

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 8643 of 2005
Reserved on:- 31.03.2015
Date of decision: 10.04.2015

Apeejay College of Engineering

...Petitioner(s)

Versus

State of Haryana and another

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR,
ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE G.S.SANDHAWALIA**

Present: Mr. H.L. Tikku, Sr. Advocate,
with Mr. Sumeet Goel, Advocate,
and Mr. Yashmeet, Advocate,
for the petitioners.

Mr. Mamta Singla Talwar, AAG, Haryana.

G.S.SANDHAWALIA, J.

This judgment shall dispose of 6 civil writ petitions i.e. CWP Nos. 8643, 6451, 6460, 6462, 6479, 6087 of 2005, as common questions of facts and law are involved in all the writ petitions. For dictating the judgment, facts are being taken from ***CWP No. 8643 of 2005, Apeejay College of Engineering vs. State of Haryana and another.***

Challenge in the present writ petition is to the show cause notices dated 17.02.2005 (Annexure P-8), 08.03.2005 (Annexure P-9) and 03.05.2005 (Annexures P-11 to P-18) issued by The Assistant Excise and Taxation Officer-respondent no. 2 under Section 6(4) and Section 9(4) of the Punjab Passengers and Goods Taxation Act, 1952 (as applicable to the State of Haryana) (in short 'the Act') on the ground of lack of jurisdiction

and being in contravention of the exemption granted to the educational institutions. Vide the said notices, the petitioner was asked to attend the proceedings for the purpose of assessing the tax on the vehicles owned by it and also for the purpose of imposing penalty under Section 9(4) of the Act.

The pleaded case of the petitioner is that it is an education society set up by the Apeejay Education Society and the college has been duly approved by AICTE and the Director of Technical Education, Government of Haryana and is affiliated to the Maharshi Dayanand University, Rohtak. The education institution runs 15 buses, details of registration numbers of which, were mentioned and the said buses were used for carrying the children to and from the education institutions. The Act provided that the State Government could exempt any person or a class of persons from the operation of the provisions of the Act for promoting public interest and vide order dated 22.09.1970 bearing Memo No. 9573-ET-(II)-70/23127, exemption had been granted to the education institutions from the payment of the passenger tax in respect of Stage Carriage (buses) owned by them and used for the transportation of children to and from such institutions. It was pleaded that when the notices dated 17.02.2005 and 08.03.2005 had been received, college had given the reply on 31.03.2005 (Annexure P-10) wherein, reliance had been placed upon Division Bench judgment of this Court in ***Principal, Haryana College of Technology and Management, Kaithal vs. State of Haryana and others, 2005 (2) PLR 489*** and the notification dated 22.09.1970 pleading that exemption had been granted to the education institutions and it had been held that education institutions would take within its fold schools, colleges and universities. In

spite of the said notification, respondent no. 2 had sought to distinguish the said judgment on the ground that it was applicable in case of road tax only and not that of passenger tax and that the notification pertained to school children only. Thereafter, the demand was again raised on 03.05.2005, resultantly leading to filing of the writ petitions.

Initially, this Court allowed the Assessing Authority to determine the passenger tax but interim protection was granted that no coercive steps would be taken to recover the demand which may be created by the assessment orders subject to the petitioner furnishing adequate security to the satisfaction of the Assessing Authority.

In the written statement filed, plea of the remedy of appeal provided under the Act and the remedy of revision was taken. The action was sought to be justified on the ground that the exemption dated 22.09.1970 only pertained to school children and the petitioner-institution was a professional institution and not a school and, therefore, the benefit could not be extended to it. The judgment of the Division Bench in *Principal, Haryana College of Technology and Management's case (supra)* was sought to be distinguished on the ground that it pertained to payment of road tax under the Punjab Motor Vehicles Taxation Act, 1924. Thereafter, the writ petitions were admitted and the interim order was directed to continue.

Senior counsel for the petitioner has thus argued that in view of the exemption granted under Section 10 of the Act to education institutions vide the letter dated 22.09.1970, the demand was without any justification and, therefore, the proceedings are liable to be quashed.

Counsel for the State, on the other hand, justified the demand raised and submitted that the letter in question only pertained to school children.

