
(1994) 12 KL CK 0010
In the High Court Of Kerala

Raveendran

APPELLANT

Vs

R.T.O. Kannur

RESPONDENT

Date of Decision : 22-12-1994

Acts Referred:

Motor Vehicles Act, 1988 — Section 2, 47, 66, 77, 82

Citation : (1995) 1 ACC 300 : (1995) 1 ILR (Ker) 743

Hon'ble Judges : N. Dhinakar, J;K.T. Thomas, J

Bench : Division Bench

Judgement

K.T. Thomas, J.—Appellant claims to be the owner of a goods vehicle (lorry). He applied for a goods permit before the Regional Transport Authority (for short "the RTA") concerned, but the said authority did not grant the permit. He, therefore, filed the Original Petition for a writ of mandamus directing the RTA to grant the permit. Learned Single Judge before whom the Original Petition came up, dismissed it on the ground that as the appellant is not the registered owner of the vehicle he is not entitled to get a permit. This appeal is against the said judgment.

2. According to the appellant, the lorry (KRD 457) belonged to one C.P.K. Balan (who is the registered owner of the vehicle even now) who transferred to the vehicle to another person and from the latter it was purchased by the appellant. The first owner C.P.K. Balan entered into a Hire Purchase Agreement with a financier. The hire purchase liability was taken over by the purchaser of the vehicle and according to the appellant he had cleared the said liability and insisted on the financier to issue a clearance certificate. A goods carriage permit was earlier issued by the RTA in respect of the vehicle, but its period expired on 19.8.1993. Appellant then made Ext. P3 application for a goods carriage permit. But the second respondent took a stand that the permit could be issued only after transfer of registration of the vehicle in the name of the appellant. Due to some snage, the transfer of registration has not taken place till now. Original Petition was, therefore, field by the appellant for directing the RTC to grant the

permit.

3. Appellant contended that u/s 66(1) of the Motor Vehicles Act, 1988 (for short "the Act") it is not necessary that the applicant for a permit should necessarily be the registered owner of the vehicle. Anyone in lawful possession of the vehicle, even if he is not a registered owner, can be the holder of a permit, according to the learned Counsel. Appellant relied on the decision of a Single Judge of this Court reported in *Dakshayani v. State Transport Appellate Tribunal* 1990 (2) KLT 885 to support his claim.

4. Jagannadha Raju, J., who heard the Original Petition as a Single Judge, did not agree with the view of *Dakshayani*'s case. His Lordship dismissed the Original Petition by dissenting from the reasoning adopted in *Dakshayani*'s case observed thus:

In my humble opinion, by process of interpretation, the learned Judge was obliterating the effect of the legislative change when the word "owner" is defined in a particular manner by the new statute and when that definition is totally different from the earlier definition u/s 2(19) of the old Motor Vehicles Act.... In my considered opinion, the process of reasoning adopted by the learned Judge and his conclusion are not proper. The statement of the law is not correct it does violence to the language of the new definition.

5. Counsel for the appellant has rightly contended that the approach made by the learned Single Judge in discarding the reasoning of another Single Judge, without referring the case to a Division Bench, was contrary to the well established norms and conventions for the comity of Judges. While we refrain from making any observation regarding the strong words employed and used by Jagannadha Raju, J. in criticising the judgment of the Single Judge in *Dakshayani*'s case (cited (supra)) we are of the considered opinion that if the learned Judge had doubted the correctness of the interpretation of Section 66(1) of the Act made in *Dakshayani*'s case, the question should have been referred to a Division Bench. Salmond in his celebrated treatise on "Jurisprudence" has exhorted that the said norm should be followed, (pages 147 and 158 of the Twelfth Edition. If two Single Judges decided differently on the same question of law its effect would be to infuse confusion. In *Shridhar Vs. Nagar Palika, Jaunpur and Others*, Supreme Court pointed out that "it is well-settled principle of judicial discipline as has been reiterated in a number of decisions of this Court that if a Single Judge disagrees with the decision of another Single Judge it is proper to refer the matter to a larger Bench for an authoritative decision". In the latest decisions the Supreme Court has again reminded the High Courts of the need to follow the said norm of judicial propriety. "If the Courts express different opinions on the identical question of law while exercising the same jurisdiction, then instead of achieving harmony in the judicial system, it will lead to judicial anarchy". Vide *Hari Singh Vs. State of Haryana*, and *State of West Bengal Vs. Falguni Dutta and Another*, way back in 1965 onwards the Supreme Court has been striking this note of caution. Gajendragadkar, C.J. felt in *Shri Bhagwan and*

Another Vs. Ram Chand and Another, thus:

It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether a Division Bench or of a Single Judge, need to be re-considered, he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question.

