HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.18778 OF 2002

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

Heard Sri A.Vishnu Vardhan Reddy, learned counsel for the petitioner and the learned Government Pleader for Transport.

The petitioner prays for writ of Certiorari to call for the records pertaining to demand notice R.No.4777/A3/2002 dated 29.07.2002 issued by the 2nd respondent and quash the same as illegal and unjust.

On 28.06.2002, the respondent issued show cause notice to the petitioner and called upon the petitioner to give explanation, if any, within 7 days from the date of receipt of the notice. The relevant portion of the show cause notice reads thus:

> "The Motor Vehicles Inspector (Hqrs) Mahabubnagar has stopped and checked the C.C.Bus No.AP 22/U-2222 on 22.6.2002 are found it is plying as stage carriage from Nagarkurnool to Bijnapally by carrying (30) individual passengers from Nagarkurnool, Palem, Bijanapally to drop at Gummakunta and Jadcherla by collecting different fares @ Rs.12/-, 10/- & Rs.5/- and also following irregularities.
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> 1) Without payment of tax for Q.E 30.6.2002
> 2) Without Fitness Certificate
> 3) Without Registration Certificate
> 4) Without Permit
> 5) Without insurance Certificate
> 6) Without PUC

The petitioner through explanation dated 05.07.2002 *inter alia* denied the charges and contended that the contract carriage for vehicle bearing No.AP 22/U-2222 is not misused as a stage carrier permit and the levy of motor vehicle tax as stage carrier permit is without basis and prayed for dropping the action pursuant to the show cause notice dated 28.06.2002. The respondent, having examined the material available on record, particularly the statements of passengers recorded at the time of vehicle check rejected the explanation and held as follows:-

> "Since, the vehicle plied as stage carriage during the quarter ending 30.6.2002. The registered owner is liable for payment of tax as applicable to the contract carriage. Hence, in the reference 3rd cited a show cause notice has been issued to the owner of the vehicle bearing registration No.AP 22/U-2222 on 28.6.2002 as to why the tax of Rs.1,15,150/- should not be collected from him. He should submit his explanation if any within (10) days from the date of receipt of this notice. The owner has acknowledged the notice on 28.6.2002. He has submitted his explanation stating that the contents of the check report are not correct as the vehicle did not ply as stage carriage and that there is no liability of tax. The explanation submitted by the owner is examined in the light of law and found not satisfactory. Since the Checking Officer has clearly stated in the check report the vehicle has plied as stage carriage by carrying (30) passengers by collecting individual fares Rs.12/-, Rs.10/-, Rs.5/- to get down from Nagarkurnool, Palem and Bijnapally to drop at Gummakunta and Jadcherla and in support obtained the signature of the driver and statement of the passenger also recorded. Hence, the demand is therefore confirmed.
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> The owner of the vehicle No.AP 22/U-2222 c.c. bus is directed to pay the tax of Rs.1,15,150/- for Q.E 30.6.2002 within (10) days from the date of receipt of this notice, failing which action will be taken to collect the amount under R.R.Act."

Hence, the writ petition.

The learned counsel for the petitioner vehemently challenges the finding that subject vehicle was used as a stage carriage permit, and the finding is without any material or conducting enquiry. The learned counsel prays for setting aside the order impugned in the writ petition.

Per contra, the learned Government Pleader submits that the best evidence in the matter is the statement of passengers who have paid fare from one destination to another destination is not challenged by the petitioner. Whether the vehicle is used as a stage carriage or contract carriage is substantially known at the time of inspection of a vehicle and the evidence gathered by the checking officer. This Court in its jurisdiction under Article 226 of the Constitution does not sit against the orders of respondent as a Court of appeal and examine each one of the circumstances now putforward by the petitioner. He contends that it is not the case of petitioner that either the statements on which any reliance is placed by the respondents are non-existing or for that matter those persons did not give any statement at all.

We have perused the material available on record and taken note of the contentions of the learned counsel appearing for both the parties. The finding of fact recorded by the respondent is that the checking officer has found that the vehicle was plied as stage carriage by carrying 30 passengers by collecting individual fares of Rs.12/-, 10/- and 5/- to be alighted at Nagarkurnool, Palem and Bijanapalli. The petitioner has failed to discharge the burden by placing any material on record to show that the vehicle was used as a contract carriage.

In the counter-affidavit filed by the respondent, the totality of circumstances as could be culled out from the record are adverted to. We are not stating all the allegations made in the counter affidavit. *Prima facie,* the petitioner failed to make out any ground against the order impugned.

The writ petition fails and is, accordingly, dismissed. No costs.

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

DILIP B. BHOSALE, ACJ

S.V.BHATT, J

Date:18.09.2015
Lrkm