

(2005) 05 KAR CK 0015

In the Karnataka High Court

Case No : Writ Appeal No's. 2327-28/99, etc., and Writ Petition No's.
28589/615 of 1999

K.T. Rajashekar and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 25-05-2005

Acts Referred:

Karnataka Motor Vehicles Taxation Act, 1957 — Section 15, 3, 4, 8 A
Motor Vehicles Act, 1988 — Section 2 (7), 50, 74

Citation : (2005) ILR (Kar) 2725 : (2006) 3 KarLJ 215 : (2005) 4 KCCR 330 SN

Hon'ble Judges : N.K. Sodhi, C.J;K.L. Manjunath, J

Bench : Division Bench

Advocate : R. Ramesh, Murthy and Kumar and V.R.S. Naik, for King and Partridge, for the Appellant; M.N. Sheshadri, GA and K.N. Puttegowda, AGA, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi, C.J.—This order will dispose of a bunch of writ appeals (writ appeals Nos. 2327-28, 2329, 3376, 4331, 5550 of 1999) and writ petition No. 28589-615 of 1999 in which common questions of law and fact arise. Counsel for the parties are agreed that the decision in writ appeal No. 3376 of 1999 will govern the other cases as well. Writ petition 28589-615 of 1999 came up for hearing before a learned single Judge and when he was informed that the issues involved therein were pending in these writ appeals the same was referred to be heard along with these cases.

2. For the sake of convenience, facts are being taken from writ appeal No. 3376 of 1999.

3. The short question that arises for consideration in writ appeal No. 3376 and other cases is whether the action of the respondents in levying higher rate of tax under the Karnataka Motor vehicles Taxation Act, 1957 (hereinafter called the Taxation Act") in respect of private service vehicles registered in the name of

Bharath Earth Movers Limited (for short "the Company") treating them as contract carriages is justified.

4. The Company is a public sector undertaking of the Government of India and is employing several thousand employees residing at various places in and around Bangalore district. It has its factory "Bangalore Complex" situated at New Thippasandra Post, Bangalore. With a view to provide transportation facilities to its employees the Company invited tenders for hiring Contractors to ply 23 buses on its behalf to pick up its employees from their residence to the factory for work and to drop them back after the work at various places from the factory. The tender submitted by M/s. N.T. Rahamathulla Khan and Associates (hereinafter called the Contractor) was accepted and the Company entered into an agreement with the Contractor on 23.4.1994 for carrying its employees to and from the factory. The agreement was initially executed for a period of three years and the same was renewed on 1.5.1997 and the same was still in force when the writ petition came to be filed out of which the present appeal has arisen. As per the agreement, the Contractor is to ply the buses on behalf of the Company to carry its employees from various points in and around Bangalore district to the factory and back at the prescribed timings on all working days of the month as decided by the Company. The payment to be made to the Contractor was also agreed between the parties as per Annexure-II to the agreement. The Company agreed to pay hire charges of Rs. 10.50 per kilometer per bus per day and over and above the run of 200 kilometers per day it is paying Rs. 9.50 per kilometer per bus per day. It appears that after the agreement had been executed the Contractor transferred 23 vehicles in the name of the Company and approached the authorities u/s 50 of the Motor Vehicles Act, 1988 (hereinafter referred to as the M. V. Act) to get the transfer registered in its name. It is common case of the parties that the vehicles stand transferred in the name of the Company in the registration certificates. These vehicles had not been purchased by the Company as no monetary consideration had passed nor are they included in the list of assets of the Company. The Company then obtained permits from the Regional Transport Authority for plying the vehicles as Private service vehicles for carrying its employees to and from the factory. It is not in dispute that permits were issued in the name of the Company on the basis of which the Contractor is plying the vehicles on behalf of the former in terms of the aforesaid agreement. It is also not in dispute that the Contractor while plying the buses is not carrying any passenger for hire or reward but is only transporting the employees of the Company to and from the factory.

