

(2010) 04 KAR CK 0009
In the Karnataka High Court
Case No : Writ Petition No. 15565 of 2007

Nafiza Sultana

APPELLANT

Vs

The Secretary, R.T.A. and Another

RESPONDENT

Date of Decision : 21-04-2010

Acts Referred:

Karnataka Motor Vehicles Taxation Act, 1957 — Section 14, 3, 6
Motor Vehicles Act, 1988 — Section 83, 89 (1)

Citation : AIR 2010 Kar 179 : (2011) 3 CHN 159 : (2011) 1 CTC 760 : (2010) ILR (Kar) 3123 : (2011) 1 RCR(Civil) 222 : (2011) 1 RCR(Civil) 223

Hon'ble Judges : N. Kumar, J; Mohan Shantanagoudar, J; A.S. Pachhapure, J

Bench : Full Bench

Advocate : Puttige R. Ramesh, for the Appellant; E.S. Indresh, HCGP for R1 and C. Mohammed Sabhanulla Shariff, for R2, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—This writ petition is placed before this bench in pursuance of the order dated 10.12.2009 passed by the Hon'ble Chief Justice on a reference by the Learned Single Judge.

FACTUAL MATRIX:

2. Smt. Nafiza Sultana, the petitioner is the holder of stage carriage permit bearing No. P.ST.P. No. 37/98-99 on the route Thoralakki-Bangalore, granted under the provisions of the Motor Vehicles Act, 1988 [for short hereinafter referred to as "the M.V. Act"] by the Regional Transport Authority, Bangalore Rural District. The petitioner was not owning any vehicle on the date of the grant of permit. Therefore, she sought for coverage of the aforesaid permit by the vehicle bearing No. TN 49 E-0580 owned by the 2nd respondent. The said request was granted vide proceedings dated 05.07.2004 of the 1st respondent/Government. The petitioner had obtained the policy of insurance in respect of the aforesaid vehicle and also paid tax due as and when it became payable under the provisions of the Karnataka Motor Vehicles Taxation Act, 1957 [for short

hereinafter referred to as "the Taxation Act"].

During the year 2006, the vehicle of the 2nd respondent was regularly giving mechanical problems and was not fully plying on the road. When this was brought to the notice of the 2nd respondent, he took the vehicle from the custody of the petitioner with an assurance that he will get the vehicle properly repaired. When there was delay in re-delivery of the vehicle, on an enquiry, the petitioner was told that the 2nd respondent has scrapped the vehicle on 20.10.2006 after notifying the concerned R.T.O. On 26.04.2007, the petitioner filed an application seeking replacement of the vehicle covered by the permit. Upon such request being made, the 1st respondent issued an endorsement on 27.04.2007 to the effect that no tax appears to have been paid on the vehicle bearing No. TN 49 E-0580 from 01.11.2005 and accordingly, called upon the petitioner to produce the document to evidence payment of tax as per the endorsement at ANNEXURE- "A". Thereafter, the petitioner made available the extract of B-Register and the letter written by the 2nd respondent to the R.T.O. seeking cancellation of the Registration Certificate as per ANNEXURES-"B and C" respectively. The petitioner thereafter filed an appeal u/s 89(1) of the M. V. Act before the Karnataka Transport Appellate Tribunal [for short hereinafter referred to as "the Appellate Tribunal"]. The Appellate Tribunal after hearing the petitioner, dismissed the appeal by its Order dated 14.08.2007 as per ANNEXURE-"D". Challenging the aforesaid Order, the petitioner has preferred this writ petition.

NEED FOR REFERENCE:

3. It was contended before the Learned Single Judge that when an application is made for replacement of a vehicle u/s 83 of the M.V. Act, the non-payment of tax in respect of the vehicle covered under the permit cannot be made a ground for rejection of such request.

In support of such contention reliance was placed on two Judgments of this Court.

