
(2008) 04 JH CK 0001
In the Jharkhand High Court

Tata Engineering and Locomotive Company Ltd.	APPELLANT
Vs	
State of Bihar and Another	RESPONDENT

Date of Decision : 02-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 265, 271
Motor Vehicles Act, 1988 — Section 12, 211, 212, 39, 40

Citation : (2008) 2 JCR 610

Hon'ble Judges : M. Karpaga Vinayagam, C.J.; D.G.R. Patnaik, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M. Karpaga Vinayagam, C.J.—The Tata Engineering and Locomotive Company Ltd. (TELCO), the petitioner herein has filed this writ petition seeking for the three reliefs:

(i) For declaration that demand and realization of surcharge over temporary registration fee of motor vehicle (Chassis) through the notification dated 7.10.1996 are beyond the competence of the State Government as there is no power conferred either in the Motor Vehicles Act, 1988 or in the Bihar Motor Vehicles Rules, 1982.

(ii) For further declaration that the surcharge cannot be realized on the temporary registration fee of the chassis through the notification dated 7.10.1996 as it makes addition in Rule 74 of Rules which relates to Chapter V of the Act and not Chapter IV of the Act containing Section 43 of the Act, 1988.

(iii) For refund of the surcharge already paid by the petitioner.

2. The background of the facts in this case are as follows:

(i) The petitioner is a manufacturer of Chassis at Jamshedpur. The Chassis/vehicles so manufactured by the petitioner at Jamshedpur are sent outside to different destinations for sale.

- (ii) The Motor Vehicles Act, 1988 requires registration/temporary registration of motor vehicles/ chassis before going on public Road.
- (iii) Section 39 of the Act and Section 43 of the Act provide for necessity of registration and temporary registration of the motor vehicles.
- (iv) Section 65 of the Act empowers the State Government to frame Rules in relation to the provisions of Chapter IV of the Motor Vehicles Act.
- (v) Section 211 also empowers the Government to frame rules to levy fee.
- (vi) In pursuance of the above provisions of Motor Vehicles Act, Rules were framed by the then State of Bihar, known as Bihar Motor Vehicles Rules, 1992.
- (vii) Under Rule 46 in Chapter IV deals about grant of temporary registration.
- (viii) Rule 44(v) provides for prescribed fee for temporary registration.
- (ix) Rule 52-A deals with the grant of temporary registration on the application being filed for a certificate of temporary registration along with the fee prescribed under Rule 43.
- (x) Rule 74 deals with the fee payable under Chapter V of the Act.
- (xi) On 7.10.1996, a notification was issued about addition of two schedules at the end of Rule 74. The present case is concerned with Schedule II. Under the said heading Rule 44, Chapter IV at Serial No. 4. Rate of "surcharge" for temporary registration and its each extension under Rule 53(1) has been fixed at Rs. 20/-.
- (xii) In pursuance of the above notification dated 7.10.1996, two letters were issued by the District Transport Officer, Jamshedpur, Singhbhum East, the respondent No. 2. The first letter is dated 3.11.1997. Through this letter, the respondent No. 2 asked the petitioner to pay "surcharge" on temporary registration at the rate of Rs. 20/- for each temporary registration certificate claiming it with effect from 1.10.1996. Similarly, a demand was also made by respondent No. 2 through letter dated 26.12.1997.
- (xiii) Aggrieved by these demands, the present writ petition has been filed.
- (xiv) In the meantime, the amount of surcharge demanded by the authority have been deposited. During the pendency of this writ petition, this Court ordered on 9.8.1999 that the payments of surcharge made during the pendency of the case would be subject to the result of this case.

3. The case of the petitioner is that:

- (i) The State Government has the authority under the relevant provisions of the Act and the Rules only to levy fee and has no authority to demand surcharge.
- (ii) There is no provision either in the Act or in the Rules, empowering the State Government for demanding "surcharge" over temporary registration fee.

(iii) Section 211 empowers only for levy of fee and not "surcharge". "Fee" and "surcharge" are two different things. The fee is for services rendered and therefore, "surcharge" becomes "tax".

(iv) If this is allowed to be charged by the State, it will become a tax and will be violative of Article 265 of the Constitution of India.

(v) The tax is compulsory extraction of money by the public authority for public purpose whereas "fee" is charged for specific services rendered to individuals by Government. Levying surcharge would be beyond the power of the State Government because the Statute does not confer power to the State Government for the same either specifically or by giving necessary implications. Thus, the exercise of power of the State Government in issuing the impugned notification is ultra vires because imposition of surcharge is penal and hence invalid.

