

Chandrakanth Vs. State of Karnataka

Chandrakanth Vs. State of Karnataka

SooperKanoon Citation : sooperkanoon.com/382482

Court : Karnataka

Decided On : Jan-01-1996

Reported in : ILR1996KAR365; 1996(6)KarLJ256

Judge : M.L. Pendse, C.J. and ;B.N. Mallikarjuna, J.

Acts : [Karnataka Motor Vehicles Taxation Act, 1957](#) - Sections 8B

Appeal No. : W.P. Nos. 36714 of 1992 Etc. W.A. Nos. 191 and 215 of 1992

Appellant : Chandrakanth

Respondent : State of Karnataka

Advocate for Def. : B.R. Sundaraja Gupta, ;P.K. Ramesh, Advs. and ;K. Viswanath, HCGP

Advocate for Pet/Ap. : B.R. Sundararaja Gupta, ;C.S. Shanthamallappa, ;Shreeshail Turkani, ;C. Narasimhachar, Advs. and ;K. Viswanath, HCGP

Judgement :

Pendse, C.J.

1. This batch of Writ Petitions and Writ Appeals raise identical questions and, therefore, can be conveniently disposed of by Common Judgment. It would be convenient to set out the facts which gave rise to filing of Writ Appeal No. 191/92, to appreciate the issue involved for determination.

2. The respondent Kaleemulla (in W.A.No. 191/92) is the owner of goods vehicle bearing Registration No. CAS 3048. Respondent had secured a permit to use the vehicle as a public carrier and the permit was valid upto March 20, 1991, The permit entitled the respondent to ply the vehicle in the States of Karnataka, Andhra Pradesh and Tamil Nadu. The permit did not entitle the respondent to carry any passenger in the goods vehicle. On September 23, 1989 the vehicle was searched by the authorities and it was noticed that the respondent was carrying 15 passengers in the vehicle after collecting diverse amounts enabling to travel from one point to another. The driver of the vehicle was prosecuted and he admitted that passengers were carried in the vehicle by charging fare and that was in contravention of the permit issued by the Authorities constituted under the Motor Vehicles Act.

3. The Karnataka Government had enacted the [Karnataka Motor Vehicles Taxation Act, 1957](#) (for short 'the Act') to consolidate and amend the law relating to levy of tax on motor vehicles in the State of Karnataka. Section 3 of the Act provides for levy of tax, at the rates specified in Part-A of the Schedule, on Motor Vehicles suitable for use on roads. Part-A of the Schedule sets out various classes of vehicles and quarterly tax payable for such vehicles. The goods vehicles fall under Item-3 and it interalia provides different rates of quarterly tax depending upon the weight laden. Section 8 of the Act provides for payment of additional tax which reads as follows:

'Section 8- Payment of additional tax -- When any motor vehicle in respect of which a tax has been paid is altered or proposed to be used in such a manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax is payable, the registered owner or person who is in possession or control of such vehicle shall pay an additional tax of a sum which is equal to the difference between the tax already paid and the tax which is payable in respect of such vehicle for the period for which the higher rate of tax is payable in consequence of its being altered or so proposed to be used and taxation authority shall not grant a fresh taxation card in respect of such vehicle so altered or proposed to be so used until such amount of tax has been paid.'

The Karnataka Legislature amended the Karnataka Motor Vehicles Taxation Act on April 17, 1989 and by the amending Act, Section 8B was inserted. The amended Section 8B reads as follows:

'8B, Further Additional Tax for misuse of Motor Vehicles-

When any motor vehicle in respect of which tax has been paid is misused or used not in accordance with the purpose for which the vehicle is registered or the permit is granted or is used in such manner as to cause the vehicle to become, a vehicle in respect of which a higher rate of tax is payable, the registered owner or person who is in possession or control of such vehicle, shall for such misuse other than the one under Sub-section (4) of Section 3, pay a further additional tax of a sum which is equal to double the difference between the tax already paid and the tax which is payable in respect of such vehicle for the period for which the higher rate of tax is payable in consequence of its being misused or used not in accordance with the purpose for which the vehicle is registered or the permit is granted.'

