(1988) 07 KAR CK 0057

In the Karnataka High Court

Case No : W.P. Nos. 10627 to 10630/1988

N. Swaminathan APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 20-07-1988

Acts Referred:

Motor Vehicles Act, 1939 — Section 129A

Citation : (1988) 3 KarLJ 320

Hon'ble Judges : H. G. Balakrishna, J

Judgement

Balakrishna, J.-The material facts of the case are as follows:

The 1st petitioner holds an All India Tourist Omni Bus permit which is valid up to 26.5.1990 covering vehicle bearing registration No. KCT 5267. The petitioner also holds an All India Tourist permit bearing registration No. TCE 4356 and the permit is valid up to 13.2.1990. These vehicles are being operated only in the State of Tamil Nadu and Kerala and the intention of the petitioner is to bring the vehicles and to operate in the State of Karnataka also, after paying the necessary tax.

2. The 2nd petitioner holds on All India Tourist permit which is valid up to 27.5.1990 covering an All India Tourist Omni Bus bearing registration No. KBV 4707. In respect of this vehicle, tax has been paid to the State of Karnataka up to 30.9.1988.

3. The 3rd petitioner holds an All India Tourist permit which is valid up to 13.2.1990 covering vehicle bearing registration No. TCE 900 in respect of which the tax due has been paid to the State of Karnataka upto 31.7.1988.

4. The 4th petitioner holds an All India Tourist Omni Bus permit which is valid up to 13.2.1990 covering vehicle bearing registration No. TCE 1701 in respect of which tax has been paid to the State of Karnataka up to 31.7.1988. These facts are not disputed.

5. The petitioners carry either from the State of Tamil Nadu the passengers to

the State of Karnataka or from the State of Kerala to the State of Karnataka by entering into a contract with the tourist agent of the petitioner with offices in all the concerned States carrying on transport business under the name and style of "N.S. TRANSPORTS", According to petitioners, no taxes are due to the concerned authorities.

6. The grievance of the petitioners is that frequently their vehicles are checked by the checking Officers attached to the office of respondents 3 and 4 under authorisation from respondents 1 and 2 in the course of the journeys particularly on Friday nights, Saturday and Sunday. Check reports are prepared and show cause notices issued to the petitioners from time to time for alleged violations of the provisions of the Motor Vehicles Act. Often, these cases culminated in the payment of compounding fee by the petitioners, usually at the rate of Rs. 1000/- per vehicle as spot fine particularly for the release of the vehicles and according to the petitioners, they pay the compounding fee in order to avoid harassment to the passengers by seizure and detention of vehicles and to ensure that the vehicles reach their destinations in time.

7. It is also the grievance of the petitioners that under intimidatory circumstance they have no other alternative than to pay a compounding fee of Rs. 1,000/- mainly for the purpose of preventing the seizure and detention of the vehicles. According to the petitioners, the seizure of the vehicles is being done on the ground that the vehicles are being operated from one point to another carrying individual passengers after collecting individual fares and that such an operation being treated as an operation without a permit ended with payment of compounding fee of Rs. 1000/- per vehicle in order to avoid seizure and detention of the vehicle.

8. The main contention of the petitioners is that no offence and much-less, any wrong is committed by the petitioners by operating the vehicles from one point to another carrying individual passengers by collecting fares individually. According to the petitioners, there is no legal support for such action on the part of the officers of the Motor Vehicles Department under Section 129-A of the Motor Vehicles Act, 1939.

9. The only point for consideration is, whether the authorities were not justified in seizing and detaining the vehicles of the petitioners for the violation of law inputed to them, in the facts and circumstances of these cases.

10. The learned counsel for respondents 1 to 4 Sri P.R. Ramesh submitted firstly there is no harassment either intended or inflicted by the officers of the department on the petitioners and that the allegation is unfounded. Secondly it was contended that even in the instant cases of these petitioners, in none of the instances the vehicles were seized on Friday night or Saturday night or Sunday and therefore the allegation made by the petitioners is misconceived. Thirdly, it was contended by the learned Govt. Pleader that what the authorities have done is in accordance with law and in consonance with sub rule 1 of Rule 2 of the

Rules known as the "TOURIST VEHICLES ADDITIONAL CONDITIONS OF PERMIT RULES, 1985" published by the Government of India on.2.9.1986.

11. It is necessary to set out the provisions of sub-Rule 1 of rule 2 of the said Rules which reads thus:

"The permit holder shall cause his authorised agent or operator of the tourist vehicle to prepare a list of tourist passengers giving full names and addresses of the tourists passengers who intend to use the tourist vehicle jointly for tourist purposes such as going on pilgrimage, excursion tours, or to visit places of tourist importance, or attending gatherings of social, religious, education, cultural nature and sports meets."

