(1981) 12 MAD CK 0054

In the Madras High Court

Case No : Writ Appeals No''s. 262 etc. of 1977 etc.

The Regional Transport Officer APPELLANT

Vs

M.K. Rajagopal and Others RESPONDENT

Date of Decision : 18-12-1981

Acts Referred:

Tamil Nadu Motor Vehicles Rules, 1989 — Rule 16
Tamil Nadu Motor Vehicles Taxation Act, 1974 — Section 2(25), 48(3), 62, 62(1), 63(6)

Citation : (1984) ILR (Mad) 197

Hon'ble Judges : P.R. Gokulakrishnan, O.C.J.;Ratnam, J

Bench : Division Bench

Advocate : R. Venkataswamy, Government Pleader, for the Appellant; K. Thirumalai, V.D. Gopalan and S. Krishnappan, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Gokulakrishnan, O.C.J.

1. These writ appeals are either by the Motor Vehicles Inspector or by the District Transport Officer or by both, filed on behalf of the State Government, against the orders of MOHAN J., in various writ petitions filed by bus operators having stage carriage permits for particular routes.

2. Number of bus operators filed writ petitions either to quash the memos served on them or to direct the Government not to insist upon payment of full tax on spare buses. The memos issued by the Government to various bus operators are more or less the same, though on different dates. The bus operators who have reserve vehicles either as spare bus or as reserve stage carriage, had, by virtue of the provisions of the Motor Vehicles Taxation Act, 1974, the benefit of paying the concessional tax, which is three- fourths of the maximum rate payable per passenger for any of the regular stage carriages of the permit holders. The bus operators when they used the spare bus to meet a particular need u/s 62(1)(c) of the Motor Vehicles Taxation Act or as a contract carriage u/s 63(6) of the Act, under valid permits were insisted upon to pay the difference between the

concessional rate of three-fourths of the maximum rates payable per passenger for the regular stage carriages under item 4(III)(C) of the Schedule to the Tamil Nadu Motor Vehicles Taxation Act, (XIII of 1974) and the usual tax payable for the stage carriage, when the memo of demand was issued to the respective bus operators who were using spare buses, writ petitions were filed by them, from which the present appeals arise.

3. Mohan, J., after adverting to the relevant provisions of the Motor Vehicles Act and also the Tamil Nadu Motor Vehicles Taxation Act, (XIII of 1974) held that an operator of a spare bus used for purposes for which a temporary permit was issued cannot be made liable to pay more than the three-fourths rate of tax paid for such spare bus. Finally, the learned Judge quashed the impugned memos of demand holding that they are illegal. It is against these orders, the present writ appeal have been filed.

4. Mr. R. Venkataswamy, the learned Government Pleader on behalf of the Appellants submitted that if a spare bus or a reserve stage carriage is operated on a different route or for different purpose, for example as a contract carriage, it is liable to full tax and that the differences between the three-fourths tax paid for the spare bus and the full tax has to be paid by the bus operator. According to the learned Government Pleader, the spare bus is only a stand by for a route bus and the spare bus can be used only in that route for which the operator holds the permit. Relying on G.O. Ms. No. 1904, Home Department, dated 21st October, 1975, he stated that the concessional tax for a spare bus is available only when it is used for the purposes mentioned in the said G.O. It was further submitted by the learned Government Pleader that once a permit is granted u/s 62(1)(c) of the Motor Vehicles Taxation Act or u/s 63(6) of the Act for using the spare bus for some other special purpose or as a contract carriage, the character of the spare bus ceases and it loses the exemption granted to it.

5. Though number of Counsel appear for different bus operators, who are the Respondents in these writ appeals, Mr. V.D. Gopalan, learned Counsel represented all of them, and he submitter that the spare bus under a valid permit can be used for different purposes as a contract carriage or for special occasions and that no extra tax is, leviable, other than the one contemplated under item 4(III)(C) of the Schedule to Act XIII of 1974. According to the learned Counsel, the taxing provisions has to be strictly construed and there is absolutely no warrant for the Government to demand the difference, as if the spare bus is liable to full rate of tax.

6. Mr. S. Krishnappan, learned Counsel appearing for some of the Respondents in these writ appeals, supplemented the above submissions by stating that G.O. Ms". No. 1094, Home, dated 21st October, 1975 relied on by the Appellants, where under a spare bus is permitted to ply on certain occasions in different routes itself recognises such different user and this makes it clear that the character of the spare bus is not changed by such user. According to the learned Counsel, both according to the intention of the Legislature and also the taxing

provision under which spare bus is taxed, it is clear that the demand of the difference between the concessional rate and the actual rate of tax is illegal.

7. We have carefully gone through the relevant provisions of the Motor Vehicles Act and also the Tamil Nadu Motor Vehicles Taxation Act (XIII of 1974). There is no definition in both the enactments for spare bus or for reserve stage carriage. Section 48(3)(xvi) of the Motor Vehicles Act, which speaks about reserve of vehicles, reads as follows:

48(3). The Regional Transport Authority, if it decides to grant a stage carriage permit, may grant the permit for a service of stage carriages of a specified description or for one or more particular stage carriages, and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:

(xvi) the reserve of vehicles to be kept by the holder of the permit to maintain the services and to provide for special occasions.

