

(1985) 08 AP CK 0003

Andhra Pradesh High Court

Case No: Writ Petition No"s. 15820 of 1984, 6979 of 1982 and 11703 of 1983

V. Govindarajulu and

APPELLANT

Vs

The Regional Transport Officer,
Anantapur and Others

RESPONDENT

Date of Decision: Aug. 6, 1985

Acts Referred:

- Andhra Pradesh Motor Vehicles Taxation Act, 1963 - Section 12, 3, 4
- Constitution of India, 1950 - Article 133
- Motor Vehicles Act, 1939 - Section 2(29), 2(3), 60

Citation: AIR 1986 AP 7

Hon'ble Judges: P. Chennakesav Reddy, Acting C.J.; Lakshmana Rao, J; Kodandaramayya, J

Bench: Full Bench

Advocate: E.P.K. Sikhamani, S. Venkata Reddy and K.N. Jwala, for the Appellant; A.A.G. and Govt. Pleader, for the Respondent

Judgement

P. Chennakesav Reddy, Actg. C.J.

1. These cases raise a vexed question of considerable importance, frequently faced by the transport authorities and owners of public service vehicles and agitated before the Courts. The question is when is a "contract carriage" as defined u/s 2 (3) of the Motor Vehicles Act, 1939, (for brief "the Act") said to have been used as a "stage carriage" as defined u/s 2 (29) of the Act in order to attract the levy and demand of the increased rate of tax for a stage carriage as notified u/s 3 of the Andhra Pradesh Motor Vehicles Taxation Act, 1963 (for brief "the Taxation Act"). Is it necessary for the levy of tax as a stage carriage that the owner of the public service vehicle should hold a valid permit to ply it as a stage carriage? When one of the cases, W. P. No. 15820 of 1984 came up for hearing before Jeevan Reddy and Sardar Ali Khan, JJ., the learned Judges felt that the course of judicial authority on the

question had not been steady but teetered particularly after the Division Bench decision of this Court in W. P. No. 3714 of 1982 and it was therefore not only desirable but necessary to have an authoritative pronouncement on this question by a Full Bench of this Court. Accordingly they referred this case and cases involving similar question to the Full Bench. That is how these cases have been posted now before us.

2. Before we proceed to answer the question, the short and relevant facts provoking the vexed question may usefully be set out : The contract carriage AAA 1999 was found carrying 49 adult passengers in all from Tadipatri to Anantapur. It was stopped and checked by the Motor Vehicles Inspector, Anantapur on 25-9-1984 at 4.00 P. M., near Singanamala tank on Anantapur - Tadipatri road. All the passengers boarded the vehicle at Tadipatri bus-stand. They paid an individual fare of Rs. 5/- each. All the passengers did not belong to single party and each was travelling on his own word. The trip sheet maintained in the bus did not indicate any contract, express or implied, between the passengers and the owner of the contract carriage. Therefore, the Motor Vehicles Inspector came to the conclusion that the vehicle was misused as a stage carriage by collecting individual fares. On the basis of the check report submitted by the Motor Vehicles Inspector, Anantapur, the Regional Transport Officer issued a show cause notice to the registered owner of the contract carriage AAA 1999 to show cause within seven days from the date of receipt of the said notice as to why the maximum tax of Rs. 11,500/- applicable to a stage carriage should not be collected from him for the quarter ending with 30-9-1984. The registered owner submitted his explanation. He stated in his explanation that the Regional Transport Authority had issued a notice for taking action u/s 60 of the Act for the said alleged offence and requested the Regional Transport Officer to await the decision of the Regional Transport Authority. The Regional Transport Officer on a consideration of the report of the checking officer found that the contract carriage had been misused as a stage carriage holding that all the passengers that boarded the contract carriage paid individual fare of Rs. 5/-, that there was no express or implied contract between the passengers and the contract carriage owner and that the list of passengers maintained did not tally with the passengers that were actually found travelling in the bus. The registered owner was therefore directed to pay the difference of Rs. 2750/- for the quarter ending 30-9-1984 being the difference in tax payable when the vehicle is used as a contract carriage and tax payable when the vehicle is used as a stage carriage. Aggrieved against the said decision, the owner of the contract carriage filed the writ petition invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution.

