

(2001) 04 AP CK 0130
In the Andhra Pradesh High Court
Case No : Writ Petition No. 18143 of 2000

M.R.S. Maha Lakshmi

APPELLANT

Vs

Deputy Transport Commissioner and Secretary, RTA, Krishna
District and another

RESPONDENT

Date of Decision : 17-04-2001

Acts Referred:

Andhra Pradesh Motor Vehicles Taxation Act, 1963 — Section 3
Andhra Pradesh Motor Vehicles Taxation Rules, 1963 — Rule 12
Constitution of India, 1950 — Article 226

Citation : AIR 2001 AP 384 : (2001) 3 ALD 652 : (2001) 3 ALT 96

Hon'ble Judges : S.R. Nayak, J;S. Ananda Reddy, J

Bench : Division Bench

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

Judgement

S.R. Nayak, J.—In this writ petition, writ of certiorari is sought to quash the demand notice dated 28-2-2000 in R.No.6432/A3/96 issued by the Deputy Transport Commissioner and Secretary, Regional Transport Authority, the 1st respondent herein demanding payment of tax of Rs.87,500/- for the quarter ending 30-6-1997 for the vehicle bearing registration No.TN01/N-27 and for consequential direction to the 1st respondent to refund the tax of Rs.29,167/- paid under protest on 2-5-1997.

2. The petitioner is the owner of the subject motor vehicle and the said vehicle is covered by All India Tourist Permit No.TVP/ 13/99 valid upto 4-2-2001. The petitioner on 31-12-1996 submitted a stoppage report to the 1st respondent informing that the bus was stopped from 31-12-1996 for carrying out certain repairs. When the matter stood thus, the 1st respondent directed the 2nd respondent to conduct surprise verification of stoppages reported by the owners of the vehicles covered by All India Tourist Permits and State wide contract carriage permits. Accordingly, the 2nd respondent conducted a surprise verification at the reported place on 24-4-1997 and after verification submitted a

report to the 1st respondent reporting that the subject vehicle of the petitioner was not found at the reported place i.e., Sri Venkata Ramana Auto Mechanical Works, Police Station Road, Opp. Kalyana Mandapam, Jawahar Auto Nagar, Vijayawada-7. Therefore, on the basis of the report submitted by the 2nd respondent, the 1st respondent issued show-cause notice dated 2-5-1997 in R.NO.64322/A3/96. It reads :

"Office of the Deputy Transport Commissioner: Vijayawada Notice

R.No.64322/A2/96 Dated 2-5-1997 Sub: Motor Vehicles -Contract Carriage Bus TN 01/N-27 - Stoppage report filed -Vehicle not found at reported place - Reg.

Ref:--I.S.R. filed on 31-12-1996.

2. Special Check dated 24-4-1997 of the M.V. Inspector.

----- In the reference 1st cited, a stoppage report was filed in respect of CC Bus TN 01/N-27 covered by valid AIT permit.

As per the instructions of the JTC, (V&E), STA, Hyderabad camped at Vijayawada on 24-4-1997, a surprise check was conducted for verification of stoppage referred to above. During such check, the M.V. Inspector in the reference 2nd cited, reported that the vehicle has not been found at the reported place. Hence, it is assumed that the Stoppage Report filed by the Registered owner is not genuine report in respect of his bus, for which the Registered owner is liable to pay full tax for the said period under APMVT Act and Rules, 1963.

Therefore, the registered owner of the vehicle is hereby called on to show-cause as to why full tax for the period from 1-1-1997 to 30-6-1997 as applicable to the category of the vehicle shall not be collected from him, within 7 days from the date of receipt of this show-cause notice, failing which exports action will be taken basing on the material available on records.

Licensing Officer, Vijayawada

To

Smt. M. Rama Sita Maha Lakshmi, W/o Rama Krishna, Vallurivari Street, Chowdaripet, Krishna Lanka, Vijayawada-3."