In exercise of power conferred under Section 8B of the Act, the Authority served demand notice calling upon the respondent to pay additional amount of tax determined at Rs. 5,810/-. The demand notice was served on the respondent on January 16, 1990. The respondent feeling aggrieved, preferred appeal before the Deputy Commissioner for Transport, Bangalore, but by order dated January 31, 1991 the appeal ended in dismissal. The order of dismissal of appeal gave rise to filing of Writ Petition under Article 226 of the Constitution before the learned Single Judge. The learned Single Judge by impugned order dated March 22, 1991 allowed the Petition and quashed the order passed by the Authorities calling upon the Respondent to pay additional tax. The learned Single Judge held that levy of additional tax under Section 8B of the Act is incompetent in view of the Decision of the Supreme Court in NARASIMHAIAH v. DEPUTY COMMISSIONER FOR TRANSPORT, ILR 1988 KAR 565, and the Decision of the Division Bench of this Court in N.MUDDAPPA AND ORS. v. STATE OF KARNATAKA AND ANR., 1990(3) KLJ Supp 261. The impugned order passed by the learned Single Judge has given rise to filing of Writ Appeal No. 191/92 by the Deputy Commissioner for Transport and the Regional Transport Officer.

4. Several Writ Petitions were preferred before the learned Single Judge to challenge the demand of additional tax under Section 8B of the Act. The demand was made on the basis that the goods vehicles were used for carrying passengers and thereby the vehicles were misused. The Petitions are now placed before Division Bench for disposal. The challenge to the Demand Notice was on the basis that the provisions of Section 8B of the Act are ultra vires the Constitution. The contention raised in the Petitions is that the Karnataka Legislature was incompetent to carry out amendment providing for levy of additional tax for misuse of the vehicle. Learned Counsel appearing on behalf of the petitioners and on behalf of the Respondents in Appeals very fairly stated that in case the validity of Section 8B of the Act is upheld, then the Demand Notice cannot be challenged and the Appeals preferred by the Deputy Commissioner are required to be allowed. The sole Question, therefore, for Determination is about the validity and legality of the provisions of Section 8B of the Act.

5. Learned Counsel appearing on behalf of the petitioners submitted that the wordings of Section 8 and Section 8B of the Act are almost identical and as the Supreme Court has found that the levy and recovery of additional tax under Section 8 of the Act is not permissible, the conclusion is inescapable that Section 8B is not valid. It was also contended that the Division Bench of the Karnataka High Court has held that the provisions of Sub-section (4) of Section 3 which was also amended, was invalid in view of the fact that the Legislature was not competent to make the amendment in view of the Decision of the Supreme Court. The learned Government Advocate, on the other hand, contended that neither the Decision of the Supreme Court nor of the Division Bench of this Court has any bearing on the validity of the provisions of Section 8B of the Act. It was urged that Section 8B was inserted in the Act possibly in view of the Decision of the Supreme Court and, therefore, the validity of Section cannot be considered as concluded by the Decision of the Supreme Court. The learned Government Advocate further submitted that the Division Bench of the Karnataka High Court has clearly misread the Decision of the Supreme Court and the conclusion reached by the Division Bench is inaccurate.

6. In view of the rival submissions, it is necessary first to ascertain what was the issue considered by the Supreme Court in the case of Narasimaiah, a registered owner of motor vehicle which was used as a stage carriage under a permit issued by the Regional Transport Authority under the provisions of Motor Vehicles Act, 1939. Permit was issued for carrying passengers and the owner was liable to pay Rs. 160/- per quarter for every seated passenger (other than the driver and conductor). The owner was required to pay Rs. 45/- per quarter for every passenger other than the seated passengers permitted to be carried. On some stray occasions it was found that the operator of the vehicle was carrying few passengers in excess of the number of passengers allowed to be carried under the permit. The Taxing Authority therefore, issued a demand for payment of additional tax under the provisions of Section 8 of the Act on the ground that the owner had proposed to use the motor vehicle in such a manner as to cause the vehicle to become a vehicle in respect of which higher rate of tax was payable. The owner challenged the levy and demand of additional tax by filing Writ Petition in this Court, but the Petition was dismissed. The owner, thereupon approached the Supreme Court and it was contended that the provisions of Section 8 of the Act cannot be imported to, demand additional tax. Before the Supreme Court it was not in dispute that the vehicle was granted permit to carry passengers and on some occasions passengers more in number than what was permitted were carried in that vehicle. On these facts, the Supreme Court examined the question as to whether the owner was liable to pay additional tax under Section 8 of the Act.

