

(2011) 03 KAR CK 0048
In the Karnataka High Court
Case No : Writ Petition No. 2351 of 2008

Bus Operators Association

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 112, 113, 177, 183, 190
Penal Code, 1860 (IPC) — Section 71

Citation : (2011) 4 KarLJ 491 : (2011) 2 KCCR 1633

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : C.V. Kumar, for the Appellant; K.M. Shivayogiswamy, HCGP, for the Respondent

Judgement

Huluvadi G. Ramesh, J.—The Petitioners, being aggrieved by the Notification dated 29.10.2007 issued by the 1st Respondent at Annexure-B, are before this Court.

2. The first Petitioner is a Registered Association of bus operators of Shimoga, the second and third Petitioners are operators of stage carriage services.

3. According to the Petitioners, Section 112 of the Motor Vehicles Act, 1988 (for short "MV Act") deals with speed limits and Section 113 of MV Act deals with weight limits and limitations on use i.e., carrying of excess passengers in transport vehicles is not made a distinct offence though carrying weight in goods vehicles is expressly forbidden. Further, it is stated that passengers traveling in transport vehicles in excess of the seating capacity may be due to several reasons such as jathras, special occasions etc., and during that time the public may forcefully enter the buses by overpowering the crew and in such contingencies the responsibility cannot be shouldered on the owner or the driver or the conductor of the vehicle. In similar circumstances, this Court in W.P. Nos. 35430-35432/2000 by order dated 14.6.2002 has quashed the Notification with liberty to the Government to issue a fresh Notification providing for a

compounding fine in accordance with the provisions of law till appropriate amendment is brought to the Act. Having complied with the order of this Court, the impugned Notification dated 29.10.2007 was issued specifying the amounts of compounding fee of Rs. 100/- per passenger carried in excess of the seating capacity which is contrary to Section 177 R/w Section 200 of the MV Act. Section 177 of M.V. Act, 1988 reads thus:

General provision for punishment of offences - Whoever contravenes any provision of this Act or of any rule, regulation or notification made there under shall, if no penalty is provided for the offence be punishable for the first offence with fine which may extend to one hundred rupees, and for any second or subsequent offence with fine which may extend to three hundred rupees.

Section 200 of M.V. Act, 1988 reads thus:

Composition of certain offences - (1) Any offence whether committed before or after the commencement of this Act punishable u/s 177, Section 178, Section 179, Section 180, Section 181, Section 182, Sub-section (1) or Sub-section (2) of Section 183, Section 184, Section 186, 1[Section 189, Sub-section (2) of Section 190], Section 191, Section 192, Section 194, Section 196, or Section 198, may either before or after the institution of the prosecution, be compounded by such officers or authorities and for such amount as the State Government may, by notification in the Official Gazette, specify in this behalf.

(2) Where an offence has been compounded under Sub-section (1) the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of such offence.

1 Subs. By Act 54 of 1994, Section 58, for "Section 89" (w.e.f. 14.11.1994)

4. Learned Counsel for the Petitioners contended, the 1st Respondent committed an error in specifying the amount of composition in excess of the maximum amount of fine prescribed u/s 177 of the MV Act i.e., Rs. 100/- for the first offence and Rs. 300/- for the second or subsequent offence and specifying separate amounts of composition fee of Rs. 100/- per passenger carried in excess of the specified number without considering that each excess passenger will not constitute a separate offence and the act of over loading constitute one act irrespective of the number of persons. Hence, the impugned specification of the amount of compounding fee per passenger is illegal and contrary to Section 177 of the MV Act as, what is contemplated is an offence and the amount of fine fixed is with reference to an offence. Therefore, it cannot be split or multiplied on the basis of the number of persons or units involved in the act.

5. Per contra, learned Government Pleader contended, to regulate the transport vehicles, all conditions that are imposed have to be followed by the Petitioners in the interest of commuters. There is no prohibition as such imposed to such Notifications either under the Act or under the Rules. In the absence of the same, the Notification cannot be quashed only on the ground that the compounding fee

fixed is on the higher side.

6. Section 177 of the MV Act does provide for punishment for the offences and any Notification issued in contradiction of the provisions of the MV Act or Rules or Regulations has to be treated as bad in law. Similarly, Section 200 of the MV Act provides for composition of certain offences to avoid lengthy procedure. In other words, to cut short the procedure in imposing the punishment and to avail an opportunity to compound the offence so that time would be saved. Further, compounding of offences is inevitable for the smooth functioning of the system when they are treated as minor offence.

7. In the case on hand, in the decision reported in P. Ratnakar Rao and others Vs. Government of Andhra Pradesh and others,, referring to Section 194 of MV Act which provides for driving vehicle exceeding permissible weight, the Apex Court has held that compounding of offence is not mandatory and it depends upon willingness of the accused to have the offences compounded. It may also be done before the institution of the prosecution case. However, power u/s 200 of the MV Act is delegated to the State Government to prescribe reasonable compounding fee i.e., it is not "unguided".

8. The word not "unguided" refers to reasonableness. Though the State Government is empowered to issue Notification for compounding of offence, two aspects have to be taken into consideration. Firstly, in so far as compounding of offence is concerned, it depends upon the willingness of the accused. For the offences compounded, it may be done prior to or after the initiation of the prosecution. Secondly, the penal and charging section prescribes the maximum outer limit within which the compounding fee would be prescribed. The Apex Court, in the case cited supra has held that so long as the compounding fee does not exceed the fine prescribed by penal section, the same cannot be declared to be either exorbitant or irrational or bereft of guidance.

9. In the case on hand, for the first offence of carrying the passengers in excess of seating capacity, the compounding fee should have been prescribed as per Section 177 of the MV Act and it may extend to Rs. 100/- and for any second or subsequent offence, with fine which may extend to Rs. 300/- .

10. At the outset, learned Counsel for the Petitioners relies on Section 71 of IPC to contend that such violation of carrying excess passengers amounts to only one offence irrespective of number of passengers.

11. On the other hand, learned Government Pleader contended, Section 71 of IPC does not apply to the case on hand.

12. In the context, without interpreting whether it amounts to single offence or offences on each of the excess passengers, a decision has to be taken by the Government in prescribing the penalty on the basis of individual passenger or as a whole, treating the offences as a single offence every time. The Petitioners are at liberty to approach the Government seeking for such clarification. However, so

far as the imposition of fine is concerned, while fixing the amount of compounding fee, it shall not exceed the fine prescribed but, it shall exceed penalty as prescribed u/s 177 of the MV Act. Accordingly, the writ petition is disposed of.