(1998) 12 AHC CK 0073

In the Allahabad High Court

Case No : C.M.W.P. No. 467 of 1998

Shiv Prasad Serhaiya — APPELLANT

Vs

Passenger Tax Officer and others — RESPONDENT

Date of Decision : 09-12-1998

Acts Referred:

Uttar Pradesh Motor Gadi (Yatri Kar) Adhiniyam, 1962 — Section 13, 9

Citation : (1999) 2 AWC 1126

Hon'ble Judges : V.P. Goel, J;Ravi S. Dhavan, J

Bench : Division Bench

Advocate : A.R. Dube, for the Appellant;

Final Decision : Dismissed

Judgement

Ravi S. Dhavan and V. P. Goel, JJ.—This petition has been brought by certiorari action complaining that the order of 17.3.1998, passed by the Passenger Tax Officer, Banda, is ex parte and illegal. By this order, the vehicle has been assessed to passenger tax under the U. P. Motor Gadi (Yatrikar) Adhiniyam, 1962. The Court is not going into the aspects of the merits for the order. Suffice it to say that the assessing authority, aforesaid, records that the vehicle was not in use only for the reason that the engine of the vehicle was damaged. Taking into consideration that the motor vehicle from time to time ceased to be used under the circumstances and repair of the vehicle being one of the circumstances, the assessing authority came to the conclusion that the passenger tax was liable to be paid on the ground that repair of the vehicle may not be a circumstance for which the tax may be waived. This is the context of the order of the assessing authority. The order may be right or may be wrong but the order was not without jurisdiction. At the end of the order, the assessing authority indicated that if the petitioner feels dissatisfied with the order, then he may file an appeal. In accordance with the law as prescribed, u/s 13 of the Act itself. Thus, it was entirely upto the petitioner either to comply with the order or impugn it in appeal. But the petitioner did not do this. What the petitioner did was that he made a complaint against the assessing authority on his order to the Divisional Commissioner, Chitrakoot Dham. In this complaint, he took one additional ground that he did not submit to the order of payment of tax as he happens to be a person belonging to "Anusuchit Jaati". BY writing these words, the petitioner tried to take political advantage in a quasi-judicial proceeding. He ought to have filed an appeal if he was dissatisfied with the order instead of making a complaint. As if the petitioner''s conduct in itself was not bad, the Divisional Commissioner did not entertain the complaint.

2. This Court is of the opinion that there is no provision under the Act that the order of the assessing authority, in the circumstances of the present case, should be subjected to criticism outside the scope of an appeal, which has been so provided. Learned standing counsel, Sri B. N. Mishra, clearly conceded that the order cannot be sustained as any action to criticise the order or certify it as incorrect can only happen in an appeal so prescribed under the Act, the provision for which is Section 13.

3. The Divisional Commissioner acted on the complaint of the petitioner dated 15.9.1998. The Divisional Commissioner passed the following order :

^^Jh f''koizlkn ls<+b;k iq= jkeizlkn fu- euksgkjh xat] ckank us voxr djk;k gS fd og thi la[;k ;w-ih- 90&6727 dk Lokeh gS rFkk fu;fer jksMVSDl vnk djrk gS A mlus viuh mDr thi ds [kjkc gksus ij [kM+h gksus dh lwpuk ;k=hdj vf/kdkjh dks fnukad 4-8-97 dks nh x;h Fkh] fdUrq mldks utjvUnkt djrs gq;s mlds ?ij eq- 32]710 :- dk ;k=hdj fcuk mldks uksfVl fn;s vFkok lqus gh fu/kkZfjr dj fn;k x;k gS] tks vuqfpr gS A vr% vki crk;sa fd izkFkhZ dks fcuk lquokbZ dk volj fn;s gqq;s ;k=hdj fdu ifjfLFkfr;ksa esa fu/kkZfjr dj fn;k x;k rFkk bl /kujkf''k dh olwyh gsrq rRdky dk;Zokgh fdu ifjfLFkfr;ksa esa dh x;h vr% vki izkFkhZ dks lqudj fu;ekuqlkj ;k=hdj dk fu/kkZj.k djsa rFkk mDr ds lEcU/k esa viuh vk[;k ,d lIrkg esa miyC/k djk;sa A**

4. The Divisional Commissioner now certified that the order of the assessing authority, without notice was ex parte and that the assessing authority should explain in what circumstances this order has been passed and consequential recoveries are being made in pursuance of this order. The Divisional Commissioner, further, directed that the assessing authority hear the petitioner in accordance with the law, and further offer his explanation within a week.

5. The Court is afraid that no higher authority may give an administrative direction to a quasi-judicial or Judicial authority on how to decide a case, unless there are extraneous circumstances which may permit inquiry administratively. If the higher authorities start giving directions to judicial or quasi-judicial authorities on how a case is to be decided, then this will place the decision making authority into an embarrassing situation and deprive it of its Independence. Such a direction itself will be a factor of extraneous circumstances ; a misplaced power in excess of Jurisdiction. Thus, the Court cannot permit this order of the Divisional Commissioner to remain at the

appellate authority may be compromised should the petitioner file an appeal u/s 13. In the circumstances, the Court is of the view that in case an appeal is filed by the petitioner, the appellate authority shall not be weighed by any circumstance mentioned in the order of the Divisional Commissioner dated 17.9.1998 (Annexure-8 to the writ petition), which stands quashed.

6. The petition is consigned with the aforesaid observations.

