

Praveen Kumar Vs. the State of Bihar

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Court : Patna

Decided On : Jul-18-2005

Judge : I.P. Singh, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; [Motor Vehicles Act, 1988](#) - Sections 88 and 196; Bihar Motor Vehicle Taxation Act, 1994 - Sections 28(7); [Bihar Reorganisation Act, 2000](#) - Sections 2, 67 and 67(1); Jharkhand Motor Vehicles Taxation Act, 2001

Appeal No. : Cri. Misc. No. 14139 of 2005

Appellant : Praveen Kumar

Respondent : The State of Bihar

Prior history : I.P. Singh, J. 1 This is an application under Section 482 of the Code of Criminal Procedure, 1973 (in short the Code). It has come up for admission. It is directed against the order dated 11.11.2004 passed by the learned Ist Addl. Sessions Judge, Jehanabad in Criminal Revision No. 5 of 2004 by which he has refused to interfere with the order dated 13.8.2004 passed by Judicial Magistrate Ist Class, Jehanabad in Tr. No. 1878 of 2004 arising out of M.V. Case No. 29 of 2004 by which the prayer o

Judgement :

I.P. Singh, J.

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2. It appears that the petitioner is the owner of a truck bearing registration No. BR 17G, 4949. On 23.5.2004 it was intercepted at Check Post No. 2 at Jehanabad by the District Transport Officer (hereinafter called the DTO) and since according to him necessary papers were not with the truck, he seized it. He submitted a prosecution report under Section 196 of the Motor Vehicles Act, and Section 28(7) of the Bihar Motor Vehicle Taxation Act, 1994 before the Judicial Magistrate, Ist Class, Jehanabad. As per his prosecution report the petitioner had not paid necessary taxes of this truck from 15.11.2000 the date on which the State of Jharkhand was carved out of the erstwhile State of Bihar.

3. It appears that the petitioner had filed a petition before the learned Magistrate for the release of his truck. However, the DTO in his report vide letter No. 135 dated 11.6.2004 had submitted that necessary tax liability of this truck was due with effect from 16.11.2000 till the date of its seizure which requires to be ascertained. Finally the tax liability penalty was assessed at Rs. 1,71,319/- as will appear from this letter (Annexure-3). Against this order the petitioner has preferred a revision (Criminal Revision No. 5 of 2004) before the learned Sessions Judge which was heard and disposed of by the Ist Addl. Sessions Judge, Jehanabad who rejected the same on the ground that the impugned order was interlocutory in nature. The petitioner has contended that he had deposited the tax for this vehicle and holds valid goods carriage permit bearing Permit No. 325 of 2000 (Annexure-5) which was valid from 23.7.2000 to 22.7.2005 and as such in terms of Section 67 of the [Bihar Reorganisation Act, 2000](#) (in short the Act) there was no tax liability on the petitioner.

4. The petitioner has further submitted that this Court in the case of Manoj Sahay v. State of Bihar, 2002 (I) PLJR 666 had held that where the transport permits are valid for remainder period by virtue of provisions contained under Section 67(1) of the Act, no action can be taken against the permit holders for not holding permits granted by the authorities of the new State, as permit granted by the erstwhile State of Bihar are valid permit for both the States. The petitioner has further submitted that in any view of the matter the truck has to be released to him as held by the Hon'ble Supreme Court in the case V. Mohinigiri v. Union of India, AIR 2003 SC 638, in which the Hon'ble Court had observed that whatever be the situation, it is of no use to keep the seized vehicle at the police station for a long period and it is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicle, if required at any point of time and the same can be done pending hearing of this application for return of such vehicle. According to the petitioner the tax and penalty liability computed by the DTO is neither in accordance with Act nor in accordance 'with the decision of the Court stated above. On these grounds it has been prayed that the order dated 13.8.2004 passed by the Judicial Magistrate, Ist Class, Jehanabad as well as order dated 11.11.2004 passed by the Ist Addl. Sessions Judge in Criminal Revision No. 5 of 2004 be set aside and the vehicle be released in his favour at the earliest.

5. I have heard the parties in detail with respect to these prayers. From the impugned order dated 13.8.2004 it appears that the learned Magistrate was pleased to order for the release of the truck on payment of all the taxes reasonably fixed by the DTO Jehanabadi against proper receipt. The petitioner has contended that as a matter of fact there is no tax liability against his vehicle and assessment of the DTO for the tax liability of the amount of Rs. 1,71,319/- is absolutely without any foundation and he is not legally liable to pay the same. In view of these submissions it has become necessary to examine this question.

6. There is no denying the fact that the Act had come into force on 15.11.2000. The permit of the petitioner (Permit No. 325) was valid from 23.7.2000 to 22.7.2005. From this it would appear that the petitioner was granted this permit on payment of necessary taxes prior to 23.7.2000 at Hazaribagh on the date when

the State of Jharkhand was not carved out as a result of this Act. On the said date Bihar State was. also having offices at various places including Hazaribagh and it was at this place that the petitioner had deposited the necessary taxes. The question that arises in this connection would be whether on the creation of the State of Jharkhand and Bihar with effect from 15.11.2000 the petitioner would be liable to pay taxes afresh to the state of Bihar with effect from this date since he had paid the tax at Hazaribagh which is now fallen in the State of Jharkhand.