After hearing counsel for the parties, this Court is of the opinion that the demand raised is without any basis as admittedly, exemption has been granted to education institutions from the payment of passenger tax in respect of such carriage buses owned by them and used for transportation of children to and from such institutions. Section 10 of the Act provides that the State Government may, by general or special order and subject to specific conditions, if any, exempt any person or class of persons from the operation of all or any of the provisions of this Act, if in its opinion, such exemption would promote national or public interest. The said Section reads as under:-

“10. Exemptions.- The State Government may, by general or special order and subject to specific conditions, if any, exempt any person or class of persons from the operation of all or any of the provisions of this Act, if in its opinion, such exemption would promote national or public interest.”

It is not in dispute that in view of the above provision, the letter dated 22.09.1970 (Annexure P-20) was issued by the Deputy Secretary to Government of Haryana, Excise and Taxation Department to the Excise and Taxation Commissioner, Haryana, which reads thus:-

“Subject: Exemption of State Carriages (Buses) owned and operated by Educational Institutions in carrying School children from the levy of Passengers Tax under Section 10 of the Punjab Passengers and

Goods Taxation Act, 1952.

Reference: Your memo No. 3105/a-iv, dated the 20th July, 1970

In exercise of the powers conferred by Section 10 of the Punjab Passengers and Goods Taxation Act, 1952, the Governor of Haryana hereby exempts the educational institutions from the payment of Passengers Tax under the Act, ibid, in respect of Stage Carriage (buses) owned by them and used for the transportation of children to and from such institutions.”

2. *This memo issue with the concurrence of the Finance Department's U.O.No.3399-2FG-(1)-70/, dated the 10th September, 1970.”*

A perusal of the above would go on to show that exemption has been granted to education institutions from the payment of passenger tax in respect of such carriage buses owned by them and used for transportation of children to and from such institutions.

In similar circumstances, the Division Bench of this Court in *Principal, Haryana College of Technology and Management's case (supra)*, while dealing with the similar provision regarding the exemptions from the payment of road tax under the Punjab Motor Vehicles Taxation Act, 1924, held in favour of the educational institution which was a college of technology and management by giving a wider interpretation to the word 'pupil', which was mentioned under Rule 8(i)(iii) of the Punjab Motor Vehicles Taxation Rules, 1925 and held that educational institutions mentioned in the rule would take within its fold schools, colleges and universities and the word pupil would apply to all categories of students.

The relevant observations read thus:-

“7. A conjoint reading of the provisions reproduced above shows that the motor vehicles owned by the educational institutions are entitled to total exemption from tax provided that the same are used solely for the purposes of carrying pupils to and from the institution or for the purpose directly related to or incidental to the functions of the institution. The language of Rule 8(1)(iii) of the Rules is very wide and takes within its fold the vehicles owned by the educational institutions which are used for carrying the students to and from the institution or for a purpose which is directly related to or is incidental to the functioning of the institution. In our opinion, this rule is applicable to the petitioner's case because the vehicle owned by the College is to be used for the purpose of carrying its students and staff to and from the institution. The use of the vehicle for the staff is directly related to the functioning of the institution because without the staff, the College cannot run. Therefore, the condition incorporated in letter Annexure P4 for levy of road tax at the rate of Rs. 200/- per seat per annum will have to be treated as ultra vires to Section 13(1) of the Act read with Rule 8(1)(iii) of the Rules.

8. The plea of the respondents that the students of the College cannot be treated as covered by the word 'pupil' as is commonly understood cannot, but be treated as frivolous and vexatious. There is nothing in the language of Rule 8(1)(iii) of the Rules from which it can be inferred that expression 'educational institution' appearing therein is restricted to schools and it does not apply to other educational institutions, like the College and the word 'pupil' is referable only to the school children and not to the students of the College. Rather, by adopting the rule of purposive interpretation, it must

be held that expression "educational institution" takes within its fold the schools, colleges, universities etc. and the word 'pupil' comprehends within itself all categories of students."

