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**(1993) 03 MAD CK 0054**  
**In the Madras High Court**

R. Ranganatha Reddy

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

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**Date of Decision :** 05-03-1993

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 72, 74, 74(2)(i), 88, 88(8)

**Citation :** (1993) 2 MLJ 106

**Hon'ble Judges :** Srinivasan, J

**Bench :** Single Bench

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**Judgement**

Srinivasan, J.—The petitioner is a transport operator from Kerala State with contract carriage permit granted u/s 74 of the Motor Vehicles Act, 1988 read with Rule 144(b) of the Kerala Motor Vehicles Rules. The permit is valid from 11.7.1991 to 10.7.1991. Under the permit, the petitioner is entitled to operate the vehicle in the State of Kerala, Karnataka and Maharashtra from Tellicherry to Bombay (via) Kannoore, Poyyanur, Kasargode, Mangalore, Udupi, Kunhapur, Ankola, Archilghat, Hubli, Dharward, Padayam, Nipani, Kolhapur, Sathura, Pune and Bombay. It was made conditional subject to counter-signature by the State Transport Authorities of Karnataka and Maharashtra on tax payment basis and also that the vehicle shall commence operation only after the permit is duly counter-signed by the State Transport Authorities. The petitioner obtained a special permit u/s 88(8) of the Act on 30.8.1991 valid from 1.9.1991 to 7.9.1991. Under the said permit, the petitioner was permitted to visit the following places along with the party consisting of 48 persons.

Kannur Gonikopal, Hunsuit, Sreeran-gapatnam, Mandya, Madur, Bangalore local, Bhannerghetta National Park Ram Nagar, S.R. Patna Mysore local, Chamundi Hills KRS Dam Nanjangud Bandipur Ooty local, Coonur, Ooty, Mysore, S.R. Patna Mandya Bangalore Hunsur and back Kannur.

2. When the petitioner was operating the vehicle under the Special permit, the vehicle was stopped by the Motor Vehicles Inspector, (N.T) T.R.P.T. Check Post, Gudalur, Nilgiris on 4.9.1991. The petitioner was directed to pay a sum of Rs.

2,400 by way of tax payable in the State of Tamil Nadu. The relevant part of the Check report reads thus:

Stopped and checked the vehicle, while proceeding from Mysore to Ooty and found this vehicle is covered by route permit to ply from Tellicherry to Bombay issued by the Secretary, S.T.A Kerala valid from 11.7.91 to 10.7.96. But, this vehicle was issued a T.P. u/s 88(8) of the M.V. Act for the period from 1.9.91 to 7.9.91 by the R.T.A., Kannanoor. Hence, the tax for Tamil Nadu at the rate of Rs. 50 per seat Rs. 50x48 = Rs. 2,400 (Rupees Two thousand Four hundred only) has been collected in receipt No. 567788, dated 4.9.1991.

The petitioner has slated that the said Collection of tax is illegal and arbitrary as the petitioner will be entitled to the benefits of G.O.Ms. No. 894, dated 29.5.1991. Apprehending similar demands for tax in future, the petitioner has filed this writ petition for issue of a writ of mandamus forbearing the respondent from seizing the vehicle demanding and collecting motor vehicles tax. In the last paragraph of the affidavit, the petitioner has also prayed for a direction to the third respondent to refund the tax of Rs. 7,250. It is also stated in that paragraph that the petitioner was forced to pay on three occasions. But, no particulars of the Check reports for the other two occasions were mentioned.

3. When the matter came up for arguments, the petitioner's counsel produced a copy of the Special permit u/s 88(8) of the Act, the check report dated 4.9.1991 and the receipt for payment of Rs. 2,400 of the same day. It is the contention of the petitioner that he is entitled to the benefit of G.O.Ms. No. 894. The said Government order has been issued u/s 20(1) of the Tamil Nadu Motor Vehicles Taxation Act, 1974. It has exempted the persons who hold permits granted under Sub-section (8) of Section 88 of the Act by the other States, from paying the tax due in Tamil Nadu provided a reciprocal exemption from payment of tax in respect of the public service vehicles registered in the State of Tamil Nadu and having special permits u/s 88(8) of the Act is granted in such other States. There are two provisos in the Government Order. The first proviso relates to permits covered by Section 88(8) of the Act but permitting the holders to pick up and set down passengers in the State of Tamil Nadu. Such persons are not covered by the exemption granted by the Government Order. The second Proviso is another exception to the Government Order. Under that proviso, if a person has no basic permit under Sections 72, 74 and 88(9) of the Act and has only a special permit u/s 88(8) of the Act, even then, the holder of such permit will not be entitled to exemption from payment of tax. The contention of the petitioner is that he is having a special permit issued u/s 74 of the Act and therefore, he is entitled to the benefit of G.O.Ms. No. 894.

