

(2005) 07 AHC CK 0004

In the Allahabad High Court

Case No : C.M.W.P. No's. 645, 646, 647 of 2004 and 1345 of 2003

St. Mary's School and Another

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 08-07-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 2, 2(11), 2(33)
Uttar Pradesh Motor Gadi (Yatri Kar) Adhiniyam, 1962 — Section 3
Uttar Pradesh Motor Vehicles Taxation Act, 1997 — Section 4, 6, 6(1), 6(11), 6(3)
Uttar Pradesh Motor Vehicles Taxation Rules, 1998 — Rule 29, 29(5)

Citation : (2005) 4 AWC 3311

Hon'ble Judges : Rajes Kumar, J; R.K. Agrawal, J

Bench : Division Bench

Advocate : Aroop Banerjee and Manish Goyal, for the Appellant; S.P. Kesharwani, S.C., for the Respondent

Final Decision : Allowed

Judgement

Rajes Kumar, J.—All the Petitioners claimed to be the educational institution imparting education at different levels and owns vehicles for the transportation of their students from their residence to the Schools, The claim of the Petitioners are that they are neither liable for additional tax u/s 6 of the Act nor surcharge u/s 6(3) of the U.P. Motor Vehicles Taxation Act, 1997 (hereinafter referred to as "the Act"). In the counter-affidavit, it has been accepted by the Respondents that in view of the notification issued under Rule 29 (v), additional tax u/s 6(1) of the Act is not chargeable from the vehicles owned by the recognized institution and. therefore, the Petitioners are not liable for additional tax and are only liable to pay surcharge u/s 6(3) read with Section 8 of the Act.

2. Heard Sri Aroop Banerjee and Sri Manish Goyal, learned Counsel for the Petitioners and Sri S. P. Kesharwani, learned standing counsel for the Respondents.

3. Shri Aroop Banerjee, learned Counsel for the Petitioners submitted that the

Petitioners are the educational institution and are only imparting the education at various levels to the students and owns vehicles for transportation of their students from their residence to the schools. These vehicles are not meant for public purposes and are meant exclusively for the transportation of the students and, therefore, the vehicles do not come within the purview of "Public Service Vehicle" u/s 6 of the Act and, therefore, neither additional tax is chargeable u/s 6(1) nor surcharge is chargeable u/s 6(3) of the Act. In support of his contention, he relied upon the Division Bench decision of this Court in the case of All Indian Public School's Welfare Society, Ghaziabad and another Vs. State of U.P. and others, and a Division Bench decision in the case of Civil Misc. Writ Petition No. 431 of 2000, Independent Schools' Federation of India and Anr. v. State of U.P. and Ors. decided on 21st August, 2000 in which following the decision of All India Public School's Welfare Society, Ghaziabad and Anr. v. State of U.P., (supra) Respondents were directed not to levy surcharge on the Petitioners under U.P. Act No. 21 of 1991 in respect of the vehicles of the Schools. Learned standing counsel submitted the Schools are charging that substantial amount from their students. In the case of St. Mary's School, it is alleged that a sum of Rs. 150 is being charged from the students while the normal rate of carriage is only Rs. 80 therefore, the amount charged is not related to the maintenance alone. However, in Writ Petition Nos. 646 of 2004 and 647 of 2004, no such claim has been made. In Writ Petition No. 1346 of 2003, it is stated that the Petitioners are charging monthly fare Rs. 300 per students for 12 months for the distance between 10 to 12 km. per trip which shows that the buses are being operated for hire or reward. However, in the rejoinder-affidavit, it has been stated that the amount has been charged only for the purposes of maintaining the costs of the vehicles. Learned standing counsel relied upon paragraph 45 of the Full Bench decision of this Court in the case of Jagdish Prasad Vs. Passenger Tax Officer and Another,

4. Section 6 of the Act reads as follows:

6. Additional tax on public service vehicle.-(1) Save as otherwise provided in this Act or the Rules made thereunder, no public service vehicle, other than those owned or controlled by the State Transport undertaking shall be operated in any public place in Uttar Pradesh unless there has been paid in respect thereof, in addition to the tax payable u/s 4, an additional tax at the rate applicable to such public service vehicle specified in the Fourth Schedule:

(2) The additional tax in respect of a public service vehicle owned or controlled by a State Transport undertaking shall be levied and paid in accordance with the formula specified in the Fifth Schedule.

(3) Where a public service vehicle is wholly or partially exempted from the payment of additional tax by or under this Act a surcharge for the purpose of the fund established u/s 8 shall be levied on its operator at the rate of five per cent of the additional tax that would have been payable on such vehicle had it not been so exempted and such amount shall be credited to the said Fund.

