**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.8060 of 2015**

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Gurubachan Singh S/o Late Sharwan Singh Resident of Bhatta Bazar, Purnea, P.S. K. hat in the Town and District Purnea.

.... .... Petitioner

Versus

1. The State of Bihar, Patna through its Secretary-cum-Transport Commissioner, Department of Transport, Government of Bihar, Bishwashraiya Bhawan, Baily Road, Patna.
2. Member Board of Revenue Old Secretariat, Bihar, Patna.
3. Transport Secretary-cum-Commissioner, Govt. of Bihar, Office at Bishwesraiya Bhawan, Baily Road, Patna.
4. Joint Transport Commissioners, Govt. of Bihar, patna Bishwesraiya Bhawan, Baily Road, patna.
5. District Transport Officer, Purnea, Office at Court Compound, P.O. and P.S. Purnea, District Purnea.
6. The State Transport Authority Bihar Patna Office at Bishwesraiya Bhawan, Baily Road, Patna.

.... .... Respondents

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**Appearance :**

For the Petitioner/s : M/S Sudhir Sahay, Shiopujan Singh & Mukesh Kr. Singh, Advocates
For the Respondent/s : Mr. Sunil Kumar, AC to S.C. 2

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**CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA**
**and**
**HONOURABLE MR. JUSTICE SUDHIR SINGH**

ORAL ORDER

**(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)**

4 05-11-2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner prays for quashing the order dated 22.7.2011 passed by the Member, Board of Revenue in Case No. 14 of 2011 by which the revision application filed by the petitioner has been dismissed. So far as the other reliefs sought in the writ application are concerned, learned counsel for the petitioner does not press the same.

The petitioner, who is the owner of a transport vehicle being Bus bearing registration No. BR-11A-9457, claims to have surrendered the same in the office of the District Transport Officer, Purnea on 3.8.2002 along with an application dated 31.7.2002 accompanied by Form 'J'. The application is stated to have been received by the Head Assistant with the remark "Received application without Insurance & Permit" and additionally in the annexures mentioned in the said application the Column Nos. 4 and 5 have been encircled and cancelled out since they related to copies of Insurance and Permit. The grounds stated in the application was that due to inhuman increase in the taxes with respect to commercial passenger vehicles the petitioner was unable to pay the same and accordingly he surrendered the vehicle. The surrender was said to be for uncertain period. Thereafter the petitioner submitted affidavits on various dates at intervals of approximately three months. Ultimately on 7.3.2007 in the affidavit it was stated that he may take four months to make the vehicle repaired. Again on 16.6.2007 the expected time for repairing was stated as 1 to 1 ½ months. Again on 16.8.2007 he made an application to the District Transport Officer stating that the bus may be released on payment of current tax pending final order after due enquiry and he undertook to pay any taxes found due on the bus in question. From the noting of the District Transport Officer on surrender case No. 6 of 2008 on 20.12.2008 it appeared that the District Transport Officer was having no record of surrender made on 31.7.2002 or any action taken by him till the application dated 16.8.2007 was made. Even in the surrender register entries were made from serial No. 1 to 160 but none of them had been signed by any officer or employee. The District Transport Officer had endorsed the application of the petitioner to Motor Vehicle Inspector for enquiry who reported that the vehicle was found at the stated place in repaired and ready to ply condition. The report dated 20.8.2007 was taken on record which was written on 20.12.2008 stating that the petitioner was issued current tax token and had been paying regular taxes although there was arrear of tax amounting to Rs.3,22,459/- for alleged period of surrender. The matter was ultimately forwarded to the Transport Commissioner and the same was disposed of by the Joint Transport Commissioner by his order dated 18.8.2009 rejecting the claim of the petitioner. In appeal the Secretary, Transport also dismissed the appeal upholding the order of rejection. Thereafter the Member, Board of Revenue by the impugned order dated 22.7.2011 rejected the claim of the petitioner in the revision filed before him.

