

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 17.04.2018	Delivered on 26.06.2018
---------------------------	----------------------------

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1607 of 2015
and MP No.1 of 2015

The Management of Christian
Medical College (CMC Association, Vellore)
Ida Scudder Road,
Vellore 4, Rep by its Secretary ...Appellant/Petitioner

versus

1. Government of Tamilnadu,
Rep. By the Secretary to Government,
Labour and Employment Department,
Fort St. George, Chennai 600 009.
2. Deputy Inspector of Labour,
No.10, Ponniyamman Koil Street,
Sainathapuram, Vellore. Respondents

Appeal filed against the order passed by this Court dated
27.07.2015 passed in W.P.No.8999 of 2006.

Prayer in WP.No.8999 of 2006:-

To Declare that the Motor Transport Workers Act does not
apply to the Petitioner Institution.

For appellant : Mr.Sanjay Mohan, Senior Counsel
for M/s.S.Ramasubramaniam & Associates

For Respondents : Mr.M.Karthikeyan
Additional Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The challenge in this Intra Court Appeal is to the judgment of the learned Single Judge, dated 27.07.2015 made in WP No.8999 of 2006, dismissing the said Writ Petition.

2. The prayer in the Writ Petition is as follows:
"For the reasons stated in the accompanying affidavit, it is respectfully prayed that this Hon'ble Court may be pleased to issue a Writ of declaration, or any other Writ or direction in the nature of a Writ under Article 226 of the Constitution of India that the Motor Transport Workers Act, 1961, does not apply to the petitioner institution and thereby render justice."

3. The appellant which is an Educational Institution claimed the aforesaid declaratory relief on the following contentions:-

The appellant is a Medical College, situate at Vellore. It is a minority Educational Institution as contemplated under Article 30(1) of the Constitution of India. The appellant apart from running a Medical College is also running a Nursing College and Research Institution. A full fledged Hospital is also attached to the Medical College. The Medical College as well as the Nursing College run by the appellant are affiliated to the Tamil Nadu Dr.M.G.R. Medical University. In order to cater to the needs of the students and staff comprising of Doctors, nurses, paramedical and other skilled and unskilled employees, the appellant Institution owns certain transport vehicles, viz. Buses and Ambulances, which are used for the purpose of transporting the students, Doctors and employees of the Institution from the Hostels, residential quarters to the College and back, it also employs skilled and unskilled workers to operate the said transport vehicles.

4. While so, during the year 1968, the Assistant Inspector of Labour, issued a show cause notice for noncompliance of the provisions of the Motor Transport Workers Act, 1961, to which reply was sent by the appellant on 25.09.1968, contending that the said Act would not apply to the appellant Institution. The said claim of the appellant was rejected by the Assistant Inspector of Labour, Vellore vide its letter dated 26.09.1968. Subsequently by its letter dated 03.10.1969, the appellant reiterated its contention that since it is an Educational Institution, it cannot be termed as a Motor Transport Undertaking, within the meaning of Section 2(g) of the Motor Transport Workers Act, 1961. The Chief Inspector of Motor Transport, vide his letter order dated 10.11.1969, rejected the

said claim of the appellant. Subsequently the Assistant Inspector of Labour vide letter dated 28.01.1973 required to the appellant to comply with the provisions of the Act.

5. It is also claimed that the appellant vide its letters dated 27.02.1973 and 05.03.1973 sought for exemption from the provisions of the Act. The Assistant Inspector of Labour, Vellore, by his letter dated 06.11.1973, once again insisted that the appellant should comply with the provisions of the Act.

The Commissioner of Labour, Madras vide his letters dated 01.11.1974 and 04.12.1974 directed the appellant to renew the registration and then approach for exemption. In the interregnum, the 2nd respondent viz. The Deputy Inspector of Labour, Vellore, filed a complaint, before the Judicial First Class Magistrate, Vellore, for the alleged contravention of the certain provisions of the Motor Transport Workers Act, 1961. The complaint came to be dismissed by the Judicial First Class Magistrate, Vellore, dated 22.06.1978, upon the finding that the charges were not proved beyond reasonable doubt.

