(1992) 11 OHC CK 0002

In the Orissa High Court

Subhash Chandra Padhi APPELLANT

Vs

State Transport Authority and Others RESPONDENT

Date of Decision : 11-11-1992

Acts Referred:

Orissa Motor Vehicles (Taxation of Passengers) Act, 1969 — Section 6, 7, 8(1), 8(2)

Citation : (1994) 2 ACC 147

Hon'ble Judges : S.K. Mohanty, J;G.B. Patnaik, J

Bench : Division Bench

Judgement

G.B. Patnaik, J.—The demand raised by the Regional Transport Officer, Chatrapur, Ganjam (opp. party No. 3) to the tune of Rs. 1,12,000.90 paise on the petitioner towards the levy of passenger tax in respect of his vehicle ORG 6707 for the periods 1982-83 and 1983-84 and the consequential issuance of certificate by the Special Certificate Officer (opp. party No. 3) as per Annexure-2/A, are the subject-matter of challenge in this writ application. Against the demand raised by opposite party No. 3 the petitioner had moved by Appellate Authority and being unsuccessful therein has moved the revisional authority and die appellate and revisional orders are also challenged in this writ application.

2. The Orissa Legislature thought of augmenting the financial resources of me State for financing the expanding developmental activities and proposed the legislation to levy tax on passengers and accordingly, the Orissa Motor Vehicles (Taxation of Passengers) Bill, 1968 was introduced in the Legislative Assembly. The Bill was referred to the Select Committee on 6th of December, 1968 and me Select Committee suggested some changes. Finally, the Bill was passed in the Legislative Assembly and the Orissa Motor Vehicles (Taxation of Passengers) Act, 1969 (Orissa Act 11 of 1969) was made applicable to the whole of the State of Orissa with effect from 11th of July, 1969, the assent to me same having been given by the Governor on 10th of May, 1969. A Press Note had been issued in the Orissa Gazette, Extraordinary, dated 4.7.1969, informing me travelling public and the Operators the fact that the Act has been brought into force and me liability of

a passenger as well as the operator to pay the tax in question. The Preamble to the long title of the Act indicates that it is an Act to provide for the levy of tax on passengers carried in. stage carriages in the State of Orissa. "Stage Carriage" has been defined in Section 2(e) to mean:

...a motor vehicle carrying or adapted to carry more than six persons excluding the driver which carries passengers for hire or reward, at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey, and includes such a carriage when used as a contract carriage within me meaning of the Motor Vehicles Act, 3 of 1939.

The expression "taxable vehicle" has been defined in Section 2(h) to mean "a stage carriage which is referred to in Section 3". Section 3 is the charging section and it would be appropriate to extract Section 3 in extenso:

3. Levy of tax and the rates thereof:

From and after the commencement of this Act there shall be levied and paid to the Government a tax on all passengers carried by stage carriages at me rate of fifteen paise in the rupee on the fares payable to the operators of such stage carriages calculated 10 the nearest paise:

Provided that where passengers are carried by a stage carriage-

(a) from any place outside the State to any place within the State; or

(b) from any place within the State to any place outside the State ; or

(c) from any place within the State to any other place within the State through the intervening territory of another State,

me tax shall be payable at the rate aforesaid on the fare payable in respect of die distance covered within the State.

Section 6 casts an obligation on the Operator of a taxable vehicle of file monthly returns before the prescribed authority in such from and by such date as may be prescribed. Section 7 provides for the payment of tax along with the return submitted. Section 8 is the provision for assessment of tax. We are not concerned with the other provisions of the Act in the present case.

The Act was amended by Orissa Motor Vehicles (Taxation of Passengers) Amendment Act, 1972 (Orissa Act 5 of 1972). The expression "State Carriages" was substituted by the expression "Public Service Vehicles" in the Preamble of the long title and Section 2(e) of the principal Act was substituted by defining "public service vehicle" to the effect that it shall have the same meaning as assigned to it under the Motor Vehicles Act, 1939, but shall not include a motor car as defined in that Act. In Section 2(h) of the principal Act which has defined "taxable vehicle" for the words "stage carriage" the expression "public service vehicle" was substituted by the Amending Act. In the charging section also for the words "stage carriage" the words "public service vehicle" were substituted by the Amending Act.

The Act was further amended by the Orissa Motor Vehicles (Taxation of Passengers) Amendment Act, 1981 (Orissa Act 20 of 1939) and the expression "public service vehicles" in the long title was substituted by the expression "stage carriages". In Section 2(b) which defines "Operator", the expression "public service vehicle" was substituted by the expression "stage carriage". Section 2(c) was also substitute:11 by defining "stage carriage" to mean:

...a motor vehicle carrying or adapted to carry more than six persons excluding the driver which carriage passengers for hire or reward at separate fares paid by or individual passengers, either for the whole journey or. for stages of die journey.

