

(1997) 04 KAR CK 0018
In the Karnataka High Court
Case No : Writ Petition No. 28387 of 1996

H.R. Venugopal

APPELLANT

Vs

The Regional Transport Officer. Bangalore West

RESPONDENT

Date of Decision : 02-04-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 52, 52(1)

Citation : (1997) 7 KarLJ 680

Hon'ble Judges : Harinath Tilhari, J

Judgement

1. By this petition, the petitioner has challenged the endorsement dated 1-10-1996 which bear the No. RTA/BNG(W)/TR/KA-04-4944/96-97, dated 10-1-1996, copy of which resolution has been annexed as Annexure-A to the writ petition.

2. The facts of the case in brief are that the petitioner had been registered as maxi-cab bearing Registration No. KA-04/4944 with seating capacity of 12+1. On 30-9-1996 the petitioner moved an application under Section 52(1) of the Motor Vehicles Act, 1988 read with Rule 49(1) of the Karnataka Motor Vehicles Rules, 1989 for approval of alteration of vehicle by way of reduction of seats from 12+1 to 6+1 and to classify the vehicle as motor-cab. The respondent-Regional Transport Authority (RTA) instead of granting approval to the alteration rejected the said application and refused to grant approval to alteration sought for and further directed that if the petitioner wishes to have his maxi-cab registered as motor-cab he may purchase another motor-cab with seating capacity of 6+1 in his name which is permissible in law. It has rejected the application taking the view that purpose of alteration would create variation in the actual construction and equipment. It has also observed that the applicant had not given any reason for the purpose of alteration intending reduction of seating arrangement. The Regional Transport Officer further opined that Section 52 of the Motor Vehicles Act which relates to alteration in Motor Vehicle is not exhaustive in nature and it does not state that the seating capacity be altered which arrangements affects the construction equipment or maintenance of vehicle. It opined that the

proposed alteration of the seating capacity will affect the material change directly affecting the wheel-base and also construction of the vehicle and on this basis he has refused to grant approval to the proposed alteration.

3. Feeling aggrieved from this order, the registered owner has come up before this Court by this petition under Article 226 of the Constitution.

4. I have heard learned Counsel for the petitioner Sri B.R.S. Gupta and Sri Shivayogiswamy, the learned Government Pleader. It has been contended by the learned Counsel for the petitioner that the respondent-R.T.O. has illegally refused the application for alteration. He also submitted that the petitioner has got the right to make use of his vehicle and also make alteration as per his liking, no doubt, after having obtained the approval of the registering authority. Learned Counsel contended that the scheme of Section 52 reveals that ordinarily alterations have to be approved. He further submitted that Section 52 of the Act does not specifically indicate that there can also be refusal to grant approval. Learned Counsel submitted that the section appears to be silent on this matter and it does not specify any ground and circumstance in which it is to be rejected. If within 7 days of the giving of the notice by the registered owner of the intended alteration, the Registration Authority does not pass any order or communicate the approval, then the approval shall be deemed and be presumed to have been granted. That the petitioner's learned Counsel contended that the proviso to Section 52(2) further reveals that in ordinary course of things, approval may be granted to the proposed alteration. It is only if at all in the rarest of the rare cases it may be rejected but it has to be on the basis of substantial reasons and grounds. Learned Counsel further contended that even if there is a likelihood of material change or material alteration which may affect the wheel-base approval has to be granted. Learned Counsel invited my attention to Explanation to Section 52.

5. These contentions have been hotly contested by Sri Shivayogiswamy, learned Government Pleader. He contended that the maxi-cab is a motor vehicle in which the seating arrangement is 12+1 while in the motor-cab it is only 6+1 persons capacity and not more. Learned Government Pleader further contended that this change viz., the reduction of the seats may have a material effect or it may amount to material alteration affecting the basic structural change in the construction of the vehicle and if that is so, then there may be chances of misuse of the maxi-cab in the form of motor-cab resulting in loss of revenue to the State in the form of tax as well as depriving the benefit of means of transportation to the common man. Such alteration being adversely affecting the public interest as well as the State's exchequer and such considerations may furnish sufficient ground for the rejection of application for approval of alteration and in this view of the matter, R.T.A. did not commit any error of law or jurisdiction in refusing alteration. Learned Government Counsel contended that power to grant approval carries with itself power to refuse approval. The learned Government Pleader further urged that power is no doubt subject to reasonable exercise thereof and

not to be exercised arbitrarily. Learned Counsel further contended that when the authority has exercised the power in a reasonable manner it cannot be said that it has committed any jurisdictional error or error of law.

