(2000) 12 MAD CK 0005

In the Madras High Court

Case No : Writ Petition No. 19211 of 2000

A. Sadiq APPELLANT

Vs

The Transport Commissioner and The Regional Transport Officer RESPONDENT

Date of Decision : 13-12-2000

Acts Referred:
Motor Vehicles Act, 1988 — Section 72, 74, 88(8), 88(9)
Tamil Nadu Motor Vehicles Taxation Act, 1974 — Section 2, 20, 6

Citation : (2000) 12 MAD CK 0005

Hon'ble Judges : S. Jagadeesan, J

Bench : Single Bench

Advocate : Radha Gopalan, for the Appellant; S. Thirugnanasambandam, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

S. Jagadeesan, J.—The Petitioner has filed this Writ petition to quash the impugned circular No. 190 of 2000 dated 10.10.2000 issued by

the first Respondent herein.

2. The grievance of the Petitioner is that he is the owner of the contract carriage. He used to obtain special permit u/s 88(8) of the Motor Vehicles

Act in order to carry tourists. As per G.O. No. 894 Home (Transport) Department dated 29.5.91] there is a reciprocal exemption from payment

of tax in respect of the vehicles of both the States of Pondicherry and Tamil Nadu. Hence the Petitioner is not liable to pay any tax to ply within the

State of Tamil Nadu while taking tourists from Pondicherry. Whenever there is any violation in picking up or setting down the passengers, the

vehicles are bound to be impounded and on payment of l/10th of tax, the vehicles were released, as the special permits are issued for a period of seven days.

3. Now under the impugned circular, the first Respondent had directed the Motor Vehicle Authorities to collect the tax for the entire quarter. Since

the circular is over riding the government order G.O. No. 894 dated 29.5.91 the same is liable to be quashed.

4. Mr. Thirugnanasambandam, the Special Government Pleader on behalf of the Respondents contended that the circular is only a clarification in

respect of the said G.O.894 dated 29.5.91 and it does not in any way override the said Government Order. As the authorities have found in the

recent past that the bus operators are violating either the Rules or the permit conditions, the authorities sought for the clarification from the first

Respondent and the first Respondent had issued the impugned clarification. Hence there is no illegality in the said impugned circular.

5. In order to appreciate the contention of the counsel for the Petitioner, it is necessary to consider the terms of G.O. No. 894 dated 29.5.91

which is as follows:

GOVERNMENT OF TAMIL NADU

ABSTRACT

Motor Vehicles -Taxation - Notification issued in G.O. Ms. No 602, Home dated 18.3.81 -Superseded-Revised-Notification issued.

HOME (TRANSPORT. A) DEPARTMENT

G.O. Ms. No. 894

Dated: 29.5.1991.

Read:

1. G.O. Ms. No. 602, Home, dated 18.3.81.

2. From the Transport Commissioner. Madras Lr. No. 12187/Dl/90,

dated 23.7.90 and 3.12.1990.

ORDER:

The following Notification will be published in the Tamil Nadu Government Gazette :

NOTIFICATION

In exercise of the powers conferred by Clause (1) of Section 20 of the Tamil Nadu Motor Vehicles Taxation Act, 1974 (Tamil Nadu Act 13 of

1974) and in supersession of the Home Department Notification No. II (2) Ho/1434/81, published at page 236 of Part-II Section 2 of the Tamil

Nadu Government Gazette, dated the 8th April 1991. the Governor of Tamil Nadu hereby exempts the public service vehicles registered in other

states having special permits granted under Sub-section (8) of Section 88 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988) from

payment of tax payable under the said Tamil Nadu Motor Vehicles Taxation Act, 1974 (Tamil Nadu Act 13 of 1974). Subject to the condition

that such other States continue to give reciprocal exemption from payment of tax in respect of the public service vehicle registered in the State of

Tamil Nadu having special permits granted under the said Sub-section (8) of Section 88 of the said Motor Vehicles Act, 1988 (Central Act 59 of

1988) to operate in such other States: Provided that such exemption shall not be made in respect of:(a) The public service vehicles covered by

special permits granted under Sub-section (8) of Section 88 of Motor Vehicles Act, 1988 (Central Act 59) of 1988) by the transport authority of

a State other than the State of Tamil Nadu to pickup and set down passengers in the State of Tamil Nadu; and

(b) those vehicles not covered by a permit issued u/s 72 (including a reserve stage carriage or a spare bus) or u/s 74 or under Sub-section (9) of

Section 88 but issued with special permission under Sub-section (8) of Section 88 of the Motor Vehicles Act, 1988 Central Act 59 of 1988) by

transport authority of a state other than the state of Tamil Nadu.

