

Jagir Singh & Ors. Etc. Etc vs State Of Bihar & Anr. Etc. Etc on 26 November, 1975

Equivalent citations: 1976 AIR 997, 1976 SCR (2) 809, AIR 1976 SUPREME COURT 997, 1976 2 SCC 942, 1976 TAX. L. R. 1549, 1976 2 SCR 809, 1976 SCC (TAX) 204, 1976 PATLJR 389

Author: A.N. Ray

Bench: A.N. Ray, Kuttyil Kurien Mathew, N.L. Untwalia

PETITIONER:

JAGIR SINGH & ORS. ETC. ETC.

Vs.

RESPONDENT:

STATE OF BIHAR & ANR. ETC. ETC.

DATE OF JUDGMENT 26/11/1975

BENCH:

RAY, A.N. (CJ)

BENCH:

RAY, A.N. (CJ)

MATHEW, KUTTYIL KURIEN

UNTWALIA, N.L.

CITATION:

1976 AIR 997 1976 SCR (2) 809

1976 SCC (2) 942

CITATOR INFO :

D 1976 SC1074 (27)

F 1992 SC 117 (3)

ACT:

Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961-Sec. 3-'Owner'-If includes any person for the time being in charge of the Vehicle-Liability to pay tax-On whom rests.

HEADNOTE:

Section 2(d) of the Bihar Taxation on Passengers and Goods (carried by Public Service Motor Vehicles) Act, 1961, defines "owner" as the owner of a public service motor vehicle and includes the holder of a permit under the Motor

Vehicles-Act, 1939, in respect of a public service motor vehicle or any person for the time being in charge of such vehicle or responsible for the management of the place of business of such owner. Section 3(2) of the Act provides that every owner shall pay to the State Government the amount of tax due under s. 3. Sub-Section 3 provides that every passenger carried by a public service motor vehicle and every person whose goods are carried by such vehicle shall be liable to pay to the owner the amount of tax payable under s. 3 and every owner would recover such tax from such owner or person as the case may be.

There are identical provisions in the different State Acts. The term "operator" used in some Acts, instead of the word "owner", means any person whose name is entered in the permit as the permit-holder or any person having the possession or control of such vehicle.

In a petition under Art. 32 of the Constitution it was contended that the words "or any person for the time being in charge of such vehicle" in the definition of "owner" mean that if there are two types of owners for a particular vehicle, it will be the owner who transports the goods carried by the vehicle who is responsible to pay the tax.

Dismissing the petition,

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HELD : The liability to pay tax is of the permit-holder in all cases. The permit-holder is the owner within the definition of the word "owner" in the Bihar and other State Acts and is also the "operator" within the meaning of the word "operator" in other Acts. [817G-H]

(1) The definition of the term "owner" is exhaustive and intended to extend the meaning of the term by including within its sweep bailee of a public carrier vehicle or any manager acting on behalf of the owner. The intention of the Legislature to extend the meaning of the term by the definition given by it will be frustrated if what is intended to be inclusive is interpreted to exclude the actual owner. [815H]

(2) The words "or any person for the time being in charge of such vehicle or responsible for the management of the place of business of such owner" indicate that the permit-holder will include any person who is in charge of such vehicle or any person who is responsible for the management of the place of business of such owner. The owner cannot escape the liability by stating that any person is for the time being in charge of such vehicle and, therefore such person is the owner and not the permit-holder. [815E]

(3)(a) Once it is found that the Legislature levies tax on passengers and goods carried by public service motor vehicles, it becomes the responsibility of the owner of the vehicle not to permit the vehicle to be used until the tax is paid. [816D]

(b) The operational arrangement has no relevance to the liability to taxation. The person who allows his vehicle to

be used for the purpose of carrying goods or passengers is the permit-holder and, therefore, the liability to pay tax attaches to the permit-holder as the owner of the vehicle. The fact that

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these licensed agents have to furnish the operators with correct figures of freight-receivable by them shows not only that they are accountable to the owners or operators but also that licensed agents are not the owners or operators. [816C; 817E]

(c) Section 59 and 61 of the Motor Vehicles Act, 1939, indicate that a permit cannot be transferred. [817G]

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petitions Nos. 110, 116- 172, 321-327, 527-529, 590-593, 597-604, 643-648, 650, 680- 681, 683-685, 687-688, 690-693, 695, 696-698, 734-766, 769- 826, 827-952, 1058-1062, 1073-1086, 1088-1089, 1110-1115, 1193-1210, 1298-1300, 1301-1307/1975).

