THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE MS JUSTICE J.UMA DEVI

Writ Appeal No.1216 of 2017

JUDGMENT: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the interlocutory order passed by the Learned Single Judge in W.P.M.P. Nos.31433 and 31434 of 2017 in W.P. No.25354 of 2017 dated 02.08.2017. The respondent in this appeal filed the writ petition questioning the proceedings of the Deputy Transport Commissioner & Secretary, Regional Transport Authority, Ananthapuram dated 26.04.2017 returning the Demand Drafts of Rs.1,63,130/-, taking back possession of the subject vehicle, and in keeping it in the office of the Deputy Transport Commissioner, Ananthapuram for safe custody, as arbitrary and illegal.

Facts, to the limited extent necessary, are that a notice dated 13.07.2017 was issued by the Licensing Officer calling upon the respondent-writ petitioner to show cause why tax of Rs.1,08,750/- and penalty of Rs.54,380/-, totalling to Rs.1,63,130/-, should not be collected from them for having failed to pay tax, for the Quarter ending 30.09.2017, at the border check post while entering the State of Andhra Pradesh; and for having crossed the Andhra Pradesh border skipping Penukonda Check Post located on the Bengaluru-Ananthapuram National Highway. Pursuant thereto, the respondent-writ petitioner paid the said amount and, on action being taken against them under Section 448-A of the Andhra Pradesh Motor Vehicles Rules, 1989 (for short "the A.P. Rules"), paid a fine of Rs.5,000/- and Rs.2,000/- respectively consequent to which proceedings dated 26.07.2017 were issued directing release of the subject vehicle. The respondent-writ petitioner claims to have paid the parking fees of Rs.560/- to obtain release of the vehicle and, when they were taking their vehicle back, the impugned order came to be passed; and the tax and penalty paid by them earlier were returned.

Learned Government Pleader for Transport would submit that, since certain vehicles were found to be plying in violation of Rule 85(3) of the Central Motor Vehicles Rules, 1989 (for short "the Central Rules"), such vehicles were seized; while quarterly tax can be paid by vehicles which have an All India permit and authorisation, if the vehicles are used as a contract carriage, such payment cannot be permitted in the case of stage carriage vehicles; the subject vehicle, plying from Bengaluru to Hyderabad, was being used as a stage carriage; with regard to such vehicles, the Government of Andhra Pradesh had taken a decision not to permit them to enter the State of Andhra Pradesh, or to collect tax from them; questioning the action of the Government of Andhra Pradesh, in refusing to receive tax, the respondent-writ petitioner had filed a Writ Petition which is still pending on the file of this Court, wherein no interim orders have been passed till date; the subject vehicle is registered in Pondicherry; Rule 85(3) of the Central Rules enables action to be taken where a vehicle does not either start or end their trip at the place where they are registered; since the subject vehicle is plying between Bengaluru and Pondicherry, it neither started its journey from Pondicherry nor did it end its trip at Pondicherry; and the appellants were entitled to take action against them under Section 207(1) of the Motor Vehicles Act, 1988 (for short "the Act").

Sri B.Sivarama Krishnaiah, learned counsel for the respondent-writ petitioner, would submit that the appellants had taken action, in the present case, only for violation on the part of the respondent-writ petitioner to pay tax; the appellants had not even issued a notice to the respondent-writ petitioner regarding the alleged violation of Rule 85(3) of the Rules, or for action being taken under Section 207(1) of the Act for such violation; since a notice was issued calling upon the respondent-writ petitioner to pay tax and penalty, they had paid the said amount, and had obtained release of the vehicle; and, having received payment, the appellants cannot turn around and now contend that they would return the tax and penalty already paid and detain the vehicle, when the impugned show cause notice makes no reference to their having contravened Rule 85(3) of the Central Rules. Learned counsel would rely on the judgments of the Supreme Court in ***Commissioner of Police, Bombay vs. Goverdhandas Bhanji***[1] and ***Mohinder Singh Gill vs. The Chief Election Commissioner***[2] in this regard.