5. There is in force in the State of Karnataka the Taxation Act which provides for the levy of Tax on all motor vehicles which are suitable for use on roads. Section 3 of the Taxation Act which is the charging section provides that "A tax at the rates specified in part A of the Schedule shall be levied on all motor vehicles suitable for use on roads". According to Section 4 of this Act the tax levied u/s 3 is to be paid in advance either by the registered owner of the vehicle or by any other person having possession or control of the motor vehicle for a quarter, half

year or year at his choice within fifteen days from the commencement of such quarter, half year or year, as the case may be. Part A of the Schedule to the Taxation Act prescribes the rates of tax to be levied on different kinds of motor vehicles. Different rates have been fixed for contract carriages and private service vehicles. Taxes in regard to the vehicles which were transferred in the name of the Company were being paid treating them as private service vehicles ever since the agreement was executed between the parties. The Auditors raised an objection that since the vehicles had been transferred in the name of the Company without consideration, the latter could not be said to be the owner and, therefore, the vehicles had not been used as private service vehicles. They further said that the vehicles were being operated by the Contractor under a contract and, therefore, those were contract carriages. Accordingly a notice u/s 8A of the Taxation Act was issued to both the parties to show cause why tax at the higher rate be not levied in terms of Clause 5(a) of the Schedule treating the vehicles as contract carriages. The Company and the Contractor filed their replies which were not accepted and the Regional Transport Officer-cum-Taxation Authority, Bangalore held that the vehicles were transporting the employees of the Company on contract basis and were therefore liable to be taxed at the higher rates applicable to contract carriages. The company and the Contractor were directed to pay the balance difference of tax and created a demand accordingly. Feeling aggrieved by this order both the parties filed appeals u/s 15 of the Taxation Act before the Deputy Commissioner for Transport which were dismissed and it was held that the Company was not the owner of the vehicles because no monetary consideration had passed when the vehicles were transferred in its name. The Appellate Authority further found that the employees were being transported by the Contractor on the basis of an agreement entered into with the Company and therefore the vehicles were being used as contract carriages. Both the orders were then challenged in the writ petitions filed by the parties out of which the present set of appeals have arisen. All the writ petitions were dismissed by the learned single Judge by a common order dated 17.3.1999 upholding the stand of the Department. It is this order which is under challenge in this bunch of writ appeals. The orders passed by the authorities under the Taxation Act are under challenge in the writ petition.

6. We have heard the learned Counsel for the parties. Clause 5(a) and Sub-clause (b) to (e) of Clause (8) of the Schedule to the Taxation Act which are relevant for our purpose may be reproduced hereunder for facility of reference.

_____ Item Class of vehicles Quarterly tax for Nos. vehicles fitted with pneumatic tyres. _____

_____ 5 (a) Motor vehicles (contract carriages) plying for hire or reward and constructed or adapted to carry more than twelve passengers (excluding driver and 750.00 conductor / attendant) and covered by permit issued u/s 74 of the Motor Vehicles Act, 1988, for every passenger.
 (b) 8. Omni buses and private service vehicles:

(a) (b) Having floor area exceeding 5 square metres, but not exceeding 6 square 700.00 metres, for every square metre (c) Having floor area exceeding 6 square metres but not exceeding 9 square 750.00 metres, for every square metre. (d) Having floor area exceeding 9 square metres but not exceeding 12 square 850.00 metres, for every square metre (e) Having floor area exceeding 12 square metres, for every square metre 1,000.00 (f)

7. A reading of the aforesaid clauses of the Schedule would make it clear that different rates of tax have been prescribed for motor vehicles which are used as contract carriages and those which are used as private service vehicles. In the case of contract carriages tax is levied at a higher rate under Clause 5(a) for every passenger at the rate specified in column 3 of the Schedule and in the case of private service vehicles the same is levied on the basis of floor area. It is, thus, clear that if the vehicles answer the description of a private service vehicle, then tax thereon could be levied only on the basis of their floor area in terms of Clause (8) of Part A of the Schedule and if they are contract carriages then tax could be levied at the rate specified in Clause 5(a) of the Schedule.

8. "Private service vehicle" has been defined in Clause (ee) of Section 2 of the Taxation Act and the same reads as under:

"(ee) "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."

Clause (i) of Section 2 of the Taxation Act provides that words and expressions used but not defined in the Taxation Act shall have the meanings assigned to them in the M.V. Act.

9. Private service vehicle means an omnibus which is constructed or adapted to carry more than nine persons excluding the driver and is used by or on behalf of the owner for the purpose of carrying persons for or in connection with his trade or business otherwise than for hire or reward. In other words, a private service vehicle is one which is used by or on behalf of its owner for carrying his employees or other persons in connection with his business and it must not carry any person for hire or reward. What is important is that it must be used by or on behalf of its "owner". The word "owner" has not been defined in the Taxation Act and therefore we have to go to the definition as given in the M.V. Act wherein it is defined in Clause (30) of Section 2 as under:

"(30) "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".

