(1999) 12 AP CK 0029

In the Andhra Pradesh High Court

Case No : Writ Petition No. 20335 of 1999 and Batch

O. Gangadhar APPELLANT

Vs

Transport Commissioner, A.P. and others RESPONDENT

Date of Decision : 08-12-1999

Acts Referred:

Andhra Pradesh Motor Vehicles Taxation Act, 1963 — Section 3, 4
Andhra Pradesh Motor Vehicles Taxation Rules, 1963 — Rule 126, 5
Central Motor Vehicles Rules, 1989 — Rule 47
Motor Vehicles Act, 1988 — Section 2(22), 2(25), 2(29), 2(31), 2(35)

Citation : (2000) 2 ACC 668 : AIR 2000 AP 198 : (2000) 2 ALD 343 : (2000) 1 ALT 704

Hon'ble Judges : V. Eswaraiah, J;P. Venkatarama Reddi, J

Bench : Division Bench

Advocate : M/s. Noushad Ali, E. Maruthi Raja B. Chandrasekhar, Arifulla, B. Sudhakar Reddi, V.V.N. Narayana Rao, P. Venkata Rao, S.V. Muni Reddy, K. Venkateswarlu, P. Sreeramulu Naidu, Ch. Ravinder, S.A.K. Mynoddin, N. Siva Reddy, M. Madhava Reddy, K.N. Jwala, E.V. Bhagiratha Rao, V. Narasimha Reddy, John Rajendra Prasad, Mohd. Ansaruddin, Mrs. Vinobha Devi, Mrs. NP Anjana Devi and Government Pleader for Transport, for the Appellant;

Judgement

V. Eswaraiah, J.—In all these writ petitions common questions of law and facts are involved, hence they are decided by a common judgment.

2. The petitioners earlier filed the Writ Petition No.34574 of 1998 and Batch contending that they are entitled to alter their motor vehicles by reducing the number of seats u/s 52 of the Motor Vehicles Act (for short ''the Act'') and the learned single Judge following the principles laid down by a Division Bench of Kerala High Court in the case of T.K. Radhamani Vs. Joint Regional Transport Officer, Mattancherry, , as confirmed by the Full Bench of Kerala High Court in the case of B. Mohandas and Vs. Registering Authority, Regional Transport Office, Trichur etc. etc., , held that:

"Reduction in number of seats of the vehicles possessed by the petitioners would not amount to alteration as it did not change the seating capacity requiring permission u/s 52 of the Act. Accordingly, it is declared that registered owner need not obtain the approval of the Registering Authority if they intend to reduce or increase the seating capacity u/s 52 of the Act. But, if the result of any such change is exceeding 2% of the weight entered in the registration certificate, the approval of the Registering Authority is necessary."

3. The learned Judge left it open to the Transport Department with regard to the collection of the tax as provided under the Act, i.e., whether the tax has to be collected on the basis of the seating capacity or on the basis of number of passenger''s seats as mentioned in the permits, the said question was not before him, the learned Judge refrained from deciding as to what amount, of the tax should be paid by the vehicle owners who have reduced the number of seats, and observed that it is for the authorities to take a decision in accordance with the relevant provisions of law. When it was brought to the notice of the learned single Judge by the Government Pleader that by virtue of the interim directions of this Court, the petitioners arc plying the vehicles with the reduced seats and paid less tax, the learned Judge observed that there was no direction by this Court to collect particular amount towards the tax and if the respondents are entitled to collect higher tax, even though the vehicles are running with reduced number of seats, it was left open for the authorities to collect the differential tax in accordance with law.

4. Pursuant to the disposal of the Batch of aforesaid writ petitions in the case of A. Narayana Rao Vs. Asst. Secretary, Regional Transport Authority, Secunderabad and others, , the Transport Commissioner issued a Circular Memo N0.12/868/ D1/99 dated 12-8-1999. Questioning the said circular memo dated 12-8-1999, these writ petitions have been filed to declare the same as illegal and for a consequential direction restraining the Transport Authorities from cancelling the motor cab permits in respect of their vehicles and further direct them to collect the tax as applicable to motor cab.

