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S. SRIKANTIAH & ORS.

v.

**THE REGIONAL TRANSPORT AUTHORITY,
ANANTAPUR & ORS.**

May 7, 1971

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[S. M. SIKRI, C. J., G. K. MITTER, C. A. VAIDIALINGAM, P. JAGAN-
MOHAN REDDY AND I. D. DUA, JJ.]

Madras Motor Vehicles (Taxation of Passengers and Goods) Act 16 of 1952 and The Motor Vehicles (Taxation of Passengers Goods) Andhra Pradesh (Amendment) Act 1959—Notification issued under s. 43 of Act authorising enhancement of fares by operators—No consequential amendment made in permits held by operators—Once Notification is issued under s. 43 the conditions of permits stand statutorily amended by virtue of s. 59 (3) (c).

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The Madras Motor Vehicles (Taxation of Passengers and Goods) Act 1952 became applicable to the State of Andhra and subsequently to Andhra Pradesh when the respective reorganisation of States took place in 1953 and 1956. In 1959 the Andhra Pradesh legislature enacted the Motor Vehicles (Taxation of Passengers and Goods) Andhra Pradesh (Amendment) Act with a view to augmenting the revenue of the State. By this Act the rates in respect of state carriages as well as goods vehicles were increased. The Act came into force with effect from 8th May 1959. On 7th May 1959 by G.O. Ms. No. 1077 the State Transport Authority was directed by the Government to fix maximum fares inclusive of the leviable tax under the Act for the state carriages in the State of Andhra Pradesh. The 1959 amendment was struck down by the High Court. The legislature thereafter passed Act 34 of 1961 by validating the levy under the Act which had been struck down by the High Court and also for imposition of a surcharge. The operators again questioned the Amendment Act of 1961 on the ground that they had not collected the fares on the enhanced rates fixed by the Transport Authority because by the conditions of their permit they were precluded from collecting the fares at a rate higher than 7½ pies or 4 NP per passenger per mile. In view of the fact that the Regional Transport Authorities had not taken action to modify that condition suitably they could not collect this amount and therefore were not liable to pay surcharge at enhanced rates. The High Court held that the directions issued by the Government in G.O. Ms. No. 1077 of 7th May 1959 pursuant to which the Regional Transport Authority by its proceedings dated 12th May 1959 called upon the Regional Transport Officers to notify the operators and which the said officers had notified authorising them to collect the enhanced fares was sufficient authorisation for them to collect the enhanced fares as if the fare tables had been amended. The operators appealed to this Court. The constitutionality of the surcharge having been upheld by this Court in *Nazeeria Motor Service etc. etc. v. State of Andhra Pradesh & Anr.*, [1970] 2 S.C.R. 52, the only question that survived for consideration was whether there was any impediment preventing the operators from collecting the enhanced fares without the conditions of the permit being amended.

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HELD: In view of the directions given by the Government in its notification under s. 43 the Regional Transport Authority called upon the Regional Transport Officers to notify the operators to collect the enhanced

fares and accordingly the officers concerned in compliance with these directions notified the operators. Once the provisions of section 43(1)(i) and 44(4) are complied with section 59(3) (c) comes into play and it has the effect of incorporating the maximum fares as notified including the tax leviable, as a condition of the permit. This being the legal position there was no justification for the contention that the collection by the operators of the enhanced fares without the table of fares being amended would entail the cancellation of the permits. [820G-H]

Madhya Pradesh Transport Co. Private Ltd. v. State of Madhya Pradesh, A.I.R. (Vol. 49) 1962 M.P. 108, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1332 of 1968.

Appeal from the judgment and order dated February 3, 1964 of the Andhra Pradesh High Court in Writ Petition No. 201 of 1963.

K. Mangachari, K. R. Chaudhuri and K. Rajendra Chaudhury, for the appellants.

P. Ram Reddy and G. S. Rama Rao, for the respondent.

The Judgment of the Court was delivered by

P. Jaganmohan Reddy, J.—This Appeal is by a Certificate against the Judgment of the Andhra Pradesh High Court given in a batch of Writ Petitions of which the Writ Petition giving rise to this Appeal was one. The High Court while dismissing the Writ Petitions gave certain directions to which we will refer later.

