

(1994) 01 MAD CK 0088

In the Madras High Court

Case No : W.A. No. 840 of 1993 and W.P. No. 15861 of 1993

K.V. Shekar

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 06-01-1994

Acts Referred:

Motor Vehicles Act, 1939 — Section 63(6)
Motor Vehicles Act, 1988 — Section 100, 72, 74, 88, 88(8)
Tamil Nadu Motor Vehicles Rules, 1989 — Rule 170, 171

Citation : (1994) 01 MAD CK 0088

Hon'ble Judges : K.A. Swami, C.J.;Somasundaram, J

Bench : Division Bench

Advocate : P. Vedavalli, for the Appellant; A.S. Venkatachalamoorthy, Government Pleader and S. Varadachari, for 5th Respondent, for the Respondent

Judgement

K.A. Swami, C.J.—Writ Appeal 840 of 1993 is preferred against the order dated 26th February, 1993 passed in W.P. 15923 of 1991. The Petitioner is the Appellant. He sought for issue of a writ in the nature of mandamus directing the Respondents 1 to 4 to forbear from seizing the vehicle, demanding and collecting motor vehicles tax pursuant to the exemption granted in G.O. Ms. No. 894 dated 29/05/91 in respect of the Petitioner's tourist vehicle bearing registration number A.P. 03/T-0850 granted u/s 88(8) of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act), whereas the Petitioner in W.P. No. 15861 of 1993 has sought for issue of a writ in the nature of mandamus directing the Respondents 1 and 2 herein to forbear from demanding tax in respect of the vehicles issued with special permits u/s 88(8) of the Act belonging to the members of the Petitioner Association, so long as such vehicles are covered by the basic permits issued u/s 74 of the Act read with Rule 174 of the Andhra Pradesh Motor Vehicles Rules, 1989 in Form PC. The Petitioner in W.P. No. 15861 of 1993 is Guntur District Tourist Bus Owners' Association, Guntur. Andhra Pradesh Motor Vehicles Rules, 1989 will be hereinafter referred to as Andhra Pradesh Rules and Tamil Nadu Motor Vehicles Rules, 1989 will be hereinafter

referred to Tamil Nadu Rules.

2. Learned single judge has rejected the writ petition on the ground that the permit issued to the Petitioner's vehicle does not show that it is covered by the permit issued u/s 74 of the Act, that the permit issued u/s 74 of the Act enables the vehicle to be operated only within a radius of 2 kilo metres from the place of business of the permit-holder, therefore the Special Permit u/s 88(8) of the Act cannot be granted to enable the owner of such vehicle to operate it beyond the area for which the basic permit u/s 74 of the Act is granted. Learned single judge has relied upon his earlier decision in *Krishnamoorthy, J. v. The State of Tamil Nadu and Anr.* 1993 Writ L.R. 687. The order under appeal is also reported in *Sekar, K.V. v. The State of Tamil Nadu and 3 Ors.* 1993 Writ L.R. 686.

3. The contention of the Petitioner is that for granting the special permit u/s 88(8) of the Act, it is not necessary that the basic permit issued under Sections 72, 74 and Sub-section (9) of Section 88 should cover the area or the route, for which the special permits are granted under Sub-section (8) of Section 88 of the Act, inasmuch as there is no warrant for such conclusion as per the contents of Sub-section (8) of Section 88 of the Act.

4. On the contrary, it is contended by learned Government Pleader that as long as the basic permits do not authorise or enable the holder of the permit to operate the vehicle over the area in respect of which the special permits are granted, the special permits beyond the area covered by the basic permits cannot be held to be valid, so as to enable the holder of the permit to be entitled to exemption from payment of tax under G.O. Ms. No. 894 dated 29/05/1991 issued by the Tamil Nadu State.

5. Facts necessary for the purpose of deciding these rival contentions are as follows: The Andhra Pradesh Transport Authority has issued the basic permits to the vehicles in question in Form PC as per Rule 174(iii) of the Andhra Pradesh Rules. Form PC is as follows:

FORM PC

Permit in respect of A Particular Contract Carriage

(Rule 174(iii) of the Andhra Pradesh Motor Vehicles Rules, 1989).

Transport Authority.

No. P.C.

(1) Name of holder

(2) Father's name

(3) Address

(4) Registration mark

(5) Number of passenger's seats

(6) Route/Area for which the permit is valid

(7) Date of expiry

(8) Rate of fare per mile in case of a motor car only

(9) This permit shall be subject to all rules relating to permits made under the Motor Vehicles Act, 1988; and in force for the time being.

