

(1998) 02 AP CK 0063

In the Andhra Pradesh High Court

Case No : Writ Petition No. 30359 of 1997 and Batch

Mehmood Hayath

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 13-02-1998

Acts Referred:

Andhra Pradesh Motor Vehicles Taxation Act, 1963 — Section 3, 4, 88(14), 88(8), 88(9)
Central Motor Vehicles Rules, 1989 — Rule 83, 84, 85

Citation : (1998) 1 ACC 534 : (1998) 2 ALD 657 : (1998) 3 ALT 134 : (1998) 1 APLJ 390

Hon'ble Judges : P. Venkatarama Reddi, J;A.S. Bhate, J

Bench : Division Bench

Advocate : Mr. B. Sivaramakrishnaiah, for the Appellant; Government Pleader for Transport, for the Respondent

Judgement

P. Venkatarama Reddi, J

1. An inartistically drafted notification issued by the State Government u/s 9 of the A.P. Motor Vehicle Taxation Act has given rise to this litigation between the transport operators and the Transport Department."

2. In all these writ petitions, the petitioners question the action of the respondents viz. the officials of Transport Department in not accepting the tax for seven days as per G.O.Ms.No.142, Transport, R & B (Tr-II) dated 22-8-1995 and seek a direction to the respondents concerned to accept the tax for seven days as per the said G.O. in respect of the Petitioners" vehicles.

3. The petitioners are owners of All India Tourist Vehicles based in Karnataka and other States, having permits u/s 88(9) of the Motor Vehicles Act. Such permits were issued by the State Transport Authority of Karnataka etc. and they are valid in Andhra Pradesh State also. It is the case of the petitioners that they ply their vehicles intermittently. It is their further case that they are entitled to pay the tax for 7days at a time in terms of G.O.Ms.No.142, dated 22-8-1995 and that the

Transport Department officials in-charge of border check-posts, whenever they are approached to receive the weekly lax as per the G.O. and to permit them to enter the Andhra Pradesh State, they are refusing to accede to the petitioners' request and insisting on payment of quarterly tax at the normal rate. The respondents have taken the stand that the Notification in G.O.Ms.No.142 is applicable only to the contract carriages of other States not covered by authorisation to ply in Andhra Pradesh, but merely passing through the State of Andhra Pradesh. As the vehicles in question are covered by authorisation to ply in Andhra Pradesh State as per the permit which the petitioners hold, the lax is to be collected either quarterly, half yearly or annually at the rates prescribed in G.O.Ms.No.200 dated 7-11-1996. The respondents also submit that the petitioners' vehicles regularly operate as Tourist Vehicles in Andhra Pradesh and therefore they cannot avail of the tax concession in G.O.Ms. No. 142.

4. It is not in dispute that the petitioners hold the permit u/s 88(9) of the Motor Vehicles Act. Sub-section (9) of Section 88 authorises the State Transport Authority to grant permits in respect of tourist vehicles valid for the whole of India, or in such contiguous States not being less than three in number, for the purpose of promoting tourism. The permits are granted subject to the rules made by the Central Government under sub-section (14) of Section 88 Chapter IV of the Central Motor Vehicles Rules deal with the tourist permits. Suffice it to refer to a few relevant provisions thereof. Rule 84 makes it clear that no tourist permit shall be deemed to exempt the owner of the vehicle from the payment of tax or fee, if any, leviable in any State. So also, Rule 83 lays down that the authorisation granted in Form No.47 is subject to the payment of taxes or fees levied by the concerned States. Rule 85 which prescribes additional conditions of tourist permit lays down inter alia that the permit holder shall not operate the tourist vehicle as a stage carriage. The permit holder shall have to maintain a day-to-day logbook containing the specified particulars including starting and destination points of the journey and the name and address of the hirer and the logbook shall be preserved for a period of three years.

