

SUPREME COURT OF INDIA

Prahlad Singh

Vs.

State of U.P

C.A.No.3325 of 2009

(Dr. Arijit Pasayat and V.S. Sirpurkar JJ.)

06.05.2009

JUDGEMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in these appeals is to the judgment of a Division Bench of the Allahabad High Court. Several Petitions were disposed of by a common judgment and the writ petitions were dismissed. The writ petitioners had questioned the vires of Article II of Part D of the First Schedule of the *Uttar Pradesh Motor Vehicles Taxation Act, 1997* (hereinafter referred to as the 'Taxation Act'). Order dated 30.10.2000 passed by the Transport Commissioner, U.P., Lucknow was also questioned. The High Court noted that in the meeting held on 20.4.1999 decision was taken by the Transport Commissioner not to realize the Additional Tax at the rate of Rs.45/- per metric ton as provided under Article II of Part D of the First Schedule of the Taxation Act. By order dated 30.10.2000 the Transport Commissioner had informed all his subordinate authorities that the decision had since been revoked and tax in accordance with law was to be realised.

3. According to the writ petitioners they were Stage Carriage Operators, they have own buses and operate them on the strength of permanent Stage Carriage Permit granted in their favour by the Regional Transport Authority. Prior to the commencement of the Taxation Act, taxes were realised from the transport operators under the provisions of different enactments enacted i.e. *United Provinces Motor Vehicle Taxation Act, 1935*, *Motor Gadi (Yatri Kar) Adhiniyam, 1962* and *U.P. Motor Gadi (Maal Kar) Adhiniyam, 1963*.

4. The Taxation Act replaced the aforesaid three acts and it became operative from 9.11.1998. The writ petitioner contented that they had paid road tax under Section 4 of *Uttar Pradesh Motor Vehicle Taxation Act, 1935* (in short the 1935 Act') which was replaced by Section 4 of the Taxation Act. They had paid a tax at the rate of Rs.2015/- per quarter inclusive of Rs.45 for the luggage of passengers in respect of 55 seater vehicle. With the coming into force of the Taxation Act the Authorities started demanding additional tax at the

rate of Rs.45/- for every metric ton on the gross vehicles weight of the vehicle or part thereof in terms of Article II of Part D of the First Schedule of the Act.

“On protest being raised by the transport operators, a decision was taken by the Transport Commissioner on 20.4.1999 and direction was issued to the subordinate authorities to obtain affidavit from the Stage Carriage operator to the effect that they do not carry goods in their vehicle except the personal luggage of the passengers and on filing of such affidavit the tax demanded under the new provision shall not be realised from them.”

5. The High Court held that in a vehicle which is covered by the Stage Carriage Permit, luggage of the passengers as also the goods are permitted to be carried. The only restriction is that the weight of goods and passengers luggage and that of the passenger including the weight of unladen vehicle should not exceed the gross vehicle's weight.

6. The High Court after referring to various provisions observed that Article II is attracted when passengers' goods whether it is personal luggage of the passenger or not is transported in the vehicle. Thus the State Carriage Permit holder were liable to pay tax under Article II of Part D of the First Schedule of the Act. Therefore, the Writ Petitions were dismissed. It was the stand of learned counsel for the appellants that since goods have not been defined under the Taxation Act, in view of the specific provisions of the Taxation Act i.e. Section 2(o) recourse to the definition given in the *Motor Vehicles Act, 1988* (in short the `Act') has to be taken.

7. It was submitted that there is no scope for carrying any goods of the passengers and in fact they had not carried any such goods in the Stage Carriage, except the personal luggage and, therefore, they were not liable to pay any tax under the aforesaid Article.

