
(1984) 12 AHC CK 0030

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 606 of 1980

Suraj Bhan Dixit

APPELLANT

Vs

Yatri Kar Adhikari and Another

RESPONDENT

Date of Decision : 21-12-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Motor Gadi (Yatri Kar) Adhiniyam, 1962 — Section 13(2), 5, 5(7), 9

Citation : AIR 1985 All 143

Hon'ble Judges : Om Prakash, J;N.D. Ojha, J

Bench : Division Bench

Advocate : Ganga Singh, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

N.D. Ojha, J.—These eight writ petitions raise a common question and are, as such, being decided by a common order.

2. The petitioners in these writ petitions are operators of stage carriages and have to pay passenger tax as contemplated by the U. P. Motor Gadi Yatrikar Adhiniyam, 1962 (hereinafter referred to as the Act). By these writ petitions orders assessing the petitioners to tax under the said Act for the period between Jan. 1979 and 29th July, 1979 passed by the Passenger Tax Officer (Yatri Kar Adhikari) Kanpur, are sought to be quashed. The case of the petitioners which has not been disputed is that they had entered into an agreement as contemplated by the first proviso to Section 5 of the Act for payment of tax under the said Act on the lump sum basis. By the impugned orders the petitioners have been required to pay additional tax on the ground that even though under the agreement they were entitled to make only two trips, they had made more trips and consequently were liable to pay additional tax calculated on the basis of the additional trips made by them.

3. It has been urged by counsel for the petitioners that under the Act the

petitioners " could be required to pay either that amount of tax which they were liable to pay under the lump sum agreement or such amount of tax as was calculated on the basis of the number of passengers actually carried by them during the period in question and that the Passenger Tax Officer had no jurisdiction to require the petitioners to pay additional tax calculated only on the basis of additional trips said to have been made by the petitioners in excess of the trips permitted under the lump sum agreement.

4. Before dealing with the merits of the submission made by counsel for the petitioners it is necessary to dispose of a preliminary objection raised by the standing counsel appearing for the respondents. The preliminary objection raised by him is that the impugned orders are orders of assessment of tax u/s 9 of the Act and since an appeal is maintainable against that order to the appellate authority u/s 13 (2)(c) of the Act, this writ petition is not maintainable. Reliance in support of this submission has been placed by the standing counsel on *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, and *S. Jagadeesan Vs. Ayya Nadar Janaki Ammal College and Another*, where it was held that if the petitioner has a right of appeal, a writ petition is not maintainable. In regard to the preliminary objection suffice it to point out that in the case of *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, also the law laid down by the Supreme Court in the case of *State of U. P. v. Mohammad Nooh* AIR 1958 SC 86 to the effect that if an order passed by an inferior court or tribunal was contrary to the rules of natural justice the High Court may properly exercise its power under Article 226 even if an appeal to other inferior court or tribunal was available has been reiterated. On the facts of the instant case we are of opinion that the impugned orders have been passed in violation of principles of natural justice. In this connection our attention was invited by the standing counsel to the copy of a notice filed as an annexure to the writ petitions and on its basis it was urged that principles of natural justice were complied with. We find it difficult to agree with the submission made by the standing counsel. Section 9 of the Act under which, according to the standing counsel, the impugned orders have been passed reads as follows : "Fare and escaping assessment:-- If, for any reason, the whole or any portion of the tax leviable under this Act in respect of any month has escaped assessment, the Tax Officer may at any time within three years from the expiry of that month, assess the tax which has escaped assessment, after issuing a notice to the operator and making such inquiry as such officer may consider necessary." A plain reading of Section 9 makes it clear that even apart from the principles of natural justice a notice to the operator is necessary to be issued u/s 9 before assessing tax under the said section. At this stage it would be useful to consider the scheme of the Act in regard to the levy and realization of the tax thereunder. Sub-section (1) of Section 3 of the Act inter alia provides that from and after the coming into force of the said section there shall be levied and paid to the State Government a tax on every passenger carried by a stage carriage at a rate equivalent to a particular percentage of fare payable by such passenger to an operator of the

