



**IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

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**W.P.Nos. 13780, 13819, 12862, 14091, 16904, 17500, 18707, 19872, 21246, 21425, 21727, 22784 of 2020 and 22, 86, 13818, 14623 of 2021**

**W.P.No.13780 of 2020**

**Between:**

1. Nama Venkata Uma Mahesh, S/o.Nama Venkatarathnam, Aged about 27 years, R/o.21/1257, Nagalakatta street, Jammalamadugu, Y.S.R. Kadapa District. (AP 04 TW 7130, KA 01 AB 3967)
2. Nama Venkatarathnam, S/o.N.Venkatesh, Aged about 70 years, R/o.21/83-2, Nagalakatta Street, Jammalamadugu, Y.S.R.Kadapa District. (AP 04 TW 8246)
3. Mahammad Ghouse Moghul, S/o.M.Mujafar Ali Baig, Aged about 38 years, R/o.2/178-A, K.K.Street, Duvvur, Y.S.R.Kadapa District. (AP 02 V 7630, AP 03 U 4722)

**... Petitioners**

And

- \$ 1. The State of Andhra Pradesh, Rep.by its Principal Secretary, Transport, Roads & Buildings Department, Secretariat, Velagapudi, Amaravathi, Guntur District, Andhra Pradesh.
2. The Transport Commissioner, Andhra Pradesh, Vijayawada.
3. The Deputy Transport Commissioner, Kadapa, Y.S.R. Kadapa District.
4. The Regional Transport Officer, Proddatur, Y.S.R. Kadapa District.
5. The District Collector, Kadapa, Y.S.R. Kadapa District.

**... Respondents**



**Date of Judgment pronounced on : 01-09-2021**

**HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

1. Whether Reporters of Local newspapers  
May be allowed to see the judgments? : Yes/No
2. Whether the copies of judgment may be marked  
to Law Reporters/Journals: : Yes/No
3. Whether the Lordship wishes to see the fair copy  
Of the Judgment? : Yes/No

**\*IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI****\* HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

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**% Dated: 01-09-2021**

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**... Respondents**



! Counsel for petitioners : M/s.S.Arifullah, Sri E.Maruthi Raja,  
Sri B.Chandrasekhar, Sri Rajanikantha  
Jwala

^Counsel for Respondent No.1 : G.P. for Roads & Buildings

^Counsel for Respondents 2, 3 & 4 : G.P. for Transport

^Counsel for Respondent No.5 : G.P. for Revenue

<GIST:

>HEAD NOTE:

? Cases referred:

**(1997) 5 SCC 516**



**THE HON'BLE SRI JUSTICE R.RAGHUNANDAN RAO**

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**COMMON ORDER:-**

The petitioners in this batch of writ petitions are owners of contract carriage vehicles, stage carriage vehicles and goods vehicles of different categories registered with the road transport authorities in the State of Andhra Pradesh. The owners of such vehicles are required to pay motor vehicle tax under the provisions of the Andhra Pradesh Motor Vehicles Taxation Act, 1963 (for short 'the Act') read with Andhra Pradesh Motor Vehicles Taxation Rules, 1963 (for short 'the Rules').

2. Section 3 of the Act provides for levy of tax as the Government may, by notification, direct from time to time on every motor vehicle used or kept for use, in a public place in the State. Under these provisions, the owners of such vehicles were paying quarterly tax for the quarters ending 31<sup>st</sup> March of the year, 30<sup>th</sup> June of the year, 30<sup>th</sup> September of the year and 31<sup>st</sup> December of the year. In the event of the owner of such a vehicle taking a decision not to ply the vehicle for any particular quarter, the said owner has to intimate the appropriate authority, under Rule 12A of the Rules, before the commencement of the quarter for which tax is due, that the



motor vehicle would not be used after expiry of the period for which taxes has already been paid.

3. It is the case of the petitioners, that they had paid motor vehicle tax for the quarter ending 31.03.2020 (Barring some of the petitioners). However, due to the notifications issued by the State Government and the Central Government, on account of the Covid-19 pandemic, the offices of the road transport authorities in the State were closed and the movement of the vehicles of the petitioners was banned in the State of Andhra Pradesh for a large part of the quarter ending on 30.06.2020. It is the case of the petitioners that on account of the sudden closure of the offices of the road transport authorities around 22<sup>nd</sup> of March, the petitioners were unable to inform the Road Transport Authorities, under Rule 12A, of their intention not to ply their vehicles for the next quarter.

