

(2015) 02 KAR CK 0420

In the Karnataka High Court

Case No : Writ Petition No. 112584 of 2014 (MV)

Neelappagouda Virupaxgouda Patil

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Motor Vehicles Act, 1988 — Section 19, 19(1)(c), 19(3)
Penal Code, 1860 (IPC) — Section 238, 279, 304A

Citation : (2015) 2 AKR 387

Hon'ble Judges : A.N. Venugopal Gowda, J

Bench : Single Bench

Advocate : Vaishali K. Kaladagi, for the Appellant; Vidyavati, AGA, Advocates for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopal Gowda, J.—Petitioner is working as a driver in KSRTC. On 25.08.2014, at about 6.30 p.m., while he was on duty and proceeding from B.C. Road to Mangaluru, on N.H. No. 75, driving a bus bearing No. KA-19F/2461, near Kadri Rice Mill, an accident occurred and one Gangadharappa, sustained injury. A First Information Report, under Ss. 279 and 238 of IPC, was registered in Crime No. 304/2014, by the Mangaluru Rural Police. Later, it was converted to S. 304A of IPC. On 26.08.2014, Traffic Police Inspector (East), Kadri, Mangaluru, having submitted a report, Assistant Commissioner of Police, Mangaluru City, sent a communication dated 18.09.2014, to the Assistant Regional Transport Officer, Bailhongal i.e. the 3rd respondent, to suspend the driving licence of the petitioner. The 3rd respondent having served a show cause notice dated 25.09.2014 vide Annexure-A, the petitioner has appeared and stated that he drove the bus with care and caution and since it was raining, on approaching the spot of accident, he saw a bus proceeding in front of him and at the same time, a truck was overtaking the bus and as such, he controlled the speed of his bus further more and that the victim, all of a sudden, came on the road, without

heeding to the horn given and in that process, the bus hit the pedestrian, who fell down by the side of the road and that he immediately stopped the vehicle and took the victim to a hospital and intimated the police regarding the occurrence of the accident. He has further stated that he was innocent of the allegation levelled and that there was no negligence on his part in driving the bus and since the offence as alleged by the police is yet to be investigated, charge-sheet filed and proved before a Court of law, there cannot be suspension of his driving licence. Despite the said statement and there being no other evidence, the 3rd respondent, in exercise of the power under S. 19(1)(c) of the Motor Vehicles Act, 1988 (for short "the Act"), passed an order dated 07.10.2014, vide Annexure-B and disqualified the petitioner from holding the driving licence, for a period of four months. The relevant portion of the said order reads thus:

Feeling aggrieved, petitioner filed an appeal, under S. 19(3) of the Act read with Rule 4 of Karnataka Motor Vehicles Rules, 1989, before the 2nd respondent. The Appellate Authority having narrated the facts and noticed the contentions, without application of mind to the contentions raised and without assigning any reason in support of the conclusion, dismissed the appeal, on 18.11.2014 vide order as at Annexure - D. Relevant portion reads as follows:

Aggrieved, this writ petition was filed, to quash the orders, as at Annexures-B and D.

2. Smt. Vaishali K. Kaladagi, learned advocate, argued that the case of the petitioner was not properly considered by respondent No. 3 and substantial questions raised in the appeal were not examined by respondent No. 2 and that the respondents have committed manifest errors in passing the impugned orders, which are non speaking orders. She submitted that the impugned orders being wholly arbitrary and illegal, interference is called for.

3. Per contra, Smt. K. Vidyavathi, learned AGA, submitted that there being no denial of the occurrence of the accident on 25.08.2014 and the sustaining of fatal injury by a pedestrian, who succumbed later, the petitioner having used the vehicle in the commission of a cognizable offence, the impugned orders deserve to be affirmed. She made submissions in support of the impugned orders and sought dismissal of the writ petition.

4. Having bestowed my anxious consideration to the rival contentions and perused the record, in my view, there is merit in the submission made by Smt. Vaishali K. Kaladagi, that the Appellate Authority has not examined the case in accordance with law. The impugned order as at Annexure-D is bald and cryptic. The case of the petitioner has neither been considered nor any finding recorded by the Appellate Authority.

5. The 3rd respondent having issued show-cause notice and the petitioner having appeared before him and stated his case, has a duty to arrive at a finding by taking into consideration the materials on record. The 3rd respondent by merely referring to a communication dated 18.09.2014 of the Assistant Commissioner of

Police, Mangaluru, has concluded that the offence being grievous in nature, falling under S. 19(1)(c) of the Act, has passed the order as at Annexure-B. Right of appeal, as per sub-section (3) of S. 19 having been provided, when availed by an aggrieved person, should be considered and decided in the manner therein.

6. Relevant portion of S. 19 of the Act reads as follows:

"19. Power of licensing authority to disqualify from holding a driving licence or revoke such licence-- (1) If a licensing authority is satisfied, after giving the holder of a driving licence an opportunity of being heard, that he--

(a) xxxxx

(b) xxxxx

(c) is using or has used a motor vehicle in the commission of a cognizable offence; or

it may, for reasons to be recorded in writing, make an order--

(i) disqualifying that person for a specified period for holding or obtaining any driving licence to drive all or any classes or descriptions of vehicles specified in the licence; or

(ii) revoke any such licence.

