

(2000) 08 KAR CK 0039
In the Karnataka High Court
Case No : Writ Petition No. 12756 of 1998

Medical Superintendent School of Nursing, Bangalore	APPELLANT
Vs	
Assistant Labour Commissioner	RESPONDENT

Date of Decision : 04-08-2000

Acts Referred:

Karnataka Transport Workers Rules, 1964 — Rule 4
Motor Transport Workers Act, 1961 — Section 2 (g), 3
Motor Vehicles Act, 1939 — Section 42 (2)

Citation : (2001) 1 ACC 322 : (2000) 87 FLR 410 : (2000) ILR (Kar) 3331 :
(2000) 1 KarLJ 413

Hon'ble Judges : Kumar Rajaratnam, J

Bench : Single Bench

Advocate : Sri Ganapathi Hegde, for the Appellant; Sri M.N. Ramanjaneya Gowda, Additional Government Advocate, for the Respondent

Judgement

Kumar Rajaratnam, J.—The petitioner is the Medical Superintendent of the School of Nursing managed by the Bangalore Baptist Hospital, Hebbal, which is a society registered under the Societies Registration Act.

2. The parent organisation, namely M/s. Bangalore Baptist Hospital Society is a minority charitable institution, established with an object to cater to the needs of the general public in and around the city of Bangalore in the matter of health care. The petitioner is the administrative head of both the institutions.

3. It is submitted that as a part of its objective M/s. Bangalore Baptist Hospital Society has established the School of Nursing in or about 1996. In the School of Nursing students are trained to take up the avocation of nursing. The parent organisation which is running the hospital functions as a catalyst in that it gives practical training to the students being a teaching hospital. The School of Nursing is not a separate establishment or entity and is an integral part of the Bangalore Baptist Hospital.

4. It is further submitted that there are about 39 students in the school. As a

part of their study, students of the school are required to participate in community health postings in rural areas, psychiatry postings in hospitals other than the parent hospital, field trips and other special programmes. For the transportation of the students to take part in the aforesaid activities, the school bus is exclusively used. The bus accommodates 22 persons plus driver. The bus carries 20 students plus two faculty members and the driver. The bus owned by the school is exclusively used for the transportation of the students of the school.

5. While the matter stood thus, the respondent hereinabove issued a notice dated 5-12-1997 u/s 3 of the Motor Transport Workers Act, 1961 and Rule 4 of the Karnataka Motor Transport Workers Rules, 1964 by which notice the respondent directed the petitioner to get registered being the owner of vehicle being a Swaraj Mazda van bearing registration No. KA 04 8247 under Rule 4 of Karnataka Motor Transport Workers Rules, 1964. A copy of the notice dated 5-12-1997 bearing No. SKA-1:MTA: CR-662 of 1997 issued by the respondent is produced at Annexure-A and the same was received by the petitioner on 24-12-1997.

6. The petitioner after receipt of the said notice vide Annexure-A placed the same in the hands of their Advocate with a request to send an appropriate reply. The petitioner replied inter alia, contending that the notice was without jurisdiction. It was further contended that Section 3 of the Motor Transport Workers Act, 1961 and Rule 4 of the Karnataka Motor Transport Workers Rules, 1964 have no application insofar as the petitioner was concerned. It was pointed out to the respondent that u/s 3 of the said Act only an employer of a "Motor Transport Undertaking" is required to obtain registration of the undertaking. It is relevant to extract Section 3 of the said Act which reads as under:

"Registration of motor transport undertaking.--(1) Every employer of a motor transport undertaking to which the Act applies shall have the undertaking registered under this Act.

(2) An application for the registration of a motor transport undertaking shall be made by the employer to the prescribed authority in such form and within such time as may be prescribed.

(3) Where a motor transport undertaking is registered under this Act, there shall be issued to the employer a certificate of registration containing such particulars as may be prescribed".

A reading of the provision makes it clear that only an employer of a motor transport undertaking is required to apply for registration under the Act for registration of the undertaking and on such application being made in the prescribed form, a certificate of registration shall be issued to the employer. The Act also defines the term "Motor Transport Undertaking" u/s 2(g) of the Act as follows:--

" "a motor transport undertaking" means a motor transport undertaking engaged

in carrying passengers or goods or both by road for hire or reward and includes a private carrier".