3. Broadly stated the question that therefore pre-eminently comes to the fore is when can a contract carriage - a public service vehicle, be classified as a stage carriage to attract the higher rate of tax payable on a stage carriage under the notification issued by the State Government u/s 3 (2) of the Taxation Act.

4. In order to answer the question , it is necessary to look at the relevant provisions of the Act and scrutinise the structure of taxation. "Contract Carriage" is defined u/s 2 (3) of the Act as follows :

"contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward under a contract expressed or implied for the use of the vehicles as a whole at or for a fixed or agreed rate or sum.

(i) on the time basis whether or not with reference to any route or distance, or

(ii) from one point to another, and in either case without stopping to pick up or set down along the line of route passengers not included in the contract; and includes a motor cab notwithstanding that the passengers may pay separate fare."

Section 2 (15) defined "motor cab" to mean any motor vehicle constructed, adapted or used to carry not more than six passengers excluding the driver, for hire or reward. "Permit" is defined u/s 2 (20) of the Act to mean the document issued by the commission or a State or Regional Transport Authority authorising the use of a transport vehicle as a contract carriage, or stage carriage, or authorising the owner as a private carrier or public carrier to use such vehicle. Section 2 (24) defines "public place" to mean a road, street, way or other place, whether a thoroughfare or not, to which the public have a right to access, and includes any place or stand at which passengers are picked up or set down by a stage carriage. Section 2 (25) defines "public service vehicle" to mean any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a motor cab, contract carriage and stage carriage. Lastly we come to the definition of "stage carriage" u/s 2 (29) which is as follows :

"stage carriage" means a motor vehicle carrying or adapted to carry more than six persons excluding the driver which carries passengers for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey."

5. Section 2 (33) defines "transport vehicle" to mean a public service vehicle or a goods vehicle.

6. Sections 46 to 48 deal with the procedure for the grant of stage carriage permits and the conditions subject to which a stage carriage permit could be granted by a Regional Transport Authority. Sections 49 to 51 deal with the procedure for the grant of a contract carriage permit and the conditions subject to which a permit can be granted. Section 57 prescribes the procedure to be observed in applying for and granting stage carriage or contract carriage permits. Section 59 enumerates the general conditions that are applicable to the holder of any permit. Section 60 invests the transport authority which granted the permit with the power to cancel or suspend the permit for violation of any of the conditions enumerated therein.

7. It would be clear from a combined reading of the definitions of "contract carriage", "stage carriage", "public service vehicle" and "transport vehicle" that a contract carriage and a stage carriage are public service vehicles used for the carriage of passengers for hire or reward. A contract carriage or a stage carriage can be used as a transport vehicle under a permit granted by the State or Regional Transport Authority. The permit is for the use of the transport vehicle as a contract carriage or as a stage carriage. Now the distinction between a contract carriage and a stage carriage is clearly drawn in the definition of "contract carriage" u/s 2 (3) and "stage carriage" u/s 2 (29) of the Act. The definition of "contract carriage" is plain and the language not too elastic and wide so as to bring within its sweep a situation never intended by the Legislature. A transport vehicle is a contract carriage when the vehicle as a whole is hired for a fixed or agreed sum under a contract express or implied by a passenger or passengers from one point to another or on a time basis whether or not with reference to any route, and in either case without stopping to pick up or set down along the line of route passengers not included in the contract. On the other hand, in the case of a "stage carriage" a transport vehicle is not hired as a whole and only separate fares are collected from individual passengers either for the whole journey or for stages of the journey and the restrictions relating to a contract carriage use of the vehicle as a whole for a fixed sum and the journey between two points without a right to pick up passengers en route or set down passengers are not there. In this content rule 213 of the A. P. Motor Vehicles Rules which lays down additional conditions for the permits becomes relevant. Sub-rule IV condition (vii) makes it obligatory for the owner of a contract carriage to maintain a list of passengers travelling in the vehicle in the form prescribed therein in respect of each trip and such list shall be produced before the checking officer on demand by him. Thus, it is clear that the dominant factor that determines whether a transport vehicles is plied as a contract carriage or as a stage carriage is the actual user of the vehicle and not the permit granted authorising the use.

