

State of Karnataka and Others

Vs

N. Madappa and Others

Civil Appeals Nos. 8843-8850 of 1996 With No. 8851 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

02.05.1996

JUDGMENT

1. Delay condoned.
2. Leave granted.
3. We have heard learned counsel on both sides.
4. These appeals by special leave arise against the judgments dated 18-10-1990 and 18-2-1991 of the Division Bench of the High Court of Karnataka made in WPs Nos. 14029-036 of 1989 and 159 of 1991. The appellant had introduced by the Karnataka Motor Vehicles Taxation (Amendment) Act 14 of 1989, subsection (4) of Section 3 which reads as under:

"Amendment of Section 3. -After sub-section (3) of Section 3 of the Karnataka Motor Vehicles Taxation Act, 1957 (Karnataka Act 35 of 1957) (hereinafter referred to as 'the principal Act'), the following shall be inserted, namely:

(4) Notwithstanding anything contained in sub-sections (1) and (2), a Special Additional Tax at the rates specified in part 'D' of the Schedule shall be levied on motor vehicles suitable for use on roads carrying passengers or goods in excess of the permitted capacity of the vehicles.

(5) Insertion of new part 'D' after part 'C' and before the Explanation, the following shall be inserted, namely:

-- Item Class of Vehicle Special additional tax No. for each occasion on which such excess is carried -- Rs ps

1. Passenger vehicles carrying 20.00 passengers in excess of the permitted capacity, for every such excess passenger.

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(6) In the Explanation. in paragraph (3) after the words 'Corporation', the words 'Or a Bank or a Board or a Cooperative Society or such other institution as may be notified by the State Government in this behalf shall be inserted.

8. power to remove difficulty.--If any difficulty arises in giving effect to the provisions of the principal Act, as amended by this Act, the State Government may, by notification in the Official Gazette, make such provisions as may appear to it to be necessary or expedient for removing the said difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act."

5. The respondents have challenged the validity of the above provisions. The Division Bench had held that the State Government is devoid of power to levy tax at the enhanced rate on the passengers. It followed the ratio laid down by this Court in *Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan*[AIR 1962 SC 1406 : (1963) 1 SCR 491] and held that there is no competence of the State Legislature to enact sub-section (4) except to enforce Section 60 of the Motor Vehicles Act, 1939 (4 of 1939) which is equivalent to Section 86 of the 1988 Act to levy tax on extra passengers and goods.

6. The question, therefore, is: whether the State Legislature is competent to enact law to levy tax on excess passengers carried by the holder of a permit under the Motor Vehicles Act? On an earlier occasion, when the State had amended Section 8 and armed itself with power to levy additional tax, it came to be challenged. Ultimately this Court in *M. Narasimhaiah v. Dy. Commr. for Transport* [1987 Supp SCC 452] held that having regard to the power to levy the tax on the capacity of the vehicle determined under Entry 4 of Schedule A read with Section 8 of the Act and the rates prescribed thereunder the State Legislature has no power to impose additional tax on excess passengers. While considering that question this Court in para 10 held thus: (SCC p. 459)

"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."

7. It is true that under Entry 57 of List II of the Seventh Schedule to the Constitution, the State Legislature has power to impose tax on vehicles, whether mechanically propelled or not, suitable for use on roads subject to the provisions of Entry 35 of List III. There is no law made by Parliament occupying the field under Entry 35 of List III. Therefore, the State Legislature has power under Entry 57 to make law levying tax on vehicles.

8. It is seen that under Schedule A read with Section 8, the State Legislature has already levied tax on the basis of the capacity of the passengers carried in the motor vehicle as per the permit issued thereunder. Having had that power the question emerges: whether the State Legislature can levy tax on excess passengers on each of the occasions when the enforcing officers found the vehicle to have been overloaded? The concept of tax on vehicle is not for a single day or an hour when the passengers were found to be in excess of the limit prescribed under the permit. The power to levy the tax is on the basis of the user of the vehicle for the quarter under the Act. Under those circumstances, the power to levy tax under the amended sub-section (4) of Section 3 read with Schedule D on excess passengers obviously on each occasion of overloading appears to be unsustainable. Under those circumstances, the power to levy tax at the enhanced rate on the excess

passengers on finding the vehicle to be overloaded in excess of the prescribed limit, appears to be not consistent with the scheme under Section 8 of the Act. Therefore, though for different reasons, we hold that the amendment is not valid in law.

9. The appeals are accordingly dismissed. No costs.