(2008) 01 MAD CK 0236

In the Madras High Court

Case No : Writ Petition No. 27990 of 2003

Lakshmi Vidhya Sangam	APPELLANT
Vs	
Regional Transport Officer and Another	RESPONDENT

Date of Decision : 11-01-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(11), 2(30), 2(33), 66, 66(1)
Tamil Nadu Motor Vehicles Taxation Act, 1974 — Section 15, 3, 8

Citation : AIR 2008 Mad 173 : (2009) 1 MLJ 1221

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : S. Elambharathi, for the Appellant; A. Arumugam, Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J.—Petitioner has sought a Writ of Certiorarified Mandamus to quash the order of the first respondent in Na.Ka. No. 72088/E1/2002. dated 31-12-2002 and consequently, direct the first respondent to receive the Tax for the vehicles owned by the petitioner in accordance with the concession provided under Item 8(a) of the first Schedule to the Tamil Nadu Motor Vehicles Taxation Act, 1974.

2. The petitioner is a non-profiting Society registered under Tamil Nadu Societies Registration Act XXI of 1860 on 6-6-1964. The main objects of the petitioner are,

a) to acquire funds and properties by donations or otherwise so as to establish a fund for charitable educational purposes;

b) to establish and maintain TV Sundaram Iyengar Elementary School, TV Sundaram Iyengar Higher Secondary School, TVS Lakshmi Matriculation Higher Secondary School and any other colleges, Universities and similar Institutions which may come under the management of the society solely for Education without any consideration of caste or creed;

c) to acquire, purchase, hold, take on lease or hire any property, buildings, lands, securities, and any other movable or immov-able property to be used for the purpose of conducting institute, college, school, universities or for investment of the Society''s funds and to sell, mortgage, pledge, let on lease or hire or otherwise dispose of the above said properties of the Society, movable or Immovable for the advancement of the Society''s objects;

d) to enter into any transaction or carry out any activities for the above mentioned purposes;

e) to undertake to execute any trust which may seem directly or indirectly conducive to any of the objects of the society;

f) to do all other lawful things as are incidental or conducive to the attainment of the above objects or any of them.

3. The petitioner has established Educational Institutions and is the owner of following Schools, viz., a) T.V.S. Lakshmi Matriculation Higher Secondary School, b) T.V.S. Higher Secondary School, c) Lakshmi School and d) T.V.S. Primary School. All the above Educational Institutions are controlled and managed by the petitioner. The lands and the movables and immovable assets are in the name of the Society, Lakshmi Vidya Sangham. the petitioner herein. For starting of Private Educational Institutions under the relevant Rules various provisions are to be complied with and only thereafter recognition is given by the State Educational Authorities. One of the conditions for the above is that the said Educational Institution should be owned by a Trust or a Society There are about 5,500 students studying/Trained in the aforesaid Institutions. In order to provide quick and convenient transport to the students, the petitioner has acquired vehicles viz. a) Vehicle No. TN 59-D-3339; b) Vehicle No. TAU/3355; c) Vehicle No. TAY/1299; d) Vehicle No. TN 59/A-3456; e) Vehicle No. TN 59/A-4000; f) Vehicle No. TAU/9819; g) Vehicle No. TN 59/B-5969; h) Vehicle No. TN 59/E-4939; i) Vehicle No. TDA/2755; j) Vehicle No. TN 59/D-0321; k) Vehicle No. TN 59/D-3229; l) Vehicle No. TN 59/F-1517; m) Vehicle No. TN 58/A-4602 and they have all been under use for quite some time.

4. The petitioner was served with an order in Na.Ka. No. 72088/E1/2002 dated 31-12-2002, In which the first respondent had Intimated that In accordance with the communication dated 28-11 -2002 from the Accountant General, Chennal, the vehicles of the petitioner would not be entitled to the concessional rate provided under the Taxation Act and therefore the petitioner should make payment of Rs, 4,95,985/- as arrears of tax for all the vehicles owned by the petitioner.

5. The petitioner made enquiries and was able to obtain a copy of the circular dated 1-3-2002 sent by the Second respondent to the first respondent. In view of the above circular the second respondent is made a party to this writ petition. The petitioner was satisfied that the contention of the first Respondent was not correct and therefore he sent a legal notice dated 13-5-2003 and there was no

reply.