4. The case of the respondents, the State Government is as follows:

(i) The State Government is empowered under different sections of Motor Vehicles Act including Section 211 of the Motor Vehicles Act to make rules for levying the fee. Therefore, Bihar Motor Vehicles Rules, 1992 has been framed and enforced from 5.12.1992.

(ii) The temporary registration fee is registration charge under the provisions of the said Rules. As the cost of stationary has increased, the notification for surcharge has been issued after previous publication to realize the charges.

(iii) The surcharge on temporary registration fee is nothing but additional fee. Therefore, the notification is valid and consequently the demand through the letters are perfectly justified.

5. The main question to be dealt with by this Court in the light of the rival contentions is as follows:

Whether the State Government is empowered to levy surcharge as additional fee on issuance of temporary registration certificate as per the relevant Rules and provisions including Section 211 of the Motor Vehicles Act. 1988?

6. It is mainly contended by the petitioner while challenging the aforesaid notification that Section 211 of the Motor Vehicles Act, 1988 does not empower the State Government to frame Rules to collect surcharge and as such notification is invalid.

7. Let us now quote the relevant provisions of the Act.

Section 43(2) deals with the temporary registration, which reads as under:

43(2) A registration made under this section shall be valid only for a period not exceeding one month, and shall not be renewable.

Provided that where a motor vehicle so registered is a chassis to which a body has not been attached and the same is detained in a workshop beyond the said

period of one month for being lifted with a body or any unforeseen circumstances beyond the control of the owner, the period may, on payment of such fees, if any, as may be prescribed, be extended by such further period or periods as the registering authority or other prescribed authority, as the case may be, may allow.

Section 64 deals with the power of the Central Government to make rules. Section 64(o) reads as under :

Section 64(o).-The fees to be charged for the issue or renewal or alteration of certificates of registration, for making an entry regarding transfer of ownership on a certificate of registration, for making or cancelling an endorsement in respect of agreement of hire-purchase or lease or hypothecation on a certificate of registration, for certificates of fitness for registration marks, and for the examination or inspection of motor vehicle and the refund of such fee.

Section 65 deals with the power of the State Government to make rules, which reads as under:

Section 65.-Power of the State Government to make rules.-(1) As State Government may make rules for the purpose of carrying into effect the provisions of this Chapter other than the matters specified in Section 64.

(2) Without prejudice to the generally of the foregoing power, such rules may provide for:

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) the temporary registration of motor vehicles, and the issue of temporary certificate of registration and marks.

(g) ...

(h) ...

(i) ...

(j) ...

(k) ...

(l) ...

(m) ...

(n) ...

(o) ...

(p) any other matter which is to be or may be prescribed.

Section 211 reads as under:

Section 211.-Any rule which the Central Government or the State Government is empowered to make under this Act may notwithstanding the absence of any express provision to that effect, provide for the levy of such fees in respect of application, amendment of documents, issue of certificates, licences, permits, tests, endorsements, badges plates, Counter Signatures, authorization, supply of statistics or copies of documents or orders and for any other purpose or matter involving the rendering of any service by the officers or authorities under this Act or any rule made thereunder as may be considered necessary.

Provided that the Government may, if it considers necessary so to do, in the public interest, by general or special order, exempt any class of persons for the payment of any such fee either in part or in full.

Section 212 reads as under:

Section 212.-Publication, commencement and laying of rules and notifications.-

(1) The power to make rules under this Act is subject to the condition of the rules being made after previous publication.

(2) All rules made under this Act shall be published in the Official Gazette, and shall unless some later date is appointed, come into force on the date of such publication.

(3) Every rule made by any State Government shall be laid, as soon as may be after it is made, before the State Legislature.

(4) ...

8. Let us now quote the relevant provisions of the Bihar Motor Vehicles Rules, 1992.

Rule 44 deals with the fee payable under Chapter IV of the Act. Rule 44(v) reads as under:

Rule 44(v) in respect of certificate of temporary registration of each of its extension thereof under Sub-rule (1) of Rule 52-A-Twenty rupees.

Rule 46 deals with grant of temporary registration.

Rule 52-A deals with grant of temporary injunction.

Rule 74 deals with the fee payable under Chapter V of the Act.

9. Now let us quote the English translation of Annexure 1, the notification dated 7.10.1996, which reads as under:

No. Patna 422 Patna, Monday, 7th October, 1996

Transport Department

Notification

1 October, 1996

1. G.S.R. 16, dated 7th October, 1996. In exercise of power conferred by Section 211 of the Motor Vehicles Act, 1988 (Act 59 of 1988). The Governor of Bihar is pleased to make following amendment in the Bihar Motor Vehicles Rules, 1992, which has already been published in advance as per requirement u/s 12 of the Motor Vehicles Act vide G.S.R. 26, dated 27 October, 1995.