4. In answer to this, learned Government Advocate contents that the basic permit u/s 74 of the Act is with reference to a particular prescribed route mentioned expressly in the permit and it is not open to the authority to issue a Special permit u/s 88(8) of the Act to the petitioner. There is no substance in this contention. It is not open to the Government of Tamil Nadu to contend that the

Kerala State authorities have no jurisdiction to issue a permit u/s 88(8) of the Act. Section 88(8), of the Act reads that notwithstanding anything contained in Sub-section (1), the Regional Transport Authority of any one region, or, the State, Transport Authority, may, for the convenience of the Public, grant a Special permit in relation to a vehicle covered by a permit issued u/s 72 or u/s 74 or under Sub-section (9) of Section 88 for carrying a passenger or passengers for hire or reward under a contract, express or implied for the use of the vehicle as a whole without stopping to pick up or set down along the line or route passengers not included in the contract, and in every case where such special permit is granted, the Regional Transport Authority shall assign to the vehicle, for display thereon, a distinguishing mark in the form and manner specified by the Central Government and such special permit shall be valid in any other region or State without the counter signature of the Regional Transport Authority of the other region of the State. In the present case, the petitioner's basic permit is clearly one falling u/s 74 of the Act. Just because a specific route is mentioned expressly in the permit, it does not cease to be one covered by Section 74 of the Act. In fact, Section 74 of the Act enables the Regional Transport Authority to grant a contract carriage permit and attach to the permit any one or more of the conditions set out in Sub-section (2) of the Act. Clause (i) of Sub-section (2) reads that the vehicles shall be used only in a specified area or on specified routes. Thus u/s 74(2)(i) of the Act the authority is entitled to specify the rule or the routes to be used by the permit-holder for plying the vehicle. That has been done in the present case by the authority who issued the basic permit to the petitioner. That does not make the permit any the less one u/s 74 of the Act. It is clearly covered by Section 74 of the Act. Hence, the permit-holder is entitled to apply u/s 88(8) of the Act for special Permit. That has been done in the present case and such a permit has been obtained. The Government order passed by the Tamil Nadu Government on 29.5.1991 contains only three exceptions. The first exception is permit issued by a State, where there is no reciprocal exemption from payment of tax for Tamil Nadu Vehicles. The second exemption relates to permits which allow passengers to be picked up and set down in the State of Tamil Nadu. The third exception relates to the special permit u/s 88(8) of the Act without basic permit under Sections 72, 74 or 88 (9) of the Act. The present case does not attract any of the three exceptions. Hence, the petitioner is entitled to the benefits of G.O.Ms. No. 894, dated 29.5.1991 and is not liable to pay the tax due in Tamil Nadu whenever the petitioner gets a special permit u/s 88(8) of the Act in relation to the basic permit obtained by him already on 11.7.1991.

5. Learned Government Advocate places reliance on my judgment in W.P. Nos. 15923 and 15924 of 1991, dated 26.2.1993. In those cases, I have held that a permit issued by the Andhra Pradesh Authorities which confined the area of operation of the permit holder to a radius of 2 km. from the place of business of the permit holder will not fall u/s 74 of the Act for the purpose of Section 88(8) of the Act. In fact, on the facts of the case, the permit which was produced in that case does not make any reference to Section 74 of the Act. Apart from that,

confining the permit to a radius of 2 km cannot be equated to specifying a route u/s 74(2)(i) of the Act for a permit issued under that section. Hence, the ruling in the above writ petitions will not apply to the present case.

6. In the result, the writ petition has to be allowed following the direction issued to the respondents. If the petitioner gets a special permit u/s 88(8) of the Act from the competent authorities in relation to his basic permit dated 11.7.1991 issued u/s 74 of the Act, the authorities in the Tamil Nadu State are not entitled to demand tax so long as G.O.Ms. No. 894, dated 29.5.1991 is in force. The writ petition is allowed in the above terms. No costs.