(Petitions Under Article 32 of the Constitution of India).

AND WRIT PETITIONS NOS. 576-577, 578-584 AND 607/1975. For the Petitioners:

In WPs. Nos. 110, 116-172, 643, & 607/75: M/s. K. B. Rohatgi, D. N. Gupta and V. K. Jain, Advocates.

In WPs. Nos. 688, 852-863, 664-952, 1058-1062, 1073- 1086, 1298-1300, 1304-1307/75: M/s. M. S. Ratta and S. K. Sabharwal, Advocates.

In WP. Nos. 321-327, 527-529, 590-593, 650, 691, 697, 698, 1088-1089, 1110-1115 & 1193-1210/75: S. T. Desai, Senior Advocate (In WP. No. 321-327 only) (M/s. B. R. Kapur (In WPs. Nos. 527-529 & 321-327) and T.S. Arora, Advocates, with him).

In WP. Nos. 597-604, 644-647, 683-685, 687, 692, 576, 578-579, 580-584/75: M/s. M. S. Ratta and S. K. Sabharwal, Advocates.

In WP. Nos. 680-681, 689, 695-696/75: S. C. Patel, Advocate In WP. Nos. 690-693/75: C. K. Ratnaparkhi, Advocate For the Respondents:

In WPs. Nos. 110, 116-172, 590-593, 650, 697 and Respondent Nos. 1 & 3.

In WPs. Nos. 647 & 693, Respondent Nos. 1, 3 & 4. In WPs. Nos. 597, 576, and Respondent No. 1 In WP. No. 577 & 1193-1210/75 : Balabhadra Prasad Singh, Advocate General for the State of Bihar.

(In WP. Nos. 110, 116-172, 321-327) U. P. Singh, Advocate in all other matters.

For Respondent No. 1, 7 & 13, (In WP. No. 601/75), Respondent No. 1, 3, 4 (In WP. No. 680 & 688, Respondent No. 1 & 5 In WP. 691, Respondent No. 1 & 9 In WP. No. 578-79, Respondent No. 4 & 5 in WP. No. 600, 1073-86. Respondent No. 6 in WP. No. 690 and Respondent No. 7 in WP. No. 599/75: M. C. Bhandare Senior Advocate, (In WP. Nos. 601, and 602/75 only), N. N. Goswami (In WP 769-806/75) and R. N. Sachthey (In all other petitions), Advocates, with him).

For Respondent No. 1 & 7 In WP 603, Respondent No. 1, 5-7 In WP. No. 645, 695, Respondent No. 1 and 5-7 In WP. No. 1073-1086, Respondent No. 1 & 7 In WP. No. 584 and For Respondents In WP. 1208-1300: G. N. Dikshit, Senior Advocate (In WP. No. 603 only), O. P. Rana, Advocate, with him in all the petitions).

For Respondent No. 1 In WP. No. 598, 646, 692 and for Respondents. In 581-82/75: L. M. Singhvi, Advocate General for the State of Rajasthan and S. M. Jain, Advocate.

Respd. No. 1, 3, 4, 6, 8 In WP. No. 604, Respdts In WP. No. 643, 698, 1110-1115, and Respd. No. 1, 7 & 8 In WP. 683-84, Respd. No. 1, 6, 8 In WP. No. 696, Respondents in WP. No. 607 and 1088-89/75: I. N. Shroff, Advocate.

