

B. Srikantiah and Others

Vs

The Regional Transport Authority, Anantapur and Others

Civil Appeal No. 1332 of 1968

(CJI S. M. Sikri, P. Jagmohan Reddy, C. A. Vaidialingam, I. D. Dua JJ)

07.05.1971

JUDGMENT

REDDY, J. -

1. This Appeal is by a certificate against the Judgment of the Andhra Pradesh High Court given in a batch of Writ Petitions of which the Writ Petition giving rise to this Appeal was one. The High Court while dismissing the Writ Petitions gave certain directions to which we will refer later.

2. A few facts may be stated to appreciate the matters in issue in this appeal. The Madras Motor Vehicles (Taxation of Passengers and Goods) Act (Act XVI of 1952) became applicable to the State of Andhra and sub-sequently to the Andhra Pradesh when the respective reorganisation of States took place in 1953 and 1956. In 1959, the Andhra Pradesh Legislature enacted the Motor Vehicles (Taxation of Passengers and Goods) Andhra Pradesh (Amendment) Act with a view to augment the revenue of the State. By this amendment Act the rates had been increased in respect of State carriages as well as in respect of goods vehicles. It is not necessary to notice what those rates are except to say that under sub-section (2) of Section 1 of the Madras Motor Vehicle (Taxation of Passengers and Goods) Andhra Pradesh (Amendment) Act, 1959, the Government of Andhra Pradesh appointed the May 8, 1959, as the date on which the State Act came into force. On May 7, 1959, by G.O.Ms. No. 1077, the State Transport Authority was directed by the Government to fix maximum fares inclusive of the leviable tax under the Act for the State carriages in the State of Andhra Pradesh which immediately before the November 1, 1956, were comprised in the State of Andhra. The Andhra Pradesh Amendment having come into force it was challenged in a batch of Writ Petitions in the High Court of Andhra Pradesh and that Court had struck down the Act as being unconstitutional. The Legislature thereafter passed Act 34 of 1961 by validating the levy under the Act which was struck down by the High Court and also for imposition of surcharge from the different dated from the date on which it came into force namely from the November 3, 1961. The operators again questioned the Amendment Act of 1961 on the ground that they had not collected the fares on the enhanced rates fixed by the Transport Authority because by the condition of their permit they were precluded from collecting the fares at a rate higher than 7 1/2 pies or 4 np. per passenger per mile. In view of the fact that the Regional Transport Authorities had not taken action to modify that condition suitably they could not collect this amount and therefore were not liable to pay surcharge at the enhanced rates. This contention was negatived by the High Court which while rejecting the Writ Petitions on that ground nonetheless directed that the Respondent will not be entitled to payment or collect the enhanced surcharge from the operators for the month of May 1959, which the counsel for the Government had stated on instruction that the Government will not collect.

3. The point which is urged before us, as was urged in the High Court is whether the enhanced surcharge became operative and payable immediately on the coming into force of the 1961 Act or was it necessary to amend the conditions of the permit dealing with the fares leviable by the operators before the Government could collect the enhanced surcharge from them. The learned Advocate for the Appellants argues relying on Madhya Pradesh Transport Co. Private Ltd. v. State of Madhya Pradesh (AIR 1962 MP 108) that unless the table of fares is altered in accordance with the procedure laid down fares which includes taxes cannot be lawfully collected and therefore they are in law bound to pay the enhanced surcharge. This very contentions was raised before the High Court, which disagreeing with the Madhya Pradesh case cited above held that the directions issued by the Government in G.O. Ms. No. 1077 of May 7, 1959, pursuant to which the Regional Transport Authority by its proceedings, dated May 12, 1959, called upon the Regional Transport officers to notify the operators and which the said officers had notified authorising them to collect the enhanced fares was sufficient authorisation for them to collect the enhanced fares as if the fare tables had been amended.

