

(1956) 10 KL CK 0004

In the High Court Of Kerala

Case No : O.P. No's. 3, 7 to 11 and 61 of 1956

K. Balagangadharan and Others

APPELLANT

Vs

Central Road Traffic Board and Others

RESPONDENT

Date of Decision : 05-10-1956

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 230, 234
Motor Vehicles Act, 1988 — Section 43, 48, 59(3), 60(1), 72

Citation : (1956) 10 KL CK 0004

Hon'ble Judges : T.K. Joseph, J; Joesph Vithayathil, J

Bench : Division Bench

Advocate : P. Subramonian Potti, for the Appellant; N. Krislmaswami Iyengar, Government Pleader, for the Respondent

Judgement

Joesph Vithayathi, J.—O. P. No. 3 of 1956 is by the owner of bus T. C. Q. 1119. I Te has a permit to run the bus on the Haripad - Kozheneherri route. O. P, No. 7 of 1956 is by the driver of that bus. On 26-5-1955, the Circle Inspector of Police, Pathanamthitta, chocked the bus at Nanukkadu. He reported to the Secretary, Road Traffic Board, Quilon, that the bus was found overloaded. The Board called for the, explanations of the owner and tire driver:

The owner gave an explanation to the effect that there was no overloading and that he was not responsible" for the ovexdloading if any. The driver also denied-, I the charge of overloading, and also stated that even if there was overloading he was not responsible for the same. The Road Traffic Board suspended the permit of the bus for 6 months and also suspended the competency certificate of the driver for Q months. Both the owner and the driver appealed\$| to the Central Road Traffic Board. The Centraln Road Traffic Board reduced the period of suspension of the bus to one week and the", pension of the competency certificate of the driver to one month. In other respects the order of the Road Traffic Board was confirmed.

2. O. P. No, 8 of 1956 is by the driver of bus T. C. Q. 997 running along the

Haripad - Chengannur route & O. P. No, 10 of 1956 is by the owner of that bus. On 15-5-1955, the District Superintendent of Police, Quilon, checked the bus at Kollakadavu and reported to the Road Traffic Board, Quilon that there was overloading in the bus. The Road Traffic Board asked for explanations of the owner and the driver. The driver denied the charge of overloading and also denied his responsibility even if there was overloading. The owner also denied responsibility for over loading in the bus. The Road Traffic Board suspended the permit of the bus for 6 months and the competency certificate of the driver for 6 months. In appeals filed by the owner and by the driver, the Central Road Traffic Board reduced the period of suspension of the competency certificate of the driver to 3 months and the period of suspension of the permit to 2 weeks.

3. O. P. No. 9 of 1956 is by the owner of bus T. C. Q. 1758 running along the Haripad - Patlia-namthitta route and O. P. No. 11 of 1956 is by the driver of that bus. On 15-5-1955, the District Superintendent of Police, Quilon, checked the bus near Kollakadavu and reported to the Road Traffic Board, Quilon, that there was overloading in the bus. The Road Traffic Board called for the explanations of the owner and the driver. The owner gave an explanation to the effect that he was not responsible for the overloading. The driver denied the charge of overloading. He also denied his responsibility in the matter. The Road Traffic Board suspended the permit of the bus for a period of 6 months and the competency certificate of the driver for 6 months. -In appeals, filed before the Central Road Traffic Board, the suspension of the permit was reduced to 2 weeks and the suspension of the competency certificate of the driver was reduced to 3 months. /

4. O. P. No. 61 of 1956 is by the owner of bus T. C. T. 1.793 running along the Quilon - Kulathupuzha route. On 22-2-1956, the Inspector-General of Police checked the bus at Adichanallur and made a report to the Road Traffic Board Quilon, that there was overloading in the bus. The Road Traffic Board called for the explanation, of the owner. The owner stated that he was not responsible for the overloading. The Road Traffic Board suspended the permit of the bus for a period of 3 months. The owner filed an appeal before the Central Road Traffic Board and applied for stay of the order of the Road Traffic Board. The Central Road Traffic Board refused to grant the stay. The owner then filed the original petition for a writ of certiorari quashing the order of the Road Traffic Board, Quilon. O. Ps. Nos. 3, 7, 8, 9, 10 and 11 are for the issue of writs of certiorari quashing the orders of the Road Traffic Board and the Central Road Traffic Board in the respective cases.

5. The grounds urged in the petitions are: (1) the Road Traffic Board has no power to suspend the permit of the bus for overloading, (2) The Road Traffic Board has no power to suspend the competency certificate of the driver of a bus for overloading in the bus, (3) The Road Traffic Board acted illegally and against rules of natural justice in suspending the permits of the buses and the competency certificate of the drivers in the respective cases without giving them

an opportunity to substantiate their explanations.

6. Ground No. 1. Section 59 of the Motor-Vehicles Act empowers the Transport Authority which granted the permit for a motor vehicle to cancel or suspend the same in certain cases. The section reads:

59. Cancellation and suspension of permits (1) The Transport Authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit.

