

BBN Passenger Cooperative Transport Society Ltd. Vs. State of H.P. an Ors.

CWP No. 5400 of 2024

01.10.2024 Present: Mr. Ajay Shama, Sr. Advocate, with Ms. Kavita Kajal Mahajan, Advocate, for the petitioner.

Mr. Anup Rattan Advocate General with Mr. Sushant Keprate, Additional Advocate General, for the respondents/ State

CWP No. 5400/ 2024 & CMP No.17795/2024

1. The substantive prayers made in the writ petition read as follows:

“i) *That the impugned acts of the respondents above stated which amounts to executive in action may kindly be quashed and set aside with directions to the respondents to immediately and forthwith convene meeting of the heads of the departments of Excise & Taxation and Transport department along with members of the petitioner society and individuals running contract carriage vehicles and to put the issues at rest for all times to come.*

ii) *That directions may be issued to the respondents to immediately and forthwith started [sic start] receiving SRT may be by taking necessary remedial measures in the software of the transport department for ensuing periods.*

... ..

vii) *Respondents may be directed to fix payment of SRT @ 1500/- per seat per annum in the interest of law and justice.”*

2. The record shows that on 04.09.2020, the Government of Himachal Pradesh [hereafter referred to as the “Government”]

transferred administrative control of the Passenger and Goods Tax [in short “PGT”] from the Excise & Taxation Department to the Transport Department.

3. The aforementioned Notification was followed by another Notification dated 06.12.2021, whereby in continuation of the Notification dated 09.01.2006, the Government ordered that a “Special Road Tax” [in short “SRT] would be levied, charged, and paid to the Government in lieu of PGT.

4. On 09.10.2023, the Government notified a Special Policy for one time waiver of penalty/interest due on SRT (in lieu of PGT up to 31.12.2021) to bring about the implementation of the policy and enable its levy and collection by the Transport Department *albeit* w.e.f. 01.01.2022 as per the provisions of Section 3A of Himachal Pradesh Motor Vehicles Taxation Act, 1972/rules made thereunder.

4.1 The change in policy as incorporated in the Notification dated 09.10.2023 applied to commercial vehicles up until 31.12.2023.

5. As per the petitioner, the waiver concerning penalty and interest due on SRT up to 31.12.2021 could only be availed if clearance to that effect concerning the previous three (3) years was obtained from the Excise & Taxation Department. The Transport Department insisted on the

clearance if contract carriage vehicles were to get the benefit of waiver of penalty and interest due on SRT till 31.12.2021.

4. The petitioner was unable to obtain such clearance from the Excise & Taxation Department as 'Fare' under Section 67 of the Motor Vehicles Act, 1988 [hereafter referred to as the "1988 Act"] was not determined. The earlier avatar of SRT, as noticed above, PGT, was, according to the petitioner, always charged on a lump-sum basis. Therefore, the petitioner and persons similarly circumstanced could only produce receipts that evidenced payment of PGT. The Transport Department, however, refused to accept the receipts, which according to the petitioner, established payment of PGT.

5. The record also discloses that the Government, in supersession of the Notification dated 06.12.2021, issued a Notification dated 01.11.2023, which *inter alia* provided that SRT shall be levied, charged, and paid to the Government on the stipulated categories of Transport vehicles used or kept for use in Himachal Pradesh.

5.1 For instance, on 'Contract Carriage' vehicles with 23 or more seats, SRT could be levied at the rate of Rs. 1500/- per seat per annum. Likewise, for 10 or more but less than 23 seats, SRT was to be

levied at the rate of Rs.1000/- per seat per annum. Furthermore, this very Notification also adverted to the following:

