

(2002) 06 AP CK 0104

In the Andhra Pradesh High Court

Case No : Writ Petition No. 25964 of 2001 and Batch

Visakha District (Rural) Passengers Association

APPELLANT

Vs

Government of A.P. and Another

RESPONDENT

Date of Decision : 25-06-2002

Acts Referred:

Andhra Pradesh Motor Vehicles Taxation Act, 1963 — Section 4, 4(4), 87, 88
Constitution of India, 1950 — Article 14

Citation : (2002) 4 ALD 691

Hon'ble Judges : S. Ananda Reddy, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : E. Manohar, for T.V.N. Narayana Rao, John Rajendra Prasad, E. Maruthi Raju, R.K. Jawla, M. Vinobha Devi, G. Sreenu Kumar, B. Siva Rama Krishnaiah, Mallikarjuna Rao, K.N. Jwala, B. Sudhakar Reddy, A. Vishnu Vardhana Reddy, Government Pleader for Taxes, for the Appellant;

Final Decision : Dismissed

Judgement

Motilal B. Naik, J.—In all these writ petitions, challenge to G.O. Ms. No. 152, Transport, Roads and Buildings (TR.1I) Department, dated 1-12-2001 is made and therefore, they are disposed of by this common order.

2. These writ petitions are filed either by the owners of Idle Contract Carriage Vehicles or by passenger associations challenging the validity of G.O. Ms. No. 152, dated 1-12-2001. The vehicles involved in these writ petitions are idle contract carriages not covered by any permit but are plied on the strength of temporary permits or special permits issued u/s 87 or 88(8) of the Motor Vehicles Act, 1988.

3. Prior to the issuance of impugned G.O. Ms. No. 152 dated 1-12-2001, G.O. Ms. No. 100, Transport, Roads and Buildings (Tr.II) Department, dated 20-5-1999 was in operation. Under the said G.O., the rate of tax was Rs. 17/- per seat per day for the Idle Contract Carriages if the operators of such vehicles obtained either special permits or temporary permits for a particular period.

However the Government of Andhra Pradesh issued the impugned G.O. Ms. No. 152 on 1-12-2001, fixing the tax at Rs. 1,150/- for Idle Contract carriages not covered by any permit but were plying on the strength of temporary/special permits issued u/s 87 or Sub-section (8) of Section 88 of the Motor Vehicles Act, superseding the earlier G.O. Ms. No. 100 dated 20-5-1999. As per the impugned G.O. Ms. No. 152 dated 1-12-2001, the owners/operators of Idle Contract Carriage vehicles are required to pay a lump sum amount of Rs. 1,150/- per seat per quarter without regard to the number of days of plying the vehicle on the strength of obtaining permits during the quarter.

4. On behalf of the writ petitioners, leading the arguments, Sri E. Manohar, learned senior Counsel appearing on behalf of the petitioner in WP No. 25964 of 2001, attacked the impugned G.O. Ms. No. 152 dated 1-12-2001, principally on one ground. According to the learned senior Counsel, the vehicles in question are Idle Contract Carriages which are engaged by parties for few days and were paying Rs. 17/- per seat per day. However, the owners/operators of the Idle Contract Carriage Vehicles are now required to pay quarterly tax, without regard to the number of days of plying on par with contract carriages which ply within the district and also in the contiguous district. Learned senior Counsel contended, this action of the Government in classifying the two categories of vehicles, viz., Idle Contract Carriage Vehicles and Contract Carriage Vehicles into one category for the purpose of payment of tax is inappropriate and offends Article 14 of the Constitution of India. Learned senior Counsel tried to explain the repercussion as a result of the impugned G.O. and contended that by resorting to abnormal increase in the tax structure, the owners/operators of Idle Contract Carriage Vehicles are forced to opt out of their avocation as they are unable to pay the abnormal increase in the tax. Learned senior Counsel submitted that there is no rationale in the increase of the rates of tax to be paid by the owners/operators of the Idle Contract Carriage Vehicles and contended that the State is obliged to explain the circumstances leading to the issuance of the impugned G.O. which affects the livelihood of the owners/operators of the Idle Contract Carriage Vehicles. Learned senior Counsel therefore, submitted that on these grounds alone, the impugned G.O. is liable to be set aside.

5. Counsel appearing on behalf of the petitioners in other writ petitions adopted the submissions made by the learned senior Counsel Sri E. Manohar, appearing on behalf of the petitioner in WP No. 25964 of 2001.

