Phoolchand and ors. Vs. State of Madhya Pradesh and ors.

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Court : Madhya Pradesh

Decided On : Oct-20-1965

Reported in : AIR1966MP131

Judge : P.V. Dixit, C.J. and ;K.L. Pandey, J.

Acts : Madhya Pradesh Motor Vehicles Taxation Act, 1947 - Sections 3; Constitution of India - Articles 301 and 304; Madhya Pradesh Motor Vehicles Taxation (Amendment) Act, 1965 - Sections 3(2)

Appeal No. : Misc. Petn. No. 256 of 1965

Appellant : Phoolchand and ors.

Respondent : State of Madhya Pradesh and ors.

Advocate for Def. : R.J. Bhave, Govt. Adv.

Advocate for Pet/Ap. : Y.S. Dharmadhikari, Adv.

Disposition : Petitions dismissed

Judgement :

Dixit, C.J.

1. This order will also govern the disposal of Misc. Petition No. 269 of 1965.

2. By these two applications under Article 226 of the Constitution the petitioners who ply trucks under Public Carriers Permits issued to them under the Motor Vehicles Act, 1939, challenge the validity of Act No. XV of 1965, namely, the Madhya Pradesh Motor Vehicles Taxation (Amendment) Act, 1965, (hereinafter called the Amending Act), and pray that it be declared that the Amending Act is ultra vires and invalid and they

'are not required to pay the tax (under the Madhya Pradesh Motor Vehicles Taxation Act, 1947) for the quarter during which they do not keep the vehicle in use or for use.'

They also seek writs of certiorari for quashing the memoranda issued to them intimating them that they should deposit tax in respect of their vehicles within the time mentioned in the memoranda.

3. The matter arises thus. By Section 3(1) of the Madhya Pradesh Motor Vehicles Taxation Act, 1947 (hereinafter referred to as the Act) it is provided that

'a tax at the rate specified in the First Schedule shall be leviable on every motor vehicle used or kept for use in Madhya Pradesh.'

According to Sub-section (2) of Section 3 the tax leviable under Sub-section (1) is to be paid by 'the owners of the motor vehicles used or kept for use-

'(i) for a whole quarter at one-fourth of the annual rate specified in the First Schedule, and for two or more whole quarters, pro rata, or

(ii) for any period expiring on the last day of a quarter and not exceeding two months, at one-sixth or one-twelfth of the rate specified in the First Schedule, according as the period exceeds, or does not exceed one month.' The original Sub-section (2) contained a proviso which ran as follows:

'Provided that the tax shall not be payable by the owner of a motor vehicle who does not use the vehicle during such period if, before the tax is due, he has given notice in writing as may be prescribed.' The notice contemplated by the proviso was required to be given under Rule 11 of the Rules framed under the Act in Form

I. This proviso was deleted by Section 2 of the Amending Act. Sub-section (3) of Section 3 of the Act is as follows:

'An owner who keeps a transport vehicle of which the certificate of fitness and the certificate of registration are current or an owner who keeps a motor vehicle other than a transport vehicle of which the certificate of registration is current shall, for the purposes of this Act, be presumed to keep such vehicle for use.' Section 16(b) of the Act as originally enacted made a person using a motor vehicle without informing the authority to whom the tax is payable, in contravention of the notice given under Sub-section (2) of Section 3, punishable with fine as prescribed in that section. Clause (b) of Section 16 of the principal Act was also deleted by the Amending Act.

4. The Amending Act came into force on 1st April 1965. Some time in May or June 1965 the petitioners in Misc. Petition No. 265 of 1965 applied to the respondents Nos. 2 and 3, the Tax Officers, for being supplied with Form I so that they could give an intimation to the Tax Officers that they did not intend to use their vehicles during the period of the rainy season. In reply, the Tax Officer informed them that the proviso to Sub-section (2) of Section 3 of the M. P. Motor Vehicles Taxation Act, 1947, had been deleted by Act No. XV of 1965 and so there was no question of their intimating to him about the intended non-user of a vehicle for a certain period and that they should forthwith deposit the amount of tax due in respect of their vehicles. The applicants in the other petition (Misc. Petition No. 269 of 1965), however, gave notice to the Tax Officer Bilaspur, in Form I that they did not intend to use their vehicles from 1st July 1965 to 31st December 1965. They also got the same reply from the Tax Officer, Bilaspur, as the one which the other petitioners received.