(a) on the breach of any condition specified, in Sub-section (3) of Section 59, or of any condition contained in the permit, or (b) if the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorised by the permit, or (c) if the holder of the permit ceases to possess the vehicle or vehicles covered by the permit, or (d) if the holder of the permit has obtained the permit by fraud or misrepresentation:

Provided that no permit shall be cancelled unless an opportunity has been given to the holder of the permit to submit his explanation.

(2) Where a Transport Authority cancels or suspends a permit, it shall give to the holder in writing its reasons for the revocation or suspension.

7. It is argued for the Petitioners that not to overload the bus is not one of the conditions of the permit specified in S. 59(3). Section 59 (3) provides:

59(3) The following shall be conditions of every permit:

(a) that the vehicle or vehicles to which the permit relates are at all times so maintained as to comply with the requirements of Chapter v. and the rules made thereunder;

(b) that the vehicle or vehicles to which the permit relates are not driven at a speed exceeding the speed lawful under this Act;

(c) that any prohibition or restriction imposed and any minimum fares or freights fixed by or under the Act are observed in connection with any vehicle or vehicles to which the permit relates;

(d) that the vehicle or vehicles to which the permit relates are not driven in contravention of the provisions of Section 72;

(e) that the provisions of this Act limiting the hours of work of drivers are observed in connection with any vehicle or vehicles to which the permit relates; and (f) that the provisions of Chapter VIII so far as they apply to the holder of the permit are observed.

It is true that prohibition relating to overloading, is not one of the conditions specified in the subsection. But sub J(u) empowers the Transport Authority to cancel or suspend a permit on the breach of any condition contained in the permit. Section 48 (d) (iv) empowers the Regional Transport Authority to attach

to a stage carriage permit condition to the effect:

That not more than a specified number of passengers and not more than a specified amount of luggage shall be carried on any specified vehicle at any one time.

The question is whether such a condition is attached to the permits issued in these cases. The permits of the buses in question were placed before as. In each permit the maximum number of passengers that can be carried in the bus is mentioned. It is also stated as one of the conditions of the permit that there should be no overloading of the vehicle at any time. According to learned Counsel for the Petitioners lire entry in the permit relating to the maximum number of passengers is only a description of the vehicle and that carrying m re persons than those specified in the entry does not amount to overloading. We arc unable to accept this argument.

When the maximum number of passengers that, can be carried in the vehicle is mentioned in the permit and it is also stated that there should be no" overloading of the vehicle, it is clear that carrying more persons than the maximum number specified in the permit amounts to overloading. If there has-been such, overloading it clearly amounts to" breach of a condition contained in the permit. Learned Counsel for the Petitioner relied on the observation of Byers, J., in Re, Nagulatlah, 19-13-1 Mad LJ 130 : In Re: Nagulatiah, that the-mention of the number of passengers" seats as well as the maximum laden weight in the permit does not amount to a condition relating to overloading. But in that ease it was not one of the conditions of the permit that there should not be overloading. It is not so in the present cases. There is thus no substance in the first contention raised on behalf of the Petitioners.

8. Ground No. 2. The second contention is that the Road Traffic Board has no power to suspend the competency certificate of the driver for overloading in the bus. Rules 230 and 231 of the Rules passed under the Motor Vehicles Act prescribe the duties of the driver of a public service vehicle. It is not stated in those rules that it is one of the duties of the driver to see that the vehicle is not overloaded. It is true that it is stated in Rule 231 (1) that the driver and the conductor of a public service-vehicle while on duty shall,

as far as may be reasonably possible, having regard to his duties, be responsible for the due observance of the provisions of the Act and of the rules.

But we do not think that this provision makes the driver responsible for the overloading of the bus so long as it is not one of his duties to see that the bus is not overloaded. Rule 233 which prescribes the duties of the conductor of a public service vehicle provides that the conductor shall not allow any person to be carried, in any public service vehicle in excess of the seating capacity specified in the permit of the vehicle. It is thus the duty of the conductor to see that the bus is not overloaded. It is only when there is no conductor for a public services vehicle that the driver is made responsible for the observance of the rule relating

to overloading. (vide Rule 234).

It is not disputed that there were conductors for the buses in question. This question came up for consideration before the Madras High Court in 1943-1 Mad. L. J. 130 : In Re: Nagulathiah, . It was held in that case that under the rules then in force corresponding to rules 230, 231, 233 and 234 of the present rules the driver could not be made liable for overloading in a bus which had a conductor. To the same effect are the decisions in In Re, Duraisami Illaju, 1939-1 Mad L. J. 518 : AIR 1939 Mad 491) (B) and In Re: Srinivasa Ayyangar and Another, . It was held in those cases that the driver could not be held liable for "the non-observance of a rule or condition in respect of which he has been exempted from responsibility by a statutory rule. We therefore accept the contention that the Road Traffic Board had no power to suspend the competency certificate of the q drivers in these cases.

9. Ground No. 3. The third ground raised is that the Road Traffic Board acted against the rules of natural justice in that it did not give the Petitioners an opportunity to substantiate the explanations given by them. The proviso to Section 60 (1) says that no permit shall be cancelled unless an opportunity has been given to the holder of the permit to submit his explanation. The proviso cannot apply to the present cases since the permits have not been cancelled but only suspended in these cases. Yet rules of natural justice require that a person should be given a fair opportunity to state his case before he is punished.

