IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1415 of 2012
IN
Civil Writ Jurisdiction Case No. 13459 of 2012

==

Ram Chandra Yadav, Son of Hanslal Yadav, Resident of Village- Chandour, P.S. Sour Bazar, District- Saharsa

.... Appellant

Versus

1. The State of Bihar Through The Principal Secretary Transport Department, Government of Bihar, Patna
2. The Divisional Commissioner-Cum-Chairman Kosi Regional Transport Authority, Saharsa
3. The District Magistrate Cum-Collector, Saharsa
4. The Deputy Inspector General Of Police, Kosi Division, Saharsa
5. The Secretary, Regional Transport Authority, Saharsa
6. The District Transport Officer, Saharsa

.... Respondents

==

Appearance :
For the Appellant : Mr. Shekhar Singh, Mr. Raja Surendra Mohan
Mr. Abhijeet Gautam, Advocates
For the State : Mr. Mithilesh Kumar Pathak, SC7
For Zila Parishad, Madhepura : Mrs. Sunita Kumari, Advocate

==

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)
Date: 09-03-2016

The challenge in the present Letters Patent Appeal is to an order dated 02.08.2012, passed by a learned Single Judge of this Court in CWJC No.13459 of 2012, whereby the writ petition was dismissed challenging toll tax fixed for auto rickshaws plying in Saharsa.

2. Earlier some residents of village Madhepura filed a writ petition before this Court challenging levy for using bus stand and halting station in Madhepura and Singheshwar @ Rs.5/- per trip. This Court directed the Regional Transport

Authority to take a decision regarding the levy of such fee. It is in pursuance of such direction, the Koshi Regional Transport Authority, Saharsa, in its meeting held on 17th November, 2011, considered the levy of fee of Rs.7/- per trip from auto rickshaws in Saharsa. It was observed that such amount is being recovered pursuant to an advertisement by Nagar Parishad. It was also observed that Nagar Parishad is an independent autonomous body and that the drivers of auto rickshaws can easily afford such charges keeping in view their daily income.

3. The appellant has also attached the minutes of the meeting of the Koshi Regional Transport Authority, Saharsa, dated 16th July, 2010, in respect of payment of fee @ Rs.5/- per trip from auto rickshaws in Madhepura and Singheshwar, for the use of Madhepdura bus stand and Singheshwar bus stop. In respect of the charges from vehicles in Madhepdura bus stand, rates were fixed at Rs.20/- per day from bus, Rs.15/- per day from mini bus of 32 seaters/maxi (22 seaters), Rs.10/- per day from jeep/passenger/Tata Magic, and Rs.5/- per day from auto rickshaws. Similar was the rate fixed for Singheshwar bus stop as well.

4. In the writ petition directed against the minutes dated 17th November, 2011, the challenge was on the differential rate of tax claimed from the drivers of auto rickshaws of Madhepura and Singheshwar and that of Saharsa. Nagar Parishad either of Madhepura, Singheshwar or Saharsa was not

impleaded as party in the writ application.

5. The learned Single Judge dismissed the writ application observing that in commercial activities, authorities are competent to take decision as per their best judgment and fix up rate of daily tax. The Court cannot superimpose its own views in regard to assessment over a decision taken by the Nagar Parishad in this regard.

6. In the present LPA, in terms of different interim orders, counter affidavits have been filed. In supplementary counter affidavit dated 11.02.2015, reference was made to Rule 191 of the Bihar Motor Vehicles Rules, 1992, and Section 127 of the Bihar Municipal Act, 2007, to assert that nature of tax or fee are different under both the provisions. It was also mentioned that Government has to maintain the bus stand for the benefit of vehicle owners and general public. Therefore, the applicant should not oppose the levy of such tax. Reference was also made to a judgment of this Court in the case of **Amar Pratap Singh vs. State of Bihar [1997 (2) PLJR 10],** that in terms of Section 117 of the Motor Vehicles Act, 1988, the State Government or the authorized authority is to maintain the vehicle stand.

7. Though there is no details of fixation of rates for Saharsa has come on record but it can be presumed that it would be on same line as in Madhepura and Singheshwar limits except that there is difference in the rates.

8. A perusal of Annexure-2 shows that the charges have been levied by the Regional Transport Authority on account of use of bus stand or bus stop. Such charges are leviable in terms Rule 191 of the Bihar Motor Vehicles Rules, 1992. The relevant Rule reads as under:-