The petitioner filed his explanation on 17-6-1997 stating that the vehicle was shifted to another shed for engine repairs only by towing; the said information was communicated to the 2nd respondent on 24-4-1997 while he was returning from the reported place after conducting surprise verification, that the respondent No.2 did not obtain any written statement either from the Watchman or from the son of the petitioner who were present at the workshop and that the usage of the vehicle was not established in any manner and requested the 1st respondent to drop further action in pursuance of the show-cause notice. The petitioner along with the explanation enclosed (i) a receipt for having received an amount of Rs.500/- towards charges for towing of the subject vehicle from Sri

Venkata Ramana Auto Mechanical Works, Police Station Road, Opp. Kalyana Mandapam, Jawahar Auto Nagar, Vijayawada - 7 to M/s. Siva Parvathi Auto Mechanical Works, Vijayawada issued by the Krishna District Lorry Owners Association and (ii) another certificate certifying that the subject vehicle was brought to the mechanical shed of M/s. Siva Parvathi Auto Mechanical Works, Vijayawada on 21-4-1997 by towing with another vehicle bearing registration No.DL/IG-5760 from Sri Venkata Ramana Auto Mechanical Works, Police Station Road, Opp. Kalyana Mandapam, Jawahar Auto Nagar, Vijayawada - 7 for engine repairs and after completion of the repairs the vehicle was sent from the shed on 2-5-1997. In the explanation statement, the petitioner also requested for cross-examination of the 2nd respondent before the 1st respondent authority or in the alternative to call for a specific report from him on the representation filed by the petitioner. Accordingly, the 1st respondent referred the matter to the 2nd respondent for special report and the 2nd respondent submitted a report dated 2-9-1997 in which he stated that he once again visited the workshop after one hour at about 8.30 p.m., on 24-4-1997 as requested by the representatives of the registered owner and found nobody there and he did not find the vehicle when he visited second time on 24-4-1997.

3. The 1st respondent on consideration of the reports of the 2nd respondent as well as the explanation offered by the petitioner issued impugned demand notice calling upon the petitioner to pay tax of Rs.87,500/- for the quarter ending 30-6-1997. Hence, this writ petition assailing the validity of the same.

4. In response to rule nisi, the 1st respondent has filed a detailed counter opposing the writ petition.

5. Sri B. Siva Rama Krishnaiah, learned Counsel for the petitioner while assailing the validity of the impugned demand notice issued by the 1st respondent would contend that (i) there is absolutely no evidence to show that the petitioner operated the vehicle after he filed the stoppage report before the 1st respondent on 31-12-1996 and therefore no tax could be levied; (ii) that the explanation offered by the petitioner to the show-cause notice was not properly considered by the 1st respondent and (iii) that the 1st respondent has failed to consider the report submitted by the Senior Motor Vehicle Inspector, Vijayawada, dated 9-12-1997.

6. On the other hand, learned Special Government Pleader for Taxes would support the impugned action. The learned Special Government Pleader at the time of hearing placed before us the original records of the case.

7. Sub-section (1) of Section 3 of the Andhra Pradesh Motor Vehicles Taxation Act, 1963 (for short "APMVT Act) provides:

"3. Levy of tax on Motor Vehicles :--

(1) The Government may, by notification, from time to time, direct that a tax shall be levied on every motor vehicle used or kept for use, in a public place in

the State".

Rule 12-A of the A.P. Motor Vehicles Taxation Rules, 1963 provides:-

12-A. Liability for payment of tax in respect of motor vehicles kept for use :--

For the purpose of Section 3 of the Act, a motor vehicle shall be deemed to be kept for use and is liable to tax unless the registered owner or the person having possession or control of the motor vehicle intimates in writing to the Licensing Officer before the commencement of the quarter for which tax is due that the motor vehicle shall not be used after expiry of the period for which tax has already been paid. The Licensing Officer, shall on receipt of the intimation, acknowledge its receipt".

