THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.74 of 2016

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Smt. Yamuna Singh, wife of Sri S.N. Singh, Resident of Mrs Shivam Contruction Comapany, Babupara, Ambikapur, District- Sarguja, Chhatisgarh

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Transport, Government of Bihar, Patna
2. State Transport Authority, Bihar, through its Secretary, Office Situated at Bishweshraiya Bhawan, Baily Road, Patna
3. The Chairman, State Transport Authority, Bihar, Office situated at Bishweshraiya Bhawan, Baily Road, Patna
4. State Transport Commissioner, Transport Department, Government of Bihar, Bishweshraiya Bhawan, Baily Road, Patna
5. Joint State Transport Commissioner, Transport Department, Government of Bihar, Bishweshwaraiya Bhawan, Baily Road, Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 1164 of 2016

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Smt. Yamuna Singh, wife of Late S.N. Singh, Resident of Mrs Shivam Construction Company, Babupara, Ambikapur, District- Sarguja, Chhatisgarh.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Transport, Government of Bihar, Patna.
2. State Transport Authority, Bihar, through its Secretary, office situated at Bishwesharaiya Bhawan, Baily Road, Patna.
3. The Chairman, State Transport Authority, Bihar, Office situated at Bishweshraiya Bhawan, Baily Road, Patna.
4. State Transport Commissioner, Transport Department, Government of Bihar, Bishweshraiya Bhawan, Baily Road, Patna.
5. Joint State Transport Commissioner, Transport Department, Government of Bihar, Bishweshraiya Bhawan, Baily Road, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 1314 of 2016

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Smt. Yamuna Singh Wife of Lt. S.N. Singh Resident of Mrs Shivam Construction Company, Babupara, Ambikapur, District - Sarguja, Chhatisgarh.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Transport, Government of Bihar, Patna.
2. State Transport Authority, Bihar, through its Secretary, Office situated at Bishweshwaraiya Bhawan, Bailey Road, Patna.
3. The Chairman, State Transport Authority, Bihar, Offiice situated at Bishweshwaraiya Bhawan, Bailey Road, Patna.
4. State Transport Commissioner, Transport Department, Government of Bihar, Bishweshwaraiya Bhawan, Bailey Road, Patna.
5. Joint State Transport Commissioner, Transport Department, Government of Bihar, Bishweshwaraiya Bhawan, Bailey Road, Patna.

.... Respondent/s

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Appearance :
(In CWJC No. 74 of 2016)
For the Petitioner/s : Mr. Randhir Kumar Singh
Mr. Sanjay Kumar Pandey
For the Respondent/s : Mr. Uma Shankar, G.P.4
Mrs. Punam Kr. Singh, A.C. to G.P.4
(In CWJC No. 1164 of 2016)
For the Petitioner/s : Mr. Randhir Kumar Singh
Mr. Sanjay Kumar Pandey
For the Respondent/s : Mr. Ram Shankar Prasad, A.C. to G.P.7
(In CWJC No. 1314 of 2016)
For the Petitioner/s : Mr. Randhir Kumar Singh
Mr. Sanjay Kumar Pandey
For the Respondent/s : Mr. Suresh Kumar, A.C. to G.P.5

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

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)
Date: 25-02-2016

Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks direction on the respondent State Transport Authority to countersign the permanent Interstate Stage Carriage Permit No.CG/STA/77/2012 for the route Ambikapur to Ara for single trip daily covered by Bus No. C.G.15AB-0193 and two other similar permits covered by two other buses valid for the period from 01.12.2012 to 30.11.2017 having been granted by the State Transport Authority, Chhatisgarh, Raipur and to accept the tax with effect from the date when the countersignature of the permit is made. She further seeks quashing of the letter dated 15.05.2013 issued by the Additional Secretary, Transport Department, by which he has asked the petitioner to deposit penalty of Rs.20,730/-as a road tax and additional tax of the State of Bihar, which was not paid in time, i.e., with effect from 01.12.2012 to 08.03.2013 and for further consequential reliefs.

The petitioner, whose Bus No.CG/15AB/0193 is registered in the State of Chhattisgarh, had applied before the Transport Authority, Chhattisgarh, Raipur for permanent Interstate Stage Carriage Permit for the route Ambikapur to Ara for single trip daily, which was granted on 07.11.2012 for the period from 01.12.2012 to 30.11.2017.

