

(1998) 12 AP CK 0047

In the Andhra Pradesh High Court

Case No : Writ Petition No. 34574 of 1998 and Batch

A. Narayana Rao

APPELLANT

Vs

Asst. Secretary, Regional Transport Authority, Secunderabad
and others

RESPONDENT

Date of Decision : 24-12-1998

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1989 — Rule 334
Central Motor Vehicles Rules, 1989 — Rule 47, 48
Motor Vehicles Act, 1988 — Section 2(7), 3, 41, 44, 45

Citation : AIR 1999 AP 195 : (1999) 1 ALD 614 : (1999) 1 ALT 587

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : Mr. E. Maruthi Raja, for the Appellant; Government Pleader for Transport, for the Respondent

Judgement

G. Bikshapathy, J.—In all these writ petitions common questions of law are involved and hence, therefore they are decided by a common judgment.

2. The question that arises for consideration in all these writ petitions is whether any permission of the authorities is required for reducing the seating capacity in the contract carriage vehicles.

3. The factual matrix in the nutshell is that the petitioners are owning the Light Motor Vehicles having seating capacity of more than 6 excluding the driver. In some cases, the petitioners have purchased the vehicles from the manufacturers which are having seating capacity of more than 6 passengers excluding the driver. They intend to run the vehicles as contract carriages and also under All India Tourist Taxi Cabs Permits u/s 88(9) of the Motor Vehicles Act. The stand of the petitioners is that they have effected necessary adoptions in the seating arrangement by reducing the seating to 6 excluding the driver so as to give better tourist facilities and that they may be permitted to adopt the seating capacity of 7 in all to run under all India Tourist Motor Cab Permits or contract

carriages as the case may be. Some of the applications: were rejected by the authority stating that it was neither permissible nor advisable to reduce the seats and it is against the prototype brought out by the manufacturer as approved by the competent authority. The authorities also relied on the instructions of the Transport Commissioner who directed not to permit the alterations involving structural changes until the Report from the ARIE is received.

4. Common counter has been filed by the Transport Department stating that once the seating capacity is fixed by the manufacturer it cannot be altered unless the seating capacity is fixed on wrong calculations. The seating capacity as certified by the manufacturer is the criteria for entering in the Certificate of Registration. Further if the vehicle is registered as 10 Sealer, the tax has to be levied @ 126/- per seat per quarter and if the vehicle is used as contract carriage, the rate of tax is Rs.1,150/- per seat within the District or if it plies within the State of Andhra Pradesh or outside the State the tax is Rs.2,500/- per seat per quarter. The rate of tax is different for these vehicles. For seating capacity of 6 in all and 7 in all the tax is Rs.414/- per seat per quarter and for more than 7 seats upto 50 Rs.2,500/- per seat per quarter. The petitioner intends to reduce the seating capacity from 10 to 7 in all with a view to avoid the tax liability and to deny the revenue to the State. It is further stated that once the seating capacity is fixed by the manufacturer it cannot be altered as mandated by the third proviso to Rule 334 of A.P.M.V. Rules unless such reduction was necessitated on account of wrong calculation of the measurements or on construction of the body. The vehicles are designed with appropriate seating capacity. Hence, the seating capacity cannot be changed. Further in order to avoid payment of tax, they are seeking reduced seating capacity.

5. The learned Counsel appearing for the petitioners in all the writ petitions submit that there is no prohibition to convert the motor vehicles which do not fall within the definition of motor cab (which means any motor vehicle constructed or adapted to carry not more than 6 passengers excluding the driver for hire or reward). The seating is adapted as to accommodate 6 passengers excluding the driver. Therefore, there is no prohibition for registering the seating capacity as 7 in all. They also submits that u/s 52 alteration of motor vehicle is permissible with the permission of the authorities. The seats were reduced in order to provide better travelling comforts to the passengers. Therefore, they submit that the action of the respondents in rejecting the applications for registering the passenger capacity of 7 in all is illegal and contrary to rules.

6. The learned Government Pleader on the other hand contends that change of seating capacity amounts to structural changes which is not permissible under the provisions of the Motor Vehicles Act. Secondly also he submits that by reducing the seats taxi cabs and the omnibuses are reduced to motor car, and the taxes which are payable as a taxi cab and omnibuses are quite different than that of motor cab and in order to avoid the payment of tax to the Government, the petitioners have devised an ingenious method of seeking conversion with

reduced capacity of passengers. Therefore, he submits that the action of the respondents is quite justified and no interference is called for.