6. Thereafter, when the representatives of the petitioner went to pay the quarterly tax for the vehicles, the first respondent has refused to receive the same on the ground that arrears of tax have to be paid first. It is submitted that the order of the first respondent withdrawing the exemption granted to the petitioner for payment ot tax and the refusal of the first respondent in not receiving the tax is illegal and without jurisdiction. Hence the petitioner sent a letter on 13-8-2003 to the first respondent stating that there is not justification for demanding arrears. A reply was given by the first respondent on 14-8-2003 demanding the petitioner to pay the arrears. Therefore the petitioner was constrained to file the present writ petition, challenging the proceedings of the first respondent in Na.Ka. No. 72088/El/2002 dated 31-12-2002. It is submitted that challenging the similar order of the first respondent in respect of vehicle owned by M/s. Subbalakshmi Lakshmipathy Foundation, this. Court had passed an interim order on 29-4-2003 in W.P.M.P. No. 17261 of 2003 in W.P. No. 13790 of 2003 and the same is pending. It is further submitted that by an order dated 1-9-2003 the above W.P.M.P. No. 17261 of 2003 was closed since the first respondent accepted the Tax. The petitioner submitted that the First respondent accepted the quarterly tax pertaining to the quarter ending 30th September, 2003 after much persuasion by the petitioner and orally informed that the tax In respect of future quarters will not be accepted unless the arrears of tax demanded In the order dated 31-12 2002 is paid, Hence the petitioner has come forward with the present writ petition to set aside the proceedings of the first respondent In Na.Ka.No. 72088/El/2002 duted 31-12-2002.

7. Learned Counsel for the petitioner submitted that the petitioner is an Educational Institution and Is entitled to pay tax on Its vehicle In accordance with item 8(a) of the First Schedule to the Taxation Act. He further submitted that Section 2(11) of the Motor Vehicles Act, 1988 defines an Educational Institution Bus as follows:

''educational institution bus'' means an omnibus, which is owned by a college, school or other educational institution and used solely for the purpose of transporting students or staff of the educational institution in connection with any of its activities;

8. He submitted that Section 66(1) of the Motor Vehicles Act 1988 provides that no Motor Vehicle shall be used or permitted to be used as a transport vehicle in any public place, unless it obtains a permit in accordance with the said section. However, Section 66(3)(h) as it stood earlier exempted Educational Institution from obtaining a permit u/s 66 of the Act. The said Sub-section (3)(h) was deleted with effect from 13-8-2000. Therefore he further submitted that the amount of tax would vary in accordance with the type of vehicle and the purpose for which the same is used. Learned Counsel for the petitioner further submitted that originally item 8 (a) was not included in the First Schedule to the Taxation Act, but the same was added subsequently. The amount of tax payable at

present to the vehicles owned by Educational Institution is Rs. 500/- per quarter. The petitioner was paying regularly the said tax for the vehicles owned by it in accordance with item 8 (a) of the First Schedule to the Tamil Nadu Motor Vehicles Taxation Act. Hence the contention of the respondents that the petitioner has to pay arrears of tax is incorrect.

9. Learned Counsel for the petitioner further submitted that the petitioner is an Educational Institution and is entitled to pay tax on its vehicles in accordance with item 8 (a) of the first schedule to the Taxation Act. He further submitted that as regards the contention of the respondents that the petitioner is liable to pay tax on its vehicles as an ordinary private service permit, is contrary to the definition of "Educational Institution Bus" contained in Section 2(11) of the Motor Vehicles Act,

10. Learned Counsel for the petitioner submitted that the respondents are under an erroneous impression that deletion of Section 88(3)(h) of the Motor Vehicle Act, would make the institution like the petitioner fall within the ambit of Section 78 of the Motor Vehicles Act liable to obtain private service permit. Therefore, the respondents have failed to consider that the effect of omission of Section 66(3)(h) from the Motor Vehicles Act would only mean that Educational Institution is liable to obtain permits similar to private operators and would not change the character of the institution from education to a Commercial operator. He further submitted that the respondents were also under a duty to pass an order after considering the objections of the petitioner and that the first respondent has no power to refuse to receive the tax from the petitioner in respect of their vehicles. In view of the refusal of the first respondent, the petitioner prayed for seeking a direction of this Court to the first respondent to receive the quarterly tax in respect of their vehicles bearing Registration Nos. TN 58/D-3339, TAU/3355, TAY/1299, TN59/A-3456, TN59/ A-4000, TAU/9819, TN58/ B-5969, TN59/ E-4939, TDA/2785, TN59/D-0321, TN59/ D-3229, TN59/F-1517, TN58/A-4602 owned by them in accordance with the concession provided under Item 8(a) of the first schedule to the Tamil Nadu Motor Vehicles Taxation Act, 1974.