The Supreme Court observed that the demand or additional tax arises only on two occasions - (i) when the motor vehicle is altered in such a manner as to cause the vehicle to become a vehicle in respect of which higher rate of tax is payable; and (ii) when any motor vehicle is proposed to be used in such a manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax is payable. The Supreme Court noticed that the vehicle in question was not altered and then proceeded to examine whether the vehicle was proposed to be used in such a manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax is payable. The Supreme Court noticed that the vehicle in question was used only as a stage carriage and there was no provision in Part-A of the Schedule to the Act which required a higher rate of tax to be paid in respect of a

vehicle which is being used as a stage carriage on the basis of more number of passengers that are carried in it. The Supreme Court, thereupon held that in the absence of any provision in Part-A of the Schedule providing for levy of additional tax for vehicles carrying more passengers than permitted under the permit issued under the Motor Vehicles Act, the provisions of Section 8 of the Act are not attracted. The Supreme Court observed that unless and until the two categories of cases set out in Section 8 are attracted, the levy of additional tax is not permissible. The Decision of the Supreme Court clearly deals with a case where the vehicle carried more passengers than permitted to be carried. The Supreme Court highlighted the expression 'Vehicles permitted to carry' occurring in Item-4(2) of Part-A of Schedule of the Act. The two categories of cases which attract Section 8 of the Act do not cover the cases where there is misuse of the vehicle in the sense that a vehicle registered as a goods vehicle is used for plying passengers or vice-versa. To overcome the lacuna in that respect the Legislature stepped in and amended the provisions of the Act by inserting Section 8B of the Act. It was contended by the learned Counsel that the wordings of Section 8 and Section 8B of the Act do not differ in material particulars and, therefore, once the Supreme Court held that the provisions of Section 8 are not attracted for recovery of additional tax, the levy under Section 8B of the Act cannot be sustained. It is not possible to accede to the submission of the learned Counsel. The Supreme Court, as mentioned herein above, set out two categories of cases where Section 8 is attracted and on facts of the case came to the conclusion that levy of tax was not permissible. The Supreme Court nowhere held that the provisions of Section 8 of the Act were not Constitutionally valid or the Karnataka Legislature was not competent to enact the same. In this background the Legislature carved out one more category of case where the additional tax can be recovered and that category is where the vehicle is misused. A vehicle which was registered as goods vehicle, if used for purpose of plying passengers, then the use is obviously contrary to the registration and squarely comes within the four corners of Section 8B of the Act. In our Judgment, the Decision of the Supreme Court has no bearing whatsoever to determine whether the provisions of Section 8B of the Act are Constitutionally valid or otherwise. It is well settled by a catena of Decisions that the Constitutional validity of legislative provisions can be struck down only on the

ground of legislative incompetency or that the provisions violate any of the Fundamental Rights guaranteed under the Constitution. The learned Counsel for the petitioners did not advance any submission to urge that the Karnataka Legislature was incompetent to insert Section 8B in the Act or the provisions of the Section breach any of the Fundamental Rights. In these circumstances, in our Judgment, the challenge to the validity of Section 8B of the Act cannot be sustained.

7. The contention of the learned Counsel that Section 8B of the Act is not an improvement on the provisions of Section 8 of the Act is also not accurate. The rate of tax payable for the goods vehicle is set out under Item-3 of Part-A of the Schedule; and as mentioned herein above, the rates vary according to the weight laden of the vehicle. The Schedule does not contemplate the goods vehicle being used for plying passengers and there cannot be any provision in the Schedule for fixing the rates and levy of additional tax for misuse of the vehicle. The quantum of tax to be recovered is to be found in the provisions of Section 8B itself. The Section clearly sets out that the amount of additional tax payable for misuse of motor vehicles should be equal to double the difference between the tax normally payable and the amount of tax which would be payable for the different use made. In other words, the goods vehicle, if liable to pay tax at Rs. 100/- per quarter, while the vehicle used for plying passengers is liable to pay tax at the rate of Rs. 200/- per quarter, then, the additional tax would be double the difference between the two. The quantum of tax is to be determined with reference to the rates settled under Schedule-A to the Act. It was then contended by the learned Counsel that the liability for payment of tax is with reference to the quarter of any year and merely because on one or two occasions the vehicle was found to be misused, it is not permissible to recover the entire difference due for the entire quarter. It was urged that the liability cannot be foisted on the owner of the vehicle for misuse on one or two occasions by demanding difference of duty for the entire quarter. Learned Counsel submitted that the wordings of Section 8B of the Act suggest that the tax would be payable in respect of period for which the vehicle was misused and if the vehicle was misused on one or two occasions, then the liability cannot be for the entire quarter. The submission is entirely erroneous. In the first instance it is impossible to accept that the liability would arise only if the vehicle is misused

