(2006) 07 AP CK 0033

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8397 of 2006

M. Lakshma Reddy — APPELLANT

Vs

State of A.P. and Others — RESPONDENT

Date of Decision : 27-07-2006

Acts Referred:
Andhra Pradesh Motor Vehicles Taxation Act, 1963 — Section 9(1)

Citation : (2007) 1 ALD 252 : (2007) 1 ALT 232

Hon'ble Judges : J. Chelameswar, J;D. Appa Rao, J

Bench : Division Bench

Advocate : D.V. Sitaramamurthy, for the Appellant; Government Pleader for Transport, for the Respondent

Judgement

D. Appa Rao, J.—The petitioner impugns the proceedings of the Joint Transport Commissioner, Hyderabad, by way of this writ of mandamus, in refusing him to grant exemption of life tax and consequently purchase and allow to drive a car, Skoda Octavia Rider (Automatic Transmission), on the ground that he is a physically challenged person.

2. The petitioner is a physically handicapped person with disability of lower limbs having afflicted with Post Polio Para Plegia. With the help of a caliper to left leg and with the aid of hand stick in his right hand he walks. The Medical Board constituted by the State Government issued a certificate that he is physically handicapped with 65% disability. Earlier he drove a Bajaj Scooter attached with the sidecar bearing Registration No. ATX 591. In the year 1990 he purchased a Maruti-800 car with automatic transmission bearing Registration No. AP 9 A 918 and later another Maruti in 1998 Bearing No. AP 9 AP 9998. For these vehicles he was granted exemption by virtue of Sub-section (1) of Section 9 of the A.P. Motor Vehicles Taxation Act, 1963. Under G.O. Ms. No. 351, Transport, Roads and Buildings (Tr. III) Department, dated 29.8.1978, the Government granted exemption of the tax payable under the Act in respect of all motorized vehicles other than transport vehicles owned by physically handicapped persons, so long

as they are driven exclusively by such persons with a condition that they should possess with a valid driving licence to drive motorized vehicle, and that a board with inscription "driven by a physically handicapped person" shall be exhibited to the front of the vehicle.

3. When he intended to purchase Skoda Octavia Rider (Automatic Transmission) 1.9 Tdi/66KW from Mahavir Auto Diagnostics Pvt. Ltd. Somajiguda, Hyderabad, he made a representation, dated 19.1.2006 to 3rd respondent requesting him to grant exemption of life tax payable to the vehicle. M/s Mahavir Auto Limited also addressed a letter, dated 27.1.2006, to the 3rd respondent, confirming his booking of vehicle and he being physically challenged person requested road tax exemption so that the vehicle could be delivered to him. On that, the R.T.A. Hyderabad sought a clarification whether the vehicle has been specifically designed for the use of physically handicapped persons. M/s Mahavir Auto Limited gave necessary clarification mentioning.

In the reference to the above subject to Mr. Laxma Redely, Life Tax exemption, we are pleased to inform you that Skoda Auto India Pvt. Ltd. Manufacturers Octavia Rider Automatic Transmission which is a model in Skoda and is suitable for Mr. Laxma Reddy who is physically handicapped and is not merely adopted by our local show room. This type of Automatic Transmission can be useful for certain categories of physically handicapped person.

(emphasis supplied)

Pursuant to which the 3rd respondent addressed a letter to 2nd respondent requesting him to issue general clarification whether such vehicle could be registered as ''invalid carriage'' and grant exemption of life tax. He also made a request to the 2nd respondent to grant exemption in terms of the said G.O.

4. However, the 2nd respondent passed the following impugned order.

The applicant Sri Lakshma Reddy is informed that his request for Exemption of Tax in respect of the proposed vehicle model "Octavia Rider (AT) 1.9/66Kw" cannot be considered. The vehicle does not come under the category of vehicles fitted with such gadgets or contrivances as to make the vehicle capable of being driven by physically handicapped persons so long as exclusively to consider his request for categorizing his vehicle under exemption category. The vehicle in question is an automatic transmission vehicle. It is an advanced technology vehicle to be used by all types of persons of all ages. It is not an exclusive vehicle manufactured to be exclusively driven by physically challenged person. Even the vehicle dealer of the proposed vehicle has categorically stated that this type of automatic transmission can be useful for certain categories of physically handicapped persons. It is not stated as to what categories of persons are eligible to drive such vehicles.

Even otherwise, in the matter of road safety, it is not desirable to allow such persons to drive such vehicles on the road endangering the lives of other road users.

