

A PRAHLAD SINGH & ANR.
v.
STATE OF U.P. & ORS.
(Civil Appeal No. 3325 of 2009 Etc. Etc.)

B MAY 6, 2009

B [DR. ARIJIT PASAYAT, V.S. SIRPURKAR AND ASOK
KUMAR GANGULY, JJ.]

Uttar Pradesh Motor Vehicles, Taxation Act, 1997:

C s. 4 and First Schedule, Part D, Article I, item 7,
Explanation, and Article II – Road Tax – Imposition of tax –
55 seater Stage Carriage – Demand of additional tax at the
D rate of Rs. 45/ – for every metric ton – Held: High Court was
right in holding that if the vehicles were covered under more
than one Articles of Part-D of the First Schedule to the Act,
then the highest rate mentioned under either of the Articles
would be payable – Article II of Part-D of the First Schedule
operates when goods were carried and it does apply to
E passengers' luggage.

The appellants filed writ petitions before the High
Court challenging vires of Article II of Part D of the First
Schedule to the Uttar Pradesh Motor Vehicles Taxation
Act, 1997 and the order dated 30.10.2000 passed by the
F Transport Commissioner. The case of the petitioners was
that they were Stage Carriage Operators operating their
buses under the permanent Stage Carriage permit
granted to them and they had paid road tax u/s 4 of the
United Provinces Motor Vehicles Act, 1935. It was
G submitted that with the coming into force of the 1997 Act,
the demand for additional tax at the rate of Rs. 45/- for
every metric ton in terms of Article II of Part D of the First
Schedule to the Act was not applicable to them and they
were required to pay in terms of Article I, Item 7, as they

were carrying more than 35 passengers. The High Court dismissed the writ petitions holding that if the vehicles of the petitioners were covered under more than one Articles of Part D of the First Schedule to the Act, then the highest rate mentioned under either of the Articles would be payable. Aggrieved, the writ petitioners filed the appeals.

Disposing of the appeals and the writ petitions, the Court

HELD: Because of the Explanation to Item 7 of Article I of the Part D of First Schedule to the U.P. Motor Vehicles Taxation Act, 1997, the view expressed by the High Court is the correct one. Article II of Part D of the First Schedule to Act operates when goods were carried and it does apply to passengers' luggage. [Para 9 and 12 [930-A; 933-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3325 of 2009.

From the Judgment & Order dated 28.8.2000 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 1157 of 2000.

WITH

C.A. No. 3326/2009, 3327/2009, 3328/2009, 3329/2009, 3330/2009, 3331-3332/2009 W.P.(C) No. 40/2007, 39/2007.

Rani Chhabra, Pradeep Misra, Sooraj Singh and Daleep Dhyani for the Appellant.

S.K. Dwivedi, AAG, R.K. Gupta, Rajiv Dubey, Kamendra Mishra and Jatinder Kumar Bhatia for the Respondents.

The Judgment of the Court was delivered by

A **DR. ARIJTI PASAYAT, J.** 1. Leave granted.

2. Challenge in these appeals is to judgment of a Division Bench of the Allahabad High Court. Several Petitions were disposed of by a common judgment and the writ petitions were dismissed. The writ petitioners had questioned the vires of Article II of Part D of the First Schedule of the Uttar Pradesh Motor Vehicles Taxation Act, 1997 (hereinafter referred to as the 'Taxation Act'). Order dated 30.10.2000 passed by the Transport Commissioner, U.P., Lucknow was also questioned. The High Court noted that in the meeting held on 20.4.1999 decision was taken by the Transport Commissioner not to realize the Additional Tax at the rate of Rs.45/- per metric ton as provided under Article II of Part D of the First Schedule of the Taxation Act. By order dated 30.10.2000 the Transport Commissioner had informed all his subordinate authorities that the decision had since been revoked and tax in accordance with law was to be realised.

3. According to the writ petitioners they were Stage Carriage Operators, they have own buses and operate them on the strength of permanent Stage Carriage Permit granted in their favour by the Regional Transport Authority. Prior to the commencement of the Taxation Act, taxes were realised from the transport operators under the provisions of different enactments enacted i.e. United Provinces Motor Vehicle Taxation Act, 1935, Motor Gadi (Yatri Kar) Adhinyam, 1962 and U.P. Motor Gadi (Maal Kar) Adhinyam, 1963.

