(1987) 12 KAR CK 0012

In the Karnataka High Court

Case No : W.P. No. 17194/1987

Mohammed Zaheer APPELLANT

Vs

R.T.O., Bangalore RESPONDENT

Date of Decision : 10-12-1987

Acts Referred:
Motor Vehicles Act, 1939 — Section 63(6)

Citation : (1988) 1 KarLJ 55

Hon'ble Judges : B. Murlidher Rao, J

Judgement

Murlidher Rao, J.-Petitioner, a registered owner of vehicle KRZ 2199 has filed this petition challenging the order of respondent declining to grant special permit, on the ground that he has not paid the tax arrears to the tune of Rs. 86,270/- in respect of vehicle No. ATT 62. The contention is that tax liability, in respect of one vehicle, cannot be made a ground to refuse the grant of special permit for plying another vehicle.

The debate firstly necessitates to find out the nature of tax liability and secondly whether the authorities have acted arbitrarily in refusing to grant the permit, so as to warrant interference, under Articles 226 and 227 of the Constitution of India.

The special permits are issued under sub-section (6) of Section 63, in relation to a public service vehicle for carrying a passenger or passengers for hire or reward and for the use of the vehicle without stopping to pick up or set down along the line of route passengers. It is a discretionary order which can be interfered with only if it is arbitrary, capricious or mala fide. The Motor Vehicles Act does not mention the circumstances under which this permit should be granted or the grounds on which it can be refused.

Rule 127 prescribes the procedure for the grant of special permit. It requires the authority to examine the application and satisfy itself that particulars required in Form 53 are furnished. Form 53 while providing columns for mentioning the details of the applicant, it also provides details of the vehicle, places of visitings and purpose and the enclosures to be enclosed namely, the treasury challan and column pertaining to payment of prescribed fee. Neither the Act nor the rules stipulate the grounds on which the special permit can be refused.

Under the Motor Vehicles Taxation Act, 1957, the tax liability is on the registered owner or person having possession or control of the vehicle and if the tax remains unpaid, it is liable to be recovered as arrears of land revenue. Therefore the registered owner or a person who is in possession of the vehicle is personally liable to pay the tax even if the vehicle is transferred from the registered owner. Further, if the value of the vehicle fall short of the tax due, the registered owner or person in possession has to make good the balance.

That the liability is such is clear from sub section (2) of Section 9 of the Motor Vehicles Taxation Act, 1957, which reads thus:

"(2) Nothing contained in this section shall be deemed to affect the liability of the person, who has transferred the ownership or has ceased to be in possession or control of the vehicle, to pay the said tax".

Therefore it cannot be disputed that a person who has not paid the tax owes the amount, so determined, to the State. Unlike several other enactments, there is no disqualification attached to the person treating him as a defaulter in payment of tax.

Having answered the first question, the question to be decided is whether this tax liability disqualifies the applicant from claiming special permit from the authorities under the Act Secondly, whether the authorities can decline to issue permit on this ground and can it be termed as arbitrary exercise of power.

The authorities have relied upon a judgment of this Court in Canara Public Conveyance v. R.T.A., South Kanara (AIR 1971 Mysore 356). In the said judgment, the Court observed thus:

"...........The special permits granted under sub-section (6) of section 63 are for such short periods or for a single journey that the cancellation of the permits is neither possible in ordinary circumstances, nor is of such a nature as to be effective deterrent against the operator. Hence, the provision of subsequent disqualification or disentitlement from taking out similar permits may be regarded as a reasonable way of controlling operations and obviating breaches of conditions of the permits. It also has sufficient statutory background because we have provisions like sections 15 and 21-G providing for disqualification for a specified period in the case of driving licences and permits........"

The disqualification of non-payment of tax though not enjoined in the statutory provisions is clearly of a temporary nature which gets extinguished if the tax is paid. In granting the permit or licence, one has to bear in mind the following observations of the Supreme Court in Ramana Dayaram Shetty v. The International Airport Authority of India and others (A.I.R. 1979 S.C. 1628):

"It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down".

In State of Orissa v. Harinarayan, (AIR 1972 S.C. 1816), it was observed thus:

"....The Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State........."

If the above observations are borne in mind and the non-payment of tax due from the person who applies for the special permit is made a ground to grant the special permit, it cannot be said that the ground so stated is either arbitrary or irrelevant. It must be made clear that if special permit is granted, notwithstanding that the person has not paid the tax arrears, it becomes debatable whether this Court can in exercise of its writ jurisdiction interfere with such a grant because that is not provided as a disqualification for granting special permit. But if the grant of special permit is refused, the ground of refusal in the circumstances, cannot be treated as arbitrary, discriminatory or irrelevant.

Mr. S.V. Krishnaswamy, however relied upon a decision of this Court in Vagesh P. v. The R.T.O., & Taxation Authority, Chitradurga & others (1978(1) Kar.L.J. 198). The petitioner therein sought for replacement of the vehicle covered by stage carriage permit by operating a new vehicle and it was stated by the authority that he could not be permitted unless the payment of arrears of tax demanded in respect of the earlier vehicle. In that case, the order of demand for the tax years had been set aside and the matter was remitted to the Taxation Officer for fresh consideration; in other words, the tax liability had remained unascertained. In the instant case, it is not the case of the petitioner that the amount mentioned as tax arrears is not ascertained nor has he raised any dispute regarding its correctness.

Therefore, on facts, it appears to me that the ratio of the said decision has no application to the facts of this case.

Reliance was also placed on an unreported decision of this Court in B.A. Nazeer Ahmed Khan v. The R.T.O. & others (W.P. 2224/1986 disposed of on 20-6-1986). In the said case, vehicle bearing No. CAA 3969 was seized on the ground that there is an arrears of tax in respect of vehicle bearing No. MYD 5577. The petitioner contended that he had paid the entire tax in respect of the vehicle that had been seized. It was noticed that the demand made from the petitioner was towards the tax due from his father. The parties were Muslims. The concept of joint family ownership is absent. In these circumstances the Court held that the vehicle of the son was not liable for seizure for non-payment of tax in respect of another vehicle belonging to the father.

There is nothing in this judgment to come to the conclusion that tax arrears which are not paid cannot be made a ground for refusing special permit. The third decision on which the advocate placed reliance was in M/s. Pondy Roadways v. The R.T.O., Bangalore and anr. (W.P. No. 2600/1987, disposed of on 25-2-1987). In that case, the petitioner''s vehicle bearing No. PYT 500 was seized for the recovery of tax alleged to be due in respect of another motor vehicle bearing registration No. PYR 3400. Placing reliance on the judgment in W.P. 2224/ 1986 (supra), the Court directed the release of the vehicle.

In none of these cases, the Court was required to examine the question whether the undisputed tax liability can be made a ground for refusing the grant of special permit.

That the person in such circumstances is a defaulter cannot be disputed; that he owes huge amount to the State also cannot be disputed. It appears to me that to grant a permit or a licence to a person who in the eye of law is a defaulter and owes a debt to the State, would be opposed to public policy and therefore if this is made as a ground to refuse the grant of special permit, it cannot be termed as arbitrary, discriminatory or irrelevant. In these circumstances, there is no justifiable ground to interfere.

For the aforesaid reasons, this petition fails and it is accordingly dismissed. No costs.

