

(1998) 01 MAD CK 0061
In the Madras High Court
Case No : Writ Petition No. 16946 of 1991

V. Ramanathan

APPELLANT

Vs

The Regional Transport Officer, Trichy

RESPONDENT

Date of Decision : 02-01-1998

Acts Referred:

Tamil Nadu Motor Vehicles Taxation Act, 1974 — Section 3

Citation : AIR 1998 Mad 334 : (1998) 3 CTC 217

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : Mr. V.A. Sadagopan, for the Appellant; Mr. R. Thirugnanasambandham, Addl. Govr. Pleader, for the Respondent

Final Decision : Allowed

Judgement

1. Petitioner seeks the issuance of a writ of certiorari or any other writ, order or direction, calling for the records of the respondent in

R.No.31723/E3/91 dated 11.11.1991 and quash the same.

2. In the affidavit filed in support of the writ petition, it is said that the petitioner's mother, late Chellappu Ammal was holding one stage carriage

permit and three spare buses. The permit holder died on 30.8.1991, and the petitioner has filed an application under the Motor Vehicles Act for

transfer of the permit in his name and the same is pending. Being the legal representative of the stage carriage permit holder, petitioner is now

operating the bus. The reason for filing the writ petition is that on 11.11.1991, respondent issued a memo, asking the petitioner to remit a sum of

Rs. 37,260, within seven days. The notice was issued in the name of petitioner's mother. Since the petitioner is interested in plying the bus, he

received the same. As per the memo, the petitioner has been directed to remit a

sum of Rs.37,260 for the period from 1.1.1987 to 31.3.1987 and from 1.4.1987 to 31.3.1988, for the spare buses TDY 1699 and TNX 6226. It is said that the tax has been paid for the said period at the rate of 3/4th of the tax payable in respect of the route bus. The amount claimed by the memo is the difference of 1/4th tax. It is said that the demand made by the respondent is highly illegal, and it is patently unauthorised since the same is on the basis of an audit report. It is his case that on the basis of an audit report, the liability should not be fastened on him, especially when the respondent is not entitled to demand tax.

3. I heard the learned Additional Government Pleader also.

4. At the time of argument, learned counsel for petitioner brought to my notice the judgment dated 18.12.81 in Writ Appeal No.262 of 1977, etc,

Batch, The Regional Transport Officer, Chingleput District at Kancheepuram v. N.K.Rajagopal, the Judgment dated 12.9.97 in Writ Appeal

No.403 of 1996, Minor S.Bharathi and others v. The Regional Transport Officer, Tiruchirappalli, and also my own order dated 7.11.1997 in WP

No.7508 of 1992 V.Ramanathan v. The Regional Transport Officer, Trichy. The learned Government Pleader also agreed that the ratio in these

decisions applies to the facts of this case also, and the case may be decided in terms thereof.

5. In those decisions, it was held that apart from the user of such spare bus, the taxing provision does not contemplate the demand of extra rate

other than the one fixed for the spare bus. It was further held in those cases that 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, and under such circumstances, the operator is liable to pay full rate of tax. In other cases,

the Division Bench, which I have followed in my case has held that the tax payable in respect of the reserve stage carriage or spare bus shall be

three-fourths of the maximum rates payable per 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". In that case, the Division Bench further held that the

same principle will apply even if the permit holder is having more than one spare bus. It was held in both the Bench decisions that there is no

restriction contained in the taxing provision that the concessional rate of tax will

be available only if the spare bus is used in the place of the regular vehicle owned by the permit holder. They further went on and said that it is well-settled that any measure relating to taxation must be strictly construed. But, in this case, the taxing statute does not differentiate between stage carriages. There is no mention in the taxing provision that 3/4th tax must be collected in respect of the first spare bus and full tax must be collected for the second spare bus. The finding on this aspect is not valid in law. This reasoning of the Division Bench was followed by me in, V.Ramanathan v. R.T.O., Trichy, Order dated 7.11.97 Writ Petition No.7508 of 1992. Learned counsel on both sides agree that it has become final. The facts herein are also similar. The demand is made in this case for the reason that the petitioner's mother was having three spare buses and, therefore, liable to pay one fourth extra tax. It is not disputed by the respondent that the entire tax due under the permit has been paid, and three-fourths of the tax has also been paid for the spare bus. If that be so, I do not think that the demand made by the respondent on the basis of auditor's report could be sustained. Consequently I quash the impugned memo, and I hold that the petitioner is not liable to pay the amount covered by the memo. The writ petition is allowed, however, without any order as to costs. Stay Petition WMP 25490 of 1991 is closed.