

SUPREME COURT OF INDIA

State of West Bengal & Ors.

Vs.

Mani Bhushan Kumar

C.A.No.8528 of 2011

(R.V. Raveendran and A.K.Patnaik,JJ.,)

11.10.2011

JUDGMENT

A.K.Patnaik,J.,

Civil Appeal arising out of SLP (C) NO. 11653 OF 2010:

1. Leave granted.

2. This is an appeal by special leave against the order dated 23.03.2010 of the Division Bench of the Calcutta High Court in A.S.T. No. 83 of 2010 (for short `the impugned order).

3. The facts very briefly are that on 02.09.2009 the State Transport Authority, Bihar, issued a temporary permit in favour of the respondent for plying a Stage Carriage Vehicle for the route Motihari in Bihar to Siliguri in West Bengal, for a period of four months with effect from 01.09.2009. On 07.09.2009, the respondent submitted an application to the Secretary, State Transport Authority, West Bengal, for counter-signature on the temporary permit. On 08.09.2009, the respondent also deposited a sum of Rs. 9,180/- towards tax and additional tax in respect of his vehicles for plying within the State of West Bengal. On 08.10.2009 vehicle no. BR-31P 5105 of the respondent was intercepted by the Enforcement Branch of the Motor Vehicle Department at Siliguri and the driver of the vehicle was asked to produce the papers including permit and proof of payment of tax relating to the vehicle. Since the permit produced by the driver of the vehicle was not counter-signed by the State Transport Authority, West Bengal, the vehicle was seized by the officials of the Motor Vehicle Department and a notice was issued to the respondent under Section 16(4)(a) & (b) of the West Bengal Motor Vehicles Tax Act, 1970 (for short `the Motor Vehicles Tax Act') to produce the papers and documents showing payment of tax and additional tax due for the vehicle and other necessary documents relating to the vehicle failing which the vehicle will be sold.

4. Aggrieved, the respondent filed Writ Petition No. 17755 (W) of 2009 before the Calcutta High Court challenging the seizure of his vehicle and praying for release of the vehicle

alongwith the seized documents. The appellants herein filed a reply in the said Writ Petition contending inter alia that the temporary Stage Carriage permit granted by the State Transport Authority, Bihar, in favour of the respondent for the route Motihari in Bihar to Siliguri in West Bengal had not been counter-signed by the State Transport Authority, West Bengal, as provided in Section 88 of the Motor Vehicles Act, 1988 (for short 'the Motor Vehicles Act') and hence the vehicle of the respondent was plying without a valid permit and had to be seized under Section 207 of the said Act. In the reply, the appellants also contended that in the facts of the case the duration of plying has to be reckoned as 17 weeks retrospective from the date of interception of the vehicle and the respondent is liable to pay a tax at the rate applicable for a period of 17 weeks together with a fine of equal amount and therefore the total of tax and penalty payable by the respondent works out to Rs.1,13,460/- as per the assessment memo dated 15.10.2009 of the Taxing Officer, Siliguri.

5. The learned Single Judge, who heard the Writ Petition, held in his order dated 04.03.2010 that while sub-section (1) of Section 88 of the Motor Vehicles Act provides that counter-signature is absolutely necessary for a permanent permit, it will be clear from sub-section (7) of Section 88 of the Motor Vehicles Act that for a temporary permit no such counter-signature is necessary. The learned Single Judge also held that the entire tax had been paid by the respondent relying on a notification dated 13.04.2007 of the State Government. Accordingly, the learned Single Judge allowed the Writ Petition and directed the appellants to forthwith release the vehicle of the respondent and awarded a cost of Rs.10,000/- in favour of the respondent against the appellants. Aggrieved by the order of the learned Single Judge, the appellants filed an appeal before the Division Bench of the Calcutta High Court and by the impugned order, the Division Bench of the High Court sustained the findings of the learned Single Judge that a temporary permit issued under Section 87 of the Motor Vehicle Act to be valid in the State of West Bengal need not be counter-signed and that the respondent has paid the tax and additional tax to the State Transport Authorities in respect of the vehicle. The Division Bench, however, reduced the cost awarded by the learned Single Judge from Rs.10,000/- to Rs.5,000/- provided the vehicle of the respondent is released by 26.09.2010. On 26.04.2010, this Court directed that pending consideration of the Special Leave Petitions, the vehicle shall be released subject to the respondent furnishing a Bank Guarantee for Rs.1,00,000/- for the vehicle.

