

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15727 of 2024

1. Krishna Kumar Jha Son of Dayanath Jha Resident of Denbi Road/D-13, P.O.- Lalbag, P.S.LNMU, Darbhanga, District - Darbhanga, Bihar. And at present resident of Village Murliachak, P.S. Patauna (Bisfi), District - Madhubani, Bihar.
2. Chamcham Jha Wife of Krishna Kumar Jha Resident of Village - Murliachak, P.S. - Patauna, District - Madhubani, Bihar.
3. Anand Kumar Jha Son of bak Dayanath Jha Resident of Denbi Road/D-13, P.O.- Lalbag, P.S. - LNMU, Darbhanga, District - Darbhanga, Bihar. And at present resident of Village - Murliachak, P.S. - Patauna (Bisfi), District- Madhubani, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Transport Department, Government of Bihar, Patna.
2. The Secretary, Transport Department, Government of Bihar, Patna.
3. The State Transport Commissioner, Transport Department, Government of Bihar, Patna.
4. The District Transport Officer, Madhubani.
5. The District Transport Officer, Sitamarhi.
6. The District Transport Officer, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Prince Kumar Mishra, Advocate Mr. Vikas Kumar Jha, Advocate
For the Respondent/s	:	Mr. Raghwanand, GA-11 Mr. Pratik Kuma, AC to GA-11

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-10-2024

Three writ petitioners, registered owners of



different vehicles have joined together to file the above writ petition to seek issuance of provisional Motor Vehicles Tax Token with respect to their vehicles, for the current period; despite there being arrears of tax with respect to the aforesaid motor vehicles, for the earlier periods. Insofar as the arrears are concerned, the claim is that the petitioners have submitted applications to exempt/write off the motor vehicle taxes for various periods; during which period the vehicles were not plied on the roads since there was a pending dispute with the Bihar State Road Transport Corporation (for brevity 'BSRTC') and citing the demand raised against the registered owners by the BSRTC, the stage carriage vehicles were denied permit by the Road Transport Authority (R.T.A).

2. The learned Counsel for the petitioner pointed out Annexure-P/2 judgment, in which a learned Single Judge of this Court directed the authority to consider the application for permit afresh on its own merits, without taking into consideration the amounts due to the BSRTC. The BSRTC was reserved liberty to take action for recovery of any amounts due from the petitioner, in accordance with law; but it was categorically held that the renewal of the petitioner's permit cannot be rejected on the sole ground that some



amounts were due to the BSRTC. It is pointed out that the vehicles were not plied for various periods, as is seen from Annexure-P/1 series. Applications have been submitted by the petitioners, as per Annexure-P/5 series for exemption from tax.

3. The petitioner also relied on a Division Bench decision of this Court in *Nirbhay Kumar and Others v. State of Bihar and Others; 1993 SCC Online Pat 27 : 1995 (1) PLJR 60*. It is the contention of the petitioners that they are entitled to exemption from tax, for the periods in which the vehicles were not plied, as is evident from Annexure-P/6 and they are hence, entitled to issuance of tax tokens for the current periods, which tax amounts, they are willing to satisfy.

4. At the outset, we have to notice that the judgment produced as Annexure-P/2 deals with quite a different matter; unconnected with the provisions of the Motor Vehicles Taxation Act, 1994 and was filed by only one of the petitioners herein; the first petitioner. There is clear mis-joinder of parties since though the claim raised is of issuance of Motor Vehicles Tax Token for the current periods, after exempting the arrears/dues; the tax liability is for different stage carriages and the period for which exemption is claimed



is also quite distinct and different. There is absolutely no reason to find a common cause of action arising in the case of the petitioners.

5. Be that as it may; in the writ petition filed by the first petitioner herein, the claim was against the rejection of the application for permit for two stage carriages bearing Registration No. BR06PB9099 and BR06PB9095; which rejection was also on the ground of dues payable to the BSRTC. As was rightly pointed out by the learned Counsel for the respondent, the declaration in the judgment of the learned Single Judge is only to the effect that the dues of third parties cannot restrict the consideration of an application for permit by the Regional Transport Authority (RTA). This does not in any event absolve the petitioner or the two vehicles on which the earlier writ petition was filed by the first petitioners; from paying tax, as per the taxation enactment, on their vehicles kept for use on the roads.

6. *Nirbhay Kumar (supra)* considered the claim of exemption under Section 9A of the Bihar and Orissa Motor Vehicles Taxation Act, 1930 (for brevity 'Act of 1930'). Therein, this Court had found that on 12.12.1991, the State Government had prescribed the mode of inquiry contemplated



under Section 9A of the Act for according exemption, according to which the claim has to be preferred in a prescribed form, coupled with an affidavit and other documents and papers relating to the vehicles. It was categorically held in paragraph 11 that in view of the statutory procedure prescribed, no claim for exemption can be entertained unless the procedure prescribed is followed. This Court went on to examine Section 9A to find that there was no time limit fixed for filing of the application. It was reasonably construed that necessary intimation regarding breakdown or the intention of the Owner/Manager to not operate the vehicle, should be given to the authorities; within a reasonable time having proximity with the event of breakdown or the intention nurtured.

