
(1989) 06 KAR CK 0021
In the Karnataka High Court
Case No : W.P. Nos. 2179 to 2180/89

M.S. Suryanarayana

APPELLANT

Vs

Regional Transport Officer, Bellary and Others

RESPONDENT

Date of Decision : 27-06-1989

Acts Referred:

Karnataka Motor Vehicles Taxation Act, 1957 — Section 16

Citation : (1989) 3 KarLJ 634

Hon'ble Judges : H. G. Balakrishna, J

Judgement

Balakrishna, J.-These writ petitions are directed against the order of the 2nd respondent dated 2-2-1989 under Annexure-E and the order of the 4th respondent dated 2-2-1989 under Annexure-F. The petitioners have sought for quashing the said orders and also for a mandamus directing the respondents to release the vehicle bearing Registration Mark AIL 9599 and TML 8120 from seizure and detention. The arguments were heard and the writ petitions are disposed of by a common order.

2. Briefly set out the facts of the case are as follows:

The 1st petitioner is the owner of the public service vehicle bearing registration mark AIL 9599 registered before the competent authority at Vijayawada and it is stated that he has paid the tax payable under the Andhra Pradesh Motor Vehicles Taxation Act and further that the tax token had been displayed in the public service vehicle. The petitioner entered into a contract for carrying a party consisting of a batch of students of B.E.D. College, Harapanahally from Guntakal Railway Station to various places of tourist importance between Guntakal and Bombay City which lying in the State of Andhra Pradesh, Karnataka and Maharashtra and in the return journey the contracting party of students had to be brought from Bombay to Nasik, Yellora, Aurangabad, Bijapur, Hospet, Harapanahalli, Hospet, Guntakal. The petitioner obtained special permit necessary for the purpose from the Secretary, Transport Authority, Krishna District. It is also stated that the vehicle was covered by a valid Fitness

Certificate,

3. The 2nd petitioner is similarly the owner of another vehicle bearing registration mark TML 8120 which is also duly registered Before the competent authority at Vijayawada with tax having been paid upto date. This vehicle was also covered by the valid Fitness Certificate. The tax token for having paid was also as required under the Rules. This petitioner also entered into a contract to carry batch of students for educational tour and the students, belonging to B.E.D. College, Harapanahalli, commencing from Guntakal-Railway Station to various places of tourist importance between Guntakal and Bombay City lying in the States of Andhra Pradesh, Karnataka and Maharashtra and the same place is mentioned in respect of the earlier vehicle. The petitioner obtained a special permit as required for the said purpose from the Secretary, R.T.A., Krishna District, Vijayawada, for the period between 22-1-1989 and 2-2-1989.

4. A Notification dated 22-11-1962 came to be issued under Section 16 of the Karnataka Motor Vehicles Taxation Act, 1957, bearing No. HD 72 TMT 61. Under the said Notification, the vehicles of the petitioners in respect of which tax had been paid to (he State of Andhra Pradesh were being operated under Special Permit issued in accordance with Section 63(6) of the Motor Vehicles Act. The vehicles carried a special distinguishing mark which facilitated identification of the vehicles as to the status. According to the petitioners, the vehicles were exempted from the payment of tax under the Karnataka Motor Vehicles Taxation Act, 1957.

5. The trouble arose when the vehicles after performing the contracted journey had come to Harapanahally. When the vehicles reached Harapanahally, inspite of the insistence of the drivers of both the vehicles; the contracting parties on their own volition alighted at Harapanahalli which is part of the contracted journey and thereafter the vehicles of the petitioners were returning empty. When the vehicles had reached near Bisalahalli on 2-2-1989 they were checked by respondents-2 and 4 who seized and detained the vehicles and issued an endorsement in Form-27 and also check reports in relation to both the vehicles. The petitioners are aggrieved by the action taken by respondents-2 and 4.

6. The question which arises for consideration is whether the exemption from payment of tax under the Karnataka Motor Vehicles Taxation Act 1957 by virtue of the Notification issued in H.D. 72 TMT 62 Bangalore dated 22-11-1962 is liable to be withdrawn or revoked on the facts and in the circumstances of these cases, and whether the proviso inserted under Annexure-G is applicable thereunder.

7. It was contended on behalf of the petitioners by the learned Counsel Sri. M. Rangaswamy, that before the seizure and detention of the vehicles no opportunity was given to the petitioners to show cause whether the vehicles were liable for tax and that the seizure and detention was in contravention of Section 11-A of the Karnataka Motor Vehicles Taxation Act and Rule 27-A of the Karnataka Motor Vehicles Taxation Rules.

8. On the other hand it was submitted by the learned Government Advocate appearing for respondents-1 to 4 that on an application of the Notification under Annexure-G to the facts of the instant case it cannot be said that the action taken by respondents-2 and 4 is illegal and that the denial of exemption from payment of tax to the petitioners is justified.

9. It is necessary to refer to the Notification dated 22-11-1962 bearing No. HD 72 TMT 61 Bangalore. In accordance with this Notification all the ingredients necessary to avail exemption are satisfied by the petitioners and to that extent there is no controversy. The real controversy arises only in the application of the proviso inserted under Notification dated 12-8-1988, a copy of which is Annexure-G. Annexure-G reads as follows:

GOVERNMENT OF KARNATAKA

No. FTD

49 TMT 86 Karnataka Government

Secretariat, Multistoreyed

Building, III Stage, 7th Floor,

Dr. B.R. Ambedkar Veedhi

Bangalore, Dated: 12-8-1988.

