

**(1999) 03 KAR CK 0048**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 27467 of 1998 connected with Writ Petition No's. 29294 of 1998 and 7364 and 7365 of 1999

Bharath Earth Movers Limited (Beml), Bangalore

APPELLANT

Vs

Deputy Commissioner for Transport, Bangalore Division,  
Bangalore and another

RESPONDENT

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**Date of Decision :** 17-03-1999

**Acts Referred:**

Karnataka Motor Vehicles Taxation Act, 1957 — Section 8 A  
Motor Vehicles Act, 1988 — Section 52, 76, 86 (d)

**Citation :** AIR 1999 Kar 394 : (2000) 1 KarLJ 433

**Hon'ble Judges :** V.K. Singhal, J

**Bench :** Single Bench

**Advocate :** M/s. King, Patridge and Sri Puttige R. Ramesh, for the Appellant; Sri Kishore Mallya, Government Advocate, for the Respondent

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**Judgement**

1. All these writ petitions are disposed of by a common judgment as the controversy raised in these writ petitions are common.

2. Writ Petition No. 27467 has been filed by Bharath Earth Movers Limited (BEML) (hereinafter called as "company") while Writ Petition No. 29294 of 1998 has been filed by M/s. N.T. Rahamathulla Khan (hereinafter called as "transporter") and W.P. Nos. 7364 and 7365 of 1999 have been filed by K.T. Rajashekar and Widia India Limited, Bangalore. The controversy is with regard to tax u/s 8A of the Karnataka Motor Vehicles Taxation Act, 1957 as to whether it is payable either under Entry 5 or under Entry 8 of First Schedule Part-A of the Act.

3. For the sake of convenience, the facts of Bharath Earth Movers Limited (BEML) are taken into consideration.

4. The petitioner was served with a notice u/s 8A of the Karnataka Motor Vehicles Taxation Act, 1957. An objection was raised by the Accountant General that the petitioner entered into an agreement with M/s. N.T. Rahamathulla Khan to operate 23 vehicles on behalf of the company to carry the employees of M/s.

BEML factory from their residence to factory and back, for which the petitioner was paying hire charges to the said Rahamathulla Khan and associates. The vehicles were transferred in the name of the petitioner in the year 1994 and on transfer, these vehicles have been converted from Stage Carriages/Omnibuses to Private Service Vehicles on applications filed by the petitioner u/s 52 of the Motor Vehicles Act, 1988. The petitioner was asked to intimate as to whether these vehicles were in fact purchased and if so, to furnish the particulars including the cost of each vehicle paid to the said N.T. Rahamathulla Khan and Associates. It was also stated that the vehicles were transferred on misrepresentation of facts and also got them converted into Private Service Vehicles only with a view to satisfy the definition of Section 2(33) of M.V. Act, 1988 and to obtain the permits u/s 76 of the said Act to get the tax levied on the basis of floor area even though these vehicles were not purchased for monetary consideration and owned by the company. The vehicles were being operated on hire charges and as such, the petitioner was given to explain as to why the tax be not levied on the basis of the seating capacity of each vehicle at Rs. 500/- per seat per quarter upto 31st March, 1995 and at Rs. 750/- per seat per quarter plus 5% cess up-to-date with effect from 1-4-1995 instead of floor area. It was also stated that the Registration Certificate of the vehicles in question are also liable to be cancelled u/s 55(5) of the M.V. Act, 1988 and also the permits held by the company are liable to be cancelled u/s 86(d) of the Act besides levying higher rate of tax.

