

(1984) 06 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition No. 1162 of 1984

Makthum Hussain Akebar Saheb Mulla

APPELLANT

Vs

Deputy Commissioner for Transport, Belgaum Division,
Belgaum and Another

RESPONDENT

Date of Decision : 07-06-1984

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1939 — Section 33 (1) (b)

Citation : AIR 1985 Kar 162

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : S. Viswanath, for the Appellant; S. Udayashankar, Govt. Pleader, for the Respondent

Judgement

1. In this writ petition, under Articles 226 and 227 of the Constitution, the petitioner has sought for quashing the orders dated 27-10-1983 and 12-12-1983 passed by respondents 2 and 1 respectively.

2. The 2nd respondent by the aforesaid impugned order has suspended the R. C. of the Vehicle in question bearing Registration No. MEZ. 5274 under S. 33(I)(b) of the Motor Vehicles Act, 1939, hereinafter referred to as the "Act", for a period of one month. The Appellate Authority has affirmed the said order.

3. Sri A. S. Viswanath, learned counsel appearing for the petitioner has advanced one and the only contention :

That carrying of human passengers on hire in a public carrier amounts to contravening the conditions of the public carrier permit, therefore the case falls under S. 60 of the Act and not u/s 33(I)(b) of the Act, hence, respondent-2 has had no jurisdiction to suspend the R. C. In support of this contention learned counsel, has placed reliance on a decision of this Court in S.R. Rangaiah Vs. Senior Regional Transport Officer, The learned counsel has also tried to

distinguish another decision of this Court rendered in W. P. No. 27513/81. The facts of the present case are: the vehicle in question was checked by the I.M.V. P.S.I., Spl. Police Squad, K.S.R.T.C., Bangalore, on 1-12-1981 and it was found that the Driver was carrying 6 passengers from Hubli to Sattur by collecting Rs. 3/- from each of the passengers. The Driver also failed to produce the Driving Licence. The Vehicle in question is a Public carrier and not a Stage Carriage vehicle. In W. P. No. 27513/81 also the vehicle involved was a public carrier vehicle, wherein the passengers were entertained on payment for conveyance. It was held that since the vehicle was a goods vehicle, it had the permit only as public carrier and that it did not have the stage carriage permit, therefore, there was no permit for carrying the passenger on hire, hence the case fell under S. 33(l)(b) of the Act. Thus, the decision in W. P. No. 27513/81 answers and negatives the contention raised in the petition. The decision in Rangaiah's case cannot be held to support the contention raised by the petitioner.

It is specifically stated in the aforesaid decision in Rangaiah's case that in the case falling under S. 33(l)(b) of the Act, the vehicle must have been used for hire or reward without a valid permit and in the case falling under S. 60 the vehicle must have been used with a valid permit, but, in the manner not authorised by the permit. In the instant case, the contention is that there is a permit to the vehicle and it cannot be said that the vehicle did not have a permit. Hence, it is contended that the act of carrying the passengers on hire amounted to only contravening the conditions of the permit. It is very pertinent to notice that S. 33(l)(b) specifically provides that "if any registering authority or other prescribed authority has reason to believe that any motor vehicle within its jurisdiction -

a) xx xx xx xx xx xx xx xx xx b) has been, or is being, used for hire or reward without a valid permit for being used as such."

The words "as such" are very material. These words refer to the permit which is in conformity with the use to which the vehicle is put. Here, in the case, the permit enjoyed by the vehicle was that of a public carrier permit and not that of a stage carriage permit; whereas the vehicle was used as a stage carriage for carrying human passengers on hire for which there was no permit as such. Hence that act amounted to using the vehicle without a permit. Therefore, the contention cannot be accepted. For the reasons stated above, this writ petition fails and the same is dismissed.

Sri. S. Udayashankar, learned High Court Government Pleader, is permitted to file his memo of appearance on behalf of respondents in six weeks.

4. Petition dismissed.