5. Keeping in view the observations made by the learned single Judge and the Motor Vehicles Act and the Rules, the Transport Commissioner issued the following instructions in the said Circular to take further action on the motor cab permits issued on the interim directions of this Court, as the said judgment has become final and no writ appeal was filed against the said Batch of writ petitions.

"1. The motor cab permits should be cancelled by issuing notices to the registered owners to surrender the permits along with registration certificates. Along with the cancellation of permit, seating capacity in the registration certificate has to be restored to the position prevailing prior to the grant of Motor Cab permit by reducing seating capacity to 7 in all on the interim directions of the Hon''ble High Court.

2. Collect taxes at omnibus rate prospectively from the date of cancellation of permit and restoration of seating capacity as omnibus.

3. Check vehicles and book cases of the omnibuses misused as either contract carriages or stage carriages without permit, without payment of tax etc., by keeping a close watch on their movement."

6. Pursuant to the interim direction in the aforesaid Batch of writ petitions directing the registering authority to reduce the seating capacity from 9 or 10 to 7, the Registration Certificates were amended by reducing the seating capacity to 7 in all. After the seating capacity was reduced by the registering authority, the petitioners filed applications for grant of motor cab permits on payment of Rs.345/- or Rs.414/- per quarter as applicable to motor cab permits, and accordingly, motor cab permits were granted to the petitioners. After disposal of the writ petitions, the Transport Commissioner issued the aforesaid circular directing all the registering authorities to take steps to restore the original entry of the seating capacity. Action has been accordingly initiated to restore original entry of seating capacity in the Registration Certificate and cancel the motor cab permits and also to collect the differential tax from the date of cancellation of permits.

7. The question that arises for consideration in these writ petitions is whether the Transport Authorities are entitled to cancel motor cab permits granted to the petitioners pursuant to the interim directions for the purpose of restoring the Registration Certificate to the earlier position prior to the grant of motor cab permits and whether the Transport Authorities are entitled to collect tax at omnibus rate on the restored seating capacity from the date of cancellation of motor cab permits.

8. The petitioners have purchased the motor vehicles having seating capacity of more than 7 in all like; Tata Sumos, Mahindra and Mahindra, Jeeps, Truckers, Armada etc., classified as omnibuses. The seating capacity of the vehicles has been fixed by the manufacturers themselves and the same is liable to be entered in Registration Certificates. The question that arose in the previous batch of writ petitions was whether any permission of the authorities was required for reducing the seating capacity in respect of their motor vehicles. It was answered that the owners need not obtain the approval of the Registering Authority if they intend to reduce or increase the seating capacity u/s 52 of the Act. The seating capacity was already mentioned in the Certificate of Registration. The contention of the petitioners was that they are entitled to reduce the seats and they have a right to reduce the seats or seating capacity even though the seating capacity was mentioned in the Certificate of Registration based on the prescription of the manufacturer. The learned single Judge held that the reduction of seats by the owners of the vehicles will not change the seating capacity of their vehicles. In this connection, it is necessary to extract the relevant provisions under the Motor Vehicles Act and the Rules made thereunder:

Section 2(4) "Certificate of Registration" means the certificate issued by a competent authority to the effect that a motor vehicle has been duly registered in accordance with the provisions of Chapter IV.

Section 2(7) "Contract Carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum:

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes;

(i) a maxi cab; and

(ii) a motorcab notwithstanding that separate fares are charged for its passengers.

Section 2(22) : "Maxi Cab" means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward.

Section 2(25) : "Motor Cab" means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward.