Firstly, a Division Bench of this Court in the case of Sreenivasa Reddy v. The Secretary, Mysore State Transport Authority W.P. No. 1851/1972, disposed of on 26.10.1972, held as under:

4. Rule 130 of the Motor Vehicles Rules, 1963, provides for an application for replacement. The applicant shall forward Part A of the permit and apply in Form No. 76 M. V. Rep. A to the transport authority stating the reasons why the replacement is desired.

5. No provision in the Act or the Rules, is brought to our notice, providing for a condition that the applicant should pay all the arrears of Tax in respect of the vehicle before he seeks its replacement.

6. The order impugned, therefore, is patently illegal and unauthorised by law.

7. It may be relevant to state that the petitioner does not even admit the arrears

of tax payable by him in respect of the vehicle No. MYD 4744. It would be, therefore, not proper for the authority to insist on the payment of the disputed tax before according permission for replacement.

8. In the result, we allow the writ petition and direct the respondent to consider the application of the petitioner for replacement of his vehicle as expeditiously as possible without insisting on the payment of the alleged arrears of tax in respect of the vehicle bearing No. MYD 4744.

Secondly, in the case of Vinayaka Bhat Vs. State, , where it was held:

The existence of a motor vehicle is a condition precedent for levy of tax under the Act". Therefore, the respondent has to enquire and determine as a question of fact, whether the motor vehicle was in existence during the relevant period and then only they call upon the owner of the vehicle to pay tax under the Taxation Act.

Therefore, it was contended that the impugned endorsement issued by the authority is illegal and requires to be quashed.

The Hon''ble Apex Court in the case of State of Karnataka Vs. K. Gopalakrishna Shenoy and Another, has held as under:

Even if the vehicle was not in a roadworthy condition and could not be put to use on the roads without the necessary repairs being carried out, even though Certificate of Registration was current the owner or person having possession or control of a vehicle is enjoined to pay the tax on the vehicle and then seek a refund u/s 7 read with the relevant rules.

The said view is affirmed by the Hon''ble Apex Court in the case of Natwar Parikh and Co. Ltd. Vs. State of Karnataka and Others, , wherein it has been held:

Sections 3 and 4 of the Taxation Act have to be construed on their own force and not with reference to the provisions of registration or fitness certificate under the M.V. Act, 1988.

Therefore the Learned Single Judge was of the view that the law laid down by this Court in SRINIVASA REDDY's case runs counter to the law laid down by the Apex Court. He held, Sections 3, 6 and 14 of the Taxation Act, if read conjointly would make it ample clear that the person having possession of the vehicle is liable to pay the tax under the Taxation Act and therefore, the aforesaid Judgments of this Court referred to supra have not taken into consideration these or aforementioned statutory provisions and also the law laid-down by the Hon''ble Apex Court. Hence he was of the opinion that the said question requires consideration by the larger bench. That is how the matter is before us for consideration.

RIVAL CONTENTIONS:

4. Sri. Puttige R. Ramesh, the Learned Counsel appearing for the petitioner

contended that the petitioner has filed an application u/s 83 of the M. V. Act for replacement of the vehicle in place of the vehicle covered by the permit. Rule 79 of the Karnataka Motor Vehicles Rules, 1989 [for short hereinafter referred to as "the M.V. Rules"] provides, the procedure to be followed on such application. Once the requirement of the M.V. Rules is satisfied, the petitioner is entitled to permission under the M.V. Rules. Neither under the M.V. Act, nor under the M.V. Rules, there is any provision dealing payment of tax as a condition precedent for granting the permission. Therefore, the authority is not justified in insisting on either payment of tax or proof of payment of tax before granting permission to replace the vehicle. He further submitted that the case is covered by the decision of the Division Bench of this Court in the case of SREENIVASA REDDY and therefore, he submits that in the first place, the reference itself was unwarranted and secondly, the case is covered by the aforesaid decision of the Division Bench and the impugned Annexures have to be quashed.

