
(1988) 08 KAR CK 0061
In the Karnataka High Court
Case No : Writ Petition No. 10452 of 1988

M. Abdul Zaheer

APPELLANT

Vs

The Assistant Regional Transport Officer, Bangalore

RESPONDENT

Date of Decision : 17-08-1988

Acts Referred:

Motor Vehicles Act, 1939 — Section 32

Citation : AIR 1989 Kar 171 : (1989) ILR (Kar) 1316

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

Bench : Single Bench

Advocate : P.R. Srirangaiah, for the Appellant; P.R. Ramesh, Govt. Pleader, for the Respondent

Judgement

1. In this petition, the petitioner has questioned the order passed by the respondent in classifying the vehicle bearing Registration No. TNR 3539 as Omni Bus without any application from the petitioner.
2. The short point for consideration is, whether under the provisions of the Motor Vehicles Act, it is permissible for the respondent to reclassify the vehicle of the petitioner as an Omni Bus on his own volition.
3. The petitioner purchased the vehicle bearing Registration Number TNR. 3539 which was registered with the Registering Authority, Madurai as a Stage Carriage Vehicle. Later on the vehicle was brought within the jurisdiction of the respondent into the State of Karnataka. At the time of crediting the tax in respect of the said vehicle, the respondent suo motu (without application from the petitioner) proceeded to re-classify the vehicle as Omni Bus with effect from 136-1988 on the ground that the vehicle is not covered by any permit and assessed tax on that basis.
4. Being aggrieved by the reclassification, the petitioner filed an application for rectification of the mistake so as to enable him to retain the vehicle as stage carriage and not as Omni Bus. The respondent issued an endorsement dt.

12-7-1988 in response to the application, directing the petitioner to comply with the requirements of the provisions of S. 32 of the Motor Vehicles Act, 1939 ("the Act" for short) for the purpose of classifying the vehicle as Stage Carriage vide Annexure-A. The petitioner is aggrieved by the said order.

5. It is necessary to make a reference to S. 32 of the Act.

"32(I) No owner of a motor vehicle shall so alter the vehicle that the particulars contained in the certificate of registration are no longer accurate, unless --

(a) he has given notice to the registering authority within whose jurisdiction he resides of the alteration he proposes to make; and

(b) he has obtained the approval of the registering authority to make such alteration :

Provided that it shall not be necessary to obtain such approval for making any change in the unladen weight of the motor vehicle consequent on the addition or removal of fittings or accessories, if such change does not exceed two per cent of the weight entered in the certificate of registration.

(2) Where a registering authority has received notice under sub-section (1), it shall, within seven days of the receipt thereof, communicate, by post, to the owner of the vehicle its approval to the proposed alteration or otherwise :

Provided that where the owner of the motor vehicle has not received any such communication within the said period of seven days, the approval of such authority to the proposed alteration shall be deemed to have been given.

(3) Notwithstanding anything contained in sub-section (1), a State Government may, by notification in the Official Gazette, authorise, subject to such conditions as may be specified in the notification, the owners of not less than ten transport vehicles to alter any vehicle owned by them so as to change its engine number by replacing the engine There of without the approval of the registering authority.

(4) Where any alteration has been made in a motor vehicle either with the approval of the registering authority given or deemed to have been given under sub-section (2) or by reason of any change in its engine number without such approval under sub-section (3), the owner of the vehicle shall, within fourteen days of the making of the alteration, report the alteration to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration to that authority together with the prescribed fee in order that particulars of the alteration may be entered therein.

(5) A registering authority other than the, original registering authority making any entry shall communicate the details of the entry to the original registering authority."

6. From an examination of the provisions of S. 32 of the Act, it is abundantly clear that statutorily the condition precedent for reclassification of a vehicle is an

application by the petitioner desiring, by giving notice to the Registering authority which is vested with the jurisdiction, seeking the alteration and then obtain the approval of the Registering authority before alteration of the vehicle. After the receipt of the application, the Registering authority shall within seven days from the date of receipt thereof, communicate its approval to the proposed alteration. If the owner of the vehicle has not received any communication within the stipulated period of seven days, approval is deemed to have been granted. From a plain reading of this provision, what can be gathered is that unless there is a notice or communication from the desiring applicant for reclassification of the vehicle, no statutory power is reserved for the authority to order reclassification of the vehicle on its own volition.

7. What is apparent from the order made by the respondent is, in the first place, reclassification of the vehicle of the petitioner into an Omni Bus was on the volition of the respondent, and not at the instance of the petitioner. Secondly, it is evident from the order that the respondent has directed the petitioner to comply with the requirements of the provisions of S. 32 of the Act for conversion of the vehicle as a Stage Carriage from Omni Bus. In other words, the respondent directed the petitioner to get the vehicle converted from Omni Bus into a Stage Carriage by making application under S. 32 of the Act.

8. The learned Government Pleader sought to justify the impugned order on the basis of certain precedents mentioned in his statement of objections. The decisions cited at the bar by the learned Government Pleader, are not applicable to the facts of the present case.

9. Construing the provisions of S. 32 of the Act, I am of the opinion that the respondent has clearly exceeded the jurisdiction and has exercised power which is not vested in him to suo motu reclassification the vehicle of the petitioner as an Omni Bus. The respondent has also exceeded his jurisdiction in directing the petitioner to make an application under S. 32 of the Act in order to undo the mistake which the respondent himself has committed.

10. This is a classic instance of a public authority committing one mistake to cover up another mistake. It is expected that a public authority while exercising its power under a Statute should make sure whether the power intended to be exercised is available or not. It may be said that discretion to be exercised by such an authority should not be arbitrary, but must be limited by reason of law. Perverse exercise of power prevaricates. He who decides must hear before passing an order. The authority must stay within the limits of fair exercise of power for, it does not possess unfettered discretion. Any statutory power conferred for promoting public interest in the ultimate, is conferred "upon trust, not absolutely that is to mean, it can validly be used only in the right and proper way which the Parliament When conferring it is presumed to have intended.

11. For the reasons stated above, I allow this writ petition and quash the order passed by the respondent in classifying the vehicle bearing Registration No.

TNR/3539 as, an Omni Bus and also quash the order directing the petitioner to make an application under. S. 32 of the Act for converting the Omni Bus into a Stage Carriage.

12. Petition allowed.