SALES TAX OFFICER KANPUR AND ORS. A

v.

UNION OF INDIA AND ANR

NOVEMBER 21,1994

[B.P. JEEVAN REDDY, N.P. SINGH AND S.B. MAJMUDAR, JJ.] B

Constitution of India—Articles 226 and 227—Writ petition—Finding of fact—Whether Writ Court can interfere with a finding of fact—Held, No, unless the finding is based on no evidence or is perverse.

Uttar Pradesh Sales Tax Act— Section 13(A) (6) Railways Act, 1989— Transporting goods from railway godown to booking agencies claimed to be part of "Railways"—Relevant material not placed before— Court for determining the question—Matter remitted to High Court. C

Twenty six packages of utensils were being transported in a 'Thela' from the parcel godown of the Central Railway Station. The goods being transported were not accompanied by the requisite documents. The 'Thela' was checked by the Sales Tax Officer. The goods were seized and proceeding were taken u/s 13 (A) (6) of the Uttar Pradesh Sales Tax Act. Railways officials applied for release of goods contending that in as much as the goods were being transported from Railway godown to the city booking agency, which according to them was indeed a part and parcel of the "Railway" as defined in the Railway Act, the seizure of the goods was unlawful. The Deputy Commissioner rejected the plea under an elaborate order. A finding was recorded that the story of transport of the said seized goods to the city booking agency is untrue, for the reasons recorded in the order. The Deputy Commissioner was of the opinion that the goods were really being taken to some other place and since they were not accompanied by the requisite documents/forms, they were liable to be seized. D E F

Against the order of the Deputy Commissioner, the Railway filed the writ petition. The Division Bench of the High Court allowed the petition holding the order of the Deputy Commissioner erroneous. G

Civil Appeal has been filed against the judgment of the High Court. H

A It has been submitted by the Railways that the city booking agencies were really part and parcel of the 'Railway' and, therefore, for transporting the goods from the Railways godown to the city booking agency, the goods need not be accompanied by documents/ forms prescribed by the Uttar Pradesh Sales Tax Act and the Rules made thereunder.

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The question raised are:

(i) Whether the High Court was justified in interfering with the finding of the fact recorded by the Deputy Commissioner in this case?

C (ii) Whether the Railway booking agencies do or do not form part of the 'railway'?

Disposing of the matter, this Court

HELD: 1.1 The question whether the goods being transported from the Railway godown were being in fact transported to city booking D agency is always a question of fact. Mere claim to that effect is not conclusive. The power of the sales tax authorities to stop and check the goods being transported to satisfy themselves that they are being validly transported is undoubted. If they are satisfied that the goods being transported were imported into the State of Uttar Pradesh but E that they are not accompanied by the documents/forms required by the Uttar Pradesh Sales Tax Act and the Rules, they are entitled to seize the goods and levy the tax and penalty as is provided by law. The said power necessarily includes the power to decide the question whether the goods in fact were being transported to city booking agency or to some other place. (598 H, 599 B)

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1.2 In the present case, a finding was recorded by the Deputy Commissioner that the story of transport of the said seized goods to the city booking agency is untrue, for the several reasons recorded in his order. He was of the opinion that the goods were really being taken to some other place and since they were not accompanied by the requisite G documents, they are liable to be seized. The said finding is one of fact which could have been and ought to have been questioned in an appeal provided by the Act. (599 C, D)

1.3 The High Court which decided the matter, interfered with the finding of fact without even referring to the several grounds on which it H was based. The High Court has not even referred to all the reasons and

grounds assigned by the Deputy Commissioner and yet set aside his finding. Moreover, a writ Court cannot interfere with a finding of fact unless the finding is based on no evidence or perverse, i.e., a finding which no reasonable person would have arrived at. (599 D, E, F)

1.4 On the larger question, viz., whether the Railway booking agencies do or do not form part of the 'Railway', the relevant material is not placed before the Court for determining the said question and for that reason, the matter requires to be remitted to the High Court. (599 F, G)

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1635 of 1987 etc. etc.

From the Judgment and Order dated 30.9.86 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 914 of 1986.

R.B. Misra, Mrs.Rani Chhabra, C.V.S. Rao, Ms. Abha Jain, P.K. Jain, S.K. Jain, A.K. Srivastava and K.V. Sreekumar for the appearing parties.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. A common question arises in these matters. Civil Appeal No. 1635 of 1987 is preferred against the judgment of Allahabad High Court allowing Writ Petition (C) No. 914 of 1986 filed by the Union Of India. Civil Appeal No. 5021 of 1989 is preferred against the judgment of the same High Court in Writ Petition (C) No. 2858 of 1987 (filed by the Northern Railway City Booking Agency and Anr.) allowing the writ petition following the judgment in Writ Petition (C) No. 914 of 1986. The writ petitions were filed later saying that they raised the very point involved in Civil Appeal No. 1635 of 1987. The matter arises under the Uttar Pradesh Sales Tax Act. It would be enough if we refer to the facts in Civil Appeal No. 1635 of 1987 and indicate how the common question of law arises.

