

(1988) 09 KAR CK 0002
In the Karnataka High Court
Case No : W.P. No. 11398 of 1988

Nagarajaia, K.B.

APPELLANT

Vs

The Regional Transport Officer, Bangalore South

RESPONDENT

Date of Decision : 21-09-1988

Acts Referred:

Motor Vehicles Act, 1939 — Section 32(4)

Citation : (1988) 2 KarLJ 535

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

Judgement

Balakrishna, J.-On 4-8-1988 Sri Ramesh, learned Government Pleader, was directed to take notice for respondent and a copy of the Writ Petition was also served on him. Subsequently, a copy of the application containing additional statement of facts, after having served the same to the learned Government Pleader, was filed before Court.

2. The matter is taken up for final hearing today, arguments of learned Counsel for the petitioner heard, and disposed of by this order.

3. The petitioner, who is the owner of a Luxury Taxi Cab bearing registration No MED 7024, filed an application on 10-6-1988 under sub-section (1) of Section 32 of the Motor Vehicles Act, 1939, for alteration of the said vehicle into a private vehicle with the intention of naking use of the same without any fresh permit and exclusively for his personal use. The said application was received and an acknowledgement for having received the same by the respondent on 13-6-1988 was given to the petitioner. A communication was received from the respondent on the same day directing the petitioner to produce the challan for having deposited a sum of Rs. 170/- in the treasury and also to produce a certified copy of the permit in order to ascertain the validity of the same. Thereafter, the petitioner filed a second application on 8 7-1988 along with the challan and the Xerox copy of the check report showing the period or otherwise of the permit, for alteration of his vehicle into a private vehicle before the respondent. Subsequent to the receipt of the second application no reply was received from the

respondent, who is the registering authority. According to the petitioner, under the proviso to sub section (2) of Section 32 of the Act, if no communication is received from the respondent within seven days from the date of receipt of the application for conversion its approval to the proposed alteration or otherwise, the statutory presumption is it shall be deemed to have been given. Relying on this proviso, the petitioner submitted that he is entitled to the conversion he has sought for.

3.1. However, on 27-7-1988, an endorsement was issued by the respondent to the petitioner refusing to make entry in the Certificate of Registration of the vehicle as contemplated under the Act. The petitioner, being aggrieved by the same, has presented this petition challenging the said endorsement.

4. It is stated in the writ petition that the petitioner did not get the permit renewed since no fresh permit in the vacancy has been granted and it is only on account of this reason he wants to convert the vehicle and use the same for his personal use. The Xerox copy of the check report produced by the petitioner shows that the permit was valid only upto 6-5-1986 only.

5. The question that arises for consideration, in the above circumstances, in this petition is:

Whether, under the statutory presumption, the petitioner is deemed to have been permitted by the registering authority to convert the public vehicle, belonging to him, into a private vehicle?

From the sequence of events and also from the undisputed facts of the case, it is clear that the petitioner did make an application for grant of permission for conversion of the vehicle in question into a private one, on 10-6-1988 and there was response to this application from the respondent on 13-6-1988 calling upon the petitioner to furnish the challan for having deposited Rs. 170/- into the treasury and also the certified copy of the permit. Thereafter, on 8-7-1988, the petitioner along with another application furnished a Xerox copy of the check report, instead of certified copy of the permit, and also a challan for having deposited Rs. 170/- once again requesting the respondent to grant permission for conversion of the vehicle. On 23-7-1988, the petitioner, under sub-section (4) of Section 32 of the Act, instead of reporting the alteration to the registering authority, he sought for an endorsement of Certificate of Registration approving conversion of the vehicle from public vehicle into a private one. Between the date on which the documents were produced (Xerox copy of the check report and the challan) along with the second application and the date on which the petitioner invoked the provisions of Section 32(4), no reply was received from the respondent. The interval between them exceed period of seven days. In these circumstances, it would not be unreasonable to presume that by operation of law, the petitioner acquires the right to convert the vehicle as desired by him under the proviso to sub-section (4) of Section 32 of the Act. If there had been a reply from the respondent, after the petitioner furnished a Xerox copy of the

check report along with the challan for having deposited Rs. 170/-, it would have been possible to hold that the period of seven days within which the communication of approval or otherwise is expected to be made by the respondent, under sub-section (4) of Section 32 of the Act, would come in the way of the petitioner. In the absence of any reply, whatsoever, during this interval of time, there is no alternative than to hold that the petitioner is deemed to have acquired the right to convert his vehicle as desired by him.

7. For the reasons stated above, I allow this Writ Petition and direct the respondent to give effect to the deemed permission for conversion of the vehicle belonging to the petitioner bearing registration No. MED 7024 from the public (transport) vehicle into a private vehicle under the provisions of sub-sec. (4) of Section 32 of the Act. He is further directed to give effect to this order within three weeks from the date of receipt of the same.

Sri P. R. Ramesh, learned Government Pleader, is permitted to file his memo of appearance for the respondent within two weeks.

Writ Petition Allowed.