

M. Narasimhaiah

Vs

Deputy Commissioner for Transport, Bangalore Division, Infantry Road, Bangalore and Another

Civil Appeal No. 3031 of 1987

(E. S. Venkataramiah, K. N. Singh JJ)

24.11.1987

JUDGMENT

VENKATARAMIAH, J. –

1. Aggrieved by the levy of additional tax under Section 8 of the Karnataka Motor Vehicles Taxation Act, 1957 (hereinafter referred to as 'the Act') in respect of his motor vehicle, which he has been running as a stage carriage under a permit issued under the provisions of the Motor Vehicles Act, 1939, the appellant herein questioned the levy of the said additional tax before the High Court of Karnataka in Writ Petition No. 31533 of 1982. That writ petition was dismissed by High Court following an earlier decision of a Division Bench of that Court in Noorullha Khan v. State of Karnataka [Writ Petition No. 8302 of 1980 and connected cases, decided on June 26, 1985 (Kar HC)]. The appellant has filed this appeal by special leave against the decision of the High Court dismissing his writ petition

2. The facts of the case are briefly these. The appellant is the registered owner of the motor vehicle which he has been running as a stage carriage under a permit issued by the Regional Transport Authority Under the provisions of the Motor Vehicles Act, 1939. He is liable to pay tax in respect of the said motor vehicle under Section 3 of the Act which provides that a tax at the rates specified in Part A of the Schedule to the Act shall be levied on all motor vehicles suitable for use on roads. Item 4 in Part A of the Schedule to the Act, as it stood in the year 1985, which related to the levy of tax on motor vehicles which were used as stage carriages read thus :

#----- Quarterly tax for Class of  
Vehicles vehicle fitted with pneumatic tyres-----  
----- (1) (2)-----4.  
Motor Vehicles other than those mentioned in items 5, 6 and 7 plying for hire and used for transport of passengers and in respect of which permits have been issued under the Motor Vehicles Act, 1939. (i) Vehicles permitted to carry in all : Rs. P. (a) not more than three persons (other than the driver) 40.00 (b) Four persons (other than the driver) 75.00 (c) Five persons (other than the driver) 90.00 (d) Six persons (other than the driver). 200.00 (ii) (1) Vehicles permitted to carry more than six persons and plying exclusively on routes within the limits of cities and towns notified by the government and other vehicles not falling under (2) below : (a) For every seated passenger (other than the driver and the conductor) which the vehicle is permitted to carry. 130.00 (b) For every passenger (other than the seated passenger, the driver and the conductor) which the vehicle is permitted to carry. 45.00 (2) Vehicles permitted to carry more than six persons and the total mileage of which exceeds 100 kilometers

per day : (a) For every seated passenger (other than the driver and the conductor) which the vehicle is permitted to carry. 160.00 (b) For every passenger (other than the seated passenger, the driver and the conductor) which the vehicle is permitted to carry. 45.00-----##

3. Item 5 of Part A of the Schedule to the Act, as it stood during the relevant time, referred to the tax payable by motor vehicles which were used as contract carriages under permits issued under the Motor Vehicles Act, 1939. Item 6 of Part A of the Schedule to the Act has been replaced. Item 7 of Part A of the Schedule to the Act, as it stood during the relevant period, dealt with the tax payable in respect of omnibuses. It reads thus :

#----- Class of Vehicles  
Quarterly tax for vehicles fitted with pneumatic tyres-----  
----- (1) (2)-----  
-----7. Omnibuses, - Rs. P. (a) permitted to carry not more than 10 persons  
(excluding the driver), for every person which the vehicle is permitted to carry; 50.00  
(b) permitted to carry 11 persons or more (excluding the driver), for every person  
which the vehicle is permitted to carry. 100.00-----  
-----##

4. The appellant was liable to pay at the time when he filed the writ petition Rs. 160 per quarter for every seated passenger (other than the driver and the conductor) which the vehicle was permitted to carry and Rs. 45 per quarter for every passenger (other than the seated passengers, the driver and the conductor) which the vehicle was permitted to carry. Section 8 of the Act which provides for payment of additional tax in respect of motor vehicles reads thus :

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 or 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.

