(1996) 07 MAD CK 0053

In the Madras High Court

Case No : Writ Petition No''s. 2552 of 1995 and 561 of 1996 and W.M.P. No''s. 4052 and 4053 of 1995

Jasmin Roadways, Pondicherry APPELLANT

Vs

Transport Commissioner, Madras RESPONDENT

Date of Decision : 30-07-1996

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(31), 62(1), 63, 88(6)
Tamil Nadu Motor Vehicles Rules, 1989 — Rule 213(7), 279
Tamil Nadu Motor Vehicles Taxation Act, 1974 — Section 20

Citation : AIR 1997 Mad 251

Hon'ble Judges : S.M. Ali Mohamed, J

Bench : Single Bench

Advocate : V.T. Gopalan for Mrs. Radha Gopalan, for the Appellant; P. Rajamanickam, Addl. Govt. Pleader, for the Respondent

Judgement

1. The prayer in the writ petition No. 2552 of 1995 is to issue a writ of certiorari calling for the records of the respondent in R. No. E-2/48055/94

and quash the demand notice dated 22-1-1995.

2. The petitioner in his affidavit filed in support of the writ petition states that he is operating a stage carriage TDP 5555 since replaced by PY-

01/B, 5979 on the inter-State route Marakkanam to Karayanaputhur. The permit of the said bus was originally held by one R. Ravi, son of

Ramalingam, Kosa-palayam, Pondicherry and the same was transferred in the name of the petitioner by the proceedings of the State Transport

Authority, Pondicherry dated 13-4-1993. The said route finds a place in the Inter-State Reciprocal Agreement dated 19-4-1985 as Item No. 69,

Appendix-II of Part A. Earlier the erstwhile permit holder preferred W.P. No. 13958 of 1992 against the proceedings of the respondent in R. No.

44015/E2/84, dated 12-8-1992 directing the payment of Rs. 49,664 as Motor Vehicle Tax due to Tamil Nadu for the''period from 1-4-1984 to

18-4-1985, and the same was admitted by this Court on 14-9-1992. After notice to the respondent herein, by an order dated 29-1-1993, this

Court was pleased to grant stay of collect ion of the said tax pursuant to the said demand dated 12-8-1992. The said writ petition is still pending.

When the petitioner herein approached the respondent viz., the State Transport Authority, Madras for making the endorsement of transfer of the

said permit to his name, the petitioner was advised that he should first get himself impleaded in the place of the erstwhile permit holder in the

abovesaid W.P. No. 13958 of 1992. As a matter of fact, all the earlier inter-State transferee of such inter- State permits were also similarly

directed and only on such impleadments in the pending writ petitions relating to such permits, the State Transport Authority, would consider the

question of endorsement of the transfer in the said permits which are matters of record in the office of the respondent herein. The petitioner has

accordingly filed a petition for substitution before this Court in W.M.P. No. 26508 of 1993 in the said W.P. No. 13958 of 1992 and the same

was ordered by this Court on 12-11-1993.

3. The respondent-Transport Commissioner by his impugned order dated 22-1-1995 held that the petitioner is liable to pay the tax of Rs.

1,04,400/- on the ground that the transfer of permit in favour of the petitioner by the erstwhile owner was with effect from 3-5-1993 whereas the

applicant applied for continuance of endorsement of counter-signature of permit only on 12-7-1994 after a delay of 14 months. Aggrieved by the

same, the petitioner has preferred this writ petition with the relief as prayed for.

4. Mr. V. T. Gopalan, learned Senior Counsel appearing for the petitioner contended that the route in question falls under the Inter-State

Agreement entered into between the Government of Tamil Nadu and the Government of Pondicherry and was notified by the Government of

Pondicherry and the Government of Tamil Nadu in G.O.Ms. No.3/85, dated 9-3-1985 and the route in question is covered by Serial No. 69,

vi/.., Marakanam to Karayambathur (via) Pondicherry, Thavalakuppan, Karikalampakkam, Bahour Kannikoil Bahour, Kuruvinatham and

Krishnavaram. Mr. V. T. Gopalan, learned Senior Counsel invited the attention of this Court to Clause IV of the Inter-State Agreement which is as

follows:--

Taxation : Transport vehicle covered by countersignature in the reciprocating State shall be exempted from payment of lax to the reciprocating

State. This benefit of single point tax shall apply to the stage carriages having both regular and temporary permits, subject to the routes finding

place in the inter-State Agreement. The benefit of single point tax will also apply in respect of routes finding place in the basic agreement

irrespective of any variation, extension, curtailment or pattern of trips that may be allowed on future, dates. The concession shall also apply in

respect of spare buses with valid counter-signature for which temporary permits are granted by each State u/s 62(i)(c) in respect of routes finding

place in the agreement''.