*“This notification in respect of newly registered vehicles shall come into effect from the date of publication in Rajpatra (e-Gazettee), Himachal Pradesh. In case vehicles already registered under The Himachal Pradesh Passenger and Goods Taxation Act, 1955, Department of Excise shall collect Passengers and Goods Tax till 31 December, 2021 and stop collecting Passenger and Goods Tax from 01.01.2022 and issue No Objection and Tax Clearance (NOTC) certificate in favour of such operators so that simultaneously Department of Transport could start collecting Special Road Tax from all owners of vehicles from 1st January, 2022. In case of operators who have paid PGT for the whole year can also start paying Special Road Tax with the Department of Transport **on production of NOC issued by the Excise and Taxation Authority to the concerned taxation authority.**”*

[Emphasis is ours]

6. According to the petitioner and persons similarly circumstanced, had difficulty in availing the benefit of Notification dated 01.11.2023 because it had to obtain a NOC from the Excise & Taxation Authority for the period prior to 01.01.2022. As noticed above, the petitioner’s submission is that PGT was being collected on a lump sum basis, ranging from Rs.5,000/- to Rs.10,000/- per annum. The petitioner also avers that PGT was never collected as per the notifications issued by the Government at the point in time when the Excise & Taxation Depart-

ment was charged with the responsibility of levying and collecting the said tax. The reason why according to the petitioner PGT was collected on a lump sum basis was because 'Fare', which was required to be determined under Section 67 of the 1988 Act had not been ascertained. It is against this backdrop that the petitioner and persons similarly circumstanced have approached the Court after their representations to the respondents did not yield any results.

7. Mr. Anup Rattan, learned Advocate General, says that fares were fixed as per Schedule-I of the Himachal Pradesh Passengers and Goods Taxation Act, 1955 [hereafter referred to as the "1955 Act"]. In other words, according to Mr. Anup Rattan, tax had to be paid at the rate of 40% of the 'Fare', besides surcharge which is payable at the rate of 20% per seat per kilometer in terms of Section 3A of the 1955 Act.

8. Mr. Ajay Sharma, learned senior counsel, who appears on behalf of the petitioner, disputes this position. According to Mr Sharma, the 1955 Act and the provisions relied upon by Mr. Anup Rattan, learned Advocate General, concern the unamended version of the Act.

9. That said, Mr. Ajay Sharma, learned senior counsel, says that the petitioner would be willing to pay SRT with effect from 01.01.2022 at the rate of Rs.1500/- per seat per annum for vehicles

having 23 or more seats and at the rate of Rs. 1000/- per seat per annum for vehicles having 10 or more but less than 23 seats, in terms of Notification dated 01.11.2023. Further, Mr. Ajay Sharma adds that the petitioner should also not be called upon to pay penalties and interest for the period mentioned above.

10. As regards the period before 01.01.2022 commencing from 06.12.2021, Mr. Ajay Sharma says that the matter requires adjudication given the stand taken by the respondents.

11. In rejoinder, Mr. Anup Rattan, learned Advocate General submits that there is a dispute concerning the period spanning between 06.12.2021 and 01.01.2022 as to the manner in which the tax was levied, charged, and collected by the respondents.

11.1 It is Mr. Rattan's stand that the petitioner's contention that PGT was collected on a lump sum basis, is not correct.

12. Having heard learned counsel for the parties, we are of the view that, for the moment, the following *pro tem* directions can be issued.

- i) The petitioner shall pay tax, *albeit*, at the following rates on a lump sum basis:
 - a) For vehicles having a capacity of 10 or more but less than 23 seats – at the rate of Rs.1000/- per seat per annum.

- b) For vehicles having a capacity of 23 or more seats at the rate of Rs. 1500/- per seat per annum.
- ii) For the present, no penalty or interest will be charged.
- iii) Lump-sum tax for the period before 01.01.2022 commencing from 06.12.2021 will be paid by the petitioner within eight (8) weeks.

13. A definitive view would be taken after hearing further arguments from both sides.

14. Upon payment of tax, the necessary Fitness Certificate and Renewal of Permit will be issued by the respondents/Department.

15. List on **03.12.2024**.

(Rajiv Shakdher)
Chief Justice

(Satyen Vaidya)
Judge

01st October, 2024
(Sumit)