(1998) 01 MAD CK 0031

In the Madras High Court

A. Aslam APPELLANT

Vs

The State Transport Authority and Another RESPONDENT

Date of Decision : 09-01-1998

Acts Referred:
Tamil Nadu Motor Vehicles Taxation Act, 1974 — Section 3(1)

Citation : (1998) 3 MLJ 270

Hon'ble Judges : S.S. Subramani, J

Bench : Division Bench

Judgement

S.S. Subramani, J.—Petitioner seeks the issuance of a writ of mandamus or any other appropriate writ, order, or direction in the nature of a

writ, forbearing the respondents herein from collecting tax for 35 seats instead of 31 seats at the rate of 1,500 rupees per seat per quarter in

respect of petitioner''s vehicle T.N.02-H-1999 covered by All India Tourist Permit issued by first respondent.

2. In the affidavit filed in support of the writ petition, it is stated that the petitioner applied for an All India Tourist Permit, which was rejected, and

the matter was taken in appeal before the State Transport Appellate Tribunal, Chennai, which was allowed. Pursuant to the grant of permit,

petitioner produced a new luxury coach with a seating capacity of 31 seats, which was registered by the second respondent. The seating capacity

of the vehicle is only 31 and the petitioner is liable to pay tax only at the rate of Rs. 1,500 per seat per quarter. But when the vehicle was produced

before the first respondent for issuance of permit, the petitioner was directed to pay tax for 35 seats, and the petitioner was granted permit as per

his application, and Column 11 of the Permit itself shows that the seating capacity of the vehicle is 31, i.e., 31 + 1, 32 in all, and petitioner cannot carry more than 31 passengers. Since the vehicle is new and it could not be kept idle, petitioner gave an undertaking to pay tax for 35 seats even

though he was liable to pay tax only for 31 seats. Petitioner who was bound to pay only Rs. 46,500, is now paying Rs. 52,500, which is far in

excess of the amount legally payable by him. Petitioner was compelled to pay tax for 35 seats in spite of his protest. The undertaking given by him

is also not valid, since the demand for tax must be provided by the Statute. If the respondent had no right to demand tax for 35 seats, the

undertaking given by the petitioner that he will pay tax for 35 seats also cannot stand in the way of his claiming relief in this writ petition.

3. When the matter came for admission, I directed the learned Additional Government Pleader to take notice in the writ petition, and I also passed

an interim order directing the respondents not to demand motor vehicles tax for 35 seats. The Additional Government Pleader also argued the

matter, after getting Instructions.

4. Sub-section(1) of Section 3 of the Tamil Nadu Motor Vehicles Taxation Act, 1974 reads thus:

Subject to the provisions of Sub-section(2) tax shall be levied on every motor vehicle used or kept for use in the State of Tamil Nadu at the rate

specified for such vehicle in the First Schedule, or, as the case may be, in the second schedule.

(Remaining portion of the section is not necessary for our purpose, and hence omitted).

5. Item 2(ii) of First Schedule provides mat tax payable is Rs. 1,500 for every person where the vehicle is used as a contract carriage and is

intended to carry five persons other than the driver. Petitioner has produced the permit issued by the respondents, from which the registration

particulars could be seen. The maximum passenger seating capacity is 32 in all, i.e., 31 passengers +1 driver. It also could be seen that the vehicle

is of a new registration. If that be so, the tax could be levied only for 31 passengers and not 35. The petitioner has also produced the tax card

issued by the Regional Transport Officer, from which it could be seen that the respondents are collecting tax for 35 persons, which is per se illegal.

Sec. 11 of the Tamil Nadu Motor Vehicles Taxation Act also may not have any application to this case, and the learned Additional Government

Pleader also agreed that the said provision has no application to the case on hand. Only that Section 11, petitioner could be compelled to pay

additional tax. When tax is calculated for 35 persons, it is not additional tax. Under the Statute, additional tax can only mean tax legally payable for

31 passengers, and additional tax is payable u/s 11 of the Act. Demanding tax for 35 persons when the vehicle itself has no capacity for 35

passengers, cannot be claimed as additional tax under the Motor Vehicles Taxation Act.

6. In the decision reported in M. Narasimhaiah Vs. Deputy Commissioner for Transport, Bangalore Division, Infantry Road, Bangalore and

Another, , which arose from the Karnataka Motor Vehicles Taxation Act, stage carriage owner was directed to pay additional tax on the ground

that it carried more passengers than the permitted capacity. The said demand was quashed by the Supreme Court, wherein their Lordships held

thus:

The rate of taxation in this case is not based on the number of passengers actually carried during any period in a motor vehicle used as a stage

carriage but it is related to the number of passengers which the motor vehicle is permitted to carry under the permit. If the number of the

passengers carried during any period is less than what is permitted, the registered owner of the motor vehicle does not get any rebate. He has to

pay the tax at the rate determined by the number of maximum passengers mentioned in the permit even when the stage carriage is run without any

passengers. When that is the position there appears to be no justification to hold that the registered owner or whoever is liable to pay the tax

should be made to pay the additional tax merely because on some stray occasions the motor vehicle is found to have carried a few more

passengers than the number permitted under the permit since the tax is not levied on the basis of the number of passengers actually carried.

The only question that requires consideration is, what is the effect of the undertaking given by the petitioner. When the authorities cannot demand

tax, the undertaking given by the petitioner that he will pay tax for 35 passengers is of no consequence. It is well-settled that for demand to be

legal, it must be on the basis of some Statute. If a demand cannot be made legally, for 35 passengers, the mere undertaking given by the petitioner cannot bar him from challenging the same. Consequently, there will be a direction forbearing the respondents from collecting tax for 35 seats as is

being done, and I direct the respondents to collect tax only for 31 passengers in respect of the petitioner''s vehicle bearing Registration No.

T.N.02-H-1999, covered by All India Tourist Permit. The writ petition is allowed as indicated above. No costs. W.M.P.No. 29539 of 1997 for

injunction is closed.

