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Court : Rajasthan

Decided On : Sep-26-1972

Reported in : 1972WLN814

Judge : V.P. Tyagi, J.

Appeal No. : S.B. Civil Writ Petition No. 1210

Appellant : Pratap Narayan

Respondent : The State of Raj. and ors.

Disposition : Petition dismissed

Judgement :

V.P. Tyagi, J.

1. Petitioner Pratap Narayan in this writ petition filed under Article 226 of the Constitution has prayed that the notification published on 26th April 1972, notifying the rate of tax under Section 4 of the Rajasthan Motor Vehicles Taxation Act of 1951 be quashed.

2. The case of the petitioner is that he is holding a non-temporary stage carriage permit for a bus 7320 running on Jaipur to Andhi Gola-Ka-Bas route and be is paying tax on the said vehicle in accordance with the provisions of the Rajasthan Motor Vehicles Taxation Act No. 11 of 1951(hereinafter called the Act). According

to his averment, he bad paid the latest quarterly instalment for the period ending the month of June, 1972 His grievance is that when he went to deposit the amount of tax for the next quarter, the Taxation Officer, Jaipur Region, Jaipur asked the petitioner to pay the tax in accordance with the rates fixed by the State Government by issuing a notification in the Rajasthan Gazette dated 26th of April, 1972. The petitioner's contention is that according to the provisions of Schedule II of the said Act he was required to pay Rs. 12.50 per seat excluding the seat of the driver and the conductor, but now under the new scheme of taxation, as introduced by the Rajasthan Motor Vehicles Taxation (Amendment) Act. 1972, the petitioner is required to pay more tax than what was due from him. He has, therefore, filed this writ petition challenging the notification of 26th of April 1972, whereby the new rates of tax have been fixed, inter alia, on the ground that the State Government could not have issued a notification under Section 4 on the strength of the amendment proposed by introducing a Bill in the Legislature on 26th of April, 1972. and that even if by virtue of the provisions of the Rajasthan Provisional Collection of Taxes Act, 1958 (hereinafter referred as the 1958 Act), the Government could tax the petitioner at the new rate of tax fixed from 26th of April, 1972, it could not have realised the tax from the petitioner at the enhanced rate after the Bill was passed by the Legislature an ending Section 4 of the Act without issuing a fresh notification under the amended provision of Section 4 of the Act. According to learned Counsel for the petitioner, it was incumbent for the State Government to fix the rate of tax by issuing a fresh notification under amended Section 4 of the Act and unless it was done the taxing authorities cannot realise tax at the rate specified in the notification dated 26th April, 1972, the force whereof came to an end alter the legislature pasted the Bill and introduced amendment in Section 4 of the Act on 23rd June, 1972. It is, therefore, vehemently contended by Mr. B R. Vyas that unless fresh notification was issued under the amended Section 4 of the 1951 Act after 23rd of June, 1972, petitioner cannot be held liable to pay tax in accordance with the rates specified in the notification of 26th April, 1972 that lost its force.

3. This position of the petitioner has been contested by the respondents and the ground given by the learned Additional Government Advocate is that by virtue of the declaration under Section 3 of the 1958 Act, the provisions of Clause 2 of the

Bill came into force on the day the Bill was introduced and published and, therefore, amended Section 4 became the part of the 1951 Act from 26th of April, 1972 and thereafter the State Government alter fixing a rate of tax by issuing a notification thereunder could charge new rate of tax from the petitioner. It was also averred by the State Government that the Bill was ultimately adopted by the Legislature on 23rd of June, 1972, without any amendment and, therefore, the notification issued on 26th of April, 1972, remained valid as the law was enacted within sixty days of the date when the provisions of Clause 3 of the Bill become part of the Act by virtue of the declaration under Section 3 of the 1958 Act. In such circumstances, it is urged by the respondents that no fresh notification was at all needed to give effect to the now rates of taxes specified in the notification issued on 26th of April, 1972.

4. Section 3 of the 1958 Act provides that where a Bill to be introduced in the Rajasthan Legislative Assembly on behalf of the State Government provides for the imposition or increase of a tax, the State Government may cause to be inserted in the Bill a declaration that it is expedient in the public interest that any provision of the Bill relating to such imposition or increase shall have immediate effect under this Act and the effect of such a declaration is that the proposed declared amendment comes into force from the day the Bill is published or the Bill is introduced in the Legislature.