The combined effect of sub-section (1) of Section 3 of the APMVT Act and Rule 12-A of the APMVT Rules is that a motor vehicle should be deemed to be kept in use and is liable to tax unless the owner or the persons having possession or control of the motor vehicle files stoppage report before the prescribed authority-Licensing Officer before the commencement of the quarter for which tax is due. In the instant case, though the petitioner claims that the subject motor vehicle was shifted to M/s. Siva Parvathi Auto Mechanical Works, Vijayawada on 21-4-1997 for repairs by towing with another vehicle bearing registration No.DL/IG 5760, the petitioner for the reasons best known to her did not inform this fact to the 1st respondent or the 2nd respondent either orally or in writing. Although the provisions of the APMVT Act and the APMVT Rules do not provide any specific procedure to shift the vehicle from one place to another either for repairs or for some other purpose after a stoppage report is filed, the combined reading of the provisions of sub-section (1) of Section 3 of the Act and Rule 12-A of the rules make it obligatory by necessary implication that the registered owner or the person having possession or control of the motor vehicle should inform the Licensing Officer about the shifting of the vehicle. In arriving at this opinion, we may derive sustenance from Column No.8 of the Stoppage Report Form. Column No.8 of Stoppage Report Form produced at page 14 of the material papers provides:

8. Place at which the vehicle At Sri Verkata Ramana is kept Auto Mechanic Works, Police Station Road, Opp. Kalyana Mandapam Jawahar Auto Nagar Vijayawada-7

The objective behind the requirement that the registered owner should state the place at which the vehicle is kept when the files stoppage report is that the departmental authorities should know where the vehicle is kept in respect of which stoppage report is lodged and for periodical or surprise verification to know whether the vehicle is kept idle at the place mentioned in column No.8 of the report or it is being operated clandestinely despite filing the stoppage report.

8. It is true, as contended by the learned Counsel for the petitioner, that there is no independent or corroborative evidence to show that the petitioner operated

the vehicle for profit or business purpose after the stoppage report was filed on 31-12-1996. But, the fact remains that when the surprise verification was done by the 2nd respondent on 24-4-1997, admittedly, the vehicle was not found at the place shown in column No.8 of the Stoppage Report. In that view of the matter, it cannot be said that the 1st respondent acted illegally in drawing inference that the vehicle was operated despite filing the stoppage report and therefore it is subjected to tax. Of course, this inference drawn by the Licensing Officer could be rebutted by the petitioner adducing satisfactory rebuttal evidence. The question is whether the petitioner has produced any rebuttal evidence to establish that despite the fact that he shifted the vehicle from the place shown in column No.8 of the Stoppage Report to another place did not use the vehicle for commercial or business purpose.

9. No flaw legal or otherwise can be found in the action of the 1st respondent in rejecting the self-serving plea of the petitioner that after she filed the stoppage report on 31-12-1996, she did not use the vehicle for commercial or business purpose particularly in the absence of any independent or corroborative evidence in support of that plea.

10. Be that as it may, the question whether the subject motor vehicle was used by the petitioner for commercial or other purpose after she filed the stoppage report on 31-12-1996 before the 1st respondent is purely a question of fact. The scope of judicial review in reviewing findings of fact, under Article 226 of the Constitution is very much limited and circumscribed by authoritative judicial pronouncements. Unless in a given case, the Court finds that the finding recorded by an authority, statutory or otherwise, is based on "no evidence", it cannot reappraise the evidence led before the authority and come to a different conclusion than the one arrived at by the authority as if the Court acts as an appellate authority over the decision taken by the authority. The decision of the Supreme Court in *Major G.S. Sodhi Vs. Union of India (UOI)*, , AIR 1997 993 (SC) , are the authorities to state that the High Court, shall not ordinarily, enter into disputed questions of fact like an Appellate Court. The Supreme Court in *B.I. Corporation v. Industrial Tribunal* AIR 1957 SC 355, *Income Tax Officer, Special Investigation Circle-B, Meerut Vs. Seth Brothers and Others etc.*, , *Om Prakash Vs. State of Haryana and Another*, , has opined that the High Court cannot sit as a Court of Appeal over the findings of fact recorded by a competent inferior Tribunal. Further, the Supreme Court in *Kavalappara Kottarathil Kochunni Moopil Nayar Vs. The State of Madras and Others*, , *Harbans v. Jagmohan*, (1986) 1 UJSC 28 and *State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others*, , has opined that the High Court cannot reappraise the evidence for itself. In *State of Orissa v. Murlidhar* AIR 1963 SC 404, *The State of Madras Vs. G. Sundaram*, , the Supreme Court held that the findings on fact cannot be interfered with on the ground that the evidence on which it was based was not satisfactory or sufficient particularly when the finding of the inferior authority is "final" under the statute. The only inquiry which the High Court can make under Article 226 while reviewing the finding of fact is whether there was

