

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 6384 of 2015 (O&M)
Date of decision: 4.7.2016

The Jind Vandana Cooperative Transport Society Ltd. and others
.. Petitioners

v.

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. H. S. Sawhney, Senior Advocate with
Mr. Raj Kaushik, Advocate for the petitioners.

Ms. Mamta Singla Talwar, Deputy Advocate General,
Haryana.

...

Rajesh Bindal J.

The order dated 1.12.2014, passed by the Transport Commissioner, Haryana-cum- Revisional Authority under Haryana Motor Vehicles Taxation Act, 2013 (for short, 'the 2013 Act') in exercise of powers under Section 17(3) of the 2013 Act, has been impugned in the present petition.

Learned counsel for the petitioners submitted that the petitioners are holders of stage carriage permits having been granted by the competent authority. They could not operate the buses for which the permits were granted for different periods on account of various compelling circumstances, for which exemption from payment of tax payable under the

Punjab Motor Vehicles Taxation Act, 1924 (for short, 'the 1924 Act') was

prayed for. The competent authority, vide different orders passed, granted exemption to the petitioners from payment of tax under the 1924 Act for different periods. Without there being any good reason, the Transport Commissioner, Haryana, while exercising powers under Section 17(3) of the 2013 Act, set aside the order granting exemption to the petitioners. It was submitted that the orders passed by the competent authority in exercise of powers conferred under the 1924 Act were saved in the saving clause of the 2013 Act, protecting all actions taken, hence, the order could not be set aside. He further submitted that the provisions of the 2013 Act are not operative, as no rules as such have been framed thereunder. In fact, no tax has been levied under that Act. It was further submitted that opportunity of hearing was granted by different officer, than the officer who passed the order.

On the other hand, learned counsel for the State submitted that there is no illegality in the order impugned. The 1924 Act stood repealed with the enactment of the 2013 Act, as notified on 15.10.2013. The orders were passed by the Secretary, Regional Transport Authority, in favour of the petitioners on different dates from 15.5.2014 to 19.5.2014. As per Section 25 of the 2013 Act, the 1924 Act stood repealed, hence, no exemption could possibly be granted by the Secretary, Regional Transport Authority in exercise of the powers conferred under the repealed Act. It was further submitted that as per the 2013 Act, it is only the State Government which could grant exemption, that too by a notification. The power is not vested with the Regional Transport Authority, hence, the order having been passed under the repealed Act by an incompetent authority, was rightly revised by the competent authority. She further submitted that immediately after the

exemption was granted, the matter was referred by the Secretary, Regional Transport Authority himself for revision vide communication dated 23.6.2014. Even the Finance Department opined that the exemption granted by the Secretary, Regional Transport Authority was totally un-called for. It was further submitted that there is no prejudice caused as such to the petitioners as there is no illegality in the order as such even if the matter was not heard by the officer who passed the order, as it was a legal issue which was duly considered and decided.

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

The undisputed facts on record are that the tax was earlier levied under the provisions of the 1924 Act, which was repealed with the enactment of the 2013 Act, as notified on 15.10.2013. The petitioners had stage carriage permits issued in their favour. It was claimed that for various reasons, they could not ply the buses, hence, sought exemption from payment of tax for different periods, as noticed below:

<u>“Name of Society</u>	<u>Period of exemption of Road Tax</u>	
xx	xx	xx
4. The Jind Vandana Tpt.	1.4.2006 to 30.6.2012 1.1.2013 to 31.3.2014	
xx	xx	xx
7. The Vikas Malvi Tpt	1.7.2009 to 30.9.2010	
8. The Ashoka Tpt	1.4.2013 to 30.6.2013	
9. The Lalit Khera	1.10.2010 to 30.6.2013	
xx	xx	xx
14. The Bainsla Tpt.	1.10.2012 to 31.3.2014	
xx	xx	xx”

The Secretary, Regional Transport Authority, vide different orders passed from 15.5.2014 to 19.5.2014 in the case of the petitioners granted exemption from payment of tax, while exercising powers under the 1924 Act. It could not be disputed that the 1924 Act stood repealed with the enactment of the 2013 Act, which was notified on 15.10.2013. Section 16(2) thereof provides that the Government may, by notification, exempt a person or class of persons from liability to pay whole or part of the tax in respect of any motor vehicle or class of motor vehicles. Meaning thereby, the power to grant exemption from payment of tax was available with the Government and not with any other authority on the date the order was passed by the Regional Transport Authority. In the case in hand, the power was exercised by the Secretary, Regional Transport Authority under the provisions of the repealed Act of 1924. When the matter was brought to the notice of the Secretary, Regional Transport Authority, he himself vide communication dated 23.6.2014, immediately after passing various orders granting exemption, referred the matter to the Transport Commissioner, Haryana for taking up the matter for suo-motu revision. It was thereafter that revisional proceedings were initiated by the Transport Commissioner in exercise of powers conferred under Section 17(3) of the 2013 Act. Notices were issued to the authorities. After opportunity of hearing, the orders were revised and the exemption already granted in favour of the petitioners and 10 other parties on similar grounds were withdrawn. There is no error in the order passed, if considered in the light of the provisions of the 2013 Act, which were in force at the time of grant of exemption by the incompetent authority. The argument that the 2013 Act is not operative as the Rules had not been framed is merely to be noticed and rejected as nothing was to be done under

the Rules as source of power is prescribed under the Act only. The 2013 Act had been enforced is not the matter in dispute.

Accordingly, the writ petition is dismissed. However, the same will not debar the petitioners from seeking exemption from payment of tax under the 1924 Act or the 2013 Act from competent authority, in case it is available to them under the provisions of the Act applicable.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

4.7.2016
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