5. In response to this notice, the petitioner pointed out that the petitioner which is a Public Sector Undertaking, Government of India Company, called for tenders in the newspaper to operate vehicles registered in the name of the company covered by private service vehicle permits in favour of the company. In response to the said notification, Mr. N.T. Rahamathulla Khan offered to operate the vehicle under the private service vehicle permits of the company. The same has been accepted by the BEML Limited, and hence the said Rahamathulla Khan is a contractor operating the buses on behalf of the company. No person other than the employees of the BEML have been carried in the vehicle in question and they have been never plied for hire or reward. None of the ingredients of the contract carriage is attracted to the present case. The specific condition specified in the permit in question is to carry factory employees in the vehicle without collecting hire or reward and the permit is valid within Bangalore City only. The vehicles in question have never been used as a contract carriage and there is no violation of the permit conditions of these vehicles. The levy and collection of taxes on the basis of floor area as private service vehicle under Entry No. 8(e) of Part-A of Schedule of the Karnataka Motor Vehicles Taxation Act at the rate of Rs. 800/- per sq. metre is correct and no tax could be demanded under Item No. 5(a) of Part-A to the Schedule to the Taxation Act. The Registering authority registered the Vehicle after being satisfied as to the requirements of law and there is no power to review or modify the said order. The R.T.O. Taxation Authority, after considering the contention of the petitioner and the agreement entered with the contractor and came to the conclusion that the vehicle was operated by the

transporter for carrying employees of BEML for and in terms of the conditions of the agreement entered into between M/s. N.T. Rahamathulla Khan and Associates and M/s. BEML, Bangalore, and as such, assessed them and liable to pay tax at higher rate applicable to a contract carriage. The contention that the vehicle has not been plied as contract carriage and therefore, they cannot be made liable to pay higher tax was rejected following the decision given in the State of Mysore Vs. Syed Ibrahim, , since the vehicle was plied for hire or reward by a private person for which M/s. BEML is paying hire charges of Rs. 10.50 per k.m. per bus per day and over and above run of 200 kms. per day they are paying Rs. 9.50 per km. per bus per day. A finding was also recorded that BEML have not purchased these vehicles for monetary consideration as per Section 4 of the Sale of Goods Act, 1930.

6. Against the above order passed by the Assessing Authority, an appeal was preferred to the Deputy Commissioner for Transport, which was rejected on 9th September, 1998. It was found that out of 26 vehicles, 23 vehicles Certificate of Registration shows the name of BEML as the owner and for the remaining 3 vehicles, Certificate of Registration shows NTR as the owner in respect of two and the remaining one vehicle is shown to be owned by MICO Limited. The vehicles were classified as "Private Service Vehicles" and the tax has been collected on the basis of floor area. It was on the basis of audit objection, action u/s 8A was taken. In the Assets and Liabilities of BEML, it was not shown that these vehicles were purchased for any monetary consideration and that ownership of these vehicles shown in the Certificate of Registration is only dummy and fictitious. It was also found that the BEML has entered into an agreement with NTR for operating the said vehicles on contract basis for hire or reward for transportation of employees of BEML from their residences to factory and back.

7. A contention was raised that the ownership as indicated in the Certificate of Registration is final and the Taxation Authority cannot go beyond that certificate on the basis of any contract entered into by the petitioner. It was also stated that the consideration was paid and Power of Attorney was executed for maintenance and not to make NTR as the owner. The Appellate Authority found that, u/s 4 of the Taxation Act, the tax levied u/s 3 shall be paid in advance by the registered owner or person having possession or control of the motor vehicle. The tax liability was held on the petitioner as well as the contactor. On the question of ownership, a finding was recorded that, no sale consideration has been stipulated under the agreement and no payment has been made towards the sale consideration and accordingly, NTR is the real owner.

8. The other contention raised is that the respondents are bound by the Certificate of Registration relating to motor vehicle for the purpose of taxation and since the BEML has been certified as the owner, respondents have no power to go into the question regarding the entry in the Registration Certificate and the permit. This contention was rejected and it was found that the Registering authority has no power or authority to go to the genuineness of the transaction.

It is the user of the vehicle which determines the liability as held in the case of ref; State of Karnataka and Others Vs. N. Madappa and Others, , Syed Ibrahim"s case, supra, and Y. Peda Venkaiah Vs. The Regional Transport Officer, Nellore, , and the Full Bench of the Andhra Pradesh High Court in V. Govindarajulu and Vs. The Regional Transport Officer, Anantapur and Others, , wherein, it was found that the nature of permit for use of the transport vehicle as a contract carriage or stage carriage by the owner is not the real determinant for the levy and collection of tax. Tax is levied on the basis of the use of the transport vehicle and not on the nature of permit held by the owner. Similar views were taken in M. Sidda Lingama Naidu Vs. Licensing Officer-cum-Asst. Secretary, R.T.A., Chittoor, . Reliance was placed on the decision given by this Court in Indian Telephone Industries and Others Vs. Regional Transport Officer, Bangalore and Others, and M. Narasimhaiah Vs. Deputy Commissioner for Transport, Bangalore Division, Infantry Road, Bangalore and Another, .

