
(1988) 08 KAR CK 0043
In the Karnataka High Court
Case No : Writ Petition No. 11438 of 1988

Kasim Peer and Co.

APPELLANT

Vs

Deputy Transport Commissioner

RESPONDENT

Date of Decision : 05-08-1988

Acts Referred:

Motor Vehicles Act, 1939 — Section 112, 123, 33 (1) (b)

Citation : (1989) ILR (Kar) 1172 : (1988) 2 KarLJ 410

Hon'ble Judges : Balakrishna, J

Bench : Single Bench

Advocate : A.S. Vishwanath, for the Appellant; P.R. Ramesh, for the Respondent

Final Decision : Allowed

Judgement

Balakrishna, J.—Sri P.R. Ramesh, learned High Court Government Pleader is directed to take notice for respondents 1 and 2.

2. On 17-12-1987 and again on 19-4-1988 the petitioner's vehicle (Matadar van) bearing Registration No. MYS 9590 (Omnibus) was stated to have been operated on hire basis on Bhadravathi and Sugar Nagar road without permit according to the check report issued by the Motor Vehicles Inspector, Shimoga. A show-cause notice was Issued to the petitioner containing the allegations. The said allegations, according to the petitioner, did not amount to an offence entailing suspension of registration certificate. A case was registered before the concerned jurisdictional Magistrate (Munsiff and Additional J.M.F.C. Bhadravathi) against the driver of the vehicle and after trial the case was dismissed and the accused acquitted in C.C. No. 4579 of 1987. It is submitted that the complainant in the criminal case was no other than the Senior Motor Vehicle Inspector attached to the office of the R.T.O., Shimoga who is the 2nd respondent in this case. The order passed by the Jurisdictional Magistrate Is at Annexure-A.

3. The order of the Magistrate was passed on 22-1-1988. The order impugned In this Writ Petition was passed on 19-4-1988 by the R.T.O. and Registering

Authority, Shimoga. In reply to the show-cause notice Issued by the R.T.O., the petitioner submitted his explanation and denied the allegations. Thereafter, there was no enquiry and even though the driver had been acquitted of the charges, by the Jurisdictional Magistrate, the R.T.O. initiating proceedings u/s 33(1)(b) of the Motor Vehicles Act, passed an order dated 19-4-1988 suspending the Registration Certificate for a period of 120 days which is the maximum period prescribed by law. The petitioner is aggrieved by this order and also by order under Annexure-C dated 21-6-1988 passed by the Deputy Commissioner for Transport, Shimoga Division, Shimoga In appeal confirming the Impugned order of the R.T.O., Shimoga.

4. The question that arises for consideration is, whether the impugned orders vide Annexures "B" and "C" deserve to be quashed.

5. The contentions of the petitioner are that the R.T.O. has not applied his mind in a proceeding which is of quasi-judicial nature before passing the Impugned order under Annexure-B and has issued an order in a cyclostyled form wherein only the signature of the R.T.O. is in his hand-writing and all other entries are filled up by an official of his staff. The second contention is that the Inspector of Motor Vehicles himself was the complainant in C.C.4579 of 1987 before the Jurisdictional Magistrate and has tendered evidence as P.W.I In the case. It Is only after the order of acquittal was passed in c.C.4579 of 1987 that the R.T.O. proceeded to take action against the petitioner u/s 33(1) (b) of the Act knowing fully well that there was a decision on merits after trial, acquitting the driver of the vehicle on charges Which are identical with the imputations contained both In the show-cause notice and the check report. This, according to the petitioner, is paradoxical. It is also submitted by Sri. A.S. Viswanath, learned Counsel for the petitioner, that infliction of penalty by four months" suspension of Registration Certificate being the maximum that is provided under law is unreasonable. According to the learned Counsel, suspension has been made without exercise of judicial discretion. It is his contention, that even If the allegations are proved before quantifying the period of suspension, the authority should apply its mind to the various circumstances preceding the violation, the nature of violation and its gravity.

6. It was further contended that after the submission of explanation by the petitioner to the show-cause notice, no opportunity of a hearing was given to the petitioner and no preliminary enquiry was held by the R.T.O. and therefore, the action taken is arbitrary.

