A. Mallayya Vs. Licensing Officer (R.T.O.), Karimnagar

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Court : Andhra Pradesh

Decided On : Jun-16-1981

Reported in : AIR1981AP383

Judge : Madhava Reddy, J.

Acts : Motor Vehicles Act, 1939 - Sections 42(1) and 42(3); Constitution of India - Article 226; Public Health Act, 1875; Sanitary Act, 1866

Appeal No. : Writ Petn. No. 1416 of 1978

Appellant : A. Mallayya

Respondent : Licensing Officer (R.T.O.), Karimnagar

Advocate for Def. : Govt. Pleader for Transport

Advocate for Pet/Ap. : E.P.K. Sikhamani, Adv.

Disposition : Petition allowed

Judgement :
ORDER

Madhava Reddy, J.

1. This is a petition under Article 226 of the Constitution of India to quash the demand notice No. 5476/ A4/77 dt. 22-2-1978 issued by the Regional Transport

Officer, Karimnagar, in respect of vehicle No. ADB 3304 forplying it on an unauthorised route which attracts the higher rate of tax at Rs. 135/- per seat per quarter. A sum of Rs. 2,601/- was demanded under the impugned notice.

2. The petitioner's vehicle ADB 3304, which was permitted to ply as a stage carriage on route Karimnagar to Jagtial viz., Anthergaon, Fotharam, Ramannapet, Mallial, Thakkallapalli, Narasingapur, Kachapur, Thurkalamaddikunta, was found, on being checked by the Regional Transport Officer, Karimnagar, at 47/4 K. Ms. on Karimnagar -- Jagtial road, to be proceeding from Jagtial to Mallial. The petitioner was asked to show cause why an amount of Rupees 2,601/- should not be collected from him towards the difference of tax for plying the vehicle on an unauthorised route. In his representation the petitioner stated that the channels flowing into Pochampad Project reservoir between Potharam and Ramannapeta villages had been flooded and the level of the water had risen so high that vehicles could not ply on that portion of the route and in order to reach Karimnagar from Jagtial, the vehicle had to take a deviation. As the channels were flooded for a major part of the year due to the progress of the construction on Pochampad Project, he applied for variation of the route on 10-5-1976 via Mallial. The Motor Vehicles Inspector, Karimnagar, inspected the said route and submitted his report on 17-9-1977 confirming the facts averred by the petitioner and recommending variation of the route. He opined that the vehicle cannot be plied on the permitted route in view of the feeder channels being flooded and therefore the deviation of nearly 5 K.Ms. had perforce to be taken. That petition for variation of the route was pending when the check was made and based on that, the show cause notice was issued. The Regional Transport Officer while not disputing that the channels were flooded and the deviation was necessitated, confirmed the demand on the ground that there was in fact deviation from the permitted route.

3. In this writ petition Mr. Sikhamani, learned counsel for the petitioner, contends that the deviation from the permitted route taken by the petitioner's vehicle was necessitated due to floods in the channels cutting across the permitted route and the deviation taken in those circumstances cannot betreated as plying on an unauthorised route. According to him, that is a matter covered by Clause (m) of Sub-section (3) of Section 42 of the Motor Vehicles Act.

4. Section 42 (1) enjoins that no owner of a transport vehicle shall use or permit the use of the vehicle in any public place save in accordance with the conditions of the permit granted or countersigned by a Regional or State Transport Authority or the Commissioner authorising the use of the vehicle in that place in the manner in which the vehicle is being used. Section 42 (3) however, provides for certain exceptions. Clause (m) of Sub-section (3) of Section 42 is one such exception which reads as follows :

'Sub-section (1) shall not apply to any transport vehicle which, owing to flood, earthquake or any other natural calamity, is required to be diverted through any other route whether within or outside the State, with a view to enabling it to reach its destination'. It is common ground that on the day when the petitioner's vehicle took the deviation, the channel feeding Pochampad Project reservoir was flooded with water and the level of the water had risen so high that it could not be negotiated. The petitioner's vehicle, which had started at one of the termini of the permitted route i.e., Jagtial, in order to reach the other terminus i.e., Karimnagar, could not cross that channel at the permitted point on the route. But the passengers in the vehicle whose destination was Karimnagar or other points on the said route beyond the channel had to be transported by this vehicle and hence that vehicle had to necessarily take the deviation. It is at this deviation that the vehicle was checked. Whether the diversion taken in these circumstances, constitutes plying on an authorised route or plying in the circumstances covered by the exception provided in Clause (m) of Sub-section (3) of Section 42 is the question.