Section 2(h) also was amended by substituting "public service vehicle" with the words "stage carriage". Similarly, the charging section in Section 3 was amended by substituting the expressions "public service vehicles" and "public service vehicle" wherever they occur by the words "stage carriages" and "stage carriage" respectively.

3. The legislative history traced above indicates that when the Act was enacted, passengers carried by stage carriage vehicles had been brought under the purview of the Act. The Statement of Objects and Reason of the amendment that was introduced in 1971 clearly states that the Act was amended to enlarge the scope of the principal Act to further augment the financial resources of the State for financing the expanding development activities and thus by amendment made in the year 1971, "public service vehicles" which include both stage carriages and contract cam (sic) were brought under the purview of the statute. The further amendment that was made in 1981 by Orissa Motor Vehicles (Taxation of Passengers) Amendment Act, 1981, again substituted the words "public service vehicle" by "stage carriage" and the Statement of Objects and Reasons of the said amendment clearly states that the Act seeks to confine the applicability of the Orissa Motor Vehicles (Taxation of Passengers) Act, 1969, to the stage carriages and exclude from its purview "contract carriages". It is further indicated that the loss of passenger tax from contract carriages is proposed to be made good by suitably raising the rate of motor vehicle tax in respect of such carriages. We are concerned in the present case with the law as is stood for the period January, 1982 to September, 1983, by which time the amended Act of 1981 had already come into force. It is to be noticed that the legislatures while excluding the contract carriages from the purview of the Act, also enhanced the tax in respect of contract carriages by amending the rate provided for such carriages under die Orissa Motor Vehicles Taxation (Amendment) Act so as to adequately compensate for the loss of passenger tax in respect of the contract carriages in view of its exclusion from me purview of me Orissa Motor Vehicles (Taxation of Passengers) Act, 1969.

In view of our discussions made above, there cannot be two opinion on die question that during me relevant period only the passengers carried by stage carriage vehicles were subjected to levy of passengers tax under the Orissa Motor Vehicles (Taxation of Passengers) Act and the contract carriages had been taken out of its purview.

4. The petitioner''s case in the nut-shell is that his vehicle O.R.G. 6707 had been registered as a contract carriage till 31.12.1981. In die hope of getting a route permit for operating the vehicle as a stage carriage, the petitioner paid me enhanced tax meant for stage carriage with effect from 1.1.1982, but, in fact, no route permit was made available to the petitioner. The petitioner, therefore, had no other option man to ply the vehicle as a contract carriage and, therefore, he is not liable to pay any passenger tax merely because he has paid die higher rate of tax as is meant for a stage carriage. The further contention of the petitioner is that even if it is held that the petitioner was plying the vehicle as a stage carriage without a route permit for the same on the basis of the some check reports obtained periodically, he can be charged only on those dates and not for the entire period. The stand of the Transport Authority in the counter affidavit, on me other hand, is mat me petitioner himself made an application to the Taxing Authority to permit the petitioner to use the vehicle as a stage carriage with effect from 2.1.1982 and, in fact, paid the requisite amount of higher rate of tax meant for stage carriage in me Schedule and, therefore, in die eye of law, the vehicle must be held to be a stage carriage with effect from 2.1.1982. It is not disputed by the opposite parties that during die period in question, the petitioner has not been able to obtain a route permit for using the vehicle as a stage carriage, but notwithstanding me same, he was clandestinely using me vehicle as a stage carriage which is apparent from several check reports as per Annexure-A series. The concerned authority, therefore, initiated a proceeding u/s 8 of the Orissa Motor Vehicles (Taxation of Passengers) Act and after giving due opportunity completed the assessment for the period in question. The petitioner being aggrieved by the same preferred an appeal and the appeal having been dismissed, die petitioner carried the matter in revision. The revisional authority has also affirmed me assessment made and mere is no error of law in any of the orders passed by me authorities. Since the assessment made by the authorities u/s 8 was not paid and the amount is recoverable under me provisions of the Orissa Public Demands Recovery Act, me certificate proceeding has been initiated.

5. Mr. Das, me learned Counsel for the petitioner, raises two contentions in challenging me assessment made by die concerned authority towards passengers tax under the provisions of the Orissa Motor Vehicles (Taxation of Passengers) Act, 1969 (hereinafter, for convenience, referred to as the "Passengers Tax Act" and die appellate and revisional orders arising therefrom:

(i) The vehicle in question cannot be said to be a stage carriage as there had been no route permit in favour of the petitioner who is die owner of die vehicle to operate the vehicle as a stage carriage and, therefore, under law since the Passengers Tax Act has been made applicable in respect of passengers carried by a stage carriage, the assessment is without jurisdiction; and

(ii) Even if it is held the vehicle was found to be used as a stage carriage while intermittent checks were made, but there is no presumption in law that it was so used for the entire period and, therefore, tax could be levied only in respect of those dates and not otherwise and judged from that angle, the assessment made is illegal and invalid and cannot be sustained.

