
(2004) 09 PAT CK 0143
In the Patna High Court
Case No : CWJC No. 4471 of 2004 (D.B.)

Sudarshan Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-09-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 2(26), 2(29), 2(47), 2(h)

Citation : (2005) 1 PLJR 170

Hon'ble Judges : I.P. Singh, J;B.K. Jha, J

Bench : Division Bench

Advocate : Jay Prakash Sharma, for the Appellant; R.K. Dutta, for the Respondent

Final Decision : Dismissed

Judgement

1. This application filed under Article 226 of the Constitution of India has come up for admission. It has been filed for a direction to the respondents not to collect Additional Motor Vehicles Tax prescribed for transport vehicles vide notification dated 17th July, 2002 which is not applicable to the vehicle of the petitioner which is a Maruti Van bearing registration No. B.R.-1P-8304. The petitioner has contended that the vehicle in question was purchased by one Nageshwar Prasad Roy and the present petitioner has purchased it from him. According to paragraph 4 of the petition the type of the body of the vehicle has been described as Saloon and its seating capacity has been stated as 8 persons. The petitioner has purchased this vehicle for personal use and its seating capacity was reduced to 5 persons only by fixation of seats. Annexure-3 will show that the department had described this vehicle as Car and had accepted the tax accordingly, When, however, the petitioner went to the office of respondent No. 4 (District Transport Officer) to pay the tax from 22.3.2003 to 21.3.2004 and excess amount of Rs. 2062.70 was charged which was far in excess to the lawful tax. It is against this alleged arbitrary taxation that the present application has been filed.

2. The petitioner has further contended that he had personally come to the office of respondent No. 4 to pay the tax for this vehicle but he was directed to pay Rs. 11,200/- for one year which is quite illegal. The certificate of registration will show that his vehicle was registered as motor car bearing No. BR-IP-8304. Hence it can not be classed as commercial vehicle. The amendment to Motor Vehicle Taxation Act was published in Bihar Gazette dated 17th July, 2002 which did not authorise the respondent No. 4 to realise annual tax for the vehicle in question. On these ground in this writ application the petitioner has contended that respondents be directed not to realise tax for this vehicle at the rate prescribed for commercial tax or transport vehicle.

3. A counter affidavit has been filed on behalf of respondent No. 4 in which it has been stated that section 2(26) of the Motor Vehicle Act, 1988 (hereinafter called as 1988 Act) has defined motor car which is a vehicle other than omni-bus. Section 2(29) has defined omni-bus as a motor vehicle adapted to carry more than six persons excluding the driver. Section 2 (47) has defined a transport vehicle which also includes a private service vehicle. It has further been contended in the counter affidavit that the petitioner's vehicle is 8 seater vehicle and can not be called a personalised vehicle which has been defined in section 2(h) to mean a motor car with seating capacity of more that three but not exceeding five which are solely used for personal purposes. Respondent No. 4 has contended that the petitioner's vehicle is an omni-bus and undisputedly a transport vehicle in accordance with the Notification No. S.0.451(E) dated 19.6.1992 the Bihar Motor Vehicle Taxation Act, 1994 (hereinafter called 1994 Act) has provided that for the purpose of imposing tax the vehicle having seating capacity of not more than five persons can be defined as personalised vehicle and as per this definition the vehicle of the petitioner can not be said to be a personalised vehicle. It is a transport vehicle for which a separate rate of tax has been provided through Bihar Finance Act, 2001. As such it has been submitted that the petitioner is liable to pay the motor vehicle taxes under part-C of schedule I and also liable to pay additional motor vehicle tax under schedule II of 1994 Act as amended by Bihar Finance Act, 2001. The petitioner has claimed to have changed the seating capacity of his vehicle which is not authorised to do in view of 1988 Act and also 1994 Act. On these grounds it has been submitted that the writ petition is devoid of any merit and fit to be dismissed.

4. A reply to this counter affidavit has been filed on behalf of the petitioner. He has submitted that his vehicle has been registered as motor car by respondent No. 4 and the tax accordingly was paid for motor car and accepted by the department. The photo copy of the certificate of registration of another vehicle has also been given as Annexure-5. It has been further contended that the petitioner is using this vehicle purely for his personalised use and it is neither mini bus or a transport vehicle. Hence his application is fit for admission.

5. The parties have been heard at length with respect to the submissions made by them. In this connection I will firstly refer to Annexure-2 which is the form of

certificate of registration of this vehicle (BR-IP-8304). No doubt at the beginning the description of this vehicle has been shown to be a car but in the body portion it has been shown to be Saloon with seating capacity including the driver to be 8 persons. According to section 2(26) of 1988 Act the motor car means any motor vehicle other than a transport vehicle or omni-bus. Section 2(29) of this Act defines omni-bus as a motor vehicle constructed to carry more than six persons excluding the driver. From the above two definitions it would mean that since the vehicle of the petitioner has seating capacity of 8 persons obviously it can not be said to be a motor car even if the same has been shown as such in the certificate of the registration (Annexure-2). In this connection my attention has been drawn to the Notification No. S.O.451(E) dated 19.6.1992 according to which the petitioner's vehicle will come under the purview of omni-bus and has to be treated to be transport vehicle. According to the Bihar Finance Act, 2001 all the transport vehicles which are not motor cars with seating capacity of 6 persons have been kept Class I vehicle for the purpose of computation of additional motor vehicle tax as given in Annexure-2. As such the petitioner's vehicle can not be treated to be personalised vehicle. So far as the changing of the seating capacity is concerned that is not permissible under the provisions of either 1988 Act or 1994 Act.

6. In reply to the counter affidavit it has been contended that in the case of petitioner's car the seating capacity has been fixed as 8 which appears to be a typing error. It is too late at this stage to come up with this explanation. Also my attention has been drawn to the fact that earlier the transport department as per Annexure 3 had accepted the tax showing the vehicle in question as Car. This, however, will not operate as estoppel against the department. Since as per the law noted above the vehicle in question can not be treated to be a motor car, From the detailed discussions made above it becomes clear that this application is not fit for admission. It is, accordingly, rejected.