WPA 7734 of 2024

5.7.2024
Ct. 25,sl.4
sk

Sagar Chakraborty..-vs-The State of West Bengal & Ors.

Mr. Krishnendu Bhattacharya
Mr. Pratik Majumder
Mr. Priyankar Ganguly
Mrs. ShaliniBairagi
Ms. Neelanjana Ghorai
...for the petitioner.

Mr. Srijan Nayak
Mrs. Rituparna Maitra
....for the State respondent.

1) The writ petitioner is aggrieved of the alleged illegal action of the respondents, in detaining his vehicle, that is, a luxury air conditioned bus. He claims that the bus is under coverage of a valid special permit. He is also aggrieved of the impugned claim of motor vehicle tax by the respondents, as against that bus. According to the writ petitioner, the purported action of the respondents, detaining the bus on the allegation of plying without a valid permit and claiming vehicle tax against the same, are illegal and liable to be set aside.

2) Mr. Krishnendu Bhattacharya, appearing for the petitioner, apart from making submissions as regards the merits of the case, has stated that the petitioner has not been granted any opportunity of hearing by the authorities, before imposition of such penal measures against him. Such inaction also violates the principles of natural justice in case of the petitioner, he says. He seeks appropriate relief for the petitioner.

3) The State appears and contests in the case. It has denied and disputed that the vehicle concerned was under cover of any valid permit, at the time of its detention by the authorities. Mr. Srijan Nayak has represented the State. According to him, the vehicle being registered in the State of Orissa, when plying within the State of West Bengal, it has to remit appropriate tax as per the specific provision of the State statute. He has supported the State action in this regard for the reason that neither the vehicle was plying with a valid permit at the time of its detention, not such statutory tax was remitted for its plying within the territorial jurisdiction of the State of West Bengal. Therefore, according to Mr. Nayak, there would not be any cogent reason for interference by this Court and the writ petition should be dismissed.

4) The two specific orders, both dated ***February 24, 2024***, of the respondents, are under challenge in this writ petition. One is for imposition of penalty for plying the vehicle *"without permit/invalid permit/violation of permit"*. The other order is for levying penalty due to alleged offence of tax default. A written representation of the writ petitioner dated ***March 5, 2024***, though submitted, is still pending for consideration by the concerned respondent authorities.

5) So far as the alleged defaulted vehicle is concerned, which bears the Registration No.***OR05AK3344***, the same has been registered in the State of Orissa. It is under coverage of a valid insurance policy, from November 16, 2023 to November 15, 2024. The

vehicle has been granted certificate of fitness. The petitioner has remitted MV Tax and additional MV Tax for the month of February 2024, before the competent authority at Mayurbhunj, Odisha. ***A special permit*** was issued by the RTA Orissa, for the said vehicle of the writ petitioner, on ***February 24, 2024***, covering the route Chatia to Chatia, via Disha, Kharagpur, Kolkata, Namkhana, Mayapur, Murshidabad, Tarapith, Bakreshwar, Baghmundi-Bankura. To this extent there would not be any apparent illegality for the writ petitioner to ply the vehicle on the date of alleged confiscation thereof, that is, February 24, 2024.

6) However, on careful scrutiny of the permit and other documents, it would be evident that at the time of confiscation of the vehicle, that is, at ***7.50 hrs*** in the morning on the said day, the special permit had not been issued by the authorities. The said 'special permit' has been issued only at ***20.45 hrs*** on the same date, which is after about twelve hours from the time of confiscation of the vehicle. However, evidently, even after issuance of the special permit, the same has not been taken into consideration by the present respondents.

7) Evidently also, the writ petitioner has remitted due motor vehicle tax for the said vehicle, at the office of the competent authority, at Orissa. The respondents have not disputed the said facts. However, it is the contention of the respondents that in order to ply his vehicle within the State of West Bengal, he has to remit due tax as per the provisions of the State taxation statute. It is also submitted that he has been penalised for non-compliance of the provisions of the State taxation statute, and non-submission of the State tax. The writ petitioner, in turn, has denied to be liable to pay any tax in West Bengal, after duly remitting the MV Tax and additional taxes in the State of Orissa.

8) There are contradictory claims of the parties in this case. Whereas the respondents have not denied payment of tax by the petitioner in the state of Orissa, such payment as per the State Act, West Bengal, is denied. Per contra, according to the petitioner, he would not be liable to pay any tax, other than the same, which he has already submitted at Orissa. Apart from this, the petitioner has claimed to be covered under the valid permit dated February 24, 2024. As regards this, the respondents have denied such contention of the petitioner for the reason that according to the respondents at the time of confiscation of the vehicle, no such special permit was in existence. The respondents have also not denied the fact as alleged that before imposition of penalty, the petitioner has not been granted any opportunity of hearing.

9) In such view of the matter, the Court finds it proper to dispose of the present writ petition, with the following directions:

(i) The respondent No.2 is directed to consider and decide upon the prayer of the petitioner vide his letter dated

March 5, 2024, with the aid of the annexed documents in this writ petition;

(ii) For this purpose, the petitioner shall supply a copy of the writ petition along with all its annexures, in the office of the respondent No 2;

(iii) The respondent No. 2 shall grant opportunity of hearing to the writ petitioner and also to any other person/persons, as it may deem fit and proper, while deciding upon the petitioner's prayer, as above;

(iv) The respondent No. 2 shall dispose of the matter by dint of a reasoned order and within a period of two weeks, from the date of submission of the copy of the writ petition, by the petitioner, in the office of the respondent No.2.

(v) Let, in the meantime, the vehicle No.OR05AK3344be released by the said respondent, in favour of the writ petitioner, with the undertaking to produce the same as and when called for;

(vi) It is, however, made clear that, in case after the hearing, the finding of the respondent regarding commission of the said alleged offence by the present petitioner is sustained, the respondent shall be at liberty to take appropriate steps against the writ petitioner, in accordance with law. Till that time the said respondent shall refrain to act upon any further with respect to the said two orders dated February 24, 2024, as impugned in this case.

10) The writ petition being WPA No.7734 of 2024, is disposed of.

11) Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities

(Rai Chattopadhyay, J.)