5. While introducing Bill No. 8 of 1972 in the Rajasthan Legislature to amend the Rajasthan Motor Vehicles Taxation Act, 1951, a declaration was made by the State Government at the end of the Bill which reads as follows:

Declaration Under Section 3 of Rajasthan Act 23 of 1956.

In pursuance of Section 3 of the Rajasthan Provisional Collection of Taxes Act, 1958 (Rajasthan Act 23 of 1958), it is hereby declared that it is expedient in the public interest that the cLauses 2 and 14(2) of this Bill shall have immediate effect under the said Act.

6. Clause 8 of the Bill relates to the amendment to be introduced in Section 4 of the Act of 1951 and it reads as follows:

4. Imposition of tax-(1) Save as otherwise provided by this Act or by the rules made thereunder or by any other law for the time being in force, there shall be levied and collected on all motor vehicles used or kept for use in the State, a tax at the rates fixed by the State Government, by notification in the Official Gazette, but not exceeding the maximum rates specified in the Schedule to this Act,'

(Sub-cLauses (2) and (3) are not relevant for the disposal of this writ petition and, therefore, they are not reproduced).

7. When this Clause 2 of the Bill No. 8 of 1972 is read with the declaration made under the 1956 Act, it becomes clear that the provisions of Clause 8 of the Bill, which relate to the amendment of Section 4 of the principal Act, came into force with immediate effect i.e. from 26th of April, 1972. The State Government treating this provision of Clause 2 of Bill No. 8 of 1972 as part of the Act of 1951 issued a notification fixing rate of tax on the vehicles running in Rajasthan to be realised from 26th of April, 1972, and it was in pursuance of this new rate that the petitioner was required to pay the tax as specified in the notification issued by the State Government on 26th of April. 1972.

8. The contention of Mr. Vyas is that if it is assumed that Clause 2 of the Bill came into force from 26th of April, 1972, even then after the lapse of a period of 60 days, it, cannot be deemed to be in effect under the provisions of Section 3 of the 1958 Act and, thereafter, after 23rd of the June, 1972, when the Legislature adopted the Bill and converted it in to an Act, it was incumbent for the State Government to have issued a fresh notification specifying new rate or rates of tax from 23rd of June, 1972, under the amended provision of the Act This argument, in my opinion, is misconceived and is based on his presupposition that before the Bill was passed by the Legislature the force of the declaration made under Section 3 of 1956 Act exhausted and the rate of tax as specified in (he notification dated 26th April, 1972 could not be enforced because of the passing of the Act amending Section 4 of the 1951 Act. This presupposition has no basis in law. Under the provisions of the 1958 Act if a declaration is made by the State Government under Section 3 thereof, then that part of the Bill which finds a mention in the declaration by virtue of the fiction of law is deemed to have become the part of the Act sought

to be amended thereby and if any notification is issued thereunder then that notification will always be treated to have been issued under the amended provision of the Act which is sought to be amended by introducing the Bill which contains declaration under the 1958 Act. In the circumstances of this case the amendment so introduced in Section 4 of the Act by virtu' of the declaration made under the 1958 Act remained in force till 23rd June, 1972, when the Legislature adopted the Bill and amended Section 4 of the Act by enacting law. Things would have been different if 60 days had elapsed between the date of the introduction of the Bill and the date of adoption thereof by the Legislature. Section 4 of the 1958 Act, however, deals with the duration of the effect of the declaration made under that Act, and it lays down that a declared provision shall have the force of law on and from the date on which the Bill containing it is introduced or published whichever is earlier and it shall cease to have the force of law under the provisions of this Act-

(a) when it comes into operation as an enactment with or without any amendment, or

(b) when the State Government, in pursuance of a motion passed by the Rajasthan Legislative Assembly, directs, by notification in the Official Gazette, that it shall cease to nave the force of law, or

(c) if it has not already ceased to have the force of law under Clause (a) or cl (b). then on the expiry of the sixtieth day after the date on which the declared provision had the force of law under Sub-section (1).

9. Provisions of Clause (b) and (c) of Section 4 of the 1958 Act are, however, not attracted to the circumstances of this case as the legislature enacted a law adopting the provisions of the Bill No. 8 of 1972 before the expiry of 60 days and therefore the provisions of Clause 2 of the Bill which acquired the force of law by virtue of the declaration made under Section 3 of 1958 Act became part of the Act of 1951 when the Bill was adopted by the legislature on 23rd June, 1972.

