

Muthyala Sunil Kumar

v.

Union of India & Ors.

(Writ petition (Civil) No. 864 of 2022)

09 July 2024

[Vikram Nath* and Satish Chandra Sharma, JJ.]

Issue for Consideration

In the instant writ petitions, Petitioners-transporters and tour operators assailed the legality of different State Governments levying and collecting Authorization Fee/Border Tax, allegedly, in violation of All India Tourist Vehicles (Permit) Rules, 2023. Petitioners also prayed for refund of the Border Tax/Authorization Fee already realized by the State Authorities at the time of their vehicles entering the State.

Headnotes[†]

Inter-State transportation – All India Tourist Vehicles (Permit) Rules, 2023 – All-India Tourists Vehicles (Authorisation of Permit) Rules, 2021 – Levy and collection of Authorization Fee/Border Tax by State Governments – Petitioners are transporters and tour operators – Complaint that the State of Tamil Nadu and several other States were realizing Border Tax/Authorization Fee despite the transporters or the vehicles entering the State having already paid the requisite tax/fee under the Rules, 2023 – Tenability of:

Held: The submission advanced by the States is that the demand being raised by them is primarily under the rules framed by the respective State Governments under Entries 56 & 57 of List II of Schedule VII of the Constitution – This Court is not inclined to go into the merits of the matter at this stage, as apparently, the fundamental question to be decided would be whether levy and realization of taxes by the respective States is covered by the Act and Rules framed by the respective States under Entries 56 & 57 of List II of Schedule VII of the Constitution or not – The State enactments, rules and regulations being not under challenge, it cannot be said that the demand of Border Tax/Authorization Fee at the borders by the respective State Governments is bad under law – The petitioners, in order to succeed, have to consider

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challenging the State provision contained in the Act – Also, the petitioners ought to have first approached their jurisdictional High Courts to challenge their respective State enactments – Accordingly, the petitions disposed of, without interference with demands raised by the State Governments while giving liberty to the petitioners to approach the jurisdictional High Courts for their reliefs – It is made clear that this Court neither entered into the merits of the matter nor examined the same. [Paras 7, 9, 10, 11]

All India Tourist Vehicles (Permit) Rules, 2023 – Demand of Border Tax/Authorization Fee despite the transporters or the vehicles entering the State having already paid the requisite tax/fee under the Rules, 2023 – Challenge to – Writ petitions before Supreme Court – Prayer for refund of Border Tax/Authorization Fee already realized by the State Authorities – Tenability of:

Held: In the instant case, the petitions are disposed of, without interference with demands raised by the State Governments while giving liberty to the petitioners to approach the jurisdictional High Courts for their reliefs – The tax already recovered would be subject to the final outcome of the petitions that may be filed before the High Courts. [Paras 11 & 12]

List of Acts

All-India Tourists Vehicles (Authorization/Permit) Rules, 2021; Constitution of India; All India Tourist Vehicles (Permit) Rules, 2023; Motor Vehicles Act, 1988.

List of Keywords

Inter-State Transport; Authorisation Fee; Border Tax; Motor Vehicles Act; Refund of Border Tax; Double Taxation; Taxation Without Legal Authority; Entries 56 & 57 of List II; Entry 35 of List II; Seventh Schedule to the Constitution of India; Liberty To Approach High Court.

Case Arising From

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 864 of 2022

(Under Article 32 of The Constitution of India)

With

Conmt. Pet.(C) No.1243 of 2023 In W.P.(C) No.864 of 2022, Writ Petition (C) No.756 of 2023 With Conmt. Pet.(C) No.1244 of 2023 In