6. Sri Mallikarjuna Rao, learned Counsel appearing on behalf of the petitioners in WP No. 5148 of 2002, apart from adopting the submissions of the learned senior Counsel Sri E. Manohar, also submitted that under the scheme of the A.P. Motor Vehicles Taxation Act, 1963, petitioners would be liable to pay tax in terms of Section 4(4) as provided under Schedule II of the said Taxation Act, which is only for few days. According to the learned Counsel, since the respondents, through the impugned G.O., are seeking to collect quarterly tax, which is not contemplated u/s 4(4) of the Taxation Act, the action of the respondents in

issuing the impugned G.O. is nothing but a statutory violation contained under the Taxation Act and therefore, the impugned G.O. is liable to be set aside on this ground also.

7. On behalf of the respondents, a common counter has been filed, inter alia, stating that when pro-rata tax was collected from the Idle Contract Carriages, on the basis of the representation made by Idle Contract Carriage Owners/Operators Association, that system was withdrawn in the year 1984 as by that time it was realised that the operators were misusing such permits. Later, again the proper system was introduced on the basis of representations received from the Private Bus Operators Association. As per the said system, the operators have been paying pro-rata tax at the rate of Rs. 17/- per seat per day as revised in 1996, and the said system was withdrawn with effect from 1-12-2001 as the Government found that the system of accepting tax on pro-rata basis was found to be fraught with certain deficiencies and brought the Idle Contract Carriage under quarterly rate of tax in terms of Section 3 of A.P. Motor Vehicles Taxation Act.

8. Learned Special Government Pleader for Taxes while elaborating his submissions, in support of the impugned G.O., contended that the plea of the petitioners that the impugned G.O., offends Article 14 of the Constitution of India is untenable inasmuch as there are two sets of operators, one is Idle Contract Carriage operators and the other is regular Contract Carriage operators, and when there are two types of operators, the plea of discrimination does not arise. It is nextly contended by the learned Special Government Pleader for Taxes that the Government is competent to revise the tax structure as and when it is required and as long as the competency of such revision is not challenged, it is not open to the petitioners to question the rationale behind such increase. It is submitted that as narrated in the counter, experience showed, there was misuse and abuse of permits by the Idle Contract Carriages causing a great dead weight loss to the State, taking into account all factors, the impugned G.O. is issued requiring the owners/operators of Idle Contract Carriages to pay Rs. 1,150/- per seat per quarter. Learned Special Government Pleader further contended that neither any embargo nor any restrictions are imposed for plying the Idle Contract Carriages throughout the quarter on par with other Contract Carriage Vehicles and as such, there is no force in the contention of the petitioners that there is discrimination between the owners of Idle Contract Carriages and Contract Carriage vehicles.

9. In all these writ petitions, petitioners have sought for a writ of Certiorari calling for the records relating to the issuance of the impugned G.O. Ms. No. 152, dated 1-12-2001 and for quashing of the said G.O. on various grounds. The grounds for invoking a writ of certiorari include excess of jurisdiction, violation of the principles of natural justice, fraud and error on the face of the proceedings or violation of any fundamental rights guaranteed under the Constitution.

10. Insofar as the competency of the Government in issuing the impugned G.O.

Ms. No. 152 dated 1-12-2001, no arguments are advanced on behalf of the writ petitioners questioning the competency of the Government in issuing the impugned G.O. Therefore, there is no reason for us to adjudicate on the question of competency of the Government in issuing the impugned G.O.

11. The principal ground of attack on the impugned G.O. Ms. No. 152 dated 1-12-2001 is that it offends Article 14 of the Constitution of India.

12. We shall now deal with the principal contention advanced on behalf of the writ petitioners. The preamble of the Constitution of India speaks of equality of status and opportunity. Article 14 of the Constitution of India gives effect to that principle in the text of the Constitution. In other words, right to equality is guaranteed under Article 14 of the Constitution of India. In order to bring their grievances within the sweep of Article 14, the petitioners must establish that the respondents have exhibited discrimination between similarly placed persons or denied equality. In this case, admittedly, there are two types of operators, viz., Idle Contract Carriage Operators and Contract Carriage Operators. It is difficult for us to understand as to how these two different categories of operators could be treated as one category and to hold there is discrimination in the tax rate. Undoubtedly, the payment of tax is though covered for a period of one full quarter, the Idle Contract Carriage Operators are not prevented from plying the vehicle for the entire quarter with the same rate of tax of Rs. 1,150/- per seat per quarter. Prior to the impugned G.O. ms. no. 152, dated 1-12-2001, G.O. Ms. No. 100 was in force and as per the said G.O., Rs. 17/- per seat per day was the tax required to be paid by the Idle Contract Carriage Operators whenever they seek special permit or temporary permit. After expiry of such permit, if the Idle Contract Carriage Operators/Owners seek permit for other period, they are required to pay tax at the rate for subsequent period also. However, through the impugned G.O., the operators of Idle Contract Carriages are not obliged to pay the tax again and again during a quarter and they are also not denied permits to ply their vehicles for the entire quarter basing on the payment of quarterly tax at once in the quarter. On account of this variation in tax structure, the only difference in the impugned G.O. is that the operators of Idle Contract Carriages have to pay the tax in advance per quarter and there is also no restriction imposed on them for plying it in a particular quarter subsequent to their seeking permits. In this view of the matter, it is difficult for us to hold that there is discrimination between the operators of Idle Contract Carriages and Contract Carriages. We, therefore, hold that the impugned G.O. does not offend Article 14 of the Constitution of India. Accordingly, we reject the submissions advanced on behalf of the writ petitioners in this regard.