8. The learned counsel for the petitioners contended : The mere fact that individual fares were collected from the passengers does not make the vehicle a stage carriage. There must be a valid permit for the use of the vehicle as a stage carriage. The valid permit held by the petitioners in these cases was only for the use of the vehicle as a contract carriage and to ply between two fixed places and all the passengers who travelled in the vehicle were travelling only between those two places and no passenger was picked up on the way and the user of the vehicle was as a contract carriage and not as a stage carriage. It is essential for a contract carriage to be classified as a stage carriage, that the contract carriage should be able to pick up or set down along the line of the route passengers not included in the contract. If no passengers were picked up or set down along the line on the route, the vehicle cannot be classified as a stage carriage. This contention, in our view, ignores the essential part of the definition of "contract carriage", namely, that the contract, express or implied, to use the vehicle must be as a whole for a fixed

sum. The essential condition is that a single party or person should be exercising full control for the use of the vehicle. In other words, was there a single contract in respect of the vehicle as a whole ? If there is no single contract in respect of the vehicle and if no person or leader of the party could exercise full control of the vehicle and several passengers have separately contracted for the use of the vehicle and pay individual fares, such a transport vehicle cannot fall within the definition of contract carriage. But if there is a prior contract for the use of the vehicle as a whole with the owner, the mere fact that individual fares were collected by the leader of the party from the passengers does not make the vehicle a stage carriage. Though a contract carriage and a stage carriage are public service vehicles as defined u/s 2 (25) of the Act, it is in the nature of the user that the distinction between the two types of transport vehicles is drawn.

9. We may now usefully refer to the judicial precedents on the question.

10. The view expressed by us above is supported by the unreported decisions of this Court in W. P. No. 6127 of 1970 and W. A. No. 131 of 1972 preferred against the order in W. P. No. 6127 of 1970. In these two decisions the learned Judges held that the main requirement to fall within the ambit of the definition of "contract carriage" is whether the prior contract, express or implied, entered into by passenger or passengers was for the use of the vehicle as a whole for a fixed amount. It was also observed by Kuppuswami, J., (as he then was) that

"It is true that if once a contract is entered into expressly or impliedly to have the use of the vehicle as a whole, from the mere face that for convenience fares were collected individually from the passengers which is often in vogue, the vehicle will not cease to be a contract carriage."

11. The learned Judge further observed that the definition of "contract carriage" to include a motor cab notwithstanding that the passengers may pay separate fares also strengthens or lends assurance to the conclusion that collection of individual fares is not permitted in a contract carriage. The contract must be for the use of the vehicle as a whole for a fixed amount.

12. Kondaiah, J., (as he then was) in Y. Venkata Subamma Vs. The Regional Transport Officer, Krishna District, Vijayawada and Another, held that in order to bring a transport vehicle within the definition of contract carriage, the use of the vehicle must be as a whole at or for a fixed or agreed rate or sum under a contract express or implied without stopping to pick passenger not included in the contract. The learned Judge further observed that

"The contract contemplated u/s 2 (3) must be only one contract and the use of the vehicle must also be as a whole. It does not admit two or more contracts for the purpose of use of the vehicle as a contract carriage by different parties."

13. The Supreme Court in Shri Roshanlal Gautam Vs. State of Uttar Pradesh and Others, pointed out the distinction between a contract carriage and a stage carriage as defined u/s 2 (3) and 2 (29) thus

"contract carriage is engaged for the whole of the journey between two points for carriage of a person or persons hiring it, but it has not the right to pick up other passengers en route. The stage carriage, on the other hand, runs between two points irrespective of any prior contract and it is boarded by passengers en route who pay the fare for the distance they propose to travel."

14. Thus, the essential difference between a contract carriage and a stage carriage is that in the former there is a prior contract between the passenger or passengers for the use of the vehicle as a whole for a fixed or agreed sum while in the latter there is absence of such a prior contract and the passengers board the bus en route and pay the fare for the distance they propose to travel.

15. The unreported decision of the Court relied upon by the learned counsel for the petitioners in W. P. No. 898 of 1972 and W. A. No. 943 of 1972 and W. A. No. 17 of 1977 in which decision in W. A. No. 943 of 1973 was followed, are not of much assistance to the learned counsel. In W. P. No. 898 of 1972 undoubtedly there was a prior agreement entered into by one Babu Rao to take a party of persons from Vijayawada to Hyderabad and back and the vehicle was engaged as a whole for a hire for a fixed amount of Rs. 400/. Therefore, the learned Judge rightly held that the transport vehicle was used as a contract carriage. In W. A. No. 943 of 1973, the decision in W. P. No. 898 of 1972 was merely affirmed and in W. A. No. 17 of 1977 the decision in W. A. No. 943 of 1973 was followed. The learned counsel, however, submits that there was a discordant note struck from the earlier decision in W. P. No. 131 of 1972 in W. P. No. 3714 of 1982 by a Division Bench of this Court consisting of Madhava Reddy, A. C. J., and Punnayya, J. It is true that in that case the learned Judges observed that