> "**191. Parking places and halting stations.** – (1) In consultation with local authorities having jurisdiction in the area concerned and in the city where there is Commissioner of Police, in consultation with such Commissioner of Police and elsewhere, with the District Magistrate, the Regional Transport Authority may, by notification in the official Gazette or by the erection of traffic signs which are permitted for the purpose, under sub-section (1) of Section 116, or both, in respect of picking up or setting down of passengers or both, by public service vehicles or by any specified class of public service vehicle –
>
> (i) conditionally or unconditionally prohibit the use of any specified place or of any place of a specified nature or class, or
>
> (ii) require that within the limits of any municipal corporation, municipality, notified area of or cantonment, or within such other limits as may be specified in the notification, certain, specified stands or haling places only shall be used :
>
> Provided that no place which is privately owned shall be notified except with the previous consent in writing of the owner thereof.
>
> (2) Whether a place has been notified or has been demarcated by traffic signs, or both, as being a stand or halting place for the purpose of this rule, then notwithstanding that the land is in possession of any person, the place shall, subject to the provisions of these rules, be deemed to be a public place within the meaning of the Act; and the Regional Transport Authority may enter into an agreement with, or grant a licence to any person for the provision or maintenance of such place including the provision or maintenance of the buildings or works necessary thereto, subject to the termination of the agreement or licence forthwith upon the breach of any condition thereof and may

otherwise make rules or give directions for the conduct of such place including rules or direction –

(i) prescribing the fees to be paid by the owners of public service vehicles using the place and providing for the receipt and disposal of such fees;

(ii) specifying the public service vehicles, or the class of public service vehicles which shall use the place or which shall not use the place;

(iii) appointing a person to be the manager of the place and specifying the powers and duties of the manager;

(iv) requiring the owner of the land, or the local authority, as the case may be, to erect such other works as may be specified in the rules or in the direction, and to maintain the same in a serviceable, clean and sanitary condition;

(v) requiring the owner of the land or the local authority, as the case may be, to arrange for the free supply of drinking water for passengers including intending passengers;

(vi) prohibiting the use of such place by specified persons or by other than specified persons.

(3) Nothing in sub-rule (2) shall require any person owning the land, which has been appointed as a stand or halting place to undertake and work or incur any expenditure in connection therewith without his consent and, in the event of any such person declining to carry out such work or to incur such expenditure or failing to comply with any rule or direction made or given to him under this rule, the competent authority may prohibit the use of such a place for the purposes of the rule."

9. A perusal of the above Rule shows that sub-section (1) empowers the Regional Transport Authority to specify the area in respect of picking up or setting down the passengers or both, by public service vehicles or by any specified class of public service vehicles. It is sub-section (2) which authorizes the

Regional Transport Authority to enter into an agreement or grant a licence to any person for the provision or maintenance of such place including the provision or maintenance of the buildings or works necessary thereto and for the said purpose, levy such fee. A perusal of Annexure-2 shows that the Regional Transport Authority has taken into consideration the number of vehicles which are frequenting the bus stop and bus stand on each day and consequently the number of passengers which may be using these vehicles and are using the bus stop and bus stand. Therefore, such fee has been fixed keeping in view the number of passengers and the vehicles visiting the halting place and for their conveniences. Such levy is in terms of sub-rule (2) of Rule 191 of the Rules and this cannot be said to be illegal or unwarranted.

10. The argument of learned counsel for the appellant is on difference of rate of charges fixed from the owners of the auto rickshaws of Madhepura and Singheshwar with that of Saharsa, is arbitrary. The Regional Transport Authority has to take into consideration the number of vehicles using the halting place and also consequently the number of passengers visiting such place. Therefore, if there are more vehicles in a particular halting station, the Regional Transport Authority would be entitled to fix the rate accordingly. Therefore, mere fact that there is differential rate of fee in respect of Saharsa limits of the Regional Transport Authority and also with

that of Madhepura and Singheshwar limits of Regional Transport Authority, levy cannot be said to be illegal, arbitrary or discriminatory.

11. Though in Annexure-1 there is a reference of imposition of charges by Nagar Parishad, but Nagar Parishad have not responded to the notice issued in the LPA where they were impleaded as party respondents for the first time. Assuming that levy has been imposed by Nagar Parishad, the same is valid levy under Section 127 of the Bihar Municipal Act, 2007. The relevant extract of Section 127 reads as follows:-

> "**127. Power to levy taxes.** – (1) Subject to the provisions of section 10, the Municipality shall have, for the purposes of this Act, the power to levy the following taxes:-
>
> ……………… ……….
>
> ……………….. ……….
>
> (k) toll –
>
> (i) on roads, bridges, ferries and navigable channel and
>
> (ii) on heavy trucks which shall be heavy goods vehicles, and buses, which shall be heavy passenger motor vehicles, within the meaning of the Motor Vehicles Act, 1988, plying on a public street.
>
> …………… ………….."

12. Learned counsel for the appellant vehemently argued that the levy of taxes is permissible on heavy trucks in terms of sub-clause (ii) of clause (k) of Section 127 of the Bihar Municipal Act, 2007, therefore, the same is not legal. However, we find that the tax is being levied for use of the road by auto rickshaws. Therefore, such levy can be said to be justified in terms of sub-clause (i) of clause (k) of Section 127(1) of the Act.

In view thereof, we do not find any illegality in the levy charged @ Rs.7/- per trip from auto rickshaws in Saharsa.

13. Consequently, the LPA is without any merit. It is accordingly dismissed.

(Hemant Gupta, J)

Navaniti Prasad Singh, J. I agree.

(Navaniti Prasad Singh, J)

mrl.

U			