

Kapildeo Singh Vs The State of Bihar

Court: Patna High Court

Date of Decision: Dec. 16, 1992

Citation: (1993) 1 PLJR 295

Hon'ble Judges: S.B. Sinha, J; G.C. Bharuka, J

Bench: Division Bench

Advocate: B.N. Singh and Sujata Mukherjee, for the Appellant; A.A.G. I for the State, for the Respondent

Final Decision: Allowed

Judgement

S.B. Sinha and G.C. Bharuka, JJ.

In this application the petitioner has sought for issuance of a writ of certiorari for quashing of an order

dated 4.8.1992 passed by the respondent No. 2 whereby and where under he rejected an application filed on behalf of the petitioner for

exemption from payment of tax for the period from 30.6.1989 to 31.5.1991. The fact of the matter lies in a very narrow compass.

2. The petitioner is owner of a bus bearing registration No. BRB-6141. The petitioner admittedly paid road tax and additional road tax in respect

of the said bus till 30th June, 1989.

3. Allegedly the petitioner surrendered the documents before the District Transport Officer, Gaya on 1.7.89, as the condition of bus were badly

deteriorated and required major repairing.

4. According to the petitioner in June, 1991 the bus was repaired and he obtained a permit from the Regional Transport Authority on 22.6.91 to

22.10.91. The petitioner applied for exemption from payment of road tax and additional road tax in respect of the said vehicle for the period

1.7.1989 to 31.5.1991.

5. By reason of the impugned order dated 4.8.1992 as contained in Annexure-5 to the writ application, the respondent No. 2 rejected the said

application.

From a perusal of the impugned order, it appears that the respondent No. 2 took into consideration that the bus was caught plying on 1.7.1991 by

the Special Judicial Magistrate at 4.10 P. M. at a place named Kusma. The respondent No. 2 in his order observed as follows :
 "The bus was observed at 4.10 P. M. at a place named Kusma. The respondent No. 2 in his order observed as follows :

The whole proceedings of this case stated only after the vehicle was prosecuted so as to cover up the prosecution and get the tax exemption for

the period just prior to the date of prosecution. For the first time on July, 2, 1991 the owner of the vehicle had filed an affidavit before the D.T.O.

Gaya praying that he wanted to get the bus released and ply it as it has been repaired. The report of the M. V. I. and the B. O. have also been

obtained after the date of prosecution i. e. on 3.7.1991 and 4.7.1991. The D. T. O. has also submitted the record on 17.7.1991 and sent it to this

office on 26.7.1991. In fact the bus which was caught by the Judicial Magistrate on 17.7.91 could not have been released but for the payment of

up to-date taxes in terms of the provisions of the Motor Vehicle Taxation Act and therefore, what the owner needed was a tax token even if it was

provisional. He deliberately did not disclose the fact of prosecution of his vehicle on 1.7.91. The D. T. O. was obviously not aware of that as

report of the B. O. and M. V. I. were available on record. The D. T. O. recommended for sympathetic consideration of the claim of the owner

and accordingly. I passed an order on 7.8.1991 for grant of provisional tax token to the owner. After that, the owner of the bus submitted the

same to the Judicial Magistrate and the vehicle was released. Thereafter the report which the D. T. O. sent was mysteriously not put up before me

and final orders of tax exemption in absence of the D. T. O.'s report were obtained. Interestingly, the owner deposited the taxes of the bus a day

after the bus was seized i. e. on 2nd July, 1991. This is classic once in which the operator has continued to ply his vehicle is long as it was not

caught and immediately after its seizure, has taken steps to get the tax of the period immediately prior to the seizure exempted. It is undoubtedly

true that the vehicle was plying on 1.7.1991 without payment of taxes and without getting the papers released from the D. T. O. and hence his

entire claim was based on misrepresentation of facts and he was only taking advantage of the fact that he was tax case before July 1, 1991.

6. Mr. B. N. Singh, Learned Counsel appearing on behalf of the petitioner however, submitted that the respondent No. 2 misdirected himself for

passing the impugned order insofar as he failed to take into consideration that the petitioner has obtained the permit for plying thereof from

30.6.1989 to 30.5.1991 and even deposited the road tax and additional road tax for June, 1991.

7. The Learned Counsel submitted that as the respondent No. 2 did not take into consideration the aforementioned fact, the impugned order is

vitiating in law.

8. It is now well known by various decisions of this Court that a owner may be granted exemption from payment of road tax or additional road tax

if he had not plied his vehicle during the period for which the exemption had been claimed. The grant of exemption from payment of road tax and

additional road tax, however, depends upon the facts as to whether the vehicle in question had been plied or not.

9. There cannot be any doubt that in determining such a question the respondent No. 2 was entitled to take into consideration all facts and

circumstances of the case.

10. However, in this case it appears that the respondent No. 2 was not correct in observing that the petitioner had deposited road tax and

additional road tax only on 1.7.1992. As indicated hereinbefore, even prior thereto the petitioner appears to have deposited the road tax and

additional road tax for June, 1991 on 17.6.1991.

11. For the reasons aforementioned, in our opinion, the matter requires reconsideration at the hands of the respondent No. 2. In the result, this

application is allowed, the impugned order as contained in Annexure 5 to the writ application is quashed and the matter is remitted to the

respondent No. 2 for passing a fresh order in accordance with law.