

(1996) 09 KAR CK 0065

In the Karnataka High Court

Case No : Writ Petition No"s. 3623 to 3625 of 1994 connected with Writ Petition No"s. 4721 to 4724 of 1994 and 19570 of 1995

D.P. Sharma and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 09-09-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 142, 144, 145
Criminal Procedure Code, 1973 (CrPC) — Section 100 (4), 451
Motor Vehicles (Amendment) Act, 1988 — Section 207, 88 (14) (a)

Citation : (1999) 4 KarLJ 229

Hon'ble Judges : R.P Sethi, C.J;S. Rajendra Babu, J

Bench : Division Bench

Advocate : Sri C.B. Srinivasan for Sri C. Narasimhachar, Sri P.R. Ramesh and Sri C.V. Kumar, for the Appellant; Sri D'Sa and Sri J.M. Rajanna Setti, Additional Central Government Standing Counsel, for the Respondent

Judgement

1. The constitutional validity of Section 207 of the Motor Vehicles Act, 1988 (hereinafter called "the Act") has been challenged in these writ petitions mainly on the ground of its being violative of Articles 14 and 19 of the Constitution of India. It is further submitted that in the absence of rules as contemplated under the section, the provisions are unworkable. A declaration is sought to the effect that till rules as per sub-section (14)(a) of Section 88 of the Act are not framed, the respondents be restrained from seizing and detaining tourist vehicles of the petitioners and others. Direction is sought against respondents 3 and 4 and their subordinate checking officers not to compel the compounding fee for the offences which fall at Item No. 10 of the notification dated 25-10-1990 issued in FTD 18 TMR 89 at the place of seizure of the vehicle. It is further prayed that respondents 3 and 4 be directed to refund the compounding fee so far collected from the drivers of the tourist vehicles.

2. In view of the fact that constitutional validity of Section 207 of the Act was challenged and further reliefs prayed for in the light of the said challenge, the

learned Single Judge vide his order dated 17-2-1994 referred these petitions to a Division Bench in terms of Section 9 of the Karnataka High Court Act, 1961.

3. The learned Counsel appearing for the parties, admitted that the petitioners were entitled to various reliefs consequent upon the interpretation of Section 207 and the examination of its constitutional validity. It is submitted that once the provisions of the offending section are held to be intra vires the petitioners may not be in a position to the grant of consequential reliefs as prayed for by them in these petitions.

4. Prior to coming into force of the Act of 1988, a corresponding provision in the form of Section 129-A was existing in the Motor Vehicles Act, 1939, being Central Act No. IV of 1939. The Supreme Court in *Transport Commissioner, Andhra Pradesh, Hyderabad and Another v S. Sardar Ali and Others*, had the opportunity to determine the constitutional validity of Section 129-A of Central Act No. IV of 1939. Dealing with the question of the said section being ultra vires of the guarantees of the fundamental rights or its being unreasonable, the Apex Court held as under:

"Section 129-A dealing with seizure of vehicles used without certificate of registration or permit cannot be said to be unreasonable on ground that there is no provision for preparing list of things seized in course of seizure. In the very nature of things when property is seized and not recovered during a search, it is not possible to comply with the provisions of sub-sections (4) and (5) of Section 100 of the Criminal Procedure Code. In the case of a seizure under the Motor Vehicles Act, there is no provision for preparing a list of the things seized in the course of the seizure for the obvious reason that all those things are seized not separately but as part of the vehicle itself. But it is in the interest of the very officer or person seizing the vehicle, so that he may not be open to any charge being laid against him later, that such officer or person takes care to prepare a list of detachable things which are ordinarily not parts of the vehicle and give a copy of the list to the person in charge of the vehicle at the time of the seizure".

5. Faced with this situation, the learned Counsel appearing for the petitioners submitted that as rules have not been framed and no "prescribed manner" provided for the purpose of seizure and detention of the vehicles, the judgment of the Apex Court in *Sardar Ali's case*, supra, would not be applicable. Elaborating his submissions, the learned Counsel submitted that the words "prescribed manner" were incorporated for the first time in Section 207 of the Act and were non-existent in the Section 129-A of the repealed Act. Reference is also made to Section 2(32) of the Act which defines the words "prescribed manner" to mean prescribed by rules made under the Act. The distinction sought to be drawn is illusory and not factual. The plea that in the absence of the rules, the provisions of Section 207 of the Act could not have been implemented is far fetched and without substance. A perusal of the section clearly indicates that "prescribed manner" envisaged under this section is only with respect to the manner under which the vehicle is required to be seized and detained. There is

