

RAJASTHAN HIGH COURT

Phoosa Ram

Vs.

State (Rajasthan)

Civil Writ Petn. No.4758 of 2000

(Dr. B.S. Chauhan, J.)

18.04.2001

ORDER

Dr. B.S. Chauhan, J.

1. The instant writ petition has been filed for releasing the bus No. RNF 1071 and for issuing directions to the respondents not to take any coercive measures for recovery of the tax as demanded by notice dated 6-11-2000 from the petitioner.

2. The facts and circumstances giving rise to this case are that one Shri Girdharilal was holding a permanent State Carriage Permit on the route Loonkaransar to Binjrawali and the petitioner purchased the said bus from him. The same stood transferred in the name of the petitioner. When the bus was being plied, it was seized by the authorities in exercise of the powers under Section 207 of the Motor Vehicles Act, 1988 (for short 'the Act') on the grounds that the vehicle was not having tax token; Special Road Tax has not been paid; neither having permit nor the fitness certificate, nor registration certificate, nor insurance policy certificate, nor certificate from the Pollution Control Board. Moreover, it had not cleared the tax. Moreover, there is a demand of tax to the tune of Rs. 31,136/- and 24,530/- from the petitioner. Hence, this petition.

3. Shri B.L. Maheshwari, learned counsel appearing for the petitioner, has raised large number of issues including the power and competence of the respondent No.2 to seize the vehicle and further that the notices of demand are void ab initio. On the contrary, Sri Vineet Kothari, learned counsel appearing for the respondents, raised the preliminary objections that the impugned demand notices had been made on 6-11-2000 by the competent authority under the provisions of S-13-B of the Rajasthan

Motor Vehicles Taxation Act (for short 'the Act, 1951') and the vehicle has been seized under the provisions of the Section 207 of the Act on 27-11-2000. It is not permissible for the petitioner to mix up all the issues and claim relief in the petition. Moreso, seizure memo contains large number of deficiencies with the vehicle. It did not have even the registration certificate or certificate of fitness. In addition to the demand of tax etc., and it is not the petitioner's case that the vehicle has been seized only for non-payment of tax. Unless the vehicle is fit and road-worthy, it cannot be permitted to be piled on the road. The issues involved here are question of facts which cannot be determined in the writ jurisdiction. Moreover, the statute itself provides for remedy of assessment, its appeal and its revision and authorizes the District Transport Officer to release the vehicle. Therefore, in these circumstances, the writ petition should not be entertained by this Court.

4. A constitution Bench of the Hon'ble Supreme Court, in *G. Veerappa Filial v. Raman and Raman Ltd.*¹ held that as the Motor Vehicles Act is a self contained code and itself provides for appealable/ revisable forum, the writ jurisdiction should not be invoked in matters relating to its provision.

5. Similar view has been reiterated in *Assistant Collector of Central Excise v. Dunlop India Ltd.*² *Ramendra Kishore Biswas v. State of Tripura*,³ and *Shivgovinda Anna Patil v. State of Maharashtra*⁴.

6. In *C.A. Abraham v. I.T.O.*⁵ and *H.B. Gandhi v. M/s Gopinath and Sons*,⁶ the Hon'ble Apex Court held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction.

7. Another Constitution (Bench) of the Hon'ble Supreme Court, in *K.S. Venkataraman and Co. v. State of Madras*⁷ considered the Privy Council judgment in *Raleigh Investment Co. Ltd, v. Governor General in Council*,⁸ held that the writ Court can entertain the petition provided the order is alleged to be without jurisdiction or has been passed in flagrant violation of the principles of natural justice, or the provisions of the Act/Rules is under challenge.

8. In *Titaghur Paper Mills Co. Ltd. v. State of Orissa*,⁹ the Hon'ble Supreme Court refused to extend the ratio of its earlier Judgment in *State of U.P. v. Mohammed Nooh*,¹⁰ wherein the Court had held that prerogative writ can be issued to correct the error of

the Court or Tribunal below even if an appeal is provided under the statute under certain circumstances, i.e. the order is without Jurisdiction, or principles of natural justice have not been followed, and held that in case of assessment under the Taxing Statute, the principle laid down by the Privy Council in *Raleigh investment Co. Ltd.*, (supra) would be applicable for the reason that "the use of the machinery provided by the Act, not the result of that use, is the test."

9. While deciding the said case, the Hon'ble Supreme Court placed reliance on large number of judgments, particularly *New Water Works Co. v. Hawkes Ford*.¹¹ *Neville v. London Express Newspapers Ltd*¹² and *Attorney General of Trinidad and Taboco v. Gordon Grant and Co.*¹³ and *Secretary of State v. Mask and Co.*,¹⁴ wherein it had consistently been emphasized that the remedy provided by the statute must be followed and writ should not generally be entertained unless the statutory remedies are exhausted.