7. Sri. P.R. Ramesh, learned High Court Government Pleader, contended that the R.T.O. was justified in having recourse to action contemplated u/s 33(1)(b) of the Act and the Impugned order passed by the Magistrate in C.C.4579 of 1987 does not bar the statutory exercise of power of the R.T.O. In this context, reliance was placed on the decision reported in Chandrakanth Narayan Nayak Vs. Deputy Commissioner for Transport, Belgaum and Another, .

8. Learned Government Pleader contended that there is no statutory duty Imposed upon the R.T.O. to grant hearing to the petitioner after he offered explanation in response to the show-cause notice nor for (SIC) enquiry. The nature of the proceeding being summary, such an elaborate procedure is not contemplated under law. In support of his contention, the learned Government Pleader has relied on the decision reported in the case of M.S. Hemashankar Vs. Regional Transport Officer, Central Bangalore and Another, As regards the order passed in the cyclostyled form, the learned Government Pleader submitted that so long as the R.T.O. has applied his mind before fixing the period of suspension (120 days in this case), It cannot be said that the order passed Is arbitrary merely because the cyclostyled form has been used. It is possible, according to the learned Government Pleader, that entry of figure quantifying the period of suspension might have been made by a member of the staff of the R.T.O. on the instructions of the R.T.O. himself who has signed the order. He submitted that merely because the order is contained in a cyclostyled form it does not necessarily mean that there was no application of judicial mind by the R.T.O. It is also contended that the entire matter has received the scrutiny and review at the hands of the Appellate Authority which has looked Into ail the material relevant for the purpose before confirming the order of the R.T.O. and therefore, it would not be correct to say that the order passed by the R.T.O. is arbitrary and mechanical.

9. Lastly it was contended that as far as the period of suspension is concerned, there may be some force in the contention of the learned Counsel for the petitioner that due consideration may not have been bestowed.

10. I have examined the order passed under Annexure-B. It Is no doubt true that the entire order is in a cyclostyled form In Kannada leaving gap in certain places for purposes of making relevant entries before the order is signed by the R.T.O. I also noticed that all the particulars except the signature, have been filled up In the hand-writing, probably of an official of the Department other than the R.T.O., Shimoga. It is a well known principle of law that not only justice should be done but manifestly appear to have been done. There is scope for a feeling that the authority who is empowered to pass a considered order entailing civil consequences has not applied his mind. If an order is to be passed in a cyclostyled form, the officer not even caring to fill up the gaps by making relevant entries himself the feeling is to an extent justified. It is also possible to presume on the basis of the nature of the contents in the cyclostyled form that the R.T.O. may be proceeding with a closed mind while considering the case. In public adminstration, a statutory authority exercising quasi-judicial power should avoid any scope for reasonable apprehension that the person appearing before him in response to a show-cause notice is not receiving fair treatment. What applies to judicial authority in similar circumstances is equally applicable to a quasi-judicial authority. Therefore, I am inclined to believe that the order passed under Annexure-B in cyclostyled form seems to be an order passed mechanically and without application of judicial mind.

11. On the question whether after the Jurisdictional Magistrate has tried the case on the basis of the complaint received from the Inspector of Motor Vehicles and acquitted the driver of all the charges, after a lapse of about three months from the date of acquittal, whether it is open to the R.T.O. to take action u/s 33(1)(b) of the Act based on identical allegations is a matter which requires careful consideration. While the learned Government Pleader has placed reliance on the decision rendered in Chandrakanth Narayan Nayak's case, Sri A.S. Viswanath, learned Counsel for the petitioner, derived support from the ruling of this Court in P. CHENNAPPA v. MYS. REV. APPELLATE TRIBUNAL 1964(2) Mys.L.J. 277 which is a decision of a Division Bench of this Court. It is necessary to refer to the relevant portions of the decisions relied upon by both the learned Counsel.

