(1999) 03 AP CK 0031

In the Andhra Pradesh High Court

Case No : Writ Petition No. 35404 of 1998 and Batch

Ch. Kankaiah APPELLANT

Vs

Regional Transport Officer, Warangal RESPONDENT

Date of Decision : 15-03-1999

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1989 — Rule 185(1)
Andhra Pradesh Motor Vehicles Taxation Rules, 1963 — Rule 12

Citation : (1999) 3 ALD 733 : (1999) 4 ALT 90

Hon'ble Judges : M.S. Liberhan, C.J;A.S. Bhate, J

Bench : Division Bench

Advocate : Mr. B. Sivarama Krishnaiah, for the Appellant; Government Pleader for Transport, for the Respondent

Judgement

M.S. Liberhan, CJ.

1. These writ petitions are disposed of by common order as common questions of law on para material facts have been raised.

2. Facts are taken from Writ Petition No.35446 of 1998. The petitioner was the owner of the vehicle on 11-11-1998 with idle contract carriage permit, effective within 2 K.Ms., from the residential address of the owner. One of the conditions of permit is that the vehicle shall be parked at such stands as may be determined by the Transport Authority when it is not engaged and it shall be available for hire thereat. Reference be made to Rule 185(1)(e)(iii) of the A.P. Motor Vehicles Rules, 1989 (hereinafter referred to as ''the Andhra Rules'')- It would remain within 2 K.Ms. Statutory tax on such permit at the rate of Rs.10/- per seat per quarter was levied. The owner is required to take a special permit for operation after giving the terms of contract and the names of the passengers to the Authority concerned.

3. The petitioner''s vehicle was not found by the Department on 17-11-1998 at the given address or within 2 K.Ms., radius. No stoppage was intimated to the

Department. No shifting information with respect to parking place was intimated. Show cause notice dated 24-11-1998 was served pointing defalcation resulting in presumption of the vehicle having been plied without tax, and proposed tax at the rate of Rs.2,500/-per seat. The petitioner submitted her explanation, inter alia, that in view of objection from the Municipal Corporation, neighbours, the vehicle was parked at Machili Bazar while she is residing at the address given in the registration Certificate.

4. The authorities found that there is nothing to support averments in the explanation of the petitioner. Neither Municipal Corporation nor the residents objected to the parking of the vehicle. The vehicle was neither found to be parked at the given address nor at the places marked by the Municipal Corporation or where stage carriage vehicles are found parked. The averment that the petitioner''s vehicle was parked at Machili Bazar was found to be false, as the Officers of the Department inspected the same at the relevant time and did not find the disputed vehicle parked there. Authorities levied tax at the rate of Rs.2,500/- per seat per quarter.

5. The learned Counsel for the petitioner, during the course of arguments, raised the following questions - (1) Whether any violation of the conditions of the permit entitles the State to levy lax at the rate of Rs.2,500/- per seat per quarter; (2) Whether the authorities can levy tax in the absence of material for misuse; (3) What is the rate of tax applicable under G.O. Ms, No.220.

6. The learned Counsel for the respondent refuted the submissions made by the learned Counsel for the petitioner. It was contended that in terms of the permit the petitioner could park her vehicle within 2 K.Ms., from the residence of the registered owner. Rule 12-A of the A.P. Motor Vehicles Taxation Rules, 1963 (hereinafter referred to as ''the Taxation Rules'') envisages that in the eventuality of a person in possession and having control of the vehicle, does not intimate in writing to the licensing authority before the commencement of a quarter for which tax is due, that vehicle shall not be used after the expiry of the period for which tax has been paid, the motor vehicle shall be deemed to have been kept for use and is liable for tax.

7. We have heard the learned Counsel for the parties quite at length, gone through the record, petition and the reply.

8. In our considered view it is categorically inferable on the disputed facts as well as the totality of the circumstances that the condition of the permit that the vehicle being parked within 2 K.Ms., from the residential address of the owner, as in the registration Certificate, is violated. It may be noticed that the petitioner was served with the notice to produce the vehicle. Undisputedly, the petitioner averred that the vehicle was parked in Machili Bazar on the relevant date. On inspection, it was pointed out that no such vehicle was found to have been parked at that place. There is nothing on record to show that the Municipal Corporation or the residents objected to the parking. It is not disputed that the

petitioner was stage carriage permit holder. Parking..at Machili Bazar was stated in the writ petition. There is no intimation with respect to stoppage of the vehicle. Thus, on the factual matrix it cannot be disputed that the petitioner did violate the terms of the permit. We find no error in the finding of the authorities to that effect.

