

Shri M. P. Singh, Dy. Transport Commissioner M. P. Gwalior and Others etc.

Vs

Anand Transport Co. (P) Ltd. etc.

Civil Appeals Nos. 1449 to 1454 of 1967

(K.S. Hegde, A.N. Grover JJ)

29.07.1971

JUDGMENT

GROVER, J. -

1. All these appeals arise out of writ petitions that were filed in the High Court of Madhya Pradesh challenging the notices of demand issued by the Deputy Transport Commissioner for payment of the amount of passenger tax said to be due under the Madhya Pradesh Motor Vehicles (Taxation of Passengers) Act, 1959, hereinafter referred to as the 'Act'. By a common Judgment, dated November 8, 1966, the High Court allowed the petitions and quashed the demand notices. The appeals may be divided into two categories. In C. As. 1449 and 1453 of 1967, returns had been duly filed as contemplated by Section 5 of the Act but no tax had been deposited as required by Section 6. Demand notices were issued in respect of the tax payable pursuant to the returns some years later. Proceedings were also taken as no payment was made for recovery of the tax as arrears of land revenue. In the other four appeals the returns were never filed but it appears the authorities did take certain proceedings under Section 7 of the Act and in some cases accounts of the respondents were checked and their liability determined. When demand notices were sent and recoveries sought to be made the writ petitions were filed. The High Court did not go in these matters fully and treated all the petitions as if the facts were similar.

2. Section 3 of the Act which is the charging section, provides that these shall be levied and paid to the State Government a tax on all passengers carried by stage carriages at a rate equivalent to 15% of the fare inclusive of the tax payable to the operator of a state carriage. The tax has to be collected by the operator of a stage carriage and paid to the State Government in accordance with the provisions of the Act. Under Section 5 the operator must deliver to the tax officer or to such prescribed officer as may be specified a return in the prescribed form and manner either daily or at such intervals as may be prescribed. Section 6 lays down that the tax payable during any month in accordance with the return submitted under Section 5 shall be paid into a Government treasury by the operator and the receipt evidencing such payment has to be forwarded to the Tax Officer. Sections 8, 9 and 10 are in the following terms :

"(8) Fares escaping assessment. - If, for any reason, the whole or any portion of the tax leviable under this Act, for any month has escaped assessment, the Tax Officer may, at any time within, but not beyond, one year 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 the officer may consider necessary.

(9) Penalty for non-payment of tax. - Where the whole or any portion of the tax

payable to the State Government in respect of any stage carriage for any month or portion thereof in pursuance of Sections 6, 7 and 8 has not been paid to it in time the Tax Officer may, in his discretion, levy in addition to the tax so payable, a penalty not exceeding 25 per cent. of the maximum tax which would have been payable to the State Government if the stage carriage had carried its full complement of passengers during such month or portion thereof.

(10) Recovery of tax, etc. - (1) In the cases referred to in Sections 7, 8 and 9 in the Tax Officer shall serve on the operator a notice of demand for the sums payable to the State Government and the sums specified in such notice may be recovered from the operator as arrears of land revenue.

(2) The tax shall be a first charge on the stage carriage in respect of which it is due as also on its accessories and such stage and the accessories thereof may be attached and sold for the recovery of the tax under the appropriate law relating to the recovery of arrears of land revenue."

Section 12 provides for an appeal against a notice of demand served under Section 10.

3. The scheme of the above provisions apparently is that the operator of a stage carriage has to submit a return in accordance with Section 5 and pay tax into the Government treasury every months as provided by Section 6. No question can arise of any assessment order being made under Section 7 by the Tax Officer where the returns are found to be correct and complete. It is only where either no returns have been submitted or where the returns submitted appear to the Tax Officer to be incorrect or incomplete that the Tax Officer has to follow the procedure laid down in Section 7 and determine the tax payable by the operator. The High Court was of the view that even where returns had been filed and accepted as correct the Tax Officer has to pass a proper assessment order holding the operator liable for payment of tax in accordance with the return submitted by him. In other words no notice of demand can be issued until the Tax Officer makes such an order quantifying the amount of tax.

4. We are unable to accede to the contention which prevailed with the High Court that even where returns had been submitted but the tax has not been paid the Tax Officer is bound to make an order before serving a notice of demand even though the demand is strictly in accordance with the returns which have been submitted. Section 7 rules out any such course to be followed by the Tax Officer. It is only when the returns have not been submitted or when returns submitted are found to be incorrect and incomplete that the Tax Officer has to make an inquiry and determine the sum payable by the operator by way of tax. Similarly, if there has been escapement of tax proceedings have to be taken under Section 8 and an order has to be made after an enquiry. The position would be same if penalty is sought to be levied under Section 9. But where returns have been accepted as correct nothing more need be done except to recover the tax due which has not been paid and no assessment order need be passed in view of the express language of Section 7.

5. We are satisfied that in the two appeals, i.e., C. As. 1449 and 1453/67 in which returns had been filed the Tax Officer was not bound to make any order quantifying the amount of tax before issuing the notice of demand. The amount sought to be realized was quantified in the returns themselves vide Form IV read with Rule 4(2)(c) of the M.P. Motor Vehicles (Taxation of Passengers) Rules. It has not been shown that any penalty was sought to be imposed in those two cases. The order of the High Court, therefore, in these appeals to sustained and is hereby set aside and the writ petitions are

ordered to be dismissed.

6. As regards C. As. Nos. 1450, 1451, 1452 and 1454/67, it appears, as has been stated earlier, that some proceedings were held of the nature contemplated by Section 7 and the notices of demand were issued after order had been duly made by the Tax Officer. But this is a matter which was not examined in each case by the High Court and we would like to express no opinion with regard to it. These appeals are also allowed and the orders of the High Court are set aside. The High Court will re-hear and re-decide the same in accordance with law. There will be no order as to costs in all the appeals.

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