

(1985) 12 KAR CK 0003

In the Karnataka High Court

Case No : W.A No. 901 of 1979 and W.P. No. 8380 of 1979

Narayanaswamy

APPELLANT

Vs

Regional Transport Officer

RESPONDENT

Date of Decision : 19-12-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 33

Citation : (1986) ILR (Kar) 373

Hon'ble Judges : Jagannatha Shetty, Acting C.J.;Venkatesh, J

Bench : Division Bench

Advocate : A.S. Viswanath, for the Appellant; D. Bhoopathy, HCGP, for the Respondent

Judgement

K. A. Swami, J.—In this Petition under Article 226(i)(a), (b) & (c) of the Constitution the petitioner who is the registered owner of the Matador Vehicle Bearing No. MES 3306, has challenged the correctness of the order passed by the R.T.O., Shimoga dated 3-1-1979 (Ex. B) and also the order passed by the Deputy Commissioner for Transport, Shimoga, in Tax Appeal No. 7/79 dated 25-5-79 (Ex. D).

2. The necessary facts for consideration of the contention raised on behalf of the petitioner are not in dispute. The R.T.O., Chittoor, after affording due opportunity to the petitioner, by his order dated 26-12-1978 (Ex.C) suspended the registration certificate of the vehicle in question for a period of four months for the reasons recorded therein. Thereafter the R.T.O., Chittoor, forwarded the impounded R.C. Book of the vehicle in question to the R.T.O, Shimoga. On receipt of the same R.T.O. Shimoga, intimated the petitioner that he should not run the vehicle on the road for a period of four months from the date of surrender of the documents and further directed the petitioner to surrender the documents such as valid tax card, insurance certificate along with both the number plates and further to declare the place where the vehicle would be stationed during the period of suspension.

3. Against the said order the petitioner went up in appeal before the Deputy Commissioner for Transport, Shimoga, who by the order dated 25-5-79 has dismissed the appeal holding that in view of the order passed by the R.T.O, Chittoor, which had not been challenged before the proper authority, the action taken by the R.T.O., Shimoga, was nothing but to enforce the order of suspension passed by the R.T.O., Chittoor and as such there was no illegality whatsoever.

4. Sri Vishwanath, the Learned Counsel appearing for the petitioner put forth the following contentions : (1) that the order passed by the R.T.O, Chittoor, was without jurisdiction (2) that the R.T.O., Shimoga had no jurisdiction to execute the order passed by the R.T.O., Chittoor, (3) that the appellate authority committed an error in not considering the appeal on merits.

5. The first contention is based on the provisions contained in Section 33 of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act). According to the contention of Sri Vishwanath, the Learned Counsel for the petitioner, the expression "any registering authority" occurring in Section 33 of the Act must mean the authority who has registered the vehicle and not any other authority. But this contention overlooks the definition contained in Section 2(28) of the Act, according to which "registering authority" means an authority empowered to register motor vehicles under Chapter-III. It is undisputed that the R.T.O, Chittoor, was an authority empowered to register motor vehicles, under Chapter III of the Act. Thus, he was the registering authority for the purpose of Chapter III of the Act. Section 33 of the Act, is found in Chapter-III of the Act. That being so, the R.T.O., Chittoor, being a registering authority, was competent to take action against the vehicle, in question which, having been registered as a private vehicle, was found to be used for hire when it was checked by the Assistant Motor Vehicles Inspector, Tirupathi (Enforcement), on 30-11-1978 at 12-30 p.m. on Tirupathi Tiruchanoor Road. Therefore, the first contention raised by the Learned Counsel for the petitioner is without force.