The above mention of the reserve of vehicles in our opinion, will include spare buses also. This view gets fortified if we read item 4(III)(c) of the Schedule to Act XIII of 1974, which mentions:

The tax payable in respect of a reserve stage carriage or a spare bus....

8. Section 62 of the Motor Vehicles Act deals with grant of temporary permits on certain conditions. Section 63(6) deals with grant of permit to use a public service vehicles as a contract carriage. Section 2(25) of the Act defines public service vehicle.

It states:

"Public service vehicle" means any motor vehicles used or adapted to be used for the carriage of passengers for hire or reward, and includes a motor cab, contract carriage, and stage carriage.

Thus, a stage carriage can get a permit u/s 63(6) of the Act.

9. Mr. K. Venkataswamy, the learned Government Pleader stressing the provision u/s 48(3)(xvi) of the Act, stated, that for the reserve of a vehicle, such as spare bus, permit is granted, to maintain the service and to provide for special occasions. This provision, according to the learned Government Pleader has to be strictly construed, and if a strict construction is placed on the provision for grant of a permit to spare service bus, it can be used only in he route for which the operator was granted permit in order to maintain the continuity of the service.

10. On a reading of the various provisions of the Acts, we do not find any prohibition as such for using spare bus on a permit granted u/s 62 or u/s 63(6) of the Motor Vehicles Act, Mr. V.D. Gopalan, learned Counsel, rightly pointed out Rule 16-00 of the Tamil Nadu Motor Vehicles Rules, which reads as follows:

It shall be a condition of the permit, that, where a temporary permit is issued to a vehicle covered by the permit, to meet the requirements on special occasions, the breach of any of the conditions of the temporary permit shall be deemed to be the breach of the conditions of the permit itself and such permit shall be liable for suspension or cancellation.

The above provisions visualizes user of a spare bus on temporary permit in route ether than the one for which the operator was granted the permit when the operator holds, permit for the spare bus also. Section 48(3)(xvi) of the Motor Vehicles Act makes to clear that reserve vehicles is kept both to maintain the continuity of service and to provide for special occasions. A liberal interpretation, of this provision also does not bar a spare vehicle being used under a permit granted u/s 62 or u/s 63(6) of the Motor Vehicles Act.

11. Apart from the user of such a spare bus, the taxing provision does not contemplate payment of extra rate other than the one fried for spare bus if it is used in a route other than the one for which the operator holds the permit. Permit has; to be obtained for such user is clear. Whether the spare bus is liable to fall rate of tax is the question to be decided. The taxing provision which reads:

The tax payable in respect of a reserve stage carriage or a spare bus shall be three-fourths of the maximum rates payable for passenger for any of the regular stage carriages of the permit holder provided the permit holder has paid the taxes for the period in respect of all his stage carriages covered by valid permits.

makes it clear that the rate of tax for spare bus is three-fourths of the maximum rates payable per passenger for any regular stage carriages of the permit holder. Once such a tax has been paid for the spare bus, further tax cannot be demanded in the absence of a provision in this regard in the charging provision. The only condition for availing of the concessional tax for spare bus, is that the permit holder should have paid the taxes for the period in respect of all his stage carriages covered by valid permits. Once this condition is fulfilled, the rate, as per the charging provision cannot demand more than what is payable for a spare bus. No doubt, in G.O. Ms. No. 1904, Home, Department, dated 21st October, 1975, it is stated that concessional rate of tax is available for temporary permits for fairs and festivals, as contract carriage u/s 63(6) of the Motor Vehicles Act and as substitute services in the place of regular stage carriages of ether permit holders for a short period when their vehicles are withdrawn without surrender of permit not involving refund of tax. Such numeration in the said G.O. will not prohibit a spare bus from being put to use under valid permit on a route other than the one specified in the permit of the bus operator. It is well-settled that any measure relating to taxation must be strictly construed. The taxing provision above referred to does not contemplate demanding any extra tax for a spare bus other than the one mentioned in that provision.

12. In this connection we can usefully refer to the decision of RAMAHUJAM J., in Writ Petition No. 1592 of 1974, dated 16th July, 1975 wherein the learned Judge has stated that concessional rate of tax will be available in respect of a spare bus

even if it is plied as a substituted service in the place of business belonging to other stage carriage operators. The learned Judge has held that there is no restriction contained in the taxing provision that the concessional rate of tax will be available only when the spare bus is used in the place of the other vehicles owned by the permit holder. This will squarely apply to the facts of the present case also. We are in agreement with the said principle laid down in the above writ petition.

13. For the foregoing reasons, we do not find any merit in the present appeals. The writ appeals are therefore dismissed with costs.