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W.P.(C) No.756 of 2023, Writ Petition (C) No.819 of 2023 With Conmt. Pet.(C) No.1245 of 2023 In W.P. (C) No.819 of 2023 and Writ Petition (C) No.1033 of 2023 With Conmt. Pet. (Diary No.46438 of 2023) In W.P. (C) No.1033 of 2023, Writ Petition (Civil) Nos. 998, 1043, 1058, 1064, 1047, 1059, 1066, 1103, 1104, 1105, 970, 975, 1034, 1007, 996, 984, 1015, 995, 1000, 1039, 1002, 1010, 1031, 1119, 1092, 1178, 1115, 1112, 1138, 1143, 1127, 1144, 1125, 1150, 1173, 1167, 1195, 1189, 1213, 638, 783, 799, 828, 831, 824, 808, 852, 815, 825, 836, 812, 816, 853, 851, 833, 835, 834, 820, 857, 1139, 1147, 1156, 1152, 804, 859, 832, 822, 855, 898, 865, 879, 872, 894, 955, 892, 891, 953, 949, 950, 923, 956, 969, 935, 988, 947, 981, 992, 957, 964 and 993 of 2023, Writ Petition (Civil) Nos. 29, 28 and 38 of 2024, Writ Petition (Civil) Nos. 1348, 1355, 1396, 1411, 1415, 1408, 1409, 1406 and 1438 of 2023, Writ Petition (Civil) Nos. 98, 117, 176, 212, 264, 290 and 316 of 2024

Appearances for Parties

S Murlidhar, Navin Pahwa, Raghenh Basant, Sr. Advs., S. Mahesh Sahasranaman, Arjun Garg, Ms. Sagun Srivastava, Ms. Nisha Pandey, S. Udaya Kumar Sagar, Ms. Bina Madhavan, Eeshan D. Khaire, M/s. Lawyer S Knit & Co, Dileep Poolakkot, Bijo Mathew Joy, Muhammed Siddick, Shivam Sai, Ms. Mansha Shukla, M/s. Lead Counsel, Aakash Nandolia, Manoj V George, Ms. Shilpa Liza George, Km Vignesh Ram, Ms. Chaahat Khanna, Ms. Tanya Agarwal, Rishab Gupta, Nikhil Srivastav, Mrs. Shubhangi Tuli, N. Sai Vinod, Ms. Purna Acharya, Ms. Kaushitaki Sharma, Abhinav, Sahil Ghai, Atul Shankar Vinod, B Ragunath, Mrs. Nc Kavitha, Vijay Kumar, Dileep Poolakkat, Aljo K. Joseph, Vinay Kumar Puvvala, Prashant Jhajharia, Raghunatha Sethupathy B, S. Sabari Bala Pandian, T. Harish Kumar, Navneet Dugar, Subham Kothari, Ms. Preethi G, Shine P. Sasidhar, M. Gireesh Kumar, Ankur S. Kulkarni, Ms. Uditha Chakravarthy, Ms. Shalaka Srivastava, Advs. for the Petitioner.

Vikramjit Benerjee, A.S.G., Arvind P Datar, Jayanth Muth Raj, Sr. Advs., Gurmeet Singh Makker, Ms. Rekha Pandey, Naman Tandon, Ms. Monica Benjamin, Bhuvan Kapoor, Zoheb Hossain, Manish Pushkarna, Nachiketa Joshi, Sabarish Subramanian, C Kranthi Kumar, Vishnu Unnikrishnan, Naman Dwivedi, Danish Saifi, Ms. V Keerthana, Aman Prasad, Nishe Rajen Shonker, Mrs. Anu K Joy, Abraham Mathew, Alim Anvar, Mahfooz Ahsan Nazki, Polanki

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Gowtham, Kv Girish Chowdary, T Vijaya Bhaskar Reddy, Ms. Rajeswari Mukherjee, Meeran Maqbool, Ms. Archita Nigam, V. N. Raghupathy, Manendra Pal Gupta, Prakash Jadhav, Ravichandra Jadhav, Sanjeev Kumar, Ms. Devina Sehgal, Dhanajay Yadav, Anmol Sehgal, Rajiv Kumar Choudhry, Ms. G. Indira, Ms. Anindita Pujari, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Judgment**

Vikram Nath, J.