no bar on the power of the police officer or other authorised person to initiate action for seizure of the vehicle which is found to have been used in contravention of the provisions of Section 3 or Section 4 or Section 39 or sub-section (1) of Section 66 or in contravention of any other condition of the permit relating to the route on which or the area in which or the purpose for which the vehicle is required to be used. Power to seizure is an independent power than the power to detain the vehicle in the manner prescribed. The prescribed manner contemplated for the purpose of Section 207 is in addition to the already existing provisions in the Code of Criminal Procedure. The prescribed manner being complementary and supplementary to the existing provisions regarding seizure and detention cannot be made a ground to urge that the provisions of Section 207 of the Act were either unconstitutional or not workable. It would have been better for the respondent-authorities to frame the rules in the prescribed manner, but in the absence of the prescribed manner, resort has to be had under the ordinary law dealing with the seized property used in connection with the commission of an offence.

6. Chapter XXXIV of the Code of Criminal Procedure deals with the disposal of the property. Section 451 of the Criminal Procedure Code authorises the Criminal Court to order for custody and disposal of the property pending trial of the case. It provides that when any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial. For the purposes of this section, property includes any kind or document which is produced before the Court or which is in its custody. The Supreme Court in *Sardar Ali's case*, *supra*, held that the motor vehicle regarding whose temporary custody arrangements are made under this section by the police officer or by the authorised person seizing the vehicle must be considered to have been produced before the Criminal Court as soon as a complaint is lodged alleging the commission of an offence under the Act. It was further held as under:

"In any case, the Court has ample power under Chapter VII of the Code, Section 91 in particular, to compel the production of the vehicle before the Court. Thus, if the provisions of the Motor Vehicles Act are read in conjunction with the provisions of the Code of Criminal Procedure - and there is no getting away from the provisions of both the laws - it is seen that there is no lacuna whatsoever in regard to the proper custody and disposal of the motor vehicle seized u/s 129-A of the Motor Vehicles Act. The custody of the vehicle in the hands of the police officer or the authorised person is but temporary and he is therefore, obliged to act and take all further steps in the matter with all expedition. If he releases the vehicles on being satisfied that no offence has been committed or if he releases the vehicle on the offence being com-pounded, no further question arises. If, instead, he lays a complaint before the Court, the Court acquires instant jurisdiction over the vehicle to pass suitable orders. In the remote event of the police officer or the authorised person not taking any further action after seizing and detaining the vehicle, the owner of the vehicle is not without remedy. Article

226 is always available but one does not have to presume that the police officer or the authorised person may not act according to law".

7. In view of the judgment of the Apex Court in Sardar Ali's case, *supra*, there is no substance in the arguments of the learned Counsel for the petitioners insofar as the non-framing of the rules for the purposes of making provision and prescribing the manner for seizure and custody of the vehicle is concerned. Even in the absence of the rules, the provisions of the Section 207 are workable and do not become redundant. The provisions also does not adversely affect the interests of the motor vehicle owners.

8. It was next contended that as wide discretion has been conferred upon the officer authorised to seize the vehicle under the proviso to sub-section (1) of Section 207 of the Act, the same was liable to be struck down being violative of the fundamental rights. It was submitted that as the discretion conferred was unguided, there was every possibility of the officer or person authorised to seize the vehicle to exercise the powers according to his whims and caprice. Referring to the word "may" as used in the said proviso, it is urged that as no guidelines have been prescribed for the exercise of the discretion, the same should be struck down as being unconstitutional. This argument also cannot be accepted for the reason that the Supreme Court in Sardar Ali's case, *supra*, had considered the constitutional validity of Section 129-A which had the similar proviso, and did not find any vice of unconstitutionality on the ground of use of the word "may" in the proviso to sub-section (1) of Section 129-A of the Motor Vehicles Act, 1939. The ratio of the Supreme Court is binding upon all the Courts in the country in view of the provisions of Articles 141, 142, 144 and 145 of the Constitution of India. The Supreme Court in Assistant Collector of Central Excise, Chandan Nagar, West Bengal v Dunlop India Limited and Others, referred to the system of dispensing justice in the country and hoped that in the hierarchical system of Courts in the country, it was necessary for each lower tier including the High Court to accept loyally the decision of the higher tiers. Referring to Cassell and Company v Broome, their Lordships observed:

"We desire to add and as was said in Cassel and Company v Broome 1972 AC 1027, we hope it will never be necessary for us to say so again that in the hierarchical system of Courts" which exists in our country, it is necessary for each lower tier" including the High Court, "to accept loyally the decisions of the higher tiers". "It is inevitable in a hierarchical system of Courts that there are decisions of the Supreme Appellate tribunal which do not attract the unanimous approval of all members of the judiciary But the judicial system only works if someone is allowed to have the last word and that last word, once spoken, is loyally accepted. The better wisdom of the Court below must yield to the higher wisdom of the Court above. That is the strength of the hierarchical judicial system. In Cassel and Company v Broome, commenting on the Court of Appeal's comment that Rookes v Barnard 1964 AC 1129 was rendered per incuriam, Lord Diplock observed:

"The Court of Appeal found themselves able to disregard the decision of this House in *Rookes v Bernard*, by applying to it the label *per incuriam*. That label is relevant only to the right of an appellate Court to decline to follow one of its own previous decisions, not to its right to disregard a decision of a higher appellate Court or to the right of a Judge of the High Court to disregard a decision of the Court of Appeal".

It is needless to add that in India under Article 141 of the Constitution the law declared by the Supreme Court shall be binding on all Courts within the territory of India and under Article 144 all authorities, civil and judicial in the territory of India shall act in aid of the Supreme Court".

Even the obiter of the Supreme Court is required to be given due respect and considerable weightage. It has therefore to be presumed that while upholding the constitutional validity of Section 129-A of the Motor Vehicles Act of 1939, the honourable Supreme Court examining its constitutional validity was aware of the proviso conferring discretion and despite that did not find any ground to declare the said section to be unconstitutional. As Section 207 of the Act along with the proviso is *pari materia* to the provisions of Section 129-A of Motor Vehicles Act of 1939, the argument of the learned Counsel for the petitioner cannot be accepted.

9. Otherwise also, a critical examination of the proviso would demonstrate that the apprehension expressed and the argument advanced on behalf of the petitioners is without any substance. Under the proviso, an officer or specially authorised person has been authorised to tentatively form an opinion to determine as to whether according to the facts and circumstances of the case, the motor vehicle was being used in contravention of Section 3 or Section 4 or without the permit as required by sub-section (1) of Section 66 of the Act, and once such an opinion is formed the question of taking consequential action of either seizing the vehicle or seizing the certificate of registration would arise. After formation of the opinion regarding the user of the vehicle, the officer or the authorised person apparently does not have any option but to seize the certificate of registration instead of seizing the vehicle. The exercise of the option or vesting of discretion in the officer or specially authorised person is not on account of the existence of the word "may" as has been argued by the learned Counsel appearing for petitioners but is inherently in existence on account of the power conferred upon such officer or authorised person to form an opinion regarding the user of the vehicle, under the earlier portion of the proviso. The prayer of the learned Counsel for petitioners for declaring the section as unconstitutional on account of this ground is bereft of any force and cannot be accepted.

10. The prayer of the petitioners for issuance of a direction to the respondents to frame rules in terms of Section 88 of the Act can also not be accepted inasmuch as the said position of law is that Courts cannot issue directions to the executive or the legislature either to frame the law or make the rules. Making of the rules is in the discretion of the authority upon whom the powers are conferred by the

statute. No citizen can pray for issuance of a mandamus for compelling the State to frame the rules as has been urged in the instant case. The Supreme Court in *State of Jammu and Kashmir v A.R. Zakki and Others*, dealt with this point of law and held as under:

"A writ of mandamus cannot be issued to the legislature to enact a particular legislation. Same is true as regards the executive when it exercises the power to make rules, which are in the nature of subordinate legislation. Section 110 of the Jammu and Kashmir Constitution, which is on the same lines as Article 234 of the Constitution of India, vests in the Governor, the power to make rules for appointments of persons other than the District Judges to the Judicial Service of the State of Jammu and Kashmir and for framing of such rules, the Governor is required to consult the Commission and the High Court. This power to frame rules is legislative in nature. A writ of mandamus cannot, therefore, be issued directing the State Government to make the rules in accordance with the proposal made by the High Court".

11. No other point was argued before us.

12. In view of what has been stated hereinabove, we do not find any force in these writ petitions which are accordingly dismissed. Rule issued is discharged.