We would examine both these contentions.

6. Coming to me first submission of the learned Counsel for the petitioner, let us examine the relevant provisions of the Passengers Tax Act. Section 3 is the charging section which says that from and after the commencement of the Act there shall be levied and paid to the Government a tax on all passengers carried by stage carriages at the rate of fifteen paise in the rupee on the fares payable to the operators of such stage carriages calculated to the neatest paise. Levy, therefore, is on the passengers carried by a stage carriage at the rate of fifteen paise in the rupee on the fares payable to the operator of such stage carriage. The expression "operator" has been defined to mean a person whose name is entered in the permit as the holder thereof and where a stage carriage is used or allowed to be used without a permit, includes the person in whose name such vehicle is registered under the Motor Vehicles Act, 1939 or the person having possession or control thereof. The aforesaid provision makes the position clear that for the purpose of Passengers Tax Act, even a registered owner or even a person having possession or control of the vehicle which is a stage carriage would be "operator" even if there is no route permit in favour of the said person to ply the vehicle as a stage carriage. The expression "stage carriage" has been defined under the said Act to mean a motor vehicle carrying or adapted to carry more than six persons excluding the driver which carries the passengers for hire or reward at separate fees paid by or for individual passengers either for the whole journey or for the stages of the journey. In this view of the matter, if a motor vehicle satisfies the definition of "stage carriage" as mentioned in Section 2(e) and is found to be used as such even without a route permit for die same, whereby die owner of the registered vehicle becomes an operator under the relevant Act, then liability accrues for levy of tax u/s 3(1) of the Act in question. Consequently, the contention of the petitioner that in the absence of any route permit permitting the vehicle to applied as a stage carriage, the passengers carried by the said vehicle would be excluded from the purview of the levy of passengers tax cannot be sustained. In view of the findings the lower Tribunals to the effect that the petitioner himself had paid the higher rate of tax meant for a stage carriage in respect of the vehicle in question and on being checked it was found to be carrying passengers for hire at separate fees paid by individual passengers for stages of the journey and as such was being used as a stage carriage within me meaning of Section 2(e) of the Passengers Tax Act, such passengers would be liable for the levy u/s 3(1) of the Act notwithstanding the fact that there had been no route permit in favour of the petitioner to ply the vehicle as a stage carriage. Since the petitioner had not submitted any return, the prescribed authority had the jurisdiction to make the assessment under Sub-

section (2) of the Section 8 of the said Act and initiation of such proceeding by me prescribed authority cannot be said to be without jurisdiction. The first submission of the learned Counsel for the petitioner must, therefore, be rejected.

7. Coming to the second contention of Mr. Das appearing for the petitioner, we however, find ample force in the same. u/s 6 of the Passengers Tax Act, an operator is required to deliver to the prescribed authority monthly return in such form and by such date as may be prescribed. u/s 7, the tax becomes payable for every month in accordance with the return submitted u/s 6. u/s 8(1) of the Act, where a return is furnished and the prescribed authority is satisfied about the correctness of the such return, then the assessment has to be made for the month in question by the concerned authority. Under Sub-section (2) thereof even if no return is submitted by an operator for any month, then the prescribed authority has to determine the sum payable to Government by the operator by way of tax after giving the operator reasonable opportunity of being heard in respect of such month or a portion thereof. A combined reading of the aforesaid provisions makes it abundantly clear that "month" is the unit for levy of tax on passengers under the provisions of the Act. Consequently, where no return is filed, but on sporadic checks on different dates, the authorities find that on those dates the vehicle was being used by as a stage carriage and initiates a proceeding for levy of tax under the provisions of the Passengers Tax Act, then the concerned authority can levy tax in respect of the month in question and not for the whole year. From the revisional order it transpires that check reports had been received in respect of the vehicle on two dates in May, 1982, one day in September, 1982, one day in January, 1983, one day in February, 1983, one day in March, 1983 and two days in June, 1983. Therefore, the prescribed authority can levy tax for those six months and not for the entire period of 1982-83, as has been done by the Assessing Officer which has been affirmed in appeal and revision. In view of our aforesaid conclusion, the assessment made u/s 8(2) cannot be sustained and the prescribed authority u/s 8(2) can make the assessment for the six months as already stated above. Consequently, the order of assessment made by the concerned authority as well as the appellate order therefrom and the revisional order under Annexure-1 are quashed and necessarily the consequential initiation of the certificate proceeding and the certificates under Annexures-2 and 2/a are hereby quashed. The matter is remitted back to the prescribed authority u/s 8 of the Act to make a fresh assessment for the periods already mentioned above bearing in mind the law laid down in this judgment and this may be made by giving an opportunity of hearing to the petitioner.

The writ application is allowed to the extent and manner indicated above. There would be no order as to costs.

