(1986) 06 KAR CK 0040

In the Karnataka High Court

Case No : Writ Petition No. 25508 of 1981

K. Krishnappa APPELLANT

Vs

Registering Authority and Regional Transport Officer and others RESPONDENT

Date of Decision : 04-06-1986

Acts Referred:

Citation : AIR 1988 Kar 75

Hon'ble Judges : M.P. Chandrakantaraj Urs, J

Bench : Single Bench

Advocate : S.V. Krishnaswamy, for the Appellant; P.M. Appaji, High Court Govt. Pleader, for the Respondent

Judgement

M.P. Chandrakantaraj URS, J.—The petitioner is the owner of vehicle bearing Registration No. TNS 3447. The vehicle was covered by a special permit to carry passengers on contract from Mysore to Krishnaraja Sagar Dam and back. However, on the vehicle being checked at about 6-15 p.m. on 24-8-1981 it was proceeding from Srirangapatna to Mysore. Based on the check report, show cause notice was issued by the 1st respondent-Registering Authority calling upon the petitioner-owner to show cause why he should not be proceeded against for an offence under Cl. (b) of sub-s.(1) of S. 33 of the Motor Vehicles Act, 1939, (hereinafter referred to as the Act). The petitioner appeared before the respondent-Registering Authority at Mysore and pleaded guilty of the charge and asked for a lenient view being taken. In that circumstance, the respondent-Registering Authority passed the impugned order dated 13-10-1981 which is at Annexure-A to the petition by which the registration certificate of the vehicle in question was suspended for a period of four months. Aggrieved by the same, the petitioner has approached this Court for relief inter alia contending that the suspension for a period of four months is excessive and imposed without proper application of mind by the respondent.

2. The order under cl. (b) of sub-s. (1) of S. 33 of the Act is an appealable order.

The petitioner has alleged that he did not prefer the appeal because soon after the passing of the impugned order, the Registering Authority was placed in charge of the duties of the Deputy Commissioner of Transport for that region and therefore remedy by way of appeal would not be of any assistance to him.

3. This Court issued emergent notice regarding rule on 3-11-1981. The respondents though served remained unrepresented and therefore the learned Government Pleader was directed to take notice on 2-4-1986 and file the statement of objections. Unfortunately, though the case was specifically posted for hearing today, subject, however, to the statement of objections being filed on 7-4-1986, no statement of objections has been filed.

4. I think it would not be proper to extend the time any further to permit the respondents to present their case in the form of a statement of objections. The short question which falls for determination in this case, is a pure question of law, in the light of the admission made by the petitioner of the commission of the offence by him under cl. (b) of sub-s. (1) of S. 33 of the Act; apart from the fact that this petition is of the year 1981 which calls for expeditious disposal.

5. A number of similar orders are being passed by the various Registering Authorities imposing the maximum punishment prescribed under cl. (b) of sub-s. (1) of S. 33 of the Act and the same are being challenged in this Court. Therefore, a quick disposal of this case will be of some assistance to the Registering Authorities in the State in disposing of similar cases in future where an offence of the type contemplated under cl. (b) of sub-s. (1) of S. 33 of the Act, is to be dealt with by them.

6. In sub-cls. (i) and (ii) of sub-s. (1) of S. 33 of the Act, the period of suspension for the offences in cls. (a) and (b) of that subsection are prescribed. In cases of offence falling under cl. (a), suspension of the registration certificate will be up to the point of time till the defects for which the suspension has taken place are remedied by the owner of the vehicle i.e., where the condition of the vehicle is such that it endangers the public by its use in a public place or such vehicle does not satisfy the requirements of Ch. V of the Act or the Rules made thereunder. But in respect of an offence committed under cl. (b) of sub-s. (1) of S. 33 of the Act for using the vehicle for hire or reward without a valid permit, suspension may extend to a period not exceeding four months.

7. In other words, the Legislature has thought it fit to provide only for the maximum punishment which may be imposed by the Registering Authorities when an offence is committed by the registered owner of vehicle under cl. (b) of sub-s. (1) of S. 33 of the Act. It may be said that there is no mandate in the section which empowers the Registering Authorities to impose four months'' suspension, as a matter of course, in all cases.

8. There cannot be any doubt that imposition of the penalty of suspension is in its nature punitive. It is a measure of punishment imposed on the owner. Therefore, exercise of that power is quasi-judicial in character inasmuch as the

Registering Authority has to give an opportunity to the offender of being heard and thereafter proceed to impose punishment if found guilty of the offence alleged. A quasi-judicial authority is expected to exercise its discretion, when discretion becomes necessary. It is now well settled in criminal jurisprudence that sentencing a person for any criminal offence is not retributive. It is not with any vengeance that the State imposes punishment on offenders. Nature of the offence, the circumstances leading to the commission of the offence, the character and antecedents of the offenders and several other factors like the background in which the offender comes from etc. are to be taken notice of before the prescribed quantum of punishment or only part of the maximum quantum prescribed is imposed as punishment. It does not matter whether the imposition is one of fine or sentencing one to imprisonment or as in the present case imposition results in the deprivation of the use of the vehicle by the owner of the vehicle for a defined period.

9. In the case of A. Pulliah v. Tahsildar, Sindhanoor, ILR (1981) 2 Kant 1029 this court had occasion to consider this very same aspect with reference to the manner in which the Irrigation Officer may impose the penalty prescribed under sub-s. (4) of S. 32 of the Karnataka Irrigation Act, 1965. It would be useful to notice, cl. (b) of that sub-section in the said Act for purpose of seeing the parity of language and it is as follows :

(b) also, be liable to pay such water rate, as may be determined by the Irrigation Officer, not being less than five times and not exceeding ten times the water rate which he would otherwise have been required to pay.

(underlining is mine)

In the said decision, Jagannatha Shetty, J., placed reliance on a passage found in Judicial Review of Administrative Action by De''Smith found at page 346 which is as follows :

It has often been asserted in judicial dicta and academic literature and all statutory powers (or at least all statutory-powers directly impinging on private rights) must be exercised reasonably; and inasmuch as powers are conferred subject to an implied requirement that they be exercised reasonably, an authority failing to comply with that obligation acts unlawfully or ultra vires.

10. Undoubtedly, prescription of punishment is at four months maximum. But that does not mean, as already observed by me, that lesser punishment should not be given by the Registering Authority, having regard to the number of previous offences, the circumstances under which the offence was committed, the manner in which the public would suffer inconvenience if a transport vehicle is rendered useless for such a long period as four months. The Registering Authorities must also take notice of the fact that under the provisions of S. 3 of the Karnataka Motor Vehicles Taxation Act, 1957, if registration certificate of the vehicle is suspended for whatever reasons, it is not liable to pay the motor vehicles tax due on that vehicle. In other words, if, as a matter of course, the

Registering Authority goes on imposing the maximum punishment the State incurs a serious loss of tax revenue notwithstanding the fact that some of the Registering Authorities do add the qualification that the suspension of the registration certificate would not entitle the owner to claim tax exemption. What the legislation itself exempts cannot be prevented by the Registering Authorities by so stating in a quasi-judicial order.

11. Therefore, automatic matter of course, approach in suspending the registration certificate for the maximum period, is arbitrary exercise of power and without the authority of law.

12. In that view of the matter, the impugned order is set aside and the matter is remitted back to the Registering Authority to consider what would constitute in the circumstances and the facts of the case, proper quantum of punishment, in the light of the observations made in the course of this order.

13. Rule will accordingly issue and be made absolute. There will be no order as to costs. If the parties apply for a certified copy of this order, it shall be furnished forthwith.