6. The appellant by its letter dated 02.11.1978, addressed to the Commissioner of Labour, Madras, sought for orders confirming that the appellant Institution is not a Motor Transport Undertaking within the meaning of Section 2(g) of Motor Transport Workers Act, 1961. The 2nd respondent appears to have issued another show cause notice on 02.11.1978, calling for an explanation from the petitioner/appellant for not complying with the provisions of the Motor Transport Workers Act, 1961. The appellant vide its letter dated 28.11.1978 again reiterated its stand that it cannot be termed as a Motor Transport Undertaking and as such the Act will not apply to it. The appellant again by its letter dated 07.12.1978 addressed to the Deputy Commissioner of Labour, Madras, requested him to pass orders confirming that the appellant institution is not a Motor Transport Undertaking within the meaning of the Act.

7. However, the appellant, as per the directions of the Authorities, sought for renewal of its license for the years 1978 and 1979 without prejudice to its contention that it is not covered under the Motor Transport Workers Act, 1961. It is further claimed that the Inspector of Labour, Vellore again issued a show cause notice on 15.02.1979, as to why action should not be taken against the appellant for non-compliance with the provisions of the Act. The appellant sent a reply on 01.05.1979 reiterating its earlier stand that it is not a Motor Transport Undertaking within the meaning of the said Act and the workers, who are employed by it, cannot be termed as Motor Transport Workers falling within the purview of the Act. In the meanwhile, the Commissioner of Labour, by his letter dated 06.05.1980 required the appellant to narrate the circumstances

under which the exemption is sought for or if not, to apply the Chief Inspector of Motor Transport Undertaking, for removal of the appellant institution from the purview of the Act.

8. Accordingly, the appellant vide its letter dated 10.06.1980 requested the Inspector of Labour, to remove the appellant from the purview of the Act and also stated that by a misconception of the appellant institution was registered under the provisions of the Act. A reply was sent by the first respondent on 23.01.1981 stating that the question of removal of the appellant institution does not arise and by another letter dated 17.02.1981 advised the appellant institution to renew its registration. In compliance with the said letter dated 17.02.1981, the appellant by its letter dated 28.02.1981 submitted an application for renewal of registration under protest and without prejudice to its contentions that it is not a Motor Transport Undertaking for the years 1980 and 1981.

9. The appellant appears to have again reiterated its stand that the Motor Transport Workers Act did not apply to it. In the meanwhile, the Government of Tamil Nadu passed certain orders exempting certain Educational Institution from the purview of the Act, at the instance of the Indian Institute of Technology, Chennai and nine other Educational Institutions. The exemptions that were in force till the year 2003, were not renewed further. Since the exemption granted was not renewed, the 2nd respondent issued another show cause notice on 26.04.2004, to the appellant for its failure to comply with the provisions of the Act. The 2nd respondent issued another show cause notice on 20.01.2005 claiming that the Act applies to the appellant and that the appellant ought to have complied with the provisions by submitting necessary forms and paying necessary fees. The appellant once again sent a detailed reply on 04.04.2005, wherein, it reiterated its stand that the Motor Transport Workers Act would not apply to the appellant institution and sought for exemption from the provisions of the Motor Transport Workers Act. The said claim of the appellant was rejected by the 1st respondent vide its letter dated 27.12.2005, wherein, the 1st respondent, after referring to the Government orders issued on the subject, had concluded that since the Government had decided not to grant exemption from the provisions of the Motor Transport Workers Act, 1961, in respect of the Indian Institute of Technology, Chennai and nine other Educational Institutions the appellant cannot be construed as institution falling outside the scope of the Motor Transport Workers Act, 1961.