NOTIFICATION

In exercise of the powers conferred by sub-section (1) of Section 16 of the Karnataka Motor Vehicles Taxation Act, 1957 (Karnataka Act 35 of 1957) read with Section 21 of the Karnataka General Classes Act, 1889 (Karnataka Act III of 1899), the Government of Karnataka, hereby makes the following amendment to Notification No. HD 72 TMT 61 dated 22nd November 1962 namely:

In the said Notification the following proviso shall be inserted at the end namely:

"Provided that such exemption shall not be available in respect of motor vehicles covered by special permits granted under sub-section (6) of Section 63 of the Motor Vehicles Act, 1939, by the Transport Authority of a State other than the State of Karnataka to pick up and set down passengers in the State of Karnataka".

10. It was contended on behalf of the petitioners that the words "to pick up and set down passengers in the State of Karnataka" mentioned in the proviso have to be read conjunctively and not disjunctively. The argument of the learned Counsel was that exemption could be denied only when there is both picking up of passengers and setting down of passengers in the State of Karnataka. If passengers have been picked up in another State and set down in the State of

Karnataka, the proviso cannot be applied and the exemption cannot be

withdrawn. Admittedly what has been done in the instant case is that the vehicles in question picked up the B.E.D. College students of Harapanahally from Guntakal Railway Station and in the course of return journey the passengers (contracting party) were set down at" Harapanahalli, Bellary District, Karnataka State. Thus the cause of action for respondents-2 and 4 was only setting down of the passengers at Harapanahalli in Karnataka State. It is not at all the case of the respondents that the passengers had been picked up at Harapanahalli in the State of Karnataka and set down at Harapanahalli. The learned Counsel for the petitioners sought to derive support for his argument that the word "and" is used in the conjunctive sense, from a decision of the Supreme Court in *Sambhu Nath Sarkar v The State of Bengal and others*, AIR 1973 SC 1425. The relevant portion is extracted hereunder:

"In this view, the meaning of the word "and" in that clause must be held to have its ordinary conjunctive sense, the context in that clause also requiring not the opposite but its commonly understood sense, requiring parliament to prescribe both the circumstances and the classes of cases in which only consideration by the Board can be dispensed with."

The proviso inserted is an indication of the circumstance which would disqualify the special permit holders for exemption. The conditions entailing withdrawal of exemption being, that the passengers are not only picked up in the State of Karnataka but also set down within the same State. The two components, coexistence of which alone would entail the withdrawal, are not to be found in the check reports issued by the authorities under Annexures "C and "D". There could be no controversy on the factual position that the wrongful conduct imputed under Annexures "C and "D" is one and the same and that is, setting down the passengers at Harapanahalli, Bellary District (Karnataka State) after having picked them up from Guntakal Railway Station in Andhra Pradesh.

11.The words in the proviso have to be construed strictly by contextual compulsion. The power to withdraw the exemption is conditional as intended by the rule. The power can be exercised only in the circumstances set out in the proviso if all the conditions are infringed. The right to exemption cannot be taken away by an arbitrary exercise of power without ascertaining whether the conditions for exercise of such power do exist. It has to be noticed that all that is required to be done by the petitioners in order to earn the exemption under the notification has been done and that exemption is sought to be taken away by exercise of power conferred under the proviso to the notification. The exercise of the power withdrawing the exemption has the fall-out of seizure and detention of the vehicles. As it is rightly said, to wield the power of a giant is glorious, but to misuse it is tyrannous. Power is meant to be exercised carefully and not casually.

12.On account of the far reaching effects of detention and seizure based on a wrong decision, substantial injury is likely to be caused to the owners of the motor vehicles. It is against this backdrop that special emphasis has to be laid on the imperative of a reasonable opportunity before taking an action to revoke the

exemption and to follow it up with seizure and detention. It is submitted by the learned Counsel for the petitioners that no show cause notice was issued before the impugned action was taken. The grievance of the petitioners is well-founded. The draconian exercise of power without verification and hearing, would certainly violate the principles of natural justice as in the instant cases. Perhaps, if a fair opportunity had been conceded to the petitioners, they would have satisfied the authorities that conditions for withdrawal of the exemption do not exist and that the circumstances did not warrant the revocation of exemption. If not a show cause notice, at least, a reasonable opportunity should have been afforded to the petitioners to defend against the proposed action. Failure to do so, has resulted in miscarriage of justice.

13. I am of the opinion that the impugned orders under Annexures "E" and "F" are arbitrary and in excess of the jurisdiction vested in the concerned authorities. The petitioners are entitled to a writ of mandamus for the release of the vehicles bearing Registration Marks AIL 9599 and TML 8120. However, an order in this behalf has already been passed by way of interim direction on 3-2-1989 conditional upon payment of Rs. 5,000/- by each of the petitioners. In this regard, it would be necessary to direct the concerned authorities to refund the amounts recovered from the petitioners.

14. In the result, for the foregoing reasons, rule is issued and made absolute. The writ petitions are allowed and the impugned orders are quashed. The 1st respondent is hereby directed to refund a sum of Rs. 5,000/- to each of the petitioners within three months from the date of receipt of a copy of this order.

15. The learned High Court Government Advocate is permitted to file memo of appearance within two weeks from today.

Writ petitions allowed.