

(2024) 01 KAR CK 0011
In the Karnataka High Court
Case No : Writ Petition No. 44 Of 2024 (MV)

Raghavendra G S/O Gopinath

APPELLANT

Vs

Regional Transport Officer Bengaluru South Jayanagar
Shopping Complex Bengaluru-560011 & Others

RESPONDENT

Date of Decision : 04-01-2024

Acts Referred:

Motor Vehicles [Amendment] Act, 2019 — Section 192(A)(1), 192(B)(3)
Motor Vehicles Act, 1988 — Section 66(1), 86(1), 192A, 192B

Citation : (2024) 01 KAR CK 0011

Hon'ble Judges : S.R. Krishna Kumar, J

Bench : Single Bench

Advocate : B R Sundara Raja Gupta, Vikram Huilgol, Shamanth Naik

Final Decision : Allowed

Judgement

S.R.Krishna Kumar, J

1. In this petition, petitioner seeks the following reliefs:

"i) Declare the seizure and detention of the vehicle KL-23-0621 HPV Stage Carriage as illegal and without authority of law;

ii) Quash the order dated 18.12.2023 insofar as it relates to item No.4 of rejecting the prayer for release of the vehicle in question marked as Annexure L by issue of a writ of certiorari or any other appropriate order or direction.

iii) Grant such other reliefs as this Hon'ble Court deems just and necessary in the circumstances of the case, in the interest of justice and equity."

2. Heard learned counsel for the petitioner and learned AAG and learned HCGP for the respondent and perused the material on record.

3. A perusal of the material on record including the impugned order will indicate that petitioner approached this Court in W.P.No.27339/2023 which was disposed of by this Court vide order dated 13.12.2023, which reads as under:

"The petitioner, who is the owner of stage carriage vehicle bearing No.KL-23-0621, has impugned the first respondent's order/notice dated 29.11.2023 [Annexure-H] seeking declaration that the seizure of the vehicle is illegal and without authority of law. On the previous hearing date, Sri. B. R. Sundara Raja Gupta, the learned counsel for the petitioner, had submitted that the Show Cause Notice dated 28.11.2023 [Annexure-G] is issued to the petitioner alleging that he has been permitted the vehicle to ply between Mysore Circle [Bengaluru] and Ramanagara though the permit was to operate between Challakere and Chitradurga and Challakere to Bangalore and back and that the chassis number of this vehicle is punched and therefore not genuine, but on the next date [on 29.11.2023], the impugned notice is issued calling upon the petitioner to pay penalty and tax under Section 192(A)(1) and 192(B)(3) of the Motor Vehicles [Amendment] Act, 2019 [for short, 'the MV Act'].

2. In the light of these submissions, this Court had called upon the first respondent - the Regional Transport Officer - to verify and file a report on the circumstances in which the proceedings were completed within a day. Presently, Sri. Shamanth Naik, the learned High Court Government Pleader places on record the report by the first respondent - the Regional Transport Officer, Bengaluru [South]. It is seen that the said Officer has stated that he has withdrawn the order dated 29.11.2023 because it is the outcome of an inadvertent error [a copy of this order dated 12.12.2023 is also enclosed to the report]. The petition must be disposed of in the light of this order to enable enquiry for continuation of the proceedings pursuant to the Show Cause Notice dated 28.11.2023 .

3. At this stage, Sri. B.R.Sundara Raja Gupta submits that there is no occasion for the respondents to detain the vehicle, and this Court must direct the respondents to forthwith release the vehicle as against the petitioner offering the vehicle as security subject to the outcome of the consideration. In support of this submission, Sri. B.R.Sundara Raja Gupta submits that;

[a] the petitioner has purchased the vehicle on 16.07.2015, and this vehicle is inspected for fitness certification every year thereafter, and the registration and the fitness certificate/s mention the chassis number as found.

[b] the last inspection is in the month of March 2023 for renewal of fitness which is now granted to be in force until April 2024.

4. The request for immediate release of the vehicle is considered in the light of these submissions and the respondents' definite assertion that at the time of inspection they have found that the chassis number is tampered with. This assertion that the chassis number is tampered must necessarily be considered in the light of the ground placed before this Court, and this Court is of the considered view that in the peculiarities of the case, which is emphasized by the circumstances referred to above, there must be a direction to the respondents pending consideration of the reply filed in response to the Show Cause Notice

dated 28.11.2023, to consider the petitioner's request for immediate release of vehicle by a reasoned order within a period of one [1] week from today.