5. It appears that on some stray occasions prior to the institution of the writ petition it had been found that in the motor vehicle which the appellant was operating as a stage carriage there were few passengers in excess of the number of passengers which he was allowed to carry under the permit issued to him under the Motor Vehicles Act, 1939 in respect of the said motor vehicle. The taxation authority under the Act, therefore, issued a demand for payment of additional tax under the provisions of Section 8 of the Act on the ground that the appellant had proposed to use the motor vehicle in such a manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax was payable following the decision of the High Court in Noorulla Khan case [Writ Petition No. 8302 of 1980 and connected cases, decided on June 26, 1985 (Kar HC)]. Aggrieved by the said demand he filed the writ petition. As mentioned above, that petition having been dismissed, this appeal by special leave has been filed.

6. Since the judgment of the High Court under appeal is based on the decision in Noorulla Khan case [Writ Petition No. 8302 of 1980 and connected cases, decided on June 26, 1985 (Kar HC)] it is

necessary to set out briefly the facts in that case. Noorulla Khan who was the petitioner in that case was the registered owner of a motor vehicle classified as an 'omnibus' with a seating capacity of 15 + 1 under the provisions of the Motor Vehicles Act, 1939 and was subjected to tax on that basis under item 7(b) of Part A of the Schedule to the Act. He was liable to pay at the rate of Rs. 100 per seat per quarter under the said provision. He was, however, called upon by the taxation authority to pay an additional sum by way of tax on two different occasions calculating the tax on the basis of the number of passengers carried in the vehicle on those two occasions. He challenged the said demands before the Deputy Commissioner for Transport in Appeal. That appeal having been dismissed he filed Writ Petition No. 8302 of 1980, referred to above, on the file of the High Court. The High Court took the view that the petitioner in that writ petition having used the vehicle on two occasions for carrying passengers in excess of the number of passengers which he was allowed to carry under the permit he had become liable to pay additional tax for the 'proposed user' of the motor vehicle in a manner different from the manner in which he was permitted to run it. In support of its decision the High Court relied strongly on the decision in *Payne v. Alcock* [(1932) 2 KB 413] in which the conviction of the owner of a motor vehicle in respect of which he had obtained a licence to use it as a private motor car for having used it for the conveyance of goods had been upheld.

7. The Motor Vehicles Act, 1939 is a central Act, which was enacted pursuant of Entry 20 of List III of the Seventh Schedule to the Government of India Act, 1935 corresponding to Entry 35 of List III of the Seventh Schedule to the Constitution of India. The Act under which a tax is leviable on motor vehicles has been enacted by the Karnataka State legislature in exercise of its powers under Entry 57 of List II of the Seventh Schedule to Constitution of India. Thus the scope of the Act and the scope of the Motor Vehicles Act, 1939 are entirely different. Section 42 of the Motor Vehicles Act, 1939 Provides that no owner of a transport vehicle shall use or permit the use of the vehicle in any public place whether or not such vehicle is actually carrying any passenger or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or the Commission authorising the use of the vehicle in that place in the manner in which the vehicle is being used. The expression 'permit' is defined under Section 2(20) of the Motor Vehicles Act, 1939 as a document issued by the Commission or a State or Regional Transport Authority authorizing the use of a transport vehicle as a contract carriage, to stage carriage, or authorizing the owner as a private carrier on public carrier to use such vehicle. Section 2(29) of the Motor Vehicles Act, 1939 defines the expression 'stage carriage' as 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. Section 2(j) of the Act provides that the words and expressions used but not defined in the Act, shall have the meanings assigned to them in the Motor Vehicles Act, 1939. Section 48(3)(vi) of the Motor Vehicles Act, 1939 provides that the Regional Transport Authority, if it decides to grant a stage carriage permit, may grant the permit specifying the maximum number of passengers that may be carried in the motor vehicle in respect of which the stage carriage permit is issued. Section 60 of the Motor Vehicles Act, 1939 empowers the Regional Transport Authority to cancel or suspend a permit for such period as it thinks fit on the breach of any of the conditions attached to the permit. Thus a person who has obtained a stage carriage permit exposes himself to the cancellation of the permit itself under Section 60 of the Act if he carries passengers in excess of the maximum number of passengers that he is permitted to carry under the permit.

