

(1976) 08 KAR CK 0013
In the Karnataka High Court

D.P. Sharma

APPELLANT

Vs

The Regional Transport Authority, Bangalore and Another

RESPONDENT

Date of Decision : 02-08-1976

Acts Referred:

Karnataka Motor Vehicles Rules, 1963 — Rule 56 (4), 59 (1)
Motor Vehicles Act, 1939 — Section 32, 32 (1), 32 (2)

Citation : AIR 1977 Kar 1 : (1976) ILR (Kar) 1593 : (1976) 2 KarLJ 181

Hon'ble Judges : V.S. Malimath, J

Bench : Single Bench

Advocate : B.S. Keshava Iyengar, for the Appellant; B.B. Mandappa, G.P., for the Respondent

Judgement

1. The petitioner is the owner of motor vehicle bearing No. MYA 7242. It was registered under the Motor Vehicles Act, 1939 (hereinafter referred to as the Act) as a contract carriage. The petitioner gave notice to the registering authority the first respondent of his proposal to alter the contract carriage as a stage carriage. That notice was given on the 9th of January, 1976 and was received by the first respondent on the same day. The petitioner was informed by the first respondent by his letter dated 10th February, 1976, which according to the petitioner was received on 14-4-1976, that his application dated 9-1-1s976 in Form 32 A. M. requesting for conversion of vehicle MYA 7242 as a stage carriage is rejected as the said vehicle which is registered as a contract carriage has vested in the State Government in view of Ordinance No. 7 of 1976 dated 31-1-1976. There appears to be a mistake in mentioning the date of the Ordinance, the correct date being the 30th of January, 1976.

2. Shri B. S. Keshava Iyengar, learned counsel appearing for the petitioner, submitted at the outset that the prayer "C" in paragraph 4 of the petition is not pressed by the petitioner at this stage and he reserved his right to agitate this matter in other appropriate proceedings. Hence, the only other two reliefs which survive for consideration are these: (1) To declare that the petitioner's vehicle

MYA 7242 had become a stage carriage and (2) that the endorsement of the 1st respondent as per Exhibit "A" is without the authority of law and has no legal effect or validity.

3. Shri Keshava Iyengar, relying on the decision of this Court in *M, Ranganathan v. State of Karnataka*, (W. P. Nos. 1461 and 5192 of 1976 decided on 12-7-1976) (Kant), submitted that the approval sought by the petitioner by issue of a notice under sub-section (1) of Section 32 of the Act must be deemed to have been granted by the first respondent on the expiry of 7 days of the receipt of the notice by the first respondent.

4. Sub-sections (1) and (2) of Section 32 of the Act, which are relevant for the purpose of this case, may be extracted as follows: -

"32. (1) No owner of a motor vehicle shall so alter the vehicle that the particulars contained in the certificate of registration are no longer accurate, unless

(a) He has given notice to the registering authority within whose jurisdiction he resides of the alteration he proposes to make; and

(b) He has obtained the approval of the registering authority to make such alteration:

Provided that it shall not be necessary to obtain such approval for making any change in the unladen weight of the motor vehicle consequent on the addition or removal of fittings or accessories, if such change does not exceed two per cent of the weight entered in the certificate of registration.

(2) Where a registering authority has received notice under sub-section (1), it shall, within seven days of the receipt thereof, communicate, by 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."

It is by invoking the proviso to sub-section (2) of Section 32 of the Act that it was contended that the approval sought by the petitioner under sub-section (1) of Section 32 must be deemed to have been accorded on the expiry of seven days from the date of receipt of the application dated 9-1-1976. The contention urged by Shri. Keshava Iyengar receives full support from the decision of this Court referred to above.

5. It is not disputed that the petitioner owned the vehicle MYA 7242, which was registered as a contract carriage. It is also not disputed that the petitioner's notice under sub-section (1) of Section 32 of the Act dated 9th January 1976, was received by the registering authority-first respondent-on the same day. It is also not disputed that no communication was sent by the first respondent to the petitioner within seven days of receipt of the said notice, either granting or refusing the approval to the proposed alteration, It is also not disputed that the

only communication sent by the first respondent in this behalf is the one dated 10th February, 1976, produced in the case as Exhibit "A". As the registering authority did not take any action to communicate its decision within seven days of the receipt of the petitioner's notice dated 9-1-1976, by the operation of the proviso to sub-section (2) of Section 32, the approval as sought by the petitioner for making the proposed alteration must be deemed to have been granted.