5. The taxation of Motor Vehicles is governed by A.P.Motor Vehicles Taxation Act, 1963 (hereinafter referred to as Taxation Act). Section 3, which is the charging section empowers the Government to direct by way of notification issued from time to time, that a lax shall be levied on every motor vehicle used or kept for use, in a public place in the State. The notification issued under sub-section (1) shall specify the class of motor vehicles on which, the rates for the periods at which, and the date from which, the tax shall be levied. The proviso says that the rate of tax shall not exceed the maximum specified in Column(2) of the First Schedule in respect of certain categories of motor vehicles fitted with pneumatic tyers and one and a half times the said maximum in respect of such classes of motor vehicles fitted with non-pneumatic tyres. As per the notification issued u/s 3 (vide G.O.Ms.No.220, Tr-II, dated 7-11-1996) for the vehicle permitted to carry more than 6 persons and ply as. contract carriages covered by All India Tourist Permits issued u/s 88(9) of the Motor Vehicles Act, the quarterly tax

payable is Rs.2500/- for every passenger. The same is the rate of tax for the All India Tourist Vehicles plying on temporary permits issued u/s 88(8) of the Motor Vehicles Act.

6. While so, the State Government issued G.O.Ms. No. 142 (Tr.II) dated 22-8-1995 in exercise of the powers conferred by subsection (1) of Section 9 of the Taxation Act in supersession of the previous notification issued in G.O.Ms.No.80 dated 27-4-1995. It may be noticed at this juncture that Section 9 of the Taxation Act enables the Government to grant an exemption, make a reduction in the rate or direct any other modification not involving an enhancement in the rate of tax payable u/s 3. The Government is equally empowered to cancel or vary such exemption, reduction or other modification. As already noted, it is in exercise of this power conferred by Section 9 that G.O.Ms.No.142 was issued by the State Government on 22-8-1995. The said notification issued in G.O.Ms.No.142 covers two categories of vehicles-(i) Contract Carriage Vehicles of other States plying in the State of Andhra Pradesh displaying a special distinguishing mark in the form and manner specified by the Central Government on the strength of permits issued under subsection (8) of Section 88 of Motor Vehicles Act. The permits referred to in subsection (8) are known as "special permits, and (ii) All India Tourist Vehicles covered by the permits issued under sub-section (9) of Section 88 of the said Act. If such vehicles intend to tour or transit through Andhra Pradesh State for short periods, tax shall be paid at the rates specified below :

Period	Type of Vehicle	Rate of Tax
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Seven days or less	(1)	
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Contract Carriages covered by permits issued under Sec. 88(8) of the Motor Vehicles Act, 1988.		
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Rs 140-00 per seat other than Driver		
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(2)		
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Contract carriages covered by permits issued under Sec. 88(9) of the Motor Vehicles Act, 1988		
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Rs. 175-00 per seat other than Driver		
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7. We are not concerned with the proviso to the notification; hence it is not referred to.

8. The contention of the petitioners is that their vehicles being contract carriages covered by permits issued u/s 88(9), they can operate in A.P.State by paying tax of Rs.175-00 per seat for a period of seven days or less instead of paying for the entire quarter at the normal rate of Rs.2500/- per seat.

9. As already noted, the respondents' contention is that the notification issued in GO,Ms.No.142 is applicable only to the contract carriages covered by permits

issued by other States if they merely pass through the State of Andhra Pradesh but not to the vehicles which are authorised under the permits to ply in the State of Andhra Pradesh. We see no warrant for such restricted interpretation of the notification issued u/s 9 of the Taxation Act. We will be doing violence to the language of the said statutory notification if we accept the interpretation sought to be placed by the Transport Department. Nothing prevented the State Government from employing appropriate language if the notification was intended to operate in such restricted sphere. It is not permissible to add qualifying words to the notification especially when the absence of such words does not lead to incongruous or absurd results. Be it noted that the permits u/s 88(9) are issued for the purpose of promotion of tourism and there is no reason to think that the State Government intended to confine the operation of the notification within such narrow confines as the respondents would like it to be. It should also be noted that the language used is not merely "transit" through Andhra Pradesh State but also "tour" in A.P. State, of course, for short periods. It is difficult to envisage tour being conducted without authorisation. The authorisation to ply in State of Andhra Pradesh as a tourist vehicle does not, in our considered view, disqualify the holder of permit u/s 88(9) to the benefit of the concessional rate of tax prescribed by the notification. We, therefore, unhesitatingly reject the first contention advanced on behalf of the respondents.

