

**(1984) 02 KAR CK 0021**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 758 of 1984**

S. Narayana Bhatta

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

**Date of Decision :** 08-02-1984

**Acts Referred:**

Karnataka Motor Vehicles Rules, 1963 — Rule 120 (3), 120 (4)  
Motor Vehicles Act, 1939 — Section 132 A, 2 (20), 63 (6), 68, 68 (2)

**Citation :** AIR 1986 Kar 7 : (1985) 2 KarLJ 157

**Hon'ble Judges :** K.A. Swami, J

**Bench :** Single Bench

**Advocate :** K. Prabhakar, for the Appellant; S. Udayashankar, High Court Govt. Pleader, for the Respondent

## Judgement

1. In this petition under Arts. 226 and 227 of the Constitution, the petitioner has sought for a writ in the nature of mandamus directing the 3rd respondent to issue a special permit without insisting upon the payment of grant-fee and also to declare that the word "grant" occurring in R. 120(iv) of the Karnataka Motor Vehicles Rules, 1963 (here in after be referred to as the "Rules"), is null and void and to strike down the same. He has also sought for a further direction to the 3rd respondent to refund the excess amount collected on all the permits referred to in para-2 of the writ petition.

2. The petitioner is a Tourist Operator. He is operating his tourist vehicles under special permits under the provisions of S. 63(6) of the Motor Vehicles Act (hereinafter be referred to as the Act). According to the case of the petitioner, the 3rd respondent is collecting Rs. 50/- for each application filed by the petitioner for grant of a special permit, and in addition to this, the 3rd respondent is also insisting that for issuing each special permit, a sum of Rs. 50/- per vehicle be paid. The contentions urged on behalf of the petitioner admit of the following points for consideration :

(i) Special permit does not fall within the definition of "permit" as defined under

S. 2(20) of the Act;

(ii) That S. 68 of the Act, which provides for framing the Rules for the purpose of carrying into effect the provisions of Chapter IV of the Act, does not provide for framing a rule to levy and collect a separate fee for the grant or renewal of permit;

(iii) That as per R. 120(iii) of the Rules, when once the fee of Rs. 50/- is collected in respect of an application for grant of the special permit, the further fee of Rs. 50/- demanded in respect of each vehicle for grant of special permit is not warranted and to such a case clause (iv) of R. 120 of the Rules, does not apply,

3. Point No. (i) : The contention that the special permit does not fall within the definition of permit cannot at all be accepted. Permit is nothing but a document authorising the use of a transport -vehicle in a particular manner. S. 2(20) of the Act, defines the word "permit" as follows :

Permit means the document issued by the Commission, or a State or Regional Transport Authority authorising the use of a transport vehicle as a contract carriage, or stage carriage or authorising the owner as a private carrier or public carrier to use such vehicle."

Though the expression "special permit" is not mentioned in the definition, but special permit is also a document authorising the use of a transport vehicle. In other words, it is also a permit for the use of the vehicle in a particular manner for a particular purpose and as such, it does fall within the definition of "permits" Therefore, point No. (i) is held against the petitioner.

4. Point No. (ii) : S. 68 of the Act, enables the State Government to make rules for the purpose of carrying into effect the provisions of Chapter IV of the " Act. S. 68(2)(g) of the Act provides that the rules may be made for the fees to be paid in respect of applications for permits, duplicate permits and plates. Cal. (a) of sub-sec. (2) of S. 68 of the Act, further provides that "rules may be made for any other matter which is to be or may be prescribed". Of course, S. 68 does not specifically provide for framing of the rules for prescribing the fee for the grant renewal or endorsement thereof or extension of the permit in respect of each vehicle as is provided by R. 120(iv) of the Rules. Therefore, it is contended that R. 120(iv) of the Rules is beyond the competence of the rule making power. It is submitted that Cal. (g) of sub-sec. (2) of S. 68 of the Act, only provides for prescribing the fee payable in respect of applications for permits, duplicate permits and plates; therefore, the rule providing for payment of fee for the grant, renewal or endorsement thereof or extension of the permit in respect of each vehicle, is null and void, as it is beyond the competence of the rule making power of the State Government. An application for grant of permit and the grant of permit are two distinct acts, though one is connected with the another, rather making an application for grant of permit becomes the cause for grant of permit. A party seeking a permit which has to be accompanied by the prescribed fee, whereas the authority makes the grant of permit empowered under the Act

makes an application. As such, both the acts are neither simultaneous nor are they done by the same person or authority. Pursuant to the grant of permit a document i.e. permit, has to be issued. It is for issue of such document, a separate fee is charged as per R. 120(iv) of the Rules. Clause (zap) of sub-sec. (2) of S. 68 read with S. 132A of the Act, covers the prescription of fee of Rest. 50/- for the grant, renewal or endorsement thereof or extension of the permit in respect of each vehicle. S., 132A of the Act, specifically provides that any rule which the Central Government or the State Government is empowered to make under this Act may, notwithstanding the absence of any express provision to that effect, provide for the levy of such fees in respect of applications, amendment of documents, issue of certificates, licences, permits, tests, endorsements, badges plates, counter-signatures, authorisation, supply of statistics or copies of document or orders and for any other purpose or matter involving the rendering of any service the officers or authorities under this Act or an rule made thereunder as may be considered necessary. Thus e afore-said provision is very clear, a it is wide enough to enable the State Government to levy and collect fees for the grant, renewal or endorsement thereof or extension of the permit in respect of each vehicle. Hence, point No. (ii) is held against the petitioner.

5. Point No. (iii) : The contention of the petitioner is that the fee paid on, the application for grant of temporary permit or the special permit is for the purpose of grant of permit only; therefore, no separate fee as per R. 120(iv) of the Rules is required to be paid. It is already pointed out that the fee payable under Rule 120(iii) of the Rules, is payable on the application made for grant of a temporary permit or special permit, for a month or part thereof. If no such fee us paid, the application itself will not be valid and the authority is not bound to consider such an application. Thus, the fee paid under R. 120(iii) of the Rules, is on the application. If, on consideration of the application made for grant of temporary or special permit, the authority grants such an application; pursuant to that the permit has to be issued. It is for the issue of permit and for the permit as such, a separate fee is collected. Thus, Rr. 120(iii) and 120(iv) of the Rules cover two different and distinct stages - one does not cover the other nor there is any overlapping. Therefore, the fee demanded by the 3rd respondent for grant of special permit in respect of each vehicle, falls under R. 120(iv) of the Rules. Thus, the demand is valid and is justified in law. Accordingly, Point No. (iii) is also answered against the petitioner.

6. For the reasons stated above, this petition fails and the same is dismissed.

7. Sri S. Udayashankar, learned High Court Government Pleader, is permitted to file his memo of appearance for the respondents, in six weeks.

8. Petition dismissed.