2. This order issues with the concurrence of the Finance Department vide its UO not 115/DS/EM1/91-1, dated 21.1

(By Order of The Governor)

The above Government Order deals with the exemption from the payment of tax in respect of the public service vehicles registered in/other/States

having reciprocal agreement. The proviso deals with the cases where the exemption is not applicable. Clause (a) of the proviso deals with the

public service vehicles covered by the special permit granted u/s 88(8) of the Motor Vehicles Act who engaged themselves in picking up and

setting down the passengers in the States of Tamil Nadu. Clause (b) of the proviso deals with the vehicles not covered'' by a valid permit issued

either u/s 72 or Section 74 or Section 88(9).

6. In the case on hand, the Petitioner''s vehicle is not attracted with the proviso to G.O. But, however, the writ petition has been filed on the ground

that when even any violation pointed out in the proviso (a) to the G.O. is involved, prior to the impugned clarification admittedly the transport

authorities collected tax at the rate of 1/10th. 1/3rd or quarterly rate of tax, since the vehicle is covered with the special permit issued u/s 88(8) of

the Act. But, now by virtue of the clarification the transport authorities are empowered to demand only the quarterly tax and hence the impugned

communication, clarifying the G.O is challenged.

7. Now it is better to have a look at the impugned communication which reads as follows:

OFFICE OF THE TRANSPORT COMMISSIONER, CHEPAUK

R. No. 31628/D1/2000 Circular No. 190/2000

dated 10.10.

Sub: Collection of Tax in respect of other State Public Service Vehicle covered by Special permits u/s 88(8) of the Act-Revised guidelines issued.

Ref: 1. This Office Cir. No. 2(./89

2.G.O. Ms. No. 894, Home, Dated: 29.5.91.

1. Kind attention is invited to the references cited.

2. In G.O. Ms. No. 894, Home, dated 29.5.91. Government have exempted the public Service Vehicles registered in other States having special

permits granted under Sub-section (8) of Section 88 of Motor Vehicle Act, 1988 (Central Act 59 of 1988) from payment of Tax payable under

Tamil Nadu Motor Vehicles Taxation Act 1974 subject to condition specified therein, (copy enclosed for ref)

3. In a case, the Regional transport Officer. Thiruchy was instructed to collect full tax (i.e., Quarterly of Tax) in respect of a omnibus which was

covered by Special permit u/s 88(8) of the Act issued by State Transport Authority, Pondicherry and performing inter-state operations in Tamil

Nadu. In similar case, the Regional Transport Officer, Thiruchy has requested instruction and clarification about the collection of tax in respect of

other State Public Service Vehicles which covered by special permit either at the rate of 1/10th, 1/3rd or quarterly rate of tax.

4. On a close reading of the provisions u/s 6 of Tamil Nadu Motor Vehicles

Taxation Act, 1974, it may be seen that a temporary licence may be

issued after collecting proportionate rate of Quarterly Tax as the case may be. Hence it is revealed that tax can be collected at the time of issue of

Temporary Licence only. Hence it cannot apply straightaway in the case of irregularities or violation after detection made. During the meeting of all

Regional Transport Officer, Deputy Transport Commissioners hold on 28.09.2000, at Chennai, it was decided to collect full rate of Quarterly Tax

in respect of other States Public Service Vehicles which are violating the conditions stipulated in G.O. Ms. No. 894, Home, dated 29.5.91. though

they are covered by special permit issued u/s 88(8) of Motor Vehicles Act to ply in Tamil Nadu.

5. Hence Joint Transport Commissioners, all Deputy Transport Commissioners, Regional Transport Officers, Motor Vehicle Inspectors, Unit

Office and Checkposts are requested to collect full rate of Quarterly tax in respect of other States Public Service Vehicles which are covered by

Special Permit u/s 88(8) of the Motor Vehicles Act and violating the conditions specified in the G.O. referred to with immediate effect. The

checking officers should ensure whether the Special Permits issued u/s 88(8) of Motor Vehicles Act are genuine one and they should make such

entries in the original Special Permit such as place of check, time in place from which it is coming and proceedings etc.

6. All Regional Transport Officers, Motor Vehicle Inspector, Unit Office, Motor Vehicle Inspector (Checkposts) should acknowledge receipt of

the reference directly to the concerned Joint Transport commissioner, Deputy Transport commissioner and the Joint Transport Commissioner,

Deputy Transport Commissioner should acknowledge receipt to this office at once.

Sd/

P.R. Shampath,

Paragraph 3 of the impugned proceedings reveals that the Regional Transport Officer. Trichy was instructed to collect full tax in respect of the

omnibus covered under the Special permit issued u/s 88(8) of the Act by the State Transport Authority, Pondicherry and performing Inter- State

operations in Tamil Nadu. In similar cases, the Regional transport Officer, Trichy has requested instructions and clarification about the collection of

tax in respect of other State '' Public Service Vehicles which covered by the

Special Permit either at the rate of 1/l0th, l/3rd or quarterly rates of

tax.

