

(1999) 07 AP CK 0128

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9718 of 1998 and Batch

Md. Nawab

APPELLANT

Vs

Licensing Officer and Secretary, Regional Transport Authority,
Vijayawada

RESPONDENT

Date of Decision : 22-07-1999

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1989 — Rule 297(A)(1)
Andhra Pradesh Motor Vehicles Taxation Act, 1963 — Section 3(1), 3(2), 4, 9(1)
Motor Vehicles Act, 1988 — Section 2(7), 74, 87, 88(8)

Citation : AIR 1999 AP 448 : (1999) 5 ALD 69 : (1999) 4 ALT 614

Hon'ble Judges : P. Venkatarama Reddi, J;B. Prakash Rao, J

Bench : Division Bench

**Advocate : Mr. Noushad Ali and Mr. B. Sivarama Krishnaiah, for the Appellant;
Special Government Pleader for Taxes and Government Pleader for Transport, for
the Respondent**

Judgement

P. Venkatarama Reddi, J

1. The petitioners are the owners of idle vehicles covered by basic contract carriage permits. They challenge the legality of the demand notices issued under the A.P. Motor Vehicles Taxation Act (hereinafter referred to as "the Act") by the Licencing Officers.

2. For the vehicles permitted to carry more than six (6) persons plying as contract carriages with All India Tourist Permits or with the Permits authorising them to operate on intra-State routes i.e., within the State of Andhra Pradesh, the owners have to pay tax at Rs.2,500/- per seat per quarter, excluding the Driver/Conductor. The relevant Entry in the Notification issued u/s 3(1) of the Act is as follows :

"(iv) (a) Vehicles permitted to carry more than six persons and plying as contract carriages covered by All India Tourist Permit issued u/s 88(9) of the Motor Vehicles Act, 1988 for every passenger other than the Driver and Conductor/

Attendant which the vehicle is permitted to carry.

Rs. 2,500/-

(b) Vehicles permitted to carry more than six passenger and plying as contract carriage on Inter-State route on All India Tourist Permits u/s 88(8) of the Motor Vehicles Act, 1988 and on Inter-State route (i.e., within the State of Andhra Pradesh) for every passenger (other than Driver) which the vehicle is permitted to carry.

Rs. 2,500/-

(c) Contract carriages plying within the Home District and any one contiguous district for every passenger other than driver

Rs. 1,150/-

3. It may be seen that the words in Clause (b) "on temporary permits u/s 88(8) of the M.V. Act" are meaningless in the context and do not convey any sense. Moreover, instead of using the words "intra-State route", the words "inter-State" are used. Thus, there are patent errors or printers devils (by whatever name they are called) in the successive Notification issued u/s 3(1), the latest being G.O. Ms. No.220, dated 7th November, 1996. Thus, the authorities concerned have mechanically and carelessly allowed the Notifications imposing the tax liability on the subjects to remain in a State of errors galore. No one has so far taken any initiative to rectify these errors.

4. On the representation made by the A.P. Tourist Operators Association, the Transport Department of the State Government issued orders in the year 1991 granting basic permits u/s 74 of the M.V. Act, to the idle buses on payment of permit fee applicable to the contract carriage and a "normal tax" at Rs.10/- per seat per quarter subject to the condition that the area of operation of such idle buses shall not exceed more than 2 Kms., radius from the residence of the permit holder. It was further provided that idle buses covered by basic contract carriage permits can obtain special permits u/s 88(8) to enable them to ply as contract carriages carrying passengers on contract basis. For obtaining special permits, a concessional rate of tax has been prescribed by various G.Os. issued u/s 9(1) of the Act.

5. Section 9(1) provides for grant of exemption, reduction or other modification of tax not involving enhancement in the rate of tax, Section 9(1) reads as follows :

"9(1) Exemption, reduction or other modification of tax :-- The Government may, by notification -

(a) grant an exemption, make a reduction in the rate or order other modification not involving an enhancement in the rate of the tax payable, --

(i) by any person or class of persons, or

(ii) in respect of any motor vehicle or class of motor vehicles or motor vehicles running in any particular areas; and

(b) Cancel or vary such exemption, reduction or other modification".

6. In exercise of these powers, G.O. Ms. No.224, (Transport-II) dated 7-11-1996 was issued. The said G.O. has been superseded and replaced recently by G.O. Ms. No.100, dated 20-5-1999. There is a change in the rate of tax. Now, it is at the uniform rate of Rs. 17/- per seat per day. In these writ petitions, we are concerned with G.O. 224. The relevant portion of the G.O. reads as follows:

"..... the Governor of the Andhra Pradesh hereby directs that the tax in respect of (i) idle contract carriages; (ii) contract carriages covered by basic permits; (iii) stage carriages covered by spare bus permits, plying on the strength of temporary/special permits issued u/s 87 or sub-section (8) of Section 88 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988) shall be at the following rates subject to the conditions specified below:

Class of Vehicles Rates of Tax

In respect of Contract Intra-State or Inter-State Routes

Rs. 50/- (Rupees fifty only) per seat for a minimum period of 3 days and Rs. 17/- (Rupees Seventeen only) per seat per day for a period exceeding 3 days.

