

M/s Sundaram Finance Ltd.

Vs

Regional Transport Officer and Another

Civil Appeal Nos. 888-890 of 1975

(K.N. Singh, P.B. Sawant JJ)

16.08.1991

ORDER

1. These appeals are directed against the judgment and order dated January 27, 1975 of a Division Bench of the High Court of Kerala dismissing the three writ petitions filed by the appellant.
2. M/s Sundaram Finance Ltd. is a company carrying on business of financing of automobiles on hire-purchase basis with its head office at Madras. The company had three vehicles which were covered by hire-purchase agreements executed by it with the concerned bus operators. The persons who were actually operating the vehicles did not pay the passengers and goods tax. Since the vehicles were subsequently seized by the appellant and got registered in its name, the Regional Transport Authority issued notice of demand to the appellant for the recovery of the tax arrears. The appellant challenged the validity of the recovery proceedings by filing writ petitions in the High Court mainly on the ground that the appellant-company was not an 'Operator' and had no permit in its favour at the relevant time when the tax was collected; hence, it could not be made liable to pay the taxes in dispute. The Division Bench of the High Court considered the matter in detail and dismissed the petitions in view of the definition of 'Operator' in Section 2(b) of the Kerala Motor Vehicles (Taxation of Passengers and Goods) Act, 1963 (hereinafter referred to as the Act). The Court held that the appellant being the owner of the vehicle and being also in control and possession of the same, was included in the definition, irrespective of the fact it was a permit-holder or not. In this view the Division Bench dismissed the writ petitions upholding the recovery of the taxes from the appellant.
3. After hearing learned counsel for the parties at length, we do not find any error or legal infirmity in the impugned judgment of the High Court. Under Section 3 of the Act, the tax is levied on all passengers, luggage and goods carried by stage carriages and on all goods transported by goods vehicles at the rates specified therein. Under sub-section (3) of the said section, 'Operator' is liable to pay the tax. Thus, though the tax is on the transport of passengers, luggage and goods, the tax is collected from an 'Operator' and under the law he is liable to pay the taxes. Operator is defined by Section 2(b) of the Act as amended by Act 4 of 1973 as the owner or the person having possession or control of the vehicle and includes any person whose name is entered in the permit as the holder thereof. This definition is wide enough to include the appellant-company who was owner of the vehicles and on the date of the notice of demand it had, further, possession and control of the vehicles. In the circumstances, in our opinion, the High Court has rightly held that the appellant is liable to pay the taxes. Learned counsel placed reliance on two Division Bench decisions of Madras High Court, namely, Tehsildar, South West Madras v. Lalith Finance Corpn. [(1986) 99 Mad LW 442 : (1986) 2 MLJ 49] and also Tehsildar, South West Madras v. Jang Bahadur Singh Jain and Company [(1985) 98 Mad LW 808]. We have gone through the judgments carefully but with great

respect to the learned Judges we are unable to agree with the view taken by them. We need not discuss the matter in detail as similar provisions contained in Bihar Act have been considered in detail by this Court in Jagir Singh v. State of Bihar [(1976) 2 SCC 942 : 1976 SCC (Tax) 204 : (1976) 2 SCR 809]. In this case the Court has upheld the liability of the owner to pay the tax although he was not an operator, in view of the extended meaning of the side term.

4. Hence, we are of the opinion that the High Court has rightly dismissed the petitions and upheld the liability of the appellant for paying the taxes. The appeals fail and are accordingly dismissed with costs.

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