(2003) 07 AHC CK 0148

In the Allahabad High Court

Case No : C.M.W.P. No. 1513 of 2002

Sukhpal Singh Bal APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 16-07-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Uttar Pradesh Motor Vehicles Taxation Act, 1997 — Section 10(3)

Citation : AIR 2003 All 295 : (2003) 2 AWC 1448

Hon'ble Judges : Prakash Krishna, J;M. Katju, J

Bench : Division Bench

Advocate : A.D. Saunders, for the Appellant; S.P. Kesarwani and S.C., for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : State of U.P. and Others Vs. Sukhpal Singh Bal etc. etc., (2005) 3 ACC 785 : AIR 2005 SC 3324 : (2005) 8 JT 115 : (2005) 7 SCC 615 : (2005) 3 SCR 1135 Supp : (2005) AIRSCW 4325 : (2005) 7 Supreme 52

M. Katju, J.—This writ petition has been filed for a writ of certiorari quashing the order dated 5.3.2002 passed by the respondent No. 3 and for a mandamus directing the respondents to release the petitioner''s tanker unconditionally. The petitioner has prayed that the U. P. Motor Vehicles Taxation (Amendment) Act. 2001 (U. P. Act No. 25 of 2001) be declared ultra vires Articles 14 and 19(1)(g) of the Constitution.

2. Heard learned counsel for the parties.

3. The petitioner is the owner of tanker bearing registration number MP-24C-0377. The vehicle is covered by a National permit granted by Regional Transport Authority, Durg. This permit has been granted for the States of Chattisgarh, Maharashtra, Uttar Pradesh and Andhra Pradesh. The tanker was

carrying material from Bhillai Steel Plant to Sonepat and entered the State of U. P. on 26.2.2002. The tanker unloaded the goods and returned from Sonepat and crossed the border of U. P. at Masaura and was allegedly about 8 Kms. away inside the State of Madhya Pradesh on Sagar Road when the vehicle was seized by respondent No. 3 on 4.3.2002. The petitioner made an application dated 5.3.2002 for release of the vehicle, on which the respondent No. 3 passed an order dated 5.3.2002 imposing ten times penalty u/s 10(3) read with Section 10 (1) (b) of the U. P. Motor Vehicles Taxation Act, 1997 as amended by U. P. Motor Vehicles Taxation (Amendment) Act, 2001. It is alleged in para 5 of the petition that the petitioner on 4.2.2002 deposited Bank Draft for Rs. 5,100 as composite fee which has been accepted by the respondent No. 3. Photostat copy of the Bank Draft is Annexure-2. The petitioner made an application for the release of the vehicle on which the Assistant Regional Transport Officer, Lalitpur passed an order on 5.3.2002, imposing ten times penalty amounting to Rs. 51,000 and Rs. 1,100 u/s 200 of the Motor Vehicles Act, 1988.

4. The U. P. Motor Vehicles Taxation Act, 1997 provides for tax to be paid on a vehicle coming from outside the State into the State of U. P. vide Section 10 (1).

Section 9 (3) of the U. P. Motor Vehicles Taxation Act, 1997 provides :

"(3) Where the tax or additional tax in respect of motor vehicle is not paid within the period specified in Sub-section (1), in addition to the tax or additional tax due, a penalty at such rate not exceeding twenty five per cent of the due amount, as may be prescribed, shall be payable, for which the owner or the operator, if any, shall be jointly and severally liable."

5. u/s 10 (3) of the U. P. Motor Vehicles Taxation Act, penalty was imposable on vehicles under a temporary permit granted by an authority having jurisdiction outside U. P. if the vehicle operated within U. P. without paying tax. However, no such penalty was payable on national permit holders operating within U.P. without paying tax. Subsequently by U. P. Motor Vehicles Taxation (Amendment) Act, 2001 (U. P. Act No. 25 of 2001) Section 10 (1) of the Principal Act was substituted by a new provision ; and now vehicles operating in U. P. under a National permit have also to pay additional tax vide new Section 10 (1) (b). For not paying this tax, national permit holders will also now have to pay penalty of ten times the tax amount u/s 10 (3).

6. In para 28 of the petition, it is alleged that vehicles operating within the State of U. P. have to pay penalty for non-payment of tax not exceeding 25% of the amount due. On the other hand, vehicles coming from outside U. P. have to pay penalty of 10 times the tax amount simply because they are coming from outside the State. It is alleged that this is discriminatory and violative of Article 14 of the Constitution. It is. alleged in para 30 of the petition that there is no basis for imposing 10 times penalty only on the ground that composite tax has not been deposited. It is alleged there are no check posts or place to deposit the bank draft at the border of the State of U. P. The nearest Transport Office is about 50

to 60 km. from the entry point. Thus the vehicle has to travel 50 to 60 km. inside the State of U.P. to deposit the bank draft and it is at this point of time when the vehicle is checked and on the pretext that the bank draft was not deposited, the vehicle is seized and 10 times penalty imposed. The petitioner or such like persons do not even get the opportunity to deposit the composite fee before they are pounced upon by the Transport Authorities and the vehicle is seized. Thus every vehicle entering the State of U. P. is subjected to the same harassment and is compelled to pay 10 times penalty. It is alleged in para 32 of the petition that the imposition of 10 times penalty is too harsh and without any rational basis and is discriminatory.