Conditions :-

(i) The tax due shall be paid in advance specifying the dates and, the period of the permit sought for;

.....

(vi) The vehicle shall be engaged by a homogenous group having a common purpose.

(vii) Violation of any of the conditions specified above will entail in levy of full quarterly tax applicable to State wide contract carriages.

7. The petitioners obtained such special permits valid for a short duration covering limited halts enroute with specified termini. In the course of their journey, the vehicles were checked and it was found that the vehicles were being misused by carrying passengers on payment of individual fares, either contrary to the alleged contract or without a genuine contract. In effect, it was found that the concerned vehicle was being plied as a state carriage. In fact, such expression was used in some of the demand notices. The respondents therefore levied and demanded full quarterly tax applicable to the State-wide contract carriage i.e., at Rs.2,500/- per seat per quarter. In doing so, condition No.(vii) of the G.O. Ms. No.224 read with condition No.(vi) was invoked. But for condition No.(vii), the tax applicable to a stage carriage should have been collected in view of the decision of the Full Bench of this Court in Y. Peda Venkaiah Vs. The Regional Transport Officer, Nellore, . In that decision, the Full Bench repelled the

contention that once the vehicle was registered as a contract carriage and tax was paid on that footing, there was no provision in the Act which enabled the authorities to levy the tax again as a stage carriage if it was found to be used as a stage carriage and held as follows :

"This submission in our view proceeds upon a misconception of the true scope of the Act. Section 3 of the Act authorises the Government to levy tax on every motor vehicle used or kept for use in a public place in the State by means of a notification issued under that section. Section 3(2) provides that the notification shall specify the class of motor vehicles on which the rates for the period at which and the date from which the tax shall be levied. In view of this provision, the Government is authorised to levy different rates of tax on different classes of vehicles and it has accordingly done so. Further, Section 4 provides that tax levied shall be paid in advance either quarterly, half yearly or annually on a licence to be taken out by the owner of the vehicle. If, therefore, at the beginning of the quarter, the vehicle belongs to a particular class referred to in that notification tax is levied on that footing and an entry is also made in the certificate of registration to that effect. But it does not follow that if the class of vehicle is changed during the quarter by reason of the use it was put to tax cannot be levied according to the class to which the vehicle then belongs. As soon as the class of vehicle is changed, the rate of tax which applies to that class according to the notification is automatically attracted. There is no need for the Act to provide specifically that if there is a change in the class of vehicle, the authorities can levy tax afresh on that vehicle as belonging to that class. The power contained in Section 3 read with Section 4 is sufficient to enable the Government to levy the tax from time to time when the class of the vehicle is changed."

8. Reference was made to the earlier decision in *S.P. Rao v. Joint R.T.O., Vijayawada* 1971 TLR 556, in which it was observed that "the provisions of the Act make it clear that the levy of tax is based on the nature of user of the vehicle The mere fact that tax is already paid as a contract carriage and the operator did not intend to use it as a stage carriage, would not in any way disentitle the authorities from levying the tax on such vehicle as a stage carriage when it was used during the quarter as a stage carriage". The same view was taken by another Full Bench in *V. Govindarajulu and Vs. The Regional Transport Officer, Anantapur and Others*, . It was observed therein :

"The nature of permit for use of the transport vehicle as a contract carriage or stage carriage by the owner is not the real determinant for the levy and collection of the tax"

9. At the relevant point of time, when these decisions were rendered, the tax applicable to stage carriage was higher. Therefore, the stand taken by the parties was in the reverse order. The learned Government Pleader for the respondents submits that the ratio of the Full Bench decision has no application here in view of the specific condition incorporated in G.O. Ms. No.224. It is the contention of

the learned Government Pleader that the petitioner having obtained special permit by paying the concessional rate of tax under G.O. 224 is bound by the conditions stipulated therein and cannot fall back on the general principle laid down by the Full Bench without reference to any such conditions.

10. To rebut the argument of the learned Government Pleader, the learned Counsel for the petitioners argued that both the conditions (vi) and (vii) of G.O. 224 are invalid, being ultra vires the provisions of the Act. as regards condition (vi), it is pointed out that the said condition is against the definition of "contract carriage" in Section 2(7) of the M.V. Act, 1988 inasmuch as "common purpose" is not a necessary ingredient of the said definition. The learned Counsel for the petitioner relied on a Division Bench decision of this Court in *B. Noorulla Khan v. Govt. of India*, 1996(1) ALD 1101, wherein the same words occurring in Rule 297 (A)(1)(c) of A.P. Motor Vehicle Rules were struck down by this Court. In reply thereto, the learned Government Pleader submits that the purport and purpose of the Rule is different and the decision rendered in the context of M.V. Act cannot be relevant for testing the validity of a taxation provision made by the State in exercise of its exclusive power. We do not propose to go into this question. Our conclusion as regards the validity of condition No.(vii) is itself sufficient to dispose of the writ petitions.

