HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

THE HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.17633 OF 2008

ORDER: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

The petitioner prays for writ of Certiorari calling for the records leading up to and inclusive of demand notice R.No.4987/A2/2008 dated 04.04.2008 demanding vehicle tax of Rs.2,02,125/- for the quarter ending 31.03.2008 and quash the same.

The averments, in brief, are that the petitioner obtained special permit bearing No.KMV Spl.3525 for vehicle bearing No.KA 01 F 949 under Section 88(8) of the Motor Vehicles Act, 1988 from the Secretary, Regional Transport Authority, Bangalore. The special permit was taken to carry a tourist party consisting of 50 persons to different places in Karnataka, Andhra Pradesh and Tamilnadu. The period of special permit is from 08.02.2008 to 18.02.2008. On 10.02.2008 at 05.30 PM., the 1st respondent checked the vehicle bearing No.KA 40 F 0036. The 1st respondent prepared check report No.0782287. The report refers to permission for bus No.KA 01 F 949 and the searched vehicle as bearing No. KA 40 F 0036.

The petitioner was served show cause notice dated 21.02.2008 by the 2nd respondent. Through the show cause notice, the 2nd respondent demanded vehicle tax at Rs.3,675/- per seat for the quarter ending 31.03.2008. On 24.03.2008, the petitioner filed explanation before the 2nd respondent. The 2nd respondent, after rejecting the explanation, issued demand notice R.No.4987/A2/ 2008 dated 04.04.2008 calling upon the petitioner to pay vehicle tax of Rs.2,02,125/- on the ground that the petitioner had unauthorisedly plied bus No.KA 40F 0036 as a contract carriage from Bangalore to Tirupathi, Kanchipuram. The relevant portion of the impugned demand reads as under:

> “The Station House Officer, Renigunta police station has issued First Information Report in Cr.No.27/2008 dated 1.3.20078 U/s 420 & 460 of IPC and investigating into the case.
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> The Divisional Controller, KSRTC in his letter R.No.KST/3151/2007-08 dated 24.3.2008 gave reply to the show cause notice which was received in this office on 31.3.2008. Further Sri V.Bhasavaraj, Divisional Traffic Officer, Chickballapur appeared before the Licensing Officer & Regional Transport Officer, Chittoor on 31.03.2008 at
> 4 PM informed Divisional Controller who requested to offer an opportunity of being heard before adjudicating the matter. The Divisional Traffic Officer was heard personally on 31.3.2008 at 4 PM and explained regarding the letter sent by Regional Transport Officer, Bangalore (C) stating that permit No.KMP/SPL.3525 was issued to KA 01/F.0949 vide Ch.No.330410 from 8.2.2008 to 18.2.2008 and no special permit was issued to KA 40/F.0036. Further the vehicle KA 40/F.0036 is on the rolls of Regional Transport Officer, Chickballapur and permit if any can be issued only by the RTA, Chickballapur. The Regional Transport Officer, Bangalore(C) is not competent to issue permit to the vehicle KA 40/F.0036 which is not on the rolls and as the vehicle is on the rolls of Regional Transport Officer, Chickballapur which is itself clearly establishes that the permit produced by the driver is a fake and bogus one. The S.I of Police, Renigunta P.S. attended to this office on 1.4.2008 at about 5 P.M. along with Sri V.Bhasavaraj, DTO, Chickballapur and informed about the progress of the investigation made by him. The Sub-Inspector confirmed that on verification of the record at Regional Transport Officer, Bangalore(C) no permit was issued to KA 40/F.0036. Hence evidently the vehicle plied without valid permit.
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> Further regarding eligibility of tax exemption on reciprocal basis vide G.O.Ms.No.674 dt.31.12.1988 and hence it is clarified that the exemption on reciprocal basis is only valid when the vehicle is plying with a valid temporary permit issued U/s 88(8) of M.V.Act. In the instant case the vehicle is not covered by valid permit issued by the competent authority and is plying on the strength of a forged permit said to have been issued by the Regional Transport Officer, Bangalore(C). Hence the contention of the Dvl.Controller for exemption of tax as per the said Govt. Order cannot be considered. Sri Bhasavaraj, DTO, Chickballapur was explained in detail by the Licensing Officer & RTO, Chittoor in person 1.4.2008 regarding the forged permit and applicability of tax to this vehicle.
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> In view of the above it is established that the bus bearing

Regn.No.KA40F0036 was plying unauthorized as a Contract Carriage from Bangalore to Tirupathi, Kanchipuram etc., without valid permit and Tax to A.P.

