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(2002) 10 KAR CK 0034

In the Karnataka High Court

Case No : Writ Petition No. 43748 of 2001

K. Narayanappa APPELLANT

Vs

The Regional Transport Officer, Bangalore Central and Another RESPONDENT

Date of Decision : 31-10-2002

Acts Referred:

Citation : (2003) 1 KarLJ 287 : (2003) 1 KCCR 14 SN

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : C. Narasimhachar, for the Appellant; Manjunath, High Court Government Pleader, for the Respondent

Judgement

R. Gururajan, J.—Petitioner-Narayanappa is before me challenging an order of the second respondent passed in Appeal No. 38 of 2001 at Annexure-E. Petitioner in the writ petition states that he is a transport operator in the State of Karnataka having his place of business at Bangalore. He has a branch office at Hyderabad. He is the registered owner of vehicle bearing No. KA-05-5553 bearing Chassis No. RTE 291855 and Engine No. RTE 17275. He became owner of the vehicle on 3-4-1998. He has purchased this vehicle from one Kalpana. He is operating this vehicle on the strength of the special permit issued by the RTO. R.C. is at Annexure-A.

2. Petitioner also has purchased another vehicle bearing No. MED 6489 from one Rajendra Pandit Singh and others and has got transferred to his name on 6-12-1991. The vehicle was reassigned the registration number as AP-13-T-1008, Chassis No. ALB-110072 and Engine No. ALI 90505, not covered by any permit. He was paying idle tax at Hyderabad. On 24-5-2001 at about 4 p.m. the vehicle bearing No. KA-05-5553 was proceeding from Bangalore to Harani near Vellore carrying a marriage party. It was intercepted by the Inspector of Motor Vehicles and he demanded the original documents. Driver produced only Xerox copies of the permit and not the original documents. Vehicle was seized and was

handed over to Hebbagodi police for their custody, Check report and Form 27 were not issued to the petitioner. Petitioner states that without his knowledge another vehicle bearing Registration No. AP-13-T-1008 was proceeding from Bangalore to Vellore carrying a party by exhibiting the number plate of the vehicle bearing No. KA-05-5553. The inspector demanded the original documents and found that the vehicle was exhibiting Registration No. KA-05-5553. Driver produced Xerox copy of the permit issued to the vehicle bearing Registration No. KA-05-5553 and alleged that the number plate of the vehicle bearing No. KA-05-5553 was inserted on the original number plate which bore No. AP-13-T-1008. Both the vehicles were seized and handed over to the police station.

3. A complaint was lodged in the Hebbagodi Police Station. Cognizance was taken by the learned Judge. Petitioner filed an application seeking release and custody of the vehicle in terms of the Act. Demand notice was issued to the petitioner in terms of Annexure-C. Aggrieved by the same, petitioner has filed an appeal. Appellate Authority dismissed the appeal. This appellate order is challenged before me.

4. Sri Narasimhachar, learned Counsel for the petitioner would say that the levy of tax is unsustainable in law. He says that no opportunity was given to him in this regard. He strongly relies on a Division Bench judgment of this Court in Syed Rafiq Ahmed and Anr. v. Regional Transport Officer and Ors. 1984(1)Kar. L.J. 281 to contend that natural justice requires to be followed in this regard.

5. After hearing the learned Counsels for the parties, I have carefully perused the material on record. Annexure-A is a form of certificate of registration issued by the RTO, Bangalore South. Annexure-B is a form of certificate of registration issued in favour of the petitioner. Demand Notice was issued in terms of Annexure-C. In the Demand Notice it is stated as under:

"The Senior Inspector of Motor Vehicles of this office has intercepted the vehicles bearing No. KA-05-5553 on 24-5-2001 one at 4 p.m. and another at 4.30 p.m. near Hebbagodi and found plying on public road without payment of tax and on demand the drivers of the vehicles has failed to produce the valid documents of the vehicles. The Senior Inspector of Motor Vehicles has verified the Chassis arid Engine Number of both vehicles and has taken pencil impressions of the same and issued on the spot Check reports and Form 27 and thereafter handed over the vehicles to the Hebbagodi Police Station for safe custody along with police complaint for having cheated Transport Department and State Government of Karnataka by using one tax and one permit for both vehicles by exhibiting the Registration Mark KA-05-5553. Apart from noting non-payment of tax the Senior Inspector of Motor Vehicles has also noted other offences in the Check reports, on one vehicle No. KA-05-5553. The Chassis and Engine numbers found was Chassis No. ALB-110072 and Engine Number ALI 90505. On verification of the records at the Regional Transport Office, Bangalore South the vehicle having the above said Chassis and Engine number was not found registered in the office in the name of Sri K. Narayanappa, who is a resident of Bangalore. On the spot the

