

(2014) 12 KAR CK 0145

In the Karnataka High Court

Case No : Writ Petition Nos. 57887-58151/2014 (T-MVT)

K.T. Rajashekar

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 19-12-2014

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g)

Citation : (2015) 2 KarLJ 256

Hon'ble Judges : H.G. Ramesh, J

Bench : Single Bench

Advocate : Puttige R. Ramesh, Advocate for the Appellant; S.V. Girikumar, AGA, Advocate for the Respondent

Judgement

H.G. Ramesh, J.—The petitioner is before this Court seeking issue of a writ of mandamus directing the respondent not to effect seizure of the vehicles pertaining to the petitioner - SRS Travels except by following the procedure laid down by the Hon''ble Supreme Court in the case of the The Transport Commissioner, Andhra Pradesh, Hyderabad and Another Vs. S. Sardar ali, Bus Owner, Hyderabad and Others, and also following the decision in the case of Krishna Bus Service Pvt. Ltd. Vs. State of Haryana and Others, .

2. It appears alleging excess baggage/loading over the top of the luxury buses the respondent seized these vehicles and handed over them to the Joint Manager, KSRTC or BMTC. The apprehension of the petitioner is that though for violation of some rules the seizure has been made, the vehicles are not being taken proper care and are being handed over to the rival business persons i.e., the KSRTC or the BMTC, who are jealous of the private bus operators. This would cause substantial loss to the petitioner's buses as the structure of the Hi-tec buses being very delicate and modern, the damages caused would be detrimental to the interest of the petitioner and thus according to the petitioner, for violation of any rules as laid down in Karnataka Motor Vehicle Taxation Act, 1957, if the vehicles are seized on inspection and taken into custody, there

should be proper measures adopted to maintain the vehicles in a good condition and proper manner and released in favour of the petitioner, as the vehicles are operated for the purpose of tourism or else it would create loss to the petitioner's business and also the petitioner will have to spend lot of amount towards maintenance to bring it to the normal condition.

3. In the instant case, it appears the respondent has already released the vehicles which were in their custody in favour of the petitioner. Even then the petitioner is before this Court seeking for issuance of writ of mandamus.

4. Heard the learned counsel for both the parties.

5. In the decision of the Apex Court in the case of Krishna Bus Service Pvt. Ltd. Vs. State of Haryana and Others, referring to the power of seizure and inspection and also the consequential aspect of preserving the vehicles in good condition is concerned, it is held as follows:--

"10. The powers of stopping the motor vehicles and the powers of inspection, search, seizure and detention exercised under the Act are serious restrictions on the fundamental right of the operators of motor vehicles guaranteed under Article 19(1)(g) of the Constitution. These powers can be considered as reasonable restrictions only when they are exercised properly in the interests of the general public. They should be reasonable both from the substantive as well as the procedural standpoint. Such powers should, therefore, be entrusted to a person who is expected to exercise them fairly and without bias. The General Manager of Haryana Roadways who is a rival in business to the private operators of motor vehicles in the State and is intimately connected with the running of motor vehicles cannot be expected to discharge his duties in a fair and reasonable manner. An unobstructed operation of the motor vehicles by private owners operating along the same route or routes would naturally affect the earnings of the Haryana Roadways. There is, therefore, every likelihood of his being over-zealous in discharging his duties of stopping a vehicle and in searching, seizing and detaining motor vehicles belonging to others and at the same time excessively lenient in the case of vehicles belonging to his own department. If in discharging his duties in the case of vehicles belonging to others he fails to give due regard to the interests of the owners thereof he would be violating their fundamental right to carry on business in a reasonable way. If he is too lenient in inspecting the vehicles belonging to his own department, the interests of the travelling public at large would be in peril. In both the cases there is a conflict between his duty on the one hand and his interest on the other. Moreover administration must be rooted in confidence and that confidence is destroyed when people begin to think that the officer concerned is biased. This is not a case which is governed by the rule of necessity. As it is, there are many other officers who are entrusted within the powers of the police officers under the Act. There was, therefore, no necessity to appoint the General Manager of Haryana Roadways also to exercise the said powers. We are, therefore, of the opinion that the appointment of the General Manager, Haryana Roadways who is