5. Per contra, Sri. E.S. Indresh, the Learned Government Advocate pointed out that Section 3 of the Karnataka Motor Vehicles Taxation Act, 1957 [for short hereinafter referred to as "the Taxation Act"] provides that a tax at the rate specified in Part A of the Schedule shall be levied on all motor vehicles suitable for use on roads. The explanation to Section 3 provides that a motor vehicle of which the certificate of registration is current shall for the purposes of this Act, be deemed to be a vehicle suitable for use on roads. Note appended to the said explanation makes this position clear by stating that for the purpose of above explanation the certificate of registration shall notwithstanding anything contained in Section 38 of the Motor Vehicles Act, 1939 be deemed to be current, even if certificate of fitness is not effective provided such certificate of fitness is not cancelled. Then he pointed out that Section 6 of the Taxation Act, deals with the payment of tax by the owner or person having possession of a vehicle. The consequences of non-payment of tax is contained in Section 14 of the Taxation Act which says that if the tax or the instalment due in respect of a transport vehicle is not paid within the prescribed period, notwithstanding anything contained in the M.V. Act, the permit for the vehicle shall become ineffective from the date of expiry of the said period until the time such tax is actually paid. Therefore, he points out that the aforesaid Division Bench in SREENIVASA REDDY's case did not look into the statutory provision covering payment of tax. The effect of non-payment of tax is that the permit granted shall become ineffective. The condition precedent for considering the request for replacement of the vehicle covered under a permit is the permit to be effective from the day the application is made. If the tax is not paid, then the permit is not effective and therefore, the authorities are justified in insisting on payment of tax or proof of tax paid if it is already paid. Therefore he submits that the impugned endorsement issued by the authorities is legal and valid and in SREENIVASA REDDY's case, the Division Bench of this Court has not laid-down the correct law and it requires to be re-considered.

POINT FOR CONSIDERATION:

6. In the light of the aforesaid decisions, rival contentions and the impugned Order, the point that arises for consideration in this writ petition is as under:

Whether the holder of a permit is entitled to replace any vehicle covered by the permit by any other vehicle of the same nature, without paying tax due on the vehicle to be replaced, u/s 3 of the Karnataka Motor Vehicles Taxation Act, 1957.

STATUTORY PROVISIONS:

7. Chapter V of the M.V. Act deals with control of transport vehicles. Section 66 of the M.V. Act provides that no owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used:

8. Therefore, it is clear that a transport vehicle cannot be used without a permit being obtained under the provisions of the M.V. Act. Section 70 of the M.V. Act deals with application for stage carriage permit and Section 71 of the M.V. Act provides for procedure to be adopted by the Regional Transport Authority in considering application for stage carriage permit. On consideration of such application, the stage carriage permit shall be granted u/s 72 of the M.V. Act under the Scheme of the Act as held by this Court in the case of Seetharam Vs. Regional Transport Authority, . In view of the definition of the term "owner" in Section 2(30) of the M.V. Act, the holder of a permit is entitled to cover a vehicle which is actually owned by him and registered in his name or a vehicle which is lawfully in his possession under an Agreement of Hire Purchase or Hypothecation or Lease, which is duly recorded and registered in the Certificate of Registration, by the permit held by him. Consequently, the Transport Authority does not require that the vehicle to be covered by the permit should only be a vehicle owned by the permit holder. Even if the vehicle is not owned, but it is validly possessed by the permit holder and the permit holder answers the definition of "owner" u/s 2(30) of the M.V. Act and the Agreement under which the possession is held is duly noted in the Registration Certificate u/s 51 of the M.V. Act, the permit holder is entitled to use the vehicle so possessed by him against the permit held by him.

9. Section 81 of the M.V. Act deals with duration and renewal of permits and Section 82 of the M.V. Act deals with transfer of permit. The replacement of vehicles is covered u/s 83 of the M.V. Act, which reads as under:

The holder of a permit may, with the permission of the authority by which the permit was granted, replace any vehicle covered by the permit by any other vehicle of the same nature.

Therefore, a provision is made under the Act for replacement of the vehicles covered by the permit for whatsoever reason. The question for consideration is;

when such request is made, for replacement of the vehicles under the M.V. Act, whether the State or the Authority can insist on payment of tax in respect of the vehicle, which is to be replaced?