"The essential condition for holding that a motor vehicle was plying as a stage carriage is that it should have picked up passengers or set down passengers en route. So long as all the passengers were picked up at the starting point, in this case at Bangalore and were set down at the last point i.e, Madras, and were not set down anywhere en route, the contract carriage which was permitted to proceed from Bangalore to Madras with 35 passengers cannot be said to have plied as a stage carriage. Suffice to refer to a judgment of this Court in W. A. No. 17 of 1977. Our learned brother Ramachandra Rao, J., speaking for the Bench held : The mere fact that individual fares were collected from the passengers did not lead to the conclusion that the contract carriage was used as a stage carriage."

16. With great respect to the learned Judges we find it difficult to agree with the statement of law made that the essential condition for holding that a motor vehicle was plying as a stage carriage is that it should have picked up passengers en route.

Such limited operation of the definition of contract carriage is not permissible on the plain language employed in the definition.

17. Then the question is whether the mere user of a contract carriage as a stage carriage attracts the liability to pay the tax payable on a stage carriage. Is it essential that only when the owner plies a transport vehicle under permit issued by the competent authority authorising the owner to use it as a stage carriage u/s 48 of the Act that tax authorities can levy tax on the following that the vehicle was a stage carriage.

18. Let us therefore examine the structure of the Taxation Act. Section 2 (h) defines "Tax" to mean tax leviable under the Act". Section 3 (1) empowers the State Government to levy tax on every motor vehicle used or kept for use in a public place in the State by notification from time to time. Sub-section (2) to section 3 provides that the notification issued under sub-section (1) shall specify the class of motor vehicles on which the rates for the periods at which and the date from which the tax shall be levied. Thus, section 3 clearly stated that it is the nature of the use of the vehicle that attracts the levy of tax on a motor vehicle. The question of permit being essential for the levy of tax is wholly irrelevant u/s 3 (1). The only question to be asked is what is the nature for the use of the motor vehicle ? Is it used or kept for use as a contract carriage or as a stage carriage and not whether the owner of the vehicle is having a permit for its use as a contract carriage or as a stage carriage. The nature of permit for use of the transport vehicle as a contract carriage or stage carriage by the owner is not the real determinant for the levy and collection of the tax.

19. It may be noticed from the definition of "public service vehicle" and "permit" that it is for the use of the vehicle as a stage carriage or as a contract carriage that a permit is granted. If a transport vehicle is found to have been used as a stage carriage, tax is levied on the basis of the use of the transport vehicle. A Full Bench of this Court in Y. Peda Venkaiah Vs. The Regional Transport Officer, Nellore, had occasion to consider the very same question. Alladi Kuppuswami, J., (as he then was) repelling the contention that once a vehicle was registered as a contract carriage and tax was paid on that footing there is no provision in the Act which enables the authorities to levy tax again on the vehicle as a stage carriage if it is found to have been used as a stage carriage and the petitioner may be liable for action under the provisions of the Motor Vehicles Act for contravening the conditions of the permit which enabled him to use the vehicle as a contract carriage observed that

"This submission in our view proceeds upon a misconception of the true scope of the Act. Section 3 of the Act authorises the Government to levy tax on every vehicle used or kept for use in a public place in the State by means of a notification issued under that section. Section 3 (2) provides that the notification shall specify the class of motor vehicle on which the rates for the period at which and the date from which the tax shall be levied. In view of this provision, the Government is authorised to

levy different rates of tax on different classes of vehicles and it has accordingly done so. Further, section 4 provides that tax levied shall be paid in advance either quarterly, half-yearly or annually on a licence to be taken out by the owner of the vehicle. If, therefore, at the beginning of the quarter, the vehicle belongs to a particular class referred to in that notification tax is levied on that footing and an entry is made in the certificate of registration to that effect. But it does not follow that if the class of vehicle is changed during the quarter by reason of the use it was put to tax cannot be levied according to the class to which the vehicle then belongs. As soon as the class of the vehicle is changed, the rate of tax which applies to that class according to the notification is automatically attracted. There is no need for the Act to provide specifically that if there is a change in the class of vehicle, the authorities can levy tax afresh on that vehicle as belonging to that class. The power contained in Section 3 read with section is sufficient to enable the Government to levy the tax from time to time when the class of the vehicle is changed."

