

(1998) 04 KAR CK 0029

In the Karnataka High Court

Case No : Writ Appeal No's. 894 and 895 of 1998

Naushad Ali and Another

APPELLANT

Vs

Regional Transport Officer, Haveri and Another

RESPONDENT

Date of Decision : 16-04-1998

Acts Referred:

Motor Vehicles Act, 1988 — Section 113, 115, 194, 46, 58

Citation : (1998) 2 ACC 689 : (1998) ILR (Kar) 3051 : (1998) 4 KarLJ 453

Hon'ble Judges : Y. Bhaskar Rao, J;S.R. Bannurmath, J

Bench : Division Bench

Advocate : Sri P.S. Rajagopal and R. Nagendra Naik, for the Appellant; Sri S.N. Aswathanarayana, High Court Government Advocate, for the Respondent

Judgement

Y. Bhaskar Rao, J.—These two writ appeals are filed to set aside the order of the learned Single Judge dated 3-2-1998. Since common questions of law arise for consideration in both appeals and hence they are disposed of by a common judgement.

2. The facts in Writ Petition No. 3258 of 1998 i.e., Writ Appeal No. 894 of 1998 is as follows.--

The appellant the owner of the transport vehicle bearing registration No. NL 05/A 3978. The gross vehicle weight is 31,360 kgs as per the registration certificate. The Secretary, STAM, Bangalore Central has granted National permit dated 6-3-1997 in respect of the above said vehicle. On 11-9-1997 the Inspector of Motor Vehicles, Office of the Regional Transport Officer, Haveri, checked the aforesaid vehicle. At the time of checking, the gross weight of vehicle was 28,810 kgs. The 2nd respondent initiated action against appellant for the offence of overloading the vehicle to the extent of 3,810 kgs. as the maximum laden weight fixed for the vehicle is only 25,000 kgs. The facts of the other case are also similar in nature and so it need not be reiterated.

3. Assailing the said action the appellant filed writ petition. After hearing both

sides the Single Judge dismissed the writ petition holding that Central Government issued Circular u/s 58 of the Motor Vehicles Act, 1988 (hereinafter called the "Act") and the weight carried by the appellant at the time of checking exceeded the weight fixed in the notification. Therefore as there was no merits in the writ petitions they were dismissed. Against that present appeal was filed.

4. The learned Counsel for the appellant contended that the gross weight and the laden weight of the vehicle has been mentioned in the registration certificate. The gross weight of the vehicle as per the registration certificate-31,360 kgs. Therefore, the appellant can carry the weight including upto 31,360 kgs. The appellant was carrying on according to invoices at the rate of 19,600/- which is much less than the weight mentioned in registration certificate, therefore no offence has been committed by the appellant. After the notification is issued by the Central Government no notice was issued to the appellants and no action is taken to change laden and gross weight mentioned in the registration certificate. Unless such action is taken the authorities cannot take action according to the notification issued by the Central Government. The Single Judge erred in appreciating the point involved in the case and erred in dismissing the writ petitions.

5. The Government Advocate contended that as per notification issued by the Central Government the weight is fixed, if any vehicle carrying the weight exceeding weight to be carried as mentioned in the notification dated 4-7-1996 issued by the Central Government amounts to violation of provisions of the Act and so action has to be taken according to law. There are no merit in the writ appeal and writ appeal is liable to be dismissed.

6. In view of the above contention the important question of law that arise for consideration is:

Whether the appellants have contravened the provisions of the Act and notification in carrying weights specified in the invoice of the vehicle?

7. The vehicle of the appellant in Writ Petition No. 894 of 1998 bearing the registration certificate shows gross weight is 31,360 kgs. Though the vehicle is registered at Nagaland, accepting the registration certificate the Bangalore Transport Authority has issued a National Permit in which laden weight is mentioned as 31,360 kgs. Thus, the appellant is entitled to carry gross weight of 31,360 kgs. At the time of checking gross weight of vehicle, it was found 28,810 kgs. Therefore. action was initiated stating therein the vehicle was overloaded as permitted load is 25,000 kgs. It is a fact that Central Government u/s 58 of the Act dated 4-7-1996 prescribing the maximum safe axle weight for transport vehicle has stated as follows:

"The maximum safe axle weight shall be restricted to the maximum safe axle weight, irrespective of the maximum weight permitted to be carried by the tyres, specified in the schedule".