10. It is in this background that I have to examine the argument of Mr. Vyas that force of the notification issued by the State Government on 26th April, 1972 got

exhausted after the legislature enacted the law introducing amendment in Section 4 of the Act on the lines of Clause 2 of the Bill. If this provision of Section 4 of 1958 Act is examined carefully, then it leaves no room for doubt that the declared provision ceases to have effect only under 3 circumstances as referred to above. Under Clause (a) of Sub-section (2) of Section 4 of that Act the declared provision loses its force of law as soon as that provision comes into operation as an enactment passed by the Stale Legislature with or without any amendment. So long as the State Legislature does not adopt the Bill within 60 days of its introduction which finds mention in the declaration that provision has the effect of law under Section 3 of the 1950 Act and it continues to be law till the Bill is passed by the legislature. It ceases to have the force of law under the said declaration only after the Act is passed by the legislature. This process does not, in my opinion, e(sic)visage an interregnum before the declared provision loses its force as law after the Bill is passed and given the status of law by the legislature.

11. Of course, the State Legislature has a power to annul the effect of the declaration made under the 1958 Act and can direct by adopting a motion and by issuing a notification that the effect of law which a provision had acquired by virtue of Section 3 of the Act of 1958 will no more be there. Clause (c) of Sub-section (2) of Section 4 of that Act creates another situation and, it says that if within a period of sixty days from the date of declaration certain provision, which had acquired the status of law, is not adopted by the Legislature or has not been rejected by i(sic), then it will lose, after the expiry of the si(sic) day the force of law under Sub-section (1) of Section 4 of the 1956 Act. If the State Legislature by making an Act confers the status of law to such a proposed amendment after the si(sic) day then in that event a fresh notification is necessary because before acquiring the force of law by virtue of an enactment made by the legislature it had lost that status of law after the expiry of the sixtieth day, and therefore the notification issued under such declared provision would also lose its force after 60 days. But if such a contingency does not arise, then in that event the notification issued by the State Government under the declared provisions of the Bill which had acquired the force of law shall continue to have that force of law even after the adoption of that provision by the legislature as law if it is done before the expiry of the sixtieth day from the date of the introduction or publication of the Bill because that provision

shall continue to have the same force of law which it had acquired under the declaration made under 5958 Act and the notification shell not, therefore be affected.

12. Learned Counsel for the petitioner next argued that the Rajasthan Motor Vehicles Taxation (Amendment) Ordinance, 1972, issued by the State Government on September 7, 1972, goes to suggest that the State Government itself was in doubt about the validity of the notification which was issued by the State Government fixing the rate of tax on 26th of April, 1972 By this amending Ordinance, Section 4 (1-A) has been introduced in the Act of 1951 empowering the State Government to give retrospective effect from a date not earlier than 26th of April, 1972 to the first notification fixing rates of tax in respect of different classes of goods vehicles issued under Sub-section (1), after the commencement of the Rajasthan Motor Vehicles Taxation (Amendment) Ordinance, 1972.

13. Learned Additional Government advocate urged that the Ordinance has been promulgated by way of abundant precaution; In his opinion, it was not at all necessary because the first notification issued on 26th of April, 1972, came into effect immediately by virtue of the amended Section 4 of the 1951 Act which had the effect of law from 26th of April, 1972, because of the declaration made in the Bill No. 8 of 1972 under the Provisions of the 1958 Act The introduction of Sub-section (1-A) to Section 4 of the Rajasthan Motor Vehicles Taxation Act, 1951, by issuing the Ordinance of 1972 does create some confusion but the learned Additional Government Advocate frankly admitted before this Court that it was not at all necessary and it should not be taken note of while interpreting the provisions of the 1956 Act in the light of the Bill No. 8 of 1972 which was adopted by the Legislature for amending Section 4 of the 1951 Act on 23rd of June, 1972. In my opinion, the notification issued by the State Government on 26th April, 1972, remained a valid notification under the provisions of the 1951 Act even after 23rd June. 1971, when Bill No. 8 of 1972 was adopted by the legislature and Section 4 of the 1951 Act was amended by the Legislature by enacting a law. This Ordinance of 1972 in such circumstances does not provide any reasonable ground to the petitioner to get notification dated 26th April, 1972 declared as unlawful.

14. Learned Counsel for the petitioner, however, did not urge the first point which was raised by him in the writ petition to challenge the competence of the State Government to make a declaration under Section 3 of the 1956 Act which had the effect of conferring a status of law to the declared provisions of the Bill.

15. In view of the above discussion I do not find any life in this writ petition and it is, therefore, dismissed. No order as to costs.

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