6. But, it was contended by Shri B. B. Mandappa, learned High Court Government Pleader appearing for the respondents, that the petitioner's notice dated 9-1-1976 cannot be regarded as a valid notice which required the registering authority to communicate its approval or refusal within seven days of receipt of the said notice. It is not disputed that the notice given under sub-s. (1) of S. 32 is in Form 32 A. M. as required by R. 59 (1) of the Mysore Motor Vehicles Rules, 1963 (hereinafter referred to. as the Rules). But, what was submitted by Shri Mandappa is that the said notice was not, accompanied by a fee of Rs. 2/- required by sub-rule (4) of Rule 56 of the Rules. As no statement of objections has been filed on behalf of the respondents, it is not possible for me to record a finding as to whether the petitioner had paid the fee of Rs. 2/- or not along with the notice dated 9-1-1976. Even assuming that the petitioner had not paid the fee of Rs. 2/- while submitting his notice, I fail to see how the notice given by the petitioner can be regarded as not being in accordance with sub-section (1) of Section 32 of the Act. Clause (a) of sub-section (1) of Section 32 provides that notice should be given to the registering authority within whose jurisdiction the applicant resides of the alteration he proposes to make. Sub-rule (1) of Rule 59 provides that the said notice should be in form 32 A. M. Neither Section 32 nor Rule 59 requires that the notice should be accompanied by a fee of Rs. 2/-. The fee contemplated by sub-rule (4) of Rule 56 is the fee for recording any alteration to a motor vehicle u/s 32 of the Act. It is not a fee which is required to be paid along with the notice to be given under clause (a) of sub-section (1) of Section 32 of the Act. Sub-rule (4) of Rule 59 of the Rules provides that the registering authority may subject to the provisions of Section 32-A require any owner of a motor vehicle to produce the certificate of registration in respect of the vehicle before him or his nominee, for the purpose of the revision of the entries therein contained and the owner of such a motor vehicle shall produce the certificate of registration within 7 days from the date -on which such requisition was made. The revision of the entries in the registration certificate has to be made after the approval sought for is granted or deemed to have been granted u/s 32. The fee is charged for the purpose of making necessary alterations in the registration certificate in accordance with the approval granted or deemed to have been granted u/s 32 of the Act. It is clear that the stage at which fee of Rs. 2/- has to be paid by the owner of the vehicle is not when the notice is given u/s 32 (1) but that the said fee has to be paid when the entries are required to be altered giving effect to the approval granted or deemed to have been granted. Hence, it is not possible to accede to the contention of Shri Mandappa that the notice dated 9-1-1976 given by the petitioner cannot be

regarded as a valid notice. As the notice given is in accordance with the provisions of Section 32 of the Act and the rules made thereunder and as the registering authority did not communicate its decision within seven days of the receipt of the notice dated 9-1-1976, the proviso to sub-section (2) of Section 32 comes into operation. As the proviso is clearly attracted, the approval sought for by the petitioner under sub-section (1) of Section 32 of the Act must be deemed to have been granted on the expiry of seven days from 9-1-1976.

7. The impugned endorsement of the first respondent rejecting the notice of the petitioner has been made not on the ground that the notice given by the petitioner is not in accordance with law, the same not having been accompanied by a fee of Rs. 2/-. The rejection is on the ground that the vehicle in question, which was registered as a contract carriage, has vested in the State Government in view of Ordinance 7 of 1976. As already stated, the said Ordinance was promulgated on the 30th of January, 1976. The period of seven days from date of receipt of notice u/s 32(1) expired on the 16th of January, 1976, long before the Ordinance was promulgated. As, before the Ordinance was promulgated the approval must be deemed to have been granted in favour of the petitioner, the first respondent had no jurisdiction to make an order rejecting the notice of the petitioner and refusing approval sought for by the petitioner.