2. This order shall come into force from the date of this notification.

At the end of Rule 74 of above Rules following Schedules I and II is added, viz.

Schedule-I

(ka)

1. ...

2. ...

21. ...

Schedule-II

(ka) Motor Vehicles Act, 1988 - surcharge will be levied/charged equal to the fee payable under different sections of Motor Vehicles Act, 1988, the details of which are as follows :

(kha) Rate of surcharge shall be based on fee in Chapter (iii) of the Act as given below :

Present Rate of fee Amount of Surcharge Rs.

1. Under Rule 30 - Rs. 20 will be charged acceptance of verification of vehicles 20.00 2. ... 3. ... 4. ... 5. ... 6. Under Rule 44, Chapter-IV, 20.00 (1) ... (2) ... (3) ... (4) Under Rule 53(i) Temporary registration certificate and its each extension under Rule 53(i) Rs. 20/- 20.00 (5) ... (6) ... (7) ... By the order of Governor of Bihar Sd/- Illegible Joint Secretary of Government

10. As quoted above Sections 212 (1), (2) and (3) would categorically provide for the power to make Rules under the Act subject to the condition of previous publication in the Official Gazette and come into force on the date of publication. In this case, as per the requirement of prior publication of the notification has been confirmed which is the mandate of Section 212 of the Act.

11. There is no dispute in the fact that u/s 40 of the Motor Vehicles Act, the vehicles to be registered by the Registering Authority under whose jurisdiction the person has residence or place of business where the vehicle is normally kept. In the present case the place of business is Jamshedpur within the State of Bihar

now Jharkhand.

12. Section 43(2) deals with the temporary registration, which reads as under:

43(2) A registration made under this section shall be valid only for a period not exceeding one month, and shall not be renewable.

Provided that where a motor vehicle so registered is a chassis to which a body has not been attached and the same is detained in a workshop beyond the said period of one month for being lifted with a body or any unforeseen circumstances beyond the control of the owner, the period may, on payment of such fees, if any, as may be prescribed, be extended by such further period or periods as the registering authority or other prescribed authority, as the case may be, may allow.

From the reading of Section 43(2), it is clear that a fee is chargeable which may be prescribed by the State Government.

13. As provided u/s 211 of the Motor Vehicles Act, the State Government has power to meet its extra expenses as mentioned in the section itself. Let us quote the section again:

Section 211.-Any rule which the Central Government or the State Government is empowered to make under this Act may notwithstanding the absence of any express provision to that effect, provide for the levy of such fees in respect of application, amendment of documents, issue of certificates, licences, permits, tests, endorsements, badges plates. Counter Signatures, authorization, supply of statistics or copies of documents or orders and for any other purpose or matter involving the rendering of any service by the officers or authorities under this Act or any rule made thereunder as may be considered necessary:

Provided that the Government may, if it considers necessary so to do, in the public interest, by general or special order, exempt any class of persons for the payment of any such fee either in part or in full.

14. It cannot be disputed that the State Government is empowered to prescribe fee under Rule 44 of the Motor Vehicles Rules. The fee has been prescribed as Rs. 20/- for temporary registration and as also for extension of period of temporary registration. Over this, the petitioner has no grievance, but only grievance that the petitioner company has is that the State Government has no power to impose surcharge of Rs. 20/- on the aforesaid fee.

15. It is mainly contended by the learned Counsel for the petitioner that the imposition of surcharge on fee is violative of Article 265 of the Constitution of India. This cannot be accepted since the prohibition contained in Article 265 is only in relation to taxes and not fee.

16. It is also submitted that Article 271 of the Constitution of India also is a "bar". This submission also cannot be accepted, as Article 271 would not apply because that is in respect of surcharge on duties and tax. But, in this case, it is

the case of the respondents that it is not surcharge on duties and tax, but it is surcharge on fee.

17. On this basis, the counsel for the State Government would strenuously contend that in order to collect the additional fee, the State Government is empowered to impose surcharge on fee as it is not equal to tax or duty. The authority, who has got the power to collect the fee has also got the authority to increase the fee and collect as additional fee in the name of surcharge.

18. In other words, Articles 265 and 271 of the Constitution of India relate to the power of Central Government to impose surcharge on duties and taxes. On the other hand, there is no bar on the State Government to increase the fee that may be prescribed by the State Government or to take additional fee by way of surcharge.

19. It is specific plea made by the State Government that the State Government in order to collect the additional fee, imposed surcharge, which is a word used in the place of additional fee. Therefore, action of the State Government is not in violation of any of the Articles of the Constitution of India.