4. The Taxation Act replaced the aforesaid three acts and it became operative from 9.11.1998. The writ petitioner contented that they had paid road tax under Section 4 of Uttar Pradesh Motor Vehicle Taxation Act, 1935 (in short the 1935 Act) which was replaced by Section 4 of the Taxation Act. They had paid a tax at the rate of Rs.2015/- per quarter inclusive of Rs.45 for the luggage of passengers in respect of 55 seater vehicle. With the coming into force of the Taxation Act the Authorities started demanding additional tax at the rate of

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Rs.45/- for every metric ton on the gross vehicles weight of the vehicle or part thereof in terms of Article II of Part D of the First Schedule of the Act. On protest being raised by the transport operators a decision was taken by the Transport Commissioner on 20.4.1999 and direction was issued to the subordinate authorities to obtain affidavit from the Stage Carriage operator to the effect that they do not carry goods in their vehicle except the personal luggage of the passengers and on filing of such affidavit the tax demanded under the new provision shall not be realised from them.

5. The High Court held that in a vehicle which is covered by the Stage Carriage Permit, luggage of the passengers as also the goods are permitted to be carried. The only restriction is that the weight of goods and passengers luggage and that of the passenger including the weight of unladen vehicle should not exceed the gross vehicle's weight.

6. The High Court after referring to various provisions observed that Article II is attracted when passengers' goods whether it is personal luggage of the passenger or not is transported in the vehicle. Thus the State Carriage Permit holder were liable to pay tax under Article II of Part D of the First Schedule of the Act. Therefore, the Writ Petitions were dismissed. It was the stand of learned counsel for the appellants that since goods have not been defined under the Taxation Act, in view of the specific provisions of the Taxation Act i.e. Section 2(o) recourse to the definition given in the Motor Vehicles Act, 1988 (in short the 'Act') has to be taken.

7. It was submitted that there is no scope for carrying any goods of the passengers and in fact they had not carried any such goods in the Stage Carriage, except the personal luggage and, therefore, they were not liable to pay any tax under the aforesaid Article.

8. Learned counsel for the respondent-State on the other hand supported the judgment of the High Court.

A 9. Some of the relevant provisions of the Taxation Act read as follow:

"U.P. MOTOR VEHICLES TAXATION ACT, 1997:

B 2. Definitions. In this Act,

a) "additional tax" means a tax imposed under Section 5 or Section 6 in addition to the tax imposed under Section 4.

C d) "goods carriage" means motor vehicle constructed or adapted wholly or partly for use for the carriage of goods, or any motor vehicles not so constructed or adapted when used for the carriage of goods either solely or in addition to passenger, and includes a trailer but does not include a motor cab, or a maxi cab or a contract carriage or stage carriage where such contract carriage or stage carriage is authorised to carry a limited quantity of load;

E e) "limited quantity of load" means such quantity of load, not exceeding the limits determined by the Transport- Commissioner, Uttar Pradesh, as the Registering Authority may specify in the registration certificate in respect of a vehicle.

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(1) "tax" means any tax levied under section 4;

G (o) words and expressions used but not defined in this Act and defined in the Motor Vehicles Act, 1988, shall have the respect meaning assigned to them in that Act,"

4. Imposition of Tax -

H (1) Save as otherwise provided in this Act or the rules made thereunder, no motor vehicle other than a transport

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vehicle, shall be used in any public place in Uttar Pradesh unless a one-time tax at the rate applicable in respect of such motor vehicle, specified in Part 'B' of the First Schedule has been paid in respect thereof;

Provided that in respect of an old motor vehicle, instead of a one-time tax, annual tax at the rate applicable to such motor vehicle as specified in Part 'C' of the First Schedule may be-paid.

(2) Save as otherwise provided by or under this Act no transport vehicle shall be used in any public place in Uttar Pradesh unless a tax at the rate applicable to such motor vehicle, as specified in Part 'D' of the First Schedule has been paid in respect thereof.

(3) Where any motor vehicle other than a transport vehicle, in respect whereof one-time tax has been paid, is operated as a transport vehicle, the tax payable under this Act on such transport vehicle shall be payable."

Sub-Section (2) of Section 4 further provides that tax is to be paid at the rate specified in Part D of First Schedule. Under Part D Petitioners are required to pay in Article I Item 7 as they have been carrying more than 35 passenger. The said item No.7 for ready reference reads as follows:

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"7 With seating capacity for more than exclusive of the driver;

a) if intended for use on "A-Class" route Rs. 1115.00+ Rs. 45.00 for

Every seat in excess of thirty five seats.

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under either of the Article would be payable. To give an illustration, if a vehicle falls under Article I and also under Article II of part D of the 1st Schedule, then the amount of tax payable under both the Articles have to be calculated and the amount which is higher shall be payable. The amount payable by a vehicle owner, if his vehicle under Article II, would be higher than the amount payable under Article I as under Article II the amount which is payable is in addition to the amount payable under Article I and not limited to only Rs.45/- per ton."

12. In our opinion because of the explanation the view expressed as noted above indicates the correct view, Article II operates when goods are carried and it does apply to passengers' luggage.

13. The appeals are accordingly disposed of. There shall be no orders as to costs.

R.P.

Appeals and writ Petitions disposed of.