(1988) 04 MAD CK 0018

In the Madras High Court

Case No : Writ Petition No. 4803 of 1981

Rasheetha Begum APPELLANT

Vs

The Regional Transport Officer, Tiruchirapalli RESPONDENT

Date of Decision : 06-04-1988

Acts Referred:
Tamil Nadu Motor Vehicles Taxation Act, 1974 — Section 4

Citation : AIR 1990 Mad 21

Hon'ble Judges : Swamikkannu, J

Bench : Single Bench

Advocate : P. Samuel, Government Advocate, for the Respondent

Judgement

Swamikkannu, J.—This writ petition has been filed to call for the records connected with Memo No.9337/D7/81 dt. 14-3-1981 issued by

the respondent herein calling upon the petitioner to pay a sum of Rs.1,686/- in respect of her spare bus MDT 6440 for the quarter ending 31-3-

1976 and to quash the same.

2. The affidavit contained the following averments. The petitioner is a stage carriage operator playing a town bus in Trichy Town. She also owned

a spare bus bearing Registration No. MDT 6440. During the year 1976 she paid the full tax in respect of the route bus and also tax at the

confessional rate of 75% as applicable to her route bus in respect for her spare bus. During 17-1-1976 to 31-3-1976 the bus of another operator

bearing Registration No. MDY 6873 was off the road and the petitioner was granted temporary permit in respect of her spare bus to ply as

substitute service. The respondent herein accepted the tax in respect of the petitioner''s spare bus amounting to Rs.8,438/- for the quarter ending

31-3-1976 without any protest or demand for excess payment.

3. The owner of MDY 6873 did not ply his bus during the entire quarter ending 31-3-1976 and under the relevant provisions of the Tamil Nadu

Motor Vehicles Taxation Act 1974 obtained refund of the tax in respect of the said bus.

4. While so, the petitioner received a Memo No.9337/D3/81,dt. 14-3-1981 from the respondent herein calling upon her to pay a sum of Rs.

1,683/- being Rs. 562/- representing difference between the amount of Rs.8,438/- paid in respect of the petitioner''s spare bus and the sum of Rs.

9,000/- which represented the full tax due if the vehicle had been a regular route bus and not a spare bus and a sum of Rs. 1,124/- being penalty at

200% on the balance due.

5. The said notice of demand had been issued without any prior notice to the petitioner and without affording her an opportunity to show cause as

to why the tax and penalty should not be collected from her and the demand of Rs.1,686/- is wholly illegal and without jurisdiction. The demand

purports to be made based on G.O.Ms. No. 1904, Home, dt. 21-10-1976, which cannot be said to be the basis for this demand. The Tamil

Nadu Motor Vehicle Taxation Act 1974 makes a specific provision that the tax due in respect of a spare bus shall be 75% of the maximum tax

payable in respect of any of the regular route buses of the operator subject to the condition that the full tax in respect of all the regular stage

carriage should have been paid. The petitioner had paid the tax due in respect of the regular route bus in time. The object that has been raised by

the Senior Accounts Officer, Madras is that the other operator in whose place the petitioner plied her spare bus had obtained refund of the tax

paid in respect of his bus. The basis of the concession shown to the spare buses is that the operator has no certainty of utilising the same during the

entirety of a quarter. In the instant case the petitioner had plied her spare bus only during 17-1-1976 to 31-3-1976 or in other words 16 days less

than the full quarter and consequently demanding tax to be paid at the full rate is totally without jurisdiction. Therefore it is submitted that a writ of

certiorari may be issued calling for records connected with Memo No.9337/ D3/81, dt.14-3-81 issued by the respondent to the petitioner

demanding the payment of Rs. 1,686/- in respect of her spare bus MDT 6440 for the quarter ending 31-3-1976 and the same may be quashed.

6. On behalf of the Regional Transport Officer,Tiruchirapalli,the respondent herein , Mr. P. Samuel, learned Government Advocate submits that

the order dt. 14-3-1981 passed by the respondent in his Memo No.9337/D3/81 is correct and in accordance with law and is not liable to be

quashed as prayed for the petitioner herein.

7. The point for consideration is whether the relief prayed for by the petitioner herein can be granted or not.

7A. It is seen from the order dt. 14-3-1981 in Memo No.9337/D3/81 that the respondent herein had taken all the aspect of the case and had

come to a correct decision. A temporary permit in respect of the spare bus MDT 6440 belonging to Smt. Rasheetha Begun, Tircuchy, the

petitioner herein to ply in place of MDY 6873 as substitute service was granted for the period 17-1-1976 to 31-3-1976.

8. The Senior Accounts Officer, Madras during his course of audit pointed out that tax in respect of the spare bus MDT 640 has to be paid at full

rate for the quarter ending 31-3-1976. As this substitute service involves refund of tax to the route bus MDY 6873, as per G.O.Ms. No. 1904,

Home, dt. 21-10-1976 full tax amounting to Rs. 9,000/- is due to be collected in respect of the spare bus MDT 6440. The permit-holder has

remitted a sum of Rs. 8,438/- for the quarter ending 31-3-1976.The balance of Rs. 562/- along with penalty of Rs.1,124/- has to be collected.

Hence Rasheetha Begum Prop.Deepak Transport,Tiruchy was directed to sent the draft for Rs. 1,686/- being the balance of tax due for the

quarter ending 31-3-1976 within 7 days of receipt of this Memo.

9. Under these circumstances, this Court does not find any error in the Memo issued by the respondent. There is no merit in this writ petition.

Hence it is dismissed. However ,there is no order as to costs.

10. Petition dismissed.

