

(2005) 05 PAT CK 0048
In the Patna High Court
Case No : C.W.J.C. No. 1470 of 2005

Smt. Sudama Devi

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 04-05-2005

Acts Referred:

Citation : (2005) 05 PAT CK 0048

Final Decision : Allowed

Judgement

Nagendra Rai, A.C.J.

1. The question which has to be answered by this Full Bench in this case is as to whether the omnibus having seating capacity of more than five persons but below 12 is a transport vehicle (non-personalised) or not within the meaning of the amended schedule of the Bihar Motor Vehicles Taxation Act (hereinafter referred to as the Taxation Act). If it is a transport vehicle (non-personalised), then there is liability to pay additional tax in terms of schedule II of the Amended Schedule of the Taxation Act. If it is not a transport vehicle, then there is no liability to pay additional tax.

2. This question came up for consideration before a Division Bench of this Court in the case of Sudarshan Sharma Vs. The State of Bihar and Others, , and the Division Bench of this Court held that omnibus, which means constructed or adapted to carry more than six persons excluding driver, has to be treated as a transport vehicle and it is not a personalised vehicle and accordingly additional tax has to be charged.

3. Another Division Bench of this Court considered the same question to which one of us (Nagendra Rai, ACJ) was a party in the case of Uday Kumar and Ors. v. The State of Bihar and Ors., CWJC No. 8345 of 2004) disposed of on 23.11.2004, reported in 2004 (3) BLJR 2385, before whom earlier decision was not brought to the notice and held that omnibus having seating capacity of more than five but below 12 not used for any of the purposes as provided in the definition of

transport vehicle is not covered by Serial No. 3 of the amended Schedule II and as such there is no liability to pay additional tax.

4. When the present case was placed it was brought to our notice that there are two conflicting judgments of this Court on the same point and that necessitated referring this matter to the Full Bench for setting the controversy.

5. The factual matrix for disposal of the present case lies in a narrow compass.

6. The petitioner claims to be the owner of Mahindra Jeep 1991 Model having seating capacity of 11 persons bearing Registration No. BR-1C-0160 which she had purchased from one Rajesh Narayan Singh for her personal and private use and got it registered in her name. She was paying road tax regularly but from 16.7.2002 when there was amendment in the Taxation Act and the Schedules thereof, the additional tax was also demanded and she paid the same till 25.11.2004 but when again demand of additional tax was made, she filed the present writ application relying upon subsequent Division Bench judgment of this Court in the case of Uday Kumar (*supra*).

7. The State has admitted in its counter affidavit that the vehicle owned by the petitioner is omnibus. It is stated that the Taxation Act is within the legislative competence and Section 5 of the Taxation Act provides levy of tax and Section 7 provides for charges on different categories of vehicles ranging from personalised vehicle to transport vehicle. The Taxation Act including Schedules were amended by Bihar Finance Act 11 of 2002 and Schedule II contains a provision with regard to additional motor vehicles tax on transport vehicles. The vehicle of the petitioner comes under the omnibus as defined u/s 2(29) of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) and Section 2(47) of the Act defines transport vehicle which means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. The notification No. 451(E) dated 19.6.1992 issued by the Central Government u/s 41(4) of the Act clearly shows the types of vehicle, i.e. transport vehicle and non-transport vehicle. The omnibus has been kept in both the categories, i.e. transport vehicle and non-transport vehicle depending upon the nature of the use of the vehicle. In other words, if the omnibus is used for commercial purposes then it is a transport vehicle and if it is used for private purpose, then it is not a transport vehicle. As the vehicle of the petitioner is not a personalised vehicle as defined under the Act, then it will be treated to be used for commercial or public purposes and thus she is liable to pay additional tax as provided under Serial No. 3 of the Schedule II of the Taxation Act.

8. Before appreciating the point involved in this case, it is relevant mention about the relevant provisions of the Taxation Act and the Act.

