

IN THE HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD  
(Special Original Jurisdiction)

WEDNESDAY, THE FOURTH DAY OF SEPTEMBER  
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE  
AND  
THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

WRIT PETITION NO: 15244 OF 2009

Between:

M/s. S.M.S. Pharmaceuticals Ltd., Rep. by Sri. P. Ramesh Babu R/o. 17, 4th  
Floor, Aditya Enclave, Ameerpet,

...PETITIONER

AND

1. The Secretary, Regional Transport Authority Khairtabad, Hyderabad.
2. The Asst. Motor Vehicles Inspector, State Transport Authority Vigilance and Enforcement Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ order or direction particularly one in the nature of a Writ of Mandamus, declaring the Demand Notice in C.No. 162166/D3/HC/2008, dt. 23-06-2009 asking to pay difference of tax of Rs. 1,41,750/- for Q.E. 30-9-2008 for the vehicle bearing No. TN/57C - 7579, as illegal, arbitrary and contrary to law and set-aside the same.

I.A. NO: 2 OF 2009(WPMP. NO: 20018 OF 2009)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased suspend the Demand Notice in C.No. 162166/D3/HC/2008, dt. 23-06-2009 asking to pay difference of tax of Rs. 1,41,750/- for Q.E. 30-9-2008 for the vehicle bearing No. TN/57C - 7579, pending disposal of the writ petition.

**I.A. NO: 1 OF 2009(WVMP. NO: 2985 OF 2009)**

**Between:**

1. The Secretary. Regional Transport Authority Khairtabad, Hyderabad.
2. The Asst. Motor Vehicles Inspector, State Transport Authority Vigilance and Enforcement Hyderabad.

**...PETITIONERS/RESPONDENTS**

**AND**

M/s. S.M.S. Pharmaceuticals Ltd., Rep. by Sri. P. Ramesh Babu R/o. 17, 4th Floor, Aditya Enclave, Ameerpet,

**...RESPONDENT/PETITIONER**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim stay granted in WPMP No. 20018/2009 in WP No. 15244/2009 dt. 29.07.2009.

**Counsel for the Petitioner: SRI B. SIVA RAMA KRISHNAIAH**

**Counsel for the Respondents: SRI M. VIGNESHWAR REDDY,  
GP FOR ROADS & BUILDINGS**

**The Court made the following: ORDER**

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE  
AND  
THE HON'BLE SRI JUSTICE J.SREENIVAS RAO**

**WRIT PETITION No.15244 OF 2009**

**ORDER:** *(per the Hon'ble Sri Justice J.Sreenivas Rao)*

This writ petition is filed for the following relief:

“...issue a writ, order or direction particularly one in the nature of a Writ of Mandamus declaring the Demand Notice in C.No.162166/D3/HC/2008, dt. 23.06.2009 asking to pay difference of tax of Rs.1,41,750/- for Q.E. 30.9.2008 for the vehicle bearing No.TN/57C-7579, as illegal, arbitrary and contrary to law and set-aside the same...”

2. Heard Sri B.Siva Rama Krishnaiah, learned counsel for the petitioner and Sri M.Vigneshwar Reddy, learned Government Pleader for Roads and Buildings appearing on behalf of respondents.

**3. Brief facts of case:**

3.1 The case of the petitioner-company is that it is owner of private service vehicle bearing No.TN/57C-7579 which is used for transportation of its employees and workers and the said vehicle is covered by permit No.PSVP/AP009/104/2005 and the same is valid upto 19.08.2010 and the petitioner is paying taxes regularly and the vehicle is having all valid documents.

3.2 On 21.07.2008, while vehicle was carrying the employees and workers of the petitioner, respondent No.2 stopped and checked vehicle and seized the vehicle through check report No.1683584 on the alleged ground that the vehicle is misused as a contract carriage by violating the permit, the persons are individuals and there is no proof of reassignment that the vehicle is plying without permit, tax and I.C. Questioning the said seizure, petitioner filed W.P.No.15938 of 2008 before erstwhile High Court of Andhra Pradesh, Hyderabad and the said writ petition was disposed of 31.07.2008 directing respondents therein to release the vehicle subject to deposit of Rs.10,000/- and also giving an undertaking for not alienating the vehicle and also not creating any third party rights.

3.3 Subsequently, Joint Transport Commissioner and S/RTA, Hyderabad has issued show cause notice *vide* C.No.162166/D3/HC/2008, dated 01.08.2008 directing the petitioner to submit explanation as to why the tax should not be collected from him. Thereafter, respondent No.1 issued impugned demand notice C.No.162166/D3/HC/2008, dated 23.06.2009 directing the petitioner to pay an amount of Rs.1,41,750/- towards tax for quarter Q.E. 30.09.2008. Aggrieved by the same, petitioner filed the present writ petition.