Section 2(29) : "Omnibus" means any motor vehicle constructed or adapted to carry more than six persons excluding the driver;

Section 2(31) : "Permit" means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorising the use of a motor vehicle as a transport vehicle;

Section 2(33) : "private service vehicle" means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or rewarded but does not include a motor vehicle used for public purposes;

Section 2(35) : "Public Service Vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motor cab, contract carriage, and stage carriage;

Section 2(40) : "Stage Carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;

Section 2(43) : "Tourist Vehicle" means a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf;

9. Chapter IV deals with the registration of motor vehicles. As per Section 41, the motor vehicles shall be registered on an application in such form accompanied by such documents, particulars and information and the Certificate of Registration shall be issued in such form containing such particulars and information as prescribed by the Central Government. As per Section 44, the Registering Authority, may grant certificate of registration if he satisfies that the particulars contained in the application complies with all requirements of the Act and the rules made thereunder. Otherwise, he may refuse the grant of registration certificate. The application has to be filed for Registration Certificate as per Rule 47 of Central Motor Vehicles Rules, 1998 (hereinafter referred to as ''Central Rules'') in Form 20 accompanied by sale certificate in Form 21 and other particulars. Form 20 is the application form for registration of motor vehicle and the seating capacity is mentioned at Sl No.20. The sale certificate is in form No.23 issued by the manufacturer and the Sl.No.13 of the said form mentions the seating capacity which is prescribed by the manufacturer based on Rule 126. The seating capacity of the vehicles has been fixed by the manufacturers themselves based on the prototypes of these vehicles which were subjected to tests by the Vehicle Research and Development Establishment as enjoined under Rule 126 of the Motor Vehicles Rules.

10. Section 52 deals with the alteration in motor vehicle. Alteration in motor vehicle can be permitted where the particulars contained in the Certificate of Registration are no longer accurate and as per the explanation to Section 52, alteration means a change in the structure of a vehicle which results in change in its basic feature. Mere reduction of the seats cannot be said to amount to alteration of the seating capacity nor does it result in change of structure of the vehicle. The seating capacity has been fixed by the manufacturers which was entered in the Certificate of Registration and if the owner of the vehicle reduces the number of seats, no such permission is required u/s 52 of the Motor Vehicles Act as by such reduction no alteration has to be made in the entry regarding the seating capacity in the Certificate of Registration. Seating capacity will continue to be the same irrespective of reduction in the number of actual seats by the vehicle owners. We, therefore, agree with the view expressed by our learned brother Justice Bikshapathy, based on the Kerala decision. Moreover, a reduction of few seats does not require the permission of registering authority because it would not exceed 2% of weight as held by the learned Judge.

11. The application for grant of stage carriage permit has to be made as per Section 70(1) read with Rules 171 and 179 in the prescribed Form PSCA of A.P. Motor Vehicles Rules (hereinafter referred to as ''State Rules''). Section 70(1)(b) and application form clearly requires to furnish the seating capacity of such vehicle. While granting stage carriage permit u/s 72(2), the Transport Authority may attach to the permit additional conditions including the condition of maximum number of passengers to be carried on the stage carriage, and therefore, the form prescribed for grant of perm it in respect of stage-carriage in form PSP contains a column at Sl. No.5 - number of seats. Similarly, an

application for contract carriage permit has to be filed u/s 73 read with Rules 171 and 184 in the prescribed Form PCOA. Section 72(a) and Form PCOA requires to mention the seating capacity of the vehicle but while granting permit u/s 74(2), the Regional Transport Authority may attach to the permit as per the rules maximum number of passengers that may be carried on the vehicle, and therefore, the permit in respect of the particular contract carriage in form PC. At Sl. No.5 mentions the number of passengers'' seats.

12. As could be seen from the scheme of the Act and the Rules made thereunder in a given case, the Transport Authorities while granting stage carriage or contract carriage permits, keeping in view the route of journey viz., hill stations, fair weather routes etc., a condition may be imposed in the permit to carry certain maximum number of passengers. Merely because the form of permit is provided with a column of "number of passenger seats", it cannot be said that the owners of the vehicles have a right to get the alteration of seating capacity by removing some seats. Therefore, the Division Bench and the Full Bench of the Kerala High Court and the learned single Judge of this Court rightly held that mere reduction of the seats will not alter the seating capacity as entered in the registration certificate which was fixed by the manufacturer.