9. The Taxation Act has been enacted to regulate imposition and levy of tax on Motor Vehicles in the State of Bihar. Section 2(h) defines personalised vehicle which is as follows :

"2(h) "Personalised vehicle" means a motor cycle (including moped scooter and cycle with attachment for propelling the same by mechanical power) and a Motor car with seating capacity of more than three but not exceeding five which are solely used for personal purposes."

10. Non-personalised vehicle has not been defined under the Taxation Act but Section 2(c) of the Taxation Act provides that meaning given to the words mentioned therein, i.e. "certificate or registration" "goods", "goods carriage", gross vehicle weight, "invalid carriage motor cab", "Motor cycle", "Motor vehicle", "Private service vehicle", "trailer" unladen weight", registering authority, "tractor", "transport vehicle" and any other expression, not specifically defined in this Act shall have the same meaning assigned to them respectively in the Motor Vehicles Act, 1988. In other words, if the particular expression is not defined under the Taxation Act, then the definition as provided under the Act will be treated to have been incorporated and the same meaning has to be given.

11. Section 5 of the Taxation Act is a charging section and it provides inter alia that from the date of commencement of the Act, every owner of a registered motor vehicle shall pay tax on such vehicle at the rate specified in Schedule I. It further provides that from the date of commencement of this Act, every owner of a registered motor vehicle shall pay additional Motor Vehicle Tax on such vehicle at the rate specified in Schedule II. So the tax and additional tax at the rate specified in Schedules I and II shall be paid by the owner of a registered vehicle. Section 7 of the Taxation Act provides for payment of tax.

12. The Taxation Act as well as the Schedules thereof were amended on 16th July, 2002 by Bihar Finance Act 11 of 2002. We are not concerned with the Schedule I which deals with payment of tax and there is no dispute between the parties that the vehicle in question is liable to pay tax. The controversy is only as to the payment of additional tax under Schedule II of the Taxation Act. In Schedule II, Serial No. 1 deals with goods carriage including trailers, and Serial No. 2 deals with motor cabs with seating capacity up to six persons exclusive of the driver. They are not at all relevant in this case. The only relevant serial to Schedule II is Serial No. 3 which runs as follows :

Sl. Class of vehicles Distance to be overed in a quarter Additional rate of quarterly No. tax per seat 3. Transport vehicles (a) up to 9000 km. Rs. 300/- per seat per quarter for (excluding goods ordinary bus. carriage and motor (b) exceeding 9000 km but not Rs 400/- per seat per quarter for cabs) exceeding 12000 km. ordinary bus. (c) exceeding 12000 km. but not Rs. 500/- per seat per quarter for exceeding 15000 km. ordinary bus. (d) exceeding 15000 km. but not Rs. 630/- per seat per quarter for exceeding 18000 km. ordinary bus. (e) exceeding 18000 km. Rs. 630/- per seat per quarter + 160 per seat per quarter for every slab of additional 4500 km. for ordinary bus. Besides, for the following categories of classified vehicles, the percentage rates of quarterly additional tax per seat will be higher than for the ordinary buses above, as stated above :--

(a) Express 5% (b) Semi Deluxe 25% (c) Deluxe 50% (c) A.C. 60%

Every sleeper in a category above will be deemed equal to two seats."

13. As stated above, only personalised vehicle has been defined and non-personalised vehicle has not been defined. So in view of the provisions contained u/s 2(c) of the Taxation Act for finding out the meaning of expression, the provisions of the Act has to be looked into.

14. The transport vehicle as mentioned in Serial No. 3 of Schedule II of the Taxation Act has been defined u/s 2(47) of the Act which means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. The definition of public service vehicle has been given u/s 2(35) of the Act which means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxi-cab, a motor cab, contract carriage and stage carriage. Goods Carriage has been defined u/s 2(14) which means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. Educational institution bus has been defined u/s 2(11) of the Act which means an omnibus, which is owned by a college, school or other educational institution and used solely for the purpose of transporting students or staff of the educational institution in connection with any of its activities. Private service vehicle has been defined u/s 2(33) of the Act which means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes.

