

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND EIGHT
PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM
and
THE HON'BLE MR JUSTICE SANJAY KUMAR

WRIT PETITION NO : 13979 of 2000

Between:

Sri S.Murali Krishna, S/o. Damodara Rao.
R/o D.No. 40-1-124, Near Benz Circle,
Vijayawada, Krishna District.

..... PETITIONER

AND

The Deputy Transport Commissioner & Secretary, Regional
Transport Authority.
Vijayawada, Krishna District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a writ order or direction particularly one in the nature of writ of Certiorari and call for the records in demand notice dated 20/06/2000 in the R.No.33785/A3/99, from the file of the respondent demanding difference of tax of Rs.28,440/- for the vehicle bearing No.AP16W-4266 for QE 30/06/1999 and quash the same as illegal arbitrary and contrary to law and pass such other order or orders may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.B.SIVA RAMA KRISHNAIAH

Counsel for the Respondent No.: GP FOR TRANSPORT

The Court made the following :

THE HON'BLE SRI JUSTICE
GODA RAGHURAM
And

**THE HON'BLE SRI JUSTICE
P.V. SANJAY KUMAR**

W.P.No. 13979 of 2000

Oral Order: (Per: GR, J)

The petitioner is the owner of an Idle Vehicle bearing registration No. AP.16-W-4266 having a basic permit No. 89/K/98 valid up to 31-02-2003. On account of default in the payment of hire installments, the financier on 12-04-1999 repossessed the vehicle and kept it idle. The vehicle was latter released to the petitioner and he obtained a fitness certificate for it valid up to 06-06-2000. The petitioner obtained special permits under Section 88 (8) of the Motor Vehicles Act, 1988 from time to time on payment of additional tax as per G.O.Ms.No. 224 dated 07-11-1996.

While the vehicle was returning to Vijayawada from Hyderabad under a special permit, it was stopped and checked on 25-06-1999 and found plying as an express stage carriage with passengers bound for different destinations and traveling on different purposes, paying individual fares. The checking officer also noticed that there was no implied contract with the registered owner/travel agent and that the purpose of the journey was not common nor was for tourism. The checking officer therefore concluded that

the special permit was misused by operating the vehicle as a stage carriage by collecting individual fares. Consequently, the impugned demand notice dated 20-06-2000 was issued determining the difference of tax payable i.e., at Rs. 28,440-00, assailing which the writ petition is filed.

It is fairly stated by the learned Government Pleader for Transport that in view of the judgment of the Full Bench of this Court in *Kanapala Rama Rao v. Regional Transport Officer, Srikakulam*¹ and affirmed by a Larger Bench Judgment of this Court reported in *L. Royal Reddy and others v. Government of A.P.*², the notice of demand calling upon the petitioner to pay the difference of tax is not sustainable.

A Learned Larger Bench of this Court in *Royal Reddy* (supra) held per majority that the “Charging section in the A.P. Motor Vehicles Taxation Act, 1963 (Section 3) does not authorize levy of any additional tax whenever there is any violation of a permit or the conditions of a permit. The decision also held that unless the charging section authorizes or permits levy of additional tax or charges, which is a penalty the same cannot be treated as part of regulatory or compensatory tax.

In the case on hand the petitioner’s vehicle was found to be plying as an express stage carrier while having a special permit. The violation of the conditions of

permit is therefore, covered by the ratio of the decision of the Larger Bench of this Court in *Royal Reddy* (supra).

In the light of the submissions and in the light of the judgments of this Court supra, the impugned demand notice cannot be sustained and is quashed.

On 02-08-2000 an interim stay was granted by this Court on condition that the petitioner pays an amount of Rs.12,000-00 within four weeks. It is stated by the learned counsel for the petitioner that pursuant to the conditional interim order above, the petitioner has deposited the amount of Rs.12,000-00 (Rupees twelve thousand only). If that be so, in view of the quashing of the impugned demand notice, the petitioner shall be entitled to refund of the amount deposited.

The respondent shall refund the deposited amount to the petitioner within a period of two weeks on his making an application for the refund.

The writ petition is accordingly disposed of. There shall however be no order as to costs.

GODA RAGHURAM, J

P.V. SANJAY KUMAR, J

Dated: 31-12-2008
Pvks/DSK

[1](#) 2001 (6) ALD 402 (FB)

[2](#) 2004 (2) ALD 225 (LB)