Learned counsel for the petitioner submits that the petitioner having surrendered the vehicle in accordance with the provisions of Section 17 of the Bihar Motor Vehicles Taxation Act, since he was not in a position to ply the same on account of huge enhancement of motor vehicle tax on passenger vehicles, and having done his part of the work by filing affidavits from time to time as per requirement of law, the application for exemption for tax ought not to have been rejected and the petitioner cannot be saddled with such huge arrears and penalty at the rate of 200%, which according to him is without any authority of law.

It is submitted by learned counsel that such huge enhancement of tax would amount to compelling personal reasons for the surrender which have been added as additional grounds by the Amendment Act of 2006 with effect from 19.4.2006.

It is further submitted by learned counsel that Rule 4 of the Bihar Motor Vehicles Taxation Rules does not mandatorily impose penalty and the said provision merely says that the taxing officer may impose penalty and thus in the given circumstances imposition of 200% penalty is not justified.

Learned counsel for the State, on the other hand, submits that the surrender of the vehicle was not for justifiable reasons. It is submitted that the amendment sought to be pressed by the petitioner has been brought on the statute book almost four years after the surrender has been made and thus cannot at all be relied upon by the petitioner. It is further submitted by learned counsel that even the said amendment does not apply to the case of the petitioner, as a mere increase of tax cannot be considered to be a compelling personal reason for the surrender of the vehicle.

Learned counsel further submits that the Member, Board of Revenue has rightly come to the conclusion that no record of surrender was at all existing in the office of the District Transport Officer and everything has been created subsequently to help the petitioner as there was no such entry at all in the register maintained in the office of the District Transport Officer for the said purpose and there is a clear finding that serial Nos.1 to 160 entries made in the surrender register had not been signed by any officer or employee of the District Transport Office and was thus evidently created for the extraneous reasons and have no validity in law.

It is urged that had there been proper surrender by the petitioner then the District Transport Officer would have been obliged to get the inspections made from time to time after surrender and the affidavits being filed, to ensure that the vehicle was at the place mentioned and as a matter of fact everything has been done contrary to law.

On a consideration of the facts and circumstances of the case, this Court does not find any force in the submission of learned counsel for the petitioner and is of the view that there is sufficient force in the submission of learned counsel for the State. As a matter of fact the surrender itself was totally not in accordance with the provisions of the statute which gives specific reasons for such surrender, namely, whenever any motor vehicle becomes incapable of use due to disability caused by mechanical breakdown or litigation or due to other causes prescribed by State Government. None of those grounds were in existence when the vehicle was surrendered by the petitioner and mere enhancement of tax cannot be a ground for surrender.

As a matter of fact even the reliance by learned counsel for the petitioner on the additional reason added by the Amendment Act 7 of 2007 with effect from 19.4.2006 is of no avail because the surrender had allegedly taken place on 3.8.2002 and amendment in the statute book had been made four years after the surrender. Moreover, inability to pay the tax cannot be considered as compelling personal reason as the said reason is general in nature. The compelling circumstance must be with respect to the vehicle in question or its owner but must not relate to each and every person operating such motor vehicle.

Moreover, this Court finds that admittedly the surrender was not properly made as per law as it is clearly stated in the application filed by the petitioner and received by the so-called head assistant of the District Transport Office that the permit had not been surrendered and thus there was no proper surrender in the eye of law.

So far as the reliance by learned counsel for the petitioner on the provisions of Rule 4 is concerned, it is no doubt true that the taxing officer does have some discretion in exercise of his power to impose penalty as the Rule has been framed by using the words "may impose penalty". However, it would be for the petitioner to show that such imposition of penalty in the facts and circumstances of the case was not justified, when no such circumstances have been brought on the record to show that the imposition of penalty is unjustified in the facts of the present case.

Thus, on a consideration of the entire mater this Court does not find any reason to interfere with the impugned order dated 22.7.2011 of the Member, Board of Revenue.

The writ application is, accordingly, dismissed.

Learned counsel for the petitioner at this stage submits that he may be permitted to ply the vehicle upon payment of the arrears of tax and penalty for the alleged period of surrender.

It is made clear that upon the petitioner paying the amount of arrears of tax and penalty for the period of surrender and the current taxes he shall be eligible to ply the vehicle in accordance with law.

**(Ramesh Kumar Datta, J)**

**(Sudhir Singh, J)**

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