15. From reading the definition of transport vehicle along with definitions of four types of vehicles as stated above. It is clear that the vehicles which are used as public service vehicle for hire or reward, a goods carriage for carrying goods, educational institution bus for carrying students etc. and private service vehicle for the purpose of carrying persons for or in connection with his trade or business are only included. Omnibus has been defined u/s 2(29) of the Act which means any motor vehicle constructed or adapted to carry more than six persons excluding the driver. The same is not covered by definition of the transport vehicle. Maxi cab and motor car have been defined under Sections 2(22) and 2(26) of the Act. Maxi cab has been defined to mean any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward. Motor car means any motor vehicle other than transport vehicle, omnibus, road-roller, tractor etc. So omnibus has been treated to be different from transport vehicle if read with definitions of transport vehicle, omnibus and motor car.

16. No doubt, motor vehicle carrying more than six passengers but not more than 12 is included in the definition of maxi cab but it will become public service

vehicle only when it is used for the carriage of passengers for hire or reward. The vehicle kept by the petitioner for personal use, as stated above, is omnibus and it is not used for any of the purposes as provided under the definition of transport vehicle read with the definitions of public service vehicle, goods carriage, an educational institution bus or a private service vehicle.

17. The general principle of interpretation is that the Court has no power to legislate, rewrite, recast or reframe the legislation. It cannot add words to a statute or read words into it which are not there. (see *Union of India and another Vs. Deoki Nandan Aggarwal*,).

18. While interpreting the taxing statute, the law is well settled that its literal meaning has to be given and there is nothing intendment, presumption on equitable construction in the Taxation Act. Subject should not be allowed to be covered within the net of taxation by applying the construction, not permissible by giving literal meaning to the taxing statute. In taxation law, nothing has to be added, nothing has to be extracted. It has to be interpreted by giving literal meaning.

19. The taxing statute has three components, namely, subject of the tax, the person covered by the Act to pay tax and the rate at which the tax is to be collected. In case of any ambiguity or vagueness with regard to any of these components, it is possible to remove the same by reasonable construction which is permissible otherwise liability cannot be fastened to pay tax unless the said defects are removed by competent legislation or authority.

20. In *A.V. Fernandez Vs. The State of Kerala*, , Justice Bhagwati has observed as follows with regard to taxation law :

"In construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law as not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed, if, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter."

21. Instead of multiplying so many judgment, it will be useful to quote a passage from the book of *Principles of Statutory Interpretation* by Justice G.P. Singh in Eighth Edition, page 635, as captioned with the General Principle Governing Interpretation on Taxing Statutes, which passage has been quoted with the approval by the Apex Court at paragraph 9 in the case of *COMMISSIONER OF INCOME TAX Vs. KASTURI and SONS LTD.*, , which runs as follows :

"The well established rule in the familiar words of LORD WENSLEYDALE, reaffirmed by LORD HALSBURY and LORD SIMONDS, means : "The subject is not to be taxed without clear words for that purpose; and also that every Act of

Parliament must be read according to the natural construction of its words." In a classic passage LORD CAIRNS stated the principle thus : "If the person sought to be taxed comes within the letter of the law he must be taxed, however, great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however, apparently within the spirit of law the case might otherwise appear to be. In other words if there be admissible in any statute, what is called an equitable, construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute." VISCOUNT SIMON quoted with approval a passage from Rowlatt, J. expressing the principle in the following words : "In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no enquiry about a tax. There is no presumption as to Tax. Nothing is to be read, nothing is to be implied. One can only look fairly at the language used." Relying upon this passage Lord Upjohn, said : "Fiscal measures are not built upon any theory of taxation".