9. It is not in dispute that the vehicles have been registered in the name of the company. The only contention raised before me is that the Taxation Authority has no jurisdiction to treat the vehicle as contract carriage which is registered as a Private Service Vehicle. In order to appreciate the contention of the learned Counsel for the petitioner, provision of Section 3 which is a charging section is relevant. Section 3 provides that a tax at the rates specified in Part-A of the Schedule to be levied on all motor vehicles suitable for use on roads. "Private Service Vehicle" has been defined u/s 2(1)(ee) which reads:

" "Private Service Vehicle" means an omnibus constructed or adapted to carry more than nine persons (excluding the driver) and used by or on behalf of the owner of such vehicle for the purpose of carrying persons for or in connection with his trade or business or otherwise than for hire or reward".

"Registered owner" is defined u/s 2(1)(f). Clause (l)(j) of Section 2 provides that the words and expressions used but not defined in this Act, shall have the meanings assigned to them in the Motor Vehicles Act, 1939 (now Motor Vehicles Act, 1988).

"Contract carriage" has been defined u/s 2(7) of the Motor Vehicles Act, 1988.

"Owner" has been defined u/s 2(30) of the said Act, which reads:

" "Owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement";

Definition of "Private Service Vehicle" has been given in Section 2(1)(ee) of the Karnataka Motor Vehicles Taxation Act, 1957 and u/s 2(35) of the Motor Vehicles Act, 1988. Since the definition given in 1957 Act prevails, no assistance can be taken by the definition given under the Motor Vehicles Act, 1988. Section 8

provides that, when any motor vehicle in respect of which a tax has been paid is altered or proposed to be used in such a manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax is payable, the registered owner or person who is in possession or control of such vehicle shall pay an additional tax.

Section 3 read with Section 4 fix the liability for payment of tax by the Registered owner or person having possession or control of the motor vehicle.

10. A contention has been raised that the taxation authorities have no jurisdiction to go into the validity of Certificate of Registration or permit issued cannot be considered proper. The Apex Court in *Calcutta Chromotype Ltd. Vs. Collector of Central Excise, Calcutta*, observed:

"The Court said that tax planning may be legitimate provided it is within the framework of law. Colourable devices, however, cannot be part of tax planning. Dubious methods resorting to artifice or subterfuge to avoid payment of taxes on what really is income can today no longer be applauded and legitimised as a splendid work by a wise man but has to be condemned and punished with severest of penalties. If we examine the thrust of all the decisions, there is no bar on the authorities to lift the veil of a company, whether a manufacturer or a buyer, to see it was not wearing that mask of not being treated as related person when, in fact, both, the manufacturer and the buyer, are in fact the same persons".

11. The Registration Certificate is a prima facie evidence with regard to the nature of the vehicle for which it was registered and is proposed to be used. If the vehicle is used for different purpose, the taxing authority can levy the vehicle and come to conclusion as to under which entry, the tax is payable. Entry 5 applies to the contract carriages which are plied for hire or reward, while Entry 8 of the First Schedule refers to the private service vehicles. The contract has been entered into by the petitioner. Under the contract, the persons authorised by the company are to be carried. The Insurance of the staff of the company has to be covered by the premium to be paid by the contractor. Even the contractor has to insure the comprehensive insurance against all damages arising out of strike, riot etc. The registration charges, licence, permit, fitness certificate, road tax fee etc., are to be paid by the contractor and not by the company. The contractor has to maintain the vehicle in a proper condition. Payment to the contractor for services rendered are as per Schedule to the agreement. On a reading of this contract, it can be interpreted that the possession of the vehicle remains with the contractor and he has to pay all the charges. If a Transporter carries the passengers of a company under some contract, then, it has been held by this Court in the case of *Indian Telephone Industries, supra*, that it is a contract carriage and the charges are for hire or reward. It is only the registration, on the basis of which, it is stated that, the company is the owner of the vehicle. As observed, the Registration Certificate is only a prime facie evidence and executing a General Power of Attorney was one of the factors which was considered against the

