(1990) 11 AP CK 0008

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11427/88, 6960 of 1989 and W.P. No. 977 of 1990

Mohammed Khan APPELLANT

Vs

Government of Andhra Pradesh and others RESPONDENT

Date of Decision : 09-11-1990

Acts Referred:

Andhra Pradesh Motor Vehicles Taxation Act, 1963 — Section 16, 16(1), 4, 4(3), 4(4)
Andhra Pradesh Motor Vehicles Taxation Rules, 1963 — Rule 13
General Clauses Act, 1897 — Section 23
Motor Transport Workers Act, 1961 — Section 1(4), 10, 11, 12, 2
Motor Vehicles Act, 1939 — Section 107
Motor Vehicles Act, 1988 — Section 159

Citation : AIR 1991 AP 213 : (1991) 1 ALT 644

Hon'ble Judges : P. Venkatarama Reddy, J;Jagannadha Rao, J

Bench : Division Bench

Advocate : Mr. S.L. Chennakesav Rao and Mr. B. Madhava Reddy, for the Appellant; The Govt. Pleader, for Transport and Mr. P. Venkateswarlu, for the Respondent

Judgement

Jagannadha Rao, J.—These three writ petitions are connected and can be disposed of together. In W.P. No. 11427/89 there is a single petitioner-Mohd. Khan. In W.P. No. 6960 of 1989, the petitioner is the State Motor Transport Operators Association. In W.P. No. 977 of 1990, the petitioner is M/s. Hyderabad Local Lorry Owners Union. All the petitioners are impugning the validity of G.O. Ms. No. 122, Transport, Roads and Buildings (Tr. II) Department dated 30-3-1988 in so far as it insists upon the persons having a valid registration certificate under the provisions of the Motor Transport Workers Act, 1961. The Motor Transport workers Act, 1961 is an Act to provide for the welfare of motor transport workers and to regulate the conditions of their work. S. 3 of that Act provides for registration of motor transport undertakings. S. 2(g) defines motor transport undertaking. The said Act as stated in S. 1(4) applies to every motor transport undertaking employing five or more motor transport workers. The State Government is empowered to issue a notification applying the provisions of the

Act to any motor transport undertaking employing less than five motor transport workers. It is not in dispute that by virtue of G.O.Ms. No. 1624, Home dated 11-10-1968 the State Government extended the Act applying the same to motor transport undertakings employing less than five motor transport workers. The petitioner in W.P. No. 11427 of 1989 and the members of the associations covered by the other two writ petitions contend that they are all drivers of their own vehicles and that they have not employed any motor transport workers so far. Their grievance is that inspite of the same, they are now required by the amendment introduced in G.O.Ms. No. 122, dated 30-3-1988 to produce not only a certificate of registration under the Motor Vehicles Act and a valid certificate of insurance, but also a certificate of registration under the Motor Transport Workers Act, 1961. R. 13-A deals with the manner of payment of tax under the A.P. Motor Vehicles Taxation Act. The petitioners'' grievance is that inspite of their not employing any workmen, they are compelled to produce a certificate of registration under the Motor Transport Workers Act, 1961 and that inasmuch as they are unable to produce the same, there is difficulty in payment of tax and they will not be able to ply their vehicles. They contend that rules can be made under the A.P. Motor Vehicles Taxation Act only for the purpose of that Act, but no rule can be framed for purposes connected with the Motor Transport Workers Act, 1961.

2. In the counter affidavit filed on behalf of the Government and others, it is stated that the petitioners are put to strict proof of the allegation that they are all drivers of their own vehicles and have not employed any other person with or without wages. With reference to some of the members of the petitioners association, it is pointed out that some of them are having more than one Vehicles while some are ladies and that it is not possible to accept a general statement that all the persons are using their vehicles without employing any workmen. It is clarified that if in fact the transport vehicles are run only by owners-cum-drivers and no one else is engaged, then the said persons need not have to get their vehicles registered under the Motor Transport Workers Act, 1961. The respondents however contended that the amendment introduced in R. 13-A of the A.P. Motor Vehicles Taxation Rules in valid. R. 13-A has been amended in furtherance of the objects of the Motor Transport Workers Act, 1961 and the Motor Transport Workers Rules. The impugned amendment does not in any way offend the provisions of the A.P. Motor Vehicles Taxation Act or the Rules as a valid certificate of registration under the Motor Vehicles Act and a valid insurance have even previously been required to be produced at the time of payment of tax. A further requirement has now been introduced that the person paying tax should also produce a certificate of registration under the Motor Transport Workers Act, 1961. The impugned amendment is in the interests of public in general and the motor workers and is not illegal or unconstitutional.

