
(1999) 06 BOM CK 0066
In the Bombay High Court

Nanded Parbhani Zilla Luxury Bus Malak Va Operator Sangh	APPELLANT
Vs	
State of Maharashtra and Others	RESPONDENT

Date of Decision : 29-06-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 29
Penal Code, 1860 (IPC) — Section 279

Citation : (2000) 1 ACC 360 : (1999) 4 ALLMR 138

Hon'ble Judges : J.A. Patil, J;B.B. Vagyani, J

Bench : Division Bench

Judgement

J.A. Patil, J.—Heard Mr. S.R. Barlinge, learned Advocate for the petitioner and Mr. P.B. Varale, learned A.P.P. for the respondents.

2. Rule. Rule returnable forthwith by consent.

3. By this petition under Article 226 of the Constitution of India, the petitioner Association has sought certain directions against the respondent namely-

(A) Not to detain and seize the luxury buses of its members having tourist permits for the alleged contravention of the provisions of Section 29 of the Motor Vehicles Act or any of the conditions of the permit;

(B) Not to arrest the drivers and owners of the luxury buses for the alleged contravention of the provisions of Section 39 of the M.V. Act, and

(C) To direct the respondents to pay compensation to the luxury bus operators at the rate of Rs. 50,000/- for detention and seizure of each bus and Rs. 1,00,000/- for the arrest of either the drivers or owners of the luxury buses.

4. The relevant facts giving rise to this petition may be stated in brief, as follows:

The petitioner is an Association of the Owners of Luxury Buses in the districts of Nanded and Parbhani. The petitioner Association is affiliated to the Maharashtra Rajya Trucks, Tempo, Tankers, Bus Vahatuk Mahasang which is recognised

Association of Motor Vehicle Operators in the State. The petitioner has certain grievances against the methods adopted by the Police Authorities in Nanded and Parbhani districts. According to the petitioner/Association, its members have obtained tourist permits u/s 89 of the Motor Vehicles Act from the Commissioner of Transport, Maharashtra State, Mumbai. The permits in respect of tourist vehicles are issued on the conditions specified in Sections 84 and 88(ii) in addition to certain conditions specified in the permits. The members of the petitioner/Association are required to pay Rs. 1,23,200/- towards the motor vehicle tax per annum per vehicle in respect of the vehicle having capacity to transport 35 passengers. In addition, they are also required to pay about Rs. 30,000/- towards Insurance premia every year for each vehicle. It is also alleged that the members of the petitioner/Association are required to meet illegal demands of the Authorities" of the Police Department or Transport Department.

5. The main grievance of the petitioner/Association is in connection with the illegal detention and seizure of the vehicles of its members. It is pointed out that hardly a day passes without detention of 3 or 4 vehicles in each of the two districts as well as arrest of owners and drivers of luxury buses by the police. As a result of the police atrocities, it is stated that many tourist bus operators have stopped plying the luxury buses since May, 1998. It is pointed out that since May, 1998 the Police Authorities in the above mentioned two districts have detained more than 500 luxury buses and registered offences against the owners and/or drivers of the luxury buses for various offences under the Motor Vehicles Act and u/s 279 of the I.P.C. The common allegations in respect of the breaches or violations of the conditions of permit mentioned in the first information report filed against the owners and drivers are in short to the effect that the luxury buses were found carrying passengers in excess of the permissible capacity, parking of vehicles at No parking zone, non-possession of documents and non-wearing of uniforms and badges by the drivers, etc.

6. The petitioner/Association has stated that in all such cases/the Police Authorities have illegally detained and seized the luxury buses and thereby caused great hardship and inconvenience to the concerned owners. The Police Authorities in the above mentioned two districts detained and seized the motor vehicles in the purported exercise of the powers u/s 207 of the Motor Vehicles Act. The petitioner/Association has, however, pointed out that it is not each and every offence under the M.V. Act or violation of each and every condition of the permit that would attract the power of seizure and detention of the vehicles. Moreover, the detentions of the vehicles were made either by the Police Constable or Police Head Constable though u/s 207 the power to do so vests in the Police Officers not below the rank of Assistant Sub-Inspector as per the Notification No. MVA 0589/CR-106-TRA-2 dated 19.5.1990 published in the Government Gazette dated 20.9.1990. It is further alleged that the Police Authorities are arresting not only the drivers but also the owners of the luxury buses for the offences mentioned in the F.I.Rs. knowing fully well that such offences are non-cognizable. According to the petitioner, the power of arrest can

be exercised only in respect of certain offences. In the cases regarding detention and seizure of luxury buses, the Police Authorities blindly mention contravention of Sections 66(1) and 192 of the Motor Vehicles Act without applying their minds to the facts and circumstances of the case. Thus, in short, according to the petitioner/Association, the Police Authorities in these two districts have created a feeling of terror in the minds of luxury buses operators so much so that they are demoralised and about to give up the business of transporting passengers.

7. On behalf of the respondent Nos. 3 and 4, Police Inspectors G.K. Shikare and S.M. Kulkarni respectively, have filed their affidavits wherein they have denied the allegations made in the petition. According to them, the luxury buses were found carrying passengers in excess of the number permitted by the permit. This, according to them, amounts to an offence u/s 66(1) read with Section 192 of the Motor Vehicles Act. It is contended that the police have authority to detain and seize any vehicle for contravention of any condition of the permit.