The above said observations are fully applicable in the present circumstances also. The educational institutions have been exempted from payment of passenger tax in respect of stage carriage buses owned by them which have been used for transportation of children to and from such institutions. Once the Government itself has taken a decision as such, the Authorities below are not justified in trying to deny the benefit of exemption which was granted in public interest to the educational institutions under Section 10 of the Act and thus would frustrate the purpose of the exemption granted. Merely because in the heading, the word school children had been written, would not mean that the exemption was only granted to the children of schools and not to other educational institutions. If the State wanted to make a distinction as such, it would have specified that the institutions imparting education upto certain level i.e. primary or secondary were entitled for the benefit. The distinction, thus, sought to be made out is not justified and a liberal interpretation is to be given once exemption has been granted to the educational institutions.

The plea regarding the alternate remedy under the Act is without any basis also since the writ petitions were admitted almost 10 years earlier and at this stage to relegate the petitioner to its alternative remedy, would not be appropriate since it is the settled principle that in cases which have been admitted, the petitioners cannot be relegated to the alternative remedy after such a long period. Even otherwise, once the

authorities lacked inherent jurisdiction itself, it would not be appropriate to drive the petitioner's to seek its remedy before the authorities. Reference can be made to the judgment of the Apex Court in ***L.K. Verma vs. HMT Ltd. and another, 2006 (2) SCC 269***, wherein, it has been held as under:-

“The High Court in exercise of its jurisdiction under Article 226 of the Constitution, in a given case although may not entertain a writ petition inter alia on the ground of availability of an alternative remedy, but the said rule cannot be said to be of universal application. Despite existence of an alternative remedy, a writ court may exercise its discretionary jurisdiction of judicial review inter alia in cases where the court or the tribunal lacks inherent jurisdiction or for enforcement of a fundamental right or if there has been a violation of a principle of natural justice or where vires of the act is in question. In the aforementioned circumstances, the alternative remedy has been held not to operate as a bar. [See Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others , (1998) 1 SCC 1, Sanjana M. Wig (Ms.) v. Hindustan Petroleum Corpn. Ltd., (2005) 8 SCC 242, State of H.P. and Others v. Gujarat Ambuja Cement Ltd. and Another (2005) 6 SCC 499]. In any event, once a writ petition has been entertained and determined on merit of the matter, the appellate court, except in rare cases, would not interfere therewith only on the ground of existence of alternative remedy. [See Kanak (Smt.) and Another v. U.P. Avas Evam Vikas Parishad and Others, (2003) 7 SCC 693]. We, therefore, do not see any justification to hold that the High Court wrongly entertained the writ petition filed by the Respondent.”

The said view was further laid down in ***Krishan Lal vs. Food Corporation of India and others, 2012 (4) SCC 786*** wherein, the Apex Court refused to relegate the parties to their alternative remedy of arbitration on account of the pendency of the matter for the last 10 years at a belated stage. The relevant observations read thus:-

“11. It is true that there was an arbitration clause in the agreement executed between the parties. It is equally true that, keeping in view the nature of the controversy, any claim for refund of the amount deposited by the appellant could be and ought to have been raised before the Arbitrator under the said arbitration. The fact, however, remains that the High Court had entertained the writ petition as early as in the year 2002 and the present appeals have been pending in this Court for the past ten 10 years or so. Relegating the parties to arbitration will not be feasible at this stage especially when the proceedings before the Arbitrator may also drag on for another decade. Availability of an alternative remedy for adjudication of the disputes is, therefore, not a ground that can be pressed into service at this belated stage and is accordingly rejected.”

However, we may hasten to add that we were only adjudicating on the show cause notices issued in the year 2005 and not commenting on any subsequent amendments made in Rule 9 of the Punjab Passengers and Goods Taxation Rules since a Division Bench, in which one of us (G.S.

Sandhawalia, J.) was a Member and had occasion to deal with subsequent notification issued under Sub Rule (2F)(i) of the Rules in ***CWP No. 13149 of 2011, Delhi College of Technology and Management vs. State of Haryana and another*** decided on 24.09.2012.

Accordingly, the present writ petitions are allowed and the show cause notices dated 17.02.2005 (Annexure P-8), 08.03.2005 (Annexure P-9) and 03.05.2005 (Annexures P-11 to P-18) are quashed.

(S.J. VAZIFDAR)
JUDGE

(G.S. SANDHAWALIA)
JUDGE

10.04.2015
shivani