6. With regard to second contention it is not disputed that the R.T.O., Shimoga, on receipt of the order along with the impounded certificate of registration of the vehicle in question from the R.T.O., Chittoor, has informed the petitioner not to run the vehicle for the period mentioned in the order of suspension. Under Sub-section (3) of Section 33 of the Act, the authority which suspends the permit, if it is not the original registering authority has to inform that authority of suspension. Accordingly, the R.T.O., Chittoor, has forwarded the impounded certificate of registration along with the order of suspension to the R.T.O., Shimoga, for enforcement of the order of suspension. On receipt of the same, the R.T.O. "Shimoga, has informed the petitioner under Sub-section (4) of Section 33 of the Act, to comply with the order of suspension passed by the R.T.O., Chittoor. There is no provision prohibiting the R.T.O., Shimoga, from enforcing such an order. Further, once there is an order of suspension, the owner of the vehicle, on demand by the registering authority or other prescribed

authority which has suspended the certificate of registration of the vehicle, is bound to surrender the necessary documents as mentioned in Section 3(34) of the Act. The R.T.O., Shimoga, being the original registering authority was competent to enforce the order of suspension as otherwise the first part of Subsection (3) of Section 33 of the Act will be rendered nugatory. The purpose of informing the original registering authority of the order of suspension is to enable that authority to enforce the order of suspension which continues for a period of four months. Accordingly, the R.T.O., Shimoga, was well within his jurisdiction in enforcing the order of suspension passed by the R.T.O., Chittoor, against the vehicle in question.

7. The last contention of the petitioner that the appeal was not considered on merits, cannot also be accepted. As long as the order passed by the R.T.O., Chittoor, remained unchallenged there was very little to be considered in the appeal on merits. Therefore the Deputy Commissioner for Transport was right in holding that in view of the order passed by the R.T.O., Chittoor, which was not challenged by the petitioner before the proper authority there was nothing more to be considered in the appeal. The Deputy Commissioner for Transport, Shimoga, could not have sat and could not have decided as to whether the order of suspension passed by the R. T. O., Chittoor, was justified in law and on facts. Accordingly, the Deputy Commissioner for Transport has rejected the appeal on merits and not on the ground that the appeal was not maintainable. Consequently all the three contentions raised by the petitioner fail. Hence there is no ground to issue rule. Accordingly the Writ Petition is dismissed.

JUDGMENT

Jagannatha Shetty, Ag. C.J.

1. This Writ Appeal is directed against the order dated 12-7-1979 dismissing Writ Petition No. 8380 of 1979.

2. The appellant is the registered owner of the motor vehicle bearing No. MES 3306. The registration of that vehicle was suspended for a period of four months by the Additional Regional Transport Officer, Chittoor (R. T. O., Chittoor). The RTO, Chittoor, forwarded the relevant papers along with his order to the Regional Transport Officer, Shimoga (RTO Shimoga) who was the original registering authority of the vehicle in question. Upon receipt of that order, the RTO, Shimoga, called upon the owner to surrender the documents like Tax Card, Insurance Certificate, Number plates etc., of the vehicle in order to give effect to the order of suspension of the registration certificate.

3. Against the said notice, the owner preferred an appeal before the Deputy Commissioner for Transport, Shimoga, contending inter alia that the R.T.O., Shimoga, has no jurisdiction to enforce the order of the R.T.O. Chittoor. The Deputy Commissioner did not accept that contention and dismissed the appeal.

4. Challenging the order of the R.T.O., Shimoga, the owner moved this Court with

Writ Petition No. 8350 of 1979 under Article 226 of the Constitution and that Writ Petition was also dismissed by learned Single Judge.

Hence this appeal.

5. The primary question that is required to be considered in this appeal relates to the scope of Section 33 of the Motor Vehicles Act and power of the R.T.O., Shimoga, to enforce the order made by R.T.O., Chittoor. It was urged for the appellant that R.T.O., Shimoga, has no jurisdiction to enforce the order made by his counterpart at Chittoor and he cannot call upon the owner of the vehicle to surrender the documents relating to the vehicle.