The stand of the petitioner is that she being a lady and her Karta was suffering from acute jaundice, therefore, the petition for countersignature could be filed only on 08.03.2013 before the Transport Authority, Bihar, for which purpose road tax and additional tax from 01.12.2012 to 28.02.2013 as also for the period from 01.03.2013 to 31.05.2013 were also deposited as the tax demanded by the authorities concerned in anticipation of countersignature for the said permit. The respondent, the Additional Secretary, Transport Department, Bihar, however, issued letter dated 15.05.2013 asking the petitioner to deposit apart from the enhanced tax of the State of Bihar with effect from 01.04.2013 to 31.05.2013 a penalty of Rs.20,730/- for late payment of tax for the period from 01.12.2012 to 08.03.2013. The petitioner filed detailed representation supported by an affidavit on 07.06.2013 before the Principal Secretary-cum-State Transport Commissioner stating, inter alia, that the demand of penalty under Rule 4 of the Bihar Motor Vehicles Taxation Rules, 1994 was not permissible as in the absence of countersignature by the S.T.A., Bihar, the permit is not valid and the liability of tax would be from the date of the countersignature in terms of the Bihar Motor Vehicles Taxation Act and Rules and also as per the order dated 20.05.2008 of a Division Bench of this Court passed in C.W.J.C. No.3757 of 2008: Sushil Kumar Mitruka vs. The State of Bihar and others. The petitioner, thereafter, continued to deposit the tax amounts for different periods till 30.11.2015 on account of the assurance given by the authorities that the countersignature would be made but as yet no countersignature has been made. Ultimately, the petitioner has approached this Court.

Learned counsel for the petitioner submits that the liability of the petitioner to pay any tax of the State of Bihar arises under Section 14 of the Bihar Motor Vehicles Taxation Act, 1994 (in short ‘Taxation Act’) only for the entire period, for which the permit is valid in the State of Bihar. It is further submitted that under Section 88 (1) of the Motor Vehicles Taxation Act, 1988 a permit granted by the Regional Transport Authority of any one region shall not be valid in any other State or region, unless it is countersigned by the State Transport Authority concerned and thus from the said provision of the Motor Vehicles Act read with Section 14 of the Bihar Motor Vehicles Taxation Act is clear that the liability of the petitioner for payment of Bihar Tax shall arise only from the date when the permit is countersigned and not from any prior period.

It is, thus, submitted by learned counsel for the petitioner that there was no applicability of Rule 4 of the Bihar Motor Vehicles Taxation Rules, 1994 as has been insisted upon by the respondent authorities in the present matter so long as the countersignature is not made by the State Transport Authority. He further submits that the respondent authorities of the Transport Department have acted in a grossly illegal and arbitrary manner in the present matter not only to deprive the petitioner of his right of doing legitimate business in terms of the provisions of the concerned Acts and Rules but also forced the petitioner to deposit the Motor Vehicles Tax for such a long period by making false assurances, without countersigning the permit to make it valid as interstate permit so that the petitioner could have operated the vehicle on the said route.

Learned Government Pleader No.4 appearing for the State, on the other hand, submits that the present case is squarely covered by Rule 4 (1) of the Bihar Motor Vehicles Taxation Rules read with the proviso to Section 81 of the Motor Vehicles Act and the petitioner's permit was not eligible for counter-signing until the penalty demanded under Rule 4 had been paid by the petitioner and thus, there has been no illegal and arbitrary action by the respondent authorities. It is submitted by learned counsel that under Rule 4 of the Rules, the date of acquisition of the vehicle or the date when such tax is imposed by law shall be due date for tax payment. In the present matter, interstate permit was issued by the Chhattisgarh authorities with effect from 01.12.2012 and thus for the delayed payment beyond 15 days and for the further period the penalty has to be calculated in terms of Rule 4 which has been done in the present matter.

It is also submitted by learned Government Pleader No.4 that the proviso to Section 81 also supports the stand of the respondents and the countersignature is to be effected from the date of issuance or renewal of the interstate permit for a period of five years so as to synchronise with it and thus the State was entitled to levy of penalty for the entire period from 1.12.2012 and on the delay in payment of the tax the petitioner was clearly liable to pay penalty for such delayed payment.