10. It is at this juncture, the appellant has come forward with the above Writ Petition mainly contending that in order to apply the provisions of the Motor Transport Workers Act, 1961 to

the appellant, the appellant should be a "Motor Transport Undertaking" as defined under Section 2(g) of the said Act. Unless, it is shown that the appellant answered the said definition as a "Motor Transport Undertaking" the provisions of the Act cannot be made applicable to the appellant. According to the appellant, since it is an Educational Institution and the Transport Vehicles owned by it or used only for the purposes of transporting its employees, Doctors and Students from the Hostel to the Hospital and the College and vice versa, the appellant cannot be said to be the Motor Transport Undertaking within the meaning of Section 2(g) of the Act. If the appellant is not a Motor Transport Undertaking within the definition of the Act, then the workers employed by the appellant in the Transport Sector, cannot be termed as "Motor Transport Workers" within the meaning of Section 2(h) of the said Act.

11. A counter affidavit has been filed on behalf of the respondents by the Deputy Secretary to Government, Labour and Employment Department. In the said counter affidavit it is claimed that the appellant is covered by the provisions of the Motor Transport Workers Act. After referring to the exemptions granted to the Educational Institutions vide its G.O.(D).No.1164, Labour and Employment Department, dated 28.12.1999 for the period of 3 years from 05.07.2000 to 04.07.2003 and the fact that the said exemption has not been renewed further, the respondents would contend that the non renewal of the exemption granted by the Government after specific period would automatically bring the appellant within the ambit of the Motor Transport Workers Act, 1961.

12. The counter affidavit also refers to the rejection of the request of Indian Institute of Technology, Chennai and nine other Institutions, seeking exemption from the provisions of the Act. The counter affidavit further goes on to set out the activities of the petitioner/appellant herein. It is also claimed that the vehicles owned by the appellant institution are engaged for transportation of staff comprising of Doctors, Nurses, Paramedical and other skilled and unskilled employees and students studying in the college run by the appellant. It is also claimed that the prayer of the appellant that the Act itself would not apply to them is a misconception. It is also contended in the counter affidavit that Transport Vehicles that are owned by the appellant that are used for plying by the students, staff and employees of the appellant on payment of Transport charges and not free of cost.

13. According to the respondents, the appellant having admitted the applicability of the Act to it and having sought for exemption cannot now turn around and claim that it is not a "Motor Transport Undertaking" within the meaning of the Act. It

is also claimed that the appellant having admitted that it collects the transport charges from the students, doctors, and other employees for transportation from Hostel to College, Hospital and return, the appellant cannot claim that it is not a "Motor Transport Undertaking" within the meaning of Section 2(g) of the Act.

14. The learned Single Judge, who heard the Writ Petition, did not go into the question, as to whether, the activities of the appellant would amount to its carrying on the activities of a "Motor Transport Undertaking" as defined under Section 2(g) of the Motor Transport Workers Act, 1961. The learned Single Judge, on the other hand, dismissed the Writ Petition holding that the Government by G.O.(D) No.1164, Labour and Employment Department, dated 28.12.1999 had granted an exemption, for a limited period, to the Educational Institutions from the purview of the Act and the said exemption had lapsed as the same was not renewed further. The learned Single Judge also took note of the fact that the Commissioner of the Labour in the memorandum dated 08.12.2003 declined to grant further exemption on the expiry of the exemption that was granted in 1999.

15. The learned Single Judge also faulted the appellant for not having challenged the memorandum dated 08.12.2003 and the memorandum dated 03.01.2003, in and by which, the request of IIT, Madras and nine other Colleges for renewal of the exemption was rejected by the Government. Taking note of the above, the learned Single Judge concluded that the appellant having not chosen to challenge the said memorandums, where the Government refused to extend the exemption granted to Educational Institutions from the applicability of the Motor Transport Workers Act, 1961, cannot seek a declaratory relief as has been claimed in the Writ Petition. On the above conclusions, the learned Single Judge dismissed the Writ Petition.

16. Aggrieved the appellant has come forward with the above Intra Court Appeal.

17. We have heard Mr.Sanjay Mohan, learned Senior Counsel appearing for M/s.S.Ramasubramaniam & Associates, for the appellant and Mr.M.Karthikeyan, learned Additional Government Pleader appearing for the respondents.

