(2003) 03 AHC CK 0125

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1513 of 2002

Sukhpal Singh Bal APPELLANT

Vs

State of U.P.& Ors. RESPONDENT

Date of Decision : 25-03-2003

Acts Referred:

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

Citation : (2003) 03 AHC CK 0125

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

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed for a writ of certiorari quashing the order dated 532002 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 the tanker bearing registration number MP24C0377. The vehicle is covered by a National permit granted by Regional Transport Authority Drug. 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 2622002. The tanker unloaded the goods and returned from Sonepat and crossed the border of U.P. at Masaura and was allegedly about 8 kms. inside the State of Madhya Pradesh on Sagar Road when the vehicle was seized by respondent No. 3 on 4 32002. The petitioner made an application dated 532002 for release of the vehicle on which the respondent No. 3 passed an order dated 532002 imposing ten times penalty under Section 10(3) read with 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 422002 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 532002, imposing ten times penalty amounting to Rs. 51,000/ and Rs. 1,100/ under Section 200 of the Motor Vehicles Act, 1988.

4. The U.P. Motor Vehicle 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).

5. 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 percent 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.?

6. Under Section 10(3) of the U.P. Motor Vehicles Taxation Act, penalty was imposaible 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 Principle 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 under Section 10(3).

7. 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 of 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 had 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 k.m. 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.

8. A counteraffidavit 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 RTO, ARTO and Taxation Officer have no control over the vehicles entering under a National Permit under Section 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 counteraffidavit 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 counteraffidavit 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 interrupted and seized. It was only after the seizure of the vehicle and imposition of penalty that the petitioner deposited the bank draft on 652002. True copy of the Bank Draft is Annexure CA5. In para 20 it is stated that usually the temporary permit are granted for 3 or 4 days for some special occasion. On the other hand the National Permit under Section 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.

9. 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.

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

?10. Vehicles not to be used in Uttar Pradesh without payment of tax. (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 under Section 4 calculated at the appropriate rate specified in the First Schedule and in the manner provided under subsection (2) for the number of weeks of its use or stay in Uttar Pradesh;

(ii) an additional tax under Section 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 subsection (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.?

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 under Section 4 calculated at the appropriate rate specified in the First Schedule and in the manner provided under subsection (2) for the number of weeks of its use or stay in Uttar Pradesh:

(ii) an additional tax under Section 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 subsection (12) of Section 88 of the said Act by an authority having jurisdiction outside Uttar Pradesh unless the has been paid in respect thereof an additional tax under Section 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, in as much 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 holder, since the penalty on them is much more than on the intrastate 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. State 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 good 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 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 her 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 Meneka Gandhi v. Union of India, AIR 1978 SC 597, anything which is arbitrary, is violative of Article 14 of the Constitution. It is well settled in law that the punishment should be proportionate to the offence vide Ranjit Thakur v. Union of India, JT 1987 (4) SC 93; UPSRTC v. M.K. Mishra, 2003 (3) SCC 450, 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 v. V.G. Row, AIR 1952 SC 196 (200), Patanjali, Shastri, CJ 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, the 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 Chairman v. State of M.P., AIR 1951 SC 118; India Express v. Union of India, AIR 1986 SC 515 and 543 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 M/s. Laxmi Khandsari v. State of M.P., AIR 1981 SC 87; Kharak Singh v. State of U.P., AIR 1963 SC 1295; Mohd. Haneef Qureshi v. State of Bihar, AIR 1958 SC 731; Dwarka Prasad Laxmi Narain v. State

of U.P., AIR 1954 SC 224; Harak Chand v. Union of India, AIR 1970 SC 1453.

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 v. State of Punjab, AIR 1983 SC 473, the Supreme Court struck down Section 303 IPC 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 operate 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 violative 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 532002 to the extent it imposes 10 times penalty is quashed.

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