20. Learned Counsel for the petitioner would cite *Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others*, , in order to show the difference between the tax and a fee. Paragraphs 30 and 31 thereof reads as under:

30. The traditional view that there must be actual quid pro quo for a fee has undergone a sea change in the subsequent decisions. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest. If the element of revenue for general purpose of the State predominates, the levy becomes a tax. In regard to fees there is, and must always be, correlation between the fee collected and the service intended to be rendered. In determining whether a levy is a fee, the true test must be whether its primary and essential purpose is to render specific services to a specific area or class; it may be of no consequence that the State may ultimately and indirectly be benefited by it. The power of any Legislature to levy a fee is conditioned by the fact that it must be "by and large" a quid pro quo for the services rendered. However, correlation between the levy and the services rendered expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a "reasonable relationship" between the levy of the fee and the services rendered. If authority is needed for this proposition, it is to be found in the several decisions of this Court drawing a distinction between a "tax" and a "fee".

31. There is no generic difference between a tax and a fee. Both are compulsory exactions of money by public authorities. Compulsion lies in the fact that payment is enforceable by law against a person in spite of his unwillingness or want of consent. A levy in the nature of a fee does not cease to be of that

character merely because there is an element of compulsion or coercive-ness present in it, nor is it a postulate of a fee that it must have direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service. It is now increasingly realized that merely because the collections for the services rendered or grant of a privilege or licence are taken to the consolidated fund of the State and not separately appropriate towards the expenditure for rendering the service is not by itself decisive. Presumably, the attention of the Court in the Shirur Mutt case was not drawn to Article 226 of the Constitution. The Constitution nowhere contemplates it to be an essential element of fee that it should be credited to a separate fund and not to a consolidated fund. It is also increasingly realized that the element of quid pro quo in the strict sense is not always a sine qua non for fee. It is needless to stress that the element of quid pro quo is not necessarily absent in every tax : Constitutional Law of India by H.M. Seervai, Vol. 2, 2nd Edn., page 1252, para 22.39.

21. The above observations made by the Supreme Court deals with the matter, which distinguishes the tax and the fee. In this case, we are concerned with the word "surcharge". Therefore, in order to adjudicate this question, it is required to interpret the exact meaning of word "surcharge".

22. It is contended by the learned Counsel for the petitioner that the only meaning of "surcharge" is tax. This cannot be true, because the dictionary meaning of the word "surcharge" is an extra charge or extra cost and over charge and excessive burden.

23. In the light of the above meaning, it is the contention of the learned Counsel for the State that the intention of the State Government is to increase the fee. Therefore, the State Government has charged additional fee and imposed it using the word "surcharge". It should not be read alone, but it should read as a surcharge on fee. When a similar question has been raised before the Supreme Court, the Supreme Court would make the following observation in the judgment rendered in the case of Bisra Stone Lime Co. Ltd. and Another Vs. Orissa State Electricity Board and Another,

11. The word "surcharge" is not defined in the Act, but etymologically, inter alia, surcharge stands for an additional or extra charge or payment (see Shorter Oxford English Dictionary). Surcharge is thus a super-added charge, a charge over and above the usual or current dues. Although, therefore, in the present case it is in the form of a surcharge, it is in substance an addition to the stipulated rates of tariff. The nomenclature, therefore, does not alter the position. Enhancement of the rates by way of surcharge is well within the power of the Board to fix or revise the rates of tariff under the provisions of the Act...

24. Learned Counsel for the State also cited Sarojini Tea Co. (P.) Ltd. Vs. Collector of Dibrugarh, Assam and another, , to show that the surcharge means surcharge on fee, in which it is held that surcharge levied on land revenue being

an enhancement of the land revenue is part of the land revenue. Similarly, it is contended that if it is levied on fee, it is a part of fee.

25. The word "surcharge" is a general word, which can be used for any purpose and it cannot be treated as tax. When this question is raised in the case of C.I.T., West Bengal, Calcutta v. Tollygunge Club Ltd., Calcutta, the Supreme Court in the decision reported in Commissioner of Income Tax, West Bengal Vs. Tollygunge Club Ltd., , held that the department admitted surcharge is an income, therefore, the amount is chargeable upon the amount of surcharge also. It is also held by the Supreme Court that no tax is chargeable and surcharge is not the taxable income of Club. Therefore, surcharge is not a tax but in addition to the local charities.

26. So, in the absence of any reason to hold that the surcharge cannot be considered to be additional fee or it shall be considered to be a part of duty or tax, it cannot be concluded that the State Government has no authority to impose surcharge as additional fee to the fee already collected.

27. In view of the above circumstances, we are unable to accept the contention of the learned Counsel for the petitioner, as in our view, the said surcharge is nothing, but additional fee, which can be prescribed by the State Government.

28. So, this writ petition is devoid of any merit. It is, accordingly, dismissed. However, there shall be no order as to cost.

D.G.R. Patnaik, J.

29. I agree.