

(2005) 07 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No's. 3669 and 3670 of 2005

Akshaykumar Jaiswal

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 28-07-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 129A, 133A, 192, 213, 213(5)

Citation : (2005) 4 ALLMR 888 : (2006) 2 BomCR 278 : (2005) 4 MhLj 571

Hon'ble Judges : S.P. Kukday, J; R.M.S. Khandeparkar, J

Bench : Division Bench

Advocate : P.K. Joshi, S.R. Barlinge, for the Appellant; U.K. Patil, Assistant Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

R.M.S. Khandeparkar, J.—Since common questions of law and facts arise in both these petitions, they were heard together and are being disposed of by this common judgment.

2. Rule.

3. By consent, Rule is made returnable forthwith.

4. We have heard Shri S. R. Barlinge, learned Advocate for the petitioners in both the writ petitions, Shri U. K. Patil, learned Assistant Government Pleader for the respondents in both the writ petitions and Shri P. K. Joshi, learned Advocate for the Intervenor - Maharashtra State Road Transport Corporation.

5. In both the writ petitions, the petitioners are the owners of the luxury buses and hold permits of contract carriage. The petitioners seek relief in the nature of directions to restrain the respondents from detaining the vehicles under the garb of taking action under Sections 66 and 192 of the Motor Vehicles Act, 1988 (for short, the "said Act") and also to restrain the respondents from seizing the documents of registration and other papers relating to the vehicles otherwise

than permissible under the provisions of the said Act. It is the grievance of the petitioners that the police authorities are unnecessarily harassing them and similarly placed bus owners at the instance of the employees of the Maharashtra State Road Transport Corporation. It is their case that the officers of the police and Transport Officer accompanied by the employees of MSRTC stop and detain the buses under the garb that vehicles are being used as stage carriage when the permit is for contract carriage and in the process, apart from illegally detaining the buses, seize the documents of the buses and compel the passengers to get down from the buses without making any provision for their further travel and thus cause harassment even to the passengers earned in the buses of the petitioners. Their further contention is that the documents relating to the buses are being illegally seized thereby making it difficult for the petitioners to run their vehicles.

6. The respondents, on the other hand, contend that they are forced to take action to stop illegal transportation of the passengers in contravention of the permits granted to the petitioners and resultant loss which is being caused to the State Road Transport Corporation. It is their further case that the documents of two of the buses were seized merely to verify the same from the original permit as there was violation of the permits granted to the petitioners and therefore, the action under Sections 66 and 192 of the Act was initiated. According to the respondents, the petitions have been filed with the sole aim to discourage respondent-authorities from taking action against the illegal activities of the petitioners.

7. The learned Advocate appearing for the petitioners, placing reliance in the decisions in the matter of *Nanded Parbhani Zilla Luxury Bus Mala Va Operator Sangh v. The State of Maharashtra and Ors.*, 1999 (4) All MR 138, *State of Maharashtra and Others Vs. Nanded-Parbhani Z.L.B.M.V. Operator Sangh*, as well as *Ishwar Singh Bagga and Others Vs. State of Rajasthan*, , submitted that the authorities are not empowered to detain the vehicles or seize the documents relating to the vehicles otherwise than as provided under the provisions of law and particularly Section 213 of the said Act. He has further submitted that under no circumstance the officers of MSRTC could be part of the squad meant for inspection of private buses and such power is vested only in the Police and the Regional Transport Officers. The officers of MSRTC cannot assume the role of police officers and thereby harass the petitioners. He further submitted that the detention of the vehicles except in cases where there is a contravention relating to the condition regarding the route on which or area in which or the purpose for which the vehicle may be used is disclosed is illegal and that such detention can never be merely on the ground that the bus was found carrying excess passengers or that it carried passengers in contravention of the permits or permit. In any case, the police authorities are not empowered to detain the vehicle and cause inconvenience to the passengers as well as bus owners.

8. The learned Assistant Government Pleader, on the other hand, submitted that

time and again it was brought to the notice of the authorities that the buses run by the petitioners, though are granted contract carriage permits, are being utilized as stage carriage buses which causes losses to MSRTC which is the sole authority to ply stage carriage buses in the State. According to the learned Assistant Government Pleader, the documents having been seized for the purpose of verification with the original permit, no fault can be found with the seizure of such documents. According to the learned Assistant Government Pleader, the allegation regarding detention of the vehicles is without any substance as no such vehicle was ever detained or seized by the authority.