18. The issue involved in this Writ Appeal is, as to whether the appellant which is an Educational Institution could be called a "Motor Transport Undertaking", solely on the basis that it owned certain Transport Vehicles, which are exclusively used for the purposes of transporting its own employees and students from the Hostels, residential quarters to the Hospital, Colleges and vice versa. A peep in to the relevant provisions of the

Motor Transport Workers Act, 1961, would be relevant at this juncture Section 2(g) of the Motor Transport Workers Act, 1961, which defines a "Motor Transport Undertaking", reads as follows:

"Section 2(g): Motor Transport Undertaking means a Motor Transport Undertaking engaged in carrying passengers or goods or both by road for hire or reward and includes a private carrier."

19. The term private carrier has not been defined under the Motor Transport Workers Act, 1961, but Section 2(22) of the Motor Vehicles Act, 1939, defines a private carrier as follows:

"Private carrier means an owner of a Transport Vehicle other than a public carrier who uses that vehicle solely for the carriage of goods which are his property or the carriage of which is necessary for the purpose of his business not being a business of providing transport, or who uses the vehicle for any of the purposes specified in Sub Section (2) of Section 42."

Sub Section (2) of Section 42 of the Motor Vehicles Act, 1939, reads as follows:

"In determining, for the purposes of this chapter, whether a Transport Vehicle is or is not used for carriage of goods for hire or reward:

(a) The delivery or collection by or on behalf of the owner of the goods sold, used or let on hire or hire-purchase in the course of any trade or business carried on by him other than the trade or business of providing transport;

(b) The delivery or collection by or on behalf of the owner of goods which have been or which are to be subjected to a process or treatment in the course of a trade or business carried on by him, or

(c) the carriage of goods in a transport vehicle by a manufacturer of or agent or dealer in such goods whilst the vehicle is being used for demonstration purposes, shall not be deemed to constitute a carrying of the goods for hire or reward but the carriage in a transport vehicle of goods by a person not being a dealer in such goods who has acquired temporary ownership, of the goods for the purpose of transporting them to another place and there relinquishing ownership shall be deemed to constitute a carrying of the goods for hire or reward."

20. It is not the case of the respondents that the vehicles used by the appellant are meant for transport of goods for hire or reward. Therefore, these vehicles cannot be termed as private carriers. Therefore, unless it is shown that the vehicles owned by the appellant are used for carrying passengers or goods or both by road for hire or reward, the appellant cannot be termed as a "Motor Transport Undertaking".

21. Mr.Sanjay Mohan, learned counsel appearing for the appellant would invite our attention to the following judgments of the Hon'ble Supreme Court:

(i) TATA Engineering and Locomotive Co. Ltd., v. The Sales Tax Officer and Regional Transport officer, Poona and another, reported in (1979) 1 SCC 208;

(ii) Hindustan Aeronautics Ltd v. The Registering Authority and Taxing Officer and Ors., reported in 1999 (8) SCC 169; and

(iii) TATA Iron and Steel Co. Ltd., v. District Transport Officer and Ors., reported in 2015 (11) Scale 570.

22. Mr.Sanjay Mohan, would also draw our attention to the judgment of the Division Bench of Allahabad High Court in All India Public School's Welfare Society, Ghaziabad and another v. State of Uttar Pradesh and others, reported in 2000 ALL LJ 606; Father Raymond Coelho v. Labour Inspector, Office of Regional Joint Labour Commissioner, reported in 1997 (2) WLN 118, and the judgment of the Division Bench of Kerala High Court in District Executive Officer v. State of Kerala in Writ Appeal No.835 of 2008. Relying upon the above judgments, Mr.Sanjay Mohan, learned counsel appearing for the appellant would contend that the appellant cannot be termed to be a "Motor Transport Undertaking" within a meaning of Section 2(g) of the Motor Transport Workers Act. He would also draw our attention to the Judgment of Bombay High Court in Mohamed Zafrul Islam v. Birendra Lall reported in AIR 1965 Bombay 20, in support of his submission that the appellant cannot be construed as a Motor Transport Undertaking within a meaning of the Act.