"Owner" according to this definition means a person in whose name a motor vehicle stands registered and in relation to a motor vehicle which is subject to hire purchase agreement or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement. It is, thus, clear that a person in whose name a vehicle is registered is its owner for the purposes of the Taxation Act and whether he had purchased it or had received it as a gift or had become the owner by succession or otherwise and whether he had paid or not the sale consideration is not the concern of the authorities under this Act. To put it differently, the person whose name appears in the registration book is the owner of the vehicle and how he came to be registered therein cannot be the concern of the authorities under the Taxation Act nor can they enquire into the question whether his name was rightly registered or not. They cannot also go into the question as to whether title in the vehicle had passed. If the vehicle was not properly registered in his name action could be taken by the concerned authorities under the M.V. Act for cancellation of registration. The word owner cannot be given its ordinary meaning because it is well settled that once the term has been defined by the Legislature then it is that meaning which has to be assigned to the term and resort cannot be had to its general meaning. It is always open to the Legislature to give an artificial meaning to a term for the purposes of a particular legislation. Going by the definition of the word owner as given in Clause (30) of Section 2 of the M.V. Act a person in whose name a motor vehicle stands registered is the owner. Similarly, a person who is in possession of a vehicle under a hire purchase agreement or an agreement of lease or an agreement of hypothecation is also treated as an owner thereof for the purposes of the M.V. Act and also for the Taxation Act. However, if the vehicle is used by the person in whose name it is registered or by someone else on his behalf for carrying his employees to the factory and back the vehicle will answer the description of a "Private service vehicle" and will be said to have been used as such.

10. Before tax could be levied on any motor vehicle as a contract carriage in terms of Clause 5(a) in Part A of the Schedule it must be a "contract carriage". Contract carriage again, has not been defined in the Taxation Act but has been defined in Clause (7) of Section 2 of the M.V. Act which reads as under:

"(7) "Contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum,-

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another;

and in either case, without stopping to pick up or set down passengers not

included in the contract anywhere during the journey, and includes -

(i) a maxi-cab; and

(ii) a motor-cab notwithstanding that separate fares are charged for its passengers."

A vehicle could be said to be a contract carriage only if it carries passengers for hire or reward and is engaged under a contract for its use as a whole by a person with a holder of a permit in relation to such a vehicle. One of the essential requirements of a contract carriage is that it must carry passengers for "hire or reward". In other words, if a vehicle does not carry passengers for hire or reward it cannot be described as a "contract carriage" within the meaning of the M.V. Act and also for the Taxation Act even if it is operating under a contract.

11. Now let us examine whether the vehicles plied by the Contractor on behalf of the Company are contract carriages or private service vehicles. As already observed earlier and as has been found by the departmental authorities, the vehicles stand registered in the name of the Company and the permits obtained from the Regional Transport Authority to ply those vehicles as private service vehicles were also issued to the Company in its name. The Contractor is plying the buses on the basis of an agreement executed between the parties and is being paid the hire charges in terms of Annexure-II to the said agreement. It is also not in dispute that the vehicles carry only the employees of the Company and no one else. In other words, no passenger is carried in the vehicles for hire or reward and it is only the employees of the Company who are transported to and from the factory in connection with the trade or business of the Company. Since the vehicles stand registered in the name of the Company it will be deemed to be the owner thereof notwithstanding the fact that no monetary consideration had passed when the vehicles were transferred in its name. We are, therefore, satisfied that the vehicle answer the description of a private service vehicle and have been used as such. They cannot be described as contract carriages because admittedly, they are not carrying any passengers for hire or reward. The argument that the vehicles are being operated by the Contractor under a contract entered into with the Company and therefore the vehicles should be treated as contract carriages is fallacious. We have already referred to the definition of contract carriage as given in the M.V. Act and one of the essential ingredients of such a vehicle is that it must carry passengers for hire or reward. The employees of the Company alone are transported in these vehicles and since they are not carried for hire or reward the vehicles cannot be said to have been used as contract carriages. As noticed earlier, it is not enough that the vehicles should operate under a contract. It is equally important that they carry passengers for hire and reward and this ingredient is lacking in the present arrangement. In this view of the matter the vehicles have to be taxed as private service vehicles on the basis of their floor area as envisaged in Clause (8) of Part A of the Schedule.