4. It may be mentioned that the constitutionality of the enhanced surcharge was upheld by this Court in Nazeeria Motor Service, etc. etc. v. State of Andhra Pradesh and Another ((1970) 2 SCR 52 : 1969 (2) SCC 579), and therefore the only question that survives is whether there is an impediment to the operators to collect fares without the conditions of the permit being amended. There is of course of other basic question whether the payment of the enhanced tax is dependent on the operators collecting the enhanced fares. In any case it is unnecessary to consider this question in the view we have taken that the contention urged by the Appellant is unsustainable. The relevant provisions of the Motor Vehicles Act clearly support the view taken by the High Court that once a notification is issued by the Government in exercise of the powers under Section 43(1)(i) the conditions of the permit stand statutorily amended by virtue of Section 59(3)(c).

5. The provisions of Sections 43, 44, 48 and 59 before their amendment in 1969, in so far as they are applicable to the mater under consideration are as follows :

43(1) A State Government ..... may from time to time by notification in the official Gazette issue directions to the State Transport Authority -

(i) regarding the fixing of fares and freights for stage carriages, contract carriages and public carries;

44(3) A State Transport Authority shall give effect to any directions issued under Section 43 and subject to such direction and save as otherwise provided by or under this Act shall exercise and discharge throughout the State the following powers and functions namely :

#(a) x x x(b) x x x(c) x x x(d) x x x##

(4) For the purposes of exercising and discharging the powers and functions specified in sub-section (3), a State Transport Authority may, subject to such conditions as may be prescribed, issue directions to any Regional Transport Authority and the Regional Transport Authority shall in the discharge of its functions under this Act give effect to and be guided by such directions.

48(3) The Regional Transport Authority, if it decides to grant a stage carriage permit,

may grant the permit for a service of stage carriage of a specified description or for one or more particular stage carriages, and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions namely :

#(i) to (xi) x x x##

(xii) that fares shall be charged in accordance with the approved fare table;

59(3) The following shall be conditions of every permit :

(c) that any prohibition or restriction imposed and any maximum or minimum fares or freights fixed by notification made under Section 43 are observed in connection with any vehicle or vehicles or which the permit relates :

The Government has pursuant to Section 43 issued the following notification :

In exercise of the powers conferred by clause (i) of sub-section (1) of Section 43 of the Motor Vehicles Act, 1939 (Central Act IV of 1939) and in supersession of the Notification of the Government of A.P. in Public Works and Transport Department No. 1184, dated the August 11, 1956, published at page 2026 of Part I of the A.P. Gazette, dated the September 6, 1956, the Governor of Andhra Pradesh hereby directs the State Transport to fix the following maximum fares inclusive of the tax leviable under the Madras Motor Vehicles (Taxation of Passengers and Goods) Act, 1952, (Madras Act XVI of 1952) for stage carriages in the territories of the State of Andhra Pradesh which immediately before the 1st November 1, 1956 were comprised in the State of Andhra ....."

6. In view of the directions given by the Government in the above notification the Regional Transport Authority called upon the Regional Transport Officers to notify the operators to collect the enhanced fares and accordingly the officers concerned in compliance with those directions notified the operators. Once the provisions of Sections 43(1)(i) and 44(4) are complied with Section 59(3)(c) comes into play and it has the effect of incorporating the maximum fares as notified including the tax leviable, as a condition of the permit. This being the legal position we do not think there is any justification for the contention that the collection by the operators of the enhanced fares without the table of fares being amended would entail the cancellation of the permits.

7. The decision of the Madhya Pradesh case is clearly distinguishable as it does not appear that any notification was issued under Section 43 as was done in this case nor do we find that the provisions of Section 59(3)(c) have been referred to or considered. At Page 111, Dixit, C.J., noted the submissions of the Additional Government Pleader that instructions would be issued to all Regional Transport Authorities for a revision of fare tables under Section 43 of the Motor Vehicles Act so as to enable the operators to recover the tax amount from the passengers as extra fare, which he observed was a step, in the right direction. These observations show that there was no notification under Section 43 for any instructions given to the Regional Transport Officers by the Regional Transport Authority. In the circumstances that case is not an authority for the proposition contended by the learned Advocate for the Appellant. In our view there is no validity in the stand taken by the operations and consequently this appeal is dismissed with costs.

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