20. We entirely agree with the reasoning and conclusion of the learned Judges.

21. There remains lastly the contention that for violation of any of the conditions of the permit granted u/s 51 or the conditions imposed u/s 59, only action can be taken for cancellation or suspension of the permit u/s 60 of the Act and no tax can be demanded. As already pointed out, tax is levied on the user of the vehicle and action u/s 60 is taken for the breach of any of the conditions of the permit. There is no prohibition in the Act for the levy and collection of tax as authorised u/s 3 (1) of the Taxation Act in case action is taken for the breach of any of the conditions of the permit. The two actions are quite different - one for the breach of the conditions of the permit and the other for the user of the vehicle.

22. To sum up our conclusions

(1) The definition of "contract carriage" u/s 2 (3) of the Act is plain and the language is not so elastic and wide so as to bring within its sweep a situation never intended by the Legislature.

(2) The dominant factor under the definition that determines whether a transport vehicle is used as a contract carriage or as a stage carriage is whether the vehicle is hired as a whole for a fixed or agreed sum under a prior contract, express or implied, by a single person or party with the owner of the vehicle.

(3) If once a single contract is entered into expressly or impliedly for the use of the vehicle as a whole, from the mere fact that the leader of the contracting party or one of the persons in the party collected fares from the passengers, which is very often in vogue, the vehicle cannot be said to have been used as a stage carriage.

(4) If there was no single contract with the owner in respect of the vehicle and if no person or leader of the party could exercise full control over the vehicle and several passengers had separately contracted for the use of the vehicle and paid individual

fares, the transport vehicle used in such manner falls within the definition of "stage carriage" and not "contract carriage",

(5) Tax is levied on the basis of the use of the transport vehicle and not on the nature of the permit held by the owner in respect of the vehicle and the power contained in section 3 read with section 4 of the Taxation Act is sufficient to enable the State Government to levy the tax from time to time when the nature of the use of the vehicle is changed and the class of the motor vehicle is thereby altered, and

(6) There is no prohibition in the Act for the levy and collection of tax as authorised u/s 3 (1) of the Taxation Act in cases where action is taken for the breach of any of the conditions of the permit against the holder of the permit u/s 60 of the Act. The two actions are quite different - one for the user of the vehicle and the other for the breach of the conditions of the permit.

23. Now turning to the facts, it is the clear and categorical finding of the Transport Authorities that there was a single contract with the owner of the contract carriage for the use of the vehicle as a whole and individual fare was collected from each passenger. On such a finding, the only right conclusion, applying the aforesaid principles, that can be reasonably reached is that the contract carriage and thereby attracted the levy of tax as a stage carriage.

24. The learned counsel however submitted that an appeal is provided for u/s 12 of the Taxation Act against an order of levy of penalty u/s 6 of the Taxation Act, that no appeal is provided for against an order of levy of tax on the basis of change in the user or in the classification of the vehicle and that therefore this Court in the interests of justice could and should re-examine the evidence and arrest the oft arbitrary and high-handed action of the checking officers. It is now firmly settled that this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution will not act as a Court of Appeal and embark upon any evaluation of the evidence on record and upset a finding of fact. (Vide) Jt. Registrar of Co-operative Societies Madras and Others Vs. P.S. Rajagopal Naidu and Others, . We are, however, positively of the opinion that section 12 should be suitably amended so as to confer a right of appeal on an aggrieved person against levy of tax on the ground of alleged misuse of the motor vehicle so that the appellate authority or modify the levy made by the lower authority. A copy of this order shall be communicated to the Secretary to Government, Transport Department, for necessary action.

25. In the upshot, the Writ Petitions are liable to be dismissed and they are accordingly dismissed with costs. Advocate's fee Rs. 150/- in each.

26. The learned counsel for the petitioner in W. P. Nos. 6979/82 and 11703/83 makes an oral application for leave to appeal to the Supreme Court. In our considered opinion no substantial question of law of general importance which requires to be considered by the Supreme Court arises in these cases. The oral request is, therefore, rejected.

27. Petitions dismissed.