10. In *Sheela Devi v. Jaspal Singh*,¹⁵ the Hon'ble Apex Court has held that if the statute itself provides for a remedy of revision, writ Jurisdiction cannot be invoked.

11. Relevant provisions of the Act, 1951 particularly Section 15 provide that no Court inferior to that of a Magistrate of a second class shall try any offence punishable under the Act. Section 16 bars the Jurisdiction of the civil and criminal Court in matter of taxation. Section 17 of the said Act reads as under;-

"17. Power to stop a motor vehicle. - (1) Any police officer in uniform not below such rank as may be prescribed and any officer of the Transport Department not below the rank of a Sub-Inspector and any officer of the Commercial Taxes Department not below the rank of an Inspector posted at the check posts controlled by the Commercial Taxes Department may require the driver of any motor vehicle in any public place to stop the vehicle and cause it to remain stationary so long as may reasonably be necessary for the purpose of satisfying himself that the amount of the tax due in accordance with the provisions of this Act in respect of such vehicle has been paid.

(2) Where any tax due in respect of any vehicle has not been paid, any officer referred to in sub-section (1), may seize and detain such vehicle and take or cause to be taken such steps as he may consider necessary for the safe custody of the vehicle until it is produced before the Taxation Officer of the area

concerned within a reasonable time or the tax due in respect of the vehicle is paid."

12. Section 207 of the Act reads as under :-

"207, Power to detain vehicles used without certificate of registration permit, etc. - (1) Any police officer or other person authorized in this behalf by the State Government may, if he has reason to believe that a motor vehicle has been or is being used in contravention of the provision of Section 3 or Section 4 or Section 39 or without the permit required by sub-section (1) of Section 66 or In contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle, in the prescribed manner and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle :

XX XX XX XX XX XX XX

(2) Where a motor vehicle has been seized and detained under sub-section (1), the owner or person in charge of the motor vehicle may apply to the transport authority or any officer authorized in this behalf by the State Government together with the relevant documents for the release of the vehicle and such authority or officer may, after verification of such documents, by order release the vehicle subject to such conditions as the authority or officer may deem fit to impose."

13. Thus it is evident that Section 207 of the Act clearly provides that the person aggrieved may approach the Transport Authority or any officer authorised in this behalf by the State Government for release of the vehicle and he shall release the vehicle subject to such conditions as the authority or officer may deem fit.

14. Similarly, in case the vehicle has been seized only for non -payment of tax, the powers had been conferred by Sections 15 to 17 of the Act of 1951 only upon the District Transport Officer to decide the case. Thus, the statute itself provided for the remedy in such a case.

15. A Division Bench of this Court In *Rajveer Singh v. Union of India*, ¹⁶ has held the validity of the provisions of Section 207 of the Act. Therefore, if the statute itself

provides for the remedy of release of a vehicle seized for want of any document, the Transport Authority is the competent authority. In case it is seized for want of taxation, the Act of 1951 provides that statutory remedy lies before the District Transport Officer or appellate authority.

16. In *State of Rajasthan v. Mohd. Nisar*,¹⁷ this Court considered the scope and application of Section 482, Cr. P.C. for quashing the seizure memo in case the vehicle is seized in exercise of the powers under Section 207 of the Act of 1988 or the Act of 1951 and held that the Magistrate does not have power to deal with this category of cases.

17. However, in *Noor Khan v. State of Rajasthan*,¹⁸ this Court has held that a vehicle seized in exercise of the powers exercised under Section 207 of the Act of 1988 can be released by the Magistrate. It is pointed out at the Bar that the matter is pending for adjudication before the Hon'ble Supreme Court.

18. A Division Bench of the Allahabad High Court in *Mazhar Ali Khan v. Chief Judicial Magistrate*,¹⁹ is held that if the vehicle has been seized in exercise of the powers under Section 207 of the Act of 1988, for releasing the vehicle, the application should be made only before the Transport Authority or the Officer so authorized in this behalf and in such a case if the application is so filed, the Transport Authority cannot refuse to entertain the same merely on the ground that the vehicle was seized by the Police Officer.

19. In view of the above, there may be controversy as to whether the issue can be agitated before the Magistrate or not but it can definitely be raised before the Transport Authorities. The petition is liable to be dismissed only on the ground that the petitioner ought to have approached the statutory authorities rather than filing this petition.