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Senior Inspector of Motor Vehicles made oral enquiry with the driver of the said vehicle and on such enquiry it was revealed that the said vehicle has been registered in the State of Andhra Pradesh and its registration mark was AP-13-T-1008. On the basis of this information gathered by the Senior Inspector of Motor Vehicles this authority has deputed him to go over to Hyderabad (West) and obtain registration particulars of the said vehicle. Accordingly, the Senior Inspector of Motor Vehicles had gone to Hyderabad, verified the registration particulars of the vehicle No. AP-13-T-1008 and submitted a report to this office on 21-7-2001. According to registration particulars of the vehicle No. AP-13-T-1008 and according to the registration particulars furnished by the Registering Authority, Hyderabad West Zone, the vehicle No. AP-13-T-1008 stands registered in the name of K. Narayanappa S/o. Krishnappa 10-5-105/A, Marab Tank, Hyderabad having Chassis No. ALB-110072 and Engine No. ALI 90505 and this vehicle was of 1980 model. The tax due to the State of Andhra Pradesh has been paid upto 31-12-1995 and the Fitness Certificates of the vehicle expired on 6-12-1995".

Petitioner was asked to pay Rs. 9,97,920.00. An appeal was filed at Annexure-D. In Annexure-E, the Appellate Authority has chosen to reject the case of the petitioner. In the light of arguments of the learned Counsel, I have carefully perused the impugned order. The Appellate Authority notices the allegation against the petitioner and also gives a finding in the case on hand. He notices that the petitioner was operating two vehicles simultaneously by exhibiting Registration No. KA-05-5553, which was assigned by the Regional Transport Officer, Bangalore to a motor vehicle having chassis bearing No. RTE 291855 and Engine No. RTE 172755, which is of 1993 model. Same has been transferred in favour of the petitioner in 1998. He has paid tax upto 31-7-2001. On the strength of this permit, petitioner has used the vehicle No. AP-13-T-1008 of 1980 model with the Registration No. KA-05-5553. The said action on the part of the petitioner would clearly go to show of an evil design on the part of the petitioner. Sufficient reasons are forthcoming in the demand and the same has been accepted by the authorities. The fact-finding order is challenged on the ground of inadequate opportunity. A reading of the order would show that the contention of the petitioner has been noticed and thereafter an adverse fact-finding order has been issued against the petitioner. Since the Appellate Authority has chosen to consider the factual assertion, it is not necessary for me to set aside the order on the ground of inadequate opportunity. Petitioner is unable to show on the materials placed before me that this vehicle was not involved in a transaction in the case on hand. Therefore, I am not able to set aside the order on the ground of opportunity in the light of the opportunity given by the Appellate Authority while giving a fact-finding order. Even before this Court, petitioner is unable to show that the second vehicle was not involved in the transaction. In the absence of any prejudice, it is not necessary to set aside the order wholly on the ground of inadequate opportunity. Opportunity would vary from case to case, from circumstances to circumstances. Material facts would go against the petitioner,

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and, a mere remand on the inadequate opportunity would be a wastage of time. In the given set of facts, I am satisfied that the material facts attracted an adverse order against the petitioner. Petitioner is liable to pay the tax in the case on hand.

6. Petitioner also states that the demand is on the higher side. In the given set of facts, I am not inclined to set aside a factual finding, particularly when the petitioner has chosen to ply another vehicle making use of permit granted in respect of other vehicle owned by him. Liability in the circumstances is confirmed. However, it is seen from the material on record that the respondent is demanding Rs. 9,97,920.00 from 1-1-1996 to 30-6-2001 including penalty. Facts are not very clear to show as to whether petitioner has used the vehicle for the said period. Demand is rather little vague in this regard. When the said demand is challenged as being excessive, Appellate Authority also has not chosen to give acceptable reasoning in the impugned order. Except saying that the two vehicles have been operating, no other reasons are forthcoming. In the circumstances, there is a need for a factual finding as to whether the petitioner is liable to pay Rs. 9,97,920.00 and for which period the petitioner to pay, has to be determined by the authority. While confirming the liability, I deem it proper to remand the matter to find out the quantum payable by the petitioners on facts. To this extent I remand the matter.

7. At the same time, I also deem it proper that the remand cannot be without any condition. Here is an operator who has virtually played a mischief in operating the vehicle with a special permit belonging to another vehicle owned by him. This Court as a matter of fact has chosen to grant interim order directing the petitioner to pay 25 per cent of the amount in the year 28-11-2001. The said order would be a condition for remand. In the circumstances, the remand is subject to the petitioner depositing 25 per cent on the tax demanded within two months from today, with a further undertaking not to dispose of the vehicle owned by him without the leave of the Appellate Authority. In the circumstances, this petition is partly allowed. Quantum in terms of the order is set aside with a remand subject to the petitioner depositing 25 per cent of the amount in addition to an undertaking. Ordered accordingly.

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