13. Coming to the other contention advanced on behalf of the writ petitioners that by virtue of the G.O. higher rate of tax is paid which cast more burden on the operators and they are forced to opt out of this field, we do not think such a situation has arisen. The hike in the rate is not so abnormal, to drive the operators away from this field and as such it cannot be said that their livelihood

is denied. The writ petitioners are never prevented from plying their Idle Contract Carriages on obtaining permission as provided u/s 87 or 88(8) of the M.V. Act and in fact, they are free to ply their vehicles during the entire quarter, subject, however to payment of quarterly tax for the entire quarter well in advance. Therefore, when no restrictions are imposed on the writ petitioners through the impugned G.O. from plying the vehicles, it is difficult for us to accept the contention that the impugned G.O. offends the right of the petitioners to pursue their profession.

14. Any upward or downward revision in tax structure, in our considered view, is the prerogative of the Legislature and therefore, it is not for this Court to explore reasons as to whether the Legislature is justified in hiking the tax structure insofar as it relates to the Idle Contract Carriages. Incidentally, learned Special Government Pleader for Taxes has also brought to our notice about the amended G.O. Ms. No. 77 dated 1-6-2002 through which an amendment is brought to G.O. Ms. No. 152 dated 1-12-2001 reducing the quarterly tax for Idle Contract Carriage from Rs. 1,150/- to Rs. 850/-. Thus, a substantial reduction of Rs. 300/- has already been granted by the Government in the payment of quarterly tax for Idle Contract Carriages.

15. Any law made by Parliament or State Legislature could be struck down by Courts on the ground of lack of legislative competence and violation of any of the Fundamental Rights guaranteed in Part III of the Constitution or of any other constitutional provisions. No arguments on these lines are advanced before us and therefore, we are inclined to hold the impugned G.O. No. 152 does not suffer from the set parameters.

16. Insofar as the contention of Sri Mallikarjun Rao, Counsel appearing on behalf of the petitioner in WP No. 5148 of 2002 that the petitioners would be liable to tax u/s 4(4) of the A.P. Motor Vehicles Taxation Act as provided under Schedule II of the said Act, which is only for few days and requiring the Idle Contract Carriage Operators to pay quarterly tax well in advance is nothing but a statutory violation, we are not prepared to accede to this contention. As indicated by us, collection of tax either quarterly or only for a few days is the prerogative of the Legislature and as long as the competency of the Legislature in this regard is not questioned, there is no reason for us to hold such an act is illegal. We, therefore, reject the contention of the Counsel for the petitioner in this regard.

17. Having regard to our discussion, we find no merit in the contentions advanced on behalf of the writ petitions. Accordingly, we dismiss all these writ petitions. No costs.

18. During the course of hearing these writ petitions, learned Government Pleader has brought to our notice that when few writ petitions were filed initially questioning the impugned G.O., for payment of difference of quarterly tax, the Government though granted time to those writ petitioners up to 31-12-2001, but this Court while admitting a batch of writ petitions, issued interim directions

granting time to the petitioners to pay the difference of tax up to 31-1-2002. Learned Government Pleader stated that some of the writ petitioners who later moved this Court and obtained interim orders from this Court, have not brought to the notice of this Court about the earlier orders which extended time for payment up to 31-1-2002 but have given an impression that payment of tax was postponed indefinitely. This attempt by few petitioners, according to the Government Pleader, is nothing but misleading the Court and as a result interim orders were issued not to collect difference of tax until further orders, majority of the operators have not paid a single pie towards tax and are plying the vehicles without obtaining permits also under the guise of the interim directions. We have also verified some subsequent interim directions issued by this Court and found the allegation to be true.

19. We do not, however, desire to dig the matter at this stage as to who has misled this Court as we are disposing off these writ petitions finally. However, we record that the petitioners should have represented the Court collectly about their earlier orders passed by this Court so that same direction could have been issued in later writ petitions.

20. Be that as it may, since we are dismissing these writ petitions by a detailed order, we direct the writ petitioners to pay the outstanding quarterly tax as provided under G.O. Ms. No. 152 dated 1-12-2001 in respect of Idle Contract Carriage Vehicles on or before 31-7-2002, In default of payment of dues as directed by us, it would be open to the respondents to seek recourse to such legal remedies as is available to them according to law. As we dismissed these writ petitions, we vacate all the interim directions issued in these writ petitions. No costs.