National Transport Company vs State Of Bihar on 25 March, 1976

Equivalent citations: 1976 AIR 1074, 1976 SCR (3) 897, AIR 1976 SUPREME COURT 1074, 1976 3 SCC 363, 1976 TAX. L. R. 1594, 1976 SCC (TAX) 307, 1976 TAC 418, 1976 3 SCR 897, 1976 2 SCJ 23, 1976 UJ (SC) 529

Author: P.K. Goswami

Bench: P.K. Goswami, Hans Raj Khanna

PETITIONER:
NATIONAL TRANSPORT COMPANY

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT25/03/1976

BENCH:
GOSWAMI, P.K.
BENCH:
GOSWAMI, P.K.
KHANNA, HANS RAJ

CITATION:
1976 AIR 1074 1976 SCR (3) 897
1976 SCC (3) 363

ACT:
Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961, s. 2(d)-Owner, who is-'In-charge' of a vehicle, scope of

HEADNOTE:
Under s. 3(1) and (2) of the Bihar Taxation on Passengers and Goods (Carried by Public Services Motor Vehicles) Act, 1961, every owner shall pay to the State Government a tax on all passengers and goods carried by a public motor vehicle. Under s. 2(d), 'owner' means not only the owner of the specified type of vehicle but also includes, inter alia, "any person for the time being in-charge of such vehicle". Under s. 4(1) every owner liable to pay tax shall apply for registration, and under s. 6 every

owner shall furnish the prescribed return to the prescribed authority. Section 18 provides for penalties for failure to apply for registration or to submit the return.

The assessee was the sole transporting company of the cement of a manufacturing company. Since it did not have its own fleet of trucks, it used to engage trucks for use in its transport work. It was providing petrol and oil for the running of the trucks in the transport work although the prices paid by the assessee were later on adjusted in the hiring charges. The assessee was obtaining the receipts of delivery of the goods to the various stockists indicating the quantities of cement received through a particular vehicle. On delivery to the appellant of the buyers' receipt by the truck owner or his representative, the bills of hire charges of the truck owner were paid by the appellant as per the agreement between the appellant and the truck owner. The assessee was maintaining a complete record of the trucks used by it for the transport work, of the charges realisable and realised from me stockists on account of freight payable by them, and of the charges actually paid to the truck owners. The assessee was not registered under s. 4. After a surprise check, the total taxable amount of the assessee was determined and the tax and a penalty were imposed on the assessee. The assessee's appeal, revision to the tribunal, and reference to the High Court, were all decided against the assessee.

Dismissing the appeal to this Court,

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HELD: The appellant was in-charge of the trucks for the purpose of its business during the entire course of transportation of the cement from the factory to the various stockists and, as such, came within the definition of owner under s. 2(d). [904 D-E]

(1) Whether a certain person is in-charge of the vehicle for the time being depends on the particular facts of each case. Being in-charge' of the vehicle, in the context of the provisions of the Act, does not relate to mere physical charge or control in the process of movement of the vehicle from one place to another but 'to charge or control' for fulfilment of the legal obligation under the Act for payment of taxes for the carriage of goods or passengers. The words "for the time being in-charge of such vehicle" have to be comprehended in the context of the provisions of the taxing statute and these words have nexus with the actual realisation and appropriation of the freight for the goods carried by the vehicle. In a given case, the person, who is for the time being in-charge of the loaded truck and who or on whose behalf some one like a driver or conductor received the freight or fare. is also a owner within the meaning of the definition in s. 2(d).[903 C-D; 904 C-D]

(2) On the facts of the present case the appellant took full responsibility for the carriage of the goods from the

factory to various destinations. The freight had been realised by the appellant from the stockists and the truck
898
owner received only 'hire charges.' There is nothing to show nor is there any averment by the appellant that those charges included the taxes under the Act. The matter might have been different if the truck owners had been given the tax collections in addition to the hire charges. Further the absence of any provision for tax payment by the truck owners in the agreement militates against the contention that it is only the truck owners that are liable. [902 B-C, G-903 B]

(3) The case of Jagir Singh v. State of Bihar [1976] 2 SCR 809 was an application under Art. 32 of the Constitution and was concerned with booking agents and forwarding agents who were sought to be made liable under the Act at the instance the truck owners but the truck owners were held to be liable. Unlike that case, the liability to pay taxes was entirely upon the appellants in the present case as the truck owners were entitled only to hire charges. [903 F-G; 904 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1462 of 1971.