(10) Any other conditions

(11) This permit does not entitle the holder to use the vehicle herein described as a stage carriage or as a goods carriage.

Secretary Transport Authority

Date: 19

Renewals

This permit is hereby renewed upto the day of...19...subject to the following further conditions:

Date: 19

Secretary Transport Authority

Endorsement/Extension

Transport Authority

Endorsed for.... Route.... No. P.C.

Extended to.... Area

Subject to the following variation of conditions:

Date: 19

Secretary Transport Authority

Renewal of Endorsement/Extension

The above Endorsement/Extension is hereby renewed upto the day of...19...subject to the following conditions:

Date: 19

Secretary Transport Authority

5.1 From Form P.C., it is clear that it is issued in respect of a particular contract carriage. It contains the name of the holder, father's name, address, registration mark, number of passenger's seats, route/area for which the permit is valid. This is the basic permit issued u/s 74 of the Act on the basis of the application

filed as per Rules 171 and 172 of the Andhra Pradesh Rules. Tamil Nadu Rules also contain similar provisions in Rules 170 and 171. Form PC prescribed by Tamil Nadu Rules for grant of contract carriage is as follows:

FORM PC

Permit in respect of a particular contract carriage.

(See Rule 171)

Transport Authority....

PC Number....

1. Name of the holder

2. Father's Name/Husband's Name:

3. Full Address:

4. Route/Area for which the permit is valid:

5. (a) Registration number of the vehicle:

(b) Make and Model:

(c) Petrol/Diesel:

(d) Fare meter number and make permitted:

6. Number of passengers permitted:

7. Date of expiry of permit:

8. Rate of the fare (in case of motor car only):

9. This permit does not entitle the holder to use the vehicle herein described as a Stage Carrier or as a Goods Carriage:

10. Conditions:

Date:

...Transport Authority....

Renewal

PC Number....

This permit is hereby renewed upto...subject to the conditions attached.

...Transport Authority....

Pre-printed Number

Permit issued on....

Transport Authority:

-do-

5.2 Thus, it is to be seen that there is no difference between the two forms prescribed by the two States. In Form PC of the Tamil Nadu Rules also, there is no mention that it is the basic permit issued u/s 74 of the Act. The special permits are issued in Form PSPLP as prescribed by the Tamil Nadu Rules thus:

FORM PSPLP

(Special permit in respect of a contract carriage)

(See Rule 171)

Office of the Regional Transport Authority

No.

Certified that the vehicle bearing:

1. Engine No.
2. Chassis No.
3. Registration Mark

Registered by the Registering authority...and owned by...son of...(Permanent address governed by... Permit No...dated...issued by the State/Regional Transport Authority has been engaged by the person whose particulars are given below:

1. Full Name:
2. Name of father or husband:
3. Age:
4. Place of residence with full postal address:

The above person along with his party consisting of persons will be visiting the following 7 places:

....

....

....

Night Halt:... Date:... Place:...

This permit is valid upto:

Certified that in respect of the vehicles mentioned above all taxes and fees payable in this State upto the date of expiry of this permit have been paid.

The permit is valid throughout India without countersignature by any other Regional/State Transport Authority. It shall be produced on demand by any Police

Officer in uniform or an officer of the Motor Vehicles Department in uniform.

5.3. The Form contains particulars as to engine number, chassis number, registration mark, the registering authority and the name of the owner. So, this Form prescribed by Tamil Nadu Rules also does not contain the information as to the basic permit issued u/s 74 of the Act. Similar is the form prescribed by the Andhra Pradesh Rules for issue of special permit u/s 88(8) of the Act, which is in Form PTOV as follows:

FORM PTOV

Special Permit No.

(Section 88(8) of the Motor Vehicles Act, 1988 and Rules 174(vi) of Andhra Pradesh Motor Vehicles Rules, 1989)

OFFICE OF THE STATE/REGIONAL TRANSPORT AUTHORITY, Certified that the vehicle bearing:

i) Engine No.

ii) Chassis No.

iii) Registration No.

Registering by the registering authority...and owned by...S/o...(Permanent address)...covered by permit Number dated issued by the State Regional Transport Authority...has been engaged by the person whose particulars are given below:

(1) Full Name:

(2) Name of father or husband:

(3) Age:

(4) Place of residence with full postal address:

(5) Copy of the contract duly attested is enclosed.

The above person along with his party consisting of...persons will be visiting the following places:

The permit is valid upto....

Certified that in respect of the vehicle mentioned above all taxes and fees payable in this State upto the date of expiry of this permit have been paid.