10. The second aspect highlighted by the respondents deserves more serious consideration. It is pointed out that the petitioners regularly and almost continuously operate in Andhra Pradesh by bringing and taking back the tourists and such operations not being for "short periods", the notification does not apply. The sine qua non for the application of the notification is that the intended tour in or transit through State of Andhra Pradesh must be for "short periods". The phraseology "short-periods" should be given its due meaning and proper effect. If as contended by the respondents, the vehicles are being operated in Andhra Pradesh State regularly and almost on a continuous basis, the important pre-condition laid down in the notification is not satisfied. Without intending to be exhaustive, let us take a case where the contract carriage makes trips to and from Andhra Pradesh week after week leaving a few gaps of short spells or let us take a case where the vehicle runs in Andhra Pradesh State for a substantial period, say for about 5 or 6 weeks in a quarter, it cannot then be said that the vehicle is intended to tour or has toured Andhra Pradesh State only for short periods. In such an "event, the transport operators cannot legitimately bring their claim within the four corners of the notification, while that be so, the more difficult question that crops up for consideration is the yardstick by which the short periods can be judged. The "short periods", in the context of the scheme of the Act, will have to be understood with reference to the quarter which is the minimum period contemplated by Section 4 of the Taxation Act. However, the measure of reckoning the short periods (within a quarter) is not spelt out in the notification. The only indication we get in the notification is that this "short period" can definitely go up to one week, but beyond that how much and how far

it can go, we do not get a definite answer either on a reading of the notification or on a consideration of its literal meaning. Instead of leaving the matter in such vague and nebulous fashion, the State Government could have prescribed a more definite and unambiguous criteria. The language being what it is, we are left with no option but to consider the facts of particular case or cases in order to Judge whether the requirement of tour for "short periods" is satisfied, atleast on a rough and ready assessment. Our endeavour to consider the question from this perspective has proved futile on account of lack of particulars. Unfortunately, the averments of the petitioners on this aspect are vague and sweeping and do not at all inspire the confidence in our minds that the tours of the petitioners have been for short periods only. What all is stated in most of the writ petitions is:

" The operations of the vehicle depends upon the needs of the travelling public. Whenever there is a party, the vehicles" will be operated in Andhra Pradesh or from the Andhra Pradesh. The vehicle is not kept for use through out the quarter in Andhra Pradesh. Therefore, it is the choice of the operator to pay the tax quarterly or for 7 days."

11. In some other writ petitions it is stated that the vehicles enters the Andhra Pradesh State only "once or twice in a month." In the face of these vague and sweeping averments, it is not at all possible to say that the petitioners have been running their contract carriage vehicles in Andhra Pradesh State only for short periods. As already noticed, the petitioners are required under the provisions of the Central Motor Vehicles Rules to maintain logbooks disclosing the details of the trips made by them. There is no reason why the information, as culled out from the statutory records, has not been furnished to this Court. It is also not the case of the petitioners that at the lime of tendering the weekly tax, such information was furnished to the transport officials so as to enable them to Judge whether one of the important conditions prescribed by G.O.Ms.No. 142 was satisfied or not. In this state of affairs, it is not possible to grant positive relief or issue a mandamus to accept the tax from the petitioners under G.O.Ms.No.142.

12. At the same time, in order to minimise the future controversies and to ensure that G.O.Ms.No.142 is implemented in its true spirit, we are inclined to issue certain directions:

13. Till such time the State Government issues clarification or guidelines in regard to assessment of "short periods" as per G.O.Ms.No. 142, the officials of Transport Department concerned including those incharge of check-posts shall treat 25 days in a quarter as "short periods" qualifying for the benefit of G.O.Ms.No. 142. In other words, if the contract carriage vehicles of other states having All India Tourist Permits carrying tourists ply or remain in Andhra Pradesh State for a total duration of not more than 25 days in a quarter, the tax shall be accepted as per G,O.Ms.No.142, otherwise, not. In order to produce proof to this effect, the petitioners have to file a declaration showing the number of trips and duration thereof during the relevant quarter. The said declaration shall be filed before the Motor Vehicles Inspector of the check-posts or other competent

"authority. The petitioners should also produce the logbooks maintained under Rule 85 of the Central Motor Vehicles Rules if they are called upon to do so by the concerned official of the Transport Department.

14. The Writ Petitions are disposed of accordingly. No costs.