IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

104+245

CWP-2428-2022 (O&M).
Date of Decision: 02.03.2023.

Goldy Aneja

.. Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Mohd. Uzair, Advocate,
for the petitioner.

Mr. Vivek Chauhan, Addl. A.G. Haryana
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

CM-265-CWP-2023

The instant application has been filed under Section 151 of the Code of Civil Procedure, 1908 for placing on record the rejoinder on behalf of the petitioner.

The application is allowed subject to all just exceptions.

Rejoinder on behalf of the petitioner is taken on record.

The Registry is directed to tag the same at appropriate place.

Main case

The instant writ petition raises a challenge to the challan of Rs.50,000/- (Annexure P-2) imposed upon the petitioner for purported breach of the provisions of the Haryana Motor Vehicle Taxation Act, 2016 which the petitioner claims to be illegal since the requisite road tax had already been deposited by the petitioner on the Online portal of the respondent-Department.

Briefly summarized, the facts of the present case are that the petitioner is owner of vehicle bearing registration No.UP-17-T-8376 and petitioner contends that a Contract Carriage Permit has been issued to the petitioner from the State of Uttar Pradesh. On the date of incident i.e. on 15.02.2021, the vehicle in question was taken on contract for a marriage ceremony and to take the guests. The same was to be taken to Gurdaspur, Punjab, from Najibabad, Bijnor, Uttar Pradesh. He was not taking any passengers for hire on the aforesaid date. The petitioner deposited the road tax on entering Haryana, under the Haryana Motor Vehicle Taxation Act, 2016 to the tune of Rs.2,000/- at 3:40 P.M. for one day from 15.02.2021 to 16.02.2021. He submits that even thereafter the challan was issued by the respondents Authorities at 4:07 P.M. at Kalanaur which is nearly ½ an hour after the deposit of the tax. It is contended that as the fee had already been paid, the imposition of challan was inappropriate and was not legally justified. A representation in this regard was also submitted by the petitioner with the Regional Transport Authority. Since no decision was taken, hence, the present writ petition had been filed.

Written statement has been filed by the respondents wherein the claim of the petitioner regarding the fee for permit for a day having been paid has not been disputed. It is, however, contended that the bus in question was being plied for a different purpose i.e. as Stage carriage and not as a Contract Carriage and thus the petitioner violated the provisions of Section 3 of the Haryana Motor Vehicle Taxation Act, 2016 and the other conditions prescribed in the Notification of Haryana Government Transport

Department dated 29.09.2017. The relevant extract of the said Notification reads thus:-

> *"(g) In case a vehicle registered in other State and is found plying in Haryana without paying the due tax or for different purpose than the purpose for which it is granted a permit, penalty of Rs.20,000/- shall be charged in the case of a light motor vehicle and Rs.50,000/- in the case of other motor vehicles."*

It is alleged that the bus was checked at Kalanaur U.P. Border in Haryana on 15.02.2021 and the checking process took time 20 to 25 minutes. The owner of the bus could not prove that the bus was running as a contract carriage and that in the inquiry, the passengers told their different starting and reaching stations. Hence, owner of the bus was collecting fare from passengers who boarded from different places, without issuing tickets, and was thus using the same as a Stage carriage. No proof could be furnished by the petitioner for running the bus on a contract carriage permit.

I have heard the learned counsel for the respective parties and have gone through the documents appended along with the present petition.

The undisputed facts which emerge are that the petitioner is the owner of the vehicle and a contract carriage permit had been issued by the State of Uttar Pradesh. On the date of incident i.e. 15.02.2021, the challan in question was issued to him for an alleged operation of the bus in breach of the Notification issued by the Haryana Government Transport Department dated 29.09.2017 and a fine had been imposed thereunder. It is also not in dispute that the permit fee for driving the said vehicle to the State of Haryana had been deposited by the petitioner about 27 minutes prior to the issuance of challan which was valid for one day.

It is evident from the response filed by the respondents that a motor vehicle can be termed to be used as a Stage carriage when it is transporting more than six passengers for hire or reward and a separate fare is paid by the individual passengers. The respondents have, however, taken a vague and evasive stand that they had enquired from different passengers, without giving the details of the number of passengers from whom enquiry was made especially when the notification prescribes existence of a minimum number of passengers before a vehicle may be termed to be used as Stage carriage. No such evidence in support of the aforesaid averment has also been appended along with the written statement. In the absence of minimum yardstick of at least six passengers getting their statements recorded to the effect that they have paid different fare/reward for being transported, the vehicle in question cannot be termed to be running as a Stage carriage.

Learned State counsel has submitted that the deposit of the fee is only for allowing the petitioner to pass through the State of Haryana while using the vehicle for the purpose for which the permit has already been granted to him and that in the present case, the purpose for which the vehicle was being used was different from the purpose for which the permit had been issued. However, there is nothing so recorded on the challan slip to state that vehicle in question was charged or that the penalty was levied for the purported violation as is suggested now. The State cannot be permitted to improve upon its case during the course of arguments. 'Challan' being a penalty, the Authorities are required to unambiguously disclose the violation for which the penalty is being levied.

In the absence of respondents referring to any cogent or convincing evidence which is admissible in eyes of law, suggesting that the vehicle was being used as a Stage carriage, such a finding cannot be accepted.

The present petition is accordingly allowed. The challan of Rs.50,000/- (Annexure P-2) imposed upon the petitioner for alleged breach of the provisions of the Haryana Motor Vehicle Taxation Act, 2016, is accordingly set aside. The amount, if any, deposited by the petitioner shall be refunded to the petitioner within a period of 04 weeks of the receipt of certified copy of this order.

Pending misc. application, if any, shall also stand disposed of accordingly.

March 02, 2023 **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

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