A few facts may be stated to appreciate the matters in issue in this appeal. The Madras Motor Vehicles (Taxation of Passengers and Goods) Act (Act XVI of 1952) became applicable to the State of Andhra and subsequently to the Andhra Pradesh when the respective reorganisation of States took place in 1953 and 1956. In 1959 the Andhra Pradesh legislature enacted the Motor Vehicles (Taxation of Passengers and Goods) Andhra Pradesh (Amendment) Act with a view to augment the revenue of the State. By this amendment Act the rates had been increased in respect of State carriages as well as in respect of goods vehicles. It is not necessary to notice what those rates are except to say that under sub-section (2) of Section 1 of the Madras Motor Vehicle (Taxation of Passengers and Goods) Andhra Pradesh (Amendment) Act 1959, the Govt. of Andhra Pradesh appointed the 8th May 1959 as the date on which the State Act came into force. On 7th May 1959 by G.O. Ms. No. 1077 the State Transport Authority was directed by the Govt. to fix maximum fares inclusive of the leviable tax under the Act for the

- A** state carriages in the State of Andhra Pradesh which immediately before the 1st November 1956 were comprised in the State of Andhra. The Andhra Pradesh Amendment having come into force it was challenged in a batch of Writ Petitions in the High Court of Andhra Pradesh and that Court had struck down the Act as being un-constitutional. The legislature thereafter passed
- B** Act 34 of 1961 by validating the levy under the Act which was struck down by the High Court and also for imposition of surcharge from the different dates from the date on which it came into force namely from the 3rd November 1961. The operators again questioned the Amendment Act of 1961 on the ground that they had not collected the fares on the enhanced rates fixed by the Transport Authority because by the conditions
- C** of their permit they were precluded from collecting the fares at a rate higher than $7\frac{1}{2}$ pies or 4 NP per passenger per mile. In view of the fact that the Regional Transport Authorities had not taken action to modify that condition suitably they could not collect this amount and therefore were not liable to pay surcharge at the enhanced rates. This contention was negatived
- D** by the High Court which while rejecting the Writ Petitions on that ground none-the-less directed that the Respondents will not be entitled to payment or collect the enhanced surcharge from the operators for the month of May 1959 which the Counsel for the Government had stated on instruction that the Govt. will not collect.
- E** The point which is urged before us, as was urged in the High Court is whether the enhanced surcharge became operative and payable immediately on the coming into force of the 1961 Act or was it necessary to amend the conditions of the permit dealing with the fares leviable by the operators before the Government could collect the enhanced surcharge from them.
- F** The learned Advocate for the Appellents argues relying on *Madhya Pradesh Transport Co. Private Ltd. v. State of Madhya Pradesh*(¹) that unless 'the table of fares is altered in accordance with the procedure laid down fares which includes taxes cannot be lawfully collected and therefore they are not law bound to pay the enhanced surcharge. This very contention was raised before
- G** the High Court, which disagreeing with the *Madhya Pradesh* case cited above held that the directions issued by the Govt. in G.O. Ms. No. 1077 of 7th May 1959 pursuant to which the Regional Transport Authority by its proceedings dated 12th May 1959 called upon the Regional Transport Officers to notify the operators and which the said officers had notified authorising them to collect the enhanced fares was sufficient authorisation
- H** for them to collect the enhanced fares as if the fare tables had been amended.

(1) A.I.R. (Vol. 49) 1962—M. P. 108.