For Respondent No. 1 & FP. 602, Respd. 8 In WP 598 & 646, Respd. 1 In WP. No. 599 and 687, Respd. Nos. 1 & 5 In WP. No. 685 and Respondents 1, 5/3 In WP. No. 689/75: V. S. Desai Senior Advocate (In WP. Nos. 646 & 689/75), M. N. Shroff, Advocate, with him).

For Respd. Nos. 1, 5, 6, 10 In WP. No. 600, Respd. Nos. 2 & 5 In WP. 691 and Respondent Nos. 1 In WP. No. 689/75: O. P. Sharma Advocate.

For Respondent No. 1 (In WP. Nos. 734-736/75: B. R. G. K. Achar, Advocate.

The Judgment of the Court was delivered by RAY, C.J. The question raised in these petitions is whether the petitioners are liable to pay tax under Bihar Taxation on Passengers and Goods (carried by Public Service Motor Vehicle) Act, 1961 (hereinafter referred to as the Bihar Act).

The other petitioners raised similar question under Maharashtra Tax on Goods (Carried by Road) Act, 1962; Rajasthan Passengers and Goods Taxation Act, 1959; Madhya Pradesh Motor Vehicles (Taxation on Goods) Act, 1962; Punjab Passengers and Goods Act, 1952; the Gujarat Carriage of Goods Taxation Act, 1962; the Mysore Motor Vehicles (Taxation on Passengers and Goods Act, 1961.

Reference may be made to the Bihar Act as typical of all the cases covered by these petitions. The pattern of all the Acts is similar.

At the outset it may be stated that the validity of the Bihar Act was some years back challenged with regard to retrospective operation of the Act. This Court in Civil Appeals No. 16 and 17 of 1963

-Rai Ram Krishna & Ors. v. State of Bihar decided on 11 March, 1963 and reported in A.I.R. 1963 S.C. 1667 upheld the retrospective operation of the Bihar Act.

Section 3 of the Bihar Act is the charging section. That section provides that on and from the date on which this Act is deemed to have come into force there shall be levied and paid to the State Government a tax on passengers and goods carried by a public service motor vehicle.

The other two relevant provisions in the Bihar Act are sub-sections (2) and (3) of the charging section 3 of the Act. The said sub-section (2) provides that every owner shall, in the manner prescribed in section 9, pay to the State Government, the amount of tax due under section 3. Sub-section (3) provides that every passenger carried by a public service motor vehicle and every person whose goods are carried by such vehicle shall be liable to pay to the owner the amount of tax payable under section 3 and every owner shall recover such tax from such owner or person as the case may be.

When the Act came into force such tax was levied and paid at the rate of twelve and a half per cent of the fares and freights payable to the owner of such vehicle. The rate of tax was raised to twenty per cent under a notification dated 25 May, 1973.

There is also a provision in the Bihar Act for lumpsum payment in lieu of the tax at Rs. 320 per month per vehicle. Formerly, the lumpsum was Rs. 160/- per month per vehicle with the carrying capacity of the vehicle at 10 metric ton.

Section 9 of the Bihar Act speaks of payment and recovery of tax. That section provides that before any owner furnishes any return under this Act he shall, in the prescribed manner, pay into the Government Treasury the full amount of tax due from him under this Act according to such return and shall furnish along with the return a receipt from such treasury showing payment of the said amount. Further if any owner fails, without any reasonable cause, to make payment of the tax due from him according to the return furnished under section 6, the prescribed authority may direct that the owner shall, in addition to the amount of tax payable by him, pay by way of penalty, a sum not exceeding five rupees for every day after the expiry of the period prescribed under the said section. The amount of tax and penalty, if any which remains unpaid after the date specified in the notice issued shall be recovered as an arrear of land revenue.

The provisions in the different Acts in different States are identical to the provisions in the Bihar Act. The only material difference in the Maharashtra, Gujarat and Mysore Acts is that instead of the word "owner" of public vehicle the word used is the "operator" of public vehicle.

The expression "owner" is defined in the Bihar Act in section 2(d) thereof as follows:-

" "Owner" means the owner of a public service motor vehicle in respect of which a permit has been granted by a Regional or State Transport Authority under the provisions of the Motor Vehicles Act, 1939 and includes the holder of a permit under the said Act in respect of a public service motor vehicle or any person for the time

being in charge of such vehicle or responsible for the management of the place of business of such owner".