11. In the light of the above discussion, the question as regards the validity and vires of condition No.(vii) naturally arises for consideration. Though there is no specific prayer to declare the said condition as ultra vires, we have given full opportunity to the respondents to advance arguments on this aspect as it has intimate bearing on the crucial issue arising in the writ petitions and the same has been specifically raised in the affidavit. The said condition is part of the Notification issued u/s 9 of the Act. Section 9 envisages exemption for reduction of tax. In other words, it is a provision which enables the Government to give relief to the vehicle operators. The Notification issued u/s 9 or any condition prescribed therein cannot have the effect of increasing instead of diminishing the tax burden. But, the enforcement of condition No.(vii) will have the necessary effect of increasing the tax burden quite contrary to the intendment of Section 9. The petitioners will be put to the necessity of paying more tax than what they would otherwise be liable to pay. In the normal course, if the contract carriage vehicle is misused as a stage carriage by carrying passengers on collection of individual fares, they would be liable to pay the tax applicable to the stage carriage, as held by the Full Bench in the decisions cited supra. In view of the limited number of halts, the petitioners' vehicles shall have to be treated as Express stage carriages, the rate of tax being Rs.1,185/- or Rs.910/- as the case may be, per seat per quarter.

12. Thus, but for condition No.(vii) in G.O. Ms. No.224, the petitioners' contract carriage running on special permit with limited halts, would have borne the tax at a rate which is less than the rate stipulated for a State-wide contract carriage. It may be recalled that condition No.(vii) enjoins the levy of tax at the rate

applicable to Statewide contract carriage i.e., Rs.2,500/- per seat. This extra liability cannot be fastened on the petitioners by pressing into service condition No.(vii) unless such condition could be validly incorporated in the Notification issued u/s 9. The avowed purpose of Section 9 being to reduce or remit the tax liability, the State Government in exercise of the delegated power cannot stipulate a condition which runs counter to the purpose and spirit of Section 9. The provision meant to reduce the tax liability cannot be pressed into service to increase it. If at all, such condition can only be prescribed in the Notification issued u/s 3.

13. We are therefore of the view that condition No.(vii) is ultra vires the provisions of Section 9 of the Act and it cannot be enforced. If so, as per the decision of the Full Bench, the tax rate applicable to stage carriage is attracted.

14. If the decision is otherwise, certain anomalous results would follow. If a contract carriage having a permit as specified in G.O. 224 is misused as a stage carriage, the rate of tax will be Rs.2,500/- by virtue of condition No.(vii). But, if the contract carriage having no valid permit at all is misused as a stage carriage, then it will have to bear the rate applicable to stager carriage i.e., at a rate much less than Rs.2,500/- per seat. Thus, the owners of contract carriage vehicles having no permits will stand to gain when compared to the vehicle operators who obtain special permits, though the element of misuse is common to both. An element of discrimination and inequity is inherent in this fact situation. This is an added reason why we are inclined to strike down the condition No.(vii) of G.O. Ms. No.224.

15. One of the Counsel viz., Sri B. Siva Rama Krishnaiah has raised a contention that Section 9 does not permit any conditions being prescribed for the exemption or reduction of tax and that the exemption or reduction shall be unconditional and unqualified. None of the conditions appended to G.O. Ms. No.224 is therefore valid. We have no hesitation in rejecting this argument. It is open to the State Government while exercising the power u/s 9 to lay down that exemption or reduction in the rate of tax shall be available only in certain situations and in given circumstances. The norms and criteria can be laid down for grant of tax relief u/s 9. Such a power is implicit and need not be expressly stated. There is no rationale behind the argument that the State Government should either grant exemption or reduction without qualifications or not at all.

16. Having discussed the legal position, we need not go into the factual aspects i.e., whether the allegations of misuse of the vehicle are correct. Suffice it to observe that in no case, it has been demonstrated that the finding recorded by the licencing authority is without basis or that the finding has been reached arbitrarily.

17. In the result, we declare that condition No.(vii) of G.O. Ms. No.224 dated 7-11-1996 is ultra vires Section 9 of the Act and therefore invalidate the demand notices to the extent that the rate of tax is computed at Rs.2,500/- per seat per

quarter and instead, we direct that the tax shall be collected from the petitioners at the rate of Rs.1,185/- per seat. Revised demand notices should be issued accordingly and the excess tax if any collected for the relevant quarter shall be refunded or adjusted against the tax payable in future. The writ petitions are thus partly allowed. No costs.