It may be mentioned that the constitutionality of the enhanced surcharge was upheld by this Court in *Nazeeria Motor Service etc. etc. v. State of Andhra Pradesh & Anr.*,⁽¹⁾ and therefore the only question that survives is whether there is an impediment to the operators to collect fares without the conditions of the permit being amended. There is of course the other basic question whether the payment of the enhanced tax is dependent on the operators collecting the enhanced fares. In any case it is unnecessary to consider this question in the view we have taken that the contention urged by the Appellant is unsustainable. The relevant provisions of the Motor Vehicles Act clearly support the view taken by the High Court that once a Notification is issued by the Government in exercise of the powers under Section 43(1)(i) the conditions of the permit stand statutorily amended by virtue of Section 59(3)(c).

The provisions of Section 43, 44, 48 and 59 before their amendment in 1969, in so far as they are applicable to the matter under consideration are as follows.---

43(1) A State Government.....may from time to time by Notification in the official Gazette issue directions to the State Transport Authority—

(i) regarding the fixing of fares and freights for stage carriages, contract carriages and public carriers;

44(3) A State Transport Authority shall give effect to any directions issued under Section 43 and subject to such directions and save as otherwise provided by or under this Act shall exercise and discharge throughout the State the following powers and functions namely :

(a)

(b)

(c)

(d)

(4) For the purpose of exercising and discharging the powers and functions specified in sub-section (3), a State Transport Authority may, subject to such conditions as may be prescribed, issue directions to any Regional Transport Authority and the Regional Transport Authority shall in the discharge of its functions under this Act give effect to and be guided by such directions.

48(3) The Regional Transport Authority, if it decides to grant a stage carriage permit, may grant the permit for

1) [1970] 2 S. C. R. 52

A a service of stage carriage of a specified description or for one or more particular stage carriages, and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions namely:—

(i) to (xi)

B (xii) that fares shall be charged in accordance with the approved fare table;

59(3) The following shall be conditions of every permit:—

C (c) that any prohibition or restriction imposed and any maximum or minimum fares or freights fixed by notification made under Section 43 are observed in connection with any vehicle or vehicles to which the permit relates :

The Government has pursuant to Section 43 issued the following notification :

D “In exercise of the powers conferred by clause (i) of sub-section (1) of Section 43 of the Motor Vehicles Act, 1939 (Central Act, IV of 1939) and in supersession of the Notification of the Government of A.P. in Public Works and Transport Department No. 1184 dated the 11th August 1956, published at page 2026 of part I of the A. P. Gazette dated the 6th September 1956, the Governor of Andhra Pradesh hereby directs the State Transport to fix the following maximum fares inclusive of the tax leviable under the Madras Motor Vehicles (Taxation of Passengers and Goods) Act, 1952 (Madras Act XVI of 1952) for stage carriages in the territories of the State of Andhra Pradesh which immediately before the 1st November, 1956 were comprised in the State of Andhra.....”

G In view of the directions given by the Government in the above notification the Regional Transport Authority called upon the Regional Transport Officers to notify the operators to collect the enhanced fares and accordingly the officers concerned in compliance with those directions notified the operators. Once the provisions of Section 43(1)(i) and 44(4) are complied with Section 59(3)(c) comes into play and it has the effect of incorporating the maximum fares as notified including the tax leviable, as a condition of the permit. This being the legal position we do not think there is any justification for the contention that the collection by the operators of the enhanced fares without the table of fares being amended would entail the cancellation of the permits.

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The decision of the Madhya Pradesh case is clearly distinguishable as it does not appear that any notification was issued under Section 43 as was done in this case nor do we find that the provisions of Section 59(3)(c) have been referred to or considered. At page 111, Dixit C.J., noted the submissions of the Additional Government pleader that instructions would be issued to all Regional Transport Authorities for a revision of fare tables under Section 43 of the Motor Vehicles Act so as to enable the operators to recover the tax amount from the passengers as extra fare, which he observed was a step in the right direction. These observations show that there was no notification under Section 43 nor any instructions given to the Regional Transport Officers by the Regional Transport Authority. In the circumstance that case is not an authority for the proposition contended by the learned Advocate for the Appellant. In our view there is no validity in the stand taken by the operators and consequently this appeal is dismissed with costs.

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Appeal dismissed.

G. C.