22. With this settled principles, it has to be considered whether there is liability of the petitioner to pay additional tax. According to Section 5 of the Taxation Act, additional tax is to be paid with regard to motor vehicles as mentioned in Schedule II of the Schedules appended with the Taxation Act. Omnibus is not mentioned in Schedule II and as the vehicle of the petitioner is omnibus, by giving a literal meaning to the said Schedule, no liability to pay additional tax is fixed on the petitioner. However, the stand of the State is that under the Act as the vehicle of the petitioner is a non-personalised vehicle, it will be treated to be a transport vehicle and the liability is there to pay additional tax in terms of Serial No. 3 of the Schedule II. In view of the definition of the transport vehicle, unless omnibus is found to fall within any of the four categories of the vehicles as defined under the Act, the same cannot be called to be a transport vehicle. The State has relied upon the notification of 1992 issued by the Central Government u/s 41(4) of the Act which deals with registration. Sub-section (4) of Section 41 of the Act provides that in the certificate of registration, the type of the motor vehicle should also be mentioned as specified by the Central Government. The notification issued by the Central Government has been annexed as Annexure-A to the counter affidavit and it provides that the omnibus, if it is used for private use, then it is a non- transport vehicle, otherwise it is a transport vehicle. Thus, even according to said notification, the omnibus being used for private purpose will not be treated as a transport vehicle.

23. Now coming to Schedule II of the Taxation Act it will appear that three categories are included. Item No. 1 is goods carriage including trailers and item No. 2 is motor cabs with seating capacity up to six persons exclusive of the driver. Admittedly, omnibus is not included in those categories. The third item is transport vehicle excluding goods carriage and motor cabs which has been reproduced above. From the same it will appear that it provides additional rate of quarterly tax per seat depending upon the distance to be covered in a quarter for

ordinary bus. It further provides enhanced rate of additional tax for express bus, Semi Deluxe, Deluxe and A.C. bus. Thus, additional tax is provided under the heading of transport vehicle with regard to buses only.

24. Thus, the vehicle "omnibus" is not a transport vehicle if it is used for private purpose. If it is used for the carriage of passengers for hire or reward, then it will become public service vehicle and it will be treated as transport motor vehicle. From perusal of the definition of transport vehicle and the rates as provided under Schedule II of the Taxation Act, it is clear that the rates have been provided as only for the bus and not for any other vehicles. Even for omnibus used for public purpose, no rates have been provided. So far as omnibus used for private purpose is concerned, even according to types of the vehicles as mentioned in the notification of the Central Government and relied upon by the counsel for the State, the same is not a transport vehicle.

25. The Division Bench in the case of Sudarshan Sharma (*supra*) took the view that in view of the notification of the Central Government dated 19.6.1992 the vehicle will come into the purview of omnibus and has to be treated as a transport vehicle and it cannot be treated as a personalised vehicle and accordingly additional tax is payable under Serial No. 3 of Schedule II of the Taxation Act. In our view, it appears that attention was not drawn to the fact that even according to the aforesaid notification, the omnibus has been kept in both the categories; transport vehicle and non-transport vehicle. If it is used for private purpose, then it will not be treated to be a transport vehicle. Only in a case where omnibus is used for carrying passengers for hire or reward, then it will be treated as public service vehicle and is included within the definition of transport vehicle. Thus, the view taken in the aforesaid case, in our view is not correct.

26. Thus, our conclusion is that an omnibus having capacity to carry more than six persons if used for private purposes, is not a transport vehicle and as such no liability arises to pay additional tax under Serial No. 3 of the Schedule II of the Taxation Act. In case, omnibus is used as a public service vehicle, then it is included within the definition of transport vehicle and there is liability to pay additional tax. Thus, the decision rendered by the Division Bench in the case of Sudarshan Sharma (*supra*) is overruled and the view taken in the case of Uday Kumar (*supra*) is affirmed with modification. In the present case, the assertion of the petitioner that the vehicle is being used for private purposes has not been denied by the State Government. In that view of the matter, there is no liability of the petitioner to pay additional tax according to Serial No. 3 of Schedule II of the Taxation Act.

27. In the result, the application is allowed and the direction is issued to the respondents-authority not to charge additional tax with regard to vehicle of the petitioner. However, it is made clear that in case it is found that omnibus is being used as public service vehicle, in that case, liability is there to pay additional tax. It is made clear that we have taken the view on the basis of present entries in

Schedule II of the Taxation Act.

Barin Ghosh, J.

28. I agree.

Navin Sinha, J.

29. I agree.