5. It is argued by the learned Government Pleader that the rise in the water level or flooding of the channel was on account of the construction of the Pochampad Project and therefore it cannot be deemed to be 'flood' or 'natural calamity' so as to attract the exception contained in Clause (m) of Sub-section (3) of Section 42 of the Motor Vehicles Act. He argues that the word 'flood' takes only one caused byheavy rains or due to natural causes. He points out that inundation of the channel is not on account of any natural calamity but on account of the construction of the Pochampad Project by human agency. The rise in the water level of the channel is not due to heavy rains but on account of the water of the

channel not being able to empty itself in the reservoir,

6. 'Flood' as ordinarily understood is no doubt caused due to heavy rains. But the word 'flood' does not connote merely torrent of water as a result of heavy rains or downpour. ' Filling of a tank, whether with water or petrol, is also termed as 'flooding' the tank, which merely means filling up. Even when there is normal rain the stream or channel may, at a particular point, be-come 'flooded' on account of obstruction to the free flow of water in the stream, The obstruction to the stream may be due to natural cause or due to project works carried on by human agency. If that obstruction results in abnormal rise in the level of the water in the channel, one should think the channel is flooded. The word 'flood', which has various connotations, has, therefore, to be understood in the context in which it occurs.

7. In Stroud's Judicial Dictionary, 4th Edition, Vol. 2, at page 1064, the 'flood' in the context of damages resulting 'from any bursting or flood, or escape of water from any reservoir' was held to include damages occasioned by the flood waters from a reservoir, no matter how such flood was caused, even if it be by an extraordinary rise of the waters of a stream flowing into the reservoir.

8. In Countess of Rothes v. Kirkcalady Water Works Commissioner, (1881-82) 7 App Cas 694, compensation was claimed for the damage caused by the letting out of the water through a waste weir into the water course continuously when there was extraordinary rainfall. Although there was no failure or insufficiency of the works and no negligence on the part of the concerned, the Court held that the Countess was entitled to compensation for damage by flood waters from the reservoir, no matter how caused. Though the water was discharged from the reservoir, which was constructed by human agency, it was held to be a 'flood' in that context,

9. In Stretton's Derby Brewery Company v. Mayor of Derby, (1894) 1 Ch D 431, a case where a municipal corporation made a sewer under a road within their district in the year 1855, many years afterwards the owners of the premises abutting on the road erected a brewery, and in pursuance of Section 21 of the Public Health Act, 1875 or the corresponding section of the Sanitary Act, 1866, connected the drainage of the brewery cellars with the sewers. In 1891, 1892 and 1893 the

cellars were damaged by floodings. The floodings arose by reason of the large increase in recent years in the number of buildings draining into the sewer, when very heavy fall of rain occurred, while the sewer was too small to carry off the influx of water, and the pressure forced the contents of the sewer through the connections into the cellars. The 'flooding' in the aforesaid case was not entirely the result of natural causes. Yet, it was deemed to be 'flooding' of the sewer.

10. In my view, in order to determine whether a particular channel is flooded or not, what has to be found is whether the level of the water has risen above the normal level so as to obstruct the flow of vehicle traffic and rendering the road unusable at that point. Whether that flooding is due to natural causes or due to the rise in the level of the reservoir (into which the channel empties) consequent upon the construction of a dam by human agency or whether it is due to heavy rains, is immaterial. Flooding in such situations may not be a serious natural calamity. The mere fact that the words 'flood earthquake' are followed by the expression 'natural calamity', it does not mean that the word 'flood' used in that context has to be treated as a natural calamity. In the context of Clause (m) of Sub-section (3) of Section 42, the word 'flood' must be understood as such abnormal rise in water level of a channel as is sufficient to obstruct the plying of the vehicle at that point on the permitted route. As the obstruction prevents the operator of the stage carriage to ply on the route permitted, it is sufficient to entitle him to take the deviation. In my opinion, such a deviation from the route is covered by the exception provided in Clause (m) of Sub-section (3) of Section 42. Consequently the petitioner cannot be deemed to have plied the vehicle on an unauthorised route so as to render him liable to pay any higher rate of tax or penalty.

11. In view of the above discussion, the order of the Regional Transport Officer imposing penalty of Rs. 2,60l/-is quashed. This writ petition is accordingly allowed with costs. Advocate's fee Rs. 150/-.