23. Per contra, Mr.M.Karthikeyan, learned Additional Government Pleader appearing for the respondents would contend that once it is shown that the appellant owns transport vehicles which are used for transporting its employees, students and Doctors for hire or reward, the appellant would answer the description of a Motor Transport Undertaking within the meaning of 2(g) of the Act. To buttress his submission, the learned

Additional Government Pleader would rely upon the Judgment of the Hon'ble Supreme Court in Municipal Council Raipur & Anr v. State of Madhya Pradesh, reported in AIR 1970 SC 1923, wherein the Supreme Court had held that the Municipality owned the vehicles which are used for transporting night soil and refuse of the town free of charges would fall under the definition of the "Motor Transport Undertaking", under Section 2(g) of the Act. He would also invite our attention to the judgment of the Division Bench of Allahabad High Court in Star Paper Mills, Sharongo v. State of Uttar Pradesh and another, reported in 1973 (2) LLJ 433, wherein, the Division Bench had held that the company which owns a fleet of transport vehicles to collect raw materials from the manufacturer of paper would fall within the definition of the "Motor Transport Undertaking" under Section 2 (g) of the Act.

24. We have considered the rival submissions. In TATA Engineering and Locomotive Co. Ltd., v. The Sales Tax Officer and Regional Transport officer, Poona and another, reported in (1979) 1 SCC 208; the Hon'ble Supreme Court was concerned with the Bombay Motor Vehicles (Taxation of Passengers) Act 1958, which provided for taxation on certain clauses of public service. Section 3 of the said Act authorised levy of tax on all passengers carried by road in stage carriages at such rate fixed by the Government. Rule 2(1) of the Bombay Motor Vehicle Rules 1940, defined a passenger for the purposes of the Rules, as a person travelling in a public service vehicle other than the driver or a conductor or an employee of the licence holder, while on duty. While interpreting the provisions of the said enactment the Hon'ble Supreme Court concluded that merely because a nominal charge is realised from the employees of the Company it would not make the transport vehicle used by the Company to ferry its workers or employees a public service vehicle. It was on the above interpretation of the provisions of the Bombay Motor Vehicles (Taxation of Passengers) Act, the Hon'ble supreme Court held that these vehicles owned by the appellant viz. TATA Engineering and Locomotive Co. Ltd's case, referred to supra, will not be liable for being taxed as public service vehicles under the Bombay Motor Vehicle (Taxation of Passengers) Act, 1958.

25. In Hindustan Aeronautics Ltd v. The Registering Authority and Taxing Officer and Ors., reported in 78 (1994) CLT 976, a similar question regarding taxation under the Orissa Motor Vehicle Taxation Act 1975, was considered by the Hon'ble Supreme Court. The Registering and Taxing Authority had treated the vehicles belonging to the company viz. Hindustan Aeronautics Ltd., as contract carriages liable for levy of higher tax under the Orissa Motor Vehicle Taxation Act, 1975. The Hon'ble Supreme Court after referring to various cases on

the point including TATA Engineering and Locomotive Co. Ltd.'s case, referred to above, concluded that in the light of the definition of a Contract Carriage in Section 2(7) of the Motor Vehicles Act, the fact that the Hindustan Aeronautics Ltd, was allowing outsiders and third parties to hire its buses and other vehicles would not make those vehicles as Contract Carriages liable to be taxed at higher rate.

26. In All India Public School's Welfare Society, Ghaziabad and another v. State of Uttar Pradesh and others, reported in 2000 ALL LJ 606, a Division Bench of Allahabad High Court considered the definition of the term "public service vehicle" used under Section 6 of the Uttar Pradesh Motor Vehicles Taxation Act 1977, the Division Bench based on the peculiar language employed in Section 6 of the Act, which enables a levy of tax on public service Vehicle held that the vehicles which are used by an Educational Institution for transport of students cannot be classified as a public service vehicle as defined under the Act.