4. The petitioners have now approached this Court, on the ground that, the Road Transport Authorities are demanding the petitioners to pay the road tax for the quarter ending 30.06.2020 and subsequent quarters on the ground that none of the petitioners had submitted their request, under Rule 12A of the Rules, within the time stipulated in Rule 12A.

5. The petitioners assail such demands on two grounds. Firstly, they could not convey the necessary requests under Rule 12A on account of the complete lockdown put into force from 22.03.2020 and as such, would be entitled to further periods of time to convey such request even after the expiry of the time granted under Rule 12A. The petitioners also contend that the provisions of Section 3 empower the State to levy motor



vehicle tax only on such vehicles which are “used or kept for use in a public place” in the State and since the lock down regulations prohibited the plying of any of the vehicles owned by the petitioners, the Government would not have the power to levy tax for those quarters where there was a ban of plying of vehicles. It is contended that Rule 12A would not come into the picture at all in such circumstances.

6. Before advertng to the response of the State, it would also be necessary to notice certain other facts. In this batch of writ petitions, some of the petitioners have sought exemption of payment of motor vehicle tax not only for the quarter ending 30.06.2020 but also for the quarter ending 30.09.2020. Further, it has also been contended by the learned Government Pleader that some of the petitioners have not paid the motor vehicle tax for the quarter ending 31.03.2020 and as such, those petitioners who have not paid the motor vehicle tax for the quarter ending 31.03.2020 shall not be entitled to any further benefit of exemption for the quarters ending 30.06.2020 and 30.09.2020. In some cases the tax was paid for the quarter ending 30.06.2020 and a refund is being claimed on the ground that the tax was paid under protest. In some cases, the petitioners are claiming exemption for longer periods.

7. The State has filed its counter affidavit stating that immediately upon the announcement of the lockdown, the office of the Commissioner, Transport had issued a Circular Memo No.13029/6/D1/2020 dated 28.03.2020 informing the owners of all transport vehicles that they are permitted to file applications for stoppage of their vehicles on or before



31.03.2020 through e-mail or Whatsapp numbers given in the Annexure to the circular and that the remaining documents necessary for submission along with the request can be submitted within one week from the closure of lockdown. It is further stated that this circular was given wide publicity and a large number of owners of such vehicles had given such requests by way of e-mail or Whatsapp messages and had obtained the benefit of exemption of tax for the next quarter. It is also stated in this counter that the plying of transport vehicles were initially banned for a period of 21 days with effect from 25.03.2020 up to 14.04.2020. Thereafter, the Commissioner of Transport had issued a Circular Memo No.TRB03-17021/14/2020, dated 18.06.2020 on the basis of the Government Memo No. TRNSORTC(AMRT)/18/2020-TR.II (1146030) dated 18.06.2020 stating that the Government of Andhra Pradesh had granted permission to start operations of the Stage Carriage and Contract Carriage buses. Another averment in the counter affidavit, which requires to be noted, is that the Government, on the basis of representations of various associations had issued G.O.Rt.No.247, dated 31.07.2020 extending the grace period for payment of motor vehicle tax in respect of the quarters ending 30.06.2020 and 30.09.2020 up to 30.09.2020 without any penalty.

8. Heard Sri Arifullah, Sri E. Maruthi Raja, Sri B.Chandrasekhar, Sri RajanikanthJwala learned counsel for the petitioners and the learned Government Pleader for Transport.

**Consideration of the Court:**





9. The admitted fact is that the vehicles belonging to the petitioners were prohibited by the State, to ply on the roads or in any public place from 25.03.2020 to 18.06.2020. It is also an admitted fact that the offices of the transport department were closed from 25.03.2020 till beyond 31.03.2020.

10. The case of the petitioners is twofold – firstly, they could not exercise their option under Rule 12A and secondly, the petitioners would be entitled to an exemption from the payment of motor vehicle tax on the vehicles owned by them even without an application being made under Rule 12A.

