IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 26434 of 2015 (O&M)
Date of decision: 26.9.2016

M/s Suraj Bus Service and another
.. Petitioners

v.
Joint State Transport Commissioner and others
.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Rajinder Sharma, Advocate for the petitioners.
Mr. Jagmohan Bansal, Addl. Advocate General, Punjab.

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Rajesh Bindal J.

1. The petitioners had filed the present petition with a grievance that though they were granted permit for plying their bus on a route from Pangota to Dera Baba Jaimal Singh, but were, in fact, issued time table and permitted to ply the bus only from Dera Baba Jaimal Singh to Pathankot and not beyond that upto Pangota and still the tax for the entire route is being charged.

2. Learned counsel for the petitioners submitted that petitioner No. 2 was granted stage carriage permit for bus No. PB-06-F 9219 on 7.9.2011 for one return trip daily from Pangota to Dera Baba Jaimal Singh. The permit was valid upto 6.9.2016. The total length of the route from

Pangota to Dera Baba Jaimal Singh is 368 kms. (return trip). The aforesaid permit was transferred by the Secretary, Regional Transport Authority in favour of petitioner No. 1 on 15.1.2015. The petitioners could ply the bus on the route as per the time table approved by Regional Transport Authority, Jalandhar. In the approved time table, the petitioners were permitted to ply the bus only from Pathankot to Dera Baba Jaimal Singh and not from Pangota to Pathankot. The total length from Pangota to Pathankot is 69 kms. (one way). As a consequence of this arrangement, the petitioners were not able to ply the bus for total 138 kms. per day out of 368 kms., for which the permit was granted.

3. Regarding levy of tax, learned counsel for the petitioners referred to Section 3 of the Punjab Motor Vehicles Taxation Act, 1924 (for short, 'the Act'), which provides for levy of tax in such manner and at such rates, as may be determined by the Government from time to time, provided that rate of tax is not to exceed the maximum limit as specified in the Schedule. In the Schedule, at Sr. No. 11, the rates of tax have been provided for stage carriage buses. The petitioners' bus is ordinary big bus. The maximum rate provided therefor is ₹ 20/- per km. per day. As the total length permitted to the petitioners to ply the bus was for 368 kms., the tax was being collected from the petitioner on that from the very beginning, whereas as per the factual position, the petitioners were being permitted to ply the bus only from Dera Baba Jaimal Singh to Pathankot, i.e., 230 kms. per day. The tax for the entire route should not have been charged. He further referred to Section 13 of the Act to submit that there are provisions for refund of the tax paid in excess. The impugned orders have been passed by the authorities in terms of the directions issued by this court, when the

petitioners earlier approached by filing CWP No. 4550 of 2015 raising the grievance.

4. On the issue that time table was not approved, learned counsel for the petitioners referred to the earlier order passed by this Court in CWP No. 7725 of 2012, filed by petitioner No. 2, which was disposed of on 27.4.2012 directing the authorities to decide the representation of the petitioners for approval of time table. The needful was not done. It was only on 19.5.2014 that in the time table, the complete route of the petitioners was provided. Even that order was stayed by this court in CWP No. 11789 fo 2014 on 10.6.2014. Learned counsel further referred to a communication dated 27.4.2015 from District Transport Officer, Jalandhar to District Transport Officer, Gurdaspur, where calculations have been made and the refund of tax due to the petitioners for the period from October, 2011 till December, 2014 has been calculated.

5. On the other hand, learned counsel for the State fairly submitted that as per the stand of the respondents in the written statement, the petitioners did not ply the bus from Pathankot to Pangota.

6. Heard learned counsel for the parties and perused the paper book.

7. The undisputed facts on record are that the petitioners were granted permit for plying bus No. PB-06-F 9219 from Pangota to Dera Baba Jaimal Singh on 7.9.2011, valid upto 6.9.2016. The bus could be plied as per the time table approved by Regional Transport Authority, Jalandhar. The petitioners were permitted to ply the bus for one return trip daily. The total length of the route is 368 kms. (return trip). It is further not in dispute that as per the approved time table, the petitioners could ply the bus only

from Pathankot to Dera Baba Jaimal Singh and not from Pangota to Pathankot. The distance from Pathankot to Pangota in return trip is 138 kms. As a consequence, on daily basis, the petitioners were not permitted to ply the bus for 138 kms., out of total 368 kms. permitted. However, the tax for the entire route as per the permit was charged and paid by the petitioners. The fact that the petitioners have not actually plied the bus from Pangota to Pathankot is not in dispute.

8. As per the provisions of Section 3 of the Act, tax can be charged at the rate, as may be determined by the Government from time to time not exceeding the maximum limit as specified in the Schedule. In the Schedule at Sr. No. 11, the maximum rate of tax prescribed for big buses having stage carriage permit is ₹ 20/- per km./ per vehicle/ per day. As the petitioners have been permitted to ply the bus only for 230 kms. per day, they are liable to pay tax only for that and not for the entire route, for which they had been granted permit. The distances, as mentioned above, are clear from the communication dated 4.5.2015 (Annexure P-11) written by District Transport Officer, Gurdaspur to State Transport Commissioner, Punjab. Section 13 of the Act enables the Commissioner to refund any excess paid amount of tax.

9. As admittedly, the petitioners had not plied the bus for total length of the route, for which the permit was granted, they were not required to pay the tax for that. The action of the authorities in charging the excess amount of tax from the petitioners cannot be legally sustained.

10. Accordingly, the writ petition is allowed. Impugned orders (Annexures P-13 and P14), passed by the authorities are set aside. The respondents are directed to calculate and refund the excess paid amount of

tax to the petitioners within a period of two months from the date of receipt of copy of the order.

(Rajesh Bindal)
Judge

(Darshan Singh)
Judge

26.9.2016
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No