stage carriage in respect of his journey in the State. According to Section 3(1) which is the charging section, therefore, the tax is to be levied and paid to the State Government on every passenger carried by a stage carriage at the rate mentioned therein. The two provisos to Section 5(1) of the Act, however, contemplate that the State Government may accept or agree to accept a lump sum in view of the amount of tax that may be payable by the operator to the State Government and that any change in the rate of tax which comes into force after the date of agreement shall have the effect of making a corresponding proportionate change in the lump sum agreed upon in relation to that part of the period of agreement during which the changed rate remains in force. Rules also have been framed under the Act known as Motor Gadi Yatrikar Niyamawali, 1962 (hereinafter referred to as the Rules). No provision either under the Act or under the Rules has been brought to our notice which may permit levy or realisation of passenger tax in any manner other than those contemplated by Section 3(1) and the two provisos to Section 5 of the Act. Rule 5 deals with lump sum agreement. Sub-rule (1) of Rule 5 provides that an application for acceptance of a lump sum in lieu of the amount of tax shall be in Form II. Sub-rule (2) deals with the period of agreement whereas Sub-rule (3) provides the method of computing the maximum lump sum. Sub-rule (4) provides that the actual amount of lump sum to be accepted shall be determined keeping in view the estimated amount of tax to be received whereas Sub-rule (5) provides that the lump sum agreed upon may be paid at such time and in such installments not exceeding three as may be agreed upon between the parties. Sub-rule (6) contemplates the issue of a certificate in Form III to the operator which is to be kept on the stage carriage when it is plied. Sub-rule (7) which is relevant for purposes of these writ petitions reads as follows : .

"The agreement shall be subject to the condition that any change in the route, trips, seating or standing capacity or fare of the stage carriage, which has the likely effect of increasing the receipts of the operator therefrom shall render the agreement void with effect from the date of such change; and the amount if any paid by the operator under the agreement in excess of the proportionate sum payable for the period during which the agreement remained in force shall be refunded or adjusted towards any other amount due from the operator."

On a conspectus of the various provisions of the Act and the Rules referred to above, therefore, the following legal position emerges:

(a) Tax under the Act shall be levied and paid to the State government on every passenger carried by a stage carriage. The amount of tax for a particular period shall, therefore, depend on the number of passengers carried by a stage carriage during that period.

(b) The operator may enter into a lump sum agreement as contemplated by the 1st proviso to Section 5 of the Act and Rule 5 of the Rules. The amount of tax payable by such an operator shall be such as is payable under the agreement calculated in the manner prescribed in Rule 5 of the Rules.

(c) An order of assessment has to be passed determining the tax liability of the operator on the basis of the number of passengers carried by such operator on his stage carriage if he has not entered into a lump sum agreement. If, however he has entered into a lump sum agreement no such order of assessment is contemplated by the Act or the Rules for the period covered by the lump sum agreement.

(d) In case the operator makes any change as contemplated by Sub-rule (7) of Rule 5 of the Rules the agreement becomes void with effect from the date of such change and the amount, if any, paid by the operator under the agreement in excess of the proportionate sum payable for the period during which the agreement remained in force shall be refunded or adjusted towards any other amount due from the operator.

(e) It follows from what is prescribed in Rule 5(7) of the Rules that with effect from the date on which the agreement becomes void tax shall be payable by the operator on the basis of the number of passengers carried by him on his stage carriage as contemplated by Section 3(1) of the Act and the period since after the date of the agreement becoming void will be deemed to be a period for which the tax leviable under the Act has escaped assessment within the meaning of Section 9 of the Act and an order of assessment of tax u/s 9 of the Act shall have to be passed for the said period on the basis of the number of passengers carried during that period by the operator on his stage carriage as contemplated by Section 3(1) of the Act.

(f) Unless the operator enters into a fresh lump sum agreement he will have to, for the period subsequent to the period in respect of which tax has been assessed u/s 9 of the Act or is contemplated to be assessed by issuing a notice under the said section, submit returns as contemplated by Section 6 of the Act and Rule 6 of the Rules.

5. Coming to the facts of the instant case it may be pointed out that the stand taken by the standing counsel is that since the petitioners made more trips than contemplated by the agreement between Jan. 1979 and 29th July, 1979, the lump sum agreement became void in Jan. 1979 itself as contemplated by Sub-rule (7) of Rule 5 of the Rules. As such, for the period commencing the date on which the agreement became void and 29th July, 1979 (thereafter a fresh lump sum agreement having been entered into as is stated at the bottom of the impugned orders) an order of assessment of tax had to be passed u/s 9 of the Act inasmuch as tax leviable for the said period had obviously escaped assessment, the lump sum amount of tax under the Act payable for the aforesaid period having become refundable or adjustable as contemplated by Rule 5(7) of the Rules.