27. Our attention was also drawn by Mr.Sanjay Mohan, to the judgment in M.C.Mehta v. Union of India and Others, reported in 2000 (9) SCC 519, wherein, the Hon'ble Supreme Court had held that the buses owned by Schools are cannot termed as commercial vehicles in the strict sense. In TATA Iron and Steel Co. Ltd., v. District Transport Officer and Ors., reported in 2015 (11) Scale 570, the Hon'ble Supreme Court again considered the levy of additional tax, on public service vehicle, under the provisions of Bihar and Orissa Motor Vehicles Taxation Act, 1930. Section 2(j) of the said Act defines a Public Service Motor Vehicle as follows:

"Public Service Motor Vehicle means any motor vehicle used or adopted to be used for the carriage of passengers and goods for hire or reward and includes a motor cab, a stage carriage, or a public carrier"

28. On facts the Hon'ble Supreme Court found that the vehicles belonging to the appellant therein viz. M/s.TATA Iron and Steel Co. Ltd., are being used for transportation of its goods and some vehicles were used for carrying children or the employees from the residence to the School and back. Therefore, the Hon'ble Supreme court came to the conclusion that the vehicles in question though could be called as ones adopted for carriage of passengers, were not carrying passengers for hire or reward. On such conclusion, the Hon'ble Supreme Court held that those vehicles cannot be treated as public service vehicles.

29. Mr.Sanjay Mohan, learned counsel appearing for the appellant would also draw our attention to the judgment of the

learned single Judge of Rajasthan High Court in *Father Raymond Coelho v. Labour Inspector, Office of Regional Joint Labour Commissioner*, reported in 1997 (2) WLN 118, wherein, the learned Single Judge had an occasion to consider the definition of a "Motor Transport Undertaking" under Section 2(g) of the Motor Transport Workers Act directly. There again, the learned Single Judge came to the conclusion that an Educational Institution, which owns a bus used for transport of its students and staff cannot be termed as a "Motor Transport Undertaking" in the absence of any material to show that a fare is being charged for the bus journey.

30. In *District Executive Officer v. State of Kerala* in Writ Appeal No.835 of 2008, a Division Bench of the Kerala High Court have considered the definition of a "Motor Transport undertaking" under Section 2(h) of the Kerala Motor Transport Workers Welfare Fund Act, 1985, Section 2(h) of the said Act reads as follows:

"Motor Transport undertaking" means a motor transport undertaking engaged in carrying passengers or goods or both by road for hire or reward and includes a private carrier"

31. There again, the Division Bench pointed out that the Educational Institutions, whose main activity is imparting education also engages itself with providing certain service to its students as well as teachers. Such an Educational Institution cannot be termed as a "Motor Transport undertaking". The Division Bench also, however, took note of the fact that the institutions therein do not charge even cost for the travel undertaken by its students. Taking note of the fact that the institutions offer such travel free of cost, the Division Bench concluded that the workers employed in such institutions as drivers, conductors, cleaners of the Motor Vehicle owned by them, cannot be treated as "Motor Transport Workers" so as to enable the State to demand contribution to the Motor Transport Workers Welfare Fund constituted under the Kerala Motor Transport Workers Welfare Fund Act, 1985,

32. An analysis of the law declared in the above said judgments would show that the essential ingredient is transport of passengers for hire or reward. If it is shown that passengers are transported for hire or reward, then the institution engaged in such transport could be termed a "Motor Transport Undertaking" within the meaning of Section 2(g) of the Motor Transport Workers Act, 1961.

33. The judgments of the Hon'ble Supreme Court in *Municipal Council Raipur & Anr v. State of Madhya Pradesh*, reported in AIR

1970 SC1923, as well as the judgment of the Division Bench of the Allahabad High Court in *Star Paper Mills, Sharongo v. State of Uttar Pradesh* and another, reported in 1973 (2) LLJ 433, were concerned with goods vehicles that could be called as "private carrier". Therefore, according to Mr. Sanjay Mohan, the reasons that prevailed upon the Hon'ble Supreme Court to come to the conclusion that the Municipal Council Raipur in the first case and the Star Paper Mills in the second case are "Motor Transport Undertaking", as defined in Section 2(g) of the Act cannot be applied to the facts of the present case. We are afraid, such a contention loses sight of very important circumstances. Section 2(g) of the Motor Transport Workers Act, defines a "Motor Transport Undertaking", as a Motor Transport Undertaking engaged in carrying passengers or goods or both by road for hire or reward and includes a private carrier.