10. Neither the M.V. Act nor the M.V. Rules deal with imposition of tax on these motor vehicles. The M.V. Act is an Act to consolidate and amend the law relating to motor vehicles, which deals with Registration of Motor Vehicles, Licensing of Drivers of Motor Vehicles, Control of Transport Vehicles, etc. However, the tax is not the subject matter of the M.V. Act. The levy of tax is governed by the Taxation Act. The relevant provisions which have a bearing on this aspect have to be looked into. Section 3 of the Taxation Act deals with levy of tax. It reads as hereunder:

3. Levy of tax.-(1) A tax at the rates specified in Part A of the Schedule shall be levied on all motor vehicles suitable for use on roads.

Explanation.-A motor vehicle of which the certificate of registration is current shall, for the purposes of this Act, be deemed to be a vehicle suitable for use on roads.

Note.- For the purpose of the above Explanation the certificate of registration shall, notwithstanding anything contained in Section 38 of the Motor Vehicles Act, 1939 (Central Act IV of 1939), be deemed to be current even if the certificate of fitness is not effective provided such certificate of fitness has not been cancelled.

Section 6 of the Taxation Act mandates declaration by owner or person having possession of a vehicle which reads as under:

6. Declaration by owner or person having possession of a vehicle.-(1) Every registered owner of, or person who has possession or control of, a motor vehicle liable to tax under this Act shall fill up and sign a declaration in the prescribed form, giving the prescribed particulars and shall deliver within the prescribed time the declaration to a Taxation Authority and shall pay to the said Authority the tax which he is liable to pay in respect of such vehicle.

Section 9 of the Taxation Act deals with liability to pay arrears of tax which reads as under:

9. Liability to pay arrears of tax.-(1). If the tax leviable in respect of any motor vehicle remains unpaid by any person liable for the payment thereof and such person before having paid the tax has transferred the ownership of such vehicle or has ceased to be in possession or control of such vehicle, the person to whom the ownership of the vehicle has been transferred or the person who has possession or control of such vehicle shall be liable to pay the said tax to the Taxation Authority.

(2) Notwithstanding contained in this Section shall be deemed to affect the liability of the person, who has transferred the ownership or has ceased to be in possession or control of the vehicle, to pay the said tax.

Section 14 of the Taxation Act deals with Transport vehicle permit to be ineffective if tax not paid which reads as under:

14. Transport vehicle permit to be ineffective if tax not paid.-Notwithstanding the provisions of the Motor Vehicles Act, 1939 (Central Act IV of 1939), if the tax or the instalment due in respect of a transport vehicle is not paid within the prescribed period the validity of the permit for the vehicle shall become ineffective from the date of expiry of the said period until such time as the tax is actually paid.

In fact in the K. GOPALAKRISHNA SHENOY's case, the Hon'ble Apex Court had an occasion to consider the provisions of the Taxation Act and it has held as under:

The principles underlying the Taxation Act is that every motor vehicle having a certificate of Registration is to be deemed a potential user of the roads all through the time the certificate of Registration is current and therefore, liable to pay tax u/s 3(1) read with Section 4. Sections 3 and 4 are absolute in their terms and the liability to pay the tax in advance is not dependent upon the vehicle being covered by a certificate of fitness or not. The words "suitable for use on roads" in Section 3(1) of the Taxation Act have to be given the same meaning as given by the Court in Automobile Transport case to those words in Entry 57 in List II of the Seventh Schedule to the Constitution. Accordingly Section 3(1) confers a right upon the State to levy a tax on all motor vehicles which are suitably designed for use on roads at prescribed rates without reference to the roadworthy condition of the vehicle or otherwise. Even if the vehicle was not in a roadworthy condition and could not be put to use on the roads without the necessary repairs being carried out, even though Certificate of Registration was current, the owner or person having possession or control of a vehicle is enjoined to pay the tax on the vehicle and then seek a refund u/s 7 read with the relevant rules. However, in exceptional cases where the vehicle has met with a major accident or where it is in need of such extensive repairs that it would be impossible to put the vehicle to use or where the Transport Authorities themselves prohibit the use of the vehicle due to its defective condition and cancel the certificate of fitness or suspend it, the person concerned may surrender the Certificate of Registration and other documents like permit etc. and seek the permission of the Transport Authorities to waive the payment of tax on the ground that no proof of non-user was necessary and as such payment of tax on one hand and an automatic application for refund on the other would be a needless ritualistic formality and if the permission sought for is granted, he need not pay the tax.