5. The petitioner challenges the said notice and contends that the refusal to categorise the vehicle under exempted category is without justification in spite of the certificate to that extent was issued. The observation of the 2nd respondent that the public safety would be jeopardized if physically challenged persons drive such vehicles is as unsound as it is unwarranted reflecting hostile discrimination of the 2nd respondent harboring towards physically challenged persons. The 2nd respondent introduced irrelevant consideration while issuing the impugned proceedings.

6. The respondents filed counter reiterating the very same facts and the G.O. issued in this regard. It is specifically contended that it is not an exclusive vehicle to be used and driven by the physically challenged persons. The manufacturer did not mention the categories of physically handicapped persons who can use the said car. Since the car is not specifically designed for physically handicapped persons and as there are no special gadgets or contrivances attached to the vehicle to facilitate the physically handicapped persons the exemption is not allowed. Therefore, they prayed for dismissal of the writ petition.

7. It is not in dispute that the petitioner is a physically challenged person with a disability of 65%, he having been afflicted with Post Polio Para Plegia.

8. In the year 1990 and 1998 when he purchased Maruti cars with automatic transmission he was given exemption for payment of tax. When he intends to purchase a Skoda Octavia Rider with Automatic Transmission, it was rejected by the 2nd respondent on the ground that the said car does not come under the category of vehicles so as to make the vehicle capable of being driven by the handicapped persons. If the petitioner is allowed to drive, it would endanger to the lives of other road users.

9. It is unfortunate that the Joint Transport Commissioner, in spite of the letter from M/s. Mahavir Auto that Skoda Auto India Pvt. Ltd. Manufacturers Octavia Rider Automatic Transmission is suitable for Mr. Laxma Reddy and that the vehicle is not merely adopted by the local showroom - doubted the suitability of the car for the use of the petitioner. The Joint Commissioner reasoned that the dealer did not mention as to what categories of persons are eligible to drive such vehicles. This information is wholly irrelevant in order to give exemption to the petitioner. If the authority wants to know the persons who are eligible it could have addressed a letter to the manufacturer. When the dealer specifically mentions that the petitioner can use the vehicle, we do not see why question of academic nature could be posed. Had the petitioner been claimed exemption for the first time such sort of objections could have been sustained, when earlier the very Transport authorities had issued driving license to the petitioner to drive scooter as well as cars and when an highly advanced technology vehicle is introduced, there is no meaning in questioning the petitioner''s capability of driving such a car. If really, the authority entertains a doubt as to the capacity of

the petitioner in driving the vehicle, the authority could have conducted a pre driver evaluation in order to judge the suitability of the vehicle for the petitioner. Without conducting any test whatsoever apprehending that it would endanger to the lives of other road users would show apathy towards physically challenged persons. The authority did not seek any supportive technical advise, even when the car dealer certified that it could be used by all the persons including the petitioner, a physically challenged person. The reason for rejection ex-facie cannot be upheld.

10. The Commissioner could have seen that a physically challenged person if provided with an automobile, he would feel enormous sense of freedom and independence. He can do his own work by going places. The lack of mobility is a reality for many disabled persons. These vehicles obviously are adoptive vehicles. At any rate, without evaluating the petitioner''s capability of driving such a car, declining exemption is undoubtedly arbitrary exercise of power. Road traffic authorities, in view of traffic safety, are held to consider both, the handicapped individual''s interest is obtaining a licence and society''s claim to safety.

11. Numerous studies have established the fact that disabled drivers, in particular those with impairment of the limbs, are neither more accident-prone nor otherwise more conspicuous in road traffic than the non-disabled. The view that the driver with a physical disability poses particular risks, has been invalidated by extensive factual data and thorough literature review (vide In re Fittness for automobile driving of physically handicapped patients by Ekkernakamp A, Gerlach D).

12. To sum up, the petitioner has been driving cars from 1990 onwards viz., for the last 16 years. Now he intends to go for much more technically advanced Skoda Octavia Rider (Automatic Transmission). The manufacturer says that the car is suitable for the petitioner to drive. He further clarified that it is manufactured by the very company. The very petitioner in his representation, dated 3.3.2006, made a mention as to the suitability of the said car. The authority can as well evaluate the petitioner''s capability of driving such a car. The reason for refusal to grant exemption is on extraneous consideration. There was no basis for him to come to such a conclusion. In the circumstances, the impugned memo is liable to be struck down as illegal.

13. In the result, the Memo, dated 18.4.2006 is struck down as illegal. The respondents are directed to consider the representation of the petitioner, dated 3.3.2006, and accord necessary tax exemption if he is entitled to, in the light of the directions given above.

14. The writ petition is disposed of with the above directions. No order as to costs.

