

MADHYA PRADESH HIGH COURT

Raipur Transport Co., Private Ltd.

Vs.

M.P. Singh

Misc. Petn. No. 304 of 1966
(P.V. Dixit, C.J. and R.J. Bhave, J.)

08.11.1966

JUDGMENT

Bhave, J.

1. By this petition under article 226 of the Constitution, the petitioner seeks a writ of certiorari for quashing six notices of demand issued by the respondent No. 1, the Deputy Transport Commissioner, to the petitioner-company for payment of the amount of passenger-tax said to be due from the applicant under the Motor Vehicles (Taxation of Passengers) Act, 1959, (hereinafter referred to as the Act). The petitioner also prays for the issue of a writ of certiorari for quashing the proceedings initiated against it for recovery of the tax amount.

2. The petitioner-Company carries on the business of motor transport and plies stage carriages under a number of permits. Under the Act, an operator is required to submit monthly returns and deposit the passenger tax every month. For the months, February 1961 to July 1961, it appears that the petitioner filed the returns but did not deposit the passenger tax alleged to have been collected by it. The tax was not deposited because the petitioner had challenged the vires of the Act before this Court as would appear from the decision of this Court in *Madhya Pradesh Transport Co. (Pvt.) Ltd. Raipur v. State of M.P.*,¹ The lacuna pointed out by this Court was, however, removed by the State by amending the Act suitably. The amended Act was also challenged; but that matter was set at rest by this Court in *M.P. Transport Co. v. State of M.P.*,² After this decision, it appears that the Tax Officer issued the notices of demand, dated 8-3-1965 (Annexures 2 to 7) calling upon the petitioner to deposit the amounts stated in the notices within 15 days of the service of the notices. The notices also indicated that in default coercive proceedings for recovery of the amounts would be initiated. The

petitioner did not deposit the amounts as per the notices of demand; hence a recovery certificate was sent to the respondent No. 3 who has started proceedings for recovery of the amounts as arrears of land revenue.

3. The contention of the petitioner is that no assessment was made and the demand notices not being based on any assessment order are invalid in law and that no coercive proceedings can be initiated against the petitioner.

4. In the return filed on behalf of the respondents, it is admitted that no assessment order has been passed. But it is contended that under the scheme of the Act it is not necessary to pass any assessment order. The Act only requires the Tax Officer to issue a notice of demand; and if the notice is not complied with, recovery proceedings under Section 10 of the Act can be initiated. It is urged that under Section 12 an appeal is provided against the notice of demand and not against any assessment order. This indicates that an assessment order need not be passed.

5. To appreciate the contentions of both the parties, it is necessary to refer to the relevant provisions of the Act. Section 3 of the Act provides that there shall be levied and paid to the State Government a tax on all passengers carried by stage carriages at a rate equivalent to fifteen per cent of the fare (inclusive of tax) payable to the operator of a stage carriage. Sub-Section (1-A) provides that notwithstanding anything contained in the Motor Vehicle Act, 1939, an operator shall be, and shall be deemed always to have been entitled to collect the tax under Sub-Section (1) in addition to the fares as fixed and in force from time to time for a stage carriage under a notification under Section 43 of the Motor Vehicles Act, 1939; and Sub-Section (1-B) provides that the tax shall be collected by the operator of a stage carriage and paid to the State Government in accordance with the provisions of the Act. It is thus clear that it is the duty of the operator to collect the tax and deposit the same in accordance with the provisions of the Act. Section 5 of the Act requires the operator to deliver to the Tax Officer or to such, prescribed officer as the Tax Officer may specify a return in the prescribed form and manner at the prescribed intervals; and Section 6 requires the operator to deposit at the end of every month the tax collected by him as shown in his returns. Then come Sections 7 and 8 which are material. They are :-

"7. Procedure where no returns are submitted, etc. - In the following cases, that is to say, -

(a) where no returns have been submitted by the operator in respect of any stage carriage for any month or portion thereof; or