8. In view of the clarification sought for by the Regional Transport Officer, Thiruchy, during the meeting of all Regional transport Officers, Deputy

Transport Commissioners held on 28.9.2000 at Chennai it was decided to collect full rate of quarterly tax in respect of the other State public

service vehicles which are violating the conditions stipulated in G.O. Ms. No. 894 Home dated 29.5.91 though they are covered by the special

permit issued u/s 88(8) of the Motor Vehicles Act. Only pursuant to the said decision, the present clarification has been issued.

9. From the proceedings it is seen that Section 6 of the Tamil Nadu Motor Vehicles Taxation Act, 1974 empowers the collection of proportionate

rate of quarterly tax at the time of issuing the temporary licence. As the public service vehicles of other States covered under G.O. Ms. No. 894

Home dated 29.5.91 do not require to obtain any temporary licence, the provision of Section 6 of the Act will not be made applicable. Hence the

entire quarterly tax is being collected as and when the vehicles are involved in the irregularity or violation.

10. There is no dispute that all along in the case of irregularity or violation, attracting proviso (a) to G.O. Ms. No. 894 Home, dated 29.5.91 the

motor vehicle, authorities have been collecting the tax at the rate of 1/l0th, l/3rd or the quarterly tax, as the case may be. Hence the authorities had

been vested with the discretion to collect the amount, perhaps depending upon the duration of the temporary permit as well as the period of usage

of the vehicle.

11. When that be so, the question for consideration is whether in their meeting, the transport authorities can take the decision of their own to

collect the entire quarterly tax. If the answer is ''Yes'' then there cannot be any dispute that the authorities are vested with the power of collection of

the tax on then-discretion without any guidelines as to when l/3rd or 1/l0th or quarterly tax to be levied, which may not be the intension of the

Legislature.

12. When the power of the levy of tax vests with the State, when all along the Respondents have collected the tax only at the rate of l/3rd or l/10th

from the vehicles having the benefit of the reciprocal arrangement as per G.O.

Ms. No. 894, Home, dated 29.5.91, it is not open to the first

Respondent to issue any clarification with regard to the quantum of collection of tax by the Regional Transport Officers in case of violation or

irregularity.

13. All along it has been collected seven days tax or l/10th of the tax proportionately. Now suddenly the first Respondent had assumed the

jurisdiction to issue the clarification notification on the basis of the decision taken in the meeting of the Regional Transport Officers and Deputy

Transport Commission. It is not clear as to how the Regional Transport Officers and Deputy Transport Commissioners had assumed the

jurisdiction to discuss the quantum of levy of tax and take a unanimous decision. Similarly it is not clear as to how the authority who issued the

clarification notification has got the jurisdiction to issue such a direction, directing the Regional Transport Officers to collect the taxes at a particular

rate.

14. The learned Government Pleader is unable to convince the Court with regard to the source of the authority for the Respondents to issue such

clarification circular.

15. Before parting with the case, it may be worth to mention the letter issued by Thiru. P. Gopalan Joint Transport Commissioner. Chennai -4 to

all the Regional Transport Officers in Chennai zone dated 27.11.2000 wherein the Motor Vehicle Inspectors have been directed to continue their

checking of the vehicles in their respective jurisdiction and achieve the target. Only on achieving the target, they should be allowed to work in the

office. The Regional Transport Officers are requested to instruct the Motor Vehicle Inspectors that no leave or permission will be granted during

that week or till the target it achieved by them.

16. This clearly exposes the idea of the Joint Commissioner that a target has been fixed for the collection by way of tax.

17. In fact the first paragraph of the said letter is as follows:

All the Regional Transport Officers are aware that target of 120% of the collections made during the year 1999-2000 has been fixed for the

current financial year 2000-2001. In order to achieve the target, a programme of conducting special, combined check of all vehicles has been fixed as per the annexure enclosed.

18. On seeing this letter, this Court summoned the said Joint Transport Commissioner and enquired, who admitted that the target has been fixed at

the instructions of the Transport Commissioner.

19. From this, it is clear that the Transport Authorities have fixed the target to be achieved for the current financial year 2000-2001 with an

increase above the last year collection and thereby the officials are forced to achieve the target. This attitude of the officials will naturally tend to

foist the cases against the bus operators. When the collection of tax depends on the violation of the Rules or permit Conditions, then how can there

be a fixation of target for the collection of tax?

20. If the officials do not discharge their functions by taking action against the vehicles which involved in violations, it is open to the higher

authorities to take action against the officials. Instead of doing that, if the higher authorities direct the officials to achieve some target, fixing the

quantum, then the lower authorities are forced to reach the quantum whether there is any violation or not. This will be a bad trend to be carried out.

21. Perhaps this may be the reason for the Transport Commissioner also to issue such clarification circular, compelling the lower authorities to

collect the quarterly tax, giving a go by to the practice all along adopted. On this ground also the impugned clarification circular has to be set aside.

22. Hence the impugned communication, clarifying the rate of tax to be collected, issued by the first Respondent is no doubt beyond his jurisdiction

and the same cannot be sustained. Consequently the same is set aside and the writ petition is allowed with cost.