

PETITIONER:
NIRMALA JAGDISHCHANDRA KABRA

Vs.

RESPONDENT:
THE TRANSPORT COMMISSIONER & ORS.

DATE OF JUDGMENT: 14/02/1997

BENCH:
K. RAMASWAMY, S. SAGHIR AHMAD

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

This special leave petition arises from the order of the Division Bench of the Gujarat High Court made On December 4, 1996 in LPA No. 1430/96. The Motor Vehicle Inspector had imposed penalty of Rs. 1,000/- etc. for violation of the conditions of the contract carriage permit. It was found that the vehicle was being used as stage carriage in violation of the breach of the conditions of the permit inasmuch as petitioner was collecting individual fares @ Rs. 1.60 per passenger and was not using the vehicle as a tourist; vehicle hired to one group party. The petitioner filed writ petition in the High Court Seeking the relief as under:

"To allow this petition and to issue appropriate writ, direction and order holding and declaring that the respondent authorities have no legal right or power or authority to either seize or detain the petitioner's vehicles shown at Annexure A to this Petition in purported exercise of power under Section 207 of the Motor Vehicles Act, 1988 solely on the allegation of collection of individual fare from the passengers."

The learned single Judge and the Division Bench refused to grant the relief in the face of Section 207 (1) read with proviso thereto of the Motor Vehicle Act, 1988 (for short, the 'Act'). Section 207 of the Act postulates the power to detain vehicle used without certificate of registration permit, etc. Sub-section (1) provides thus:"

"Any police officer or other person authorised in this behalf by the State Government may, if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions to Section 3 or Section 4 or Section 39 or without the permit

required by sub-section (1) of Section 66 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle, in the prescribed manner and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle."

The proviso postulates thus:

"provided that whether any such officer or person has reason to believe that a motor vehicle has been or is being used in contravention of Section 3 or Section 4 or without the permit required by sub-section (1) of Section 66 he may, instead of seizing the vehicle, seize the certificate of registration of the vehicle and shall issue an acknowledgment in respect thereof."

There is power for compounding the offence provided in Section 206 of the Act. In the light of the Sub-section (1) of Section 207, if the officer authorised in that behalf is of the opinion that the vehicle has been or is being used in contravention of any of the aforesaid provisions of the Act or conditions of the permit relating to the route on which or the area in which or the purpose for which the vehicle is used, he may seize and detain the vehicle or compound the offence. The statutory power given to the authorised officer under Section 207 is to ensure compliance of the provision of the Act. Therefore, the mandamus sought for cannot be issued, as referred to earlier.

It is contended by Shri Arun Jaitley, learned senior counsel for the petitioner that the petitioner has taken the vehicle on hire basis from the owner of the vehicle who had the permit for contract carriage of the passengers from one destination to another. They are not collecting any individual fare on route by picking up or setting down the passengers. They are picking up passengers from one place and taking them for tour to the other destination and, therefore, it is a "contract carriage" within the meaning of Section 2(7) of the Act. It is not a Stat carriage permit but one of contract carriage and, therefore, the view taken by the High Court is not correct in law. It is true that if the holder of the vehicle obtains a contract carriage, the owner may carry a passenger or passengers for hire or reward on contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person which a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum. In other words, the very permit for which the contract for carriage of the passengers granted should contain the names of the passengers to carry from one destination to another destination without picking up or setting down en route for hire or reward but when the holder of a permit is another and permits them to carry the passengers and makes the contract de hors those mentioned in the list of passengers enclosed to the permit as contract carriage and takes the passengers. from one destination to

another, even without picking up or setting down en route, the necessary consequence would be that the vehicle has been or is being used as a stage carriage but not a contract carriage. Under those circumstances, obviously, the authority had rightly detained the vehicle for the contravention of the conditions of the permit. Therefore, the mandamus, as sought for, was rightly refused by the High Court. The learned counsel sought reliance on a judgment of the Madras High Court in N. Krishnasami Chetty & Ors. vs. The Licensing Officer [Air 1988 Madras 274]. The learned Judges have not correctly appreciated the legal position. Therefore, it is not correct in view of the above law. It is accordingly overruled.

The special leave petition is accordingly dismissed.

JUDIS