(1997) 08 AP CK 0070

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7271 of 1997

Mohd. Naseeruddin APPELLANT

Vs

Secretary, Regional Transport Authority and Others RESPONDENT

Date of Decision : 06-08-1997

Acts Referred:

Andhra Pradesh Motor Vehicles Taxation Act, 1963 — Section 8
Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 207

Citation : (1997) 5 ALD 423 : (1997) 5 ALT 90

Hon'ble Judges : B.S.A. Swamy, J

Bench : Single Bench

Advocate : S. Arifulla, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

B.S.A. Swamy, J.—The petitioner who is owner of a jeep bearing registration No. KA-38-M-451 filed the present writ petition questioning the action of the respondents in seizing the vehicle, which was detained in Hadnoor Police Station, Medak District in Crime No. 1 of 1997, and under Check Report No. 305608 dated 17-1-1997 in not releasing the vehicle, though he paid the compounding fee, as well as the tax as per their oral instructions and also after giving an affidavit stating that he was travelling along with his family members from Bidar to Zahirabad to attend a marriage, at the time when the accident took place and the vehicle was not being used as Stage Carriage. Having satisfied prima facie that the action of the 2nd respondent is highly illegal, by order dated 10-4-1997, I directed his appearance in the Court. Pursuant to the said orders, the 2nd respondent appeared in this Court on 21-4-1997 and stated that he has not seized the vehicle, but the Station House Officer, Hadnoor seized the vehicle. As the statement of the 2nd respondent is quite contrary to the Check Report dated 17-1-1997, I directed him to file an affidavit duly explaining why he should not be directed to pay damages to the petitioner at the rate of Rs. 10,000/-per month. Pursuant to the said order, the 1st and 2nd respondents filed their counters in this case.

2. The question that arises for consideration of this Court would be whether the Motor Vehicle Inspector is justified in seizing the vehicle, which met with an accident on the basis of a requisition sent by the concerned police to certify about the physical condition of the vehicle. It is not in dispute that the jeep in question met with road accident at Gangwar Check Post, within the local limits of Hadnoor Police Station and one of the passengers by name Sk. Mohammed Ali, son of Aziz Miyan, resident of Bidar was crushed under the wheels and died instantaneously. Thereafter, the 3rd respondent seized: the vehicle after registering a Crime No. 1 of 1997 against the Driver. Subsequently, the 3rd respondent sent a requisition to the 2nd respondent to certify about the physical condition of the vehicle. Pursuant to the said requisition, the 2nd respondent visited the Police Station on 17-1-1997 and it is not known what report he has given with regard to the physical condition of the vehicle. But under Check Report No. 305608 dated 17-1-1997, he seized the vehicle u/s 8 of Andhra Pradesh Motor Vehicles Taxation Act and also u/s 207 of Motor Vehicles Act and further detained the vehicle at Police Station, Hadnoor for safe custody. It is further the case of the petitioner that when he approached the respondents 1 and 3 on 11-3-1997 and as per their oral orders, he paid Rs. 1,650/- through a challan towards compounding fee and another sum of Rs. 280/- by way of Demand Draft towards tax and he also gave an affidavit stating that the vehicle met with an accident, while himself and his family members along with the deceased, who is his friend''s son are travelling and requested the authorities to release the vehicle. But the respondents seemed to have not released the vehicle. Ultimately, the petitioner approached this Court by way of filing the present writ petition and pursuant to the interim orders granted by this Court, the vehicle was released on 15-4-1997. Both the respondents in their counter categorically admitted that the respective amounts were paid by the petitioner. But they tried to justify their illegal action in not releasing the vehicle, by stating that the vehicle was found plying as Stage Carriage and as such the petitioner is liable to pay a sum of Rs. 2,600/- towards compounding fee u/s 200 of the Motor Vehicles Act and a sum of Rs. 7,110/- at the rate of Rs. 790/- per seat per quarter and as nine persons are travelling in the vehicle, they have to pay the said amount as per G.O.Ms.No. 220, dated 17-11-1996. This statement of the respondents was seriously contested by the learned Counsel for the petitioner stating that the tax claimed by the respondents is the tax, which has to be paid for a Stage Carriage, plying on the mofussil route, but not for Motor Cab. Even presuming the allegation to be true, for the purpose of deciding this writ petition, I need not go into that aspect, as the authorities concerned has yet to determine the tax liability in an enquiry to be conducted after giving an opportunity to the petitioner, to prove his case. It is suffice to state that if this tax is really payable by the petitioner, the respondents would not have accepted the challan and the demand draft submitted by the petitioner seeking release of the vehicle. From the counterfiled by the 2nd respondent, it is seen that the petitioner paid the

amount as demanded by the respondents. In paragraph 2 of his counter, he stated that "in fact the petitioner approached the Secretary, R.T.A., Medak (1st respondent) on 11-3-1997 for release of the vehicle and he has also consented for compounding and paid a sum of Rs. 1,650/- and also a sum of Rs. 208/- for tax." This statement itself proves that to cover up their illegal action, the respondents came up with a plea that the petitioner is liable to pay Rs. 7,110/- towards tax and Rs. 2,600/- towards compounding fee.