(b) where the returns submitted by the operator in respect of any stage carriage for any month or portion thereof appear to the Tax Officer to be incorrect or incomplete;

the Tax Officer shall, after giving the operator a reasonable opportunity, in case (a) of making his representation, if any, and in case (b) of establishing the correctness and completeness of the returns submitted by him, determine the sum payable to the State Government by the operator by way of tax during such month or portion thereof;

Provided that the sum so determined shall not exceed the maximum tax which would have been payable to the State Govt. if the stage carriage had carried its full complement of passengers during such month or portion thereof.

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."

Section 10 provides that 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. Section 12 provides that any operator objecting to notice of demand served on him under Section 10 may, within thirty days of the service thereof, appeal to the prescribed authority.

6. It is plain from Section 7 of the Act that where no returns have been filed or where the returns submitted by the operator are incorrect or incomplete, the Tax Officer is required to determine the sum payable to the State Government by way of tax after making due enquiry. This clearly envisages an assessment proceeding and the making of an assessment order. So also, where the whole or any portion of the tax livable under the Act for any month has escaped assessment, the Tax Officer is required to assess the tax which has escaped assessment. It must be noted that clause (b) of Section 7 nowhere speaks of the deposit or non-deposit of the tax amount under Section 6. That being so, no limitation of any kind can be read into that clause with reference to the deposit or non-deposit under Section 6 of the tax amount. The Tax Officer has to determine the sum payable to the State Government by the operator by

way of tax during the material month or portion thereof, no matter whether the operator has with the returns submitted by him under Section 5 deposited or not deposited the tax amount payable under Section 6.

Where along with the return the tax amount has been paid and the Tax Officer does not find the return to be incorrect or incomplete, no question of giving the operator an opportunity of making his representation or of establishing the correctness or completeness of the return submitted by him can arise. Yet, the Tax Officer has to pass an order holding the operator liable for payment of the tax in accordance with the return submitted by him, adding that the tax amount has already been paid with the return. In such a case, the question of issuing a notice of demand for payment of the tax amount cannot obviously arise. Where the operator has submitted a return and has not paid with it the tax amount as laid down under Section 6, the Tax Officer has necessarily to make an inquiry as regards the completeness or correctness of the return filed and the deposit of the tax by the operator in accordance with Section 7. It is only when the amount payable by the operator is determined that a notice of demand can be issued to him for payment of the tax. An operator objecting to the notice of demand served on him has a right of appeal under Section 12. But from this it does not follow that the Tax Officer is under no duty to pass an order determining the amount of tax payable by the operator before issuing a notice of demand against him. Indeed, Section 10 of the Act, when it says that in the cases referred to in Sections 7, 8 and 9 the Tax Officer shall serve on the operator a notice of demand for the sums payable to the State Government, presupposes that an order of assessment has been made under the earlier provisions of the Act. An order of assessment is necessary not only for the validity of the notice of demand, but also for enabling the appellate authority to see whether the tax has been correctly assessed or not and the demand made against the operator is or is not justified.

7. As in the present case the demand notices were issued to the petitioner without making any assessment, those notices are invalid and must be quashed. If, as we think, the demand notices are illegal, then the recovery proceedings initiated pursuant to those notices must also be quashed. The result is that this petition is allowed, the demand notices (annexures 2 to 7) are quashed, and the recovery proceedings initiated against the applicant on the strength of those demand notices are also quashed. The respondent No. 3 is restrained from recovering the tax amount under the recovery certificate issued by the respondent No. 1 on the basis of the aforesaid demand notices. The respondents shall pay to the petitioner the costs of this petition. Hearing

fee Rs. 200. The security amount deposited by the petitioner shall be refunded.

Petition allowed.

Cases Referred.

1. 1962 MPLJ 633: AIR 1962 Mad Prad 108
2. 1963 MPLJ 605: AIR 1963 Mad Pra 339