Writ Petition (C) No. 914 of 1986 was filed by (1) Union of India through General Manager, Northern Railway and (2) City Booking Agency, Bhoosa Toli, Kanpur, represented by M/s. Komal Prasad Ashok Kumar. The respondents to the writ petition were the sales tax officials of Uttar Pradesh in addition to State of Uttar Pradesh. The Union of India asked for quashing the order of the Deputy Commissioner, Sales Tax, Kanpur dated August 20, 1985 dismissing an application filed by the Union of India represented by the railway officials for release of the goods seized by the sales tax officials. A further direction in the nature of *mandamus* was also

A asked directing the sales tax authorities to release the goods seized (twenty six packages of utensils). The High Court allowed the writ petition.

On July 17, 1985 at about 5.10 P.M., twenty six packages of utensils were being transported in a 'Thela' (hand craft) drawn by one Matloob Ahmad and others. They were being transported from the parcel godown
B situated at Platform No.1 of the Kanpur Central Railway Station. The 'Thela' was checked by the sales tax officer (mobile unit) at the Station Road, near the Police Station, Rail Bazar on the trijunction. The officer found that the goods being transported were not accompanied by the requisite documents. It was claimed by persons accompanying the goods that they were transporting the said goods to the city booking agency at
C Bhoosa Toli. Accordingly, a show cause notice was issued to the said City Booking Agency. On the next day, i.e., July 18, 1985, Shri Komal Prasad, who holds the contract of the city booking agency, Bhoosa Toli appeared in-person but he did not submit any reply to the show cause notice. Accordingly, the officer submitted a seizure report on July 19, 1985 to the Deputy Commissioner. In the said report, the officer stated that on July 18,
D 1985, he found on verification at the octroi post maintained by the Municipal Corporation, Kanpur situated near Platform No. 1 in the Rail Bazar area of the Kanpur Central Railway Station that the octroi with respect to said goods was deposited by one Raj Kumar under Receipt No. 9953/77 dated July 17, 1985 at 5.10 P.M. in a sum of Rs. 308.25p and that the payment of octroi by Sri Raj Kumar established that the said goods had
E been delivered to the said Raj Kumar at the Railway Station itself and further that the story of said goods being transported from the Railway parcel godown to Bhoosa Toli city booking agency of the Railways could not be true.The report stated further that if the story of transport from the railway godown to the city booking agency had been true, there was no occasion or necessity for paying the octroi and that too by a strangler. On
F the basis of the said report, proceedings were taken by the Deputy Commissioner (SIB), Sales Tax, Central Zone, Kanpur under Section 13(A) (6) of the Uttar Pradesh Sales Tax Act. It is in these proceedings that the railway officials appeared and applied for release of goods contending that inasmuch as the goods were being transported from Railway godown to the
G city booking agency, Bhoosa Toli, which according to them was indeed a part and parcel of the "Railway" as defined in the Railways Act, the seizure of the goods was unlawful. The Deputy Commissioner considered the said plea and rejected it under an elaborate order dated August 20, 1985. The Deputy Commissioner referred to the facts stated in the report of the Seizing Officer and observed that "it is a well-known fact that the
H responsibility of depositing the octroi tax with regard to any consignment

