**(1998) 06 MAD CK 0087**

**In the Madras High Court**

**Case No :** Writ Petition No. 873 of 1998

J.K. Trust APPELLANT

Vs

The Transport Commissioner and Another RESPONDENT

**Date of Decision :** 12-06-1998

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 66(3)
Motor Vehicles Taxation Act, 1974 — Section 8

**Citation :** AIR 1998 Mad 373

**Hon'ble Judges :** S.S. Subramani, J

**Bench :** Single Bench

**Advocate :** G. Rajagopalan, for the Appellant; R. Thirugnanasambandham, Addl. Govt. Pleader, for the Respondent

**Final Decision :** Allowed

## Judgement

S.S. Subramani, J.—Petitioner seeks the issuance of a writ of certiorarified mandamus, calling for the records of second respondent relating to Lr. No. C1/57620/97 dated Nil/July 1997 including the subsequent communication of the 2nd respondent bearing No. Lr. No. C1/57620/97 dated 25-9-1997 and No. R. No. C1/57620/97 and the communication No. Lr. No. 79514/D1/D1/97 dated 17-10-1997 of the 1st respondent and quash the same, and to direct the 2nd respondent herein to grant Fitness Certificate to the vehicle of the petitioner bearing Registration No. MDR 2892 and thus render justice.

2. The affidavit is shown to by the Managing Trustee of the Trust. It is said that the petitioner-Trust is administering a paramedical institution by name J.K. College of Nursing and Paramedical, imparting education in B.P.T. and B.Sc. Nursing. It is said that the petitioner-Trust acquired a bus bearing vehicle MDR 2892 for the purpose of transporting students and staff of the educational institution and in connection with its activities. The Regional Transport Officer, who is the second respondent herein, has made an endorsement in the R.C. Book on 9-3-1994 wherein it is that the vehicle MDR 2892 is owned by the

 

Educational Institution which is recognised by the Director of Medical Education, Madras in G.O.MS. No. 381/dated 23-3-1993, and the same is exempted from permit u/s 66(3)(h) of Motor Vehicles Act, 1988 so long as the vehicle is used solely for the purpose of transporting students and staff of the educational institution in connection with any of its activities. Petitioner applied to second respondent for Fitness Certificate. It is said that by letter dated 7-8-1997, second respondent asked the petitioner to pay tax at the rate of Rs. 50/- per seat per quarter u/s 8(b) of Schedule I of the Motor Vehicles Taxation Act, 1974. Petitioner made a representation to the 2nd respondent stating that the Trust is liable to pay only Rs. 1,500/- as tax, and since the bus is used purely for educational purposes, the exemption should have been given from payment of Rs. 75,875/- as tax. On 25-9-1997, second respondent raised a demand for Rs. 75,875/- towards road tax. This was followed by another communication dated 19-10-1997. According to the petitioner, the said demand is one without jurisdiction, and the respondent is not entitled to demand tax at the rate of Rs. 50/- per seat per quarter. It is further said that no permit is required so far as the vehicle is concerned, and reliance on Section 8(b) of the Act by the respondent is also not above circumstances, petitioner has come to this Court (sic) quash the above letters.

3. Learned Additional Government Pleader (sic) directed to take notice and time was also (sic) to respondents, to file counter. But no (sic) was filed. Finally, on 8-6-1998, learned (sic) Government Pleader submitted his (sic) on instructions.

4. The argument of learned Additional (sic) Pleader is that the vehicle could be (sic) absolutely for educational purpose, and in (sic) case the petitioner is a charitable institution (sic) and, therefore, exemption cannot be granted.

5. I do not think that the submission of learned (sic) Government Pleader could be accepted. First respondent, in his letter dated 17-10-1997, has stated the reason why the petitioner is liable to pay tax. In para 2 of that letter, it is said that when a vehicle is owned by a trust and registered in an individual name, then the vehicle should cover with a public service vehicle permit, and the same is liable for tax as demanded. The present argument of learned Additional Government Pleader is not on that basis. A different reason is stated. Even the letter of 1st respondent has no legs to stand. It is specifically stated that the vehicle is owned by the Trust, though it is registered in the name of an individual, who happens to be the Trustee. Merely because the registration happens to be in the name of an individual, it cannot be cease to be a vehicle belonging to the Trust, which is the agency or the owner of the educational institution. I need rely only on a recent decision of the Calcutta High Court reported in Birla Vidya Vihar Trust and others Vs. State of West Bengal and others, wherein a learned Judge of that High Court has held that once it is found that the educational institution is recognised by the Government and the transport vehicle of the school is used solely for the purposes of the school, the exemption from permit control is automatic and does not depend upon the

 

discretion of the Government. In this case, respondents have no case that the vehicle in question is being used for any other purpose. It is owned by the Trust and used by educational institution only. Apart from the same, the endorsement on the registration book also supports the case of the petitioner. The respondents cannot go back from the admission made in the Registration Certificate, by the second respondent. It is stated therein that the vehicle is owned by the educational institution and it has been recognised by the Director of Medical Education, Madras. When all the conditions are satisfied, the impugned Order cannot stand.

6. The contention that a permit is required and, therefore, tax will have to be paid at the rate of Rs. 50/- per seat per quarter also cannot stand in view of my above finding. Consequently, the impugned Orders are quashed. The writ petition is allowed. No costs. There will be a direction against the second respondent to grant Fitness Certificate to the vehicle of the petitioner bearing Registration No. MDR 2892 within a period of 15 days from the date of production of copy of this Order. Connected W.M.P. 1203 of 1998 for injunction is closed.