8. Under clause (2) of item 4 of Part A of the Schedule to the Act the owner of a vehicle used as a stage carriage the total mileage of which exceeded 100 kilometers per day had to pay for every quarter during the relevant time Rs. 160 for every seated passenger (other than the driver and the

conductor) and Rs. 45 for every passenger (other than the seated passengers, the driver and the conductor) which the vehicle was permitted to carry. According to the above provision if the owner of a motor vehicle, which is used as a stage carriage, who is permitted to carry, say, 45 persons including the driver and the conductor of whom 40 are seated passengers and 3 are standing passengers, he has to pay Rs. 6535 for every quarter. The question is whether he is liable to pay any additional tax under Section 8 of the Act if he carries on any occasion any passengers in excess of the number of passengers he is permitted to carry. Let us assume that the registered owner of the motor vehicle in the above case has carried on one occasion in a given quarter 47 passengers (inclusive of the driver and the conductor) and on another occasion in the same quarter 50 passengers (inclusive of the driver and the conductor). In this instruction the question which arises for consideration is whether the registered owner is liable to pay Rs. 6535 for that quarter or Rs. 6535 plus the additional tax in respect of two more passengers or Rs. 6535 plus the additional tax for five more passengers during that quarter. Section 8 of the Act provides that 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 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 the taxation authority shall not grant a fresh taxation card in respect of such vehicle so altered or proposed to be used until such amount of tax has been paid. The crucial words in Section 8 of the Act are 'when any motor vehicle.....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 payment of additional tax arises, therefore, only on two occasions : (1) when the motor vehicle is altered in such a manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax is payable; or (2) 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. Admittedly, the vehicle in question has not been altered. The question which remains to be considered is whether in the given case the 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 vehicle in question has been used only as a stage carriage even when two or five extra passengers have been carried. There is no other provision in Part A of the Schedule to the Act which requires 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 a larger number of passengers that are carried in it. In order to bring the case within the scope of Section 8 of the Act it must be first shown that there is a provision in the Act which makes a stage carriage vehicle which carries a larger number of passengers than what is permitted under the permit issued in respect of it subject to a higher rate of tax, The highest rate of tax in respect of a stage carriage that can be levied under the Act is incorporated in clause (2) of items 4. Sub-clause (a) of clause (2) of items 4 of the Schedule to the Act provides that for every seated passenger (other than the driver and the conductor) which the vehicle is permitted to carry the registered owner is liable to pay Rs. 160 and for every passenger (other than the seated passenger, the driver and the conductor) which the vehicle is permitted to carry has to pay Rs. 45 per passenger per quarter. In both the sub-clauses the liability of the registered owner is governed by the number of passengers that he is permitted to carry under the permit issued in his favour under the Motor Vehicles Act, 1939 and thus his liability is limited by the condition incorporated in the permit.

9. It would have been possible to levy higher tax on the appellant only if the words 'which the vehicle is permitted to carry' in items 4(2) of Part A to the Schedule to the Act had been omitted.

The court cannot ignore those words while construing the said item since it relates to the levy of a tax. Moreover the provision in Section 8 is specific. It says that the additional tax shall be 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 in such a manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax is payable.

