

(1988) 03 KAR CK 0014
In the Karnataka High Court
Case No : Writ Petition No. 5435 of 1987

Abdul Jabbar Khan

APPELLANT

Vs

Regional Transport Officer, Mysore Region, Mysore

RESPONDENT

Date of Decision : 28-03-1988

Acts Referred:

Motor Vehicles Act, 1939 — Section 32, 32 (1), 32 (2), 58

Citation : AIR 1989 Kar 215 : (1988) ILR (Kar) 2592 : (1988) 1 KarLJ 495

Hon'ble Judges : H.G. Balakrishna, J

Bench : Single Bench

Advocate : Anandashetty, for C.S. Shanthamallappa, for the Appellant; K. Srinivasa Gowda, Govt. Pleader, for the Respondent

Judgement

1. In this writ petition, the petitioner has challenged the endorsement dt. 15-12-1986 vide Annexure-E issued by the respondent rejecting his application for alteration of the seating capacity in respect of his motor vehicle bearing Registration No. CAO 6106.

2. The petitioner is the owner of vehicle bearing Registration No. CAO 6106, which has been registered as a tourist taxi cab with a seating capacity of 6+1. For certain reasons, the petitioner wanted to have the alteration of the seating capacity by reducing it from 6+1 to 5+1. The permission of the competent authority as provided u/s 32 of the Motor Vehicles Act, 1939 (hereinafter called "the Act") is necessary to carry out such an alteration. Accordingly, the petitioner submitted an application on 16-9-1986. On the very same day, the respondent issued an endorsement to the effect that the petitioner should not carry out any alteration as desired by him until the respondent grants permission. Beyond that nothing else is manifest in the endorsement-dated 16-9-1986 vide Annexure-B.

3. It was later on 15-12-1986 the respondent communicated to the petitioner by written order that the permission is refused for the reasons set out in the said Annexure-E.

4. The petitioner is aggrieved by Ann- E. The first contention is that the respondents deemed to have granted the permission to the ""Petitioner by issuing, an endorsement of the kind vide. Annexure-B. According S. 32(2) of the Act, where a registering authority has received notice under sub-sec. (1), the registering authority shall, within seven days of the receipt thereof, communicate, post, to the owner of the vehicle its approval to the proposed alteration or otherwise, Provided that where the owner of the, motor vehicle has not Received any such communication within the said period of seven days, the approval of such authority to the proposed alteration shall be deemed to have been given.

5. On the basis of this statutory provision, it is contended by the petitioner that since the endorsement does not specifically either grant or decline the permission sought by the petitioner, the deeming provision comes into operation automatically on the expiry of seven days from the date of receipt of the notice issued by the petitioner under sub-sec. (1) of S. 32, and a right becomes vested in the petitioner to carry out the alteration in the motor vehicle for which he had sought permission.

6. The second contention is that the order under Annexure-E is wholly unjustified and invalid inasmuch as the provision of law contained in sub-sec. (2) of S. 32 has already created a right in favour of the petitioner for alteration in his motor vehicle. The question of, refusing permission to carry out the alteration does not arise since the petitioner has already acquired the right to make an alteration under the provisions afforested.

7. The learned Government Pleader appearing for the respondent strongly contended that what the petitioner has sought is only alteration in the motor vehicle only in so far as the Registration Certificate is concerned for the purpose of a necessary entry in the same. It is not open to the petitioner to apply for alteration under sub-s. (1) of S. 32 without having recourse to S. 58 of the Act. According to the learned Government Pleader, unless an order is obtained under S. 58 for necessary entry to be made altering the seating capacity and a condition to that effect in the permit which has already been issued to the petitioner, it is not open to the petitioner to seek permission under S. 32 straightway. Compliance with S. 58 is a condition precedent for an application under S. 32 is the gist of his argument. The other argument advanced by the leaned Government Pleader is that the wording in sub-s. (2) of S. 32 contemplate a communication by post to the owner of the vehicle the approval to the proposed alteration or otherwise. According to him, the word "otherwise" provides for the issue of the endorsement vide Annexure-B and it is not necessary that it should be an order of approval or rejection alone.

8. Section 32 of the Act appears in Chap. III of the Act con tem plating the procedure for alteration in seating capacity as in the instant case by making a necessary entry in the Certificate of Registration, w here as S. 58 appears in Chap. IV of the Act under the heading of "Control of Transport Vehicles" and the

said provision is intended for the purpose of making an entry relating to the condition fixing the seating capacity of the vehicle in respect of which the permit is issued.

9. Unless an alteration is permitted and carried out in the vehicle as in the instant case by reducing the seating capacity from 6+1 to 5+1, it cannot be said and it is not necessary that the petitioner ought to have first obtained a change in the condition of permit under S. 58 of the Act before carrying out the alteration in the vehicle after necessary permission under S. 32. It would be a case of putting the cart before the horse to first apply and obtain permission for change or variation in the condition of permit under S. 58 and then venture to apply for permission under S. 32 for carrying out alteration in the motor vehicle. S. 32 envisages the alteration of the vehicle before the vehicle's seating capacity could be varied and it is only reasonable to presume that the next stage will be for the petitioner to make a necessary application in accordance with law under S. 58 of the Act for incorporating an appropriate condition or change in condition in keeping with the change in the seating capacity. That apart, with regard to the wording to be found in S. 32(2) of the Act, the word "otherwise" could only mean refusal of permission and nothing else. Under S. 32(2) of the Act, there are only two possibilities that could be visualized as postulated by the statute. One is according approval to the application for alteration in motor vehicle and the other is refusal of permission to make such an alteration. Any other course would be far-fetched and would be removed from the area of legislative intent. Further the authority empowered under S. 32 is different from the authority under S. 58

10. My attention has been drawn by the learned Counsel for the petitioner to the decisions rendered by this Court in W.P. Nos. 9862 & 9863 of 1986, dt. 28-8-1986 and W.P. No. 11287 of 1986 dt. 29-8-1986. The ratio of those decisions applies to the facts of this case.

(Reported in (1987) 1 Kar LJ 38)

11. For the above reasons, I am of the opinion that the impugned order vide Annexure-E dt. 15-12-1986 is not valid in law and is liable to be struck-down.

12. In the result, I allow the writ petition and quash the impugned order vide Annexure-E dt. 15-12-1986 in order No. RTO.MYS.CAO-6106/1986-87. I also hold that Annexure-B, which is an endorsement issued to the petitioner that no alteration should be carried out until permission is granted, cannot enlarge the limitation. The limitation I mean is the period" of seven days within which the registering authority is bound to intimate the petitioner as to whether or not the permission to carry out alteration is granted. By issuing such an endorsement, the period within which order should be communicated by the registering authority does not . get automatically extended. It is a statutory prescription and the registering authority has no jurisdiction or power to extend the same by issuing the endorsement vide Annexure-B or by any other indirect method.

13. In the circumstances of the, case, I direct the respondent to grant permission

to the petitioner to carry out the alteration which he has sought in his application dated 16-9-1986 within thirty days from the date of receipt of this order.

14. Sri K. Srinivasa Gowda, High Court Government Pleader, is permitted to file his memo of appearance for the respondent within two weeks from today.

15. Petition allowed.