13. As could be seen from different definitions of maxi cab, omnibus, private service vehicles, stage carriages, they are all motor vehicles constructed or adapted to carry more than six passengers excluding the driver, whereas the motor cab is a vehicle constructed or adapted to carry not more than six passengers excluding the driver and motor cab can be used for hire or reward. "Maxi Cab" means any motor vehicle constructed or adapted to carry more than six passengers but not more than 12 passengers excluding the driver. Omnibus means a motor vehicle constructed or adapted to carry more than six persons excluding the driver. If the omnibus is used for hire or reward and if the seating capacity is not more than 12 passengers, it will be called as maxi cab. As the seating capacity itself has been fixed by the manufacturer based on proto-type, design, horse power, unladen weight etc., and entered in the Certificate of Registration, mere reduction in seats does not convert the maxi cab into a motor cab or omnibus into a motor cab unless there is a structural alteration and permission is obtained u/s 52. This aspect has relevance for the purpose of taxation. A special concession of tax has been provided for the motor cab, which is constructed or adapted to carry not more than six passengers excluding the driver, which can be used for hire or reward. But there is no such special concession for the motor vehicles of the category of maxi cabs, omnibuses, private service vehicles and the taxation is prescribed as per the usage of the particular motor vehicle.

14. In the background of the above legal position, the petitioners are not entitled to continue the motor cab permits which were originally registered either as omnibuses or maxi cabs or private service vehicles as the seating capacity of the vehicles remains to continue the same as entered at the time of granting of the

Certificates of Registration. The Transport Authorities permitted the petitioners to reduce the seating capacity and to obtain the motor cab permits pursuant to the interim directions. As the vehicles of the petitioners are not constructed or adapted for the purpose of motor cabs as all the above said vehicles have been constructed to carry more than seven persons and there cannot be any change in the Registration Certificate merely because the petitioners have reduced the seats and obtained the motor cab permits, the petitioners cannot insist that the said permits should continue. As already noticed, these permits were issued on alteration of seating capacity as per the interim directions,

15. Once the petitioners are not entitled to continue the motor cab permits in respect of their maxi cabs/omnibuses, the original tax as fixed has to be collected on the seating capacity as omnibuses or as per their usage. However, if the petitioner wants to ply the vehicle for hire or reward, they will have to obtain maxi cab permits by paying the tax applicable thereto under the relevant item.

16. The tax shall be levied on every motor vehicle used or kept for use in respect of the particular classes of motor vehicles as specified in the First Schedule by a notification. It is pertinent to note that as per Rule 5 of A.P. Motor Vehicles Taxation Rules, 1963, when there is an alteration in respect of any motor vehicle and that alteration results in payment of additional tax, the registered owner of such vehicle or any other person having possession or control thereof, shall file a declaration in Form 4 with the Licensing Officer together with Certificate of Registration by paying additional amount of tax payable in respect of that vehicle. Rule 5 does not provide for filing a declaration when the motor vehicle is altered resulting in lesser tax but only it provides for payment of additional tax. Thus, the Rules do not contemplate payment of tax at lesser rate on account of unilateral reduction in seats.

17. Coming to the taxation provisions, for omnibus with seating capacity of more than 6 excluding the driver, the tax liable to be paid is Rs.126/- for every person other than the driver. As the petitioners'' vehicles are liable to be treated as omnibus, the tax liable to be paid by them will be at the above rate as per Sl. No.7 of G.O.Ms.No.75 dated 27-4-1993 which is the notification issued u/s 3 of A.P, Motor Vehicles Taxation Act, The petitioners'' Counsel submit that on account of reduction of seats, they are entitled to apply for and get motor cab permits and in respect of motor cab, the tax payable is Rs.345/- or Rs.414/- per quarter as prescribed by S.No.4(ii) and 4(iii). The said entries read as follows:

"4. Motor vehicles plying for hire and used for transport of passengers:

(i) .....