3. Sri S. L. Chennakesava Rao, learned counsel for some of the petitioners and Sri B. Madhava Reddy contended that u/S. 16(1) of the A.P. Motor Vehicles Taxation Act, 1963, no rule like R. 13-A could be introduced for the purpose of

achieving the objects of the Motor Transport Workers Act, 1961, or the rules made thereunder. On the other hand, it is contended by the learned Government Pleader and Sri P. Venkateswarlu, for the Workers Union, that the rule made under, the provisions of the A. P. Motor Vehicles Taxation Act, 1963 cannot be said to be outside the purposes of the said Act. It is argued that under the Taxation Act, a licence is given in respect of the vehicle for use thereof in a public place and such user must be lawful. It is open to the State to impose such limitations on the user of the vehicle as will subserve not only the purposes of the taxation statute but other cognate enactments. At the time of payment of tax, the vehicle must have a Certificate of Insurance as provided in S. 107 of the Motor Vehicles Act, 1939 (now S. 159 of 1988 Act), and R. 13-A of the Rules made under the A.P. Motor Vehicles Taxation Act, 1963. The payment of tax is a point at which, the statutory authorities can have a check in regard compliance with provisions of the Motor Vehicles Act. In the same manner, it is open to the Government to make a rule imposing a check in respect of compliance with the provisions of the Motor Transport Workers Act, 1961. It does not matter whether the condition is laid down in the A.P. Motor Vehicles Taxation Act or Rules made thereunder, or in the Motor Vehicles Act and Rules made thereunder on in the Motor Vehicles Transport Workers Act and the Rules made thereunder. A licence under the taxation Act can be refused if there is violation of any provision relating to safety of the vehicle, road users as also the workers employed for in the use of the vehicle. The Workers Act is a piece of welfare legislation and the courts must interpret the law in a manner which leads to its vires being upheld.

4. For the purpose of appreciating the above said contentions, it is necessary to refer to the provisions of the A.P. Motor Vehicles Taxation Act, 1963 and the Rules made thereunder as also the relevant provisions of the Motor Transport Workersd Act, 1961 and the Rules made thereunder.

5. The A.P. Motor Vehicles Taxation Act, 1963 is an Act to consolidate and amend the law relating to levy of tax on motor vehicles in the State of Andhra Pradesh. Sec. 3 of that Act provides for levy of tax on motor vehicles while S. 4 deals with the payment of tax in advance and the grant of licence in token of the said payment. Under Sec. 4(3) of the Act where tax is paid by any person for a particular period or if no such tax is payable therefor, the licensing officer shall grant to such person a licence in such form as may be notified by the Government for the use of the motor vehicle in any public place in the State during the said period. The licensing officer is to record in the certificate of registration in respect of the motor vehicle that the tax has been paid or that no tax is payable. Sec. 5 directs that no motor vehicle shall be used in any public place unless the licence obtained under S. 4 4(3) (or Sec. 4(3)) is displayed on the motor vehicle. If the licence is not displayed, the registered owner or the person having possession or control thereof is liable to be punished and the vehicle may be detained. Sec. 6 provides for penalty for failure to pay tax. Power seize and detain motor vehicles in case of non-payment of tax is conferred by the provisions of Sec. 8. Tax is to be paid in the manner mentioned in S. 11. Sec. 16

confers power on the Government to make rules. The said Sec. 16 reads as follows:

"S. 16(1) The Government may, by notification, make rules for carrying out all or any of the purposes of this Act.

(2) Any rule made under sub-section (1) may provide that a breach thereof shall be punishable with fine which may extend to fifty rupees.

(3) Every rule made under this section shall, immediately after it is made, be laid before each House of the State Legislature if it is in session and if it is not in session, in the session immediately following, for a total period of fourteen days which may be comprised in one session or two successive sessions, and if, before the expiration of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or in the annulment of the rule, the rule shall thereafter have effect only in such modified form or stand annulled, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule".

The Rules provide the procedure for payment of tax and for various other matters, but we are here concerned mainly with Rule 13-A. That provision, in so far as it is material, reads as follows :

"Rule 13-A : Manner of payment of tax : Payment of every amount due under the Act shall be made by way of cash up to the value of Rs. 300/- or a demand draft or pay order obtainable from any bank mentioned in the second schedule to the Reserve Bank of India Act, 1934 and the demand draft or the pay order shall be produced together with the certificate of registration, and the valid certificate of insurance before the Licensing Officer who shall record the fact of payment of tax in the certificate of registration and the valid certificate of insurance and return them to the person who produces the same along with the taxation licence.

Provided that....."

6. The amendment now introduced by G.O. Ms. No. 122, dated 30-3-1988 states that it is necessary for the person to further produce a certificate of registration under the Motor Transport Workers Act, 1961. The amendment made under S. 16(1) of the A. P. Motor Vehicles Taxation Act, 1963 reads as follows :

"In Rule 13-A of the said Rules, wherever the words ''Certificate of Registration and the valid certificate of Insurance'' occur in the rule, the following may be substituted; namely-

"Certificate of Registration, the valid Certificate of Insurance and in respect of Transport vehicles, the valid registration Certificate of Motor Transport Undertakings under The Motor Transport Workers Act, 1961."