(2)xxxxx

(3) Any person aggrieved by an order made by a licensing authority under sub-section (1) may, within thirty days of the receipt of the order, appeal to the prescribed authority, and such appellate authority shall give notice to the licensing authority and hear either party if so required by that party and may pass such order as it thinks fit and an order passed by any such appellate authority shall be final."

7. A perusal of sub-section (1)(c) of S. 19 shows that, after giving the holder of a driving licence an opportunity of being heard, if a licensing authority is satisfied that the holder of the driving licence has used the motor vehicle in the commission of a cognizable offence, for the reasons to be recorded in writing, make an order, disqualifying that person for a specified period, from holding or obtaining any driving licence to drive all or any classes or descriptions of vehicles specified in the licence or revoke any such licence.

8. Sub-section (3) of S. 19 provides that any aggrieved person, by an order made by a licensing authority under sub-section (1), can prefer an appeal, within thirty days and the appellate authority has the obligation to give notice to the licensing authority, hear the appellant and pass order. Since the provision casts a duty to hear the party and pass order, there is requirement to record reasons.

9. Sitting in appeal against an order passed in exercise of a statutory power even by an administrative authority is a quasi judicial function and as such the Appellate Authority is bound to consider the appeal memorandum and the submissions made during the course of hearing and record reasons either to accept the appeal or reject the same.

10. In *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, AIR 1976 SC 1785 : (1976) 2 SCC 981 : (1976) SCR 489 Supp , Apex Court has held as follows:

"6. x x x it is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. That has been laid down by a long line of decisions of this Court ending with *N.M. Desai v. Testeels Ltd.* But, unfortunately, the Assistant Collector did not choose to give any reasons in support of the order made by him confirming the demand for differential duty. This was in plain disregard of the requirement of law. The Collector in revision did give some sort of reason but it was hardly satisfactory. He did not deal in his order with the arguments advanced by the appellants in their representation dated December 8, 1961 which were repeated in the subsequent representation dated June 4, 1965. It is not suggested that the Collector should have made an elaborate order discussing the arguments of the appellants in the manner of a Court of law. But the order of the Collector could have been a little more explicit and articulate so as to lend assurance that the case of the appellants had been properly considered by him. If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of *audi alteram partem*, a basic principle of natural justice which must inform every quasi judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. x x x."

11. Apex Court, in *Rani Laxmibai Kshetriya Vs. Chand Behari Kapoor and Others*, (1998) 7 AD 121 : AIR 1998 SC 3104 : (1998) 6 JT 355 : (1998) LabIC 3507 : (1998) 5 SCALE 226 : (1998) 7 SCC 469 : (1998) SCC(L&S) 1824 : (1998) 1 SCR 524 Supp : (1998) AIRSCW 3016 : (1998) 7 Supreme 234 , while relying upon *S.N. Mukherjee Vs. Union of India*, AIR 1990 SC 1984 : (1990) CriLJ 2148(1) : (1990) 3 JT 630 : (1990) 4 SCC 594 : (1990) 1 SCR 44 Supp : (1991) 1 SLJ 1 , has laid down thus:

"8. The purpose of disclosure of reasons, as held by a Constitution Bench of this

Court in S.N. Mukherjee Vs. Union of India, AIR 1990 SC 1984 : (1990) CriLJ 2148(1) : (1990) 3 JT 630 : (1990) 4 SCC 594 : (1990) 1 SCR 44 Supp : (1991) 1 SLJ 1 , is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes the chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation."

12. A Constitution Bench of the Apex Court has laid down, in Krishna Swami Vs. Union of India and another, AIR 1993 SC 1407 : (1992) 5 JT 92 : (1992) 1 SCALE 484 : (1992) 4 SCC 605 : (1992) 1 SCR 53 Supp , that if a statutory or public authority/functionary does not record the reasons, its decision would be rendered arbitrary, unfair, unjust and violating Articles 14 and 21 of the Constitution. The relevant portion reads thus:

"Undoubtedly, in a parliamentary democracy governed by rule of law, any action, decision or order of any statutory/public authority/functionary must be founded upon reasons stated in the order or staring from the record. Reasons are the links between the material, the foundation for their erection and the actual conclusions. They would also demonstrate how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached. Lest it would be arbitrary, unfair and unjust, violating Article 14 or unfair procedure offending Article 21."