11. The relevant provisions, for consideration before this Court, are Section 3 of the Act and Rule 12A of the Rules which read as follows:

**Section 3. Levy of tax on motor vehicles: -**

*(1) The Government may, by notification, from time to time, direct that a tax shall be levied on every motor vehicle used or kept for use, in a public place in the State.*

*(2) The notification issued under sub-section (1) shall specify the class of motor vehicles on which, the rates for the periods at which, and the date from which, the tax shall be levied:*

*Provided that the rates of tax shall not exceed the maximum specified in column (2) of the First Schedule in respect of the classes of motor vehicles fitted with pneumatic tires specified in the corresponding entry in column (1) thereof; and one and a half times the said maximum in respect of such classes of motor vehicles as are fitted with non-pneumatic tires:*

*Provided further that in the case of motor cycles (including motor scooters and cycles with or without attachment), invalid carriages, motor cars and jeeps and other non-transport vehicles not exceeding 2286 kgs in unladen weight and omnibuses with a seating capacity of (8) eight persons in all but not exceeding (10) ten persons in all and their chassis, the tax shall be levied at the rates specified in the Third Schedule.*

*Provided also that in respect of chassis of a motor vehicle passing through this State from a manufacturer to a dealer under a temporary certificate of registration for a period not exceeding seven days, the rate of tax shall be one twentieth of the tax payable for quarter.*



*Provided also that in respect of motor vehicles operated with battery / compressed natural gas / solar energy, no tax shall be levied for a period of five years from the date to be notified.*

**12-A. Liability for payment of tax in respect of motor vehicles kept for use:-**

*For the purpose of Section 3 of the Act, a motor vehicle shall be deemed to be kept for use and is liable to tax unless the registered owner or the person having possession or control of the motor vehicle intimates in writing to the licensing officer before the commencement of the quarter for which tax is due that the motor vehicle shall not be used after expiry of the period for which tax has already been paid. The Licensing Officer shall, on receipt of the intimation, acknowledge its receipt.*

*Provided that in the case of non-transport vehicles, if the owner of the vehicle fails to submit the stoppage report within the period specified above but subsequently gives an affidavit with full details to the effect that the vehicle was not in existence or that it was already disposed of to another person and that he is no more in possession of it, or that the tax in respect of the vehicle was paid elsewhere in the same State or in some other State and as such he is not liable for payment of tax in the jurisdiction of that Licensing Officer or proves to the satisfaction of the Licensing Officer that the vehicle has not been used, it may be deemed that the vehicle has not been kept for use:*

*Provided further that nothing in this rule shall apply in respect of vehicles for which life time or lumpsum tax is prescribed.*

*Provided also that in the case of public carrier vehicle registered and normally kept in any one of the States of Madras, Mysore, Kerala, and Maharashtra and covered by permits to ply in this state without counter-signature under the rules framed under Section 68 (2) (hh) of the Motor Vehicle Act, 1939 (Central Act 4 of 1939) in pursuance of the special reciprocal agreement entered into between the States of Telangana, Madras, Maharashtra, Mysore & Kerala, the vehicle shall be deemed to have been kept for use till the expiry of their permits irrespective of this rule unless the vehicles are kept under non-use after the prior intimation for a period of whole year in any State or States.*

12. In the present case, it is the case of the petitioners that even though they had complied with the first condition of payment of tax up to 31.03.2020 (the learned Government Pleader submits that some of the petitioners had not paid even this tax), they were not in a position to comply with the other two requirements of making an application for exemption before 31.03.2020 and submission of various documents along with



the said application. This ground is countered by the learned Government Pleader by pointing to the circular issued by the Commissioner, Transport permitting the petitioners to forward their request by e-mail or by Whatsapp without having to comply with any other formality at this stage.

13. In view of the fact that the Commissioner, Transport had issued a circular dated 28.03.2020 giving the petitioners an option to forward a request under Rule 12A by way of e-mail or Whatsapp, it cannot be said that the petitioners did not have an opportunity to forward such a request to the transport authorities on account of the closure of the offices of the transport department. Accordingly, this contention of the petitioners has to be rejected.