10. There is another difficulty in applying Section 8 to stray cases of overloading. Additional tax is payable for the period during which the vehicle is proposed to be used for a purpose which will attract a higher rate of tax. The rate of tax is fixed taking one quarter i.e. 3 months as a unit of time for taxation. Is it reasonably possible to determine the higher rate of tax payable, if, say, on two days in a quarter there has been overloading of the vehicle for a few hours or minutes ? The problem of computation of additional tax becomes difficult in such cases.

11. There is another important circumstance which persuades us to disagree with the construction placed by the High Court on the relevant provision of taxation in the Act. The rate of taxation in this case is not based on the number of passengers actually carried during any period in a motor vehicle used as a stage carriage but it is related to the number of passengers which the motor vehicle is permitted to carry under the permit. If the number of the passengers carried during any period is less than what is permitted, the registered owner of the motor vehicle does not get any rebate. He has to pay the tax at the rate determined by the number of maximum passengers mentioned in the permit even when the stage carriage is run without any passengers. When that is the position there appears to be no justification to hold that the registered owner or whoever is liable to pay the tax should be made to pay the additional tax merely because on some stray occasions the motor vehicle is found to have carried a few more passengers than the number permitted under the permit since the tax is not levied on the basis of the number of passengers actually carried.

12. The decision in *Payne v. Alcock* [(1932) 2 KB 413] is clearly distinguishable from the present case. In that case the appellant had paid the duty under para 6 of the Schedule II to the Finance Act, 1922 which was a residuary clause under which he had to pay Pounds 16 for taking out the licence for using his motor vehicle as a private motor car. But he was found to be using the vehicle for the purpose of carrying goods for a fairly long period which brought the vehicle under para 5 of that Schedule which levied a higher rate of tax. In the case before us, as we have already pointed out the vehicle could not be subjected to a higher rate of tax under any other item in Part A to the Schedule to the Act.

13. The argument urged on behalf of the State Government that the liability of the registered owner to pay tax in respect of a stage carriage depends upon the number of passengers carried in a vehicle on a given date does not appeal to us because in that event the words 'which the vehicle is permitted to carry' in item 4(2) become meaningless and ineffective. The High Court in *Noorulla Khan* case [Writ Petition No. 8302 of 1980 and connected cases, decided on June 26, 1985 (Kar HC)] overlooked the presence of the words 'which the vehicle is permitted to carry' which are found in clause (b) of item 7 of the Schedule to the Act also. It is no doubt true that it is not in the public interest that a registered owner of a motor vehicle should be allowed to carry more passengers than the maximum number of passengers that he is allowed to carry under his permit and such a tendency on the part of any registered owner should be checked. That fact, however, cannot be relied upon for the purpose of construing the items in Part A of the Schedule to the Act liberally and in favour of the State Government. It is needless to say that a law which imposes a tax should be constructed strictly. If the action on the part of the registered owner is contrary to the provisions of the Motor

Vehicles Act, 1939 there is sufficient provision in that Act to take appropriate action against him and either to cancel the permit or to suspend it.

14. In case instant case we feel that a registered owner of a motor vehicle which is permitted to be used as a stage carriage cannot be asked to pay additional tax under Section 8 of the Act merely because he has carried on some occasions more passengers than the maximum number of passengers that he is permitted to carry under the permit. The tax which he is liable to pay is limited by the maximum number of passengers he is entitled to carry under the permit. We, therefore, do not agree with the decision of the High Court in Noorulla Khan case [Writ Petition No. 8302 of 1980 and connected cases, decided on June 26, 1985 (Kar HC)]. We overrule it. The judgment of the High Court against which this appeal is filed is liable to be set aside. It is accordingly set aside. The respondents are directed not to levy additional tax on the appellant under Section 8 of the Act for carrying more passengers than what he was permitted to carry on some occasions during the period in question. But we however impress upon the authorities the need to enforce the provision in Section 60 of the Motor Vehicles Act, 1939 strictly.

15. The appeal is accordingly allowed. No Costs.

</html