

(1990) 12 GUJ CK 0007
In the Gujarat High Court

Akhil Bharat Pravas Co.

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 15-12-1990

Acts Referred:

Bombay Motor Vehicles Tax Act, 1958 — Section 14
Constitution of India, 1950 — Article 226, 227

Citation : (1991) 1 GLR 442

Hon'ble Judges : G.N. Ray, C.J.;S.B. Majmudar, J

Bench : Division Bench

Judgement

G.N. Ray, C.J.—In this Application made under Articles 226 and 227 of the Constitution of India, the petitioner challenges the legality and propriety of the order passed by the Regional Transport Officer on 9th of April, 1984 in Case No. 1252 of 1983 imposing an additional tax on the omnibus of the petitioner for a sum of Rs. 1,560/- for the period 25th of July, 1983 to 31st July, 1983 and further additional tax of Rs. 4,420/- for the period 1st of August, 1983 to 20th of August, 1983 and also penalty at the rate of 25% of the additional tax amounting to Rs. 4,784/-. The petitioner also challenges the correctness of the order Annexure "C-2" passed by the Appellate Authority under the Gujarat Motor Vehicles Tax Act, 1958 in Tax Appeal No. 5 of 1984, namely, the Director of Transport, Gujarat State, at Ahmedabad u/s 14 of the Bombay Motor Vehicles Tax Act, 1958. By the aforesaid order, the Appellate Authority rejected the appeal preferred by the writ petitioner. It appears that the petitioner owns an omnibus with 52 seating capacity and it is covered by a special permit. An application was made by the petitioner under Rule 5 of the Bombay Motor Vehicles tax Rules for keeping the said vehicle as a non-user vehicle. Under such application, permission was granted to keep the said vehicle for non-user from 22nd of July, 1983 up till 29th of July, 1983 and thereafter again from 1st of August, 1983 to 31st of August, 1983. On 18th of August, 1983, the said vehicle was intercepted by the Motor Vehicles Inspector on a highway road at Kalol and neither the permit for the said vehicle nor the tax receipts or additional tax receipts could be

produced at the time of interception. On the basis of the report made by the Motor Vehicles Inspector, a case was initiated against the petitioner and, as aforesaid, the imposition of additional tax and the penalty was made by the assessing authority, inter alia, on the finding that although the said vehicle was scheduled to be kept in the garage specified, the same was found on the highway and it was found that the same was intended to be used as a contract carriage in violation of the condition of the non-user certificate. The petitioner thereafter preferred the aforesaid Appeal u/s 14 and contended, inter alia, that no prior notice was given, indicating the reasons for which the concerned authority intended to impose the additional tax and penalty and, as such, a reasonable opportunity of being heard was denied to him. It was contended that the said omnibus was not intended to be used on the date when it was intercepted by the Motor Vehicles Inspector as a contract carriage, but the said omnibus was being taken to the garage for repairs, but arbitrarily and capriciously the taxing authority imposed the said additional tax and penalty on the finding that the same was intended to be used as a contract carriage. It may be noted here that at the time of interception, the driver of the vehicle could not produce any document from the garage showing that the same was under repair and in connection with the alleged rousing of the vehicle, the same was taken on the highway. It may be also stated here that it was not argued before the Appellate Authority that as no prior notice was given by the taxing authority indicating the purpose for which the hearing was intended to be given to him, the petitioner could not meet the case properly for which he suffered prejudice.

2. The petitioner appeared before the taxing authority and hearing was given to the representative of the petitioner. It may also be noted here that before the Appellate Authority, no argument was advanced to the affect that in the absence of a prior notice indicating the purpose of hearing, the appellant had suffered a prejudice for which the order passed by the taxing authority should be set aside. It was contended however, before the Appellate Authority that the said vehicle was not intended to be used as a contract carriage, but the same was being taken on the road in connection with the repair at a garage at Sarkhej. The Appellate Authority, however, did not accept the said contention and dismissed the appeal by accepting the decision made by the taxing authority. The learned Counsel has very strongly contended before us that the omnibus is covered by a special permit and, as such, it cannot be contended that the vehicle is a stage carriage or a contract carriage and in support of his contention, he has relied on a decision of the Supreme Court made in the case of Achyut Shivram Gokhale Vs. Regional Transport Officer and Others, . In the said case, the question arose whether an omnibus with a special permit can ply on the route which is covered by the scheme approved u/s 68D of the Motor Vehicles Act. The Supreme Court has held that an omnibus covered by a special permit has some distinctive features, which are not common with a contract carriage permit and such distinctive features have been indicated in the said judgment. It has been held that since an omnibus covered by a special permit cannot be held to be a