11. Learned Additional Government Pleader appearing for the respondent submitted that vehicles registered in the name of the trust, can either be used for School purposes or trust activities. If the Educational Institution uses the vehicle only for the purpose of transporting students and staff of the School, the Trust could have approached the authority concerned and permit could have been changed in the name of Principal or Correspondent. Since the vehicles were registered in the name of Educational Trust, the demand notice issued by the respondent is fully justified in terms of the provisions of Motor Vehicles Act and Clause 8(a) Schedule of the Tamil Nadu Motor Vehicle Taxation Act.

12. Learned Additional Government Pleader further submitted that Clause 8(a) of Schedule 1 of Tamil Nadu Motor Vehicles Taxation Act, 1974 states that in respect of vehicles owned by educational institutions (Educational Institution Bus)--for

every person (other than the driver) which the vehicle is permitted to carry, the tax payable is Rs. 500/- per quarter and for other Transport Vehicles, it is Rs. 150/- per seat per quarter.

13. Learned Additional Government Pleader further submitted that the concession given by the Government in respect of the vehicles owned by educational institutions at the rate of Rs. 500/- per quarter is not applicable to the vehicles owned by the trust/society and therefore, there is no illegality directing the petitioner to pay the difference in tax applicable to Private Transport Vehicle from the date of issue of Educational Institution Bus permit.

14. Learned Additional Government Pleader further submitted that as the petitioner is not entitled to the concession applicable to the educational institution bus, there is no need to issue any show cause notice and. therefore, there is no violation of principles of natural justice.

Heard the counsel appearing for the parties and perused the materials available on record.

15. Before adverting to the facts of this case, it is relevant to extract the definition of the owner as provided u/s 2(30) of the Motor Vehicles Act, 1988.

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 of an agreement of hypothecation, the person in possession of the vehicle under that agreement.

16. The provision relating to levy of tax as codified u/s 3 of the Tamil Nadu Motor Vehicles Taxation Act, is as follows:

(1) Subject to the provisions of Sub-section (2) tax shall be levied on every motor vehicle used or kept for use in the State of Tamil Nadu at the rate specified for such vehicle in the First Schedule or in the Second Schedule or in the Third Schedule, as the case may be,

(2) The Government may, by notification, from time to time, increase the rate of tax specified in the Schedules,

Provided that such increase, by notification, under this sub-section shall not, in the aggregate, exceed fifty person of the rate specified in the First Schedule or in the Second Schedule or in the Third Schedule, as the case may be.

As per Section 3 of Tamil Nadu Motor Vehicles Taxation Act, the amount of tax is fixed as per Clause 8(a) of Schedule 1 of the Act and the quarterly tax is fixed at Rs. 150/-.

17. The rate of tax prescribed in respect of item 8(a) of the I Schedule under Tamil Nadu Motor Vehicles Act in respect of vehicles owned by educational institution (educational institution bus), at the time of registration of vehicle was

Rs. 500/- per quarter. In respect of the other motor vehicles covered by Transport vehicle permit and "private services vehicle permit", a separate rate of tax is provided i.e., Rs. 150/- per seat per quarter.

18. Admittedly, though the trust has started the educational institution as per the norms provided by the School Educational Authorities that trust can have various activities also. The term "Education Institution bus" is defined u/s 2(11) of the Motor Vehicles Act, 1988 that the vehicle should be used solely for the purpose of transporting students and staff of educational institution, in connection with its activities.

19. A "private service vehicle" is defined u/s 2(33) of the Act, which means a motor vehicle constructed or adapted to carry more than six persons, excluding the driver and ordinarily 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 otherwise than for hire or reward but does not include a motor vehicle used for public purposes.