7. It is an undisputed fact that the petitioners have purchased the vehicles having seating capacity of more than 7 in all such as Tata Sumo, Mahindra Jeeps etc., and they required the authorities to reduce the same to 6 plus 1 in all. The manufacturers of the vehicles certified various details of the motor vehicle including the authorised seating capacity and those details are entered in the certificate of registration. In this batch we are concerned only with the reduction of seating capacity in contract carriages to 7 in all and to ply as All India Tourist Motor Cabs.

8. For proper appreciation of the case it is necessary to refer to certain definitions and other statutory provisions under the Motor Vehicles Act. The Contract Carriage is defined u/s 2(7) as "contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on fixed or an agreed rate or sum -

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another,

and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes-

(i) a maxi cab;

(ii) a motor cab notwithstanding that separate fares are charged for its passengers.

The "maxi cab" is defined u/s 2(22) as "maxi cab" means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward. u/s 2(25) motor cab is defined as "motor cab" means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward. Motor car is also defined u/s 2(26) as "Motor Car" means any motor other than a transport vehicle, omnibus, road-roller, tractor, motor cycle or invalid carriage. For running a motor vehicle as transport vehicle, the permit of the appropriate authorities is required to be issued. The transport vehicle includes a public service vehicle which means any motor vehicle used or adapted by use for carriage of persons for hire or reward and includes the maxi cab motor car and contract carriage and stage carriage. Thus, it is seen that all the motor cabs which are required to be used for carriage of passengers for hire or reward are required to obtain permit to be issued by the appropriate authority under the Motor Vehicles Act. u/s 52, no owner of a motor vehicle is allowed to alter the vehicle so that the particulars contained in the certificate of registration are no longer accurate unless a prescribed notice is given and the approval of the registering authority

is obtained. Section 52 to the extent relevant is extracted below:

"52. Alteration in motor vehicle :-- (1) No owner of a motor vehicle shall so alter the vehicle that the particulars contained in the certificate of registration are no longer accurate, unless-

(a) he has given notice to the registering authority within whose jurisdiction he has the residence or the place of business where the vehicle is normally kept, as the case may be, of the alteration he proposes to make; and

(b) he has obtained the approval of that registering authority to make such alteration:

Provided that it shall not be necessary to obtain such approval for making any change in the unladen weight of the motor vehicle consequent on the addition or removal of fittings or accessories, if such change does not exceed two per cent of the weight entered in the certificate of registration;

Provided further that modification of the engine, or any part thereof, a vehicle for facilitating its operation by a different type of fuel or source of energy including battery, compressed natural gas, solar power or any other fuel or source of energy other than liquid petroleum gas shall be treated as an alteration but that shall be subject to such conditions as may be prescribed.

(2) Where a registering authority receives a notice under sub-section (1), it shall, within seven days of the receipt thereof, communicate, by post, to the owner of the vehicle its approval to the proposed alteration or otherwise :

Provided that where the owner of the motor vehicle has not received any such communication within the said period of seven days, the approval of such authority to the proposed alteration shall be deemed to have been given."

Under Section 69 every application for a permit shall be made to the appropriate authority. u/s 73 an application for permit in respect of the contract carriage permit is to be made giving following particulars:

Type and seating capacity of the vehicle. The area for which the permit is required. Any other particulars which may be prescribed.

The appropriate authority may grant stage carriage permit u/s 74 with one or more conditions as prescribed therein. u/s 76 Regional Transport Authority is empowered to grant a private service vehicle permit. Under sub-section (9) of Section 88, the State Transport Authority may for the purpose of promoting tourism grant permits in respect of tourist vehicles valid for whole of India or in such contiguous States not less than three including the State in which the permit is issued.

9. The question that falls for consideration is whether it is open for the petitioners to seek the reduced capacity of the vehicle for the purpose of plying as All India Tourist motor cabs or contract carriages. All the vehicles possessed