12. In Chandrakanth Narayan Nayak's case, the learned Single Judge has held that the scope of the proceedings u/s 33 and Section 123 of the Motor Vehicles Act, 1939 is clearly distinguishable from the scope of the proceedings initiated u/s 33(1)(b) of the Act and therefore, the fact of conviction or acquittal u/s 123 of the Act for using the vehicle in violation of Sub-section (1) of Section 42 of the Act does not have any bearing on the proceeding u/s 33(1)(b) of the Act. It may also be mentioned that the facts of the case decided as aforesaid are not similar to the facts in the instant case. While reaching the said conclusion, the learned Judge relied upon a Full Bench decision of this Court in T.V. GOUDA v. STATE OF MYSORE ILR 1975 (Kar) 895. The Full Bench decision relates to the question whether an order of Criminal Court acquitting the accused (a Government servant) on the merits of a case would bar the disciplinary authority from holding him guilty and imposing punishment In disciplinary proceedings conducted under the Mysore (Karnataka) Civil Services (Classification, Control and Appeal) Rules on the basis of the same facts and accusations in respect of which he was tried and acquitted by the Criminal Court. On this question, the Full Bench of this Court took the view that an order of Criminal Court acquitting the accused on merits will not bar the disciplinary authority from holding him guilty and imposing punishment in disciplinary proceedings under the said Service Rules, on the basis of the same facts and accusations in respect of which he is tried and acquitted by the Criminal Court.

13. At the outset, it may be pointed out that this decision and the principle laid down may not be applicable to the facts of the present case inasmuch as what I am considering in the Instant case is not that of a departmental employee of the Government facing disciplinary proceedings after his acquittal by the Criminal Court, but a case wherein the driver of a private operator's vehicle has been acquitted of the charges levelled against him on merits u/s 112 of the Act and subsequently an order being passed by the R.T.O. suspending the Registration Certificate after Initiating proceedings u/s 33(1)(b) of the Act. It is a well settled principle that a decision will be a precedent only on the question determined. In my opinion, the ratio of the Full Bench decision is not attracted to the facts of the case.

14. Other two decisions of the Supreme Court on which the learned Single Judge relied are, S. Pratap Singh Vs. The State of Punjab, and S.A. Venkataraman Vs. The Union of India (UOI) and Another, They relate to the acquittal of a Government employee by a criminal Court and the decision was to the effect that such acquittal will not bar action by the Disciplinary Authority in a disciplinary proceeding initiated in accordance with the relevant Rules. Those decisions also, in my opinion, do not apply to the facts of this case.

15. Now I shall refer to the decision in P. Chennappa v. the Mysore Revenue Appellate Tribunal and ors.. I may also mention that this decision has not been referred to by the learned Single Judge while rendering the decision In Chandrakanth Narayan Nayak's case. In this case, the petitioner had asked for the quashing of the order passed by the R.T.O. Mandya suspending the stage carriage permit. It would be convenient and relevant to state the facts In brief: The allegation was that bus bearing No. MYU 3355 owned by the petitioner was found carrying on 30-3-1961 as many as 84 passengers though Its seating capacity was only 36. Thereafter the conductor of the bus was prosecuted in C.C. No. 2040/61 by the City Magistrate, Mysore. After trial, the accused was acquitted on the ground that charges were not proved and the prosecution case of alleged over-loading was rejected by the Court. The order of acquittal was passed on 11-7-1961. The R.T.A. Mandya proceeded under the provisions of Motor Vehicles Act against the petitioner in Subject Nb.27(d) dated 27-5-1961 on its file In respect of the alleged overloading and came to the conclusion that the allegation was true. Therefore the R.T.A. suspended the permit for a period of seven months. Aggrieved by the order the petitioner preferred an appeal before the State Transport Appellate Tribunal which confirmed the order of the R.T.A., but decided to reduce the suspension from seven months to four months. The second appeal preferred before the Mysore Revenue Appellate Tribunal was unsuccessful on the finding relating to over-loading but the period of suspension was further reduced to three months. Thereafter a Writ Petition came to be filed before this Court challenging the legality of the orders passed by the R.T.A., State Transport Appellate Tribunal and the Revenue Appellate Tribunal. The Division Bench held as follows:

"When a particular charge had been enquired into and found against by a competent Criminal Court, that charge cannot be again enquired into by Tribunals constituted under other enactments, so long as acquittal before the criminal Court is not on any technical ground but on merits."