12. The learned Government Advocate strenuously urged that the Company and the Contractor had resorted to a colourable device by transferring the vehicles in the name of the Company without consideration only with a view to evade payment of tax at a higher rate which was otherwise payable under the Taxation Act. He referred to some of the provisions of the agreement between the parties to contend that it is the Contractor who was responsible for the maintenance of the vehicles and was virtually in possession thereof and that it was he who was paying the taxes and that the Company had nothing to do with the vehicles. He further pointed out that the vehicles do not figure in the list of assets owned by the Company and therefore the Contractor should be treated as the owner for all purposes who should be liable to pay the tax at a higher rate treating the vehicles as contract carriages. It is true that the parties resorted to an arrangement to avoid payment of tax at a higher rate but such an arrangement in our view is not unlawful and it is always open to the person liable to pay tax to arrange his affairs in a manner that he either avoids payment of tax or pays tax at a lower rate. This arrangement could be a part of tax planning within the frame work of law and it cannot be described as a colourable device to evade payment of tax by resorting to dubious methods. It is permissible to avoid payment of tax but no one can be allowed to evade tax. Great emphasis was laid on the fact that the vehicles were transferred without any monetary consideration. It is true that no consideration had passed but there is no law which prohibits the transfer of a vehicle without consideration. Both the Contractor and the Company agreed in a lawful manner to arrive at an arrangement whereby tax is paid at a lower rate. We do not find anything wrong with their action. The fact that the vehicles are not shown in the assets of the Company or that the maintenance of the vehicles is the responsibility of the Contractor are not relevant for determining whether the vehicles are liable to be taxed as contract carriages or private service vehicles. One may say that there was a lacuna in the Taxation Act of which the Company and the Contractor took advantage of and without violating any law arrived at the aforesaid arrangement with a view to pay tax at a lower rate. The Legislature appears to have noticed this lacuna and introduced Clause 8A in part A of the Schedule to the Taxation Act by Act No. 6 of 2000 with effect from 1.4.2000 whereunder private service vehicles already under lease agreement with industrial undertakings or companies for the purpose of providing transport conveyance to their employees from residence to factories and vice versa are now taxed on the basis of floor area. This amending Act gives an indication that the Legislature was not averse to the kind of arrangement arrived at between the Contractor and the Company.

13. We may now advert to the judgments referred to by the learned single Judge while upholding the stand of the Department that the vehicles in question were liable to be taxed at a higher rate treating them as contract carriages. Reliance was placed on the observations of the Apex Court in *Calcutta Chromotype Ltd. Vs. Collector of Central Excise, Calcutta*, to hold that the planning of the Company and the Contractor was dubious and that they had resorted to a

colourable device to evade payment of taxes. The observations of the Apex Court were made in an altogether different set of facts and we do not think that those observations are applicable to the case in hand. We have already observed that the arrangement arrived at between the parties was not contrary to law and they could resort to it with a view to pay tax at a lower rate. *State of Karnataka and Others Vs. N. Madappa and Others*, and *State of Mysore Vs. Syed Ibrahim*, were relied upon to hold that it is the user of the vehicle which determines the liability to pay tax. There can be no quarrel with this proposition. We have already held that the vehicles in the instant case had been used as private service vehicles and not as contract carriages and were therefore liable to be taxed in terms of Clause (3) of the Schedule. In *Y. Peda Venkaiah v. R.T.O. Nellore*, a Full Bench of the Andhra Pradesh High Court held that levy of tax under the A.P. Motor Vehicles Taxation Act would depend upon the user of the vehicle. In that case the vehicle had been registered as a contract carriage and tax was paid as such whereas the vehicle was actually used as a stage carriage and the Full Bench allowed the authorities to levy tax on the footing that the vehicle was a stage carriage. This judgment does not advance the case of the Department because in the case before us the vehicles were used as private service vehicles. In *V. Govindarajulu and Vs. The Regional Transport Officer, Anantapur and Others*, another Full Bench of the Andhra Pradesh High Court reiterated that a contract carriage used as a stage carriage was liable to be taxed at the higher rate which was applicable to stage carriages.

14. In the result, the question posed in paragraph 3 of the judgment is answered in the negative and it is held that in the facts and circumstances of the present case the vehicles were being used as private service vehicles and are liable to be taxed as such in terms of Clause (8) in Part A of the Schedule to the Taxation Act.

15. For the reasons recorded above the writ appeal is allowed, the order of the learned single Judge set aside and writ petition No. 27467 of 1998 filed by the Company allowed. The orders passed by the Regional Transport Officer-cum-Taxation Authority, Bangalore and the Deputy Commissioner of Transport are set aside. For the same reasons the other writ appeals and writ petition No. 28589-615 of 1999 are also allowed leaving the parties to bear their own costs.