by the petitioners are admittedly having the seating capacity of more than 7 in all. Therefore, they fall either in the definition of maxicab or omnibus which indicate that the said vehicles are permitted to carry more than 6 passengers excluding the driver and the petitioners altered the seating arrangements in such manner as to accommodate not more than 6 passengers excluding the driver. By this they submit that when the vehicles is adapted to carry 6 passengers excluding the driver it shall fall within the definition of motorcab and therefore they must be permitted to run with the capacity of not more than 6 passengers excluding the driver for hire or reward. There is no dispute that the capacity of the vehicles as certified by the manufacturer is more than 6 passengers excluding the driver. But, according to the petitioners, they intend to reduce the capacity of the motor vehicles so as to fall within the definition of motorcab. u/s 52 of the Act, the alteration of the vehicles is not permissible when the particulars contained in the certificate of registration would become inaccurate when the alteration is made. But, such alteration is permissible with the approval of the authority. In the instant cases, the authorised seating capacity is more than 6 passengers excluding driver. It is to be noted that no structural changes in the vehicle are effected nor the prototype or basic features of the vehicle are changed. It is only a readjustment of the seating arrangement so as to accommodate less number of passengers with more comforts. Number of seats in a vehicle has no relation to the seating capacity. When the inbuilt seating capacity is kept intact and only the number of seats are reduced below the seating capacity it cannot be understood as changing the structure of the vehicle. Even the alteration of vehicle is permissible u/s 52 of the Act. A maxicab is allowed to carry more than 6 passengers and not more than 12 passengers excluding the driver for hire or reward. Similarly the omnibus is allowed to carry more than six passengers excluding the driver. If maxicab is permitted to carry more than 6 passengers excluding the driver and if it is adapted and the seating arrangements are made in such a fashion as to accommodate only 6 passengers excluding the driver, the adoption or conversion cannot be said to be contrary to Section 52 of the Act, or can it be said that the structural changes are affected.

10. Identical issues came up before the Kerala High Court for consideration. In *Joint Regional Transport Officer v. K.K. Joshi*, AIR 1992 Ker 142, the petitioners were owners of light motor vehicles applied for registration of their vehicles before the registering authority. The application was rejected for the reason that the applicant has shown the seating capacity of their vehicles in their applications as 7 which according to the registering authority is incorrect. The vehicle was designed by the company as 9 sealer and the sitting arrangement was made by the owners so as to accommodate the 7 in all. The Division Bench referring to the provisions contained u/s 41, 44 and 45 of the Motor Vehicles Act and Rule 47 and 48 of Central Motor Vehicles Rules, 1989 Read with Form 20 prescribed application for registration came to the conclusion (seating capacity) of the vehicle is different from actual seats provided in that vehicle. The seating capacity would depend upon the design, Horse Power and unladen weight and

other allied factors. The Division Bench further held that there will not be any change in the seating capacity even if the owner provided one seat having seating capacity of 20. In the application for registration what was required to be stated is not the actual seats provided in the vehicle, but the seating capacity. Under those circumstances, the Division Bench held that even though there was a mistake in the application submitted by the petitioners who has shown the number of seats provided in the vehicle, the Court directed the registering authority to issue registration certificate in respect of those vehicles showing the correct seating capacity of each vehicle. In T.K. Radhamani Vs. Joint Regional Transport Officer, Mattancherry, , the question came up for consideration was whether reduction of certain number of seats in the case of motor vehicles which are classified as omnibuses, truckers or LMV light motor vehicles having seating capacity varying 9 to 10 including driver, would amount to alteration in motor vehicle coming u/s 52 of the M.V. Act, 1988. The vehicles, with respect to which the Bench was concerned were having bodies built by manufacturer with fixed seating capacity. The Bench took the view, after referring to the provisions of the Act and Rules, including Rule 103 of Kerala Motor Vehicles Rules, 1989 that the entry in Item No. 13 of the Registration Certificate relates only to seating capacity and not to the actual number of seats provided in the vehicle. Their Lordships took the view that sub-clause (a) of Clause (2) of Rule 103 deals with structural alteration requiring change of particulars noted in registration certificate. Sub-clause (b) which deals with re-arrangement of seats, can apply only to vehicles seating capacity of which has not been fixed by the manufacturer. The certificate has no relevance as far as vehicles manufactured with photo type having fixed seating capacity. Therefore, their Lordships came to the conclusion that alteration of the vehicle contemplated under the Rules, does not take in addition or reduction of seats in a vehicle having seating capacity fixed by the manufacturers. It was also held that if, by addition of seats, there is any change in the unladen weight of the motor vehicle exceeding it by 2% of the weight entered in the certificate of registration, permission u/s 52 would be required. The aforesaid judgments of the Division Bench and some other decisions of the Division Bench were referred to the Full Bench by the learned single Judge on the ground that there was conflict of decisions between the Bench decisions and they have to be solved by the Larger Bench. The Full Bench again reconsidered the decisions of the Division Benches on the subject including the decisions referred to above. While holding that there was no conflict of decisions; upheld the decisions reported in K.K. Joshi 's case (supra) and Radhamani's case (supra). The Full Bench further held at para 17 as follows:

"We are in full agreement with the above view. What has to be shown against item 19 in the application for registration of motor vehicle and what has to be mentioned as item 13 in the certificate of registration in Form 23 is the "seating capacity" (including driver) and not the number of seats. It may be that in cases where the owner of the vehicle applies for permission to increase the number of seats in the type of vehicles with which we are concerned to more than seating

capacity designed by the manufacturer, permission may be required, since, such increase in number of seats may require alteration in the structure of vehicle and the unladen weight of the motor vehicle may be increased exceeding 2% of the weight entered in the certificate of registration. In such cases, a change in the entry against item 14, namely, unladen weight in the certificate of registration, would be required. But, in cases before us, both sides have no contention that the petitioners had made a request for permission to increase the number of seats by making any structural alteration in the vehicle."

The opinion of the Division Bench was affirmed by the Full Bench as far as the contract carriage vehicles are concerned with the bodies made by the manufacturers themselves and having definite capacity as designed by the manufacturer. No permission was necessary u/s 52 of the Act for reducing the number of seats as by such reduction, no alteration has to be made in the entry regarding the seating capacity in the certificate of registration. The seating capacity in such cases would continue to be the same irrespective of the reduction in number of actual seats. Following the principles laid down by the Division Benches of the Kerala High Court, as affirmed by the Full Bench, I have to necessarily hold that reduction in number of seats of the vehicles possessed by the petitioners would not amount to alteration as it did not change the seating capacity requiring permission u/s 52 of the Motor Vehicles Act. Accordingly, it is declared that a registered owner need not obtain the approval of the registering authority if they intend to reduce or increase the seating capacity u/s 52 of the Act. But, if the result of any such change is exceeding 2% of the weight entered in the registration certificate, the approval of the registering authority is necessary. The conclusion is accordingly recorded.

11. But, however, the learned Government Pleader submits that by reducing the number of seats the petitioners are trying to avoid the payment of tax by making payment of tax treating the vehicle as a motor cab, and thus it deprives the State substantial revenue. This issue was also considered by the Full Bench in the cases referred supra. The Full Bench observed as follows:

"The next question referred for our consideration is whether an application for altering the seating capacity u/s 52 of the M.V. Act, 1988 can be refused for the reason that it would adversely affect the interest of revenue. We are afraid that this question does not arise for consideration in the facts of this case. If no permission is necessary to reduce the number of seats in these type of vehicles as it would not amount to change in the seating capacity, the question of refusing a petition u/s 52 does not arise. As mentioned earlier, the tax liability for contract carriage vehicles under Kerala Motor Vehicles Taxation Act is related to the number of passengers permitted to carry in the respective vehicles. The number of passengers permitted to carry will depend on the permit issued to the particular vehicle. No argument was placed before us by either of the sides as to the number of passengers now permitted to carry in each of the vehicles, whether the permit holders have made applications for making modifications in

the permit, what are the conditions to be satisfied for such change or modification in the permit and whether the authorities can refuse permission to modify the permit once granted only for the reason of consequential reduction in the revenue. Since, no arguments had been addressed before us on this issue, as it does not arise in the facts of these cases, we decline to express any view on the above issue."

12. The quantum of tax that is levied by the State of Andhra Pradesh is governed by the provisions of the Andhra Pradesh Motor Vehicles Taxation Act and the Rules framed thereunder and the notifications issued. u/s 3 of the Act, the Government by notification from time to time, direct that a tax shall be levied on every motor vehicle used or kept in use in a public place in a State. The Government is also empowered to specify class of motor vehicles and the rates for the periods at which the tax shall be levied. It is open for the Government to collect the tax as provided under the Act. Since the issue regarding the payment of tax and whether the tax has to be calculated on the basis of the seating capacity or on the basis of the actual passengers permitted under various permits is not the question before this Court. Therefore, I refrain from deciding as to what amount of tax should be paid by the vehicle owners, who have reduced their number of seats. It is for the authorities to take action in accordance with the relevant provisions of the law. But, however, it is stated by the learned Government Pleader that by virtue of the interim directions of this Court, the petitioners are plying the vehicles with reduced capacity and paid less tax. There was no direction by this Court to collect particular amount towards the tax and if the respondents are entitled to collect higher tax, even though the vehicle is running with reduced number of seats, I leave it open for them to collect differential tax in accordance with law.

13. The writ petitions are accordingly disposed of. No costs.