In the light of the afore, the petition stands disposed of accordingly."

4. Subsequently, petitioner having approached respondent No.1 and having filed an affidavit dated 14.12.2023, respondent No.1 proceeded to pass the impugned order. The operative portion of which reads as under:

"R.NO.3883/DSA/TR/RTO South - 2022-23 Date: 18.12.2023

For the reasons stated in the above paras, I B.M. Suresh, The Registering Authority / Regional Transport Officer, Bengaluru (South) do hereby pass the following order:-

1. The offence u/s 192B of the Motor Vehicles Act 1988 as ordered by this authority has to be dropped as the ingredients of the said Section is not attracted.

2. The owner of the vehicle is at liberty to pay a sum of Rs.5000/- for the violation of Section 66(1) r/w 192A of Motor Vehicles Act 1988 by way of composition of offence of violation of the permit or using same in between Bangalore (Mysore Circle) Ramanagar violating the permit route Challakere to Chitradurga and back Challakere to Bangalore and back within 7 days of communication of this order, if he is willing to compound the said offences, failing which, the charge sheet shall be filed before the competent Court, after expiry.I

3. Forward the copy of the Check report to RTO / Secretary R.T.A. Chitradurga for taking action under Section 86(1) of the Motor Vehicle Act, simultaneously on taking prosecution action by this Authority.

4. The prayer of the owner of the Vehicle to release the Vehicle to his custody is hereby rejected as the vehicle in question containing the tampered chassis number has to be verified through police investigation for which the physical presence of the vehicle in question required to be produced before the police.

5. The copy of this order also be communicated to the High Court, Government Pleader for information and necessary action."

5. As is clear from the impugned order, respondent No.1 has come to the categorical conclusion that no offence under Section 192B of the Motor Vehicles Act, 1988 had been made out as against the petitioner and since ingredients of the said provision were not attracted in relation to mismatch of Chassis number of the said vehicle, the said proceedings are to be dropped. However, despite having come to the conclusion that Section 192B of the MV Act was not attracted to the subject vehicle, the respondent No.1 has erroneously proceeded to reject the request of the petitioner to release vehicle on the ground that the chassis number is tampered and requires vehicle verification, which is clearly contrary / contradictory to the findings recorded in the impugned order especially operative order portion No.1 referred to supra. Under these circumstances, I am of the considered opinion that the impugned order passed by respondent No.1 is illegal,

arbitrary and the same deserves to be set aside.

6. During pendency of the present petition, it was brought to my notice that vehicle is presently in the custody and possession of respondent No.2 pursuant to FIR being registered in Crime No.632/2023 and it is not possible for respondent No.1 to release the vehicle and hand over the same to the petitioner. Under these circumstances, this Court directed the petitioner to implead respondent No.2 for the purpose of issuing directions to respondent No.2 to release the vehicle pursuant to the present order and accordingly, respondent No.2 has been impleaded as additional respondent No.2 to the petition.

7. In view of the findings recorded by me above that the impugned order at Annexure – L dated 18.12.2023 is to be quashed, it is just, expedient and proper to issue consequential directions to respondent No.2 to release the subject vehicle in favour of the petitioner as expeditiously as possible and at any rate on or before 08.01.2024.

8. In the result, I pass the following:

ORDER

(i) Petition is hereby allowed.

(ii) The impugned order dated 18.12.2023 at Annexure – L is hereby set aside.

(iii) Respondent No.2 – Police Sub-Inspector, Kengeri Police Station, Bengaluru Urban, is directed to release the subject vehicle bearing registration No.KL-23-0621 in favour of the petitioner as expeditiously as possible and at any rate on or before 08.01.2024.

(iv) Liberty is reserved in favour of the respondents to take / initiate action against the petitioner, in accordance with law.

(v) It is made clear that this order is passed in the special / peculiar facts and circumstances of the instant case and the same shall not be treated as a precedent and shall not carry / have any precedential value for any purpose whatsoever.