
(2003) 01 KL CK 0011
In the High Court Of Kerala
Case No : O.P. No. 21976 of 2002

M.S. Ajith Kumar and Others

APPELLANT

Vs

D.G.P. and Others

RESPONDENT

Date of Decision : 20-01-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 207, 3, 39, 4, 66

Citation : (2003) 1 KLJ 479

Hon'ble Judges : R. Rajendra Babu, J

Bench : Single Bench

Advocate : M.K. Chandra Mohandas and Saju J. Vallyara, for the Appellant; D.P. Renu, for the Respondent

Judgement

R. Rajendra Babu

1. Sri. M.S. Ajithkumar and Sri. S. Ramdas who were conducting travel agencies and contract carriage services, filed this Original petition for declaring that the respondent police officials have no power or authority to detain and seize tourist vehicles belonging to the petitioners and other operators for the alleged violation of the offences under Chapter XIII of the Motor Vehicles Act (for short to be referred as the Act hereinafter) and in the guise of inspection and on trivial offences and also for directing respondents 1 to 3 to consider and pass orders and to dispose of Exts. P12 and P13 representations made by the petitioner. The allegations in the petition briefly as follows: Petitioners were conducting travel agencies and also conducting contract carriage services. Their business include arranging tours and contract carriage operation for which they have obtained the required licence. They used to issue tickets for conveying passengers for travel in such vehicles by appointing agents. They were operating the vehicles and transporting passengers strictly in accordance with the provisions of the Act and the Rules. The grievance of the petitioners was that the respondents, the police officials were unnecessarily conducting checking of the buses and were imposing fine and penalty inspite of the vehicles in question were satisfying all the

requirements of law and that the vehicles were unnecessarily detained and passengers were compelled to get down from the bus and stand for many hours under the guise of checking and for trivial offences/violations. Further, the drivers were compelled to compound the offences on trivial matters alleged against them and the vehicles were being detained and seized causing much hardships to the passengers as well as to operators.

2. Heard the learned counsel for the petitioners and the learned Government Pleader.

3. Petitioners were contract carriage operators as well as agents arranging tours. They were issuing ticket to passengers who were travelling to distinct places like Chennai, Bangalore, Hyderabad, etc. The grievance of the petitioners was that the respondents were causing much inconvenience to the passengers and also to the operators by detaining the vehicles for a long time and seizing the vehicles for trivial matters and the passengers were compelled to get down from the bus and stranded indefinitely on the street. It was further submitted that even though this court had directed on several occasions not to cause inconvenience to the passengers travelling long distance for trivial matters, the police officials are still adopting the same course and harassing the passengers and operators, and hence the petitioners were compelled to file this Original Petition for appropriate direction. The learned Government Pleader submitted that appropriate direction had been issued to the police officials not to cause any inconvenience to the passengers while checking the vehicles and vehicles need be seized only on very exceptional circumstances under Sec. 207 of the act.

4. Section 207 of the Act envisages the seizure of the vehicles for the violation of certain provisions of the Act.

Section 207 reads:

1(1) Any police officer or other person authorised in this behalf by the State Government may, if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of section 3 or section 4 or section 39 or without the permit required by sub-section (1) of section 66 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle, in the prescribed manner and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle:

Provided that where any such officer or person has reason to believe that a motor vehicle has been or is being used in contravention of section 3 or section 4 or without the permit required by sub-section(1) of section 66 he may, instead of seizing the vehicle, seize the certificate of registration of the vehicle and shall issue an acknowledgment in respect thereof.

Section 207 authorise the police officials or other persons authorised in this

behalf by the State Government to seize the vehicle for violation of Sec. 3 or Sec. 4 or Sec. 39 or sub-section(1) of Sec. 66 of the Act. Sec.3 deals with the driving of a vehicle by a driver having no valid licence. Sec. 4 deals with the driving of a vehicle by a person below the age of 18. Sec. 39 deals with the operation of vehicle in a public place without valid registration of the vehicle.

Sec. 66 dealing with the necessity of permits envisages the grant of permits for operation of vehicles on certain conditions to be stipulated in the permit. Sec. 207 specifically authorize the seizure of vehicle for the violations of Sees. 3,4,39 and the permit conditions imposed under Sec. 66 of the Act. But Sec. 207 further stipulates that the seizure and detention of the vehicle shall be in the prescribed manner. The learned Government Pleader could not convince that the manner has been prescribed by the Central Government for the seizure of the vehicle. The above aspect had been considered by this Court in O.P. 8236/91, and observed:

No rule giving effect to the provision contained u/s 207 has been framed by the centre or the State. No such Rule has been brought to my notice either. In the absence of such rule, invoking the power u/s 207 officers cannot seize the vehicle either.