5. Shri Dharmadhikari, learned counsel appearing for the petitioners, first argued that under Section 3(1) a tax at the specified rate is leviable on a motor vehicle if it is used or kept for use; and that the owner of a vehicle, if he does not use the vehicle for a certain period, cannot be said to have used the vehicle or kept the vehicle for use and, therefore, he is not liable to pay any tax under Section 3(1). We are unable to accept this contention which altogether ignores the true

significance of the words 'kept for use'. It is not necessary that a vehicle kept for use must actually be used. A vehicle kept for use, even if it has not been actually used in a certain period, would none-the-less fall within the category of the vehicles kept for use. The words 'kept for use' signify that the vehicles must be kept, that is to say, retained in one's possession, power and control with the intention and purpose of using as occasion may require, to enable the owner with the aid of the vehicle to carry on his business or move about. To illustrate, a person may own two or more motor cars, stage carriages or trucks for enabling him to move about or to carry on his business. He may intend to use actually one of the vehicles and keep the others in reserve so that if the vehicle which is being actually used goes out of order or becomes unserviceable or meets with an accident, the other vehicles can be put in service. The other vehicles which are not actually being used by him but which have been kept with the intention of using if and when an occasion arises are clearly vehicles kept for use. What matters is the intention with which the vehicle has been kept. That intention must be of using the vehicle at some time.

6. Now, Sub-section (3) of Section 3 of the Act embodies a presumption that an owner who keeps a transport vehicle of which the certificate of fitness and the certificate of registration are current, shall, for the purposes of the Act, be presumed to keep such vehicle for use. Such a presumption can also be drawn in the case of a motor vehicle other than a transport vehicle of which the certificate of registration is current. This presumption is no doubt rebuttable, and the owner can show in proceedings that he may take under Section 12 of the Act read with Rule 7 of the Rules for refund of tax that the vehicle has not been used for a prescribed period. But he can take proceedings for refund of tax after he has paid in respect of the motor vehicle tax for one or more than one quarters and he is liable to pay the tax if in respect of the transport vehicle the certificate of fitness and the certificate of registration are current. After the deletion of the proviso to Sub-section (2) of Section 3 he cannot get rid of this liability for the payment of the tax by merely intimating to the Tax Officer his intention not to use the vehicle during a certain period to come. The applicants cannot, therefore, be given a declaration that they are not liable to pay any tax for quarter during which they do not intend to use their transport vehicles even though their certificate of fitness and registration

in respect of the vehicles are current.

7. The endeavour of the petitioners to escape their liability for payment of tax in respect of vehicles kept by them for use by contending that the Amending Act is ultra vires and the proviso deleted by the Amending Act is, therefore, still operative, is futile. On the question of the vires of the Amending Act learned counsel for the petitioners submitted that the matter of taxation of motor vehicles fell under Entry No. 35 of the Concurrent List in the Seventh Schedule and consequently the Amending Act required the assent of the President and as this was not done, the Act was invalid. The contention is altogether unsubstantial. The subject-matter of taxation on vehicles, whether mechanically propelled or not, falls under Entry No. 57 of the State List. That entry is as follows:

'57. Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III.'

Entry No. 35 of the Concurrent List is in the following terms:

'Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied.'

