(1978) 02 AP CK 0032

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 1874 of 1975 and 2524 of 1976, and Writ Appeal No''s. 118 of 1976, 224 and 463 of 1977

T. Leelavathamma — APPELLANT

Vs

The Regional Transport Officer, Nellore — RESPONDENT

Date of Decision : 22-02-1978

Acts Referred:
Andhra Pradesh Motor Vehicles Taxation Act, 1963 — Section 3
Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 60

Citation : AIR 1978 AP 382

Hon'ble Judges : Punnayya, J;Chinnappa Reddy, J

Bench : Division Bench

Advocate : E.P.K. Sikhamani and T. Venkataramana, for the Appellant; P. Ramakoti, Rangacharyaulu and S. Venkaratamana Rao, Govt. Pleader, for the Respondent

Judgement

Chinnappa Reddy, J.—These writ Appeals and Writ Petitions raise a common question and may, therefore, be disposed of by a common judgement. It is enough if the facts in writ Appeal No. 118/76 are stated. The respondent, L. Kondaiah Naidu is a transport operator plying a stage carriage on the route Kovur Taluk Office to D. S. R. G. Hospital via., Government Polytechnic, Pennar Bridge, the Motor Vehicles Inspector inspected the Vehicles. Though Pennar Bridge itself Vehicles Inspector on the basis of statements said to have been made to him, thought that the vehicle was plying on an unauthorised route, Kovur-Nellore, via., Padugupadu instead of Govt. Polytechnic. He submitted a check-report on the basis of which a notice was issued to the respondent by the Regional Transport Authority, Nellore calling upon him to show cause why action should not be taken against him, under S. 60 of the motor Vehicles Act. He submitted his explanation after considering which the Regional Transport Authority exonerated him. the minutes of the proceedings of the Regional Transport Authority are as follows:-

"Item No. 43.

To consider the question of taking action under S. 60 of M. V. Act against the permit of bus APN 4912 plying on the route D. S. R. G. Hospital to Kovur Taluk Office belonging to Sri L. Kondaiah Naidu, Bur Owner, Nellore for the following irregularities when checked by the Motor Vehicles Inspector, Nellore on 3-8-1973 at 9-30 A. M. near Pennar Bridge.

1. Found the vehicle plied from Kovur to Nellore (via) Padugupadu without touching Government polytechnic. Thus the vehicle did not perform service on its original route.

2. Trip sheet not produced.

Permit Validity: 7-3-1975 R. No. 10202/A4/73

RESOLUTION:-- Heard the party. The vehicle was not checked on the deviated route. Hence benefit of doubt is given and action on that score is dropped. The other offence is compounded for Rs. 10/-. The amount shall be paid within ten days from date of receipt of this order failing which the amount will be recovered under Revenue Recovery Act.

Sd. K. Obayya, Dist. Collector & Magistrate, Nellore."

Notwithstanding the circumstance that the respondent was exonerated in the proceeding under s. 60 of the Motor Vehicles Act, the licensing officer under the Motor Vehicles Taxation Act (no other than the Secretary of the Regional Transport Authority, Nellore) issued a notice to the respondent asking him to show cause why he should not pay the difference of tax of Rs. 585/- and penalty of Rs. 1170/-. The respondent replied stating that he had already been exonerated in the proceedings under S. 60 and, therefore he was under no liability to pay difference of tax or penalty. the licensing Officer rejected the explanation of the respondent and directed him to pay the difference of tax and penalty. The respondent filed Writ Petition was allowed by our 1973 against the demand of the licensing officer. This Writ Petition was allowed by our brother Raghvir, j. Writ Appeal No. 118/76 is filed by the State against the judgement of our brother Raghuvir, J.

2. The question for consideration is whether the finding of the Transport Authority in a proceedings under S. 60 of the Motor Vehicles Act that the holder of a permit has not used or caused or allowed a vehicle to be used in a any manner not authorised by permit is binding on the licensing officer appointed under the Motor Vehicles Taxation Act so as to preclude him from raising a demand for tax or additional tax on the basis that the vehicle was used in a manner not authorised by the permit.