5. From the perusal of the aforesaid provisions, it is clear that the liability to pay additional tax u/s 6 of the Act is in respect of "public service vehicle", Sub-section (3) of Section 6 of the Act imposes a liability of surcharge on "public service vehicles" which are wholly or partially exempted from the payment of additional tax by or under the Act. The surcharge, as would be evident from the section itself is realised for being credited to "accident relief fund"-a fund established for the purpose of providing relief to the passengers or other persons suffering any casualty in any accident in which a "public service vehicle" is involved, or to heirs of such passengers or other persons. The expression "public service vehicle" is although not defined in the Act but in view of Section 2(o) the meaning assigned to it in the Motor Vehicles Act, 1988 has been adopted by incorporation for the purposes of the Act as well. "Public service vehicle", as the term is defined in Section 2 of the Motor Vehicles Act, 1988 "means any motor vehicle used or adopted to be used for the carriage of passengers for hire or reward, and includes a maxi-cab, a contract carriage and stage carriage". The word "passenger" in relation to a public service vehicle means any person travelling in a public service vehicle but does not include the operator, the driver, the conductor or an employee of the operator of the public service vehicle travelling in the bona fide discharge of his duties in connection with the public service vehicle. Students travelling in a bus owned by a recognised educational institution are no doubt "passengers" within the meaning of the term defined in Sub-section (i) of Section 2 of the Act but a motor vehicle used or adopted to be used for transportation of students would not be liable to be classified as a "public service vehicle" unless it is found that the transportation of students is undertaken by the concerned institution as an independent business activity for "hire or reward". The expression "private service vehicle" is defined in Section 2(33) of the Motor Vehicles Act, 1988, "means a motor vehicle constructed or adopted 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 person 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". The term "educational institution bus" is defined in Section 2(11) of the Motor Vehicles Act, 1988 "means an omni bus, 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". Since the vehicle owned by the educational institution has been exempted from payment of additional tax under Rule 29 (5), the Respondents are charging surcharge u/s 6(3) of the Act. As stated above. Section 6(3) of the Act is applicable to a public service vehicle, therefore, the question for consideration is whether the bus owned by the educational institution for the purpose of carrying their students fall within the purview of "public service vehicle".

6. The aforesaid question came up for consideration before a Division Bench of this Court in the case of All India Public School's Welfare Society, Ghaziabad v. State of U.P. and Anr. (supra). Before the Division Bench, the question involved

was whether the vehicle owned by the educational institution was a public service vehicle and was liable for additional tax u/s 6(1) of the Act before 28th April, 1999 period prior to the notification No. 1373/30.4.1999 dated 28th April, 1999 issued in Clause (v) of Rule 29 exempting the vehicle owned by the educational institution from payment of additional tax. The Division Bench of this Court held that bus owned by the educational institution exclusively used for conveyance of pupil to and from the institution is not a public service vehicle. The Division Bench concluded as follows:

(i) A motor vehicle registered as "educational institution bus" which is owned by an educational institution and used solely for the purpose of transporting students or staff of the institution in connection with any of its activities shall not be exigible to additional tax u/s 6 of the Act and similarly a motor vehicle registered as "private service vehicle" and ordinarily used by or on behalf of its owner for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for "hire or reward" too shall not be leviable to additional tax u/s 6 of the Act.

(ii) On the other hand a motor vehicle registered as a "public service vehicle" shall be exigible to additional tax u/s 6 except a motor vehicle owned by educational institutions and used exclusively for the conveyance of students to and from the institution otherwise than "for hire or reward". The burden will be on the institution concerned to prove that though the vehicle is registered as a public service vehicle, it is exclusively used for conveyance of the students of the institution otherwise than "for hire or reward". Nominal payments made by students for the facility of conveyance extended to them by the institution is to be treated as their contribution towards maintenance charges.

7. Perusal of the registration certificate of the vehicles annexed along with the writ petition shows that they were registered as a school bus and not as a public service vehicle. There is no dispute that the vehicle is being used exclusively for the carrying the students to and from the institution. It may also be mentioned here that having regard to the recurring expenditure towards maintenance, the distances etc, the amount charged by the Petitioners from the students do not fall within the purview of "hire or reward". The Division Bench of this Court in Writ Petition No. 431 of 2000, Independent Schools" Federation of India and Anr. v. State of U.P. and Ors. following the decision in the case of All India Public School's Welfare Society, Ghaziabad v. State of U.P. and Anr. (supra) directed the Respondents not to levy surcharge in respect of the vehicles of the Schools. The decision of the Full Bench in the case of Jagdish Prasad Vs. Passenger Tax Officer and Another, referred by the learned standing counsel is not applicable to the present case. In the said case, the dispute was with regard to levy of passenger tax u/s 3 of the U.P. Motor Gadi (Yatri Kar) Adhiniyam (8 of 1962), the operator of the bus who had entered into an agreement with the Mathura Refinery for the transportation of their employees and their children from one place to another challenged that they were not liable to passenger tax u/s 3 on the ground that

the State was not competent to levy passenger tax on the operator inasmuch as under Entry 56 of List II of Seventh Schedule of the Constitution, the State had power to levy passenger tax only on the passenger. It was further claimed that their vehicles were private service vehicle and were not stage carriage and therefore, the passenger tax could not be levied. The Full Bench of this Court has not accepted the claim of the Petitioners. That was not the case where the buses were owned by the educational institution meant exclusively for carriage of the students. The Full Bench under the provisions of U.P. Motor Gadi (Yatri Kar) Adhiniyam held that all the vehicles operated by the operator were stage carriage. Section 6 of the U.P. Motor Vehicles Taxation Act, 1997 has been considered in detail by the Division Bench of this Court in the case of All India Public School's Welfare Society, Ghaziabad v. State of U.P. and Anr. (supra) which has not been overruled or set aside by the Full Bench or by any court and it still holds the field.

8. In the circumstances, respectfully following the law laid down by the Division Bench of this Court in the case of All India Public School's Welfare Society, Ghaziabad v. State of U.P. and Anr. (supra) and Division Bench decision in Writ Petition No. 431 of 2000, Independent School Federation of India and Anr. v. State of U. P, we are of the opinion that the Petitioners being the educational institution and owner of the vehicles using the vehicles only and exclusively for the purposes of carrying the students to and from their institution are not liable to surcharge u/s 6(3) of the Act inasmuch as their vehicles does not come within the purview of public service vehicle.

9. In the result, all the four writ petitions are allowed. Respondents are directed not to demand or levy surcharge u/s 6(3) of the Act from the Petitioners. If any amount has been deposited same may be refunded forthwith."