company, by which, even the power of attorney holder could approach the authorities in the Motor Vehicles Department for any change. The petitioner has not placed on record either before the R.T.O. or before the Appellate Authority any document, by which, it can be considered that the vehicles were purchased by the company. The vehicles were originally registered in the name of the transporter and it was because of agreement entered into, a device was adopted to get the vehicles registered in the name of the company without there being any actual transfer of ownership as the possession remained with the contractor and it has not been brought on record that any money was paid; for the purpose of liability of tax, under the Karnataka Motor Vehicles Taxation Act, transporter remains the real owner. Simply because the Registration Certificates have been obtained in the name of the company without actual delivery of the vehicle by the transporter to the company, the liability has to be considered in accordance with the provisions contained under the Schedule to the Act. Even if the permission was granted as a private service vehicle, by the transport authorities, liability of the tax could be fixed by the taxation authorities, after coming to the conclusion as to whether the vehicle was used as a contract carriage or a private vehicle.

12. Reliance is placed on the judgment given in *Jayanna Vs. Assistant Regional Transport Officer*, where the omnibus is used as a contract carriage, this Court found that there being no change in the registration of the vehicle, tax on the basis of change of use, cannot be demanded as there is no relevant entry in the Schedule to the Act for charging the tax. This decision cannot help, because, at the relevant time, entries were not there, in Part-A of the Schedule but now Schedule-A contains Entries 8 and 5 which are relevant for the purpose. In this case, decision of *M. Narasimhaiah's case*, supra, was referred, in which, while interpreting Section 8, it was observed that, unless the vehicle is altered, there is no liability in accordance with the provisions of Section 8. Regarding the use of the vehicle, it was found that there is no provision under the Act requiring higher rate of tax, in respect of the vehicle which is used as a Stage Carriage if a large number of passengers are carried. Provisions of Section 8 remains as they are, but the Schedule in Part-A contains provisions for levy of tax on motor vehicle which is a contract carriage and is plied for hire or reward as well as the private service vehicle separately. Even if a private service vehicle registered with transport authority is used as a contract carriage then, simply because it is so registered with the registering authority, under the Motor Vehicles Act, 1988, it cannot be contended that the tax to be levied only as a private service vehicle. In the *Syed Ibrahim's case*, supra, it was observed that, it is the use of the motor vehicle for carrying passengers for hire or reward which determines the application of Section 42(1) of the Motor Vehicles Act. If it is used without the permit, there is an infringement. That is a separate matter, for which, the authorities under the Motor Vehicles Act, 1988 can take action, but for the purpose of levy of tax i.e., under the Motor Vehicles Taxation Act, 1957, the taxation authorities can exercise power on the basis of use of the vehicle.

13. In Y. Pedavenkaiah's case, supra, a Full Bench of the Andhra Pradesh High Court have held that the authorities are empowered to levy tax on the basis of use of such vehicle.

14. In J.C. Chennarayudu v N. Lakshamma and Others , the transferor was held the owner and not the transferee who were made liable to pay compensation.

15. In M. Sidda Lingama Naidu's case, supra, it was observed that the dominant factor that determines whether a transport vehicle is plied as a contract carriage or as a stage carriage is the actual user of the vehicle and not the permit granted authorising the use.

16. Similar are the observations in the N. Muddappa's case, supra, wherein it was held that power to levy tax on the basis of the user of the vehicle. The transporter is disguised by the alleged transfer of permit without there being actual transfer of ownership of the vehicle, he will continue to be taxed. The amounts received were for hire or reward and thus no illegality is committed in the order passed by the authorities below.

17. If a vehicle of the company is given to a contractor for transporting its employees, in that case, he could be an agent and ply the vehicle which would be a private service vehicle. But the finding which has been recorded by the Appellate Authority is that there was no sale of the vehicle. The finding which is recorded is a finding of fact and this Court under Article 226 of the Constitution of India, cannot interfere with the finding of fact. There cannot be any re-appraisal. There is neither any mistake apparent on record nor jurisdictional error committed by the authorities in appeal, so that, power under Article 226 of the Constitution could be invoked.

18. Writ petitions having no force, accordingly, stand dismissed.