He further referred to Section 20 of the Tamil Nadu Motor Vehicles Taxation Act, 1974 which gives power to the State Government to exempt

any motor vehicle from payment of motor vehicles tax. In pursuance of Section 20 of the Tamil Nadu Motor Vehicles Taxation Aci, 1974, the

State Government has isused following Notification.

No. II(2)/HO/1871/(u)/74.

In exercise of the powers conferred by Section 20 of the Tamil Nadu Motor Vehicle Taxation Act, 1974 (Tamil Nadu No. 13 of 1974), the

Government of Tamil Nadu hereby exempts from payment of tax leviable under the said Act all Motor Vehicles which ply in this State in

accordance with the reciprocal agreements entered into with other States and published under sub-section 3(B) of Section 63 of the Motor

Vehicles Act, 1939 (Central Act IV of 1939).

(G.O.Ms. No. 817, Home, 1st April, 1974).

He further submitted that by virtue of Section 20 of the Tamil Nadu Motor Vehicles Taxation Act, 1974 read with the notification the routes falling

within the Inter-State Agreement, the petitioner is entitled to the benefit of single point tax and the impugned order of the respondent is

unsustainable as it is based upon delay in filing of an application for counter-signature before the authorities in Tamil Nadu.

5. The learned senior counsel for the petitioner in this connection referred to an

order of this Court delivered by Jayasimha Babu, J. in W.P. No.

6612 of 19S6dated 23-6-1994 wherein the learned Judge has observed as follows :--

This Court has held in more than one case that, when the route is covered by the Inter- State Agreement, it is only one of the two States to whom

the route is allotted under the agreement, that can claim tax''.

The learned Senior Counsel has also invited the attention of this Court to the order passed by Shivappa, J. in W.P. No. 1039 of 1987 dated 12-7-

1994 wherein the learned Judge has observed as follows:--

(iv) Taxation (a) Transport vehicles covered by countersignature in the reciprocating State shall be exempted from payment of tax to the

reciprocating State. This benefit of single point tax shall apply to the carriage having both regular and temporary permits subject to the routes

finding place in the Inter-State Agreement. The benefit of single point tax will also apply in respect of routes finding place in the basic agreement

irrespective of any variation, extension, curtailment of patten of trips that may be allowed on future date. This concession shall also apply in respect

of space buses with valid counter signature for which temporary permits are granted by each State u/s 62(l)(c) in respect of the routes finding

places in the agreement''.

In view of Clause IV (a), the petitioner is not liable to pay the tax as ordered in the order dated 29-1-1987. Concession is being provided in

respect of spare bus with valid counter-signature with temporary permits are covered. In the instant case what is important is not the person or

number of buses but the route which finds a place in the said agreement. Therefore, petitioner is not liable to pay tax.

6. Mr. V. T. Gopalan, learned Senior Counsel apprearing for the petitioner referred to the definition of permir given in Section 2(31) of Motor

Vehicles Act, 1988 which says,

''Permit'' means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorising the

use of a motor vehicle as a transport vehicle.

and referred to ruling of the Division Bench of this Court in Taj Mahal Transports (P) Ltd., Melapalayam, Tirunelveli Vs. Secretary, Regional

Transport Authority, Tirunelveli and Another, . Wherein a Division Bench of this Court observed as follows:--

The main point is that the right of property embodied in a permit is transferable and heritable, that this has been recognised, and that such a

devolution of interest must carry with it all incidental rights pertaining thereto, such as the right to continue an application for variation by the original

holder.

7. On the basis of the above ruling, the learned Senior Counsel submitted that once the permit was transferred on 3-5-1995, the incidental rights

attached to the permit also got transferred and the petitioner is entitled to the benefit of single point tax and the impugned order directing the

petitioner to pay the Motor Vehicle Tax"" during the material period viz., 3-5-1993 to 12-7-1994 once again to''the State of Tamil Nadu is

unsustainable in law and is liable to be quashed by this Court.

8. On the other hand, the learned Additional Government Pleader Mr. P. Raja-manickam invited the attention of this Court to the counter-affidavit

filed by the respondent which reads as follows :--

I state that the petitioner has applied for the continuance of counter-signature of permit in respect of stage carriage TDF 5555 since replaced by P

Y-01/B 5979 plying on the Inter-State route Marakanam to Karayam-puthur from the name of Thiru R. Ravi s/o Ramalingam, Pondy. The transfer

of permit was allowed by the State Transport Authority, Pondy with effect from 3-5:1993. The writ petitioners have applied for the con-trinuance

of permit to this office On 12-7-1994 (i.e.) after a period of 14 months and hence the vehicle had plied in Tamil Nadu without valid counter-

signature in the name of the transferee for the period from 3-5-1993 to 11-7-1994 resulting (sic) collection of tax due of (sic) Tamil Nadu. A show

cause notice was issued to the writ petitioner calling for the explanation as to why the tax for the period from 3.-5-1993 to 12-7-1994 should not

be collected.