by the consignee starts only after its being delivered to him by the transport agency and since the octroi in the instant case was paid by Sri Raj Kumar, it is, therefore, established that the consignment-goods had been got released from the Transport Agency by Sri Raj Kumar". The Deputy Commissioner further observed that Shri Matloob Ahmad was neither an employee of the Railway nor was he having a contract to transport the goods of Railway alone. The Deputy Commissioner further pointed out that according to para (4) of the Agreement/Contract between the Railway and M/s Komal Prasad Ashok Kumar, Contractor of Bhoosa Toli city booking agency, the goods have to be transported between the Railway Station and the Agency through a motor vehicle. In an emergency, however, they could be transported by other means but before so transporting by other means, prior permission/approval from the Railway had to be obtained. The Deputy Commissioner referred to the statement of the representative of the Railway to the effect that no such permission or approval was asked for or given by the Railway administration for the said consignment. He also referred to the statement of the Railway representative on August 7, 1985 that the said representative "could not tell as to on whose behalf Sri Matloob Ahmad was transporting the goods/consignment under reference". The Deputy Commissioner also stated in his order that with a view to verify the gate pass produced by the Railway, the statement of Sri Rajendra Prasad, a senior research and development officer, Railway was recorded who stated that the gate pass which was produced was not a copy of any gate pass issued by the Railway but that it should be considered as a certificate and that it was issued on the basis of the transfer register. The said official further stated that ordinarily "the goods/consignment which is made to deliver by the Railway Parcel Office to the City Booking Agency is entered in the Register and signatures in token of its having been received are obtained by no such entry is made in the records of the Railways about the fact that through what means of transport the goods/consignment was transported and by whom transported after it is released by the Railway Booking Agency". On the above basis, the Deputy Commissioner concluded that the gate pass produced does not establish that the said goods were being transported to the Bhoosa Toli city booking agency. He also referred to the fact that the Railway officials could neither produce the consignee of the said goods nor the respective Railway receipts (Bilties). Accordingly, the Deputy Commissioner rejected the application made by the Railway officials.

Against the order of the Deputy Commissioner, the Railway did not adopt the remedy of appeal provided by statute but entered into some correspondence with the Commissioner of sales tax and not getting

A satisfaction, approached the Allahabad High Court by way of the writ petition aforesaid. The Division Bench which heard and allowed the writ petition found the order of the Deputy Commissioner erroneous. The reasoning of the High Court is to be found in the following observations in the judgment: "(T) he short controversy before him (Deputy Commissioner) was whether the goods had been given possession of by the Railway to the B consignee or not. In order to decide this controversy, the proper course would have been to summon the paper from the railway administration and to find out the fact. But, instead of doing so, the Deputy Commissioner considered irrelevant materials and held wrongly that the possession had been handed over by it to the consignee. To us it appears that as the relevant papers had not been taken into account, the decision reached by the C Deputy Commissioner was invalid". The Division Bench further observed that "the circumstances, such as octroi was paid by Raj Kumar and goods were being taken in a "Thela" driven by Matloob Ahmad and others, were wholly irrelevant. The payment of octroi did not or could not establish that the delivery of the goods had passed on from the Railway to the consignee. Similarly, if services of Matloob ahmad had been utilized for taking the D goods from Railway parcel office to the sub agency, the Deputy Commissioner could have not held that the goods at the time of seizure belonged to the consignee and its possession was not with the Railway department". On the above reasoning, the order of the Deputy Commissioner was quashed. The High Court also quashed a letter dated September 18, 1985 written by the Commissioner, Sales tax, Uttar Pradesh to the Chief Commercial E Superintendent, Northern Railway, Baroda House, New Delhi declining to admit the application presented by the railway administration.

The case of the Railways is that the city booking agencies (at the relevant time, there were four in number at Kanpur) were really part and F parcel of the "Railway" and, therefore, for transporting the goods from the Railway godown to the city booking agency, the goods need not be accompanied by documents/forms prescribed by the Uttar Pradesh Sales Tax Act and the Rules made thereunder. But before we consider the provisions relevant to the above contention, it is necessary to clarity that the question whether the goods being transported from the Railway godown G were being in fact transported in city booking agency (assuming for a moment that it is part of Railway) is always a question of fact. Mere claim to that effect is not conclusive. In fact, the grievance of the sales tax authorities is that a large scale evasion is going on under the cover of transporting the goods from the Railway Station to the city booking agencies. Their case is that goods are being transported to the premises of H dealers under the guise of and with the connivance of the said agencies and

that this fraud is resulting in lose of crores of revenue to the State. We shall, therefore, first examine whether the High Court was justified in interfering with the finding of fact recorded by the Deputy Commissioner in this case? Now, the power of the sales tax authorities to stop and check the goods being transported to satisfy themselves that they are being validly transported is undoubted. If they are satisfied that the goods being transported were imported into the State of Uttar Pradesh but that they are not accompanied by the documents/forms required by the Act and the Rules, they are entitled to seize the goods and levy the tax and penalty as is provided by law. The said power necessarily includes the power to decide the question whether the goods in fact were being transported to city booking agency or to some other place. In the present case, a finding was recorded by the Deputy Commissioner that the story of transport of the said seized goods to the city booking agency. Bhoosa Toli is untrue, for the several reasons recorded in his order. He was of the opinion that the goods were really being taken to some other place and since they were not accompanied by the requisite documents/forms, they are liable to be seized. The said finding is one of fact which could have been and ought to have been questioned in an appeal provided by the Uttar Pradesh Sales Tax Act. It was not done and the High Court was approached directly by way of a writ petition. We must say, with due respect to the Division Bench of the High Court, which decided the matter, that they interfered with the finding of fact without even referring to the several grounds on which it was based. We have set out herein before the several grounds on which the finding of the Deputy Commissioner is based and the reasons for which the said finding was set aside by the High Court, which clearly establishes that the High Court has not even referred to all the reasons and grounds assigned by the Deputy Commissioner and yet set aside his finding. Moreover, a writ court cannot interfere with a finding of fact unless the finding is based on no evidence or is perverse, i.e., a finding which no reasonable person would have arrived at. This finding of ours should have concluded the civil appeal but we were requested by both the parties to determine the larger question, viz., whether the Railway booking agencies do or do not form part of the "Railway"? While we agree that the said question should be decided, we find that the relevant material is not placed before us for determining the said question and for that reason, the matter requires to be remitted to the High Court. But before we do that, we shall briefly indicate the context.