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4. Learned counsel for the petitioner submits that the petitioner is a pharmaceutical company and the said company is the owner of private service vehicle and the same is utilized for carrying their own employees and workers and the vehicle is not a contract carriage. Respondent No.2 seized the vehicle on the alleged ground that the petitioner is misusing the vehicle as contract carriage. He further submits that the ingredients contemplated under Section 2(7) of the Motor Vehicles Act, 1988 ('Act' for brevity) does not attract, hence, the impugned demand notice dated 23.06.2009 issued by respondent No.1 is contrary to the provisions of the Act and the petitioner is not liable to pay tax as demanded through impugned notice.

5. *Per contra*, learned Government Pleader contended that the petitioner vehicle was carrying 54 persons from Balanagar (Ranga Reddy District) to Kazipalli (Medak District) when the vehicle was seized and it was found that the persons in the vehicle are not the employees or workers of the petitioner and they are individuals and the petitioner has not produced any iota of evidence to prove that they are the employees of the petitioner and the vehicle is misused as contract carriage in violation of permit and provisions of Section 2(33) of the Act and further contended that the petitioner vehicle was registered as private service vehicle and

obtained permit with a condition to carry company employees within the State of Andhra Pradesh but the petitioner is using the vehicle as contract carriage.

6. He further contended that respondents after following due procedure under law issued show cause notice on 01.08.2008, directing the petitioner to submit explanation why the difference of tax of an amount of Rs.2,625/- per seat per quarter i.e,  $\text{Rs.2,625/-} \times 54 = \text{Rs.1,41,750/-}$  for the quarter Q.E. 30.09.2008 should not be collected, as the vehicle of the petitioner was plied as contract carriage on 21.07.2008. In spite of same, the petitioner has not submitted any explanation. The Joint Transport Commissioner and S/RTA, Hyderabad after following the due procedure issued the impugned demand notice on 23.06.2009 directing the petitioner to pay an amount of Rs.1,41,750/- and the writ petition is devoid of merits and the petitioner is not entitled to the relief sought in the writ petition.

7. Having considered the rival submissions made by the respective parties and after perusal of the material available on record, it reveals that on 21.07.2008 respondent No.2 seized the vehicle on the allegation that the vehicle was carrying 54 persons from Balanagar (Ranga Reddy District) to Kazipalli (Medak

District). Thereafter, respondent No.1 issued show cause notice dated 01.08.2008 directing the petitioner to submit explanation as to why the tax should not be collected from him. Thereafter, respondent No.1 issued impugned demand notice C.No.162166/D3/HC/2008, dated 23.06.2009 directing the petitioner to pay an amount of Rs.1,41,750/- towards tax for quarter Q.E. 30.09.2008. The main contention of the learned counsel for the petitioner, that the persons who are in the vehicle during the seizure belonged to their own company and the petitioner is not using the vehicle as a contract carriage and ingredients of Section 2(7) of the Act does not attract, is not permissible under law, as the petitioner has not produced any iota of evidence to that extent before the concerned authority nor submitted explanation and respondent No.1 issued the impugned demand notice dated 23.06.2009.

8. It is relevant to extract Section 2(7) of the Act, which reads as follows:

**“Section 2(7):**

“contract carriage means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a 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

with a holder of a permit in relation to such vehicle or any person authorized by him in this behalf on a fixed or an agreed rate or sum:

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another,

and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes

(i) a maxicab; and

(ii) a motorcab notwithstanding that separate fares are charged for its passengers;"

9. It is also pertinent to mention here that pursuant to the show cause notice dated 01.08.2008, the petitioner has not submitted explanation nor participated in the enquiry conducted before respondent No.1. In the absence of any material evidence, the petitioner is not entitled to contend that the persons who are travelling in the vehicle belongs to their company and this Court is not inclined to accept the same, on the sole ground that the same is disputed question of fact and the same cannot be adjudicated in the writ petition and the petitioner has not produced any evidence before the checking officials to that extent.

10. For the foregoing reasons, this Court does not find any merit in the writ petition, to exercise the jurisdiction of this Court under Article 226 of Constitution of India.



11. Accordingly, the Writ Petition is dismissed. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

SD/- N. CHANDRA SEKHAR RAO  
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. One CC to SRI B. SIVARAMAKRISHNAIAH, Advocate [OPUC]
2. Two CCs to GP FOR ROADS & BUILDINGS, High Court for the State of  
Telangana. [OUT]
3. Two CD Copies

BN  
GJP



**HIGH COURT**

**DATED:04/09/2024**



**ORDER**

**WP.No.15244 of 2009**

**DISMISSING THE WRIT PETITION  
WITHOUT COSTS**

⑥  
05/12/24  
LOR