He further submitted that as the petitioner was plying the vehicle in Tamil Nadu during the material time from 3-5-1993 to 12-7-1994 without

counter signature of Tamil Nadu, the petitioner has to pay the motor vehicle tax once again and there is no infirmity in the impugned order and as

such the writ petition has to be dismissed.

9. I have considered the respective contentions of the learned Senior Counsel Mr. V.T. Gopalan and the learned Additional Government Pleader.

In the instant case it is admitted that the route in question is covered by Serial No. 69 of the Inter-State Agreement entered into between

Government of Tamil Nadu and the Government of Pondicherry and the same has been notified in the Gazette of respective States, G.O.Ms. No.

3/85, dated 9-3-1985 and clause IV of the said Inter-Stale Agreement dealing with the benefit of single point tax specifically states that ''this

benefit'' of single point tax shall apply to the stage carriage having both regular and temporary permits, subject to the routes finding place in the

Inter-State Agreement. The benefit of single point tax will also apply in respect of routes finding place in the basic agreement. This Court has in

more than one rulings cited above observed that when a route is specifically covered by the Inter-State Agreement it is only one of the States to

the agreement that can claim motor vehicle tax; In the instant case, it is admitted that the petitioner has paid the motor vehicle tax to the State of

Pondicherry..

10. The point for consideration is, when there is a delay in applying for counter signature after transfer of permit, whether one of the contracting

States to Inter-State Agreement can claim additional tax for the same period. In this connection, it is pertinent to point out that there is no rule

which specified any period of limitation within which the application for counter-signature has to be made after transfer of permit. Rule 213(7) of

the Tamil Nadu Motor Vehicles Rules deals with the transfer of permit and endorsement of transfer. The relevant provisions, which reads as

follows:--

An application for continuance of counter-signature of permit in respect of a vehicle of other State shall be accompanied by a fee as specified in

the Table under Rule 279.

Rule 279 specifies fee to be paid and Serial No. 30 shows continuance of countcr-signagure of permit in respect of other State vehicles and the fee

prescribed in Rs. 250/-. There is no specific rules fixing the period of limitation within which an application to be made for counter signature after

transfer of permit. The very rule specifying rate of fees says application for continuance of counter-signature and it is not fresh counter-signature but continuance of counter-signature. Therefore, the said rule proceeds on the basis that it is not an issuance of a fresh counter-signature but

continuance of counter-signature. It is, therefore, a continuance of the earlier counter signature: Further, as held by the Division Bench of this Court

in Taj Mahal Transports (P) Ltd., Melapalayam, Tirunelveli Vs. Secretary, Regional Transport Authority, Tirunelveli and Another, , that once a

permit is transferred right of property embodied in the permit is also transferred and the devolution of interest must carry with it all incidental rights

pertaining thereto. As such once a permit is transferred all rights of property embodied in a permit including all incidental rights pertaining thereto

are also transferred. Hence, such a transfer carries with it all incidental rights pertaining thereto, and in the instant case, the right for single point

motor vehicle tax as agreed between the contracting parties, viz., Government of Tamil Nadu and the Government of Pondicherry and in particular

the benefit conferred by Clause IV of the Inter-State Agreement to the transferee of single point taxation. Further, by virtue of Section 20 of the

Tamil Nadu Motor Vehicles Taxation Act, 1974 read with Notification No. II (2)/ HO/l871(u)/74, issued by the Tamil Nadu State Government by

G.O.Ms. 817 Homo, dated 1st April, 1974, as the route of the petitioner falls within Interstate Agreement, the petitioner is entitled to the benefit of

the single point tax and the impugned orders of the respondent is unsustainable in law. In view of the above, there is infirmity in the impunged order

(it) is quashed and set aside.

11. W.P. No. 561 of 1996.

The prayer in this writ petition is to issue a writ of mandamus, directing the respondent herein to make the endorsement of continuance of counter

signature of permit in respect of his bus TDF 5555 since replaced by PY-01/ B/5979 plying on the Inter-State route Marakanam to

Karayamputhur by granting the petitioner''s application dated 12-7-1994.

12. In view of the order passed in W.P. 2552 of 1995, the petitioner is entitled for counter-signature. Hence, the respondent is directed to pass

orders on the application made by the petitioner dated 12-7-1994 for continuance of counter-signature of permit in respect of his bus TDF 5555

since replaced by PY/OI/B/5979 plying on the Inter-State route Marakanam to Karyampulhur in accordance with law within a period of three weeks from the date of receipt of copy of this Order. These writ petitions are ordered accordingly. No costs. Consequently, no orders are

necessary in W.M.P. Nos.4052 and 4053 of 1995.

13 . Order accordingly.