12. An analysis of this rule would reveal that what is envisaged is the preparation of the list of tourist passengers disclosing full names and addresses of the tourist passengers who propose to use the tourist vehicles collectively (jointly) for tourist purposes. The illustrations of tourist purposes are pilgrimages, excursion tours, visit to places of tourist importance, attending gatherings of social, religious, education, cultural and sports affairs. A further analysis will show that the accent and emphasis is on the use of the tourist vehicle jointly or collectively by the listed passengers, for the purpose of part-taking in tourism.

13. What is contended by the learned counsel for the petitioners is that the respondents committed an error of law and jurisdiction in not taking into consideration that according to the conditions of the permit, there is no prohibition to operate a vehicle from one point to another or to carry a circular trip or to carry a tourist party from a neighbouring State to their Home State and there is no prohibition also to the collection of individual fare and when such operation of the vehicle cannot be held to be a contravention of the conditions of the permit or contrary to the provisions of Section 129-A of the Motor Vehicles Act, the seizure and detention of the vehicles on the said ground and levying a compounding penalty of Rs. 1000/- per vehicle for the alleged offence being wholly illegal and without jurisdiction, the impugned action is liable to be interfered with. On the face of it such a contention cannot be sustained at all, in my opinion. In this behalf reference may be made to sub-rule 3 of Rule 2 which runs thus:

"The tourist vehicle shall either commence its journey, circular or otherwise, in the Home State, subject to the conditions that the vehicle shall not remain outside the Home State for a period of more than two months. The permit holder shall see that the every return of the tourist vehicle to Home State is reported to the Authority issuing the permit.

Provided that where the contracted journey ends outside the Home State, the vehicle shall not be offered for hire within that State or from that State to any other State except the return journey to any point in the Home State."

14. Annexure-A is one of the Check Report-cum-Receipt issued by the Checking

Authority. According to this annexure, the offence alleged is:

"Used the AITOB as Express Stage Carriage carrying individual picked up passengers collecting fare Rs. 30/- each travelling for the purpose other than the permit.

15. In Annexure-B, the nature of offence disclosed is as follows:

"When stopped and checked and found that the motor vehicle carrying individually picked up passengers from Tiruchi to Bangalore by way of collecting Rs. 60/- per seat thus using the vehicle other than the purpose mentioned in the permit. Hence violation of permit condition. Hence Driver offence compounded."

16. In Annexure-C, the nature of offence is as follows:

"When stopped and checked and found that the motor vehicle carrying individually picked up passengers from Salem to Bangalore per seat by collecting Rs. 30/- per head and the passengers travelling in the bus is not a contracted passengers."

17. According to Annexure-D, the nature of offence disclosed is as follows:

"When stopped and checked and found that the motor vehicle carrying individually picked up passengers from Salem to Bangalore by way of collecting Rs. 30/- per head and the passengers travelling in the vehicle is not a contracted passengers thus using the motor vehicle as a express stage carriage between the two points thus using the vehicle other than the purpose mentioned in the permit."

18. Thus it is very clear that from the offences imputed to the petitioners, vide Annexures ''A'' to ''D'' the substance of the allegation that individually picked up passengers were carried by these vehicles collecting individual fere at a rate fixed per seat, though from point to point, is clearly contrary to the provisions of the Rules cited above. Though reference has not been made to the Rules, the purpose of law was to prohibit picking up of individual passengers for a journey from the Home State to the other State even if it is a case of a Journey from point to point. What is relevant is the substance and purpose of law.

19. In the case of Annexure-B, the Journey was from Tiruchi to Bangalore without touching Kerala. In all these cases, the common factor is as observed earlier, that the passengers are not those who were contracted to be carried in accordance with a prepared list so that it is possible to ascertain that the passengers intended to travel together or collectively for a common purpose of visiting places jointly for tourist purpose to establish community of interest.

20. However, the learned counsel for the petitioners clarified his stand by standing hat a journey from one point to another point is not prohibited under law and that the authorities could not take exception only on the ground that the journey is from one point to another and that the authorities should be directed not to find fault with the petitioners on that ground only.

21. The learned Govt. Pleader submitted that in so far as the passengers are not the individual passengers picked up for the Journey and from whom individual fares are not collected, so long as the passengers come under a contract for tourism purpose jointly or collectively to visit places, it would be certainly impermissible for the authorities to find fault with the petitioners on the sole ground that the vehicles are being operated from one point to another. But that is not so in the instant cases.

22. In the light of the submissions made and the rule of law which is attracted to the facts of these cases, what is required in these cases, What is required in these cases is only a limited observation to the effect that the operation of tourist vehicles under permit issued under the provisions of Section 63(7) of the Motor Vehicles Act between any two points touching the Home State is not a bar even subsequent to the framing of the Rules provided the contracted journey ends outside the Home State and further provided that the passengers are contracted tourists touring jointly for tourist purpose or for visiting places of tour''s importance as described in Sub-Rule 1 of Rule 2. I do not think it is necessary for me to go into the remaining points raised in these writ petitions as they are not canvassed at the time of arguments.

23. With the above observations, these writ petitions are disposes of.

Sri P.R. Ramesh, learned Govt. Pleader is directed to enter his memo of appearance within 2 weeks from today.