9. The Apex Court in Iswar Singh Bagga's case (supra) observed that having regard to the drastic nature of powers conferred on the authorities in terms of provisions of Sections 129A and 133A of the Act, the expression "other persons" therein has to refer to the officers of the authority i.e. sovereign authority and same cannot relate to any officer or employee of any statutory corporation or any other private person. It was further held that the powers of search, seizure and detention of the vehicles belonging to private parties and of launching of prosecution are incidental to the sovereign powers and they cannot ordinarily be entrusted to private persons unless the statute concerned makes specific and express provision in that regard and that the Corporation is not a department of the Government but it is an independent body incorporated and established under a statute. It was also held that the Deputy General Manager (Traffic), the Assistant Depot Managers and the Traffic Inspectors of the Corporation, in the absence of specific power being given to them under the statutory provisions, could not be authorised by the State Government to discharge the powers of the police officers u/s 129A of the said Act.

10. In Nanded-Parbhani Zilla Luxury Bus Mala Va Operator Sangh 's case (supra), the Apex Court held that the police officer is empowered to detain the vehicle only if he has reason to believe that the vehicle has been or is being used in contravention of the conditions of permit relating to the route on which or area in which or the purpose for which the vehicle may be used. It was also held that reading the provisions as it is, the conclusion is irresistible that the condition of permit relating to the route on which or the area in which or the purpose for which the vehicle could be used if contravened, would only authorise the police officer to detain the vehicle and not each and every condition of permit on being violated or contravened, that the police officer would be entitled to detain the vehicle. It was ruled that the expression "purpose for which the vehicle may be used" could not be construed to mean that when the vehicle is found to be carrying passengers more than the number prescribed in the permit. The purpose would only refer to a contingency, when a vehicle having a permit of stage carriage is used as a contract carriage or vice versa or where a vehicle having a permit for stage carriage or contract carriage is used as a goods vehicle and vice versa. But carrying passengers more than the number specified in the permit will not be a violation of the purpose for which the permit is granted. It was further held that the power of seizure has been conferred on the appropriate

authority, which power is, in fact, sovereign power of the State and has been delegated to the police officer in discharge of their duties of law enforcement and in the enforcement of an orderly society. The power, therefore, is required to be exercised with care and caution and the power has to be exercised only when the pre-condition for exercise of power is fully satisfied.

11. The power to detain vehicle by the police, therefore, cannot be exercised as a matter of course. There must be reason to believe that the vehicle is being used for the purpose otherwise than for which the vehicle is permitted to be used or may be used. The police officer having reason to believe that a vehicle holding permit for contract carriage is used as a stage carriage or vice-versa would definitely be entitled to detain the vehicle for the purpose of investigation. Undoubtedly, such detention cannot be for a period of more than required for the purpose of investigation. Detention cannot be allowed to transform into seizure of the vehicle. If the vehicle is detained for unduly long period, it would virtually amount to seizure of the vehicle for that period and certainly such power is not contemplated. For the purpose of seizure of the vehicle, there is a specific procedure and the authorities will have to follow the said procedure. This should not be construed to mean that the vehicles even used for illegally for carrying of arms or transporting criminals or contraband drugs or articles cannot be detained. Certainly nothing prevents the police authorities from detaining such vehicle even without seizure of such vehicle for the necessary period during the investigation. But such power would not include detention of the vehicle merely on the ground of violation of conditions of permit relating to use of the vehicle.

12. The petitioners are, therefore, justified in contending that merely because the police authorities have apprehension about use of contract carriage vehicle as stage carriage vehicle, that by itself would not empower the authorities to detain the vehicles for unduly long period. Once the authority is satisfied about such use of the vehicle on inspection of the vehicle, certainly it would be necessary for the police authority to cease to detain the vehicle any further. In any case, in the matter in hand, the respondents have categorically stated on oath that the petitioners' vehicles were not detained by the respondents. There is no counter by the petitioners to the said statement on oath made by the respondents. Being so, it cannot be presumed merely on the basis of allegations of the petitioners that their vehicles were in fact detained by the respondents.