Thus it attracts tax @ **Rs.3675/- p.s.p.q. for Q.E.31.03.2008** for 55 seats due to A.P. **as per G.O.Ms.No.68 T.R & B (TR.II) 13.04.2006 under item 4(v) (aa).**

Hence the reply submitted by the Dvl.Controller, Chickballapur cannot be accepted and the demand for Rs.202125/- for the vehicle KA40/F.0036 for QE.31.3.2008 is hereby confirmed.

The Divisional Controller, KSRTC, Chickballapur is therefore requested to pay the tax of **Rs.202,125/-** @ 3675/- pspq for QE 31.3.2008 due to A.P. within 7 days from the date of receipt of this demand notice. Failing which action will be taken to recover the tax under R.R.Act."

The 2nd respondent filed counter affidavit and has stated the circumstances under which the vehicle bearing No. KA 40F 0036 was treated as a contract carriage. For the purpose of disposal of writ petition, the averments relating to the bus for which special permit was taken and the bus which was checked and vehicle tax levied reads as follows:

"It is to submit that after seizure of the vehicle bearing registration No.KA 40F 0036 this respondent has addressed a letter to the R.T.O., Bangalore(Central) dated 22.02.2008 to issue certified copies of the special permits issued from 12.02.2008 for which the Regional Transport Officer, Bangalore (Central) replied a letter dated 27.02.2008 stating that the permit has been issued for the vehicle bearing Nos.KA-17-B-1786, KA-17-B-1786 & KA-01-F-949, but no permit has been issued in respect of vehicle bearing No.KA-01-F-36. Hence, the plea of the writ petitioner that this typographical error is absolutely baseless and unsustainable. The said allegation is an after thought for the purpose of evading the payment of tax for unauthorized plying in the state of Andhra Pradesh and as such the demanded tax is valid and in accordance with law.

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It is submitted that allegation of the writ petitioner that it is only typographical error in mentioning the vehicle number in the permit and as such this respondent authority has no right to levy the tax on the ground of not having a permit is absolutely baseless and unsustainable. It is to submit that at the time of inspection of the vehicle it has been clearly found that the vehicle bearing registration No.KA 40F 0036 has no valid permit and the permit that has been produced at the time of inspection reveals that the permit is for the vehicle bearing No.KA01F0036 and the petitioner ought to have verified before plying the vehicle whether the vehicle number tallies in the permit or not as an operator he is bound by the provisions of the Motor Vehicles Act and as such has to run the vehicle as mentioned in the permit and as such levy of tax by this respondent is in accordance with law".

Learned counsel for the petitioner fairly admitting that the vehicle bearing No.KA 40F 0036 did not have any permit tried to persuade this Court to consider and examine the very explanation which did not find favour with the 2nd respondent. We are afraid that the submission does not come within the scope of Certiorari jurisdiction under Article 226 of the Constitution of India. If the admitted fact is taken note of viz., that the vehicle bearing No.KA 40F 0036 did not have a permit at all, then plying vehicle without paying tax is illegal. If the solitary explanation offered by the petitioner was rightly rejected for the reasons already recorded by the 2nd respondent, the petitioner failed to point out either an error apparent on the face of the record in the impugned demand or that the same is vitiated with any other infirmity. We are satisfied that there is no merit in the writ petition and the writ petition is liable to be dismissed.

The writ petition is, accordingly, dismissed. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

DILIP B. BHOSALE, ACJ

S.V.BHATT, J

Date: 19.11.2015

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