8. In an affidavit filed by way of rejoinder on behalf of the petitioner/Association, the numbers of the luxury buses which were detained on 15.11.1998 by the Police Authorities were given. It was further pointed out in the said affidavit that the J.M.F.C, Nanded by his common order directed the respondents to release the vehicles on the ground that the seizure was not made after following the provisions of Section 207 of the Motor Vehicles Act. Alongwith the said affidavit, the petitioner/Association submitted a charge of 20 N.C. cases wherein the buses were illegally detained and seized by the Police Authorities. this Court by its order dated 30th March, 1999 directed the respondents to produce copies of the charge-sheet or complaints filed in the Court mentioning the specific breach of the provisions of law. Accordingly the respondents have filed copies of the F.I.Rs. in all the 20 cases wherein luxury buses of the members of the petitioner/Association were detained and seized.

9. So far as the detention and seizure of the motor vehicle is concerned, the same cannot be done for each and every contravention of the provisions of the Motor Vehicles Act. In this respect, Section 207(1) of the Motor Vehicles Act is very clear and it reads as under:

207. Power to detain vehicles used without certificate of registration permit, etc.-
(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 acknowledgement in respect thereof.

It will thus be seen that the motor vehicle can be attached by any Police Officer who is authorised in that behalf by the State Government for contravention of the provisions of the Sections 3, 4, 39 or 66(1) of the Motor Vehicles Act. In addition, the motor vehicle can be detained and seized if the Police Officer has a reason to believe that there is 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. It is only in the above mentioned specified cases that the police can detain and seize a motor vehicle.

10. We have gone through the copies of the F.I.Rs. produced on behalf of the respondents in 20 cases. We find that there is common allegation against all the accused in those cases to the effect that they were found transporting passengers in their luxury buses in excess of the number allowed by their respective permits. There can be no doubt that carrying passengers in excess of the permissible limit amounts to contravention of the provisions of Section 66(1) of the Motor Vehicles Act justifying prosecution of the concerned owner or the driver. However, such a contravention does not authorise a Police Officer to detain and seize the vehicle. As pointed out above, the detention and seizure of a vehicle for contravention of a condition of the permit is justified only if the contravention is relating to the condition regarding the route on which or the area in which or the purpose for which the vehicle may be used. It is, therefore, obvious that in none of the 20 N.C. cases in which the allegations are for carrying excess number of passengers, the detention and seizure of the concerned buses is warranted or justified. Mr. Varale, the learned. A.P.P. tried to submit before us that carrying excess number of passengers is itself a breach of a condition of the permit and, therefore, the Police Authorities are justified in detaining or seizing the concerned motor vehicles. It is true that carrying passengers in excess number than the number permitted by the permit is certainly a breach of a condition of the permit. However, the second part of the submission of Mr. Varale cannot be accepted for the simple reason that there is nothing in Section 207 of the Motor Vehicles Act which authorises the Police Officers to detain or seize the motor vehicle for such contraventions. Consequently, the detention and seizure of the luxury buses in those 20 cases specified in the list at page 147 is unauthorised and illegal.

11. The petitioner/Association has also sought a direction to the respondents not to arrest the drivers and owners of the luxury buses for the alleged contravention of the provisions of Section 39 or any of the conditions of the permit. The petitioner/Association has not pointed out any specific case wherein the driver or the owner of any of the luxury buses was arrested in connection with the non-cognizable offence. Mr. Barlinge, therefore, did not press payer (B).

12. As regards the prayer (C), it relates to payment of compensation for detention and seizure of the buses as well as for arrest of drivers and owners. Since the petitioner/Association has not pointed out any illegal arrest of any driver or owner, there is no question of awarding any compensation on that count. However, the prayer for compensation for illegal detention and seizure of luxury buses deserves serious consideration. As discussed above, the police have no authority to detain or seize any vehicle unless the contravention alleged is of one of the kinds specified in Section 207 of the Act. In the instant case, it is seen that at least in 20 cases, luxury buses were detained and seized though the contravention alleged against the owner or the driver of the concerned buses was not of the kind specified in Section 207. Therefore, the detention and seizure of those luxury buses was obviously unauthorised and illegal. Some of the drivers and/or owners of the vehicles in those cases were, therefore, required to move the Judicial Magistrate for release of their vehicles. What is more important to note is that this Court by its order dated 9th October, 1998 had inter alia directed the respondents that no motor vehicle be detained without strictly following the provisions of Motor Vehicles Act and that the concerned Police Officers should specifically mention the reason in writing for such detention of vehicles. Accordingly, respondent No. 3 by his circular dated 16.10.1998 had issued certain guidelines to all the Police officers in the district. What is disturbing is that in spite of such directions, it is found that the Police Officers have detained the vehicles even though the contravention alleged was not of the category specified in Section 207 of the Motor Vehicles Act. This only shows the high handedness on the part of the concerned Police Officers and their utter disregard to the directions given by the Court. All these facts, in our opinion, justify the grant of compensation to the petitioner/Association. However, we are not inclined to grant compensation as claimed by the petitioner/association. In our opinion, a compensation of Rs. 10,000/- would be proper amount of compensation. Accordingly, we direct the respondents to pay to the petitioner/Association, who has espoused the cause of its members, a total compensation of Rs. 10,000/- within a period of four weeks from the date of this order. Mr. Barlinge, the learned Advocate for the petitioner/Association undertakes that the amount of compensation will be distributed amongst the owners whose luxury buses were illegally detained and/ or seized by the Police Authorities in Nanded and Parbhani districts. With these directions, the petition is disposed of and the rule is made absolute in the above terms with costs of Rs. 2,000/-.