

M/S. Tata Engineering and Locomotive Co. Ltd.

Vs

The Sales Tax Office and Regional Transport Officer, Poona and Another

Civil Appeal Nos. 204-226 of 1978

(P. N. Bhagwati, Syed M. Fazal Ali, R. S. Sarkaria JJ)

22.11.1978

JUDGMENT

FAZAL ALI, J. -

1. These appeals by special leave are directed against an order of the Commissioner of Pune dated November 29, 1977 dismissing the appeals and holding that the challenge to the tax sought to be realised by the Revenue was not tenable and the appellants were liable to pay the tax as also the penalty.
2. The appellants are a company registered under the Companies Act, 1913 and have their factories at Pimpri and Chinchvad in the District of Pune (Maharashtra). The appellants employ as many as 7,000 workmen in those factories. In order to provide transport facilities to their employees to come to the factories from their respective villages the appellants provided transport which would pick up passengers from Pune or Khed or Vadgaon or Alandi or places en-route to TELCO Factory at Pimpri or Chinchvad and back. For this journey a nominal charge of Rs. 10 per month was realised by the appellants from the employees. Similarly, for the transport facilities provided to the employees from Pimpri Railway Crossing and onwards to TELCO factory, they were charged at the rate of Rs. 5 per month. A charge of Rs. 2 per month was levied for the transport of employees from Chinchvad village to TELCO factory at Pimpri and back. The appellants further averred that these amounts were realised by the appellants only from a particular category of employees and no charges were levied in respect of those employees who were in the supervisory grades. In the course of the arguments, it was pointed out that when the company was prepared to grant free transport facilities to the supervisory staff there was no reason why the same amenities should not be extended to the other employees and Mr. Nariman, learned Counsel for the appellants frankly conceded that in future no charges would be realised from the employees and they would be provided free transport as in the case of supervisory staff. It is manifest that if the appellants had not levied any charge at all for the transport facilities granted to the employees they would not be exigible to passenger tax. Mr. Nariman, however, argued that even if a nominal charge is realised from the employees that would not make the transport a public service vehicle carrying passengers so as to attract the provisions of Section 3 which is the charging section of the Act. In our opinion, the contention of the learned Counsel is well-founded and must prevail.
3. The Bombay Motor Vehicles (Taxation on Passengers) Act, 1958 hereinafter called the Act is a statute which authorises the levy of passenger tax. This Act has been amended several times right from the year 1960 to 1975. Before analysing the relevant provisions of the Act, it may be necessary to extract the Preamble to the Act which runs thus.

Whereas it is expedient to provide for the levy of a tax on passengers, carried in certain classes of public service vehicles in the State of Bombay : It is hereby enacted in the Ninth Year of the Republic of India as follows.

4. A perusal of the Preamble clearly reveals that the dominant object of the Act was to impose tax on certain classes of public service vehicles. In other words, the Preamble indicates that vehicles which could not be termed as public service vehicles fell beyond the ambit of the taxing provisions of the Act.

5. Section 2(7) of the Act defines 'stage carriage' thus -

'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 and includes such a carriage or other omnibus when used as a contract carriage within the meaning of the Motor Vehicles Act, 1939.

6. Section 3 which is the charging section runs thus :

3. (1) There shall be levied and paid to the State Government a tax on all passengers carried by road in stage carriages at such rate to be fixed by the State Government from time to time by order in the Official Gazette as would yield an amount not exceeding twenty per cent of the inclusive amount of fares payable to the operator of a stage carriage.

(2) After calculating the total amount of tax payable under sub-section.

(1) out of the total amount received by an operator during each month on account of inclusive fares in respect of the stage carriage or stage carriages held by him the total amount of the tax shall wherever necessary be rounded off to the nearest naya paisa, fractions of half a naya paisa and over being counted as one and less than half being disregarded.

Thus section 3 authorises the levy of tax on all passengers carried by road in stage carriages. This section contains two essential ingredients : (1) that the transport concerned must carry passengers by road, and (2) that such passengers must be carried in stage carriages, that is to say, as defined in Section 2(7) of the Act, passengers must be carried for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey.

7. Rule 2(i) of the Bombay Motor Vehicles Rules, 1940 framed under the Bombay Motor Vehicles Act, 1939 defines 'passenger' thus -

'passenger' for the purpose of the rules in Chapter IV means any person travelling in a public service vehicles other than the driver or the conductor or an employee of the permit holder while on duty.

8. A combined reading, therefore, of Rule 2(i) and Section 2(7) of the Act clearly indicates that the tax would be leviable only if the passengers are carried on a public service vehicle. It is true that the term 'public service vehicle' has not been defined either by the Act or by the rules, but that however does not create any difficulty, because having regard to the Preamble of the Act we are of the opinion that the tax can be levied only on passengers who are carried by a stage carriage which is of the nature of a public service vehicle. The word 'public' has got a well-known connotation and

means a carriage to which any member of the public can have free access on payment of the usual charges, It cannot by any process of reasoning or stretch of the usual charges. It cannot by any process of reasoning or stretch of imagination be deemed to include employees of a private company who are given facilities not as members of the public but as holding a special status, namely, the employees of that company. Thus, qua public the employees form a separate class and cannot be said to be public as contemplated by rule 2(i).

9. On the other hand, the Bombay Motor vehicles Rules, 1959 define 'private service vehicle' as follows :

'Private Service Vehicles' means any omnibus constructed or adapted to carry more than nine persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for or in connection with his trade or business, or otherwise than for hire or reward; but does not include a motor vehicle used solely for Police purposes.

10. The transport service in the present case which was registered as a private service vehicle falls squarely within the ambit of the aforesaid definition. Moreover, in the instant case, it is not disputed that the transport provided to the employees of the company was reserved for them only and no other member of the public even if he wanted to pay full charges could be carried on the said vehicle. In these circumstances, therefore, it cannot be said that the transport vehicle provided to the employees by the appellants could be a public service vehicle in any sense of the term. Mr. Nariman drew our attention to a number of rules and forms in order to illustrate his point that private service vehicle was beyond the ambit of the charging section. In view of what we have already said, it is not necessary for us to go into such meticulous details, because the legal position appears to be clear enough. As counsel for the appellants has already undertaken not to charge any amount from the employees for providing transport facilities, the point has now become more or less academic. The Commissioner appears to have demised the appeals of the appellants as he felt bound by the judgment of the Bombay High Court which had held that the transport vehicle provided to the employees by the company would be a public service vehicle. In view of our finding that such a transport vehicle is not a public service vehicle within the meaning of the provision of the Bombay motor vehicles Act, the view taken by the Bombay High Court is clearly erroneous and must be overruled.

11. For these reasons, therefore, the appeals are allowed and the order of the commissioner imposing the tax is set aside. The appellants would be entitled to one set of costs.

</html