

Ajay Kumar Vs. State of Bihar and ors.

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Court : Patna

Decided On : Mar-02-1994

Judge : K.S. Paripoornan, C.J. and N.K. Sinha, J.

Appeal No. : C.W.J.C. No. 177 of 1994

Appellant : Ajay Kumar

Respondent : State of Bihar and ors.

Disposition : Petition Dismissed

Prior history : 1. The petitioner has made an ambitious prayer in this writ petition. The complaint is that Respondent Nos. 3 and 4 should not realise the penalty against the Bus No. BEA-5328. It is stated that the Respondent No. 4 assessed the dues against the said bus of the petitioner for the period 1-10-1990 to 31-12-1992 amounting to Rs. 69,620 which is stated to be wrong. It is further stated that this was challenged before the Certificate Officer, Patna in Certificate Case No. 1/93-94. The petitioner d

Judgement :

1. The petitioner has made an ambitious prayer in this writ petition. The complaint is that Respondent Nos. 3 and 4 should not realise the penalty against the Bus No. BEA-5328. It is stated that the Respondent No. 4 assessed the dues against the said bus of the petitioner for the period 1-10-1990 to 31-12-1992 amounting to Rs. 69,620 which is stated to be wrong. It is further stated that this was challenged

before the Certificate Officer, Patna in Certificate Case No. 1/93-94. The petitioner denied his liability to pay the amount. His further case is that he will pay the actual dues in instalments and he has so agreed before the authority. The complaint is that the Certificate Officer or the District Transport Officer are not agreeing to deduct the 50 per cent penalty from the dues, though this Court has held in C.W.J.C. No. 9981/92 that the the penalty is not exigible. The petitioner has prayed for the issue of writ of mandamus directing Respondent Nos. 3 and 4 not to demand 50 per cent penalty levied against him for non-payment of dues relating to Bus No. BEA-5328.

2. We heard learned Counsel for the petitioner and also learned Counsel for the State.

3. A proper demand and refusal (to accept the dues in instalments) is the very foundation on which this Court can be invited to issue a writ of mandamus. Except a bald statement that the Certificate Officer or the District Transport Officer is not agreeing to deduct the 50 per cent penalty from the dues, there is no specific averment based on material that the petitioner approached the appropriate authority for relief and that it was denied. If the petitioner has a case that no penalty is exigible, that is a matter which the petitioner should take up before the appropriate authority stating the reasons therefor with materials. It will be open for that authority to consider the matter and pass the appropriate order. Without complying with this basic formality, it is idle for the petitioner to rush to this Court and party for the issue of writ of mandamus and seek an order which is anticipatory in nature. We hold that this writ petition is premature, it lacks particulars and the basic facts necessary for the issue of a writ of mandamus are totally absent. Accordingly, this writ petition is dismissed.