7. We shall, now briefly refer to the provisions of the Motor Transport Workers Act, 1961. We have already referred to its preamble and to the fact that under S.

1(4), the Act applies to every motor transport undertaking employing five or more motor transport workers and also to the further fact that the State Government will issue a notification extending the Act to undertakings employing less than 5 motor transport workers. We have also stated that under G.O. Ms. No. 1624, Home dated 11-10-1968, the State Government had extended the Act to undertakings employing less than five motor transport workers. Sec. 2(e) defines "employer". Sec. 2(g) defines "motor transport undertaking" and Sec. 2(h) defines "motor transport worker". Sec. 3 deals with ''registration of motor transport undertakings". Sub-clause (1) thereof states that every employer of a motor transport undertaking to which the said Act applies, shall have the undertaking registered under the Act. Sub-clause (2) requires an application to be made by the employer to the prescribed authority. Sub-clause (3) thereof states that upon such registration, a certificate of registration shall be issued to the employer containing such particulars as may be prescribed. Chapter III provides for appointment of inspecting staff. Chapter IV deals with welfare and health of the workmen. Secs. 8 to 12 which are in Chapter IV deal with provision for canteens, rest rooms, uniforms and medical and first aid facilities to the workmen. Chapter V deals with hours and limitations of employment including the clear rest period and also makes provision for weekly rest for the workers and grant of compensatory day of rest. Chapter VI deals with employment of own persons and prohibits employment of children. Chapter VII deals with wages and leave of the workmen. Contravention of the provisions of the Act could be penalised in accordance with the provisions of Chapter VIII. Sec. 37 deals with overriding effect of the provisions of the Act over any other law or agreement inconsistent with the provisions of the Act. Sec. 40 deals with the power to make rules. The said Section reads as follows :

Section 40 : Power to make rules :--

(1) The State Government may, subject to the conditions of previous publication, by notification in the official Gazette make rules to carry out the purpose of this Act :

Provided that the date to be specified under Clause (3) of Section 23 of the General Clauses Act, 1897 (10 of 1987), shall not be less than six weeks from the date on which the draft of the proposed rules was published".

Sub-clause (2) of Sec. 40 enumerates some of the matters in respect of which rules could be made without prejudice to the generality of the general power granted in S. 41. Sub-clause (3) of S. 40 requires that every rule made by the State Government under the Act, shall be laid as soon as it is made before the State Legislature.

8. Learned Counsel for the petitioner has cited rulings construing the words ''for the purpose of the Act'' occurring in certain other statutes to contend that the purpose stated in Rule 13-A requiring a certificate of registration under S. 3 of the Motor Transport Workers Act, 1961, does not subserve the purpose of the A.

P. Motor Vehicles Taxation Act, 1963 and it is, to that extent, ultra vires of the latter statute. Reference in this connection is made to a C.C.E. v. Ramakrishnan Kulwant Rai, 1989 (1) Supp SCC 541. On the other hand, it is contended by the learned Government Pleader and the learned Counsel for the transport workers, Sri P. Venkateswarlu that the rule 13-A as amended, subserves the purpose of lawful use of the motor vehicle in a public place as per the licence issued under S. 4(3) and S. 4(4) of the A. P. Motor Vehicles Taxation Act, 1963.

9. In our opinion, the words ''all or any of the purposes of the Act'' in Sec. 16(1) of the A. P. Motor Vehicle Taxation Act, 1963 have to be understood, -- in the context of the present contention -- keeping the provisions of S. 4(3) and S. 4(4) of the said Act in mind. It is necessary here to refer to S. 4(3) of the Act. It reads as follows :

"S. 4(3)(a) : Where a tax in respect of a motor vehicle is paid by any person for a particular period or if no such tax is payable therefor, the licensing officer shall-

(1) grant to such person a licence in such form as may be notified by the government, to use, the motor vehicle in any public place in the State during the said period....."

Section 4(4) deals with grant of a temporary licence.

