(1992) 02 AP CK 0046

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 2045 and 7552/90

A. Sudharsana Reddy APPELLANT

Vs

Regional Transport Officer and Another RESPONDENT

Date of Decision : 10-02-1992

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1989 — Rule 2(1)
Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 2, 2(7)

Citation : (1992) 3 ALT 531

Hon'ble Judges : V. Neeladri Rao, J;M.N. Rao, J

Bench : Division Bench

Advocate : V. Narasimha Reddy, for the Appellant; Govt. Pleader, for the Respondent

Judgement

M.N. Rao, J.—As both the writ petitions are interconnected we are inclined to dispose of the same by this common Judgment.

2. Both the writ petitions are filed by one A. Sudharshana Reddy who holds a pucca district contract carriage permit being Registration No. ADC 1969 in respect of which the tax payable is Rs. 250/- per seat per quarter. The permit enables the petitioner to ply his vehicle as contract carriage anywhere in the District of Chittoor. When the vehicle was plying on the route Madanapalli Tirupathi, it was checked on 16-2-1990 by the Regional Transport Officer, Tirupathi and the following irregularities were noticed:

(1) Registration Certificate not produced;

(2) Fitness certificate not produced;

(3) Valid insurance certificate not produced;

(4) The driver did not produce valid driving licence; and

(5) Proof of payment of tax not produced.

3. No contract was produced. The passengers were found travelling by paying Rs. 13/- each and they did not belong to one group. All the passengers were picked up at Madanapalli and the vehicle was proceeding to Tirupathi. The statement of one of the passengers also was obtained at the time of the check. Based on the check report a show cause notice was issued calling upon the petitioner to show cause why tax at the rate of Rs. 437/- per seat per quarter, which is liable to be paid by an express stage carriage operator, should not be collected from him. In his explanation he denied the allegations. Rejecting the said explanation offered by the Petitioner, the Regional Transport Officer Licensing Authority under the Motor Vehicles Act, issued demand notice dated 28-4-90 in RC No. 3093/A2/90 calling upon the petitioner to pay the tax in a sum of Rs. 10,222 /-, being the difference in tax payable by a contract carriage and an express stage carriage, for the quarter ending 31-3-90. Challenging the same W.P. No. 7552/90 was filed.

4. After the check was over the vehicle was seized and kept at Tirupathi by the Regional Transport Officer. Challenging the seizure, W.P. No. 2045/90 was filed.

5. By an interlocutory order dt. 20-2-90 in W.P.M.P. No. 2665/90 in W.P.N6.2045/90, this court directed release of the vehicle on condition of the petitioner paying a sum of Rs. 1,000/- and furnishing an undertaking that he will not alienate or encumber the vehicle and produce it whenever required by the authorities. The interlocutory order in W.P.MP. No. 9512/90 in W.P. No. 7552/90, dt. 29-5-9O was in the following terms:-

"Interim suspension on condition that the petitioner deposits half of the amount of tax within six weeks from today. In default, interim suspension stands vacated. Notice."

6. Sri V. Narasimha Reddy, the learned counsel for the petitioner, contends that there is no justification on the part of the respondents to issue the impugned demand notice; there was no evidence pointing out that the vehicle was found plying as an express stage carriage. In any event, the learned counsel says, the petitioner is liable to pay tax only at the rate of Rs. 292/- per seat per quarter, the prescribed tax in respect of ordinary stage carriage, but not as an express stage carriage.

7. The expression ''contract carriage'' is defined by clause (7) of Section 2 of the Motor Vehicles Act, 1988 which came into force with effect from 1-7-1989. It reads:

"''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 permit in relation to such vehicle or any person authorised by him in this behalf at a 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; and

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

8. The check report, a copy of which is placed before us, clearly shows that there was no contract available and the passengers were found travelling from Madanapalli to Tirupathi, each of them paying individual fare of Rs. 13/-. The only condition that was complied with by the vehicle at the time of the check was that it was plying from one point to another point. The other conditions viz., carrying passengers under a contract, express or implied, and use of the vehicle as a whole for the carriage of passengers mentioned in the contract were clearly breached by the petitioner. Unless all the conditions specified in clause (7) of Section 2 are cumulatively complied with, the vehicle cannot be treated as a contract carriage. The term ''express stage carriage'' is not defined in the Act, but Rule 2(1)(b) of the A.P. Motor Vehicles Rules, 1989, incorporates the following definition:-

"''Express stage carriage'' means (i) a carriage plying on city and town routes ''non-stop'' or ''with limited halts'' as may be prescribed by the transport authority; or

(ii) a carriage plying non-stop on mofussil routes of short distance as may be prescribed by the transport authority; or

(iii) a carriage plying on mofussil routes with limited halts, as may be prescribed by the transport authority".

9. The route Madanapalli-Tirupathi is a mofussil route and as the vehicle in question was found plying non-stop, it clearly answers the description of ''express stage carriage'' under Rule 2(1)(b)(iii) of the A.P. Motor Vehicles Rules, 1989. When once a vehicle answers the description of ''express stage carriage'', the question whether the fares collected by the permit holder or the driver on behalf of the permit holder were at the rates applicable to stage carriages or express stage carriages becomes irrelevant. Where a contract carriage was found plying non-stop from one point to another and if the route on which it was found plying is a mofussil route with limited halts as defined under rule 2(1)(b)(iii), it must be treated for the purposes of A.P.M.V. Taxation Act, as an express stage carriage. What is essential is whether the vehicle answers the description of ''express stage carriage'' as per the definition contained in Rule 2(1)(b). If the answer is in the affirmity, the owner of the vehicle which was found to have been plying as express stage carriage unauthorisedly is liable to pay the tax prescribed under the Act.

10. We, therefore, find little merit in the contention advanced by the learned

counsel on behalf of the petitioner. W.P. No. 7552/90, therefore, fails and accordingly it is dismissed.

11. As the enquiry was over and tax was levied in respect of the vehicle in question treating it as express stage carriage, there is no need to pass any further orders in W.P. No. 2045 /90 except directing the authorities to adjust the amount of Rs. 1,000/- paid by the petitioner pursuant to the interlocutory orders of this court, against the tax liable to be paid by him as per the demand notice dated 24-4-90 issued by the Secretary, Regional Transport Authority, Chittoor in RC No. 3093.A2/90. We must also make it clear that the amount deposited by the petitioner pursuant to the interim order dt. 29-5-1990 in W.P.M.P. Nr 9512/90 in W.P. No. 7552/90 shall also be adjusted towards the tax due under the impugned demand notice. The writ petition\\No. 2045/90 is closed. There shall be no order as to costs. Advocate''s fee Rs. 250/- in each.