7. A counter-affidavit has been filed by the respondents. In para 3C (iii) it is alleged that the provision for penalty has been made to prevent evasion of payment of revenue. The petitioner had not deposited additional tax of Rs. 5,000 at Entry Check post Masaura district Lalitpur where there is a well established check post of the transport department and at the same place there is a check post of the U. P. Trade Tax Department also. The petitioner''s vehicle was intercepted while it was coming from Lalitpur and was going towards Sagar in Madhya Pradesh. It is alleged that there is no discrimination in the Amending Act of 2001. It is alleged that the R.T.O., A.R.T.O. and Taxation Officer have no control over the vehicles entering under a National permit u/s 88(12) of the Act granted by the Transport Authority of other States. Experience has shown that such vehicles operate in large numbers in U.P. without paying additional tax. In para 4 of the counter-affidavit it is stated that the conduct of the petitioner clearly shows his intention was to evade payment of tax and additional tax and hence penalty was rightly imposed. In para 5 of the counter-affidavit it is denied that the vehicle was seized outside the State of U. P. and about 8 km. within M.P. The petitioner entered U.P. without paying additional tax and with intention to evade payment of such tax. In para 7 it is stated that the bank draft in question was never deposited by the petitioner till the vehicle was intercepted and seized. It was only after the seizure of the vehicle and imposition of penalty that the petitioner deposited the bank draft on 6,5.2002. True copy of the bank draft is Annexure-C.A. 5. In para 20 it is stated that usually the temporary permits are granted for 3 or 4 days for some special occasion. On the other hand, the National permit u/s 88(12) operates for the whole year and the amount of additional tax in respect of such a vehicle is Rs. 5,000. The motor vehicle of the above two natures are long distance motor vehicles.

8. An amendment application has also been filed in which the provision of Section 10 (3) of the 1997 Act has been challenged as arbitrary and discriminatory.

9. Section 10 of the U. P. Motor Vehicles Taxation Act, 1997 states :

"10. Vehicles not to be used in Uttar Pradesh without payment of lax.--(1) Notwithstanding anything contained in Section 9, no transport vehicle shall ply in Uttar Pradesh under a temporary permit granted under the Motor Vehicles Act, 1988, by an authority having Jurisdiction outside Uttar Pradesh unless there has been paid in respect thereof :

(i) a tax u/s 4 calculated at the appropriate rate specified in the First Schedule and In the manner provided under Sub-section (2) for the number of weeks of its use or stay in Uttar Pradesh ;

(ii) an additional tax u/s 5 or Section 6, as the case may be, calculated at the appropriate rate specified in the Sixth Schedule.

(2) For the purpose of levy and payment of tax under Clause (i) of Sub-section (1), the tax payable for any two weeks or part thereof shall be 2/13th of the rate specified in the First Schedule.

(3) If such a transport vehicle is found plying in Uttar Pradesh without payment of the tax or additional tax payable under this Act such tax or additional tax along with a penalty, equivalent to ten times of the due tax or additional tax shall be payable."

10, The statement of objects and reasons of the U. P. Act No. 25 of 2001 reads as follows :

"The Uttar Pradesh . Motor Vehicles Taxation Act, 1997 (U. P. Act No. 21 of 1997) has been enacted to provide for the imposition of tax in the State on Motor Vehicles and additional tax on Motor Vehicles engaged in the transport of passengers and goods on hire. The said Act does not provide for effective control over Motor Vehicles plying in the State without a permit. The said Act, no doubt provides for restriction on the use of transport vehicles within the State under a temporary permit issued by an authority having jurisdiction outside the State without payment of tax or additional tax under the said Act and in case of default thereof, imposition of penalty equivalent to ten times of tax and additional tax, but there is no such provisions with respect to transport vehicles operating under National tourist permit."

Amendment of Section 10.--In Section 10 of the principal Act :

"(1) Notwithstanding anything contained in Section 9, no transport vehicle shall ply in Uttar Pradesh :

(a) under a temporary permit granted under the Motor Vehicles Act, 1988 by an authority having jurisdiction outside the Uttar Pradesh unless there has been paid in respect thereof :

(i) a tax u/s 4 calculated at the appropriate rate specified in the First Schedule and in the manner provided under Sub-section (2) for the number of weeks of its use or stay in Uttar Pradesh ;

(ii) an additional tax u/s 5 or Section 6, as the case may be, calculated at the appropriate rate specified in the Sixth Schedule ;

(b) under a National permit granted under Sub-section (12) of Section 88 of the said Act by an authority having jurisdiction outside Uttar Pradesh unless there has been paid in respect thereof an additional tax u/s 5 calculated at the rate specified in Clause (B) of the Third Schedule, In the manner prescribed."

