

(2013) 12 GUJ CK 0101
In the Gujarat High Court

Case No : Special Civil Application No. 3054 of 1996

Parshwanath Travel Agency		APPELLANT
	Vs	
Transport Commissioner and Others		RESPONDENT

Date of Decision : 20-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0101

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : B.R. Gupta, for the Appellant; V.S. Pathak, Ld. AGP for the Respondents No. 1-2 and Nanavaty Advocates, Advocate for the Respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Brahmbhatt, J.—This matter was called out twice, none was present on both the occasions for the petitioner. Learned AGP is present. Office note dated 12/12/2013 indicate that as per the order dated 30/7/1997 passed by this Court (Coram: K.R. Vyas, J {as he then was}], aforesaid matter was required to be placed before the Division Bench with LPA No. 293 of 1994. However the matter was not listed and for that reason office could not obtain order of placement. LPA No. 293 of 1994 is disposed of by this Court vide order dated 1/5/2009. This Court is of the view that, in that view of the matter, looking to the challenge and the decision cited in the decision of the LPA, this matter is required to be disposed of.

2. Petitioner, a firm engaged in traveling business has approached this Court by way of this petition with following prayers:

(A) to allow this petition and to issue appropriate writ, direction and order holding and declaring that the respondent authorities have no legal right or power or authority to either seize or detain the petitioner's vehicles shown at Annexure-"A" to this petition was to effect forcible recovery of any composition

amount from the petitioner through its agents and drivers in purported exercise of power u/s 207 of the Motor Vehicles Act, 1988 on the allegation of collection of individual fare from the passengers and/or allied breach of conditions of permit;

(B) Pending admission final hearing and disposal of this petition, the Hon''ble Court be pleased;

(i) to direct the respondents that in case the petitioner commits any default under Bombay Motor Vehicles Act in respect of any vehicle at Annexure- "A" and are intended and required to be seized, then, if the vehicle is having passengers, then they shall allow the vehicles in reach the destination of passengers and then seize the same; and

(ii) to direct the respondents not to seize/detain the vehicles at annexure-"A" & compounding the driver/agent for the alleged breach of the Contractor/Agent for having collected individual fares from the passengers.

(C) to grant any other and further relief or reliefs as may be deemed just and proper in the premises;

(D) to award the costs of the petition from the respondents.

3. On 30/7/1997 this Court passed the following order:

As the Division Bench is seized of the matter for consideration of the question of seizure of transport vehicles by RTO u/s 207 of the Motor Vehicles Act, 1988 in a group of Letters Patent Appeals, one being LPA No. 293/94, and as the present group of petitions also involves the question of seizure of transport vehicles by the police u/s 130 of the Motor Vehicles Act, I feel that this group of petitions is also required to be referred to the Division Bench. Hence, the office is directed to place this group of petitions before the appropriate Division Bench after obtaining permission from the Hon''ble Acting Chief Justice.

4. Division Bench order dated 1/5/2009 is therefore required to be reproduced which was passed in LPA No. 293 of 1994 with companion matters. When the matters were called out for hearing on 24.4.2009, none of the learned advocates for the appellants was present. However, to give last opportunity, the hearing was adjourned to 28.4.2009. Thereafter the matters are listed again today. Today also even in the second round none of the learned advocates for the appellants is present. Ms. Jirga Jhaveri, learned AGP appears for the respondents in all the matters.

2. These appeals challenge the common judgment and order dated 30.6.1994 of the learned Single Judge in various writ petitions. In the said petitions, the appellants herein challenged the action of the respondent-authorities of detaining and seizing motor vehicles u/s 129A of the Motor Vehicles Act, 1939 (hereinafter referred to as "the old Act") and u/s 207 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the new Act"). The appellants' case was that such detention and seizure orders were illegal as the appellants had All India permits

as contract carriages, but the respondent-authorities were proceeding on the basis that the vehicles were not used as contract carriages, but as stage carriages. After considering the relevant provisions of the old Act as well as the new Act and also after considering several decisions of the Apex Court including the decision in B.A. Jayaram and Others Vs. Union of India (UOI) and Others, and The Transport Commissioner, Andhra Pradesh, Hyderabad and Another Vs. S. Sardar ali, Bus Owner, Hyderabad and Others, the learned Single Judge dismissed the petitions as no merit was found in any of the arguments of the learned counsel for the petitioners.

3. At the hearing of these appeals, Ms. Jirga Jhaveri, learned AGP has invited our attention to the decision of the Apex Court in Nirmala Jagdishchandra Kabra Vs. The Transport Commissioner and others, and a subsequent decision of another Division Bench of this Court rendered on 12.4.2001.

4. In Nirmala Jagdishchandra Kabra's case (supra), the writ petition with a prayer similar to the one made in the group of petitions giving rise to these appeals was dismissed by a learned Single Judge of this Court and the appeal was dismissed by the Division Bench. The Apex Court dismissed the SLP holding that in the circumstances the vehicle was used as a stage carriage and the authority had rightly detained the vehicle for contravening the conditions of the contract carriage permit. It was held that the statutory power given to the authorised officer u/s 207 of the Motor Vehicles Act is to ensure compliance of the provisions of the Act and, therefore, the mandamus sought for cannot be issued. The Apex Court was specifically pleased to negative the contention of the petitioners in the following terms:--

It is true that if the holder of the vehicle obtains a contract carriage, the owner may carry a passenger or passengers for hire or reward on contract, whether express or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum. In other words, the very permit which grants the contract for carriage of the passengers should contain the names of the passengers to carry from one destination to another destination without picking up or setting down en route for hire or reward but when the holder of a permit is another and permits them to carry the passengers and makes the contract dehors those mentioned in the list of passengers enclosed to the permit as contract carriage and takes the passengers from one destination to another, even without picking up or setting down en route, the necessary consequence would be that the vehicle has been or is being used as a stage carriage but not a contract carriage. Under those circumstances, obviously, the authority had rightly detained the vehicle for the contravention of the conditions of the permit.

The aforesaid decision came to be followed by another Division Bench of this Court in Letter Patent Appeal No. 243 of 1993, which decision was rendered on 12.4.2001.

5. Having gone through the judgment of the learned Single Judge and the aforesaid decision of the Apex Court we are satisfied that the controversy sought to be raised in these appeals is squarely covered by the aforesaid decision of the Apex Court against the appellants and, therefore, these appeals deserve to be dismissed. Accordingly, the Letters Patent Appeals are dismissed.

In view of these observations of the Division Bench and the judgment of the Apex Court in case of *Nirmala Jagdishchandra Kabra* (supra), this matter is required to be dismissed and is accordingly dismissed. Rule discharged. Interim relief, if any granted earlier, shall stand vacated. However, there shall be no order as to costs.