13. As regards the contention relating to the seizure of the documents, Section 213(5) of the said Act deals with the power of the officer of Motor Vehicle Department or such other officer empowered by the State in that behalf, to have various powers including the power to seize or take copies of any registers or documents or portions thereof as he may consider relevant in respect of an offence under the said Act which he has reason to believe has been committed. Obviously, in terms of Section 213(5)(d) of the Act, the authorised officer is empowered to seize documents when he finds that same are relevant in relation to an offence which he has reason to believe to have been committed. In other

words, seizure of the documents has necessarily to be in respect of an offence believed to have been committed. Seizure of documents is not permissible unless it relates to some offence believed to have been committed. Undoubtedly, therefore, when a bus is intercepted on the reasonable belief of having violated the conditions of permit regarding contract carriage and if the officer intercepting such a bus believes that an offence has been committed in that regard, then the document relating to such an offence can certainly be seized. However, in the case in hand, there is clear admission on the part of the respondents in their affidavit that the documents were seized for the purpose of verification with the original permit. A categorical statement is to be found in para 8 of the affidavit which reads thus :

"It is false to say that the vehicle of the petitioner was detained by the answering respondent, as the vehicle was carrying excess passenger and contravening the provisions of Section 66 the permit granted in favour of the petitioner was for 4 luxury buses, the documents of two luxury buses were seized by the authorities so as to verify it from the original permit."

Obviously the documents were not seized as being relevant to the offence either which was or could have been believed to have been committed but they were seized merely to verify with the original permit. Certainly, such an action is not permissible under the law. Seizure of a document cannot be for the purpose of verification with the original permit. Besides, the authority has not explained as to why it was found necessary to verify those documents with the original permit. In what way such a verification was necessary? Was it related to the contravention of the provisions of Section 66 of the Act by the petitioners? Nothing has not been explained by the respondents. Obviously, the seizure was not under the provisions of the said Act or in exercise of the powers available to the officers under the said Act and therefore, it was illegal. The action on the part of the respondents in seizure of the documents cannot, therefore, be condoned. If such documents are not returned to the petitioners so far, the same are required to be returned forthwith by the respondents.

14. As regards the contention of the petitioner that the officers of MSRTC accompany the police authorities for the purpose of interception of buses of the petitioners and other bus owners and take part in the inspection and checking proceedings as if forming part of the inspection squad, undoubtedly, the specific allegations of the petitioners have not been denied by the respondents. It was sought to be argued on behalf of MSRTC Intervenor that the officers of Corporation merely assist the authorities by filing complaint and being witnesses to the proceedings. Undoubtedly, the officers of MSRTC are not prohibited from filing complaint or assisting the authorities being witnesses to the proceedings. However, that will not empower them to act as the members of the squad. Certainly it is not permissible in law, as, in that regard law is well settled by the decision of the Supreme Court referred to above. The learned Advocate for the petitioners is justified in contending that in the absence of specific denial of the

respondents that such officers of MSRTC did not take part in the inspection squad, the statement in that regard made by the petitioners on oath is to be accepted to have been established. However, the learned Advocate for the Intervenor having assured the Court that the officers of MSRTC would not take part or act as the members of inspection squad and would merely assist the authorities by filing complaints or being witnesses, we accept the said statement and being so, it is not necessary to dwell upon this issue any further in this petition. We expect the authorities to adhere to the said assurance given to the Court on behalf of MSRTC and the police authorities to act in accordance with the said statement made on behalf of the MSRTC.

15. In the result, therefore, the petition is hereby allowed. The respondents are held to be not entitled to detain vehicles otherwise than as provided under the said Act and the Rules made thereunder read with the decisions of the Apex Court referred to above. The respondents are also not entitled to seize the documents except when such documents are relating to an offence believed to have been committed. The seized documents, if not returned so far, to be returned to the petitioners forthwith. The officers and employees of MSRTC should not form part of the inspection squad of the police authorities.

16. Rule is made absolute in above terms with no order as to costs.