
(1986) 01 KAR CK 0032
In the Karnataka High Court
Case No : Writ Petition No. 1164 of 1986

M.S. Hemashankar

APPELLANT

Vs

Regional Transport Officer, Central Bangalore and Another

RESPONDENT

Date of Decision : 22-01-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 33

Citation : AIR 1987 Kar 155 : (1986) 1 KarLJ 286

Hon'ble Judges : M.P. Chandrakantaraj URS, J

Bench : Single Bench

Advocate : Ananda Shetty, for the Appellant;

Judgement

1. The petitioner is the owner of vehicle bearing Registration No. MYN 4.5 14. The registration of that vehicle came to be suspended by an order made on 2-12-1985 by the Registering Authority and the Regional transport Officer. Bangalore Central, Bangalore. It would be useful to state that the said order came to be made on remand. The order in question on appeal has been confirmed by the appellate authority in No. RGN. Appeal 74,1985-86 made by the Deputy Commissioner for Transport. Bangalore Division, Bangalore. Aggrieved by the same. The two orders in question are assailed in this Court inter alia contending that the petitioner did not have adequate opportunity

- 1) To cross-examine the witnesses though he had demanded for the same;
- 2) The material on which the Registering Authority relied upon to initiate proceedings were not given to the owner;
- (3) That it is contrary to law.

2. The Registering Authority is empowered to initiate the proceedings under sub-s. (1) Of S. 33 of the Motor Vehicles Act. 1939. Thereinafter referred to as the Act) for using the vehicle without a valid permit. This Court has held in more than one decision that a vehicle is said to have been used without its valid permit

even if it is used for a purpose other than the one for which it may have been issued with a permit. In the instant case. The petitioner who held a permit for the vehicle in question. I special permit, which is to operate the vehicle as a contract carriage (in specified occasions. On 2.VI 1-1984 when the vehicle was checked by the Motor Vehicles Inspector. It was found that he was using the vehicle to carry individual passengers for hire and reward and who were not included in the contract. In other words. The gravies of the charge was that the same was used as a stage carriage. In the first instance. the owner or his authorised representative did not respond to the show cause notice and an ex parte order came to be passed suspending the licence. On appeal. The order was set aside and the matter remanded with a direction to issue a fresh show cause notice accompanied by the copy of the check report of the Motor Vehicles Inspector. That was done. In response to that, the owner made a representation in writing and he was also represented by a Counsel and thereafter the impugned order was passed.

3. This Court in the case of K. M. Moun v. Assistant Superintendent of Police 1972 2 Mys LJ 290 - W.Y. No. 2234/1969) in a Division Bench ruling has negative the contention that the owners facing the proceedings. under Cl. I b) of subs. I I of S. 33 of the Act are entitled to an oral hearing, r as the right to cross-examine any witnesses though a learned single Judge of this Court in a later decision took a contrary view not noticing the Division Bench fooling rendered (in 12-0-1972. BU I the Division Bench has. however. Ruled that the material on which the charily is based must be made available to the owner along vita the show cause notice. I" hat material is on, to make an effective representation and no more. as held by the division Bench. In the instant case. The check, report contains the details of the check made he the Motor vehicles Inspector. The time, the result of the check and the sunnier old contents leading it the charge. I do not think jail Petitioner is entitled to any other material! Than the check report unless it is demonstrated that the check report does not contain adequate details which would enable the once to make an adequate and effective Representation against the charge. That not King the case. The petitioner cannot make it grievance of the orders now impugned.

4. Mr. Amanda Settee learned Counsel appearing for the petitioner. However. Argued that there has been a disregard of the direction contained in the remand in the first appeal preferred by the owner. On a careful scrutiny of the first appellate order. I am satisfied that there has been no such disregard of the remand direction.

5.The petition is, therefore. Dismissed.

6. Petition dismissed.