6. In the arguments in rejoinder, the learned Counsel for the petitioner submitted that reduction of the seats cannot be said to be a valid ground for rejecting approval. Learned Counsel for the petitioner in this connection placed reliance on a Division Bench decision of this Court in *Javare Gowda v Regional Transport Officer, Mandya*, 1991(1) Kar. L.J. 126.

7. I have applied my mind to the contentions made by the learned Counsel for the parties. Before I proceed further, it will be appropriate and profitable to make reference to certain provisions of the Act and the rules in this regard. Under Section 2(22) of the Act, maxi-cab has been defined to mean as under:-

"Maxi-cab means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward".

8. Sub-section (25) of Section 2 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") has defined motor-cab as:

"Motor-cab" means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward".

9. A reading of these definitions per se reveals that two categories of motor vehicles viz., maxi-cab and motor-cab have been categorised on the basis of their construction and adaptation while maxi-cab is constructed and adapted to carry more than 6 persons but not more than 12 while in the case of motor-cab it is constructed and adapted to carry on only six passengers and the driver for hire or reward and no more than six (maximum number of) passengers are taken on a motor-cab. These two types of motor vehicles have been distinctly defined on the basis of their construction and adaptation with reference to the capacity of taking passengers in itself for hire or reward. Section 52 makes provision with reference to the matter of alteration. Section 52 reads as under:

"52. Alteration in motor vehicle.-(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 has the residence or the place of business where the vehicle is normally kept, as the case may be, of the alteration he proposes to make; and (b) he has obtained the approval of that 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:

Provided further that modification of the engine, or any part thereof, of a vehicle for facilitating its operation by a different type of fuel or source of energy including battery, compressed natural gas, solar power or any other fuel or source of energy other than liquid petroleum gas shall be treated as an alteration but shall be subject to such conditions as may be prescribed.

(2) Where a registering authority receives a 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.

(3) Notwithstanding anything contained in sub-section (1), a State Government may, by notification in the Official Gazette, authorise, subject to such conditions as may be specified in the notification, the owners of not less than ten transport vehicles to alter any vehicle owned by them so as to replace the engine thereof without the approval of the registering authority.

(4) Where any alteration has been made in a motor vehicle either with the approval of the registering authority given or deemed to have been given under sub-section (2) or by reason of replacement of its engine without such approval under sub-section (3), the owner of the vehicle shall, within fourteen days of the making of the alteration, report the alteration to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration to that authority together with the prescribed fee in order that particulars of the alteration may be entered therein.

(5) A registering authority other than the original registering authority making any such entry shall communicate the details of the entry to the original registering authority.

(6) No person holding a vehicle under a hire-purchase agreement shall make any alteration to the vehicle for which approval of the registering authority is required under sub-section (1), except with the written consent of the registered owner".

The above provision under Section 52 is the negative mandate of the Legislature under the Act that no owner of the motor vehicle shall alter the vehicle in such a manner that the particulars contained in the certificate of registration are rendered inaccurate. This is the general provision contained in Section 52(1). The bar or the prohibition against making alteration in the vehicle so as to render the particulars contained in the certificate of registration inaccurate may not apply only in case of exceptions provided by the conditions specified in clauses (a) and (b) to sub-section (1) being with expression "unless" used therein. The effect of clauses (a) and (b) is that alteration can be effected only if any owner has fulfilled the following conditions:

"(a) that the owner of the motor vehicle has given a notice in writing to the

registering authority within whose jurisdiction he has residence or place of business and where the vehicle is normally kept, of the alteration he proposes to make in the vehicle and

The other condition is that:

(b) After the notice has been given to the registering authority, the owner should have also obtained the approval of the registering authority to make alteration, i.e., first he should give intimation of nature of alteration he intends to make and that notice is to be given to the registering authority, the second condition which is to be fulfilled is that he the owner has to obtain the approval of the registering authority".