(ii) Vehicles permitted to carry 7 persons in all but excluding vehicles covered by All India Tourist Tax permits... Rs.345/-

(iii) Vehicles permitted to carry 7 persons in all and covered by All India Tourist Tax permits. Rs.414/-

As already held supra, the seating capacity is the determining factor to identify the nature of vehicle unless any condition is imposed in the permit itself limiting the number of passengers to be carried. Moreover, even going by the language in the clauses (ii) and (iii) of SI No.4, it is difficult to come to the conclusion that the vehicles with seating capacity of more than 7, will answer the description specified in clauses (ii) and (iii), even if the seats are reduced for the reasons best known to the petitioners. It cannot be said that the vehicle is permitted to carry only 7 persons in all inasmuch as the seating capacity of the vehicle, which is basically omnibus, does not change.

Explanation I relied upon by the learned Counsel cannot also come to their aid. The explanation reads as follows:

"Explanation 1: The number of persons or passengers which vehicle is permitted to carry shall,--

(i) In the case of a motor vehicle in respect of which a permit is granted under Motor Vehicles Act, 1988, be the number of persons or passengers which the motor vehicle is authorised to carry by the permits; and

(ii) In the case of a motor vehicle plying for hire or reward without permit, granted under the Motor Vehicles Act, 1988, be the maximum number of persons or passengers which the vehicle may be permitted to carry, if a permit was granted under the aforesaid Act: and

Provided that in the case of maxi cab or motor cab or motor car misused as a stage carriage by the number of persons or passengers actually carried in the vehicle at the time of such misuse."

We have already discussed the form of permits and the possible reasons for mentioning in the Form PC "number of passenger seats". Whatever it may be, merely because in the form of permit issued to a motor cab, the number of passenger seats are specified to be less than 7, it does not mean that the vehicle is authorised to carry the number of persons equivalent to seats. Mere mention of number of seats does not mean that the permit granting Authority authorised the grantees of permit to carry passengers different from the seating capacity of the vehicle. Indisputably, the permits granted to the petitioners pursuant to the interim order do not contain any stipulation that the vehicle was permitted to carry specified number of passengers. The words "authorised to carry by the permits" should be given a meaning, which will not defeat or enable to circumvent the provisions of the Act.

For all these reasons, the contention of the learned Counsel for the petitioners cannot be sustained.

18. In pursuance of the interim orders of this Court in the earlier WP No.34574 of 1998 and Batch, the petitioners have purportedly reduced the seats from 9 or 10 in all to 7 in all etc., and got Registration Certificate entries corrected and in view of the legal position laid down in the aforesaid Batch, which has become final and

the view expressed supra, the petitioners are not entitled to continue the corrected entry in the Registration Certificate and the consequential motor cab permits, as the mere reduction in the number of seats of the motor vehicles possessed by the petitioners would not amount to alteraion of the seating capacity and the petitioners cannot be permitted to ply as motor cabs by paying tax applicable to motor cabs. The circular memo issued by the Transport Commissioner is only to implement the Motor Vehicles Act, Motor Vehicles Taxation Act and the Rules made thereunder and the said circular does not suffer from any legal infirmity, though there is some inaccuracy in referring to the judgment of this Court. The alteration of entry in the Registration Certificate was got made by the petitioners as 7 in all pursuant to the interim directions to enable them to get the motor cab permits and in view of the judgment in the aforesaid Batch of writ petitions and the legal position, the Transport Department is entitled to restore the original entry in the Registration Certificates with regard to the seating capacity and register the vehicles as omnibuses or retain their original registration as omnibuses.

19. We do not see any merit in the writ petitions and accordingly they are dismissed. However, as it is represented that tax has been paid for this quarter and permits are in force and relevant quarter is going to end shortly, we direct that no action should be taken to cancel the permits upto 31-12-1999. No order as to costs.