The question is whether the appellant can carry goods weighing as mentioned in the registration certificate or in the notification. In case the appellants carry more weight than mentioned in the notification whether it amounts to an offence?

8. To decide the above question it is relevant to extract the relevant provisions of the Act and Rules.

Sub-section (2) of Section 115 places an embargo against a person driving or allowing to be driven a motor vehicle or trailer the laden weight of which exceeds the gross vehicle weight specified in the certificate of registration. There is a similar prohibition against using a vehicle or trailer the unladen weight of which exceeds the unladen weight specified in the certificate of registration, but we are not concerned with that. Suffice it to mention that the term "unladen weight" is defined in Section 2(48) as the weight of the vehicle or trailer including all equipment ordinarily used with the vehicle or trailer but excluding the weight of a driver or attendant. Section 79 of the Act empowers the Regional Transport Authority to grant goods carriage permit subject to the condition that the gross vehicle weight of any vehicle used shall not exceed a specified maximum. In the goods carriage permit issued in the proforma prescribed by the A.P. Motor Vehicles Rules known as Form PPC, the columns relating to unladen weight, gross vehicle weight and the permitted laden weight are to be found.

The expression "gross vehicle weight" was adopted by the 1988 Act in the place of the expression "laden weight" occurring in 1939 Act. "Gross vehicle weight" is defined in Section 2(15) as follows:

"Gross vehicle weight" means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle".

The term "gross vehicle weight" corresponds to "registered laden weight" as defined by Section 2(27) of the old Act.

How is the gross vehicle weight determined is the next question that needs to be considered. It is in this context Section 58 assumes importance. Section 58 which enacts special provisions in regard to transport vehicles, empowers Central Government by sub-section (1) "to specify, in relation to each make and model of a transport vehicle, the maximum gross vehicle weight of such vehicle and the maximum safe axle weight of each axle of such vehicle, by a notification in the Official Gazette, having regard to the number, nature and size of the tyres attached to the wheels of a transport vehicle (other than a motor cab) and its make and model and other relevant considerations". The words "gross vehicle weight" were substituted for the words "safe laden weight" by Act 59 of the 1994 which came into effect on 14-11-1994. Sub-section (2) enjoins on the registering authority to enter in the certificate of registration of the vehicle (a) unladen weight; (b) number, nature and size of the tyres; (c) the gross vehicle weight and the registered axle weight pertaining to the several axles thereof. Sub-section (3) of Section 58 contains a mandate that.--

"there shall not be entered in the certificate of registration of any such vehicle any gross vehicle weight or a registered axle weight of any of the axles different from that specified in the notification under sub-section (1) in relation to the make and model of such vehicle and to the number, nature and size of the tyres attached to its wheels".

Under the proviso, the Central Government is empowered to permit heavier weights than those specified in the notification under sub-section (1) in a particular locality and for vehicles of particular type. Subsections (4) and (5) provide for revision of entries in regard to registered weights in the light of any alteration made to the vehicle.

Section 46 of the Act envisages that a motor vehicle registered in accordance with the provisions of the Act in any State shall not be required to be registered elsewhere in India and certificate of registration issued or in force under this Act in respect of such vehicle shall be effective throughout India. Thus, once a registration certificate is issued mentioning the gross weight and laden weight of the vehicle the same is effective throughout India in any State.

Section 52 deals with the alteration in motor vehicles and obligate the owner of the transport vehicle to give notice to registering authority after alterations are made and obtain their approval for the alterations. However, such procedure is not required where the change happens in unladen weight of the vehicle consequent upon addition or removal of fittings or accessories, if such change does not exceed 2% of the weight entered in the registration certificate.

Section 58 empower the Central Government for issuing notifications.