Learned counsel for the State also relies upon the notification dated 22.12.2010 issued in exercise of powers under Section 88 (6) of the Motor Vehicles Act under which the amount of tax under the Bihar Motor Vehicles Taxation Act had to be paid from the date of issuance of permit by the authority of the State of Chhattisgarh.

We have considered the rival submissions of learned counsels for the parties. It would be apt at this stage itself to consider the relevant part of the provisions of Section 14 of the Bihar Motor Vehicles Taxation Act, 1994 relied upon by learned counsels for the parties, that is, the main part of Section excluding the proviso, read with Rule 4 (1) and (2) of the Bihar Motor Vehicles Taxation Rules, 1994, Section 81 (1) along with its proviso and Section 88 (1) excluding the proviso. They are as follows:-

> "14. **Transport vehicles registered outside Bihar not to be used or kept for use unless tax paid**- Notwithstanding anything contained in Section 7, no Transport Vehicle under a permit granted by a competent Transport authority of any other Sate under the

provisions of Motor Vehicles Act, 1988 (Act no.59 of 1988) shall be used or kept for use in Bihar unless there has been paid in respect thereof, tax calculated at the appropriate rate specified under sub-section (5) of Section 7:

Provided that motor vehicles plying in Bihar, under permits granted by appropriate Transport Authorities of such States as have agreed on reciprocal basis to exempt motor vehicles plying in those State under permit granted by competent Transport Authorities of this State, shall not be required to pay tax under this section other than the additional motor vehicles tax:

Provided further that the permit holders opting for the State of Bihar under the National permit scheme, granted by a competent transport authority of other State under sub-section (12) of Section 88 of the Motor Vehicles Act, 1988 shall be required to pay in respect thereof a sum to be fixed by the State Government as composite fee in lieu of the tax and additional tax on an annual basis in advance by bank draft or by other means prescribed to the officer authorized by such State Government in this behalf.

"R.4 Due date of payment and penalty for non-payment of taxes in time- (1) For vehicles other than personalized vehicles the due date of payment of tax shall be the date of expiry of the period for which the tax had been last paid. In cases where no such tax had previously been paid, the date of acquisition of the vehicle or the date when such tax is imposed by law shall be due date for tax payment. For payment of differential taxes under the provision of Section 8, the due date shall be within Seven days from the date of alteration in the vehicle or the change in its use.

(2) Where the tax for any period in respect of a vehicle has not been paid as required under the provisions of sub-rule (1) and continues to remain unpaid thereafter, the taxing officer may impose penalty in respect of such vehicles at the rate specified in the table below:-

TABLE

Period	Amount of Penalty
(i) If paid within fifteen days from the due date of payment	Nil. This will be treated as grace period.
(ii) If paid after fifteen days but within 30 days of	Penalty to be charged at the rate of 25 per cent of the tax

the due date of payment.	
(iii) If paid after 30 days but within 60 days of the due date of payment.	Penalty to be charged at the rate of 50 per cent of the taxes due.
(iv) If paid after 60 days but within 90 days of due date of tax payment.	Penalty to be charged equal to the taxes due.
(v) If paid beyond 90 days after the due date	Penalty to be charged will be twice the taxes due.

"81. Duration and renewal of permits- (1). A permit other than a temporary permit issued under Section 87 or a special permit issued under sub-section (8) of Section 88 shall be effective from the date of issuance or renewal thereof for a period of five years.

Provided that where the permit is countersigned under sub-section (1) of Section 88, such counter-signature shall remain effective from the date of issuance or renewal thereof for such period so as to synchronize with the validity of the primary permit.

88. Validation of permits for use outside region in which granted.- (1) Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional

> Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned."

So far as the tax on the Transport Vehicles registered outside the State of Bihar is concerned, it has been clearly provided by Section 14 of the Taxation Act that the Transport Vehicle, which has been granted permit by a competent Transport Authority of another State shall not be used or kept for use in Bihar, unless the tax calculated at the appropriate rate specified in Schedule-1 and additional motor vehicles tax as specified in Schedule-II for the entire period for which the permit is valid in the State of Bihar has been paid in respect of the said vehicle. It is thus evident from the said provision that for the entire period of validity of the interstate permit the motor vehicles tax and the additional motor vehicles tax have to be paid with respect to the same before a motor vehicle is used or kept for use in the State of Bihar.