6. Mr. Altaf Ahmed, Learned Senior Counsel appearing for the appellants, submitted that in the Reciprocal Agreement entered into by and between the State of West Bengal and State of Bihar, there was no provision for grant of temporary permit in respect of a Stage Carriage Vehicle, except for the interregnum between the draft and final publication of the Reciprocal Agreement. He submitted that in the absence of any such Reciprocal Agreement for grant of temporary permit in respect of a Stage Carriage Vehicle, no temporary permit could be granted from Motihari in Bihar to Siliguri in West Bengal. In support of this submission, he cited the decisions in *Ashwani Kumar and Another v. Regional Transport Authority, Bikaner and Another*¹ and *A. Venkatkrishnan v. State Transport Authority, Kerala*² in which this Court has held that in the absence of reciprocal agreement between two States, grant of permit for an inter-state route is illegal and beyond the jurisdiction of the State Transport Authority. He submitted that sub-section (1) of Section 88 clearly states that a permit granted

in any one State shall not be valid in any other State unless counter-signed by the State Transport Authority of that other State or by the Regional Transport Authority concerned. He vehemently argued that in the absence of any counter- signature by the State Transport Authority of West Bengal, the permit issued in favour of the respondent was not a valid permit in the State of West Bengal. He submitted that since the vehicle was plying without a valid permit, the authorities of the Motor Vehicle Department had detained and seized the vehicle in accordance with the provisions of Section 207 of the Motor Vehicles Act. Regarding the tax, he relied on the provisions of sub-sections (3) and (4) of Section 16 of the Motor Vehicles Tax Act and submitted that the tax and penalty amounting to Rs.1,13,460/- as assessment in the assessment memo dated 15.10.2009 of the Taxing Officer, Siliguri had not been paid by the respondent.

7. Mr. Nagendra Rai, Learned Senior Counsel for the respondent, on the other hand, submitted that admittedly the respondent had filed an application for counter-signature on the permit before the Secretary, State Transport Authority, West Bengal, but the counter-signature was not put on the permit by the State Transport Authority and as a result the vehicle of the appellant was seized and detained. He cited the decision of this Court in *Kusheshwar Prasad Singh v. State of Bihar and Others* ³ for the proposition that a wrong-doer ought not to be permitted to make a profit out of his own wrong. He argued that since the State Transport Authority, West Bengal has not counter-signed the permit of the appellants, the appellants cannot take advantage of this wrong-doing and recover exorbitant amount of tax and penalty from the respondent.

8. Sub-section (1) & (7) of Section 88 of the Motor Vehicles Act are quoted hereinbelow:

"88. Validation of permits for use outside region in which granted. -(1) Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned: Provided that a goods carriage permit, granted by the Regional Transport Authority of any one region, for any area in any other region or regions within the same State, shall be valid in that area without the countersignature of the Regional Transport Authority of the other region or of each of the other regions concerned: Provided further that where both the starting point and the terminal point of a route are situate within the same State, but part of such route lies in any other State and the length of such part does not exceed sixteen kilometres, the permit shall be valid in the other State in respect of that part of the route which is in that other State notwithstanding that such permit has not been countersigned by the State Transport Authority or the Regional Transport Authority of that other State: Provided also that –

(a) where a motor vehicle covered by a permit granted in one State is to be used for the purposes of defence in any other State, such vehicle shall display a certificate, in

such form, and issued by such Authority, as the Central Government may, by notification in the Official Gazette, specify, to the effect that the vehicle shall be used for the period specified therein exclusively for the purposes of defence; and (b) any such permit shall be valid in that other State notwithstanding that such permit has not been countersigned by the State Transport Authority or the Regional Transport Authority of that other State. (7) Notwithstanding anything contained in sub-section (1), a Regional Transport Authority of one region may issue a temporary permit under section 87 to be valid in another region or State with the concurrence, given generally or for the particular occasion, of the Regional Transport Authority of that other region or of the State Transport Authority of that other State, as the case may be."

(emphasis supplied)

9. The last limb of sub-section (1) of Section 88 of the Motor Vehicles Act states that a permit granted in any one State shall not be valid in any other State unless counter-signed by the State Transport Authority of that other State or by the Regional Transport Authority concerned. Sub-section (7) of Section 88 of the Motor Vehicles Act, however, states that notwithstanding anything contained in sub-section (1), a Regional Transport Authority of one region may issue a temporary permit under section 87 to be valid in another region or State with the concurrence, given generally or for the particular occasion, of the Regional Transport Authority of that other region or of the State Transport Authority of that other State, as the case may be. Hence, unless there is concurrence, given generally or for the particular occasion, of the Regional Transport Authority of the other region or of the State Transport Authority of the other State no valid temporary permit can be issued for the other region or the other State.

10. In the facts of this case, we find that although the State of West Bengal and the State of Bihar had entered into a reciprocal agreement in 1988 for issue of a certain number of permits, the State Transport Authority, Bihar exceeded the quota of permits for the inter-state route and there was no concurrence in general or for a particular occasion for issue of the temporary permit in favour of the respondent for the route from Motihari in Bihar to Siliguri in West Bengal. Hence, the High Court is not right in relying on the provisions of sub-section (7) of Section 88 of the Motor Vehicles Act in coming to the conclusion that no counter signature of the State Transport Authority, West Bengal, was necessary for the temporary permit of the respondent for plying his vehicle in the State of West Bengal.

