IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(APPELLATE SIDE)

Present:
The Hon'ble Justice Rai Chattopadhyay

WPA 4858 of 2024

Srichandan Dwibedi
Vs.
The State of West Bengal & Ors.

For the Petitioner	:	Mr. S. N. Mukherjee,
	:	Sk. Samim Akhter,
	:	Mr. Niraj Gupta.
For the State	:	Mr. Pantu Deb Roy,
	:	Mr. Subrata Guha Biswas.

Heard on : 29/07/2024
Judgment on: 29/07/2024

Rai Chattopadhyay,J.

1. The petitioner is aggrieved that illegally and unauthorisedly the penal charges have been levied against him including the tax/additional tax, vide the impugned notice dated July 9, 2023, for plying his vehicle in West Bengal, allegedly without permit. He is also aggrieved that later on, vide another notice dated January 9, 2024, the said concerned vehicle has been declared blacklisted, by the respondent authority. Total amount claimed from the writ petitioner by dint of the said impugned notice is Rs. 2,70,046/-.

2. The writ petitioner submits that no illegality has been committed by him while plying his vehicle within West Bengal. On the contrary this vehicle, which has originally been registered under the RTA, State of Odisha, (registration No. OD-11B-1398) was requisitioned by the District Magistrate, Purba Medinipur, in exercise of power under Section 127(1) of the West Bengal Panchayat Election Act, 2001, for the purpose of Panchayat Elections, from July 6, 2003 to July 8, 2003. That, the vehicle plied within the State of West Bengal, for the said purpose, during the said period. Admittedly, thereafter, while returning back to the State of Odisha, the vehicle carried the patients. In the midst of its journey towards the home State, the vehicle was intercepted though released thereafter, as it was carrying patients. Later, on July 9, 2003, the impugned challan was issued against the vehicle, to impose taxes, additional taxes and fine as stated above. Such tax and penalty was imposed on the ground of unauthorised plying of the vehicle, without the permit.

3. The writ petitioner is also aggrieved that subsequently, by dint of an order dated January 9, 2004, the vehicle has been declared as "black-listed", by the Regional Transport Officer, Contai, Purba Medinipur, due to non-payment of the penal charges as above.

4. Mr. Mukherjee, learned advocate appearing for the writ petitioner submits that the vehicle of the writ petitioner is requisitioned, by the District Magistrate, Paschim Medinipur for the purpose of being used in election process and in accordance with the statutory provision. Hence, it shall be allowed to ply without the permit, in exercise of the statutory provisions under Section 66(3)(n) of the Motor Vehicles Act, 1988. By referring to Section 21 of the West Bengal Motor Vehicle Tax Act, 1979, Mr. Mukherjee has stated that it would have been reasonable and necessary, if the respondent would have exercised discretion to apply the said provision in case of the writ petitioner. He indicates that in absence of the same, the petitioner has suffered prejudice.

5. It is submitted that, even if any additional tax was to be levied against the said vehicle, the same should have been in due compliance with the provisions of West Bengal Additional Tax and One Time Tax on Motor Vehicles Act, 1989. As such on behalf of the writ petitioner he has sought for quashing of the impugned notice and order of black listing of the vehicle.

6. Mr. Deb Roy, learned advocate is representing the State. He has however, vehemently opposed the contentions and the prayers of the writ petitioner. He says that on the day of the incident i.e. the July 9, 2003, the vehicle was found plying without permit within the State of

West Bengal. He has further stated that the vehicle was also carrying passengers illegally including patients. He indicates that it is only on humanitarian ground, that the vehicle was let to go at the first instance. Hence, according to him application of penal provisions of law is justified against the said vehicle. He insists that no interference be made as to impugned orders.

7. Mr. Deb Roy has further indicated that the writ petitioner shall have an efficacious alternative remedy, in terms of Section 9 of the West Bengal Motor Vehicles Act, 1979, to move the appellate authority, for redress of his grievances.

8. The petitioner has stated on affidavit that the vehicle No. OD-11B-1398, as above, was requisitioned by the District Panchayat Election Officer, that is, the District Magistrate, by dint of his requisition notice dated June 18, 2023. That, the said vehicle was requisitioned from July 6 to 8, 2023. Regarding this fact no objection has been raised by the respondents. The Court has no ground to disbelieve such statement by the petitioner made on affidavit. Therefore, very reasonably, on the subsequent day of the last date of duty, the vehicle has to return to its original place. That date comes to be July 9, 2023, when the vehicle was apprehended, intercepted and subsequently issued with the impugned notice on the same date. Another order for blacklisting of the same followed, which was issued on January 9, 2024, due to non payment of the penalty as per order dated July 9, 2023.

