

(1996) 11 PAT CK 0046
In the Patna High Court
Case No : C.W.J.C. No. 8311 of 1996

S.T. Sevrins High School and Another	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 20-11-1996

Acts Referred:

Bihar Motor Vehicles Taxation Act, 1994 — Section 15, 2, 2(1), 45
Motor Vehicles Act, 1939 — Section 2(18)
Motor Vehicles Act, 1988 — Section 2(11)

Citation : (1997) 1 PLJR 55

Hon'ble Judges : D.P. Wadhwa, C.J; R.M. Prasad, J

Bench : Division Bench

Advocate : Ajit Kumar and Krishna Mohan Prasad, for the Appellant; V.N. Sinha and Ajat Shatru, for the Respondent

Final Decision : Dismissed

Judgement

1. In this writ application, the Petitioners have challenged the validity of that part of the notification dated 16th July, 1994 (Annexure 1) issued by the State Government with respect to the determination of road tax on the motor vehicles under the Bihar Motor Vehicles Taxation Act, 1994 (hereinafter referred to as "the Bihar Taxation Act, 1994") whereby and whereunder educational institution has been classified as those recognised by the State Government or Central Government.

2. It is contended by the learned Counsel for the Petitioners that the said specification of the educational institution in the impugned notification is inconsistent with Sub-section (11) of Section 2 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the 1988 Act") which contains the definition of "educational institution bus". According to it, "educational institution bus" 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, whereas by the

impugned notification the said definition has been confined with respect to only those recognised by the State Government or Central Government. Thus, according to the learned Counsel, the impugned notification of the State Government issued in purported exercise of power u/s 15 of the Bihar Taxation Act, 1994 being in conflict with the Central Act is ultra vires Constitution of India, void and illegal.

3. On the other hand, learned Government Pleader No. IX appearing for the State has submitted that the taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramoars subject to the provision of Entry 35 of List III are in the State List of the Seventh Schedule of the Constitution of India under which the Bihar Taxation Act, 1994 has been enacted and Section 45 of the said Act vests power in the State Government to make an exemption, reduction in the rate or other modification in regard to the tax payable in respect of any motor vehicle or class of motor vehicles by issuing notification. It is submitted by him that Entry 35 of Concurrent List III of the Seventh Schedule of the Constitution empowers both Parliament as well as the Legislature to make law relating to mechanically propelled vehicle, including the principles on which taxes on such vehicles are to be levied. Sub-section (11) of Section 2 of the 1988 Act de-fines the "educational institution bus", but the Parliament has not framed any law exempting the vehicle of the educational institution from taxation under Entry 35 of List III nor the principles on which taxes on such vehicles are to be levied. As such, according to the learned Government Pleader No. IX, there is no inconsistency in the impugned notification issued by the State Government with that of the provisions contained in the 1988 Act, as submitted by the learned Counsel for the Petitioners.

4. It appears that the Petitioners had come to this Court earlier also with similar grievance in C.W.J.C. No. 6792 of 1995 which was dismissed vide order dated 27.3.1996. Thereafter the Petitioners have filed the present writ application seeking similar relief, but in the garb of challenging the vires of Clause 2 of the impugned notification which, according to them, is not in consonance with the 1988 Act and have sought for a declaration that the entire consequential orders passed thereunder by the Respondents are without jurisdiction. The Petitioners have challenged the power of the State Government u/s 15 of the Bihar Taxation Act, 1994 in issuing the impugned notification on the ground that the principle on which taxes on such vehicles are to be levied is provided in Sub-section (11) of Section 2 of the 1988 Act enacted by the Parliament in exercise of the power under Entry 35 of Concurrent List III of the Constitution and the State has got no power to differentiate in granting exemption of tax on the vehicles by acting contrary to the definition as provided in the Central Act of 1988.

5. We are unable to appreciate this repeated attempt by the Petitioners to challenge the action of the State Government in the matter of grant of exemption from levy of road tax only on the motor vehicles belonging to educational institution recognised by the State Government or Central Government and not

to educational institution run by private individual on commercial venture.

6. Section 15 of the Bihar Taxation Act, 1994 vests power in the State Government to make exemption/reduction in the rate or other modification in regard to tax payable in respect of any motor vehicle or class of motor vehicles. There cannot be any dispute that under Entry 57 of List II, the State Legislatures are competent to legislate with respect to taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of Entry 35 of List III.

7. Bihar Taxation Act, 1994 has been enacted for the purpose of safeguarding the revenues of the State and to prevent evasion of tax. u/s 15 the State Legislature in their wisdom vested power in the State Government to exempt any motor vehicle or class of motor vehicles from payment of tax and the State Government in exercise of the said power has issued the notification, contained in Annexure 1, granting exemption from payment of road tax to vehicles having sitting capacity of more than seven passengers registered in the name of educational institute or its allied institution of the State Government or the Central Government or recognised by the State Government/Central Government treating such motor vehicles to be a separate class.

8. Undisputedly, the motor vehicles registered in the name of the petitioning institution or any institution attached to them do not belong to the aforementioned class of motor vehicles which have been exempted from payment of road tax by the State Government in exercise of the power u/s 15 of the Bihar Taxation Act, 1994.

9. It is true that the Parliament under Entry 35 of the Concurrent List III is also vested with the power to enact the provision relating to the principles on which taxes on such vehicles are to be levied, but nothing has been shown to us by the learned Counsel for the Petitioners that any such law has been enacted by the Parliament laying down the principles relating to grant of exemption from payment of road tax on certain motor vehicles or class of motor vehicles.