REASONS:

11. Section 3 of the Taxation Act is the charging Section, which imposes liability for payment of tax. It declares that a tax at the rates specified in Part A of the Schedule shall be levied on all motor vehicles suitable for use on roads. The

explanation to the said Section makes it clear that the motor vehicle of which the certificate of registration is current shall, for the purpose of this Act, be deemed to be a vehicle suitable for use of roads. Therefore, as long as the certificate of registration is current, the liability to pay tax u/s 3 of the Taxation Act cannot be avoided. Though the tax is payable for the vehicles suitable for use on roads, the explanation makes it clear that if the certificate of registration is current then it shall, for the purposes of this Act viz., imposition of tax, the vehicle be deemed to be suitable for use on roads. The note appended to the explanation makes the position clear even in a case wherein a fitness certificate is not issued under the M.V. Act. Therefore, as long as the certificate of registration in respect of a transport vehicle is current and is in force and not cancelled, the liability to pay tax exists. Section 6 of the Act deals with the declaration in the prescribed form to be filed by the owner or person having possession of the vehicle, and he also shall pay tax which is liable to be paid in respect of such vehicle. Section 9 of the Act deals with the liability to pay tax on transfer of the vehicle, both on the transferor and the transferee. Therefore under the scheme of Taxation Act, payment of tax is a condition precedent for enjoying the benefits and rights flowing from possession of the motor vehicle. It is in this background one has to understand the consequences of such non-payment of tax on the motor vehicle, for which Section 14 of the Act provides.

12. Section 14 of the Taxation Act declares what is the consequence of non-payment of tax on the validity of the permit granted under the M.V. Act. This Taxation Act has received the assent of the President on 13th November 1957. Therefore, Section 14 of the Taxation Act has the over-riding effect to the extent mentioned in the aforesaid provision viz., the effectiveness or ineffectiveness of the permit and consequences of non-payment of tax. A reading of the aforesaid Section makes it clear that, if the tax or the instalment due in respect of a transport vehicle is not paid within the prescribed period, the validity of the permit for the vehicle shall become ineffective from the date of expiry of the said period. Therefore, the permit granted under the M.V. Act will be in force for the period granted as long as the permit holder is making payment of tax as required under the law. If the tax is not paid within the stipulated period, the validity of the permit shall become ineffective. In other words, it ceases to be in-operation. The language used in Section 14 of the Taxation Act is unambiguous. The language employed by the aforesaid Section makes its abundantly clear that no further act on the part of the respondent's authority is required to make a valid permit ineffective. If the permit holder commits default in payment of tax, the statute declares his permit to be ineffective from the date of such default till the said payment of tax is made. The moment the tax is paid, it becomes effective. Thus by operation of law the permit becomes ineffective and invalid for non-payment of tax, and consequently the permit holder is deprived of all rights and benefits accruing from such permit. However, once tax is paid, ineffective and invalid permit becomes effective and valid, by the operation of law. No written Order is required. That is the scheme of the Taxation Act.

13. Where an application is made for replacement of the vehicle u/s 83 of the M.V. Act, the condition precedent for permission to replace the vehicle is, there should be a valid permit on the day the application is made, because it is the holder of a permit alone who is eligible to make such an application. The permit holder should possess a valid permit. In order to find out whether the permit holder has a valid permit or not, if the authorities insist on either payment of tax or proof of tax paid receipts in respect of the vehicle covered under the permit it cannot be found fault with. They are discharging statutory obligation as contained in Section 14 of the Taxation Act. Only when it is shown that in respect of the vehicle covered under the permit, tax has been paid, the permit is valid. The replacement of a vehicle cannot be granted if the permit is not valid. In other words, if the permit is ineffective for want of payment of tax, such a permit holder is not entitled to seek replacement of the vehicle.