9. The respondents have alleged violation of provisions under Sections 3 and 4 of the West Bengal Motor Vehicles Tax Act, 1979, by the petitioner. Section 3 thereof provides for imposition of tax on every owner of a registered motor vehicle or every person who owns or keeps in his possession or control any motor vehicle. It is also undeniable and a trite law, that a vehicle cannot ply without a permit. Sub-Section (2) of Section 3 of the Act of 1979 has provided that the tax has to be paid at a rate specified in Part-H of the Schedule. The third proviso of Section 3(2) of the said Act is relevant for the purpose of this case, which provides as follows :

> ***"Provided also that if a motor vehicle is brought to West Bengal on transfer after having permanent registration from outside West Bengal, no tax shall be levied on such motor vehicle at the rate specified in Part H of the Schedule"***

10. Hence, a registered vehicle if brought on transfer from outside West Bengal, shall not be taxable. The State has also the power to exempt taxes, under provisions of Section 21 of the Act of 1979.

11. The Court cannot but notice the provision under Section 66(3)(a) and (n) of the Motor Vehicles Act 1988, which says as follows :

> ***"66. <u>Necessity for permits</u>._***
> ************
> ***(3) The provisions of sub-Section (1) shall not apply –***
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> ***(a) to any transport vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise;***
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> ** ** ** ** **
>
> ***(n) to any transport vehicle used for such purposes as the Central or State Government may, by order, specify."***

12. Under Section 66(3) thereof, the exceptions have been carved out from the general provisions of compulsorily holding a permit granted/countersigned by the State, in order to ply a vehicle within the State. According to the relevant provision, a vehicle used for government purposes and unconnected with any commercial enterprise, would not be covered by the provision of law to mandatorily hold a permit. Also, that a vehicle which runs for such a purpose as has been specified by the government to be exempted from such mandatory provision to hold a permit would not be required to do so.

13. In this case, the Court has already recorded its finding and satisfaction regarding the fact that the concerned vehicle was plying within the State of West Bengal, being requisitioned by the authorities under the specific statutory provision and for public purpose. It is well understandable that the same would require a fair amount of time after closure of duty, to return back to its original place. In the petitioner's case, it's duty was over on July 8, 2023. Admittedly, on the following day while plying towards Orissa, the vehicle was intercepted. The respondents have stated that the said vehicle was being used for commercial venture. The petitioner has also asserted the fact that some patients were being taken in the vehicle to AIIMS Bhubaneswar. The petitioner has denied that any commercial purpose was involved. The petitioner has contended that the vehicle was returning back after election duties. There is hardly any reason to disbelieve these statements of the petitioner, until and unless the respondents are able to sufficiently bring on record before the Court regarding falsehood of the contention of the petitioner that the vehicle was plying upon requisition by the state government and for public purpose. The respondents have maintained an uncanny silence in this regard by neither accepting nor denying the said fact, as claimed to be true by the petitioner. By this way, the respondents have evaded its responsibility to justify its stand to be a lawful and reasonable one.

14. Therefore in case of the writ petitioner, both the provisions under Section 66(3)(a) of the Motor Vehicles Act, 1988 and that under 3rd proviso to Section 3(2) of the West Bengal Motor Vehicles Tax Act, 1979 shall be applicable.

15. Also is worth noting the argument advanced on behalf of the petitioner, regarding applicability of the provision of Section 3 of the West Bengal Additional Tax and One Time Tax on Motor Vehicles Act, 1989. On the basis of the connected facts which have emerged to be relevant in this case, as discussed above, the Court is of the opinion that at best the respondents could have been prompted to apply the 1st proviso of Section 3(1) of the Act of 1989, in case of the petitioner and not otherwise. Let the same be quoted here, as follows:

> ***" 3. Additional Tax:-***
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> ** ** ** ** ** ** ** ** **
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> ***Provided that in the case of a motor vehicle registered outside West Bengal, whether temporarily [under Section 43 of the Motor Vehicles Act, 1988] or otherwise and which is used or kept for use in West Bengal temporarily, additional tax shall be payable for every week or part thereof for which the motor vehicle is so used or kept for use in West Bengal, at the rate of one fifty-second part of the additional tax payable for the year."***

16. On the premise as above, the impugned orders dated July 9, 2023, and January 9, 2024, appear to be de-hors the law and unsustainable. It appears to be liable to be set aside.

17. On the other hand, it also appears that in case, if at all, any tax is leviable against the petitioner and for determination of the amount thereof, determination as regards vital questions of fact cannot be avoided. Undoubtedly, regarding the questions of fact, the competent authority to determine about the same would be the tribunal and not a writ Court.

18. Considering all above, the impugned orders dated July 9, 2023 and January 9, 2024, are set aside. The writ petitioner's challenge is hereby relegated to the tribunal, which shall adjudicate upon the quantum of additional tax payable by the petitioner, if any and at all, after taking into consideration the findings of the Court, as above.

19. Till that time, the petitioner shall be at liberty to use the said vehicle, with an undertaking given before the tribunal for production of the same, as and when sought for by the tribunal.

20. The writ petition No. W.P. 4858 of 2024 is disposed of with the directions, as above.

21. The urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rai Chattopadhyay, J.)

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