The Division Bench relied upon the decision of the Madras High Court in Jerome D'Silva Vs. The Regional Transport Authority, South Kanara and Another, S.K. as well as the decision of this Court reported in 1961 Mys.L.J. 1066 Ekambaram v. General Manager, MGRTG

16. Not only on the basis of analogy of facts but also on the basis of the principle laid down In the said cases by the Division Bench of this Court, which seems to be applicable to the facts of the present case, I am of the opinion that the

impugned order of the R.T.O. Shimoga, is liable to be quashed.

17. It is no doubt true that in the decision rendered by the learned Single Judge In M.S. Hemashankar's case a principle has been laid down that the owner facing a proceeding u/s 33(1)(b) of the Act is not entitled either to an oral hearing or for the right to cross-examine any witness and only the material on which the charges are based must be made available to the owner along with the show-cause notice. That material is only to make an effective representation and no more. The check report contains the details of the check made by the Motor Vehicles Inspector, the time, the result of the check and the summary of events leading to the charge. Apart from these materials, the owner of the vehicle is not entitled to any other material for making an effective representation against the charge.

18. Principles of natural justice not only envisage the disclosure of imputations against a person who is likely to suffer punishment under the provisions of Section 33(1)(b) of the Act but also an opportunity to defend himself against such an allegation followed by a preliminary enquiry. It is not merely a question of choosing between the allegations on the one hand and the explanation on the other. Judicial determination should be based on consideration of preponderance of evidence and probabilities for arriving at the conclusion which is likely to visit the person with civil consequences. It seems to me that merely because the proceeding is intended to be summary in nature, sound legal principles should be discarded and decisions taken by a method which is approximate to arbitrariness without even a preliminary enquiry. I am afraid that in the absence of such an enquiry and in the absence of a hearing subsequent to the furnishing of explanation before a decision is taken by the authority, the quasi-judicial authority would be gambling with the rights of a person likely to be affected. The principle of "audi alteram partem" should be applicable when a person is likely to be affected materially by the action proposed to be taken by the statutory authority in the course of exercise of statutory power. Ultimately what is infringed is the right of the operator to operate the motor vehicle which he otherwise would have enjoyed in accordance with law and public interest.

19. By merely furnishing material on the basis of which the show-cause notice was issued, compliance with principles of Natural Justice cannot be presumed unless on receipt of the explanation from the petitioner, there is sufficient material apparent on the face of the order of the R.T.O. showing application of mind to the explanation offered by the petitioner in regard to the allegations made, and a considered order passed supported by reasons. There ought to be fulfilment on both the elementary principles of natural justice on the one hand and the dictates of rational adjudicative process on the other without which it cannot be said that justice has been done though it is true that Rules of natural justice supplement law and not supplant the law.

20. Administrative action is stated to be referable to broad area of Governmental activities in which the repositories of power may exercise every

class of statutory function of executive, quasi-legislative and quasi-judicial nature. The relevant function applicable to the facts of this case is quasi-judicial function. Though It is similar to a judicial function, yet, it may not possess all the attributes of a judicial function. Nevertheless, according to the weight of judicial opinion, administrative authorities must act bonafide though not judicially. A duty Is cast on the executive body or the authority to be faithful to the norms of judicial procedure in the performance of acts while exercising the administrative power.

21. The ratio of the decision rendered by the learned Judge in the case of Province of Bombay Vs. Kusaldas S. Advani and Others, is worth reproducing:

"A quasi judicial act requires that a decision is to be given not arbitrarily but according to the facts and circumstances of the case, as determined upon an enquiry held by the authority after giving an opportunity to the party to be affected, of being heard and whenever necessary, to produce necessary evidence in support of his contentions."

22. The said principles is squarely applicable to the facts of the instant case though in the exercise of administrative discretion a determination may be reached, In part at least, on the basis of considerations not entirely capable of proof or disproof.

For the reasons stated above, I pass the following-

ORDER

I allow this Writ Petition and quash the Impugned order of the R.T.O. Shimoga dated 19-4-1988 vide Annexure-B and impugned order of the Deputy Commissioner for Transport, Shimoga Division, Shimoga, dated 21-6-1988 vide Annexure-C.