on each and every day of the quarter. It is physically impossible for any authority to check the vehicle every day and the contention that the liability to pay additional tax does not arise unless the vehicle is misused every day of the quarter cannot be entertained. Secondly, it must be remembered that the liability to pay tax is per quarter and if it is noticed that the vehicle is misused during that quarter, then the taxing authority is entitled to recover additional tax as per the provisions of Section 8B of the Act for the entire quarter. It is not permissible to claim that the liability, to pay additional tax should be determined pro-rata for the days when the vehicle was found to be misused. In our judgment, the liability is for the entire quarter and even if the misuse is detected on one or two occasions, still the vehicle is liable to pay additional tax for the entire quarter as per the provisions of Section 8B of the Act

8. Reference was also made to the Decision of Division Bench of this Court where the validity of Sub-section (4) of Section 3 of the Act, which came to be inserted from April 17, 1989, was challenged. The vehicles which had been used as stage carriages carried passengers in excess of what was permitted and the operators were called upon to pay additional tax under Sub-section (4) of Section 3 of the Act which read as under:

'3(4) - Notwithstanding anything contained in Sub-sections (1) and (2), a special additional tax at the rates specified in Part-D of the schedule shall be levied on motor vehicles-suitable for use on roads carrying passengers or goods in excess of the permitted capacity of the vehicles'.

The Division Bench felt that the question raised in the Petition was no longer res integra and was concluded by the Decision of the Supreme Court in Narasimaiah's case. The Division Bench observed that the Supreme Court had held that it was impermissible to tax the vehicle owners permitted to ply stage carriages merely on account of the excess passengers carried by them over and above what they were permitted under the permits. We are afraid the Division Bench has not correctly set out the ratio of the Supreme Court's Judgment. The Supreme Court nowhere held that it was impermissible to tax the vehicle owners on account of excess passengers carried by them. It merely held that in the absence of any specific

provisions under Item-4(ii) of Schedule-A to the Act to that effect, it was not permissible to demand additional duty by reference to Section 8 of the Act. In the present case the question of Stage Carriages carrying passengers in excess of what was permitted, does not arise for consideration. In the present batch of cases, the vehicles which were registered as goods vehicles are not permitted to ply passengers for fare and these are not cases where excess passengers than permitted are carried, but there is total misuse of the vehicles which were registered for a specific purpose. The Decision of the Division Bench, in our judgment, has no application whatsoever while determining the validity of provisions of Section 8B of the Act. In our Judgment, the provisions of Section 8B of the Act do not suffer from any infirmity and the challenge to the provisions must fail. Once this conclusion is reached, all the Petitions must end in dismissal and the Appeals preferred by the Deputy Commissioner for Transport and the Regional Transport Officer are required to be allowed.

Accordingly, Rule in each of the Petitions stands discharged with costs. Writ Appeal Nos. 191/92 and 215/91 are allowed and the Judgment dated March 22, 1991 and July 15, 1991 delivered by the learned Single Judge in Writ Petition Nos. 5640 and 15501 of 1991 respectively are set aside and the Petitions stand dismissed with costs throughout.

9. Learned Counsel for the petitioners submitted that the Demand Notices were finally decided by the Authority and the petitioners had not preferred appeals to the Deputy Commissioner in view of the pendency of the Petitions. Learned Counsel requested that the petitioners may be granted liberty to file appeals. The Government Advocate states that if such appeals are preferred within a period of four weeks from to-day, then the Deputy Commissioner will dispose of the appeals on merit and not on the ground of limitation.