This contention, in our opinion, is not sustainable. Section 33 of the Motor Vehicles Act, 1939, so far as it is relevant, provides ;

"33(1) If any registering authority or other prescribed authority has reason to believe that any motor vehicle within its jurisdiction-

(a) is in such a condition that its use in public place would constitute a danger to public, or that it fails to comply with the requirements of Chapter V or of the rules made thereunder, or

(b) has been, or is being, used for hire or reward without a valid permit for being used as such, the authority may, after giving the owners an opportunity of making any representation he may wish to make (by sending to the owner a notice by registered post acknowledgment due at his address entered in the certificate of registration), for reasons to be recorded in writing, suspend the certificate of registration of the vehicle--

(2) xxx xxx xxx xxx

(3) Where the registration of a motor vehicle has been Suspended under Sub-section (1) for a continuous period of not less than one month, the registering authority, within whose jurisdiction the vehicle was when the registration was suspended, shall, if it is not the original registering authority, inform that authority of the suspension; and when the suspension has continued without interruption for a period of not less than six months, the registering authority within whose jurisdiction the vehicle was when the registration was suspended, may, if it is the original registering authority, cancel the registration, and, if it is not the original registering authority, shall forward the certificate of registration to that authority which may cancel it forthwith.

(4) The owner of a motor vehicle shall, on the demand of a registering authority or other prescribed authority which has suspended the certificate of registration of the vehicle under this Section, surrender the certificate of registration and any token or card issued to authorise the use of the vehicle in a public place.

xxx xxx xxx

It will be seen from the above provisions, the Registering authority mentioned in

Sub-section (1) of Section 33 is a registering authority, as defined u/s 2 (28) to mean an authority empowered to register motor vehicles under Chapter III. Having regard to this definition of that term, one cannot possibly state that the R.T.O., Chittoor, is not an authority empowered to register motor vehicles under Chapter III of the Motor Vehicles Act. He is, indeed an authority with powers to register motor vehicles. He is, in fact, a counterpart of R.T.O., Shimoga. When R.T.O., Chittoor, is undisputedly a registering authority for the purpose of Chapter III, he shall therefore, be held to have the power to take action u/s 33 since Section 33 is also in Chapter III.

6. As to the question of jurisdiction of the R.T.O. Shimoga, to execute the order made by his counterpart in, another State, the following provisions may be noticed.

Under Sub-section 3 of Section 33, it is incumbent upon the Registering authority within whose jurisdiction the Vehicle was when the registration was suspended, if It is not the original registering authority, to inform that authority of the order of suspension. Similar provision is found in Section 33 in regard to the cancellation of the Registration Certificate.

7. What is required to be done by the original registering authority upon intimation from his counterpart has been set out in Sub-section 4 of Section 33. It reads :

"The owner of a motor vehicle shall, on the demand of a registering authority or other prescribed authority which has suspended the certificate of registration of the vehicle under this section, surrender the certificate of registration and any token or card issued to authorise the use of the vehicle in a public place."

Sub-section 4 of Section 33 expressly sets out the duty of the original registering authority and the obligation of the owner of the motor vehicle. When the owner receives a demand from the registering authority, he shall surrender the certificate of registration and other documents of the vehicle and stop its operation. By reading the provisions of Section 33 it becomes apparent that it is possible for any registering authority to suspend the Registration Certificate of a vehicle if the vehicle has been or being used contrary to the provisions of Sub-section 1 of Section 33 and when such an order is communicated to the original registering authority, the latter shall give effect to the order by demand-ing from the owner of the vehicle to surrender the documents of the vehicle. This is the only reasonable construction that we can think of to give effect to the provisions of the Motor Vehicles Act and any other construction suggested by Counsel for the appellant would render the provisions of Section 33 ineffective and nugatory.

8. There is one other contention which remains to be considered. The appellant has also challenged the validity of the order made by the R. T. O., Chittoor, contending inter alia, that it was unreasonable and excessive even on the admitted facts. We do not propose to enter into a detailed discussion on the

merits of this contention. We would, however, like to take a lenient view of the matter. It is not in dispute that the original owner of the vehicle is since dead, his widow has been brought on record and she is prosecuting this appeal. She is said to be in a helpless condition. We are told that the vehicle is also not in a motorable condition. Taking all these facts into consideration, we reduce the period of suspension of the registration certificate of the vehicle to 15 days only.

9. In the result, the appeal stands disposed of with the terms above mentioned.