10. Thus, the Motor Vehicles Taxation Act while enacting provisions for the levy and collection of tax on motor vehicles, provides for issuance of a licence so as to entitle the owner of the vehicle to use the same in a public place. Gathering revenue by way of tax is no doubt the principal purpose of the Act. At the same time, we are of the view that the provisions which are meant to check illegal user of the vehicles or the provisions which promote the safety of road-users as well as the occupants of the vehicles cannot be said to be alien to the purpose of the Taxation Act. The provisions in the Motor Transport Workers Act and the Rules thereunder, are aimed at promoting the welfare of the workmen. These welfare measures in no small measure contribute to the efficiency of the drivers and other workmen, thereby facilitating safer driving. For instance, an over-worked or under-paid driver may not be in a position to drive the vehicle with the alertness and dedication to drive the vehicle with the alertness and dedication that is expected of him. The improvement of conditions of employment of the transport workers and their general well being will have a direct bearing on the safety aspect of the user of vehicles on a public road. The rule making authority evidently felt that the best method of enforcing the provisions of the Motor Transport Workers Act is to insist on a certificate of registration under the said Act being produced at the time of payment of tax on the motor vehicles. That is why the impugned amendment to the Rule has been introduced. By being able to enforce the provisions of the Motor Transport Workers Act effectively, the incidental object of promoting the safe driving is achieved. While the collection of tax for the purpose of improvement of roads and keeping a check over the vehicles, etc is the main object of the Taxation Act, the allied and related purpose

can be said to be to ensure safer use of the vehicle. In this connection, it may be noted that Rule 13-A provides for the production of a valid certificate of insurance. This is again meant to protect the interests of road users and occupants of the vehicles. It is not suggested that the insistence of insurance certificate is in any way illegal or ultra vires the powers of the rule making authority. By the same reasoning, there could be no objection for insisting upon the production of a registration certificate under the Motor Transport Workers Act as well. The consequence of the enforcement of the impugned provision is that a vehicle before it is put to use in a public place should not only possess a valid certificate of registration, certificate of insurance and tax token but it should also be controlled and operated by the owner of the workman coming within the purview of the Motor Transport Workers Act. There is sufficient nexus between the payment of tax, user of transport vehicle in a public place and the safe use of that vehicle. If so, we are of the view that the purpose of the amended Rule 13-A does not travel beyond and go counter to the purposes of the Taxation Act.

11. It is then argued for the petitioners that in all cases the owners of the vehicles are themselves driving their own lorries and are not employing any workmen and that they cannot therefore be compelled to obtain certificate of registration under the Motor Workers Act, 1961 and if they are not allowed to pay the tax for want of registration, it will result in serious hardship.

12. In reply, it is contended by the Government Pleader and by Sri P. Venkateswarlu for the workers that the petitioners and their members are making false claims that they are not employing any workmen and that for example, some of them are owning more than one vehicle and some of the owners are women and it cannot be accepted that they are not employing any workmen whatsoever. We see some force in this submission made by the respondents'' Counsel.

13. It is true that the question of producing the certificate of registration under the Motor Transport Workers Act does not arise in case there is no obligation under the said Act to get the undertaking registered. In other words, if there is not even one person ''employed'' within the meaning of the Motor Transport Workers Act by the owner of the transport vehicle, he will be outside the purview of the Act. We cannot construe the impugned Rule as enjoining that invariably and in all cases the transport undertaking should be registered. It may be that in vast majority of cases the obligation to register the undertaking under the Motor Transport Workers Act will arise, but it cannot be taken for granted. To this extent the Rule has to be necessarily read down. In order to ensure the effective implementation of the Rule in the manner in which it is so read down, we are of the view that the following procedure indicated by Jeevan Reddi, J. (as he then was) and Neeladri Rao, J. in W.P.M.P. No. 14390 of 1988 in W. P. No. 11427 of 1988 dated 21-3-1989, with a slight modification would relieve any hardship and would at the same time ensure compliance with the Statute. We, therefore direct as follows :

If the petitioner-operator files an affidavit before the authority under the Motor Vehicles Taxation Act to the effect that he does not employ even a single person in connection with his business and therefore he is not governed by the Motor Transport Workers Act, 1961 the authority under the Motor Vehicles Taxation Act shall receive the motor vehicle tax.

14. A copy of such an affidavit shall also be filed by the petitioners simultaneously before the Inspector (of the Labour Department) referred to in Sections 4 and 5 of the Motor Transport Workers Act, 1961. Proof of filing of such an affidavit before the Inspector shall be produced before the Secretary, Regional Transport Authority along with the affidavit mentioned above. It will then be for the competent authority under the Motor Transport Workers Act, to verify the correctness of the contents of the affidavit and to take appropriate action. We also direct that if the Inspector under the Motor Transport Workers Act, after making such enquiry as he considers necessary and after giving opportunity of hearing to the deponent of affidavit - (transport vehicle owner) comes to the conclusion that the registration of undertaking is required to be done, he shall pass an order to that effect and intimate the same to the Secretary, R.T.A. and in such a case tax shall not be received for the future period unless the registration certificate under Motor Transport Workers Act is produced as required by Rule 13-A. It is also open to the Secretary, R.T.A. (licensing authority under the Motor Vehicles Taxation Act) to direct stoppage of the vehicle after giving due notice to the vehicle owner.

15. Subject to the above direction, the writ petitions are dismissed. No costs. Advocate''s fee Rs. 150/- in each.

16. Petitions dismissed.