11. As admittedly, there was no counter-signature of the State Transport Authority, West Bengal, on the temporary permit issued by the State Transport Authority (Bihar), the respondent did not have a valid permit for the part of the route inside the State of West Bengal. The plying of the vehicle of the respondent in the Siliguri region within the State of West Bengal was thus in contravention of Section 66(1) of the Motor Vehicles Act which provides that no owner of a vehicle shall use or permit use of the vehicle as a transport vehicle save in accordance with the conditions of a permit granted or counter-signed by the Regional or State Transport Authority. The appellants, therefore, were well within their

powers to detain and seize the vehicle of the respondent under Section 207 of the Motor Vehicles Act for contravention of Section 66 of the said Act.

12. Regarding the tax payable by the respondent for the vehicle plying within the State of West Bengal, it appears that on 08.10.2009 the appellants had seized and detained the vehicle of the respondent under sub-section (3) of Section 16 of the Motor Vehicles Tax Act and issued a notice under sub-section (4) of Section 16 of the Motor Vehicles Tax Act and it is at this stage that the petitioner filed the writ petition before the Calcutta High Court for release of the seized vehicle and the High Court has held that respondent has paid all the taxes in respect of the vehicle.

13. Sub-sections (3) and (4) of Section 16 of the Motor Vehicles Tax Act are extracted hereinbelow:

"(3) Notwithstanding anything contained elsewhere in this Act, any officer referred to in sub-section (1) [may seize and detain] any motor vehicle in respect of which tax is due until the person liable to pay the tax,--

(a) has satisfied the Taxing Officer having jurisdiction within thirty days of the detention that the tax has actually been paid,

(b) has within thirty days of such detention paid to the Taxing Officer having jurisdiction the tax due together with the penalty to be paid for non- payment of tax within the prescribed time. (4) (a) On the expiry of the period of thirty days the vehicle seized and detained may, subject to the provisions of this Act, be sold in auction unless the person liable to pay tax has, within a further period of fifteen days, paid to the Taxing Officer having jurisdiction double the amount of the total tax due, including the penalty under section 11, in respect of such vehicle (hereinafter referred to as the aggregate amount).] Provided that the terms and conditions in respect of auction of a motor vehicle under this sub- section shall be specified by order, made in this behalf, by the State Government.

(b) The sale of the vehicle seized and detained [may be effected by the Taxing Officer] within whose jurisdiction the vehicle has been seized and detained under this section, and the proceeds of sale shall be disposed of in the same manner as an arrear of land revenue."

It will be clear from the provisions of sub-sections (3) and (4) of Section 16 of the Motor Vehicles Tax Act that power is vested in the Taxing Officer to decide whether tax in respect of the vehicle has been paid and if the same has not been paid, to recover the same from sale of the vehicle, if necessary. Thus, the High Court should not have straight away come to the conclusion in the writ petition that the tax in respect of the vehicle has been paid.

14. We, therefore, set aside the impugned order of the Division Bench of the Calcutta High Court as well as the order of the learned Single Judge and direct that the appellants will continue with the proceedings against the respondent in accordance with Section 16 and other provisions of the Motor Vehicles Tax Act for determining and recovering the tax amount after giving all due opportunity to the respondent. We direct that the Bank Guarantee for Rs.1,00,000/- furnished by the respondent shall remain in force for six months and in case the concerned authority holds that the respondent is liable for any amount of tax, the appellant would be entitled to encash the Bank Guarantee for Rs.1,00,000/- furnished by the respondent and recover the tax amount within a period of six months from today. We, however, direct that in the facts of the case no penalty will be recovered from the respondent because the State Transport Authority, Bihar had granted the temporary permit for the route upto Siliguri in West Bengal, in excess of the quota fixed between the two States and the respondent had in fact applied to the State Transport Authority, West Bengal for counter-signature on the temporary permit.

15. The appeal is allowed to the extent indicated above.

There shall be no order as to costs.

Leave granted.

2. This is an appeal by special leave against the order dated 23.03.2010 of the Division Bench of the Calcutta High Court in A.S.T. No. 84 of 2010 and this appeal was heard alongwith Civil Appeal arising out of SLP (C) NO. 11653 OF 2010.

3. We have delivered a judgment today setting aside the impugned order of the Division Bench of the Calcutta High Court as well as the order of the learned Single Judge against which the appeal has been filed before the Division Bench of the High Court and directed that the Bank Guarantee for Rs.1,00,000/- furnished by the respondent shall remain in force for a period of six months from today, during which the appellants will complete the proceeding for determination of tax in accordance with Section 16 of the Motor Vehicles Tax Act after giving all due opportunity to the respondent and recover the tax amount from the Bank Guarantee within six months, but will not recover any penalty from the respondent. This appeal is also disposed of in terms of the said order passed in Civil Appeal arising out of SLP (C) NO. 11653 OF 2010.

Judgment Referred.

¹(1999) 8 SCC 0364

²(2004) 11 SCC 0207

³(2007) 11 SCC 0447