This permit is valid throughout India without counter-signature by any other Regional State Transport Authority. It shall be produced on demand by any person authorised to stop the vehicle under Rule 288.

Signature of the issuing Authority.

This validity of this permit is extended upto... During this period the party may visit the following places also.

Signature of the Competent Authority.

Note: 1. The period of validity of the permit shall not exceed three months. Extensions may be granted for a maximum period of one month.

Note: 2. The competent authority shall mean the Regional Transport Authority which issued the permit or the Regional Transport Authority of region in which the party happens to be at the time of applying for extension whichever is earlier. While granting extension the competent authority shall satisfy itself that all taxes and fees payable upto the period of extension have been paid by the applicant.

Note: 3. Application for extension of validity of the permit may be made either by the permit holder or the person in charge of the vehicle who is duly authorised by the permit holder in this behalf.

* Here insert the number of persons....

Important: The Issuing authority may please strike out all the blank columns not utilised.

5.4 Section 88 of the Act is the replica of Section 63(6) of the old Act. As per Sub-section (8) of Section 88, the Regional Transport Authority of any region or as the case may be the State Transport Authority may for the convenience of the public grant a special permit in relation to a vehicle covered by a permit issued u/s 72 including a reserve stage carriage or u/s 74 or under Sub-section (9) of Section 88 for carrying a passenger or passengers for hire or reward under a contract, express or implied for the use of the vehicle as a whole without stopping to pick up or set down along with line of route passengers not included in the contract and in every case where such special permit is granted, the Regional Transport Authority shall assign to the vehicle for display thereon a special distinguishing mark in the form and manner specified by the Central Government and such special permit shall be valid in any other region or State without the countersignature of the Regional Transport Authority or the other region or of the State Transport Authority of the other State, as the case may be. Section 72 deals with the grant of stage carriage permit. Section 74 deals with the grant of contract carriage permit and Sub-section (9) of Section 88 deals with the grant of tourist permit. No doubt, Section 74 of the Act prescribes the area within which the contract carriage has to be operated. It does not state as to what should be the extent of the area. Similarly, Sub-section (8) of Section 88 also does not mention that the basic permit granted should also cover the area or the route, for which the special permit is sought. Thus, it is apparent that if the basic permit is to cover the area for which the special permit u/s 88(8) of the Act is sought, there is no purpose in obtaining the special permit. Further, when the provisions contained in Sub-section (8) of Section 88 do not require that the basic permit should also cover the area for which the special permit is sought,

there is no justification to interpret Sub-section (8) of Section 88 of the Act in the manner it is interpreted in J. Krishnamurthy's case 1993 Writ L.R. 687. It would amount to reading something into the provisions contained in Sub-section (8) of Section 88 of the Act As long as the owner of the vehicle is entitled to seek special permit u/s 88(8) in respect of the vehicle which is covered by the contract carriage or the stage carriage or the tourist permit the extent of the area covered by the basic permit is not relevant. Hence, we find it difficult to agree with the view expressed in J. Krishnamurthy's case 1993 Writ L.R. 687 and the same view expressed in the order under appeal.

The decision of the learned Single Judge in Badrachalam, V.S. v. The State of Tamil Nadu and 3 Ors. 1993 Writ L.R. 684, stands on a different footing inasmuch as in that case, the basic permit was not at all issued; special permits were issued under the direction of the High Court without the basic permits. Therefore, the learned single Judge was justified in taking a view that the Petitioners therein had no basic permit issued under Sections 72, 74 or 88(9). Therefore, the special permits issued pursuant to the direction of the Andhra Pradesh High Court did not enable them to seek exemption from payment of motor vehicles tax, pursuant to the Government Order G.O. Ms. 894 dated 29.5.1991. The aforesaid G.O. exempts the vehicle from payment of the motor vehicles tax, if it is covered by the special permit. Of course, the special permit must be in respect of the vehicle, which has the basic permit issued either u/s 72 or 74 or Sub-section (9) of Section 88 of the Act, irrespective of whether the basic permit relating to contract carriage is issued for operating the vehicle within the limited area, not covering the area for which the special permit is granted.

6. We may also refer to the letter No. 38396/N1/91 dated 5.12.1991 issued at Page 7 of the typed set of papers (Volume III). The said letter reads thus:

I invite your attention to the representation cited wherein it was requested to issue necessary instructions to all the checking officers in Tamil Nadu State not to collect additional tax in respect of A.P. based Tourist vehicles covered by special temporary permits issued u/s 88(8) of M.V. Act, "88 to ply in your State. The Special Temporary permits are granted on the strength of basic permits issued in A.P. u/s 74 of the M.V. Act, "88.