When the definition is closely examined, an employer of a motor transport undertaking who is engaged in carrying passengers or goods or both by road for hire or reward is required to obtain registration. The definition also includes a "Private Carrier" which term is not defined under the Act separately but by virtue of Section 2(n) of the Act, the definition contained in the Motor Vehicles Act is adopted. The term "Private Carrier" is defined under the Motor Vehicles Act, 1939 as hereunder:--

" "Private Carrier" means an owner of a transport vehicle other than a public carrier who uses that vehicle solely for the carriage of goods which are his property or the carriage of which is necessary for the purpose of the business of providing transport, or who uses the vehicle for any of the purposes specified in sub-section (2) of Section 42".

Under this definition of private carrier, those persons who use their vehicle for carrying goods alone are required to obtain registration.

7. In the light of definitions of "Motor Transport Undertaking" and "Private Carrier" as noticed above, it is submitted that the provisions of the said Act are clearly not applicable to petitioner. It is not out of place to reiterate that the petitioner uses their vehicle for the purpose of transporting their students. Neither the vehicle is used as a passenger carrier for hire or reward nor as a goods carrier as defined under the definition of "Private Carrier". Under these circumstances, the petitioner urged the respondent to withdraw the notice vide Annexure-A in his reply dated 23-1-1998, a copy of which is produced at Annexure-B.

8. It is submitted that Rule 4 of the Karnataka Motor Transport Workers Rules, 1964 provides for making an application for registration by an employer of a motor transport undertaking. Rule 4 contemplates that every application should be in Form I. Undoubtedly Rule 4 and Form I of the Karnataka Motor Transport Workers Rules, 1964 can apply only to a "Motor Transport Undertaking" as per Section 3. Therefore, it is submitted that every vehicle owner irrespective of the nature of use of the vehicle is not required to get registration under the Act. Only those transport owners specified in the Act and rules made thereunder are required to obtain registration.

9. It is submitted that the scheme of the Act and the rules made thereunder is to regulate the service conditions of the workmen working in a Motor Transport Undertaking. It is aimed to prevent the exploitation of a motor transport worker by his employer. The scheme of the Act is not intended to bring the private vehicle owners excepting the private carrier of goods within the four corners of the Act. Therefore, it was urged before the respondent to withdraw the notice.

10. The learned Counsel for the petitioner, Mr. Ganapathi Hegde, relied on a

Division Bench judgment of Madhya Pradesh High Court in the case of Madhya Pradesh Electricity Board, Jabalpur Vs. The State of Madhya Pradesh and Others, . The Court in that judgment took the view that registration was not necessary under the provisions of Motor Transport Workers" Act, 1961, on the ground that the cars and jeeps were not used for hire or reward. The Division Bench also took the view that the workers are not subject to the provisions of the said Act. The judgment of the Supreme Court in the case of Cemindia Co. Ltd. Vs. Bachubhai N. Raval, , was also relied upon by the learned Counsel. The Supreme Court, at paragraphs 6 and 7, held as follows:

"Where an establishment is engaged exclusively in carrying on a particular type of business by setting up any place of work with a view to carrying on the work of repairs etc., to the tools, equipment, vehicles etc., used in its business or to carry on any other activity which is essential for its business effectively and which is not use to carry on the work for the benefit of any third party but utilised exclusively for the business of the establishment, such establishment does not cease to carry on exclusively the business in which it is engaged. It cannot also be said that the establishment has commenced to carry on another industry by the setting up of such a place of work. In order to discharge effectively its functions as engineers and engineering contractors engaged in building and construction industry, an establishment has to maintain a workshop or workshops where the work of smithy, welding, cutting, carpentry etc., are carried on. In the instant case the work carried on at the appellant-company"s workshop at Bombay was the work of maintaining and repairing of the equipment belonging to the appellant only. The appellant was earning any income or profit by carrying on the work of any other establishment at the said workshop. It is wrong to treat the workshop in question as a separate unit of the business of the appellant forming a separate establishment for purposes of determining whether the Act is applicable to the appellant or not. All the business operations carried on by the appellant in their totality should be taken into consideration in order to ascertain whether the appellant was engaged exclusively in building and construction industry or not. Such a workshop in which works connected with the business of building and construction industry of the owner were being carried on cannot be construed as a separate establishment for purposes of the Act".

11. In this case, the registration of vehicle is required, if the vehicle is a "motor transport undertaking" as defined u/s 2(g) of the Motor Transport Workers Act, 1961.

12. In the facts of this case admittedly, the vehicle that was sought to be registered under the Act was not a vehicle that was used for hire or reward.

13. In these circumstances, relying on the Division Bench judgment of Madhya Pradesh High Court, the impugned notice at Annexure-A and C so liable to set aside and is accordingly set aside.

14. Writ petition is disposed of accordingly.