8. Learned counsel for the respondent-State on the other hand supported the judgment of the High Court.

9. Some of the relevant provisions of the Taxation Act read as follow:

“U.P. MOTOR VEHICLES TAXATION ACT, 1997:

2.Definitions. In this Act, a) "additional tax" means a tax imposed under Section 5 or Section 6 in addition to the tax imposed under Section 4.

d) "goods carriage" means motor vehicle constructed or adapted wholly or partly for use for the carriage of goods, or any motor vehicles not so constructed or adapted when used for the carriage of goods either solely or in addition to passenger, and includes a trailer but does not include a motor cab, or a maxi cab or a contract carriage or stage carriage where such contract carriage or stage carriage is authorised to carry a limited quantity of load;

e) "limited quantity of load" means such quantity of load, not exceeding the limits determined by the Transport- Commissioner, Uttar Pradesh, as the Registering Authority may specify in the registration certificate in respect of a vehicle.

....

(1) "tax" means any tax levied under section 4;

(o) words and expressions used but not defined in this Act and defined in the Motor Vehicles Act, 1988, shall have the respect meaning assigned to them in that Act,"

4. Imposition of Tax - (1) Save as otherwise provided in this Act or the rules made thereunder, no motor vehicle other than a transport vehicle, shall be used in any public place in Uttar Pradesh unless a one-time tax at the rate applicable in respect of such motor vehicle, specified in Part `B' of the First Schedule has been paid in respect thereof;

Provided that in respect of an old motor vehicle, instead of a one-time tax, annual tax at the rate applicable to such motor vehicle as specified in Part `C' of the First Schedule may be-paid.

(2) Save as otherwise provided by or under this Act no transport vehicle shall be used in any public place in Uttar Pradesh unless a tax at the rate applicable to such motor vehicle, as specified in Part `D' of the First Schedule has been paid in respect thereof.

(3) Where any motor vehicle other than a transport vehicle, in respect whereof one-time tax has been paid, is operated as a transport vehicle, the tax payable under this Act on such transport vehicle shall be payable."

Sub-Section (2) of Section 4 further provides that tax is to paid at the rate specified in Part D of First Schedule. Under Part D Petitioners are required to pay in Article I Item 7 as they have been carrying more than 35 passenger. The said item No.7 for ready reference reads as follows:

1. 2 3 _____ "7 With seating capacity for more than exclusive of the driver;

a) if intended for use on "A-Class" route Rs. 1115.00+ Rs. 45.00 for Every seat in excess of thirty five seats.

b) if intended for use on "B-Class route Rs. 900.00 + Rs. 35.00 for every seat in excess of thirty five seats.

Explanation:- For the purpose of this Article, fifty percent of the sanctioned standing capacity, if any, shall reckoned as additional seating capacity.

Vehicles plying for the conveyance of Limited number of passengers and the transport of a limited quantity of passengers' Goods, the tax payable under Article I in respect of the authorized number of Passenger seats in addition to tax for Every metric ton of the registered laden Weight of the vehicle, or part thereof," 45.00 III _____ IV _____ Explanation: Where any motor vehicle is used for various purposes or in such a manner as to cause it to be taxable more than one Article of this Schedule, the tax payable shall be at the highest appropriate rate.”

10. The only question that needs to be adjudicated is whether Article II has application. It is the stand of the appellants that under Part D, the appellants are required to pay in Article I item VII as they have been carrying more than 35 passengers.

11. It needs to be noted that in Writ Petition No. 6266 (M/B) of 2000, it has been observed by the High Court as follows:

“it is therefore, clarified that if the vehicle of the petitioners is covered under more than one Articles of Part D of the Ist Schedule of the Act, then the highest rate mentioned under either of the Article would be payable. To give an illustration, if a vehicle falls under Article I and also under Article II of part D of the Ist Schedule, then the amount of tax payable under both the Articles have to be calculated and the amount which is higher shall be payable. The amount payable by a vehicle owner, if his vehicle under Article II, would be higher than the amount payable under Article I as under Article II the amount which is payable is in addition to the amount payable under Article I and not limited to only Rs.45/- per ton.”

12. In our opinion because of the explanation the view expressed; as noted above indicates the correct view, Article II operates when goods are carried and it does apply to passengers' luggage.

13. The appeals and writ petitions are accordingly disposed of. There shall be no orders as to costs.