any evidence at all, which if believed, would sustain the charge before the Tribunal or the finding arrived at by it, as held by the Supreme Court in *Somnath v. State of Orissa* (1969) UJSC 351, *Swaran Singh v. State of Punjab*, (1976) 1 SCWR 46 and *State of Madras v. Sundaram* (supra) or whether the statutory authority acted upon irrelevant considerations, neglecting to take into account of relevant factors; or whether the decision is unreasonable that no reasonable person would have made such a decision. The Supreme Court in *State of U.P. v. Dharmander* (supra) has opined that judicial review under Article 226 is directed, not against the correctness of the decision, but against the correctness of the decision-making process.

11. In the instant case, the finding recorded by the 1st respondent in the impugned order cannot be said to be perverse or is based on no evidence. Therefore, the first contention of the learned Counsel for the petitioner does not merit acceptance.

12. We do not find any merit in the second contention that the 1st respondent did not consider the explanation of the petitioner properly. We have perused the impugned order. The 1st respondent has referred to the explanation offered by the petitioner on 17-6-1997 and considered the contents thereof and came to the conclusion that the plea taken by the petitioner was only an after-thought. The said opinion of the 1st respondent cannot be said to be perverse in the context of the case particularly having regard to the fact that though the petitioner claims to have moved the vehicle on 21-4-1997 from the reported place, he did not chose to report the same to the 1st respondent or to the 2nd respondent. Therefore, there is no merit in the second contention.

13. This takes us to the third contention of the learned Counsel for the petitioner that non-consideration of the final report submitted by the Senior Motor Vehicle Inspector, Vijayawada dated 9-12-1997 vitiates the impugned order. Let it be noticed at the threshold that the report submitted by the Senior Motor Vehicle Inspector, Vijayawada dated 9-12-1997 is referred to in the impugned demand notice at Reference No.(5). Therefore, it cannot be said that the 1st respondent has ignored the above report and passed the impugned demand notice without taking into consideration of the same. It is true that there is no detailed discussion of the contents of that report. We are of the considered opinion that that report will in no way advance the case of the petitioner. We say this because on two earlier occasions, the concerned Motor Vehicle Inspector who visited the place shown in column No.8 of the Stoppage Report on 24-4-1997 submitted the reports out of his personal knowledge and verification, whereas in the report submitted by the Senior Motor Vehicle Inspector on 9-12-1997 except stating that the subject vehicle was stopped from 1-1-1997 at M/s. Venkata Ramana Auto Mechanical Works, Auto Nagar, Vijayawada for the repairs of the vehicle and it was under stoppage from 1-1-1997 to 20-4-1997, he has not disclosed any materials or reasons on the basis of which he has recorded such a finding which has the direct effect of contesting the correctness of the findings recorded by the

Motor Vehicle Inspector who personally visited the place on 24-4-1997. It is also quite strange, as highlighted by the learned Government Pleader for Taxes, that there was absolutely no good reason for directing the Senior Motor Vehicle Inspector to submit one more report particularly when the Motor Vehicle Inspector who visited the place on 24-4-1997 had submitted two reports on earlier occasions. Be that as it may, as already pointed out supra, judicial review is not against the decision as such, but only against the decision making process and this Court while reviewing the administrative statutory action under Article 226 cannot act as an appellate authority and reappreciate evidence and substitute its own opinion in place of the opinion of the administrative or statutory authority even in a case where two opinions are possible on the basis of the same set of facts and evidence.

14. In the result and for the foregoing reasons, we do not find any merit in the writ petition warranting our interference. The writ petition is therefore dismissed with no order as to costs.