The mere fact that the appellants had earlier directed the respondent-writ petitioner to pay tax and penalty does not estop them from returning the amount collected by mistake earlier, and in detaining the vehicle. It is, however, not in dispute that the respondent-writ petitioner had invoked the jurisdiction of this Court, by filing a writ petition questioning the refusal of the appellants to receive the Quarterly Tax for their vehicle. It is also not in dispute that no interim order has been passed therein and, consequently, the question whether the Government of Andhra Pradesh should receive tax from those vehicles, which are alleged to have violated Rule 85(3) of the Central Rules, to be plying as stage carriages, and not as contract carriages, necessitates examination in the said Writ Petition. The fact, however, remains that the appellants have not issued any notice calling upon the respondent-writ petitioner to show cause for violation of Rule 85(3) of the Central Rules; and, consequently, they cannot be heard to contend, for the first time before this Court, that the subject vehicle has been detained for violation of the said Rule.

As noted hereinabove, neither the show cause notice issued earlier nor the impugned order refers to any other violation on the part of the respondent-writ petitioner. Rule 85(3) of the Central Rules requires the tourist vehicle (which is used as contract carriage) to either commence its

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[1] AIR 1952 SC 16
[2] AIR 1978 SC 851

journey or end its journey, circular or otherwise, in the home State, subject to the condition that the vehicle shall not remain outside the home State for a period of more than three months. The said Rule requires a permit holder to ensure that every return of the tourist vehicle to the home State is reported to the authority which issued the permit. The obligation cast on the permit holder, under Rule 85(3) of the Central Rules, is to ensure that the tourist vehicle either commences or ends its journey in the home State which, in the present case, is the State of Pondicherry. It also obligated the respondent-writ petitioner to report to the authority (the authority in the State of Pondicherry), which issued the permit, that such a tourist vehicle has returned to the home State.

Section 207(1) of the Act enables any police officer or other person authorised in this behalf by the State Government, if he has reason to believe that a motor vehicle has been or is being used in contravention of the conditions of permit, relating to the route on which or the area in which or the purpose for which the vehicle may be used, to seize and detain the vehicle. The power under Section 207(1) of the Act is available to be exercised by the authorities concerned for violation of Rule 85(3) of the Central Rules. The fact, however, remains that neither the earlier show cause notice, nor the order impugned in the writ petition, relate to action being taken against the respondent-writ petitioner under Section 207(1) of the Act for violation of Rule 85(3) of the Central Rules.

As the question, whether the Government of Andhra Pradesh is justified in refusing to receive tax and penalty, is the subject matter of adjudication in a separate Writ Petition filed by the respondent-writ petitioner, suffice it to modify the order of the Learned single Judge and permit the respondent-writ petitioner to return the Demand Drafts for Rs.1,63,130/- which the appellants shall invest in a cumulative fixed deposit. The question whether the said sum should be adjusted towards tax or penalty, or whether it should be returned to the respondent-writ petitioner, shall be subject to the result of the Writ Petition in which the interlocutory order under appeal was passed, and in the writ petition filed by the respondent-writ petitioner questioning refusal, by the Government of Andhra Pradesh, to receive the quarterly tax. As neither the earlier show cause notice, nor the order impugned in the writ petition, refers to the respondent-writ petitioner having violated Rule 85(3) of the Rules, the appellants are not justified in detaining the vehicle on this ground.

We see no reason, therefore, to interfere with the order of the Learned Single Judge in directing release of the vehicle. The subject vehicle shall be released only on the respondent-writ petitioner depositing Rs.1,63,130/- with the appellants, and furnishing proof of such re-deposit to the authorities concerned. Suffice it to make it clear that this order shall not preclude the appellants from taking action against the respondent-writ petitioner for violation of any other provisions of the Act or the Rules, including Section 207(1) of the Act and Rule 85(3) of the Rules, in accordance with law.

The Writ Appeal is, accordingly, disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

06th September, 2017
JSU

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