14. The next question that would arise is whether there can be an exemption from payment of vehicle tax, de hors Rule 12A of the Rules.

15. Section 3 of the Act, which is the charging section, does not provide for levy of tax on all vehicles in the State. Section 3 provides for levy of tax only on those vehicles which are “used or kept for use in public places”. This would mean that a vehicle is liable to be taxed if it is either “used” or “kept for use”. The State can levy tax when either of these conditions are fulfilled. Conversely, the State cannot levy a tax on a vehicle unless it used or kept for use. It must also be noted that there are no conditions that owners of vehicles cannot claim exemption from payment of tax, for a particular period, if they have defaulted on payment of tax for the earlier period or that they have to give advance intimation. The Act does not also



provide the procedure, by which the State will ascertain whether a vehicle is used or kept for use so as to be taxed or not taxed, in accordance with the requirements of Section 3. That procedure appears to be partly set out in Rule 12A.

16. A reading of Rule 12-A which has the heading **“liability for payment of tax in respect of motor vehicles kept for use”**, would show that the situation provided under Rule 12A is not in relation to “use of the vehicle in a public place”. This Rule is applicable only to the extent of the vehicle being “kept for use in public places”. This Rule would be available on compliance of the following conditions: The request for exemption should be made before the commencement of the quarter for which, exemption is sought;

17. The tax payer should have paid up the entire tax due for the quarter in which he would make a request of exemption in relation to the next quarter.

18. Rule 12A, sets up a legal fiction, that intimation of an intention not to ply a vehicle, given before the quarter commences and after payment of tax for the preceding quarter, would amount to the vehicle not being “kept for use”. The interpretation that is now sought to be placed, by the State, on this rule, by way of a converse situation is that, non intimation, to the transport authorities, of the intention of the owner not to ply the vehicle for the next quarter, after payment of tax, would be deemed to mean that the Vehicle is kept for use and liable for taxation.



19. The interpretation sought to be placed by the State would mean that the rule places conditions which are not there in the main Act. These conditions being payment of tax up to the previous quarter and giving an intimation before the period commences. The question of whether such conditions can be imposed, by way of a delegated legislation, going beyond the provisions of the Act were considered by the Hon'ble Supreme Court in the case of **Agriculture Market Committee v. Shalimar Chemical Works Limited**<sup>1</sup>.

26. The principle which, therefore, emerges out is that the essential legislative function consists of the determination of the legislative policy and the legislature cannot abdicate essential legislative function in favour of another. Power to make subsidiary legislation may be entrusted by the legislature to another body of its choice but the legislature should, before delegating, enunciate either expressly or by implication, the policy and the principles for the guidance of the delegates. These principles also apply to taxing statutes. The effect of these principles is that the delegate which has been authorised to make subsidiary rules and regulations has to work within the scope of its authority and cannot widen or constrict the scope of the Act or the policy laid down thereunder. It cannot, in the garb of making rules, legislate on the field covered by the Act and has to restrict itself to the mode of implementation of the policy and purpose of the Act.

27. Applying the above principles to the instant case, it will be seen that the market fee can be levied under the Act only on the sales and purchase of notified agricultural produce within the notified area. Explanation I to Section 12 creates a legal fiction and provides that if any notified agricultural produce is taken out of a notified market area, it shall be presumed to have been purchased or sold within such area. The presumption is a rebuttable presumption and can be shown to be not correct. The policy in enacting this provision is only to cover such transactions of sale and purchase for which direct evidence may not be available. Since a notified agricultural produce can be sold only within the notified market area, and, that too, by a trader having a

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<sup>1</sup> (1997) 5 SCC 516



licence issued to him by the committee, it is obvious that if such commodity is moved out of the notified area, it would mean either that it has been sold or purchased. Otherwise, there would be no occasion to move such commodity out of the notified market area. The legal fiction was thus limited to the “moving” of the commodity from within the market area to a place outside the market area.

