

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.06.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.29005 of 2004

and

WPMP.Nos. 35225 and 35226 of 2004

V. Hariharan

..Petitioner

vs

1. The Regional Transport Officer,
Dharmapuri-5.

2. The Regional Transport Officer,
Villupuram.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari or any other appropriate writ or order or direction in the nature of a writ, calling for the records of the 1st respondent herein made in Lr.No.38157/A3/2004 dated 04.10.2004 demanding a sum of Rs.55,000/- being one month tax for a contract carriage in respect of the petitioner's spare bus TN.32.B.8173 and quash the same.

For Petitioner : Mr. S. Radhagopalan

For Respondents : Mr. J.Ramesh, AGP

O R D E R

The petitioner is challenging the demand notice in R.No.38157/A3/2004 dated 4.10.2004 issued by the 1st respondent demanding Rs.55,000/- as one month tax for the contract carriage.

2. The case of the petitioner is that the petitioner was granted temporary permit from 1.10.2004 to 8.10.2004 to ply vehicle on the route from Tirukoilur to Tirukoilur through Cuddalore, Ponnidicheery, Tindivanam, Chengalpattu etc. places. However, the tourist agent used the vehicle on 2.10.2004 from

Meiyanur to Hoganekkal, contrary to the temporary permit granted by the authority. The said vehicle was carrying independent trip for different party. Thus Vehicle had deviated the permit condition and used as contract carriage.

3. Learned counsel for the petitioner submitted that though the temporary permit was granted in the favour of the petitioner vehicle under section 88(8) of the Motor Vehicle Act, tax has already been collected and therefore collection of another tax is arbitrary as held by the decision of this Court in the case of Parveen Travels & Other Vs. The Regional Transport Officer, Salem-7., reported in 2008 (1) TN MAC 538 wherein this Court held as follows:

34. In Hardev Motor Transport Vs. State of M.P., 2006 (8) SCC 613, the constitutionality of Entry IV (G) and Explanation 7 (as amended in 2004) of Schedule I of M.P. Motor Vehicle Act, 1991 was tested. The facts of this case are that the holders of Contract Carriage permit were alleged to have used their vehicles as Stage Carriages and their vehicles were determined. The petitioners therein were asked to pay duty, as if the vehicles were being plied without any permit. The amendments and the levy was challenged before the High Court and the operators were unsuccessful. On Appeal, the Supreme Court having regard to the nature of tax and the type of permits granted under the Motor Vehicles Act at paragraphs 29, 30 and 32 held as follows:

"29. Section 3 of 1991 Act is the charging Section. It provides that the tax shall be levied on every motor vehicle used or kept for use in the State at the rates specified in the First Schedule. The levy of tax, therefore, is on the motor vehicles. Its rate may vary keeping in view its use or the nature thereof. However, the use of a motor vehicle so far as public service vehicles are concerned would depend upon the nature of permit held by it. It is not in dispute that the appellants herein have been granted permit for plying their buses as contract carriage. Allegation against this is that

they have been violating the terms and conditions of the permit by plying their vehicles as stage carriage. It is however, not in dispute that the rate of tax of a contract carriage permit is more than the stage carriage permit. Clause (g) of Entry IV specifies the rate of tax of motor vehicle plying without permit at the rate of Rs.1,500 per seat per month.

30. Explanation (7) of the First Schedule of the 1991 Act does not create any legal fiction. It provides for an inclusive definition stating that the words "plying without permit" in clause (g) shall include plying of a public service vehicle on an unauthorised route or making a trip not authorised by a permit granted under the 1988 Act.

32. We have noticed that the Constitution Bench categorically states that compensatory tax cannot be progressive. We have furthermore noticed that, according to the Constitution Bench, imposition of tax cannot be a term or condition of a licence. If a permit has been granted, the holder of a permit is liable to comply with the conditions of permit. If he violates the terms and conditions of permit, law will take its own course. A permit is granted under the 1988 Act. If there is violation of the terms of permit, the consequences therefor, shall ensue as contained in Section 192-A of the 1988 Act. A distinction must be borne in mind that a tax cannot be imposed by way of penalty although penalty can be imposed for non-payment of tax or evasion of tax. The State may take suitable legislations in this behalf. But the same would not mean that while specifying a rate of tax, the executive Government of

the State can indirectly levy a penalty which it cannot do directly."

In view of the above decision cited supra, the demand notice issued by the authority is set aside and the Writ Petition is allowed. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

mrn

To

1. The Regional Transport Officer,
Dharmapuri-5.

2. The Regional Transport Officer,
Villupuram.

+1cc to Mr.S. Radhagopalan, Advocate SR.No.46723

+1cc to Government Pleader SR.No.46975

W.P.No.29005 of 2004
and

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RR(CO)
GMY(12/07/2019)

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