In the Maharashtra Act "operator" means any person whose name is entered in the permit as the permit holder or any person having the possession or control of such vehicle.

In all these petitions the petitioners are all holders of permit in respect of public service motor vehicles. The main contention of the petitioners is that the vehicles are hired by booking or forwarding agencies who have direct link with persons whose goods are carried on the hired transport vehicles and they collect the fare and freight as well as the tax, and, therefore, they should be liable for the tax and not the petitioners.

The petitioners contend that the definition of "owner" speaks of the following two types of owners. The first type is the owner of a public service vehicle in respect of which a permit has been granted to such owner. The second category of owner is the person who is in charge of such a vehicle for the time being and where a vehicle is in charge of such a person he is alone to be regarded as an owner of the vehicle. The petitioners contend that the words "or any person for the time being in charge of such vehicle" in the definition of "owner" would indicate that the transport or booking agencies which would take the public service motor vehicle on hire would be owners within the definition of the word without being permit holders in respect of these public service motor vehicles.

The petitioners rely on the words "or any person for the time being in charge of such vehicle" to show that when the vehicle is in charge of a person who is not the holder of the permit he is regarded as an owner of the vehicle because he carries the goods and unless he is regarded as the owner, the consignor of the goods would not be liable to pay the tax to the person for the time being in charge as the owner within the meaning of the definition. The petitioners amplify the contention to mean that if there are two types of owners for a particular vehicle it will be the owner who transports the goods and collects the tax, who alone is responsible to pay to the Government the tax on goods carried by the vehicle.

The petitioners also rely on the definition of "agent" in the Bihar Public Carrier (Licensing of Collecting, Forwarding and Distributing Agents) Rules, 1971 hereinafter referred to as the Bihar Public Carrier Rules. In these Rules "agent" is defined to mean any person who engages directly or indirectly in the business of (a) collecting (b) collecting and forwarding (c) forwarding and distributing and (d) collecting, forwarding and distributing goods carried by any public carriers. The petitioners rely on the aforesaid definition of "agent" and the following Rules in support of the contention that transport companies or booking agencies can be engaged in forwarding and distributing goods without holding permits in their names and thus become owners in charge of the vehicles within the definition of "owners". The petitioners rely on Rule 8 of the Bihar Public Carrier Rules to show some conditions for licences. Rule 8(g) mentions that the licensee shall furnish the operators with correct figures of the freight receivable by them from the consignors or the consignees. Rule 8(e) states that the licensee shall maintain a proper record of the vehicles under his control and of the collection, despatch and delivery of goods which shall be open to inspection by the State Transport Authority. Rule 8(i) shows that the licensee shall ensure that the goods vehicles

under his control have valid permits for routes on which the vehicles have to ply.

The petitioners further contend that in any event no machinery is provided in the Act or in the Rules as to how the petitioners can collect tax from the consignor of the goods or force the consignors to pay the tax to them before their goods are carried. The petitioners rely on the provisions in section 3(3) of the Bihar Act that the person whose goods are carried shall be liable to pay to the owner and every owner shall recover such tax from such passengers or persons as the case may be in support of the contention that the owner is merely a depositor of the tax if the tax is paid to the owner. The petitioners rely on section 10(1)(a) of the Bihar Act which provides that any person from whom any money is due or may become due to an owner, who has failed to comply with a notice served upon him under section 9, or any person who holds or may subsequently hold any money for or on account of such owner, may be directed to pay into the Government Treasury the tax and contend that the petitioners who lend their trucks to transport agencies are not liable to pay the tax and the transport agencies can be directed to pay the tax.