contract carriage as covered by the permit issued for a contract carriage, a bus having a special permit u/s 63(6) of the Motor Vehicles Act, can ply on the road which is covered by scheme approved u/s 68D of the Act. The learned Counsel has contended that since the omnibus of the petitioner is covered by a special permit, it cannot be held that the same was a contract carriage and as such it could not be held that the same was intended to be used as a contract carriage and no imposition of tax u/s 3A of the Bombay Motor Vehicles tax Act, 1958 can be made on the said omnibus. The learned Counsel has contended that the decision to be made by the taxing authority and the Appellate Authority were quasi-judicial in nature and it was, therefore, necessary to decide the same on the basis of objective facts by giving cogent reasons therefore. He contended that simply because the bus found on the Highway on the 18th of August, 1983 without any material on the basis of which an objective finding could be made that the same was intended to be used as a contract carriage, the imposition of additional tax and penalty could not have been made. Such imposition of additional tax and penalty are, therefore, per se illegal and should be set aside by this Court. The learned Counsel has also contended that for the omnibus owned by the petitioner covered by a special permit additional tax could not be imposed. In any event, additional tax beyond the limit of the tax indicated under the main charging Section 3 cannot be made and to that extent, Section 3A must be held ultra vires.

3. Although in the writ application ground challenging the vires of Section 3A of the Bombay Motor Vehicles Tax Act, 1958 has been taken, there is no prayer in the writ petition for any decision on the vires of the said Section 3A. Accordingly, there was no occasion to issue any notice on the learned Advocate General of Gujarat. However, since the learned Counsel intended to make submission on the question of vires without resorting to technicality, we have allowed him to make submission so that if we are satisfied prima facie on the question of vires, the petitioner may be allowed to amend the petition and challenge the same by giving notice to the learned Advocate General. It, however, appears to us that Section 3A is an independent charging section and there cannot be any doubt that the Legislature can incorporate a number of charging sections in the statute. It does not appear to us that the power of imposition of additional tax is limited by Section 3 as sought to be contended by the learned Counsel. Section 3A provides that:

On and from the first day of April, 1982 there shall be levied and collected, on all omnibus which are exclusively used or kept for use in the State as contract carriages a tax in addition to the tax levied u/s 3 xxx.

4. "Tax" has been defined under the Bombay Motor Vehicles Tax Act, 1958 as a tax imposed under this Act" and Section 3 of the said Act begins with the expression "subject to the other provisions of this Act, on and from the 1st day of April, 1958, there shall be levied and collected on all motor vehicles used or kept for use in the State, a tax xxxx". We are, therefore, unable to accept the

contention of the learned Counsel for the petitioner that within the scope and ambit of Section 3A, the additional tax could not be imposed or the provisions of the said Section 3A are ultra vires Section 3, for which a further investigation is necessary by allowing the petitioner to amend the writ petition. So far as the contention of the petitioner that without any reasonable basis whatsoever a decision was made by the taxing authority and the Appellate Authority that the said omnibus was intended to be used on 18th of August, 1983 as a contract carriage is concerned, it may be indicated that at the relevant date when the said omnibus was intercepted on the highway by the Motor Vehicles Inspector, there was no document to substantiate that the said omnibus was really under repair and was being tested on the highway in connection with the said repair. Some documents from a garage, however, were produced by the petitioner at a later stage. We may also indicate that under Rule 5, when an application for non-user certificate is made, a declaration is required to be given by the owner of the vehicle that during the period of non-user, the omnibus is required to be kept in a specified garage and without prior permission, the same cannot be taken out. Admittedly, there was no prior permission for taking out the said vehicle for the alleged purpose of repair. It may also be indicated here that the petitioner had contended that the bus was being taken to Sarkhej for the purpose of repair from Ahmedabad, but, as a matter of fact, the bus was intercepted by the Motor Vehicles Inspector at Kalol, which is in opposite direction and normally, such bus cannot be expected to be on the highway at Kalol when the same was intended to be taken from Ahmedabad to Sarkhej for repair. In the aforesaid facts and circumstances if the taxing authority or the Appellate Authority had drawn a reasonable inference that the said bus was intended to be used as a contract carriage, we do not think that such inference was so perverse that interference by the writ Court is warranted. It may be indicated that the writ Court does not sit as an Appellate Authority, which can independently assess the facts and circumstances for making its own finding of fact and the law is well settled that even if an erroneous finding has been made by the appropriate authority on consideration of the materials, no interference for correction of such erroneous finding is warranted in exercise of the power either under Article 226 of the Constitution or under Article 227 of the Constitution. So far as the grievances of the petitioner on the score of not giving reasonable opportunity of being heard is concerned, we may indicate here that a personal hearing was given by the taxing authority, where a representative of the petitioner was present and the petitioner also did not urge the prejudice alleged to have been suffered by him by not getting a prior intimation about the intended imposition of additional tax and the penalty before the Appellate Authority. Moreover, in the facts and circumstances of the case, we do not think that any real prejudice has been caused to the petitioner for which a case for violation of the principles of natural justice can be sustained, As a matter of fact, the petitioner had also admitted that there was violation of the terms of the permit on 18th of August, 1983 and he had also paid the composition fee u/s 123 of the Motor Vehicles Act. In the aforesaid circumstances, we do not find any reason to interfere in this writ application and

the same is, therefore, dismissed without, however, any order as to costs. Rule discharged.