3. The issue can be looked from another angle also. If it is the case of the respondents that this is the tax payable by the petitioner, nothing prevented the authorities in serving a notice on the petitioner calling upon him to pay the amount. Further payment of tax by the petitioner will arise only after the authorities concerned come to the conclusion that this vehicle is being plied as Stage Carriage, after full fledged enquiry. It is not in dispute that the respondents have not even commenced the enquiry in this case. The fallacy in the arguments of the respondents is evident from the Check Report itself, which is extracted here under :-

"Vehicle Check Report No. 305608. 1. Date: 17-1-1997 Time: 5.00 Place: Hadnoor 2. Registration No. KA-38-M-451, Class of Vehicle: 0/Bus (Jeep) 3. Permit No. Issued by: Validity 4. Name and Address of Registered Owner: Not known (R.C. not produced) 5. Name and Address of the Driver :Absconded from the scene of offence. 6. Name and Address of the Conductor : 7. Irregularities noticed : Inspected the accident vehicle at P.S. Hadnoor and No. R.C. Book, No. I.C. & Carrying (8) passengers out of them one passenger Sri Sk. Mohammad, son of Aziz R/o Bidar crushed under the jeep and died on the way to the Bidar Hospital and others injured. Thus, the vehicle found plying as illegal Taxi without tax, without permit, without fitness certificate and as per S.I. of Police, Driver absconded. No. D.L.

Hence, seized the vehicle u/s 8 of the A.P.M.V.T. Act and u/s 207 of the A.P.M.V. Act and further detained at P.S. Hadnoor for safe custody.

Driver absconded copy handed over to watch P.S. 1197.

Sd/- Motor Vehicle Inspector, Zaheerabad, Medak District, A.P."

From this it is evident that the 2nd respondent did not seize the vehicle while it was plying with the passengers, but he has seized the vehicle, which was seized by Hadnoor Police, already in the Criminal Case No. 1 of 1997 on 3-1-1997.

4. From this it is evident that there is no material available before me atleast to come to a prima facie conclusion that the vehicle is plying as a Stage Carriage. Even the Station House Officer himself did not even state that the vehicle met with an accident was plying as Stage Carriage. Likewise, the Station House Officer did not give any statement to the 2nd respondent that the passengers travelling in the jeep are not the petitioner, owner of the vehicle and his family members. But the 2nd respondent jumped at the conclusion that the vehicle is

being plied as a Stage Carriage, merely on the ground that it met with an accident and as one person by name Sk. Mohammed Ali died in the accident. He has gone to the extent of stating that the vehicle is plying without permit, without fitness certificate, without even ascertaining whether the vehicle is having fitness certificate and the circumstances under which the vehicle met with the accident, from the petitioner. This fact was admitted by the 1st respondent in his counter in paragraph No. 3 stating that "the M.V.I, is not known whether passengers are their family members or private passengers;" the 2nd respondent also in his counter simply reproduced the Check Report and he categorically admitted that the vehicle was seized, though he tried to deny that fact in this Court. The only reason for his presumption is that the vehicle is plying as illicit taxi and that one of the passengers crushed under the jeep.

5. From the above, it is seen that there is absolutely no material before the 2nd respondent for arriving at the conclusion that the vehicle has been plied as a Stage Carriage and in seizing the vehicle more so, when he has gone to inspect the physical condition of the vehicle at the requisition of the police. Hence, the very seizure of the vehicle in question is illegal and not warranted in the circumstances of the case.

6. Be that as it may, having directed the petitioner to pay the compounding fee and the difference of tax and having received the same, the respondents failed to release the vehicle even after an affidavit was given by the petitioner stating that himself and his family members were travelling in the jeep. In fact, the respondents failed to release the vehicle until this Court directed them to release the vehicle. This is nothing but a high-handed action on the part of the respondents and their action is quite illegal and not supported by any authority. Hence the action of the respondents in detaining the vehicle even after receiving the compounding fee and the difference in tax is illegal.

7. The next question that arises for consideration of this Court would be that whether the respondents can be directed to pay damages to the petitioner to mitigate the sufferings and misery to which they have subjected the petitioner by their illegal action. In fact by order dated 21-4-1997, I specifically directed the 2nd respondent to file his counter-affidavit why I should not direct him to pay damages at the rate of Rs. 10,000/- per month to the petitioner. But the 2nd respondent did not advert to this fact at all in his counter. In fact, when he was present in the Court, he never submitted that any tax or compounding fee is due from the petitioner. It is only after this Court directed the respondents to file counters, they came out with the said plea: I have no hesitation to hold that it is an after thought to justify their illegal action. Even when the Court has taken serious note about the conduct of the 2nd respondent, instead of rectifying the mistake by seeking pardon of the Court, the 2nd respondent justified his action by raising a false claim, by contending that some more amounts are due from the petitioner, though he has not given any communication to the petitioner to that effect. For all these reasons, I am constrained to award damages at the rate

of Rs. 10,000/- per month payable to the petitioner by the 2nd respondent for illegally detaining the vehicle belonging to the petitioner.

8. For all the above reasons, the writ petition is allowed and the seizure I report dated 17-1-1997 is quashed. The Drawing Officer shall recover the amount payable to the petitioner from the 2nd respondent in five monthly instalments and pay the same to the petitioner, failing which a serious view of the matter shall be taken.