Appeal by special leave from the Judgment and Order dated 16th April 1971 of the Patna High Court in Tax Case No. 76/68.

A. K. Sen, S. T. Desai, Somen Bose, D. N. Mukherjee and K. N. Jain, for the appellant.

V. S. Desai and B. P. Singh for the Respondent. The Judgment of the Court was delivered by GOSWAMI, J. This appeal by special leave is directed against the judgment of the Patna High Court in a reference under section 21B(1) of the Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961 (briefly the Act) as amended.

The facts as appearing from the statement of case annexing the various orders of the authorities may briefly be stated:

> The appellant, M/s. National Transport Company, is a transport undertaking without its transport. The appellant (hereinafter to be described as the assessee) was the sole transporter by road of the cement manufactured by the Associated Cement Company at Sindri (briefly the company) from Sindri to different stockists at various places in Bihar and West Bengal. In order to have some sort of uniformity in price at different places the manufacturing company used to fix the transport charges according to a schedule. The assessee's contract with the manufacturing company commenced some time on October 12, 1963. Since the assessee did not have its own fleet of trucks, it

used to engage thirty-six trucks covered by public carrier permits belonging to various persons at different times for transporting the cement. The assessee was not registered under section 4 of the Act. On September 3, 1966, there was a surprise inspection of the office of the assessee and certain books of accounts containing accounts of transport charges realised by the assessee for transporting of cement from the Sindri factory to the stockists in Bihar and West Bengal were seized. The assessee also produced some books of accounts during the hearing before the Officer. The assessee maintained his accounts ledger-wise in respect of the transport charges realised and realisable from different stockists of Bihar and West Bengal for transport of cement by it from the Sindri factory to their godowns. There were two ledgers. One was party-wise showing charges realised or realisable from the stockists and other truck-wise showing hire charges paid to various trucks. The assessee also produced a list of trucks showing the names of the truck owners with their respective places of residence. Out of thirty-six trucks, twenty-four were registered in Bihar and twelve in West Bengal. Agreements with the truck owners were also produced by the assessee. The Bills from the petrol supplying company which were paid by the assessee were also filed showing the total amount and the truck-wise amount. The ledger party-wise showed rates charged from the stockists. The ledger truck-wise showed hire charges and also deductions on account of petrol, diesel and other lubricants and also for loss in the way as per agreement.

On the basis of the statement furnished by the assessee as corroborated by the books of accounts maintained by it the Assessing Officer determined the total taxable amount and imposed a tax of Rs. 1,41,618.37 by his order of November 1, 1966. A penalty of Rs. 5000/- was also imposed under section 7(5) of the Act.

The assessee appealed to the Additional Deputy Commissioner of Commercial Taxes without success. Thereafter the assessee preferred an application in revision before the Commercial Taxes Tribunal, Bihar, which also met with the same fate.

The Tribunal, however, on the application of the assessee under section 218(1) of the Act referred the following question of law to the High Court:

"Whether in the facts and circumstances of the case the Tribunal has rightly held the applicant to be the 'owner' of the vehicles within the meaning of section 2(d) of the Act and whether the imposition of tax and levy of penalty was legal and justified".

The High Court noted the facts found by the Tribunal as follows:

(a) The assessee was the sole transporting company of the cement of the manufacturing company,

(b) it had engaged certain trucks for use in his (sic) transport work,

(c) it was providing petrol and oil for the running of the trucks in the transport work, although the prices paid by the assessee were later on adjusted in the hiring charges,

(d) it was obtaining receipts for delivery of the goods to the stockists,

(e) it was maintaining a complete record of the trucks used by it for the transport work,

(f) it was keeping a complete record of the charges realisable and realised from the stockists on account of freight payable by them,

(g) it was keeping a complete record of the charges actually paid to the real owners of the trucks, and

(h) the receipts given by the stockists indicated that they had received from the assessee, certain quantities of cement by a particular vehicle".

From the above eight factors the Tribunal came to the conclusion that the assessee was in-charge of the trucks for the time being within the meaning of section 2(d) of the Act. The High Court agreed with the Tribunal in the following words:-

"In any case, even if the conclusion that the assessee was in-charge of the trucks, for the time being, be a conclusion in law, I do not think that any error in law has been committed by the Tribunal, in arriving at its conclusion against the contentions raised on behalf of the assessee. Relevant facts have been found and a relevant finding has been given on them, before saddling the assessee with liability".

The High Court thereupon upheld the Tribunal's decision against the assessee.