7. In the present case, as is seen from Annexure-P/1, the first petitioner claims exemption for the two vehicles which were the subject matter in Annexure-P/2 namely BR06PB9097 and BR06PB9095 and two other vehicles. Annexure-P/1 indicates the validity of tax coupon & permit of two vehicles. The period for which tax arrears have not been paid commence from 2013 and 2014. The contention also is that the vehicles could not be operated because no permits



were granted during the said period. If there were no permits granted, then immediately on the commencement of the period, there should have been an intimation given for exemption, specifically indicating the intention not to operate till the permit is obtained. The applications produced as Annexure-P/5 series are all dated 05.09.2024 long after the period for which exemption is now claimed; which starts from 2013 and 2014. Even going by the dictum of the judgment in *Nirbhay Kumar (supra)*, it cannot be said that the petitioners are entitled to such exemption.

8. We have to also notice the judgment of the Hon'ble Supreme Court noticed by the Division Bench of this Court, in *Taxing Officer, Kalahandi v. Ajit Singh*, reported in *1987 PLJR 52 (SC)* which has held so:-

“The Act requires that the tax shall be paid only by the person who keeps the motor vehicle for his use. What is necessary to be proved or to be found is that vehicle is kept for use and not that it is actually plied on the road. If any owner of a motor vehicle does not intend to use the vehicle for a temporary period he may intimate the Taxing Officer under the provision of Section 9A of the Act in which case he would not be liable for payment of tax for the relevant period if the conditions prescribed under Section 9A of the Act are fulfilled.”

(underlining by us for emphasis)

9. Annexure-P/6 is of no avail since it is a



communication issued by the BSRTC indicating the period in which the permits issued to the respective vehicles were valid and also a statement that they were not operated after that. The statement made by the BSRTC is only with respect to the issuance of the permit and the operations not being made under the BSRTC. There is no ground raised that the vehicles were not kept for use within the State of Bihar. As has been found by the Hon'ble Supreme Court in *Ajit Singh (supra)*, the non-operation of a vehicle is inconsequential, in deciding exigibility to tax, if the vehicles are kept ready for use. Entitlement for exemption does not arise from the mere fact that the vehicles were not actually plied on the road. If the vehicle is kept for use and even if it is not actually plied on the road, necessarily the tax liability would fall on the vehicle and the registered owner. The mere fact that permits were not issued during the period also would not absolve the liability of the petitioner, unless a claim for exemption was raised clearly indicating the place where the vehicle is garaged and intimating the Transport Authority, the intention of the owner to not use the vehicle until the permit is issued.

10. We also see that the Act of 1930, has been substituted by the Bihar Motor Vehicles Taxation Act, 1994.



Section 17 of the said Act speaks of prior intimation of a temporary discontinuation of the vehicle. It speaks of incapability of use of a motor vehicle due to disability, caused either by mechanical breakdown, litigation, natural calamities or compelling personal reasons or due to other causes prescribed by State Government; for any period of more than a month. The provision requires the owner on such contingency to make an application before the date of expiry of the term for which the tax has been paid, furnished to the Tax Officer, with an undertaking duly signed and verified in the prescribed form, and specifying the period aforesaid and the place where the motor vehicle is kept along with current registration certificate, fitness certificate and tax token and such other particulars as may be prescribed from time to time. The proviso also restricts such undertaking to be relatable to a period not exceeding 6 months at a time.

11. Under the Act of 1994, the Bihar Motor Vehicle Taxation Rules, 1994 has also been brought out. Rule 13 prescribes the form in which an application is to be made for temporary discontinuance from use. There is also a time provided; i.e. on or before the date of expiry of the term for which the tax has been paid; unlike in Section 9A of the Act of



1930, considered in *Nirbhay Kumar (supra)*. Intimation for temporary discontinuance of Motor Vehicle is to be given in Form J with the required particulars. Admittedly, the petitioner has not applied for temporary discontinuance from use, as per the Act and Rules of 1994, within the time prescribed, and in the form, as prescribed under the rules. Section 12 of the Act of 1994 prohibits the Taxing Officer from accepting any tax or penalty for the current period, in respect of a motor vehicle which has pending arrears of the tax and penalty.

12. We find absolutely no reason to entertain the writ petition. Annexure-P/2 judgment does not cover the issue agitated in the aforesaid case and it also does not regulate the affairs of the other stage carriages, except the two specifically referred to in Annexure-P/2. *Nirbhay Kumar (supra)* also has no application in the facts of the case and in fact, the declaration therein of submission of furnishing an application within a reasonable period from the date of breakdown or intention not to ply, applies only in the context of no time having been prescribed under the then existing Section 9A under the Act of 1930. Insofar as the Act of 1994, Section 17 specifically prescribes the time within which the temporary discontinuance of a vehicle has to be furnished to the



concerned Authority.

13. We find absolutely no reason to entertain the writ petition and find the claim raised on the basis of the judgment in the decision in the *Nirbhay Kumar (supra)* to be totally misconceived. We reject the writ petition *in limine*.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

sharun/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	26.10.2024
Transmission Date	