In these cases the owners of the buses were asked to show cause why the permits should not "be suspended and the drivers were asked to show cause why their competency certificates should not be suspended for overloading their respective vehicles. In view of our finding that the Road Traffic Board had no power to suspend the competency certificates of the drivers, it is not necessary to consider the question whether they were given a fair opportunity to state their" case. We are concerned only with the question whether the owner of the "buses in O. P. Nos. 3, 9 and 10 and the owner of the bus in O. P. 61 were given a fair opportunity to state their case before the permits were suspended.

In O. P. Nos. 9 and 10 the owner of the buses practically admitted in the explanations given by them that there was overloading in the buses. What was stated in the explanations was that some people "forcibly got into the buses and refused to get down in spite of repeated requests. It was also suggested "that it must have been at the instance of somebody that those people forcibly got into the buses. In O. P. No. 61 also the owner admitted in his explanation that there was overloading in the bus and that he suspended the driver and the conductor. It was only in O. P. No. 3 that the owner denied the fact that there was overloading. The Petitioners to O. Ps. Nos. 3, 9, 10 and 61 have no case that they wanted to give evidence or to have an oral hearing and that the Road Traffic Board refused to take evidence or to give an oral hearing. The question is whether under the circumstances it can be said that the Petitioners were not given a fair opportunity to state their case.

9-A. Following the decision in *Local Government Board v. Aldrige* 1915 A. G. 120 (D), this Court held in *Krishnankutty v. State of Travancore-Cochin* 1951 Ker. L. T. 329 : AIR 1952 Ker 287 (E), that in the case of a quasi-judicial tribunal like the Board of Revenue the tribunal is not bound to give an oral hearing to the party and that it would be sufficient if the party is given an opportunity to state his case in writing. To the same effect are the decisions in *State of Travancore-Cochin v. Joseph Chacko*, 1951 Ker. L. T. 268 : AIR 1951 Ker 241 (F) and *In Re: V.S. Shanmuga Mudaliar*, . As observed by Ramaswami, J. in *Ramnath Prasad Vs. The Collector of Darbhanga and Others*, the "tribunal; . , is not required to decide the question at issue as if he were sitting as a court of law. He is not bound to follow all the procedural "; requirements of a formal trial. It is sufficient if, the tribunal gives a fair opportunity to the party to present his case. On the question whether fair opportunity has been given or not no general"? test can be formulated. The question depends upon the particular facts of each case".

To the same effect is the decision in *Nandlal Singh Vs. Ram Kirit Singh and Others*, . Reference may also be made to the following observation of Tucker, L. J., in *Russel v. Duke of Norfolk*, (1949) 1 All E. It. 109 (J). "The requirements of natural justice must depend upon the circumstances of the case, nature of enquiry, the rules under which- the tribunal -is acting, the subject-matter that is dealt with and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice" which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable "opportunity of presenting his case".

In *General Medical Council v. Spademan*, (1943) 2 All E. R. 337 (K) Lord Atkin. observed that in a case in which a party requested the tribunal to hear his evidence, the tribunal bound to hear the evidence. In the circumstances of these cases we think that so long as the Petitioners in O. Ps. Nos. 3, 9, 10 and 61 did not ask, for an opportunity to examine witnesses or for a moral hearing the Road Traffic Board cannot be said to have denied them a fair opportunity to state their case.

10. Learned Counsel for the Petitioners relied on the decision of the Andhra High Court in *Y. Thirupathi v. State of Andhra*, 1956 AP WR 192 (L) (The Andhra Weekly Reporter Vol. U, page 192). That was a case in which the owner of the bus produced four respectable persons as witnesses before the Regional Transport Authority to show that there was no overloading. The Regional Transport Authority did not record their statements and did not refer to the same in their order, That High Court quashed the order suspending the permit. We do not think that this decision applies to" the facts of the present cases. In the present cases the Petitioners did not offer to give any evidence Another case referred to by learned Counsel for the Petitioners is *Kandinella Ramayya Vs. The Madras State*, His Lordship Govinda Menon. J., observed as follows in that case:

If the Court is satisfied that the giving of opportunity was only a make-belief and a sham affair, that as a matter of fact the opportunity given was such that it

could not be legally considered an opportunity, then the provisions of Section 43 (Madias Co-operative Societies Act) have been violated." We do not think that this observation will apply to the facts of the present cases. As stated already, except in the case of O.P. No. 3, the overloading was practically admitted in the explanations given by the owners of the respective buses. In the circumstances we do not think that the Petitioners in O. Ps. Nos. 3, 9, 10 and 61 were not given a fair opportunity to state their case and that the orders of the Road Traffic Board and the Central Road Traffic Board are liable to be quashed on that ground.

11. In the result we allow O. Ps. Nos. 7, 8 and 11 and quash the orders of the Head Traffic Board and Central Road Traffic Board suspending the competency certificates of the respective Petitioners in those cases. O. Ps. Nos. 3, 9, 10 and 61 are dismissed. We make no order as to costs in the seven Original Petitions.