The only question that is canvassed by Mr. A. K. Sen on behalf of the appellant is that, on the various facts found by the Tribunal, it has erred in law in holding that the assessee is an 'owner' within the meaning of section 2(d) of the Act. We may, therefore, immediately turn to the definition of owner as given under section 2(d) 2(d) " '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 (IV of 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".

It is clear that the above definition is an inclusive definition. Owner means not only the owner of the specified type of vehicle but also includes the permit holder in respect of such a vehicle as also any person for the time being in charge of such vehicle or any person responsible for the management of the place of business of such owner. The definition has fairly widened the meaning of "owner".

We are only concerned in this appeal with one category included in the definition, namely, that an owner is a person for the time being in charge of a public service motor vehicle. There is no dispute that the trucks in question are public service motor vehicles. We are only required to consider whether the assessee is a 'person' "for the time being in-charge of such vehicle".

As the preamble shows the Act is to provide for the levy of tax on passengers and goods carried by public service motor vehicles. The taxing event is, thus, the carriage of goods and passengers by public service motor vehicles.

By section 2(a) 'business' means the business of the owner for the purpose of this Act.

Section 3 in the charging section and may be read:

> 3(1) "On and from the date on which this Act is deemed to have come into force under sub-section (3) of section 1, there shall be levied and paid to the State Government a tax on all passengers and goods carried by a public service motor vehicle; such tax shall be levied and paid at the rate of twelve and a half per centum of the fares and freights payable to the owner of such vehicle;
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> * * * * (2) Every owner shall, in the manner prescribed in section 9, pay to the State Government, the amount of tax due under this section.
>
> (3) 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 this section and every owner shall recover such tax from such passenger or person, as the case may be."
>
> * * * * Under section 4(1) every owner liable to pay tax shall apply for his registration within such period and in such manner as may be prescribed. Under sub-section (2) of section 4, if the application is in order, the prescribed authority shall grant a certificate of registration in the prescribed form.

Under section 6 every owner shall furnish to the prescribed authority such returns, within such period, as may be prescribed. There is a provision under this section for imposition of penalty on failure to submit a return without any reasonable cause.

Section 18 is the penal section for various offences under the Act including failure to apply for registration or to submit return or for contravention of any other provision of the Act of the Rules and the offender is punishable with fine which may extend to Rs. 1000/-, and when the offence is a continuing one, with a daily fine not exceeding fifty rupees during the period of the continuance of the offence.

By section 3(h) of the Act, a 'public service motor vehicle' means any motor vehicle used or adopted to be used for the carriage of passengers and goods for hire or reward and includes a motor cab, a

stage carriage, a contract carriage or a public carrier.

For the purpose of tax under the Act not every public service motor vehicle but only such a vehicle carrying goods and passengers is exigible to tax for the carriage of those goods and passengers under the Act. The tax again is a percentage of the fares or freights realised. The fares and freights have to be realised as a fact. Such a vehicle carrying goods and passengers driven by employees of the owner of the vehicle would ordinarily be in-charge of that owner or of the permit holder wherever it may ply. The physical presence of the owner or the proprietor or of the permit holder in the running vehicle is not essential. Even if the driver or the conductor realises the freight it is done on behalf of the owner of the vehicle or of the permit holder and the former is accountable to the latter. Suppose the conductor misappropriates the collection en route, that will not absolve the permit holder from liability to pay the tax actually realised for the carriage of the goods or the passengers.

In view of the terms of the agreement, on which great reliance has been placed by Mr Sen, it can be safely assumed that the appellant took full responsibility for the carriage of the goods from the Sindri factory to various destinations. This is manifest even in absence of production by the appellant of agreements, if any, between it and the company or the stockists. Cement bags will not be loaded on any and every vehicle that reports at the factory but only on those vehicles whose registration numbers must have been communicated to the company or which were taken there by the appellant's representative who has to be present at the time of loading the trucks with cement as will appear from clause (1) of the agreement. Clause (1) reads "Cement will be loaded into your lorry at the Sindri Works through us". The Sindri factory, therefore, entrusted the carriage of their cement bags to the appellant for delivery to various stockists who again in turn, at destinations, gave buyer's receipts as per clause (3) of the agreement. Clause (3) States:

> "You will obtain proper receipts for such deliveries from the consignees on the challans handed over to you and bring back all the documents including the challan duly signed by the consignees leaving one copy of the challan with the consignees".