The Bihar Act and the other Acts in the charging section enact that there shall be levied and paid to the State Government a tax on all passengers and goods carried by public service motor vehicles. The charging section further requires every owner to pay the amount of tax as mentioned in section 9 of the Bihar Act. Section 9 of the Bihar Act states that the amount of tax or penalty payable by an owner shall be paid in the manner provided. The other provisions in the Bihar Act are these. Section 6 states that every owner shall furnish to the prescribed authority such returns as may be prescribed. Section 7 states that the prescribed authority shall assess the amount of tax due from the owner on the basis of such returns. Section 8 provides that the prescribed authority may permit an owner to pay, in lieu of the tax payable by him, such amount as may be fixed by the Commissioner in the prescribed manner. Section 9 enacts that the amount of tax or penalty, if any, payable by an owner under this Act shall be paid in the manner hereinafter provided. Section 10 speaks of special mode of recovery and states that notwithstanding anything contained in section 9 or any law, the prescribed authority may at any time by notice in writing direct any person from whom any money is due or may become due to an owner who has failed to comply with a notice served upon him under section 9, or any person, who holds or may subsequently hold any money for or on account of such owner is directed to pay into the Government Treasury in the manner specified in a notice so much of the money as is sufficient to pay the amount due from the owner. Section 11 mentions that where an owner, liable to pay tax, transfers his public service motor vehicle to another person, the transferor and the transferee shall jointly and severally be liable to pay the amount of tax and penalty. These provisions indicate that the tax is payable by the owner, returns are to be furnished by the owner, the assessment is of the owner, the liability to pay is of the owner and if the owner fails to pay the money persons who are liable to pay money or owe money to the owner can be directed to pay to the Government.

The definition of "owner" repels the interpretation submitted by the petitioners that the definition means not only the owner who is the permit holder but also a booking agency who may be in charge of the vehicle without being a permit holder. The entire accent in the definition of owner is on the holder of a permit in respect of the public service motor vehicle. It is the permit which entitles the holder to ply the vehicle. It is because the vehicle is being plied that the passengers and consignors

of goods carried by that vehicle become liable to pay not only fare and freight to the owner but also tax thereon to the owner. The words "or any person for the time being in charge of such vehicle or responsible for the management of the place of business of such owner" indicate that the permit holder will include any person who is in charge of such vehicle of the permit holder or any person who is responsible for the management of the place of business of such owner. The owner cannot escape the liability by stating that any person is for the time being in charge of such vehicles, and, therefore, such person is the owner and not the permit holder.

The general rule of construction is not only to look at the word but to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning according to what would appear to be the meaning intended to be conveyed by the use of the words under the circumstances. Sometimes definition clauses create qualification by expressions like "unless the context otherwise requires"; or "unless the contrary intention appears"; or "if not inconsistent with the context or subject matter". "Parliament would legislate to little purpose", said Lord Macnaghten in *Netherseal Co. v. Bourne*(1) "if the objects of its care might supplement or undo the work of legislation by making a definition clause of their own. People cannot escape from the obligation of a statute by putting a private interpretation on its language". The courts will always examine the real nature of the transaction by which it is sought to evade the tax.

The definition of the term "owner" is exhaustive and intended to extend the meaning of the term by including within its sweep bailee of a public carrier vehicle or any manager acting on behalf of the owner. The intention of the legislature to extend the meaning of the term by the definition given by it will be frustrated if what is intended to be inclusive is interpreted to exclude the actual owner.

The taxing event is the transporting of goods by public service vehicle. The consignor is to pay the tax. The owner of the vehicle, namely, the permit holder who allows the goods to be transported on his vehicle has a duty *eo instanti* he allows the goods to be loaded for transshipment he is to see that the tax payable in the event of transportation is paid. Similarly, the tax is on passengers carried by public service vehicles and the owner becomes liable to pay tax on the fares payable by passengers to the owners.

The operational arrangement to which the petitioners refer that they have let out the vehicle on hire has no relevance to the liability to taxation. The goods are transported by a vehicle. The passengers are carried by the vehicles. The person who allows his vehicle to be used for the purpose is the permit holder, and, therefore, the liability to pay tax attaches to the permit holder as the owner of the vehicle.