3. The learned Government Pleader in support of the appeal, submitted that there was not provision in the Motor Vehicles Act or the Motor Vehicles Taxation Act which made a finding arrived at by the Regional Transport Authority in

proceeding under s. 60 of the Motor Vehicles Act binding on a licensing officer demanding tax under the motor Vehicles Taxation Act.

4. The learned Government Pleader relied upon the decisions of Subba Rao, c. J. and Ranganadham Chetti J. in Macherlappa and Sons Vs. Government of Andhra (Now Andhra Pradesh), and of Chandra Reddu C. J. and Krishna Rao, J., in Sesha Reddy, v. Excise Superintendent (1956 (2) AWR 426) in support of his contention. In the first case, the learned judges were concerned with an assessment of sales-tax after the failure of prosecution in a criminal Court for the offence of failing to furnish returns under the Government Sales Tax Act, and Rules. In the second case, the learned Judges were concerned with the imposition of a penalty by the excise authorities for illicit tapping after a prosecution for the offence of illicit tapping has failed in a criminal court. The learned judges took the view that the finding of a criminal Court was not binding on either a Civil Court or the fiscal authorities. Whatever assistance these decisions may afford by way of analogy, we think it is better to consider the provisions of the two enactments and the general principles in order to solve the question before us.

5. S. 2(c) of the Andhra Pradesh Motor Vehicles Taxation Act defines ''licensing officer'' as meaning an officer appointed by the Government as such for the purpose of the Act. it is not disputed that the Secretary of the Regional Transport Authority has been appointed as licensing officer for the purpose of the Act. ''Registered owner'' is defined as the person in whose name a motor vehicles is registered under the Motor Vehicles Act. All words and expressions used but not defined in the Act are to have the same meaning assigned to them in the Motor Vehicles Act. Section 3 empowers the Government to levy a tax on every motor vehicle used or kept for use in a public place in the State. the Government is empowered to public a notification from time to time specifying ''the class of the motor vehicles on which, the rates for the periods at which, the rates for the periods at which, and the date from which'' the tax should be levied. Notification prescribing the rate of tax of tax has been published. in the case of vehicles which are permitted to carry more than six passengers, the rate of tax various according to the number of passengers permitted to be carried and according to the total distance permitted to be covered by the vehicle in a day. The notification states that the number of persons or passengers which a vehicle is permitted to carry shall, in the case of a motor vehicle in respect of which a permit is granted under the Motor Vehicles Act, be the number of persons or passengers which the Motor Vehicle is authorised to carry by the permit. The number of persons or passengers which a vehicle is permitted to carry shall, in the case of a Motor Vehicle is permitted to carry shall, in the case of a Motor Vehicle Act, be the maximum number of persons or passengers which the vehicle may be granted under the Motor Vehicles Act. Similarly, the distance permitted to be covered by a vehicle in a respect of which permit is granted under the Motor Vehicles Act, be the distance authorised to be covered according to the permit and the distance permitted to be covered by a vehicle in a day shall, in