On delivery to the appellant of the buyer's receipt by the truck owner or his representative."the bills of hire charges" of the truck owner are paid with three weeks thereafter at the rates "as per our schedule" agreed between the appellant and the truck owners". Clause (12) of the agreement says:

> "Your bills of hire charges as per our schedule will be prepared every fortnight and will be paid within 3 weeks thereafter."

The truck owners, in this case, received as per agreement, only "hire charges" and there is nothing to show nor is there any averment by the appellant that those charges included taxes under the Act although freight had been admittedly realised by the appellant from the stockists.

In the above background of facts and circumstances, there is no escape from the conclusion that the appellant was in charge of the trucks for the purpose of the 'business' of the appellant during the entire course of transportation of the cement bags from the Sindri factory to the various stockists and as such comes within the third clause of the definition under section 3(d) of the Act.

The fact that under the terms of the agreement some incidental arrangement involving contingent financial implications in respect of carriage of the goods had been entered upon does not entitle the appellant to be relieved of the "charge" of the loaded truck for the purpose of tax under the Act for the carriage of the goods. The matter would have been different if the truck owners had been given the tax collections in addition to the hire charges, but absence of any provision for tax payment by the truck owners in the agreement militates against the contention that in this case the truck owners are liable for the payment of tax under the Act for the carriage of the cement bags.

The owner of the truck under a public carrier permit or a public carrier permit holder is undoubtedly an 'owner' under section 2(d) of the Act. But in a given case, the person who is for the time being in-charge of the loaded truck and who or on whose behalf some one received the freight or fare is also an 'owner' within the third clause of the definition under section 2(d) of the Act.

The significant words "for the time being in charge of such vehicle" have to be comprehended in the context of the provisions of the taxing statute and these words have nexus with the actual realisation and appropriation of the freight for the goods carried by the vehicle. The meaning given to the words "in-charge of vehicle" in connection with traffic cases in criminal prosecution, as has been referred to by Mr. Sen citing two English cases, is of no avail to the appellant in this case.

Mr. Sen forcefully submits that the present case is squarely covered by a decision of this Court in Jagir Singh & Ors. etc. v. State of Bihar and Anr.(1) This was a case where the same Act with some identical Acts from other States came up for consideration. It is submitted by Mr. Sen that the truck owners lost in that decision and in this appeal also, therefore, they cannot escape from their legal liability by shifting it to the appellant.

We must bear in mind that those applications were under article 32 of the Constitution while the present matter comes to us out of a reference in the fifth tier of litigation after the matter had been gone into in great detail taking note of various facets of the rival pleas by the respective authorities and lastly by the High Court. In Jagir Singh's case (supra) this Court was concerned merely with Booking Agents and Forwarding Agents who were sought to be made liable under the Act at the instance of the permit holders of the public service vehicles who did not own their liability for payment of tax under the Act. This Court observed in that case as follows:-

> "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".

From the terms of the agreement in the present case, it is clear that the liability to pay taxes was entirely upon the appellant as the owners of the trucks were only entitled to "hire charges".

Legal liability for payment of tax under the Act is well known to the appellant carrying on transport business. The appellant has taken charge of the vehicles for the purpose of the collection of tax for the carriage of the goods. The appellant has actually collected the freight from the stockists on delivery of cement bags. The appellant has only paid to the truck owners "the hire charges" as per its own schedule of rates without any mention of tax. These facts clearly distinguish the present case from what apears to have been pleaded in the writ application in Jagir Singh's case (supra) and he decision is of no aid to the appellant.

Being "in charge" of the vehicle in the context of the provisions of the Act does not relate to mere physical charge or control in the process of movement of the vehicle from one place to another but to charge or control for fulfilment of the legal obligation under the Act for payment of taxes for the carriage of goods or passengers. Whether a certain person is in charge of the vehicle for the time being depends always on the particular facts of each case and the answer cannot be put in the straitjacket of a formula. On the facts of the present case we are clearly of opinion that the appellant comes within the meaning of the third clause of the definition under section 2(d) of the Act.

We should observe that once the tax is realised for a particular transaction from one category of owner as defined, no further tax can be collected for the same carriage from any other person even though that person also may come within the definition of "owner" under the Act.

The Tribunal was, therefore, justified in holding the appellant as "owner" for the purpose of the Act. The High Court was right in not interfering with the conclusion of the Tribunal and in answering the question against the assessee.

In the result the appeal is dismissed but we make no order as to costs.

V.P.S. Appeal dismissed.