In this connection, I would like to inform you that u/s 63(6) of repealed M.V. Act, 1939 special temporary permits are granted to the idle contract carriages to ply in Tamil Nadu and other States and the vehicles covered by those permits are exempted from payment of separate tax in the reciprocating State.

As per the M.V. Act, 1988 which came into force from 1.7.89, special temporary permits are to be granted under the provisions of Section 88(8) of M.V. 88 Act in respect of a vehicle covered by a permit issued u/s 72 or 74 or 88(9) of M.V. Act, 1988. This implies that unless a vehicle is covered by a pucca/regular permit issued under the above provisions of the M.V. Act, 88, no special temporary

permit can be granted to be valid in other regions of the State or in the reciprocating State.

In A.P. State, the C.C. permits u/s 74 are not being granted liberally since it is proposed to nationalise the C.C.s in the State and the final orders of the Government u/s 100 of M.V. Act, 1988 are pending. In the meanwhile in order to meet the tourist traffic, the Government of Andhra Pradesh have decided to issue basic permits to the idle Contract Carriages in the State to ply within a radius of 2 kms. from the residence or principal place of business of the owners in order to enable them to obtain special temporary permits u/s 88(8) of the M.V. Act, 88. The Government of Andhra Pradesh has also fixed appropriate rate of tar for the vehicles covered by basic permits to ply within a radius of 2 kms. Those permits are granted u/s 74 of M.V. Act, 88.

Since A.P. Government have issued a notification u/s 9 of the A.P.M.V. Act, 63 exempting the vehicles of other States operating on the strength of Temporary permits issued u/s 63(6) of M.V. Act, 1939 (i.e. u/s 88(8) of M.V. Act, 1988) for such of the other State Vehicles which have granted similar exemption to Andhra Pradesh State Vehicles. The above notification is still in force. The Government of Tamil Nadu in G.O. Ms. No. 602, Home (Tr.I) Department, dt.18.3.81 have also given similar exemption to the other State vehicles covered by special temporary permits.

Since the vehicles of Andhra Pradesh are granted special temporary permits in accordance with the provisions of Section 88(8) read with Section 74 of M.V. Act, 88 and the Government of Andhra Pradesh have exempted the other State vehicles covered by special temporary permits from payment of separate tax on reciprocal basis to A.P. State and since the Tamil Nadu Government have also given similar exemption, I request you to kindly issue suitable instructions to all the checking officers of your state not to collect tax from A.P. based vehicles operating on special temporary permits u/s 88(8) of M.V. Act, 88 as it may cause hardship to the tourist permit holders of A.P. State.

From the aforesaid letter, it is clear that basic contract carriage permits are issued to enable the holder of such permits to operate the vehicles in respect of which the contract carriage permits are issued within a radius of 2 kilo metres, on obtaining the special permits u/s 88(8) of the Act. The letter also further makes it clear that the special permit is issued on the basis of the basic contract carriage permits issued permitting the vehicles, to be operated within 2 kilo metres and also to entitle them to seek tax benefits. The Government of Tamil Nadu does not deny the receipt of such a letter and it has also not disputed the position stated in that letter. Even otherwise, in the light of the view taken by us in the preceding portion of this judgment, it follows that the basic contract carriage permit need not cover the area, for which the special permit is issued u/s 88(8) of the Act. Consequently, the vehicles in question which are covered by the special permits issued u/s 88 of the Act and also possess the basic contract carriage permits, are entitled to the benefit of Tamil Nadu Government G.O. Ms.

894 dated 29/05/1991. In the view we take, the decision in J. Krishnamurthy's case 1993 Writ L.R. 687 has to be overruled. It is accordingly overruled.

7. For the reasons stated above, the Writ Petition and Writ Appeal are allowed. The order dated 26/02/1993 passed by the learned single judge in W.P.15923 of 1991 is set aside. There shall issue a mandamus to the Respondents refraining them from collecting motor vehicles tax from the vehicles possessing basic contract carriage permits or the stage carriage permits or the permits issued u/s 88(9) of the Act, irrespective of whether the contract carriage permit is or is not for the area, for which the special permits are issued or for any limited area as mentioned in the letter dated 5.12.1991 bearing No. 38396/N1/91 of the Transport Commissioner and Ex-officio Secretary to Government, Government of Andhra Pradesh, Hyderabad to the Transport Commissioner, Tamil Nadu, reproduced above, and such vehicles are entitled to the benefit of tax exemption as per G.O. Ms. 894, dated 29.3.1991. In the facts and circumstances of the case, there will be no order as to costs.