The question arises as to what is the period for which interstate permit is valid in the State of Bihar. The answer to the said question is to be found in Section 88 (1) of the Motor Vehicles Act, 1988 which clearly provides that a permit granted in any State shall not be valid, unless it is countersigned by the State Transport Authority of that other State. It is, thus, evident that an inter-State permit issued by another Transport Authority, in the present matter, Chhattisgarh State Transport Authority, would not be valid in the State of Bihar until it is countersigned by the Transport Authority of the State of Bihar. The liability of tax under the Taxation Act would, therefore, arise from the date of such countersigning, as clearly provided in Section 14 of the Taxation Act, because only from the date of countersignature the inter-state permit issued by the authority from outside the State of Bihar would be valid within the State of Bihar.

In this regard, reliance placed by learned counsel for the State upon the proviso to Section 81 of the Taxation Act appears to be clearly misconceived. The proviso has to be read along with the main sub-section which provided that a permit other than a temporary permit shall be effective from the date of issuance or renewal thereof for a period of five years. Thus, the normal rule laid down is that any permit other than a temporary permit issued under Section 87 or 88 (8) of the Taxation Act would be valid for a period of five years from the date of issuance or renewal of the said permit. The proviso to sub-section (1) deals with the validity of such permit where the countersignature is required thereof in another State (or other region which aspect is not involved in the present matter) and states that such countersignature shall be effective from the date of issuance or renewal thereof for such period so as to synchronise with the validity of the primary permit, i.e., if a permit is issued for the period of five years and has to be countersigned by the State Transport Authority of another State and if the countersignature is made after a lapse of whatever number of days, weeks or months or even years, the validity of such countersignature would be for the remaining period of five years from the date of original issuance or renewal thereof. The validity of the counter-signature could not in any case go beyond the period of five years. The said proviso cannot be read so as to mean that the permit becomes valid even for the period prior to the said countersignature. The provisions of Section 81 of the Taxation Act have to be read with Section 88 (1) of the Taxation Act. Once the aforesaid conclusions are reached, it is evident that for the purpose of applicability of Rule 4 it has to be seen as to what is the due date of payment of tax in such cases.

So far as the counter-signature of the interstate permit is concerned, it is not the first part of the said Rule 4 which talks of date of acquisition of the vehicle or the date when such tax is imposed by law which shall be the due date for tax payment. The imposition of tax under the Bihar Motor Vehicles Taxation Act would only be effective from the date when the interstate permit would be valid in the State of Bihar which has already been discussed. Thus, in a case of interstate permit there cannot be any levy of penalty until the interstate permit issued by the authorities of the other State is countersigned by the competent authority of the State of Bihar.

In the light of the aforesaid discussions, it is evident that the respondent authorities were clearly acting in an illegal and arbitrary manner by denying the benefit of countersignature to the petitioner. The benefit of countersignature was denied solely on the ground that the penalty of Rs. 20,703/- demanded by them had not been deposited by the petitioner, whereas admittedly the petitioner has deposited the entire amount of tax even from 01.12.2012 which, under the law as it stands, she was not liable to deposit for the period from 01.12.2012 till 08.03.2013, yet the countersignature was not made and the petitioner was deprived of the benefit of operating her inter-State permit for such a long period of time on account of the illegal and arbitrary approach and action of the respondent authorities.

Thus, in view of the aforesaid discussions, the writ applications are allowed. The impugned letter dated 15.05.2013 issued by the Additional Secretary, Transport Department is quashed. The State Transport Authority, Bihar is directed to countersign the

Interstate Transport Permits filed by the petitioner within a period of one week from the date of receipt/production of a copy of this order. The petitioner shall also be entitled to refund of the entire amount of tax, which she has paid for the period prior to the countersigning of the permit by the State Transport Authority, Bihar within a further period of four weeks thereafter. The respondents shall be also liable to pay cost of Rs. 10,000/- to the petitioner.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

A.F.R
.V.P.Sinha/-

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