1. This is a batch of 117 petitions, including four contempt petitions which are de-tagged for being listed separately, filed primarily by the transporters and tour operators under Article 32 of the Constitution of India assailing the legality of different State Governments levying and collecting Authorization Fee/Border Tax in violation of All India Tourist Vehicles (Permit) Rules, 2023.¹ Broadly, there are three categories of petitions but the relief claimed which is common in all the petitions, is about the levy and collection of Border Tax/Authorization Fee.
2. In some cases, there is a challenge to the All-India Tourists Vehicles (Authorisation of Permit) Rules, 2021² as also certain provisions of Motor Vehicles Act, 1988, however, such petitions were filed prior to the coming of the Rules, 2023. As such, the reliefs have been amended seeking directions for compliance of provisions contained in the Rules, 2023. In some cases, petitioners have also prayed for refund of the Border Tax/Authorization Fee already realized by the State Authorities at the time of their vehicles entering the State.
3. Initially, it was the State of Tamil Nadu which was said to be realizing the Border Tax/Authorization Fee but, later on, several other States were also complained of realizing similar Border Tax/Authorization Fee despite the transporters or the vehicles entering the State having already paid the requisite tax/fee under the Rules, 2023. As such, other States also became the respondent-parties and notices were issued to them.

¹ The Rules, 2023

² The Rules, 2021

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4. The Rules, 2023 superseded the All-India Tourists Vehicles (Authorization/Permit) Rules, 2021. After the coming into of the Rules, 2023, the power of levying/collecting Border Tax/Authorization Fee by the State Governments at various border check posts from vehicles carrying All India Tourists Permit was to be done away with. There were primarily two objects of bringing in the Rules, 2023. Firstly, to make the movement of such tourist vehicles across the country through different States seamless and smooth; and secondly, the revenue to be generated by the Centre to be proportionately shared with the State Governments, also taking into account their previous revenue generation, and also, keeping in mind that their earlier revenue income was not reduced in any manner.
5. The transporters started facing difficulties and harassment as alleged at the borders of different States where they were again being demanded Border Tax/Authorization Fee which has given rise to the filing of this group of petitions. Such demand of Border Tax/Authorization Fee was challenged on several grounds ranging from double taxation; levy being without legal authority; being in violation of the Rules, 2023 which had been framed under Entry 35 of List II of the Seventh Schedule to the Constitution of India, and various other grounds.
6. In all these matters while issuing notices, interim relief was also granted that the State Governments were restrained from making any further realization of Border Tax/Authorization Fee.
7. Upon notice, States appeared and filed their counter affidavits. The submission advanced by the States is that the demand being raised by them is primarily under the rules framed by the respective State Governments under Entries 56 & 57 of List II of Schedule VII of the Constitution. They have defended their competence to frame the rules, to levy and collect the taxes, which according to them, are in accordance to law.
8. It is also their submission that the petitioners, in case, had any grievance ought to have approached the respective High Courts under Article 226 of the Constitution rather than approaching this Court under Article 32 of the Constitution. Lastly, and most importantly, it was contended that State Acts/Rules levying such tax has not been put to challenge and therefore, the petitions deserve to be dismissed.

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9. Although counsel for the parties have raised their arguments on merits, but we are not inclined to go into the merits of the matter at this stage, as apparently, the fundamental question to be decided would be whether levy and realization of taxes by the respective states is covered by the Act and Rules framed by the respective States under Entries 56 & 57 of List II of Schedule VII of the Constitution or not.
10. The State enactments, rules and regulations being not under challenge, it cannot be said that the demand of Border Tax/Authorization Fee at the borders by the respective State Governments is bad under law. The petitioners, in order to succeed, have to consider challenging the State provision contained in the Act. There is another reason why we are not entertaining the matters on merit is that the petitioners ought to have first approached their jurisdictional High Courts to challenge their respective State enactments.
11. We, accordingly, dispose of these petitions without interfering with the demands being raised by the State Governments while giving liberty to the petitioners to approach the jurisdictional High Courts for their reliefs. It is made clear that we have neither entered into the merits of the matter nor examined the same.
12. Insofar as the tax already recovered, the same would be subject to final outcome of the petitions that may be filed before the High Courts. Insofar as the period of interim order passed by this Court is concerned, the petitioners would give undertakings before the High Courts that, in case they fail, they will make good on demands which would have been raised for the period for which the stay has been enjoyed.

Result of the case: Writ Petitions disposed of.

*[†]Headnotes prepared by: Bibhuti Bhushan Bose
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