The learned Government Pleader could not convince that the Central Government or the State Government had made any rules prescribing the manner of seizure of the vehicle in accordance with Section 207 of the Act. Though no such rules had been framed. I am of the view that the police officials or the authorised officers can adopt the procedure for seizure of the vehicle in accordance with the procedure laid down in the Code of Criminal Procedure till Rules are framed under Sec. 207 of the Act for the violations contemplated under Sec. 207 of the Act. The learned counsel for the petitioners submitted that the vehicles are seized by the police officials as well as the officials of the Motor Vehicles Department for violation of trivial matters also and the passengers compelled to wait on the street and are being put to irreparable hardship and injury. The unnecessary seizure and the detention of the vehicles for a very longtime by the police officials and the officials of the M.V. Department have been condemned by this court in O.P. 12076/94 and in other cases also. It is still the grievance of the operators of tourist service that the police officials as well as the officers of the Motor Vehicles Department are harassing them and the passengers, by detaining the vehicles for silly and trifling matters and seizing the vehicles without any valid or proper reasons. Sec. 207 specifies the grounds or the violations for which a vehicle can be seized. The seizure of tourist vehicles for any silly trifling violations of the provisions of the act other than the grounds stipulated in Sec. 207 of the Act cannot be justified and such seizure has to be avoided for the purpose of securing the safety and convenience of the passengers travelling long distances in contract carriages. When Sec. 207 of the Act specifies the grounds of seizure of the vehicle, it should not be seized for any other violations of the provisions of the Act or Rules. The authority to seize the vehicle is limited to the

grounds envisaged under Sec. 207 of the Act and the respondents have no authority to seize the vehicles for any violation of any other provisions of the Act.

5. The first respondent himself has felt the necessity of issuing directions to the subordinates for avoiding the harassment of passengers travelling long distances in contract carriages and also the seizure of the vehicles. Circulars and directions had been issued to the officials on different occasions for safeguarding the convenience and interests of the travelling public as well as the operators. The latest directive issued by the Director General of Police to his subordinates was dated 17-10-2002. The above executive directive No. 17/2002 would reveal that even after the issue of earlier directions, instances of violations are being reported frequently and to ensure that law abiding citizens are not put to avoidable inconvenience/harassment, the following instructions are issued for compliance by all concerned.

1. Only one vehicle will be stopped at time of M.V. checking. A second vehicle will be stopped only after the first vehicle is disposed of. In other words, the formation of a queue of vehicles, should not take place.

2. A vehicle, when signaled to stop for checking, should be directed to the extreme edge of the road margin so that it does not cause hindrance to the smooth flow of traffic.

3. The checking officers should approach the stopped vehicle and conduct the checking. The practice of directing the driver of the vehicle to go over to the checking officer with relevant records shall be stopped forthwith.

4. The checking officer should be courteous but firm in dealing with the violators of M.V. Rules and regulations. Abusive words and unnecessary comments should be avoided.

5. The violations directed may be explained to the concerned and his option to compound the offences ascertained.

6. In compound cases, the nature of violation may be recorded in brief (in English/Malayalam) in TR 5 apart from mentioning the relevant section of law/Rule.

It is hoped that the process of "M.V. Checking" will be used as an effective tool for enforcement without damaging the image of the Police". Even the Director General of Police had felt the necessity of issuing further directions, to avoid the harassment of passengers and operators at the hands of his subordinates. In the above circumstances, it has become absolutely necessary to direct the officials of the Police Department as well as the Motor Vehicles Department to comply with the instructions issued by the Director General of Police regarding the checking of contract carriages especially doing interstate services, wherein passengers of long distance are carried. The unnecessary detention of vehicles for hours together for silly and trivial matters and the unnecessary and illegal seizure of the vehicle also should be avoided.

The respondents 1 to 3 are directed to consider Exts. P12 and P13 representations and to take appropriate remedial measures if necessary, as expeditiously as possible. The Executive directive No. 17/2002 dated 17-10-2002 issued by the Director General of Police shall be implemented. The contract carriages especially conducting long distance services and interstate service shall not be seized for violations of trivial matters and the seizure shall be only for the violations on the grounds contemplated u/s.207 of the M.V. Act and that too only if it is absolutely necessary. The original petition is disposed of as above.