14. Therefore, it is clear that the liability to pay the tax under the Taxation Act is absolute. Even if the vehicle was not in a road worthy condition and could not be put to use on the roads without necessary repairs being carried out, as long as the certificate of registration is current, the owner or person having possession or control of a vehicle is enjoined to pay the tax on the vehicle and seek a refund u/s 7 of the Taxation Act read with relevant rules. The payment of tax is not dependent upon whether the vehicle is covered by a certificate of fitness or not. Therefore, when a person seeks replacement of the vehicle under a permit he must keep the permit effective as on the date of the said application is filed by paying tax due under the Taxation Act. Without paying the tax in respect of the vehicle covered under the permit, the permit holder is not entitled to seek replacement of the vehicle covered under the permit. Section 83 of the M.V. Act is to be read along with Sections 3, 6 and 14 of the Taxation Act harmoniously.

15. In fact, the Division Bench of this Court in SREENIVASA REDDY's case at para 5 has observed as under:

No provision in the Act or the rules, is brought to our notice, providing for a condition that the applicant should pay all the arrears of Tax in respect of the vehicles before he seeks its replacement.

16. Therefore, it is obvious that the aforesaid provisions of the Taxation Act were not brought to the notice of the Court and therefore not noticed and considered by the Division Bench. When Section 14 of the Taxation Act starts with non-obstante Clause, it has the effect of over-riding the M.V. Act to the extent contained in Section 14 of the Taxation Act. Section 14 of the Taxation Act, underlines the principle of Public policy. The object is to collect the tax due to the Government by a permit holder, which is in public interest. Therefore, a person who has not performed his statutory obligation and who has not paid tax to the Government due under the enactment cannot have the benefit of replacement of that vehicle. If a person who has not paid the tax is still granted the benefit of replacement of the vehicle, it is nothing but a premium to the tax evasion which is not permissible in law.

17. In the light of the aforesaid decision, the Judgment rendered by the Division Bench of this Court in SRINIVASA REDDY's case does not lay-down correct law, as Learned Judges therein have not noticed the aforesaid provisions. Accordingly, it is overruled.

ANSWER TO THE REFERENCE:

18. "The holder of a permit is not entitled to replace any vehicle covered by the permit by any other vehicle of the same nature, u/s 83 of the M.V. Act, without paying the tax due as on the date of the application on the vehicle to be replaced. "

ON FACTS:

19. In the instant case, admittedly, the petitioner had a valid permit and she was running the vehicle bearing No. TN 49 E-0580 owned by the 2nd respondent under the said permit till 20th October 2006. She sought for replacement of that vehicle by filing an application on 26.04.2007 and the endorsement is issued on 27.04.2007. The endorsement at Annexure-"A" makes it clear that the authority pointed out to the petitioner that from 01.11.2005 tax is not paid in respect of the vehicle bearing No. TN 49 E-0580 and therefore the petitioner was called upon to produce evidence in proof of payment of tax. When admittedly, the petitioner was using the vehicle up to 20.10.2006 nearly for one year from 01.11.2005 and not paid the tax from the date of the application i.e., 26.04.2007 and in view of the agreement entered into between her and the owner of the vehicle i.e., 2nd respondent, is liable to pay the tax and therefore she has to pay tax due under law. Admittedly she or the owner of the vehicle covered under the permit has not paid tax which is legally due. Therefore on the date of application for replacement of the vehicle there was no valid permit, the existence of which is a condition precedent for grant of permission to replace the vehicle. She is not entitled to the permission to replace the vehicle as the permit granted to her was ineffective for non-payment of tax. Therefore, the impugned endorsement is legal and valid and cannot be found fault with.

20. Hence we pass the following:

Writ petition is dismissed. No costs.