20. A Trust/Society can establish an educational institution, engage in charitable activity, promote culture or religious activity or any other activity legally permissible. A Trust/Society can earmark a property either movable or immovable for a specific purpose. All the properties and assets owned by the Trust cannot always be the properties of the educational institution. Possession and Management of the trust properties and administering properties owned or held on behalf of the educational institution are entirely different. The corpus of the Trust cannot be said to be corpus of the educational institution. The right of transfer is incidental to ownership. Income derived by the trust in letting out the properties either movable or immovable for generating income, cannot be the income of the educational institution started or established by the trust. The educational laws of the country mandate that the educational institution, college or school, as the case may be, which received recognition from the competent authority to maintain and submit a statement of movables and immovables owned by that college or school or educational institution, to such authorities from whom recognition is obtained. A trust can start schools, colleges or educational institution or charitable institution or engage in any other activity permissible under law. Each college, school or educational institution is a separate entity by itself and one cannot claim right of ownership or title in respect of movables or immovables held by other. It is the college, school or educational institution, which impart education and awards the degree or diploma or certificate through the Universities or examining bodies are recognised by the competent authorities and trust is not the educational institution. Merely because the trust has started an educational institution, in the instant case, schools, viz., (a) T.V.S. Lakshmi Matriculation Higher Secondary School, (b) T.V.S. Higher Secondary School, (c) Lakshmi School and (d) T.V.S. Primary School, it cannot be called as an educational institution. Trust is only an educational agency and not the institution. Only colleges, schools and

educational institutions are provided with the concession in the rate of tax, taking into consideration the ownership of the vehicle coupled with the usage of the vehicle.

21. The Motor Vehicles Act is a codified enactment and it must be construed strictly having regard to the purpose it seeks to achieve. Courts have consistently held that interpretation of the Statute shall not go beyond the object and the rule of purposive construct should be applied. Taxation Act provides for concession only for vehicles owned by schools, colleges and educational institutions and the concession cannot be extended to vehicles owned by the Trust, which has got a different connotation and meaning. Therefore, in my considered opinion vehicles owned by the Trust or Society cannot be brought within the definition of "Educational Institution Vehicle" and consequently, the Trust or the Society is not entitled to claim the concessional rate of tax.

22. In the instant case, the vehicles owned by the trust is used for the purpose of trade or business. Trade'' includes the activity done by a person, for the purpose of generating income.

23. Section 66 of the Motor Vehicles Act deals with necessity for permits which reads as follows:

(1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used.

Since the vehicles used by the petitioner cannot be brought under the definition as "educational institution", consequently they have to apply for permits u/s 66 of the Motor Vehicles Act and, therefore, the direction issued by the respondent to surrender the permits of the petitioners is in accordance with the provisions of the Motor Vehicles Act. As the petitioner is not entitled to the exemption granted for the educational institution, consequently, the petitioner is liable to pay the deferential rate of tax applicable to the private service vehicle.

24. Section 15 of the Tamil Nadu Motor Vehicles Taxation Act provides for imposition of penalty and it reads as follows:

If the tax due in respect of any motor vehicle has not been paid within the period prescribed u/s 8, the registered owner or the person having possession of control thereof shall-

(a) pay, in addition to the tax. a penalty of such sum, not exceeding twice the amount of the quarterly tax or as the case may be. half of the amount of annual tax payable, as may be prescribed, and different sums may be prescribed for different classes of motor vehicles and for different periods; and

(b) also be punishable with fine which may extend to fifty rupees, and the amount of the tax due by him in respect of such vehicle together with penalty referred to In Clause (a) shall also be recovered as If such tax and penalty were a fine.

25. Earlier Section 66(3)(h) of the Motor Vehicles Act, 1988 shall not apply to any transport vehicle owned by, and used solely for the purposes or, any educational institution which recognised by the Central or State Government or whose managing committee is a society registered under the Societies Registration Act, 1800 (21 of 1880) or under any law corresponding to that Act in force in any part of India. Subsequently the said Section 66(3)(h) was deleted with effect from 14-8-2000. Consequently, the petitioners ought to have applied to the Transport Authority for issue of a private service vehicle permit.

26. Since the payment of tax is claimed as per Section 8(a) to First Schedule of the Tamil Nadu Motor Vehicles Taxation Act, 1974, penal provision is automatically attracted as per Section 15 of the Tamil Nadu Motor Vehicles Taxation Act and therefore, imposition of penalty is also sustained.

In the result, the writ petition is dismissed and the petitioner shall pay the differential rate of tax and the penalty applicable to the private service vehicles, within a period of three months from the date of the receipt of a copy of this order. No costs.