20. Even on merit, I find no substance in the petition. The petitioner has challenged two different kinds of orders under different statutes by different authorities in one writ petition. The impugned demand notices had been issued much earlier i.e. on 16-11-2000 while the vehicle has been seized on 27-11-2000. Petitioner cannot be permitted to urge that the demand notices are void ab initio, for the reason that Section 13-B of the Act, 1951 clearly stipulates that the liability on the vehicle can be

recovered from the transferee and in case the person is so aggrieved by the order of demand etc., the Section 14 provides for the remedy of appeal and revision. So far as the seizure memo is concerned, it is quite clear that the provisions of Section 66(1) stood violated for the reason that the petitioner's vehicle has been found without permit. Petitioner has not filed any copy of the permit along with this petition nor he has explained what is the date on which his permit was issued/renewed and what is the date of its expiry.

21. It is settled proposition of law that a party has to plead the case and produce/adduce sufficient evidence to substantiate his submissions made in the petition and in case the pleadings are not complete, the Court is under no obligation to entertain the petition. In *Bharat Singh v. State of Haryana*²⁰ the Hon'ble Supreme Court has observed as under :-

"In our opinion, when a point, which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or the counter affidavit, as the case may be, the Court will not entertain the point. There is a distinction between a hearing under the Civil Procedure Code and a writ petition or a counter affidavit. While in a pleading, i.e. a plaint or written statement, the facts and not the evidence are required to be pleaded. In a writ petition or in the counter- affidavit, not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it."

22. Similar view has been reiterated in *Larsen and Toubro v. State of Gujarat*,²¹ *National Building Construction Corporation v. S. Raghunathan*,²² and *Ram Narain Arora v. Asha Rani*²³

23. Thus, the petitioners cannot be permitted to hold the Court on ransom on such vague pleadings and make submissions without any sense of responsibility.

24. Copy of the document classifying the rout is irrelevant and in support the contentions thereof contained in Annexure-5 cannot have any bearing on this case as the petitioner has not furnished full particulars of his permit etc.

25. In *State of Maharashtra v. Nanded Parbhaniz L.B.M.V. Operator Sangh*²⁴, the Hon'ble Supreme Court explaining the scope of Section 207 of the Act of 1988 had observed as under:-

"The aforesaid power of seizure has been conferred upon the appropriate authority, which power is in fact a sovereign power of the State and has been delegated to the police officers in discharge of their duties of law enforcement and in the enforcement of an orderly society. The power, therefore, is required to be exercised with care and caution and the power has to be exercised only when the precondition for exercise of power is fully satisfied. the police officer would be authorized to detain a vehicle, if he has reason to believe that the vehicle has been or is being used in contravention of Section 3 or Section 4 or Section 39 or without the permit required under sub-section (1) of Section 66 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used."

26. Similarly, in *Nirmala Jagdish Chandra Kabra v. Transport Commissioner*,²⁵ the Hon'ble Supreme Court has held as under :-

"There is a power for compounding the offence provided in Section 206 of the Act. In the light of sub-section (1) of Section 207. If the officer authorized in that behalf of the opinion that the vehicle has been or is being used in contravention of any of the aforesaid provisions of the Act or conditions of permit relating to the route on which or the area in which or the purpose for which the vehicle is used, he may seize and detain the vehicle or compound the offence. The statutory power given to the authorized officer under Section 207 is to ensure compliance of the provisions of the Act. Therefore, the mandamus sought for cannot be issued, as referred to earlier."

27. Thus, in view of the above, as the petitioner has not furnished sufficient particulars before this Court that the seizure memo is illegal or the vehicle has been seized for extraneous considerations and nor he has furnished any particulars as to how he can avoid the tax liability, no relief can be granted to the petitioner.

28. Adamancy of the Bar not to resort to the statutory remedies and filing a petition challenging different orders passed by different authorities under different enactments

on different dates is deprecated.

29. The petition is devoid of any merit, hence dismissed. Authorities shall proceed against the petitioner in accordance with law. In the facts and circumstances of the case, there shall no order as to costs.

Petition dismissed.

Cases Referred.

1. AIR 1952 SC 192
2. AIR 1985 SC 330
3. (1999)1 SCC 472: (AIR 1999 SC 294)
4. (1999) 3 SCC 5: (AIR 1999 SC 2281)
5. AIR 1961 SC 609
6. 1992 (Suppl.) 2 SCC 312
7. AIR 1966 SC 1089
8. AIR 1947 PC 78
9. AIR 1983 SC 603
10. AIR 1958 SC 86
11. (1859) 6 CBNS 336
12. (1919) AC 368
13. (1935) A. C. 532
14. AIR 1940 PC 105
15. (1999)1 SCC 209
16. AIR 2000 Raj 272
17. 1997 WLC 660 (sic)
18. (1998) 2 WLC 676
19. AIR 1996 All 16
20. AIR 1988 SC 2181
21. (1998) 4 SCC 387
22. (1998) 7 SCC 66
23. (1999) 1 SCC 141
24. (2000) 2 SCC 69
25. (1997) 9 SCC 227