9. It is not disputed at the Bar that under G.O. Ms. No.220, the maximum rate of tax applicable is Rs.2,250/- per seat per quarter. In the result, we are of the considered view that the petitioner violated the conditions of permit and entitled the State to levy the tax at the maximum rate in terms of G.O. Ms. No.220 i.e., at the rate of Rs.2,500/- per seat per quarter.

10. In view of Rule 12-A of the Taxation Rules, the burden of proof that the vehicle being not in use has been placed on the owner or possessor of the vehicle, it being in his special knowledge. In the absence of my intimation with respect to change of address or place of parking, the vehicle was deemed to have been kept for use and is liable to tax. Thus, in our considered view, there is no error in the finding of fact arrived at by the authorities that the vehicle was kept for misuse and liable for tax under the Taxation Rules.

11. In view of the fact that we have answered the questions against the petitioner, the writ petitions are liable to be dismissed.

12. At this stage, we would like to notice that though the learned Counsel for the petitioner argued on the said limited questions, however, in the writ petition the demand notice was challenged, inter alia, on the ground that the findings of the authorities are not based on the evidence on record; no particulars were given with respect to location and the attempt to locate on 17-11-1998 where the vehicles are usually parked is denied. Thus the petitioner has attempted to set up a totally new case than pleaded. The findings are based on evidence and on the basis of onus of proof on the petitioner with special knowledge with respect to place of parking and in view of the finding of the staff of the respondent that the vehicle was not found parked at usual address, non-intimation of the particulars of location with respect to inspection is of no consequence. The finding of the authority written in the demand notice that the vehicle was not found to be parked at the place furnished in the registration book, stoppage or shifting having not been intimated as a necessary corollary it has to be presumed that the vehicle was being plied on unauthorised route, cannot be set aside and we affirm the same. In the result, WP Nos.35404, 35406, 35446, 35468, 35724, 35733, 36363, 36640, 36178, 36181, 36295, 36312,36598,36605,36528,36606, and 36761 of 1998 are dismissed.

Writ Petition No : 36674 of 1998:

13. The learned Counsel for the petitioner contended that the petitioner intimated the stoppage of the vehicle on 30-6-1998 with effect from 1-7-1998 which was accepted. The authorities inspite of the said intimation of stoppage and acceptance, found on the basis of books seized from the operating agent

that on 26-10-1998 the vehicle was in operation as the operator has book the vehicle and used it The finding of the authority that stoppage was only a ruse cannot be termed to be arbitrary or illegal or without any evidence. Thus, we affirm the finding of fact that vehicle was being unauthorisedly used and liable to the tax as imposed.

Writ Petition No : 35405 of 1998:

14. The only factor required to be considered in this writ petition is whether, the petitioner is intimating to the authorities for shifting and no permission is required. The authorities did not consider the explanation of the petitioner, nor taken into consideration the fact of intimation to the authorities for shifting. The learned Counsel for the respondent does not seriously oppose the remand of the ease for fresh consideration of the explanation and passing appropriate speaking order in accordance with law. Consequently, the demand notice dated 7-12-1998 is quashed and the parties are directed to appear before the authorities on 15-4-1999.

In view of the observations made above, the writ petitions are disposed of.

nmr/ams.

At this stage the learned Counsel for the petitioner Sri B. Siva Rama Krishnaiah states that the tax leviable is Rs.1150/- per seat per quarter but not Rs.2500/-. It is unfair on the part of the learned Counsel. The case was heard, arguments were addressed at length and the learned Counsel did not even raise the contention that the amount of tax leviable is Rs.1150/- but not Rs.2500/-. When the order has been passed and his contention has been recorded, now the Counsel has become wiser and he wants to reargue and contend that the tax leviable is Rs.1150/- per seat per quarter. The learned Counsel cannot be permitted to approbate and reprobate and become wiser after the judgment is pronounced.

