

(1992) 03 PAT CK 0011
In the Patna High Court
Case No : C.W.J.C. No. 6748 of 1991

Shyam Kishore Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-03-1992

Acts Referred:

Citation : (1992) 03 PAT CK 0011

Judgement

S. Roy and S.N. Jha, JJ.—This writ application has been filed, inter alia, for a direction to issue tax token on payment of current taxes on the ground that the application filed by the petitioner u/s 9-A of the Bihar Motor Vehicles Taxation Act, 1930 (hereinafter referred to as "the Act") has not been disposed of.

2. A counter affidavit has been filed on behalf of the respondents at the admission stage stating that respondent No. 2, Transport Commissioner has rejected the prayer for exemption Copy of the order dated 4-1-1992 has been annexed thereto. Prayer was made on behalf of the petitioner for time to amend the writ petition by challenging the said order. In the facts and circumstances of this case, without going into the technicalities of procedure, on the oral prayer of the petitioner, we allowed the counsel to challenge the validity of the order dated 4-1-1992.

3. The petitioner is the owner of mini bus No. BHP 8134. According to him, the vehicle was in the garage of Matin Mistry near Pearl Cinema, New Market, from 25-6-1989 until it was seized by the Police on 3-7-1990 and owed to the Traffic Police Station. The petitioner was prosecuted and he was fined Rs. 200 in Trial No. 945/90. The fine was paid on 28-12-1990. The petitioner also paid Rs. 150/- as the towing charge on 29-12-1990. The vehicle was then released. The petitioner applied u/s 9-A of the Act on 13-9-1992 for exemption of tax for the period 1-7-1989 to 31-8-1991. The respondent No. 2 by the aforesaid order dated 4-1-1992 has rejected the exemption application.

4. It was submitted on behalf of the petitioner that, the order has been passed without giving any opportunity of hearing. According to the learned Counsel, if

respondent No. 2 had heard the petitioner he would have placed before him all relevant facts in support of his prayer for exemption. Learned Additional Advocate General No. 1 submitted that in Section 9-A of the Act there is no provision for giving any opportunity of hearing and the authority is not required to hear the person concerned. It was pointed out that the owner of the vehicle claiming exemption, has only to place the materials in support of his claim and in this case, the materials produced by the petitioner along with his application for exemption, were considered by respondent No. 2. It was urged that respondent No. 2 found those materials to be unreliable and, therefore, rejected the application.

5. Section 9-A, inter alia, empowers the Taxing Officer, on application accompanied by an affidavit to exempt payment of arrears of tax and additional tax, if he is satisfied after due enquiry as prescribed by the State Government the motor vehicle has not been used for a continuous period of not less than one calendar month since the tax or the instalment of tax last paid. From a bare perusal of Section 9-A it appears that there is a provision for making "due enquiry as prescribed by the State Government". From the perusal of the rules framed under the Act we do not find that any mode has been prescribed by the State Government for making the enquiry. Learned Counsel for the petitioner drew our attention to Rules 16 and 17. Rule 16 provides that all applications made in connection with the purposes of the Act shall be made at the office of the Taxing Officer on any working day during office hours unless a special place or time has been notified for this purpose under Rule 17, Rule 17 inter alia, provides the Taxing Officer may for the purpose of expediting the performance of his duties under the Act notify a particular office or a particular daily hour or hours for hearing applications made thereunder i.e. under the Act. It would thus appear that in Rule 17 the words "hearing application made under the Act" have been used.

6. It is true that it is for the owner of a motor vehicle of public service who files an application for exemption u/s 9-A of the Act to bring on record materials for the satisfaction of the Taxing officer for granting the relief. But there can be no doubt that the provision which confers upon such owners a right to claim exemption, envisages a proceeding in which this right is determined one way or the other. The proceeding, therefore, is quasi-judicial in nature. The Taxing Officer while discharging his duties u/s 9-A discharges not merely statutory function but also acts as a quasi-judicial authority. In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, a Constitution Bench of the Supreme Court observed that although there are no positive words in the statute requiring that the party shall be heard yet the rules of justice and fair play will supply the omission of the Legislature. Therefore, mere absence of specific provision for hearing in Section 9-A cannot be conclusive. Thus, we are of the opinion that the Taxing Officer cannot dispose of an application filed u/s 9-A without giving an opportunity to the person of being heard. This is the minimum that the Taxing Officer is required to do while disposing of an application u/s 9-A of the Act.

7. From the perusal of the order dated 4-1-1992 it appears that the petitioner was not heard while respondent No. 2 rejected his application. In view of this, in the normal course, we would have set aside the said order and remanded the matter to respondent No. 2, but in the circumstances of the case, we are not doing so for the reasons stated hereinafter. The case of the petitioner as made out in the writ petition is that the vehicle remained in garage from 25-6-1989 for its repair. On 3-7-1990 the vehicle was towed by the police to the traffic police station. It may be mentioned here that the petitioner has not disclosed the reasons for the action of the police but from the perusal of Annexures-1 and 2 it appears that it was done so as the vehicle was parked at a public road obstructing free flow of traffic. If the vehicle was in the garage, as asserted by the petitioner in paragraph 4 of the writ petition, there was no occasion for the police to tow it from the public road. Further, the application u/s 9-A of the Act was filed by the petitioner on 12-9-1991 although the vehicle was said to be in the garage with effect from 25-6-1989. It is true that the petitioner in support of the fact that the vehicle was in garage filed the bill of purchase of motor parts (Annexure-3) and the certificate of alleged payment granted by one Matin Mistry on 31-8-1991 Annexure-3-A, in which, inter alia, was stated that the vehicle was in the garage from 25-6-1989 but these facts have been noticed by respondent No. 2 in his order and not relied upon.

8. Respondent No. 2 has also noticed that at no point of time the petitioner informed the District Transport Officer that the vehicle was in garage nor he surrendered the necessary papers relating to the vehicle when the petitioner sent the vehicle to the garage for repairs. Learned Counsel, appearing for the petitioner, submitted that there is no provision in the Act under which the owner of the vehicle is required to inform the District Transport Officer the fact of sending the vehicle in garage or surrender the necessary papers when the vehicle is in garage. From the perusal of the order dated 4-1-1992 it appears that respondent No. 2 took notice of 1987 PLJR 52 (SC) in support of the proposition that an owner of a public vehicle is required to inform the District Transport Officer or surrender the necessary paper if the vehicle is not in use. From perusal of the aforesaid judgment it would appear that the Supreme Court has clearly laid down that if the owner of a public motor vehicle "does not use the vehicle for a temporary period, he should intimate the Taxing Officer under the provisions of Section 9-A of the Act and in such a case he may not be liable for payment of tax for the relevant period if the other conditions prescribed under the Act in that regard are fulfilled. In view of what has been stated by the apex Court, we are of the opinion that the respondent No. 2 was correct in rejecting the prayer of the petitioner also on the ground that he did not inform the District Officer about sending the vehicle in garage nor surrendered the necessary papers.

9. For the reasons aforesaid, we do not find any merit in this application and the same is dismissed.