**28.** The Government to whom the power to make rules was given under Section 33 and the committee to whom power to make bye-laws was given under Section 34 widened the scope of “presumption” by providing further that if a notified agricultural produce is weighed, measured or counted within the notified area, it shall be deemed to have been sold or purchased in that area. The creation of legal fiction is thus beyond the legislative policy. Such legal fiction could be created only by the legislature and not by a delegate in exercise of the rule-making power. We are, therefore, in full agreement with the High Court that Rule 74(2) and Bye-law 24(5) are beyond the scope of the Act and, therefore, ultra vires. The reliance placed by the assessing authority as also by the appellate and revisional authority on these provisions was wholly misplaced and they are not justified in holding, merely on the basis of weighing of “copra” within the notified area committee that the transaction of sale took place in that market area.

20. To save it from the vice of falling foul of the above judgment, Rule 12A would have to be interpreted to mean that this Rule at best gives the owners of vehicles a simple procedure for obtaining exemption from payment of tax and is not the sole method of demonstrating that a vehicle has not been used or kept for use and that the owners of vehicles are entitled to demonstrate these facts in any other manner also. Further, owners of vehicles cannot be denied exemption from payment of tax on the ground that they have not paid tax for the earlier period, as no such condition is evident in Section 3 of the Act.

21. In the present case, due to an extraordinary situation, the State itself prohibited the use of vehicles or keeping such vehicles ready for use in public places in the State



for the period 25.03.2020 to 18.06.2020. This fact is admitted by the Respondent State, in the Counter affidavit filed on its behalf. It is within the knowledge of the Authorities that no owner of a commercial Vehicle, including the Petitioners can either use his/her vehicle or keep such Vehicle for use, till 18.6.2020, in the quarter ending 30.06.2020. Accordingly, the petitioners would be entitled to the benefit of exemption from payment of vehicle tax on their vehicles for the quarter ending 30.6.2020 and there can be no levy of motor vehicle tax on any of the petitioners for the quarter ending 31.06.2020.

22. The learned Government Pleader had also raised a subsidiary ground that the prohibition of the State ended on 18.06.2020 and as such, the petitioners would still remain liable to pay quarterly tax on account of their ability to ply the vehicles from 18.06.2020 to 30.06.2020. This has been countered by Sri Arifullah, learned counsel for the petitioners who contended that, the plying of the vehicles had been stopped on 22.03.2020 itself and as such, the period in the earlier quarter should also be taken into account for this purpose. In the said circumstances, this contention of the respondents would not detain this Court from arriving at the conclusion that the petitioners would have to be exempted from payment of motor vehicle tax for the quarter ended 30.06.2020 whether they had paid the tax for the quarter ended 31.03.2020 or not as there is no such condition in Section 3 of the Act.

23. This extra ordinary situation existed only for the quarter ended 30.06.2020. Since the subsequent lockdown regulations permitted the movement of vehicles and the working



of the offices of the transport department, the Petitioners cannot claim an automatic exemption from the payment of tax for subsequent quarters. They would have to demonstrate, to the satisfaction of the road transport authorities, that they have neither “used or kept for use” their vehicles for the subsequent quarters.

24. Sri Vijay Mathukumilli, learned Counsel appearing for the petitioners in W.P.No.21246 of 2020 would submit that the petitioners are educational institutions who have not been permitted to conduct physical classes and consequently neither plied their vehicles on the road nor kept the vehicles for such use as they were prohibited from transporting their students. He contends that the petitioners cannot be levied with any motor vehicle tax for any period until the educational institutions commence physical classes and start transporting their students. This contention cannot be accepted as the absolute prohibition admitted by the Respondent was only for the quarter ending 30.06.2020. However, it would be open to the petitioners to demonstrate that they have not used or kept the vehicles for such use, for the subsequent quarters.

25. The Writ Petitions are allowed with the following directions:

1. The Petitioners shall not be liable to pay vehicle tax, on their vehicles, set out in the Writ petitions, for the quarter ending 30.06.2020.
2. The Petitioners may approach the transport authorities for exemption for payment of tax for subsequent quarters, by demonstrating to the satisfaction of the authorities that





they have neither used their vehicles nor kept them for use in the subsequent quarters, for which exemption is sought.

Miscellaneous Petitions, if any pending, in this Writ petition, shall stand closed.

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**JUSTICE R.RAGHUNANDAN RAO**

Date : 01-09-2021  
RJS



**THE HON'BLE SRI JUSTICE R.RAGHUNANDAN RAO**

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