6. Before passing an order of assessment of tax u/s 9 of the Act it was incumbent on the Tax Officer to have issued a notice to the petitioners. In *B.D. Gupta Vs. State of Haryana*, while dealing with a notice to a delinquent

government servant it was pointed out that a vague show-cause notice did not conform with the requirement of affording reasonable opportunity. It was held that it is essential for a show-cause notice to indicate the precise scope of the notice and also to indicate the points on which the person to whom the notice is given is expected to give reply. If the show-cause notice did not conform with these requirements, it did not give any real opportunity. It is true that even though forms of notices contemplated by Sub-rule (1) of Rule 8 and Sub-rule (2) of Rule 8 of the Rules have been prescribed being Form numbers VII and VIII respectively of the Rules no such form has been prescribed for a notice contemplated by Section 9 of the Act. One circumstance which is of significance may be pointed out at this stage that the contents of Forms VII and VIII meet with the requirements of a notice as laid down by the Supreme Court in the case of B.D. Gupta (supra), consequently there seems to be no doubt that even in the absence of a prescribed form in this behalf, the notice contemplated by Section 9 of the Act must meet the twin requirements laid down in the case of B.D. Gupta (supra) namely, that (i) it should indicate the precise scope of the notice and (ii) it should also indicate the points on which the person to whom the notice is given is expected to give reply. In other words, in regard to an operator whose lump sum agreement is being treated to have become void for making any of the charges contemplated by Sub-rule (7) of Rule 5 of the Rules, and against whom an order of assessment of tax is contemplated to be passed u/s 9 of the Act it would be a valid notice only if it indicates that it requires him to show cause as to why his lump sum agreement may not be treated as void on account of any of the changes contemplated by Sub-rule (7) of Rule 5 having been made and an order of assessment of tax for the period during which the stage carriage had been plied under a void lump sum agreement may not be passed on the basis of the number of passengers carried by him on his stage carriage during the aforesaid period. We want to make it explicit that. Our emphasis is not on the form but on the substance.

7. Tested on the aforesaid touch stone the notice in the instant cases on which reliance has been placed by the standing counsel cannot at all be treated as a valid notice. The said notice only says that information has been received that more trips than contemplated by the agreement have been made and, as such, cause may be shown as to why the difference of the tax calculated on the basis of the number of trips actually made be not realised. Since, if what was stated in the notice was right that more trips have been made than contemplated by the lump sum agreement, an order of assessment of tax on the basis of the number of passengers actually carried after the period of the agreement becoming void as contemplated by Rule 5 (7) of the Rules had to be passed there was no question of realisation of additional tax Calculated on the basis of the difference between the number of trips contemplated by the agreement and actually made by the petitioners nor was such a course open to the Tax Officer under the Act and the Rules framed thereunder. On the face of the notice it is not possible to take the view that by the said notice the petitioners were required to submit

information about the number of passengers actually carried by them during any particular period for purpose of passing an order of assessment of tax u/s 9 of the Act, as their agreement was being treated as void. The impugned orders were thus apparently passed in violation of the principles of natural justice. Consequently we are not inclined to dismiss these writ petitions on the ground that the petitioners have a right of appeal u/s 13 of the Act particularly when the writ petitions were admitted about four years back and have now come up for hearing and we have heard counsel for the parties on the merits also.

8. Coming to the merits of the impugned orders it may be pointed out that in the said order the assessment of tax has not been made on the basis of the number of passengers that may have been actually carried by the petitioners on their stage carriages during the period in question already referred to above. When the lump sum agreement according to the respondents had become void in Jan. 1979 itself, an order of assessment of tax u/s 9 of the Act had to be passed on the basis of the number of passengers actually carried by the petitioners on their stage carriages during the aforesaid period. In these circumstances the petitioners could not obviously be just required to pay additional tax calculated on the basis of the difference of trips contemplated by the lump sum agreement and the trips actually made by them. These orders cannot, therefore, be sustained and a case has been made out for quashing them and requiring the Passenger Tax Officer to pass fresh orders of assessment of tax u/s 9 of the Act against the petitioners in accordance with law.

9. At this place it may be pointed out that in case the petitioners on being required to do so by the Passenger Tax Officer do not afford the necessary material namely, the number of trips made and of passengers actually carried by them during the aforesaid period, or the material furnished by them is found as unbelievable, it would be open to the Passenger Tax Officer to make a best judgment assessment by adopting such reasonable basis for determining the number of passengers actually carried by the petitioners during the aforesaid period as he may consider proper in the circumstances of these cases.

10. In the result all these writ petitions succeed and are allowed. The impugned orders requiring the petitioners to pay additional tax for the period already mentioned above are quashed and the Passenger Tax Officer (Yatri Kar Adhikari), Kanpur, is directed to pass fresh orders of assessment of tax against the petitioners u/s 9 of the Act after giving them reasonable opportunity to show cause in accordance with law keeping in mind the observations made above. Since the matter is considerably old the Passenger Tax Officer shall pass fresh orders, as aforesaid, as expeditiously as possible. There shall be no order as to costs.