10. We are unable to hold that the impugned notification issued by the State Government in exercise of the power u/s 15 of the Bihar Taxation Act, 1994 is in conflict with the 1988 Act which is a Central Act merely because the State Government has chosen to grant exemption from payment of road tax to aforementioned category of vehicles only treating it to be a separate class and not to other vehicles of the educational institution covered by the definition of "educational institution bus" under Sub-section (11) of Section 2 of the 1988 Act.

11. In our opinion, the State Government, while exercising the power u/s 15 of the Bihar Taxation Act, 1994, can specify motor vehicles for the purpose of grant of exemption from payment of road tax, including particular type of educational institution treating them as a separate class which, of course, will have to be subject to the fundamental rights guaranteed under Part III of the Constitution. In the instant case, the exemption has been granted to the motor vehicles of the

educational institution of the State Government/Central Government or recognised by them which in itself is a class separate from the educational institution run by private individual virtually on commercial venture, like the Petitioners' institution which charges fee under different heads as they desire.

12. Learned Counsel for the Petitioners has placed reliance on paragraph 10 of the decision of the Supreme Court in the case of Travancore Tea Estates Co. Ltd. and Others Vs. State of Kerala and Others, , in support of his contention that the word "educational institution bus" having been defined u/s 2(11) of the 1988 Act, the State Government could not differentiate by putting the educational institutions of the State Government/Central Government or recognised by them for the purpose of exemption of road tax on their motor vehicles in a separate class other than the one as defined under the 1988 Act.

13. We are unable to appreciate as to how the decision of the Apex Court in the case of Travancore Tea Co., (supra) has any relevance to the facts of the present case. In the said case, the question for consideration before the Apex Court was that whether on the assumption that the motor vehicles are used or kept for use within the estate, and not intended to be used on public roads of the State, the tax is leviable.

14. In the case of Bolani Ores Ltd., the Supreme Court, while dealing with Entry 57 of List II, held that the power of taxation cannot exceed compensatory nature which must have some nexus with the vehicles using the roads, i.e., public roads. If the vehicles do not use the roads, notwithstanding they are registered under the Act, that cannot be taxed. Section 5 of the Kerala Motor Vehicles Taxation Act provided for exemption from payment of tax under certain circumstances. In paragraph 10 of the said judgment before concluding their Lordships of the Supreme Court dealt with the contention based on the decision of the Court in Bolani Ores Ltd. (supra). The plea of the learned Counsel was that the word "motor vehicle" should be understood as defined by Section 2(18) of the Motor Vehicles Act, 1939 and exclude from taxation motor vehicles "used solely upon the premises of the owner". As the vehicles with which the Court was concerned were claimed to have been kept for use solely in the premises of the company, it was contended that the vehicles are not exigible to tax.

15. The Apex Court declined to accept the contention of the learned Counsel that the test that is to be applied to determine whether motor vehicle is liable to tax or whether it comes within the exemption provided by Section 2(18) of the Motor Vehicles Act, 1939 before the amendment, mainly on the ground that the Kerala Motor Vehicles Taxation Act, 1963 came into force on 18.3.1963. It was held that Section 2(1) of the Taxation Act provides that words and expression used but not defined in the Motor Vehicles Act, 1939 shall have the meaning respectively assigned to them in that Act. On the date when the Kerala Motor Vehicles Taxation Act was enacted, Motor Vehicles Act, 1939, was amended by Act 100 of 1956 and the amended definition on the date when the Taxation Act came into force exempted only motor vehicles which are of a special type for use only in a

factory or in any other enclosed premises. Under the aforementioned circumstances the Supreme Court held that this amended definition will have to be read into the Taxation Act which was enacted subsequently to the date of the amendment of the definition of "motor vehicles" by Act 100 of 1956.

16. Section 2 of the Bihar Taxation Act, 1994 deals with definitions and the same provides that anything repugnant in the subject or context would mean as defined therein. The word "educational institution" has not been defined under the said Act. In Sub-section (11) of Section 2 of 1988 Act, the word "educational institution bus" has been defined. In our opinion, there is no repugnancy in the Central Act of 1988 and the Bihar Taxation Act, 1994 which does not even define the words "educational institution" or "educational institution bus".

17. However, the State Government has been vested with the power u/s 15 of the Bihar Taxation Act, 1994 to specify any motor vehicle or class of motor vehicles for grant of exemption/reduction in the rate or other modification in regard to the tax payable by such motor vehicles and the State Government in exercise of the said power has taken decision by issuing impugned notification, contained in Annexure 1, granting exemption from payment of road tax to vehicles having sitting capacity of more than seven passengers registered in the name of educational institution or its allied institution of the State Government or the Central Government or recognised by the State Government/Central Government treating such motor vehicles to be a separate class which, in our opinion, cannot be held to be suffering from any infirmity much less ultra vires the Constitution as contended on behalf of the Petitioners.

18. Under the aforementioned circumstances, we do not find any merit in the writ application and the repeated attempts by the Petitioners for grant of the same relief make them liable for being saddled with cost.

19. In the result, the writ application is dismissed with a cost of Rs. 1,000/- (one thousand) to be paid by the Petitioners to the Patna High Court Council of Legal Aid & Advice within two weeks from today, failing which the matter may be placed under the heading "For Orders" for initiating appropriate action against them.