7. In this connection I will firstly refer to Section 67 of the Act. It runs as follows :

'67. Temporary provisions as to continuance of certain existing road transport permits.-(1) Notwithstanding anything contained in Section 88 of the [Motor Vehicles Act, 1988](#), a permit granted by the State Transport Authority of the existing State of Bihar or any Regional Transport Authority in the State shall, if such permit was, immediately before the appointed day, valid and effective in any area in the transferred territory, be deemed to continue to be valid and effective in that area after that day subject to the provisions of that Act as for the time being enforce in that area; and it shall not be necessary for any such permit to be countersigned by the State Transport Authority of Jharkhand or any Regional Transport Authority therein for the purpose of validating it for use in such area;

(2) No tolls entrance fees or other charges of a like nature shall be levied after the appointed day in respect of any transport vehicle for its operations in any of the successor States under any such permit, if such vehicle was, immediately before that day, exempt from the payment of any such toll, entrance fees or other charges for its operations in the transferred territory.

8. In this Section the expression 'Existing State of Bihar' comes. This expression has been defined in Section 2(e) of the Act to mean the State of Bihar as existing immediately before the appointed day. 'Appointed day' has been defined in Section 2(a) of the Act, to mean the day on which the Central Government made by notification in the official Gazette appointed: In the present case the appointed day is 15.11.2000.

9. Section 67 clearly shows that if there is any road transport permit granted by the State Transport Authority of the existing State of Bihar or any Regional Transport Authority in the State immediately before the appointed day it shall be continued to be valid and effective in that area after that day subject to the provisions of that Act, namely, [Motor Vehicles Act, 1988](#). Section 67(2) as has been noticed, clearly shows that no tolls entrance fees or other charges shall be levied after the appointed day in respect of any transport vehicle for its operations in any of the successor States under such permit, if such vehicle was immediately before that day exempt from the payment of any such toll, entrance fees or other charges for its operations in the transferred territory.

9. From the aforesaid provision it would become clear that in case the permit was granted by a competent authority of the existing State of Bihar and was valid immediately before the appointed day it shall continue to be valid and effective in any area in the transferred territory. In the present case the permit was granted to the petitioner for operating his truck from 23.7.2002 up to 22.7.2005. It has to be remembered in this connection that on this date the Act had not come into force and the State of Jharkhand was not created. On this date Hazaribagh was very much a part of the State of Bihar and its authorities were the authority appointed by the Government of Bihar. Since the permit was to take effect from 23.7.2000 it is obvious that it was valid for the whole of the existing State of Bihar. Even subsequent to the creation of the State of Jharkhand and coming into force of this Act, its authority can not be questioned since in terms of this section the law has been very clearly laid down. In this connection a reference may also be made to the case of Manoj Sahay (supra) in which it was held that the transport permits were valid for the remainder period by virtue of provisions contained under section 67 (1) of the Act and therefore, no action can be taken against the permit holders for not holding permits granted by the authority of the State as permits granted by the erstwhile State of Bihar were valid permit for the remainder period for both the States.

10. Lastly a reference may be made to Annexure-6, which a notification issued by the Government of Bihar (G.S.R. No. 1038 dated 12th March, 2003). This notification is sought to be applied to those vehicles which were registered outside

the State of Bihar. This notification will not apply to the present case for the simple reason that this vehicle was registered at Hazaribagh which was then a part of Bihar and its tax with effect from 23.7.2000 was paid. On this date the State of Jharkhand had not come into existence and the truck was given Bihar Registration No. as BR-17G-4949. So far as other notifications contained in Annexure-6 are concerned it need not be pointed out that no notification can supersede the provisions of the Act which is Central Act whose Section 67(1) and 67(2) make the whole position clear.

11. The same is the case with Bihar Act 11 of 2002 which being a Bihar Act, cannot supercede the Act which is a Central Act in existence from before. Hence I do not find any merit in these contention of the opposite parties. Thus from the aforesaid the irresistible conclusion would be that no tax or any other charge can be levied against the truck in question till 22.7.2005.

12. Also it may be mentioned that Jharkhand Motor Vehicles Taxation Act, 2001 made effective from 15.11.2000 will not apply since the truck in question was registered and tax paid with effect from 23.7.2000 (a date prior to 15.11.2000)

13. Thus the law appears to be clearly laid down in the aforesaid case that the permit holder would not be liable for any further payment if he holds a permit granted to him before the creation of the State of Bihar or Jharkhand. Under this circumstances it is not clear that on what strength the DTO has imposed tax and penalty to the tune of Rs. 1,71,319/- on the petitioner for plying this truck in the State of Bihar. Annexure-3 shows that tax with respect to this truck was payable with effect from 16.11.2000. It appears that the DTO has forgotten about the provision of Section 67 of the Act. In any view of the matter at this stage it appears to me that this amount of tax and penalty prima facie cannot be levied on the petitioner and the truck would not be required to be released only on payment of the same.

14. On behalf of the petitioner it has been submitted that the truck is lying in open space in the custody of the police and is deteriorating fast. In this view of the matter relying on the case of Mohinigiri, (supra) it has been submitted that the same may be released to him after taking an appropriate bond and guarantee and

also security for the return of the said vehicle. This submission of the petitioner is not without any merit. In this view of the matter the truck in question is ordered to be released to the petitioner on his executing a bond for a sum of Rs. 2,00,000/-to the satisfaction of the learned Magistrate and the guarantee and security for the return of the said vehicle if so required at any point of time also to his satisfaction. This prayer is disposed of accordingly and the impugned order is modified to this extent.

15. With the aforesaid direction this application is disposed of.

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