Section 113 empower the State Government to prescribe the conditions for issue of permits for transport vehicles and also empower to prohibit or restrict the use of vehicles in any area or route. Further restrictions are provided, regarding, for driving of vehicle which are not relevant.

Section 194 of the Act provides punishment for whoever drives a motor vehicle or causes or allows a motor vehicle to be driven exceeding permissible weight.

9. By reading the above sections it is manifest that every owner of the vehicle has to obtain registration certificate after registering the vehicle in the concerned office. The owner is entitled to carry the weight mentioned in the registration certificate. Whenever he carries more weight than the weight mentioned in the registration certificate an action can be initiated u/s 194 of the Act. As per Section 58 of the Act the Central Government can issue notifications changing the gross and laden weights of the vehicle but wherever the gross and laden weight is changed by a notification issued u/s 58 of the Act, a notice has to be issued to the owner of the vehicle directing him to change the laden and gross weight of the vehicle coupled with the instructions issued by the Central Government. According to sub-sections (3) and (5) of Section 58 of the Act whenever Central Government issues notification changing gross and laden

weight of the vehicle the procedure prescribed under the Act has to be followed and such change has to be brought out. The learned Counsel for appellants nor the Government Advocate was able to present any rules or procedures prescribed governing the change of gross weight and laden weight of the vehicle. When once the gross and laden weight is fixed after taking into consideration make of the vehicle, axle and other required conditions as required under the Act and Rules considered and registration certificate is issued, the same is binding on the owner as well as authority until it is changed according to law. In the present case there is no dispute that no such change was made by the authorities. The Central Government issued a notification u/s 58 dated 4-7-1996 according to which gross and laden weight has changed and which came into force from 4-7-1996.

10. After the issue of notification u/s 58 by the Central Government the concerned authorities have to issue notices to the concerned parties, the authority has to change gross and laden weight in the registration certificate as per the notification by Central Government, Unless that is changed the owner of the vehicle cannot be faulted on the ground of gross and laden weight is changed and he was carrying more weight. In the present case no such procedure is followed and no such action is taken. Therefore, the impugned notice issued against appellants are arbitrary and illegal and are liable to be quashed.

11. The learned Government Advocate relied on the judgment of Andhra Pradesh High Court in V.T. Ramalingam and Others v Transport Commissioner, Andhra Pradesh, Hyderabad and Others. In that judgment learned Single Judge disposed of the writ petition stating therein the same is covered by judgment in C.H. Nageshwar Rao v Secretary, State Transport Authority .

12. In the above judgment learned Single Judge of the Andhra Pradesh High Court relied on an earlier judgment and disposed of the same. What are the facts in the earlier judgment and what is the principle laid down in that judgment is not available as the copy of it is not placed before us.

13. It is relevant to refer that the learned Single Judge of this Court in W.P. Nos. 16593 and 17006 and 17007 of 1996, decided on 15-7-1996 held that a notice is required before the laden and gross weight is changed and to take action according to law. Unless the notice is issued owners of the vehicle will not be aware of the facts.

14. We affirm the principle laid down in the above judgment.

15. A reading of the provisions of the Act referred supra makes it clear, it is open to the Central Government to issue notification revising the gross weight and laden weight and safe laden weight after substitution of the same by the Act 54 of 1994 which came into effect on 14-11-1994. Whenever such revision is made the required procedure laid down u/s 58(3) and (5) has to be followed, so that the necessary change may be made in the registration certificates of the concerned vehicles. Then only the action can be taken for carrying weight

exceeding prescribed weight. Without making such entries in the registration certificates no action can be taken because until such change is made the owner of the vehicle is entitled to carry the weight mentioned in the registration certificate.

16. In the present case, no such notice is given to the appellants either by the authorities at Nagaland or authorities at Bangalore and no revision of laden weight and gross weight is entered in the registration certificate. Therefore, the action of the respondents initiating action against appellants for overloading of vehicle is arbitrary and liable to be declared as illegal.

17. Accordingly, writ appeals are allowed.

18. However, this will not bar authorities to take action to make a revision of the gross and laden weight or any other entries required in the registration certificate and take action according to law.