The power is vested thus in the registering authorities to grant approval to the proposed alteration and until and unless, approval has been granted alteration cannot be made which has the tendency of rendering particulars in the registered certificate inaccurate. Sub-section (2) of Section 52 further provides and directs the registering authority, that on receipt of the notice referred to in sub-section (1), the registering authority is expected to act expeditiously and communicate to the owner of the vehicle its approval to the proposed alteration or otherwise. The proviso further clarifies that if the communication is not received by the owner of the vehicle from the registering authority, the approval of such authority to the proposed alteration shall be deemed to have been given. The reading of sub-sections (3) and (4) provides that after the approval has been made, alteration has been made with the approval or with the deemed approval then the owner shall within 14 days of the making of the alteration, report the alteration to the registering authority and shall also forward the certificate of registration to the authority with prescribed fee in order that the particulars may be entered in the certificate of registration. Thus a reading of Section 52(1) reveals that no alteration can be made in a vehicle which has the tendency of rendering the particulars entered in the certificate of registration inaccurate until and unless the owner of the vehicle has obtained approval. The section further provides and confers power on the registering authority to grant approval or to refuse approval. Thus power of authority to grant or refuse to grant approval is by necessary implication vested in the registering authority. When a power is conferred under the Act, then power may be exercised from time to time as occasion arises. That is the principle of Section 14 of the General Clauses Act, when power to grant approval is given, power to grant approval may be exercised if and when occasion arises and it carries with itself the right to refuse to grant approval to proposed alteration. It means power to grant approval also carries with it power to refuse approval. When I so hold I find support from my view from the language used in sub-section (2) of Section 52 which provides that registering authority shall within 7 days of the receipt thereof communicate to the owner of the vehicle, its approval for the proposed alteration or otherwise. "Otherwise" here means order of rejection and refusal to grant approval. The registering authority is required to communicate order of grant of approval or the

order otherwise than that of grant of approval which means and includes rejection of application for approval or refusal to grant approval. Thus reading of Section 52(1) and (2) reveal that registering authority has got the power to refuse as well to grant approval to the alteration proposed or sought to be proposed. No doubt Section 52 does not elaborate the grounds and circumstances in which approval may be granted or may be refused. It has been left to the judicious exercise of the power by the authority but it cannot be said that in no circumstances the application for seeking approval can be rejected. The explanations to which my attention had been invited defines alteration to mean the change in structure of the vehicle which results in the change in its basic feature. A reading of this definition per se reveals that alteration which cannot be made under Section 52 is:

(a) Change in the structure which has the tendency to change the basic feature of the vehicle.

This basic feature of the vehicle lies in their construction and their adaptability with reference to the seating arrangement. With that reference the vehicles have been categorised into motor-cab, maxi-cab, omnibus, etc. So such alteration cannot be made without approval of the authority. In this view of the matter so far as the vehicles that are used for the purpose of transportation of passengers, the public interest may also be one of the important factors to be taken into consideration while granting approval or rejecting approval to the alteration. No doubt the approval may be granted by the authority to the alteration which may have the effect of changing the basic nature and such alteration cannot be made without approval of the registering authority and whether it would be in the interest of travelling public to permit such a change is a question always for consideration by the authorities when exercising their power under Section 52. The order impugned appears to have been passed only taking the view that the proposed alteration of the seating capacity amounts to material change directly affecting the wheel-base and also construction of the vehicle. In my opinion, it could not have been the sufficient ground for rejecting the application for grant of permission in case of maxi-cab and motor-cab. Rule 151(2) may not apply because the Act by itself prescribes the seating capacity that in case of Motor-cabs not more than 6 passengers can travel excluding driver on hire or reward while in case of maxi-cab the seating strength of passengers is fixed by the Act as minimum 6 and maximum 12. So when the Act itself prescribes the seating capacity in these two types of vehicles, the question of Rules 151(1), (2) and 152 of the rules or wheel-base may not arise at all. This consideration which has affected the mind of the authorities appears to be irrelevant in the context.

10. Thus considered in my opinion, the order rejecting the application for approval of alteration appears to be based on irrelevant consideration, the order refusing application to grant approval amounts to failure to exercise jurisdiction itself. The order deserves to be quashed and it is being kept open to the authorities reconsider the application for grant of approval to proposed alteration

in the light of the provisions of the Act and in the interest of the public in general as well. Thus considered the writ petition is hereby allowed, the endorsement Annexure-A dated 1-10-1996 is hereby quashed. It is expected that the authority will again decide the matter as expeditiously as possible. The costs are to be borne by the respective parties.