directly responsible for running its motor vehicles as one of the officers who can exercise the powers of a Deputy Superintendent of Police under the Act imposes an unreasonable restriction on the fundamental right of the private motor vehicles operators and is therefore violative of Article 19(1)(g) of the Constitution. We however make it clear that the appointment of other officers of the State Government is not bad even though the Government is the owner of the vehicles as their connection with the running of the vehicles is too remote. The appointment of the General Manager as an officer who can exercise the powers of the Deputy Superintendent of Police under the Act is also not in the interests of the general public since the large number of motor vehicles owned by the Haryana Roadways would not be subject to inspection and checking by an independent agency. Can we expect a fair investigation by a police officer into a criminal case in which his own kith and kin are involved as the accused? The position is not different in this case. The Legislature could not have intended while enacting section 133-A of the Act that a person who was himself directly responsible for the proper running of the motor vehicles according to law could be appointed as the inspecting and investigating officer by the State Government for the purpose of enforcing the Act.

11. Our view receives support from a decision of the High Court of Allahabad in *Junta Motor Transport and Another v. State of Uttar Pradesh* [1970] Allahabad Law Journal, Page 810, by which the appointment of Gazetted Officers, Station Superintendents, Traffic Superintendents and Assistant Traffic Inspectors of Uttar Pradesh Roadways as the prescribed authorities to enforce the Uttar Pradesh Motor Gadi (Yatrakar) Adhiniyam, 1962 and the rules made thereunder was held to be void.

12. The appeal and the writ petitions are accordingly allowed. The impugned Notification dated March 16, 1973 called the Punjab Motor Vehicles (Haryana First Amendment) Rules, 1973 by which the General Manager, Haryana Roadways was conferred the powers exercisable by a Deputy Superintendent of Police under the Act is held to be invalid and is, therefore, quashed. There will, however, be no order as to costs."

6. In a similar case, the Apex Court referring to the handing over of the buses to the General Manager is concerned it is held that Harayana Road Transport is the authority, exercise the powers of the Deputy Superintendent of Police under the Act is violative of Article 19(1)(g) of the constitution. To make it clear, for handing over the custody of a vehicle seized to the parallel operator although Corporation belongs to State Government, it being roadways, but it would not be properly taking care of the vehicles which are seized belong to the private operator and it would be detrimental to the interest of the private operator. In that fact, situation it could be handed over to some other Officer of the Government itself, so that another Government Officer would not be very much interested to act detrimental to the interest of the petitioner/private operator. In the case on hand, for future guidance, it is hereby directed that the respondent

in the event of seizure of the vehicles for any violation of the terms and conditions of the Motor Vehicles Act and the Rules, such vehicles seized shall be kept in the safe custody of the Government or release the vehicle on getting the indemnity bound with surety and with same conditions pending disposal of the case registered against the owners and also indicating the violations made therein by the operator and which proceedings would be before the quasi judicial authority or before the Court of law. The vehicles seized by the police and kept in the custody of the transport department without taking care of them and keeping in safe custody would also be detrimental to the operators or the owners. While exercising power/discretion, it is also to be noted that for violation of any terms and conditions of the Motor Vehicle Rules, the vehicles which are seized if kept in the custody of the parallel operator, would affect the economy of the operator of the vehicle, till decision is taken by the authority in the Court proceedings, however, indicating the manner of violation by the operator or agent of the operators, charge sheeting for such violation and directing the operator to make good or to overcome any such mistake which would crept in. However, it is for authority concerned or the police to take legal course of action in accordance with law. Keeping the vehicle idle would cause substantial damage. For any gross violation of the rules if once the vehicle is seized such vehicle should be kept in safe custody either till the disposal of the matter or interim order is obtained through the Courts concerned/authorities-quasi judicial authority/tribunal. For the purpose of taking custody of the vehicle by the officer or by some other officer there shall be a compulsory inventory made and the vehicle be released, so that there shall be no monetary loss to the operator because of the improper maintenance or negligence on the part of the seizing authority.

7. An inventory should be prepared apart from filing charge sheet for any violation. Thereafter the vehicle would be preserved in a proper condition and at the time of the delivery/returning the vehicle, the operator shall undertake to produce the vehicle as and when necessary and also execute a bond with surety. At the discretion of the authority if minor offences are committed vehicle would be released on spot, instead of keeping the vehicles at the risk of the Government to avoid inconvenience to the operator or the owner of the vehicle.

8. With the above observations, writ petitions are disposed of.

9. Learned AGA is permitted to file memo of appearance within four weeks.