(1997) 03 AP CK 0016

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4267 of 1997

Port and Dock Cargo Handling Workers'' Welfare Association — APPELLANT

Vs

Deputy Transport Commissioner and Secretary, Regional Transport Authority and Another — RESPONDENT

Date of Decision : 20-03-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(33), 76(2)

Citation : (1997) 3 ALT 263

Hon'ble Judges : T.N.C. Rangarajan, J;Lingaraja Rath, J

Bench : Division Bench

Advocate : N.P. Anjana Devi, for the Appellant; GP, for the Respondent

Final Decision : Allowed

Judgement

T.N.C. Rangarajan, J.—This Writ Petition is directed against the order dated 5-2-1997 by which the Deputy Transport Commissioner and Secretary, Regional Transport Authority, Visakhapatnam held that the petitioner had utilised the vehicle as a contract carriage, for which a private service vehicle permit was given and, therefore the petitioner was liable to pay the difference in tax amounting to Rs. 11-50 per seat for the quarter ending 31-12-1996. In the petition, it is alleged that the vehicle was registered as AEV 2345 with a private service vehicle permit for the purpose of transporting the members of the petitioner-association from residence to the work spot and back and the demand is in contradiction to the permit given to the petitioner. In the Counter affidavit it is stated that on a check conducted on 2-12-1996, it was found that the members of the association were contributing Rs. 200/- per month to the Organising Secretary and that the association, having no trade or business, was found to have misused the vehicle as a contract carriage violating the permit conditions stipulated in respect of the private service vehicle.

2. The learned Counsel for the petitioner submitted that the association itself is the owner of the vehicle and thereby, every member of the association is also

deemed to be the owner of the bus. They were sharing the expenses for maintaining the bus which was used for carrying them from residence to office and back. The learned Counsel submitted that since such purpose has been declared in the application for obtaining the permit, and the manner in which it was used was in conformity with the permit granted, there was no violation for which any penalty can be imposed by way of collection of excess tax as if the vehicle was being plied as a contract carriage.

3. On the other hand, the learned Govt. Pleader for Transport submits that according to the definition of ''Private Service Vehicle'' u/s 2(33) of the Motor Vehicles Act, 1939 (sic. 1988) (for short, ''the Act''), a vehicle can be treated as such only if it is used by the owner for the purpose of carrying persons for or in connection with any trade or business otherwise than for hire or business and in this particular case, the spot inspection showed that the association, which was the owner, did not have any trade or business and the persons who are travelling had paid a sum of Rs. 200/- per head which amounted to hire or reward, contrary to the definition of private service vehicle. He therefore, submitted that the vehicle must be treated as being utilised as a contract carriage, for which the owner is liable to pay higher taxes and, therefore, the demand was justified.

4. We are unable to accept the submission even though the definition refers to the owner of the vehicle using the vehicle for the purpose of trade or business. There are two aspects of the question which escaped the attention of the authorities. First is that the owner being an association, every member of the association is also in the nature of an owner of the bus. Secondly, when the definition refers to a trade or business of the owner, it can certainly include, in the present case, the purpose for which the vehicle is used. The very object of having the bus for transporting the members of the association from residence to office and back can also be considered as the business of the association. Obviously, the association is a Trade association for the purpose of supporting the welfare of the members and that also constitutes business for the purpose of the definition. A reference to Section 76(2) of the Act indicates that application for a permit to use a motor vehicle as a private service vehicle must also contain the manner in which it is claimed that the purpose of carrying persons otherwise than for hire or reward or in connection with the trade or business carried on by the appellant will be served by the vehicle. This indicates that even in the application, the petitioner must have revealed the fact that the vehicle is being owned by the association and will be used for transporting the members of the association from residence to work spot and back. Having known this purpose and granted the private service permit, it is not possible for the respondent to contend that the use of the vehicle in terms of such permit amounted to misuse as a contract carriage permit. The reference to collection of subscription by (sic. from) the members of the association for meeting the expenses on running the bus cannot be construed as payment of hire charges or reward for being transported in the bus.

5. For all these reasons, we are convinced that prima facie, there was no misuse of the bus as a contract carriage bus, as long as there is no evidence to show that the permit given on the basis of the application in terms of Section 76(2) of the Act was in any way contravened.

6. In the circumstances, the impugned order is quashed and the Writ Petition is allowed. No costs.