13. In Workmen of Meenakshi Mills Ltd. and Others Vs. Meenakshi Mills Ltd. and Another, AIR 1994 SC 2696 : (1992) 65 FLR 1 : (1992) 3 JT 446 : (1992) 2 LLJ 294 : (1992) 1 SCALE 1248 : (1992) 3 SCC 336 : (1992) 62 TAXMAN 560 , while considering the principles of natural justice, it has been observed that it is the duty to give reasons and to pass a speaking order; that excludes arbitrariness in action as the same is necessary to exclude arbitrariness. It has been held therein as follows:

"We have already dealt with the nature of the power that is exercised by the appropriate Government or the authority while refusing or granting permission under sub-section (2) and have found that the said power is not purely administrative in character but partakes of exercise of a function which is judicial in nature. The exercise of the said power envisages passing of a speaking order on an objective consideration of relevant facts after affording an opportunity to the concerned parties. Principles or guidelines are insisted on with a view to control the exercise of discretion conferred by the statute. There is need for such principles or guidelines when the discretionary power is purely administrative in character to be exercised on the subjective opinion of the authority. The same is, however, not true when the power is required to be exercised on objective considerations by a speaking order after affording the parties an opportunity to put forward their respective points of view.

XXXXX

We are also unable to agree with the submission that the requirement of passing a speaking order containing reasons as laid down in sub-section (2) of Section 25-N does not provide sufficient safeguard against arbitrary action. In *S.N. Mukherjee Vs. Union of India*, AIR 1990 SC 1984 : (1990) CriLJ 2148(1) : (1990) 3 JT 630 : (1990) 4 SCC 594 : (1990) 1 SCR 44 Supp : (1991) 1 SLJ 1 , it has been held that irrespective of the fact whether the decision is subject to appeal, revision or judicial review, the recording of reasons by an administrative authority by itself serves a salutary purpose, viz., "it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making."

14. In *Divl. Forest Officer, Kothagudem and Others Vs. Madhusudhan Rao*, (2008) 2 CLT 866 : (2008) 117 FLR 578 : (2008) 2 JT 253 : (2008) 2 LLJ 671 : (2008) 2 SCALE 322 : (2008) 3 SCC 469 : (2008) 1 SCC(L&S) 788 : (2008) 3 SLJ 125 : (2008) 1 UJ 307 : (2008) AIRSCW 1365 : (2008) AIRSCW 4084 : (2008) 4 Supreme 547 : (2008) 1 Supreme 617 , Apex Court has laid down thus:

"20. It is no doubt also true that an appellate or revisional authority is not required to give detailed reasons for agreeing and confirming an order passed by the lower forum but, in our view, in the interests of justice, the delinquent officer is entitled to know at least the mind of the appellate or revisional authority in dismissing his appeal and/or revision. It is true that no detailed reasons are required to be given, but some brief reasons should be indicated even in an order affirming the views of the lower forum."

15. In *Manohar Anchule Vs. State of Maharashtra and Another*, (2013) 2 ABR 272 : (2013) 2 AD 54 : AIR 2013 SC 681 : (2013) 1 JT 175 : (2013) 1 RCR(Civil) 918 : (2012) 12 SCALE 601 : (2013) 120 SCL 179 : (2013) AIRSCW 750 , it has been laid down that in the context of State Information Commission, it has to hear the parties, apply its mind and record the reasons as they are the basic elements of natural justice. Apex Court has laid down thus:

"17. The State Information Commission is performing adjudicatory functions where two parties raise their respective issues to which the State Information Commission is expected to apply its mind and pass an order directing disclosure of the information asked for or declining the same. Either way, it affects the rights of the parties who have raised rival contentions before the Commission. If there were no rival contentions, the matter would rest at the level of the designated Public Information Officer or immediately thereafter. It comes to the State Information Commission only at the appellate stage when rights and contentions require adjudication. The adjudicatory process essentially has to be in consonance with the principles of natural justice, including the doctrine of audi alteram partem. Hearing the parties, application of mind and recording of reasoned decision are the basic elements of natural justice. It is not expected of the Commission to breach any of these principles, particularly when its orders are open to judicial review. Much less to Tribunals or such Commissions, the

courts have even made compliance with the principle of rule of natural justice obligatory in the class of administrative matters as well."

In the instant case, the material part of the order passed by the Appellate Authority is reproduced in para 2 (supra). It is apparent that there is no consideration of the case, as has been stated in the appeal memorandum, except narration of the basic facts. The contentions, both factual and legal, has not been considered and no reasons have been assigned for not accepting the same. Since, the provision under sub-section (3) of Section 19 of the Act, provides to any person aggrieved by an order made by the licensing authority under sub-section (1), the right to prefer an appeal to the prescribed authority and the provision also provides for hearing either party, if so required by the appellant and pass order, there is a need to follow the principles of natural justice and pass reasoned order. The order passed by the Appellate Authority, being bald and cryptic and virtually a non-reasoned order, being contrary to the settled principles, is liable to be quashed.

In the result, writ petition is allowed and the order passed by the Appellate Authority vide Annexure-D is quashed. The appeal having not been decided, in accordance with law, stands remitted to the 2nd respondent for consideration and decision afresh, by keeping in view the observations made supra. Till the appeal is decided, the order passed by the licensing authority - 3rd respondent, as at Annexure-B, impugned in the appeal, shall stand stayed.

The appellant/petitioner and the 3rd respondent are directed to appear before the 2nd respondent, on 16.03.2015 and receive further orders. The appeal be decided with expedition and before 30.04.2015.

No costs.

Consequently, I.A. No. 1/2015, is disposed of accordingly.