On reading the two entries together it is clear that while the matter of the principles on which taxes on mechanically propelled vehicles are to be levied falls under Entry No. 35 of the Concurrent List, the question of taxes on vehicles, whether mechanically propelled or not is within the scope of Entry No. 57 of the State List. The subjection of Entry No. 57 of the State List to the provisions of Entry No. 35 of List III means that if there is an existing law or an earlier law made by Parliament laying down the principles on which taxes on mechanically propelled vehicles should be levied, then any State legislation enacted with reference to Entry No. 57 of the State List must conform to the principles of taxation laid down in the existing law or the earlier law made by Parliament. If the State law imposing taxes on motor vehicles is repugnant to the provisions of an earlier law made by Parliament or an existing law laying down the principles on which taxes on motor vehicles should be levied, then the law made by the State Legislature can prevail only if it has been reserved for consideration of the President and has received his assent.

Learned counsel for the applicants was unable to point out any 'existing law' as defined by Article 366 of the Constitution or any law made by Parliament laying down the principles on which taxes on mechanically propelled vehicles should be levied. Indeed, at present there is none. In the absence of any such legislation, the State Legislature was fully competent to enact the Amending Act in the exercise of its legislative power under Entry No. 57 of the State List. The Amending Act did not, therefore, clearly require any assent of the President.

8. It was then urged that the principal Act as well as the Amending Act imposed restrictions on the freedom of trade, commerce or intercourse with or within the State and, therefore, offended Article 304(b) of the Constitution; that the continuance of the principal Act under Article 372 was subject to the provisions of Article 304; and that under the proviso to Article 304 the Bill leading to the Amending Act could not be introduced or moved in the State Legislature without the previous sanction of the President and as no such previous sanction was obtained, the Amending Act was invalid.

9. This contention cannot be given effect to in the present case in view of the decision of the Supreme Court in Automobile Transport Ltd. v. State of Rajasthan, AIR 1962 SC 1406: 1963-1 SCR 491. In that case the validity of Rajasthan Motor Vehicles Taxation Act, 1951, imposing taxes on motor vehicles used in a public place or kept for use in Rajasthan was attacked on the ground that the taxes imposed by the Act hindered the freedom of trade, commerce and intercourse, assured by Article 301. It was held by the Supreme Court that the tax imposed by the Rajasthan Act, according to the rates specified therein, was a compensatory tax imposed in lieu of facilities offered, namely, providing roads and maintaining them in good repairs, the quantum of tax not being patently much more than what was required for providing facilities it was not a tax on the flow or movement of goods even though the tax was based on passenger capacity of commercial vehicles and loading capacity of goods vehicles.

10. It was ruled by the Supreme Court:

'Regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of the restrictions contemplated by

Article 301 and such measures need not comply with the requirements of the proviso to Article 304(b) of the Constitution'.

In the case of Automobile Transport Ltd. AIR 1962 SC 1406 : 1963-1 SCR 491 (supra) the Supreme Court also pointed out that when a tax which is prima facie compensatory is challenged as violating the freedom of trade and commerce, the Court should carefully scrutinize its provisions whether it is really compensatory for the facilities provided or services rendered or it is mere colourable use of the regulatory power and that a tax on motor vehicles would be void as a restriction on the freedom of trade if it is so excessive and prohibitive as to become an impediment in the free flow of trade and commerce.

11. It is thus clear from the decision of the Supreme Court that unless the petitioners establish that the tax imposed by the M.P. Motor Vehicles Taxation Act, 1947, as amended, is so prohibitive or excessive that it operates as a hindrance to the free flow of trade and commerce, it must be taken that the tax imposed by the Act is prima facie compensatory, and does not come within the purview of Article 301 so as to attract the proviso to Article 304(b) of the Constitution. In their petitions the applicants have made no attempt whatsoever to show, with reference to the rates of tax specified in the First Schedule to the Act and the facilities offered by the State by providing roads and maintaining them in good repairs, that the tax is in no way a compensatory tax. The contention of the petitioner that the principal Act or the Amending Act offends Article 301 must therefore be rejected.

12. For the foregoing reasons, ourconclusion is that the petitioners are not entitled to any relief. Both these petitions are, therefore, dismissed with costs. Counsel's feein each is fixed at Rs. 150/-. The outstandingamount of the security deposit after deductionof costs shall be refunded to the petitionersin each case.