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Sub-section (1) of section 28-A of the Uttar Pradesh Sales Tax Act requires that any person (referred to as importer) who intends to bring, import or otherwise receive, into the state from any place without the state any goods liable to tax under the Act in excess of the specified quantity

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A shall obtain the prescribed form of declaration upon payment of prescribed fee from the assessing authority having jurisdiction over the area where his principal place of business is situated or, in case there is no such place, where he ordinarily resides. Sub-section (3) provides *inter alia* that where such goods are consigned by railway the importer shall not after taking delivery, carry the goods away or cause the goods to be carried away from
B the railway station unless a copy of the declaration duly endorsed by such officer is carried with the goods. Violation of the said provisions renders the goods concerned to be seized and the person concerned liable to the consequences provided by law. Sub-section (8) of section 28-A, however, says that nothing contained in this section shall be construed to impose any obligation on any railway administration of railway servant of the post
C office or any officer of the post office, or to empower any search, detention or seizure of any goods while on a railway as defined in the Indian Railways Act, 1890 or in a Post office as defined in the Indian Post Office Act, 1898".

D The case of the Union of India represented by the railway officials is precisely based upon this sub-section. Their case is that the city booking agency is included within the definition "Railway" and hence the goods being transported from Railway Station to city booking agency need not to be accompanied by the documents/forms prescribed by the Uttar Pradesh Act. For an appreciation of this plea, we must notice the definition of 'Railway' both in the Indian Railway Act, 1890 as also in the Railways Act,
E 1989 which has replaced the 1890 Act. The expression "Railway" was defined by clause (4) of section 3 of the 1890 Act in the following words:

> "(4) "Railway" means a railway, or any portion of a railway, for the public carriage of passengers, animals or goods, and includes—
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> (a) all land within the fences or other boundary-marks indicating the limits of the land appurtenant to a railway;
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> (b) all lines of rails, sidings or branches worked over for the purpose of, or in connection with, a railway;
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> (c) all stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery and other works contracted for the purposes of, or in connection with, a railway; and
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> (d) all ferries, ships, boats and rafts which are used on inland
> H waters for the purpose of the traffic of a railway and belong

to or are hired or worked by the authority administering the railway." A

The 1989 Act defines the said expression in clause (31) of Section 2, which may also be set out:

"(31) "Railway" means a railway, or any portion of a railway, for the public carriage of passengers or goods, and includes- B

(a) all lands within the fences or other boundary marks indicating the limits of the land appurtenant to a railway;

(b) All lines of rails, sidings, or yards, or branches used for the purpose of, or in connection with, a railway; C

(c) All electric traction equipments, power supply and distribution installations used for the purposes of, or in connection with, a railway;

(d) All rolling stock, stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, roads and streets, running rooms, rest houses, institutes, hospitals, water works and water supply installations, staff dwellings and any other works constructed for the purpose of, or in connection with, railway; D E

(e) All vehicles which are used on any road for the purposes of traffic of a railway and owned, hired or worked by a railway; and

(f) All ferries, ships, boats, and rafts, which are used on any canal, river, lake, or other navigable inland waters for the purpose of the traffic of a railway and owned, hired or worked by a railway administration, F

but does not include —

(i) a tramway wholly with in a municipal area; and G

(ii) lines of rails built in any exhibition ground, fair, park, or any other place solely for the purpose of recreation.'

(By virtue of Section 8 of the General Clauses Act, 1898, we must read the reference to Indian Railways Act, 1890 in sub-section (8) of Section 28- H

A of the Uttar Pradesh Act as a reference to the 1989 Act, after its enactment.)