the case of a motor vehicle plying without a permit, be reckoned as above 320 Kms. It is clear from the provisions of the Motor Vehicles Taxation Act and the notification issued under the Act and the notification issued under the Act that the permits granted under the Motor Vehicles Act play a vital role in the determination of tax payable under the Motor Vehicles Taxation Act. The very rate of tax is dependent on whether the vehicles has or has not a permit and if it has a permit, how many passengers it is allowed to carry and how many kilometres it is required to cover. Taxation under the Motor Vehicles Act. That, of course, it as it is bound to be, since tax is leviable under the Motor Vehicle Taxation Act on every motor vehicle used or kept for use in a public place in the State and the use of a motor vehicle in the State is regulated by the provisions of the Motor Vehicles Act provides for '' registration of Motor Vehicles'' and Chap. IV deals with ''control of vehicles''. Section 42 provides that no owner of a transport vehicle shall use or permit the use of the vehicle in any public place save in accordance with the conditions of the permit granted by the appropriate transport authority authorising the use of the vehicle in that place in the manner in which the vehicle is being used. The remaining provisions of Chap. IV prescribe the procedure to be followed etc., in granting permits. S. 60 deals with cancellation and suspension of permits S. 60 (1) (b) provides that the transport authority which granted a permit may cancel the permit or suspend it for such period as it thinks fit if the holder of permit uses or causes or allows a vehicle to used in any manner not authorised by the permit. The proviso to S. 60 (1) prescribes that no permit shall be cancelled unless an opportunity has been given to the holder of the permit to furnish his explanation. S. 60 (2) further prescribes a duty on the transport authority to give to the holder of the permit its reasons in writing for the action taken. S. 64(1) (b0 provides for an appeal against an order revoking or suspending the permit. there cannot be any doubt that a proceeding under S. 60 is of a quasi judicial nature.

6. Now, in determining the tax payable in respect of a vehicle, the licensing officer may be called upon to decide the number of persons which a vehicle is or may be authorised to carry, or the distance which a vehicle is authorised to cover, or the route along which a vehicle is authorised to travel or whether a place or places lie on the authorised route and so on. These are questions which, while a licensing officer functioning under the Motor Vehicles Taxation Act may have to answer, as primarily to be answered by the authorities constituted under the Motor Vehicles Act in appropriate proceedings, under the Act. a proceeding under S. 60 of the Motor Vehicles Act is, as already observed by us, a quasi-judicial proceeding in which the holder of the permit is required, by statute, to be given an opportunity to offer his explanation. A proceeding under the Motor Vehicles Taxation Act for determining the tax payable by the owner of a vehicle contemplates no enquiry but where higher tax or penalty is sought to be levied, the principles of natural will have to be observed. Such a proceeding under the Motor Vehicles Taxation Act is ordinarily concerned with questions which can only be answered with reference to the Motor Vehicles Act, the Motor Vehicles Rules,

the permits granted under that Act and other proceedings under that Act and which are primarily determinable by the authorities constituted under the Motor Vehicles Act. In such a proceeding, any finding already arrived at in a proceeding, where such questions are primarily to be answered must be considered to be final and conclusive evidence of that fact.

7. In Halsbury''s Laws of England, 3rd Edition, Volume 15, para 396 it is said:

"The doctrine of estoppel by record has been extended by analogy to the decisions of all tribunals which have jurisdiction, whether by the law of this country, or by the consent of the parties or by the law of the country to whose tribunals the parties have, or may be presumed from their conduct to have, submitted themselves. The estoppel which arises from the decisions of such tribunals has been conveniently named "estoppel quasi of record:" As estoppel quasi of record will be prevented from arising by any of the matters which would prevent estoppel by record."

Again, in paras 398 and 399 it is said:

"Certain courts are expressly declared by status to be courts of record. As respects the many other tribunals which have by statute been given jurisdiction in particular matter, it seems that the general principle that the law has respect not only to courts of record and proceedings in those courts but also to all other proceedings where the person who gives judgement as judicial authority is applicable ....

The principle of conclusiveness has been applied to decisions of domestic tribunals whether or not constituted by statute in a number of cases of which the following are examples:--- a sentence of expulsion passed by a college of deprivation by a college visitor; of trustees dismissing a school master. An order of the Disciplinary Committee of the General Dental Council that a dentist''s name be struck off the register on the ground of professional misconduct is conclusive as to the fact that the name has been erased from the register, and is prima facie evidence of the grounds on which the order was based."

8. We are of the view that a finding in a parent proceeding (it one may use such an expression) under S. 60 of the Motor Vehicle Act is conclusive evidence of that fact in a proceeding under the Motor Vehicles Taxation Act. In that view, we dismiss all the Writ Appeals and allow all the Writ Petitions. Advocate''s fee Rs. 150/- in each case. No costs.

9. Order accordingly.