Learned Chief Justice after making the aforesaid observations thought it necessary to remind the judicial word like thus: "That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety. It is to be regretted that the learned Single Judge departed from this traditional way in the present case and chose to examine the question himself." We too feel that the learned Single Judge has departed from the aforesaid traditional way in the present case also despite reminders made by the Supreme Court time and again.

6. But here the position seems to be still worse since the dictum laid down by the Single Judge in Dakshayani's case was affirmed by a Division Bench of this Court when the very decision was challenged in W.A. No. 723/90. The Division Bench (consisting of Malimath, C.J.) and Viswanatha Iyer, J) has observed thus: "The learned Single Judge has rightly taken the view that for the grant of a temporary permit u/s 47 of the Motor Vehicles Act it is not necessary that the applicant must be a registered owner of the vehicle". The Division Bench relied on the decision in K.M. Viswanatha Pillai Vs. K.M. Shanmugam Pillai, Malimath, C.J. speaking for the Bench has further observed that "there is now a change in the definition of "owner" under the new Act to mean that he should be registered owner but that makes no difference so far as the principle enunciated by the Supreme Court in Viswanatha's case.

7. We are certain that the fact of Division Bench affirming the Single Judge decision in Dakshayani's case would never have been brought to the notice of Jagannadha Raju, J.

8. Now that the learned Single Judge has taken a different interpretation we have to see whether the view expressed in Dakshayani's case and affirmed by the Division Bench needs reconsideration.

9. Supreme Court has laid down the legal position under the corresponding provisions of the old Motor Vehicles Act, 1939 that the provision did not require that owner himself should obtain the permit, but it only required the owner to see that the transport vehicle is not used except in accordance with the conditions of the permit. The aforesaid legal position was first laid down by a Constitution Bench of the Supreme Court even as early as in 1952 Veerappa Pillai Vs. Raman and Raman Ltd. and Others, . In Kuchwar Lime and Stone Co. Vs. Dehri Rohtas Light Railway and Co. Ltd. and Another, Supreme Court has

reiterated the position. Now, therefore, the only question is whether the new Act has sought to make a departure from the aforesaid legal position.

10. Necessity for a permit is envisaged in Section 66(1) of the Act which says that "no owner of a Motor Vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place.... save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority". "Owner: is defined in Section 2(30) of the Act as a person in whose name a motor vehicle stands registered and in relation to a motor vehicle which is subject to a hire purchase agreement or any agreement of lease or an agreement of hypothecation, "the person in possession of the vehicle under that agreement". For the purpose of the Act there can be two owners for one vehicle. One is the registered owner himself and the other is the person who is in lawful possession of the vehicle if he is not the registered owner. "Permit" is defined in Section 2(31) as "a permit issued by a State or Regional Transport Authority or an Authority prescribed in this behalf under this Act authorising the use of a motor vehicle as a transport vehicle".

11. Switching over to Section 66(1) of the Act, it is liability of the owner that his vehicle is used, either by himself or anyone else as a transport vehicle, only in accordance with the conditions of a permit. Nowhere in Section 66(1) it is stated that the owner himself should be the permit holder. A motor vehicle can be used in public places either as a public service vehicle or as a private service vehicle or as a goods carriage (as the expression "transport vehicle" is defined in Section 2(47) for each type of use different application for permit is envisaged in the Act). As the lorry involved in this case was intended to be used as a goods carriage we shall refer to Section 77 which deals with application for goods carriage permit. Nowhere in the Section is there a requirement that the application should be made only by the owner of the vehicle, much less the registered owner of the vehicle.

