N. Krishnasami Chetty and ors. Vs. the Licensing Officer, Deputy Transport Commissioner and Secretary, Regional Transport Authority

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Court : Chennai

Decided On : Mar-26-1987

Reported in : (1987)IIMLJ156

Judge : Nainar Sundaram, J.

Acts : Motor Vehicles Act, 1939 - Sections 2(3)

Appeal No. : Writ Petn. Nos. 7012, 7013 and 7066 to 7068 of 1980

Appellant : N. Krishnasami Chetty and ors.

Respondent : The Licensing Officer, Deputy Transport Commissioner and Secretary, Regional Transport Authority

Advocate for Def. : P. Chandrasekaran, Adv.

Advocate for Pet/Ap. : V.T. Gopalan, Adv.

Disposition : Petition allowed

Judgement :
ORDER

Nainar Sundaram, J.

1. By the order impugned in these writ petitions, the respondent, on the ground that the vehicles of the petitioners covered by All India tourist permits were found plying regularly as stage carriages, has called upon the petitioners to pay the tax for the concerned quarters. The petitioners have uniformly contended before the respondent and they equally contend before this Court that their vehicles had been hired to the Travel Agents as a whole for fixed sums of money and if the Agents collected individual fares from each of the passengers, the petitioners could not be made liable for the same. They also contended before the respondent and contend here also that the collection of separate fares is not prohibited under Section 2(3) of the Motor Vehicles Act, 1939, hereinafter referred to as the Act, when it defines. 'contract carriage', and their vehicles plied between the two points without stopping to pick up or set down along the line of the routes passengers not included in the contract. These contentions were not countenanced by the respondent and the grounds expressed by the respondent for mulcting the petitioners with the liability to pay tax are as follows :--

(1) The vehicles of the petitioners were found carrying individual passengers, who had paid separate fares.

(2) That the passengers had not contracted to use the vehicle as a whole has not been disputed by the petitioners.

2. Mr. V. T. Gopalan, learned counsel for the petitioners, would submit that the definition of 'contract carriage' found in Section 2(3) of the Act does not inhibit the collection of separate fares from the passengers and further the petitioners have been throughout placing their case on the basis that the vehicles had been hired to the Travel Agents as a whole for fixed sums of money and the statement in the impugned orders that the petitioners have not disputed the allegation that the passengers had not contracted to use the vehicle as a whole is a patently wrong statement and further if the criteria to be adopted to distinguish a 'contract carriage' from a 'stage carriage' as set down in the pronouncement of the Supreme Court in Roshanlal v. State of Uttar Pradesh, : [1965]1SCR841 is taken note of, the petitioners could be mulcted with the liability to pay tax on the basis that their vehicles were plied as 'stage carriages.'

3. Section 2(3) of the Act defines 'contract carriage' as follows :--

' 'contract carriage' means a motor vehicle which carries a passenger or passengers for hire or reward under a contract, expressedor implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum-

(i) on a time basis whether or not with reference to any route or distances, 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 fares.'

Section 2(29) defines 'stage carriage' 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.'

In the pronouncement of the Supreme Court relied on by the learned counsel for the petitioners, the distinction between the two has been brought out in the following lines :

'By Section 2(3) a contract carriage is defined as a motor vehicle which carries a passenger or passengers on hire or reward under a contract from one point to another without stopping to pick up or set down along the line of that route passengers not included in the contract. A stage carriage is defined as a motor vehicle carrying or adopted to carry passengers for hire or reward at separate fares paid for the whole journey or for stages of the journey. The distinction between the two is this : the 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 enroute. 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.'

It is not the case of the respondent that the vehicles of the petitioners picked up other passengers en route, so as to come within the mischief of the above ratio. As we could see from the definition of 'contract carriage' as per Section 2(3) of the Act, by the collection of separate fares from the passengers it would not lead to the deduction that the vehicle has been used as a stage carriage and not as a contract carriage. The statement in the impugned order that the petitioners have not disputed that the passengers had not contracted to use the vehicle as a whole is not a correct statement, because as already noted that the petitioners have been uniformly and consistently contending that their vehicles had been hired to the Travel Agents as a whole for fixed sums of money. Even before this Court that is the stand expressed by the petitioners. This stand has not been rebutted by the respondent by filing any counter-affidavit, In the said circumstances, I am obliged to accept the case of the petitioners that their vehicles were hired to the Travel Agents as a whole for a fixed sum of money. As already noted, there is no allegation that in between the two points, the vehicles of the petitioners picked up other passengers, which may take the plying of the vehicles of the petitioners outside the purview of 'contract carriages' and it could be stated that the vehicles plied as 'stage carriages'. For the above reasons, I am not able to uphold the orders impugned in these writ petitions and accordingly these writ petitions are allowed. No costs.