

MYSORE HIGH COURT

D.G. Bhagavan

Vs

Regional Transport Officer

Writ Petn. No. 1040 of 1964

(K.S. Hegde and K. Bhimiah, JJ.)

06.09.1966

JUDGMENT

Hegde, J.

1. In this Writ Petition, the petitioner, who is the proprietor of S. C. S. Motor Service, Kadaba, prays for a writ of certiorari quashing the demand made by the Regional Transport Officer, Tumkur, as per his notice No. MYF. 520/63-64 dated 31-10-1963, and the Order of the Commissioner for Transport in Mysore, in No. X.A/38/63-64, affirming in appeal the demand made by the R. T. O., Tumkur.

2. The material facts of the case are these :

3. The Petitioner is the proprietor of the Motor Vehicle bearing No. MYF. 520. He was operating on a route in Tumkur District. It appears that sometime in the beginning of 1963, the Superintendent of Police, Tumkur, inspected the vehicle and found it to be unfit for use on road. Therefore, a joint inspection was conducted by the R. T. O. and himself on 4-2-63. Thereafter, the R. T. O., Tumkur, cancelled the fitness certificate of the vehicle in question on 9-2-1963. The Petitioner returned to the R. T. O., the registration certificate as well as the token of the vehicle in question. But, the R. T. O., by his letter dated 18-3-1963, informed the petitioner that the surrender in question was not accepted as it did not comply with the requirements laid down by the Government Notification No. M. D. 70 MVT. 58 dated 9/13-3-1959.

At this stage, it may be noted that while surrendering the registration certificate and the token, the petitioner failed to surrender the permit relating to the vehicle. The same was surrendered only on 23-11-1963. By his letter dated 31-10-1968, the R. T. O., Tumkur, has demanded from the petitioner a sum of ₹ 3,9157- as tax and penalty due for the three quarters beginning from 1-4-1963 and ending with 31-12-1963. For each of the quarters, he has demanded a sum of ₹ 1,305/-

as tax and penalty. This Order of the R. T. O., as mentioned earlier, has been affirmed by the Commissioner for Transport in Mysore, in the appeal filed by the Petitioner.

4. So far as the levy of penalty is concerned, it is conceded on behalf of the respondents that the same is invalid. That question is no more open to dispute in view of the several decisions of this : see the decision in *Chamundi Construction Company v. State of Mysore*¹,

5. Now coming to the question as to the petitioner's liability to pay the tax demanded, we do not think that the facts of this case are governed by any decision of this Court. At any rate, no decision bearing on that point was brought to our notice at the hearing of this petition. Therefore, we have to consider the same on the basis of the relevant provisions.

6. Tax is levied on motor vehicles on the basis of Section 3 of the Mysore Motor Vehicles Taxation Act, 1957. That Section to the extent it is relevant for our present purpose reads as follows :-

"3. (1) A tax at the rates specified in part A of the Schedule shall be levied on all motor vehicles suitable for use on roads, kept in the State of Mysore :"

The proviso to that Section is not relevant for our present purpose. Then, we come to the explanation which reads :

"Explanation, A Motor Vehicle of which the certificate of registration is current shall, for the purposes of this Act, be deemed to be a vehicle suitable for use on roads."

7. There is no denying of the fact that the motor vehicle with which we are concerned in this case was not suitable for use on roads. This fact is made obvious by the Order made by the R. T. O. as per his proceedings dated 9-2-1963, to which a reference had already been made. The R. T. O., Tumkur had cancelled the fitness certificate granted to the vehicle. That being so, it can be safely held that the vehicle in question was not suitable for use on roads as contemplated by Section 8 of the Motor Vehicles Taxation Act, 1957.

8. Then we come to the explanation quoted above. As per that explanation, a motor vehicle is deemed to be suitable for use on roads if its certificate of registration is current. This is a deeming provision. The scope of that provision has been considered in a large number of decisions of this Court. Here again, we may usefully make reference to the decision of this Court in 1961-39 Mys LJ 541, cited above. But, then Mr. P. R. Srirangiah, the learned Counsel for the petitioner, contends that in this case the Revenue cannot take any assistance from the explanation to Section 3(1) referred to earlier, in view of the cancellation of the fitness certificate. Sub-section (3) of Section 38 of the Motor Vehicles Act, 1939, provides :

"The issuing authority or other prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and the rules made thereunder ; and on such cancellation the certificate of registration of the vehicle and any permit granted in respect of the vehicle under Chapter IV shall be deemed to be suspended until a new

¹1961-39 Mys LJ 541

certificate of fitness has been obtained."

In view of the cancellation of the fitness certificate, it follows that the certificate of registration issued to the petitioner was no more current. That being the position, the explanation to Section 3(1) of the Mysore Motor Vehicles Taxation Act, 1957, is inapplicable to the facts of the present case. Hence, the Revenue cannot take the benefit of the deeming provision referred to above. As already held, the vehicle in question cannot be considered as one suitable for use on roads as contemplated by Section 3(1) of the aforementioned Act.

9. The learned Counsel for the Revenue, contended that the surrender made in this case does not comply with the requirements laid down by the Government Notification No. M. D. 70 MVT. 58 dated 9/13-3-1959. That notification deals with cases where exemption is claimed. The requirements of that Notification will have to be complied with if a case falls within the scope of Section 3 of the Mysore Motor Vehicles Taxation Act, 1957, but at the same time, the operator claims exemption for one or the other of the reasons mentioned in that Notification. The present is not one such case. Therefore, the decisions bearing on the scope of that Notification have no application to the present case.

10. In the result, this petition is allowed and the Order impugned quashed. The Petitioner is entitled to his costs from the respondents Advocate's Fee ₹ 100/-

Petition allowed.