A perusal of the definitions in the previous and the present Railway Acts shows that for a city booking agency to fall within the ambit of the expression "Railway" it should either be an office or a warehouse of the Railway. If it is an office or warehouse of another person though licensed or permitted by the Railways, it would not fall within the expression "Railway". For coming within the purview of the said definition, it must be the office or the warehouse of the Railways themselves. This question can be determined only if we look to the relevant rules/orders/instructions which provide for establishment of such city booking agencies and to the particular contract/agreement which is said to have been entered into between the Railways and the holder of the said agencies. We are told that the Indian Railway Commercial Manual, Volume-II, Chapter-26, provides for appointment of city booking agencies but neither the said manual was placed before us nor-more important- has the contract/agreement entered into between the Railways and Bhoosa Toli city booking agency (or for that matter any other city booking agency at Kanpur) been placed before us. In the absence of the said material, it is not possible for us to determine the question which the parties have asked us to determine. We accordingly allow Civil Appeal No. 1635 of 1987 and remit the matter to the High Court to look into the relevant and determine the question whether the city booking agencies established at Kanpur or for that matter anywhere else in the State of Uttar Pradesh– this we are saying on the assumption that the agreement/ contracts between the Railway and the city booking agencies throughout Uttar Pradesh are uniform; if they are not, the determination shall be contained to Kanpur only– fall within the expression "Railway" as defined in Section 3 (4) of the Railways Act, 1890 or Section 2 (31) of the Railways Act, 1989.

It is made clear that if it is found that the city booking agencies do not fall with in the expression "Railway", no further question would arise and the transport, if any, of goods/consignment from the Railway Station/Godown to the city booking agencies would not be entitled to the exemption provided by sub-section (8) of Section 28-A of the Uttar Pradesh Sales Tax Act. If, however, it is found that the city booking agencies fall within the ambit of expression "Railway" as defined in the Railways Act, such transport of goods/consignment from the Railway Station/Godown to the city booking agency would be covered by the said sub-section (8).

Even so, it does not follow that the sales tax authorities of the State have no power to check the transport of goods/consignment from the Railway Station/Godown to the city booking agencies to satisfy themselves that it is indeed a transport to the city booking agency. If they find it not to be so, it shall be open to them to adopt such proceedings in that behalf as are open to them in law.

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So far as the particular consignment in Writ Petition (C) No. 914 of 1986 (Civil Appeal No. 1635 of 1987) is concerned, the Judgment of the High Court under appeal quashing the order of the Deputy Commissioner is set aside for the reason mentioned above and this question too is remitted to the High Court for consideration afresh according to law. Civil Appeal No. 1635 of 1987 is allowed in the above terms. No costs.

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So far as Civil Appeal No. 5021 of 1989 is concerned, the city booking agency approached the High Court as soon as the goods were seized and the writ petition was allowed by the High Court following the Judgment in Writ Petition (C) No. 914 of 1986. Since the question of fact has not been adjudicated in this matter, it shall now be determined by the appropriate authorities under Section 13(A) (6) and orders passed according to law. Civil Appeal No. 5021 of 1989 is accordingly allowed and the judgment of the High Court under appeal is set aside. No costs.

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WRIT PETITION (C) NOS.785/88, 792/88, 809/86, 908/88 AND 657/89,

These writ petitions were entertained and directed to be tagged with Special Leave Petition (C) No. 1575 of 1987 (numbered later as Civil Appeal No. 1635 of 1987) evidently because they were said to raise the very issue as is involved in Civil Appeal No. 1635 of 1987. There has been no adjudication of facts concerned in these writ petitions nor can it be done in these writ petitions. Accordingly, it is directed that the question of fact (i.e., whether the transport is really to the city booking agency from the Railway Station/Godown or the said plea is only a cover for evading the statutory obligation created by Section 28-A of the Uttar Pradesh Sales Tax Act and the Rules made thereunder) shall be determined by the appropriate authorities under the Uttar Pradesh Sales Tax Act. The writ petitions are accordingly dismissed.

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It is obvious that the determination made by the High Court pursuant to the remand in Civil Appeal No. 1635 of 1987 will apply in the case of all

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A the city booking agencies at Kanpur - or the whole of State of Uttar Pradesh, as the High Court may direct. (Of course, so far as the question of fact concerned in Civil Appeal No. 1635 of 1987 is concerned, that shall be contained to that case alone.) The appellant in Civil Appeal No. 5021 of 1989 and the petitioners in writ petitions before us shall be heard on the B aforementioned legal question by the High Court, if they seek to be heard. They may be treated as interveners.

The writ petitions are accordingly dismissed with costs Advocates fee Rs. 2,500 in each.

C A.G. Appeals and Petitions disposed of.