34. In Municipal Council Raipur's case, the Hon'ble Supreme Court was concerned with the vehicles belonging to the Municipality which were transporting Garbage. While considering applicability of Section 2(g) to such an activity, the Hon'ble Supreme Court concluded that while carrying out such an activity, the Municipality would be a "Motor Transport Undertaking" engaged in carrying passengers or goods. Similarly in *Star Paper Mills's* case, the Hon'ble Division Bench of the Allahabad High Court considered the applicability of the provisions of the Motor Transport Workers Act to a paper mill. The Division Bench held that the activity of M/s. Star Paper Mills, which owned a fleet of transport vehicles which were used to collect the raw material from the manufacturer, though not the principal activity of the Company, would still make it a "Motor Transport undertaking".

35. Therefore, the qualifying words, in our considered opinion are the words hire or reward. If it is shown that the buses or the Motor Vehicles, belonging to the appellant are used for transport of students/doctors/employees of the appellant free of cost then one can safely conclude that there is no transport of passengers by road for hire or reward. May be, under such circumstances, the appellant Institution cannot be held to be a "Motor Transport Undertaking" within the meaning of Section 2(g) of the Motor Transport Workers Act 1961.

36. Coming to the facts of the present case, the affidavit filed in support of the Writ Petition is totally silent on this very crucial question, viz. as to whether the appellant is collecting any fare or charges from its students/doctors/employees for the transport facility that is being offered to them. However, in the counter affidavit filed in the Writ Petition, the deponent viz. the Deputy Secretary to Government, Labour and Employment Department to the Government

of Tamil Nadu, had specifically stated as follows:

"8.... The petitioner is engaged in business / trade / occupation as an industry through its commercial activities in as much as services are rendered on payments and not free. Transport vehicles are owned by the petitioner and are used for plying on payment of Transport charges by the staff / employees / students. The reply of the petitioner in para 6 of the affidavit to the letter dated 16.09.1968 cannot be accepted inasmuch as the vehicles are used commercially. The averments in para 7 of the affidavit are mere exaggeration of the alleged activities to maintain this writ petition."

37. Though such a categorical averment has been made in the counter affidavit, filed in the Writ Petition itself, the appellant has not come forward to deny the same by filing a rejoinder. Therefore, the aforesaid averment relating to levy of charges, by the appellant, for offering transport services to its students/ doctors / employees stands uncontroverted. Once it is found that the appellant Institution charges a fee for transporting its own students / doctors / employees, it would definitely be a "Motor Transport Undertaking" within the meaning of Section 2(g) of the Motor Transport Workers Act 1961, in view of the categorical pronouncement of the Hon'ble Supreme Court in Municipal Council Raipur's case, and that of the Division Bench of Allahabad High Court in Star Paper Mills's case, referred to supra, dehors the fact that its principal activity is Education and not transport of passengers.

38. In view of the above, we are constrained to deny the relief of declaration sought for by the appellant, though not for the same reasons assigned by the learned Single Judge. Therefore, the intra Court Appeal will stand dismissed. However, in the circumstances of the case there will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Secretary to Government,
Government of Tamilnadu,
Labour and Employment Department,
Fort St. George, Chennai 600 009.
2. Deputy Inspector of Labour,
No.10, Ponniyamman Koil Street,
Sainathapuram, Vellore.

+lcc to M/s.S.Ramasubramaniam & Associates,
Advocate, S.R.No.40171

W.A.No.1607 of 2015
and MP No.1 of 2015

SVI (CO)
CS/05/07/18



WEB COPY