8. There is also no substance in the contention of Shri Mandappa that as the vehicle in question has since been acquired by the State Government in pursuance of a notification issued u/s 4 of the Ordinance 7 of 1976, which has since been replaced by Karnataka Act 21 of 1976, the petitioner is not entitled to effect any alteration as proposed in his notice dated 9-1-1976. In the notification issued u/s 4 of Ordinance 7 of 1976, the petitioner's vehicle MYA 7242 was not included as one of the contract carriages acquired by the State Government. Subsequently, a Corrigendum was issued on the 12th of February, 1976, by which the State Government purports to include the petitioner's vehicle MYA 7242 in the original Notification dated 31-1-1976. It is necessary to point out that neither in the original Ordinance nor in the Act which replaced the Ordinance, is there any prohibition prohibiting the owners of motor vehicles, which are registered as contract carriages, from altering them as stage carriages by taking appropriate action u/s 32 of the Act. Shri Mandappa, however, relied upon the provisions of Section 15 of the Karnataka Contract Carriages (Acquisition) Act, 1976, (Karnataka Act 21 of 1976), which reads as follows:

"Transfer prohibited. - No person shall on or after the commencement of this Act and before the notified date transfer by way of sale or gift, any contract carriage liable to be acquired under this Act except in favour of the State Government or the Corporation, or alter, add or remove any part, fitting or accessory. Where any transfer is made by way of sale in favour of the State Government or the Corporation the price to be paid shall be calculated in accordance with the principles for determining the amount under this Act for such property acquired under this Act."

What is prohibited by Section 15 is the transfer of the vehicle or the alteration of the vehicle by adding or removing any part, fitting or accessory. The alteration contemplated in Section 15 is the alteration of the parts or accessories of the vehicle and not the manner of user of the vehicle. There is no prohibition in Section 15 prohibiting the owner of the motor vehicle from effecting alteration other than alterations by way of adding or removing any part, fitting or accessories. Section 15 of the said Act does, not have the effect of prohibiting the owner of a contract carriage from altering the vehicle as a stage carriage. Hence " the first respondent could not have rejected the petitioner's notice on the ground that he cannot exercise the powers u/s 32 after the Ordinance came into force, The subsequent Notification dated 31st January, 1976, issued by the State Government u/s 4 of the Ordinance is also not of any consequence as the vehicle was not a contract carriage on the date of the Notification.

9. The owner of the vehicle cannot alter the vehicle so that the particulars contained in the certificate of registration are no longer accurate unless he gives a notice to the registering authority concerned of the proposed alterations and obtains the approval of the registering authority to make such alterations in this case, the petitioner did issue the notice on the 9th of January, 1976, long before the Notification was issued by the State Government u/s 4 of the Ordinance. As already stated, the approval must be deemed to have been granted on the expiry of seven days from 9-1-1976, which date is also long before the date of the Notification issued u/s 4 of the Ordinance by the State Government. The petitioner, therefore, became entitled to the alteration of the vehicle as a stage carriage on the expiry of seven days from the date 9th January, 1976. What is required to be done is only the ministerial act of giving effect to the approval deemed to have been granted in favour of the petitioner by making necessary revision of the entries in the registration book by following the procedure prescribed in the Rules. As the petitioner had acquired his right in this behalf on the expiry of seven days from 9th January, 1976, long before the Notification was issued u/s 4 of the Ordinance, the Ordinance cannot have the effect of taking away the rights of the petitioner which he has acquired u/s 32 of the Act.

10. The only other submission of Shri Mandappa is that Section 32 is not the provision under which the petitioner can alter his motor vehicle, which was a contract carriage, into a stage carriage. There is absolutely no force in this contention of his. Section 32 is the only provision under which such an alteration can be made and there is no other provision. Hence, this contention also fails.

11. For the reasons stated above, this writ petition is allowed and the impugned endorsement of the first respondent dated 10th February, 1976. Exhibit "A" is hereby quashed. It is hereby declared that the approval sought for by the petitioner by the issue of notice dated 9-1-1976 must be deemed to have been granted to convert his vehicle MYA 7242 from contract carriage to stage carriage on the expiry of seven days from 9-1-1976. The first respondent is directed to give effect to the said approval forthwith. No costs.

12. Petition allowed.