The first submission of learned counsel for the petitioner is that Section 10 (3) of the U. P. Motor Vehicles Taxation Act, 1997 is unreasonable and arbitrary and hence violative of Articles 14 and 19(1)(g) of the Constitution, inasmuch as the penalty under the aforesaid provision is disproportionate to the offence. Secondly, it is also alleged that there is discrimination against the National permit holders, since the penalty on them is much more than on the intra-State operators.

11. As regard the second submission of the learned counsel for the petitioner that there is discrimination against National permit holders, the learned counsel for the petitioner has relied on the decision of the Supreme Court in Weston Electronics v. Slate of Gujarat AIR 1988 SC 2038. In that decision it was held that the levy of sales tax at different rates on goods imported into the State and goods manufactured within the State is discriminatory. In our opinion that decision has no application to the present case since we are not concerned here with sales tax but with additional tax under U. P. Motor Vehicles Taxation Act, 1997 as amended. That decision was based on Article 301 of the Constitution with which we are not concerned in the present case. National permits and intra-State permits belong to different classes, and hence different penalties can be prescribed for the two. Hence, we find no force in this submission.

12. However, as regards the first submission, we are certainly of the opinion that the amount of penalty of 10 times of the due tax or additional tax is highly excessive and arbitrary and thus violates Articles 14 and 19(1)(g) of the Constitution.

13. As observed by the Supreme Court in Maneka Gandhi v. Union of India, AIR 1978 SC 597, anything which is arbitrary is violatlve of Article 14 of the Constitution. It is well settled in law that the punishment should be proportionate to the offence vide Ranjit Thakur Vs. Union of India (UOI) and Others, ; U.P. State Road Transport Corporation and Others Vs. Mahesh Kumar Mishra and Others, etc. No doubt the aforesaid rulings are in connection with service law and not tax law, but, in our opinion, the principle laid down therein should be extended to other laws also.

14. In State of Madras Vs. V.G. Row, Patanjali Shastri, C.J. observed :

"It is important in this context to bear in mind that the test of reasonableness, whenever prescribed, should be applied to each individual statute impugned, and no absolute standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, t h e disproportion of the imposition, etc. should all enter into the Judicial verdict."

15. In our opinion, the penalty should not be too excessive, as it is in Section 10 (3). No doubt a penalty can be imposed for violation of law but such penalty must not be excessive otherwise it may violate Articles 14 and 19(1)(g) of the Constitution vide Chintaman Rao Vs. The State of Madhya Pradesh, ; Indian Express v. Union of India AIR 1986 SC 515 etc. No doubt restrictions can be placed on the right under Articles 14 and 19(1)(g) but the restrictions should not be arbitrary or excessive in nature vide Laxmi Khandsari v. State of M. P. AIR 1981 SC 87 ; Kharak Singh Vs. The State of U.P. and Others, ; Mohd. Hanif Quareshi and Others Vs. The State of Bihar, ; Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others, and Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others,

16. In our opinion, the penalty prescribed by Section 10 (3) is certainly highly excessive and arbitrary. It may be noted that Section 10 (3) does not say that the maximum penalty can be 10 times the tax due. It fixes 10 times the tax due as the only penalty. Thus, the authority is left with no discretion in the matter.

17. In Mithu Vs. State of Punjab, the Supreme Court struck down Section 303, I.P.C. because it provides for only one punishment, i.e., death sentence and gives no scope for discretion to the Court. This is precisely the situation here.

18. In our opinion, Section 10 (3) is also discriminatory. There may be cases where a vehicle operates only for say 10 minutes within U.P. on a few kilometers without paying tax. and other cases where a vehicle operates for days or weeks on hundreds of kilometers within U.P. without paying tax. Surely these two categories are different, but in both these cases the same harsh penalty is payable, and there is no discretion in the matter. Thus Section 10 (3) treats unequal as equals, which is also violative of Article 14 of the Constitution. The ratio of Mithu''s case (supra), hence applies in the present case too, though no doubt Mithu''s case related to a different statute.

19. For the reasons given above, this writ petition is allowed. Section 10(3) of the U. P. Motor Vehicles Taxation Act, 1997 is held to be violattve of Articles 14 and 19(1)(g) of the Constitution. In our opinion, the penalty it imposes is too excessive and harsh penalty and hence it is arbitrary and unreasonable. It is also, in our opinion, discriminatory and hence, violative of Article 14 of the Constitution. The impugned order dated 5.3.2002 to the extent it imposes 10 times penalty is quashed.

20. The writ petition is allowed. No order as to costs.