12. After the issuance of the permit the vehicle can be used by the "holder" of the permit. It is apposite to notice that the Act contains the expression "holder of a permit" in wherever context the permit is referred to. It is so used in respect of stage carriage permit or contract carriage permit or goods carriage permit (vide the last provision to Section 66(1) as well as Section 66(2) and Section 77 as for the goods carriage permit). In this context reference can be made to Section 82 which deals with transfer of a permit. It provides that the permit shall not be transferable "from one person to another" except with the permission of the transport authority which granted the permit and shall not without such permission "operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit". This would mean that with the permission of the Transport Authority a permit can be transferred "to any person" and the transferee would get the right to use that vehicle in the manner authorised by the permit. Sub-section (2) deals with the situation when the holder of a permit dies. In such contingency

the person in possession of the vehicle covered by the permit is entitled to use the permit for a period of three months "as if it had been granted to himself.

13. The above survey of the relevant provisions would clearly show that the legislature intended to restrict the permit holder to the registered owner of the vehicle alone.

14. The only aspect which could have created some difficulty for the aforesaid interpretation in Section 86 of the Act which deals with "Cancellation and Suspension of permits". The Section with read along with Clause (c) of Sub-section (1) would show that the transport authority which granted the permit "may" cancel the permit or suspend it "if the holder of the permit ceases to own the vehicle covered by the permit". Perhaps it could have been contended that this Section would make the position clear that only the owner can become a permit holder.

15. There was a conflict of judicial opinion between different High Courts as to the interference to be drawn from the identical Clause included in Section 60(1) of the Old M.V. Act 1939. Andhra Pradesh High Court in Chavali Venkataswami Vs. Chavali Kotayyas and Others, and the Madras High Court in A.V. Varadarajulu Naidu (decd.) and Others Vs. K.V. Thavasi Nadar, took the view that Clause (c) enjoined that the permit could be granted only to the owner. But the Allahabad High Court took the contrary view in Khalil-Ul-Rahman Khan Vs. State Transport Appellate Tribunal and Others, with the following reasons:

It is only a permissive Clause and the Transport Authority has only been given a discretion to cancel the permit in that contingency. It may or may not cancel it, even if the holder of the permit ceases to own the vehicle covered by it.... There may be permit holders who own the vehicle covered by the permit and there may be permit holders who do not own the vehicle. This clause appears to apply only to the former case and not to the latter. On its basis, therefore, it cannot be held to be a requirement of the Act that in each case the person in whose favour a permit has been issued should necessarily be the owner of the vehicle covered by it.

The Supreme Court has set at rest the conflict by adopting the Allahabad High Court view as correct vide Viswanatha's case AIR 1969 SC 493

16. Now we will consider the question whether the change in the definition of "owner" has brought about any change in the scope of Section 66(1) of the Act. Jagannadha Raju, J. is of the view that "there is a complete change in the law after the promulgation of the new Act". In spite of the different stand adopted by the Division Bench of this Court (Malimath, C.J. and T.L. Viswanatha Iyer, J.) that the change in the definition "owner" has nothing to do with the interpretation of Section 66(1) of the Act, we may proceed to consider that aspect in the light of the observations made by the learned Single Judge (Jagannadha Raju, J.).

17. u/s 2(19) of the old M.V. Act "owner" actually means the person in lawful

possession of a motor vehicle. But u/s 2(30) of the new Act "owner" includes a person in whose name a motor vehicle stands registered as well as the person in possession of the vehicle under certain agreements. Thus, the new Act has, in effect, enlarged the ambit of the definition by including the registered owner also therein. According to us, the only impact of the new definition of "owner", if at all any, on Section 66(1) of the Act is that while under the old Act the person in possession of the vehicle alone had the liability to see that the vehicle is used in accordance with the conditions of a permit, now the registered owner also has the said legal obligation. Except to the above extent, no other restriction can be read into it.

18. We, therefore, find no reason to depart from the ratio laid down in *Dakshayani*" case which was affirmed by the Division Bench of this Court, notwithstanding the repeal of the old Motor Vehicles Act.

19. In the result, we allow this appeal and set aside the judgment of the learned Single Judge. We direct the respondents to dispose of Ext. P.3 application within 10 days on receipt of a copy of this judgment in accordance with the legal position stated above.

Appeal is disposed of in the above terms.