The plea that no machinery has been provided enabling the owner to collect or recover the tax from the owner of the goods is unacceptable. Once it is found that the legislature levies tax on passengers and goods carried by public service motor vehicle it becomes responsibility of the owner of the vehicle not to permit the vehicle to be used until the tax is paid. If the permit holder lets out the vehicle to any person on hire it is a matter of internal arrangement between the owner who is the permit holder and the person who is allowed by the permit holder to hire the vehicle to collect tax in order to enable the owner to discharge the liability. If the owner does not make adequate provision

in that behalf the owner cannot escape liability by pleading that the hirer of the vehicle is liable to pay tax and the owner is not liable. The intention of these Acts is made clear if reference is made to other similar Acts. The Mysore Act speaks of "operator" meaning any person whose name is entered in the permit as the holder thereof. The Mysore Act speaks of tax being levied and collected on goods carried by stage carriages and further provides that if the operator collects from the passengers fares and freights inclusive of the tax the operator shall pay to the State Government on account of the tax one eleventh of the total amount of fares and freights, inclusive of tax collected by him from the passengers.

The definition of "agent" in Rule 2 of the Bihar Public Carrier Rules, 1971 is not applicable to the Bihar Act under which tax is levied on passengers and goods. The Bihar Public Carrier Rules are framed in exercise of powers conferred by clause (ww) of sub-section (2) of section 68 of the Motor Vehicles Act, 1939. Section 68 of the Motor Vehicles Act, 1939 confers power on the State Government to make Rules inter alia, for (ww) licensing of agents engaged in the business of collecting or forwarding and distributing of goods carried by public carriers. These agents under the Bihar Public Carrier. Rules, 1971 are licensed agents to be engaged as forwarding agents, collecting agents. These agents have no liability to pay tax levied under sec-

tion 3 of the Bihar Act on passengers and goods carried by public service vehicles. These agents collect the goods, forward the goods, distribute the goods. Whatever freight they collect for goods they have to collect the tax also on such freight. They furnish the operators with correct figures of the freight receivable by them. These agents can charge only such commission as will be prescribed by the State Government under the Rules. These agents are separate from owner of the vehicle as will appear from Rule 9 of the Bihar Public Carrier Rules which speaks of particulars to be mentioned in contract of agency. One of the matters mentioned there is the name of the owner, driver, registration number of vehicle and its authorised load and the rate and amount of the commission. These agents are confined to the special work of collecting, forwarding, distributing of goods carried by public service vehicles.

The Bihar Act prescribes Rules made under the Bihar Act. The Bihar Act and Rules thereunder define 'agent' to mean a person authorised in writing by owner to appear on his behalf before a prescribed authority. An agent under the Bihar Act is only one authorised by the owner to appear before a prescribed authority for different purposes mentioned in the Rules. The Bihar Act and the Rules do not recognise any agency in the matter of tax on fares and freights payable to the owner of the public service vehicle. The agents under public Carrier Rules are licensed to do the special task of collecting, forwarding and distributing goods carried by public carriers. They charge fees for such service and they have special responsibility and liability under terms of agency. These agents are not owners of public service vehicles. The fact that these licensed agents have to furnish the operators with correct figures of freight receivable by them shows not only that they are accountable to the owners or operators but also that licensed agents are not the owners or operators.

The Motor Vehicles Act, 1939 in sections 54, 55 and 56 deal with applications for public carrier's permit, procedure in considering application for public carriers permit and grant of public carrier's permit. Section 59 of the Motor Vehicles Act, 1939 states that save as provided in section 61, a

permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit and shall not without such permission operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit. Section 61 speaks of transfer of permit on the death of the holder. Therefore, these provisions in the Motor Vehicles Act, 1939 indicate that a permit cannot be transferred.

The permit holder is the owner within the definition of the "owner" in the Bihar Act and other Acts and is also the "operator" within the meaning of the word "operator" in other Acts to which reference has been made. The liability to pay tax is of the permit holder in all cases.

For these reasons, the contentions of the petitioners fail. The petitions are dismissed. Parties will pay and bear their own costs.

P.B.R.

Petitions dismissed.