

(1971) 08 BOM CK 0005

In the Bombay High Court

Case No : Criminal Revision Application No. 1101 of 1970

Sabir Ahmed Lal Mohamed

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 20-08-1971

Acts Referred:

Bombay Motor Vehicles Taxation Rules, 1959 — Rule 26(34)
Constitution of India, 1950 — Article 20(2)
Motor Vehicles Act, 1939 — Section 17(1)

Citation : AIR 1972 Bom 296 : (1972) 74 BOMLR 161 : (1972) CriLJ 1437

Hon'ble Judges : Mody, J;Chandrachud, J

Bench : Division Bench

Advocate : G.A. Chandra, for the Appellant; S.C. Pratap, Asst. Govt. Pleader, for the Respondent

Judgement

Chandrachud, J.—In Criminal Revn. Appln. No. 52 of 1971 (Bom) Vaidya, J. took the view that the power conferred by Section 17(1) of the Motor Vehicles Act, 1939 (herein, "the act") to disqualify a person for holding a driving licence cannot be exercised in cases where the contravention is of a rule relating to the mere conduct of the driver. Bhasme, J., also sitting singly, took the same view in Criminal Revn. Appln. No. 1142 of 1970 (Bom).

2.A similar question arose before the learned Chief Justice in Criminal Revn. Appln. No. 1101 of 1970. He was inclined to a different view and therefore he has referred for our decision the question as regards the correctness of the two earlier decisions. In his referring judgment on July 16, 1971, the learned Chief Justice has expressed the opinion that the power conferred by Section 17 (1) to suspend a driving licence is exercisable even where the conviction is for the breach of a rule governing the conduct of the driver.

3.Only a few facts are relevant. The petitioner is a taxi driver and the prosecution arose out of his refusal to drive the complainant to the desired destination. The complainant got into the taxi when the meter flag was in a vertical position but

rather than take him where he wanted to go, the petitioner held him by his legs and threatened to throw him out. For this, the petitioner was convicted by the learned Presidency Magistrate u/s 112 of the Act read with Rule 26 (34) of the Bombay Motor Vehicles Rules, 1959, (hereinafter called "The Rules"). This rule provides that "No driver shall without reasonable excuse refuse to let the cab for hire when the flag is in a vertical position". The Magistrate sentenced the petitioner to pay a fine of Rs. 100/- and u/s 17 (1) he suspended the petitioner's driving licence for a period of two months.

4.The learned Chief Justice has confirmed the order of conviction and the sentence of fine. He was also inclined to confirm the order of suspension but he felt that he could not differ from the view taken by Courts of co-ordinate jurisdiction. He has therefore referred for our consideration the question as regards the correctness of that view.

5.Counsel appearing on behalf of the petitioner has raised two preliminary objections to the reference made by the learned Chief Justice. Counsel says that two single Judges having taken the same view, their judgments are on a par with the judgment of Division Bench and therefore the learned Chief Justice had no power to differ from the view taken by the "Division Bench" and refer the matter to another Division Bench. This objection is untenable. One plus one equals two is plain arithmetic but you cannot roll two judgments of two single Judges into one and give to those judgments the authority of the judgment of a Division Bench. This novel method will bring into being a new class of privileged judgments of "Division Benches", "Full Benches" and "Special Benches" - unknown to the law of precedents. The objection is devoid of merit.

6.Of no different variety is the second preliminary objection that the question referred to us cannot possibly arise as Section 17 (1) of the Act offends against Article 20(2) of the Constitution. Article 20(2) provides that no person shall be "prosecuted and punished" for the same offence more than once. Even assuming that the suspension of the petitioner's licence is punishment within the meaning of Article 20(2), the petitioner has not been prosecuted for the same offence more than once. It is in the prosecution that he is being fined and disqualified for holding a licence. Therefore, this objection must also fail.

7.The question for consideration is whether the power of the Court to disqualify a person for holding a driving licence extends to cases in which the conviction is recorded under S. 112 of the Act for the breach of a Rule made under the Act.

8.Section 17 (1) of the Act is in these terms :-

"17. Power of Court to Disqualify - (1) Where a person is convicted of an offence under this Act, or of an offence in the commission of which a motor vehicle was used, the Court by which such person is convicted may, subject to the provisions of this section, in addition to imposing any other punishment authorized by law, declare the person so convicted to be disqualified, for such period as the Court may specify, for holding any driving licence or for holding a driving licence to

drive a particular class or description of vehicle."

9. Section 21 of the Act confers on the State Government the power to make rules for the purpose of carrying into effect the provisions of Chapter II of the Act, in which Section 17 occurs.

10. Section 112 of the Act provides:

"Whoever contravenes any provision of this Act or any rule made thereunder shall, if no other penalty is provided for the offence, be punishable with fine which may extend to one hundred rupees, or, if having been previously convicted of any offence under this Act he is again convicted of an offence under this Act, with fine which may extend to three hundred rupees."

11. It is urged on behalf of the petitioner that Section 112 makes a distinction between the contravention of a provision of the Act and the contravention of a provision of a rule made under the Act and, therefore, the power conferred by Section 17 (1) to suspend the driving licence of "a person convicted of an offence under this Act" is not available in regard to offenders convicted for breach of a rule. We find it difficult to accede to this contention. Whether the contravention is of a provision of the Act or of the provision of a rule made under the Act the offence is committed under the Act. Therefore, even if the breach alleged is of a rule, the offence is not committed under the Rules but it is committed under the Act. It is the Act which prescribes punishment and penalties for contravention of the rules, so that offences, though they may consist in breach of rules, can be committed only under the Act and not under the rules. That is the plain position.

12. Section 112 undoubtedly refers separately to contravention of the provisions of the Act and contravention of any of the rules made under the Act but it does not make a distinction between the two classes of offences. Far from it. It clubs them together and treats them on a par by declaring both classes of contraventions as offences under it and by prescribing the same punishment for both. Section 112 thus takes in breaches of the Act as well as breaches of the rules, with the result that breaches of the rules become offences u/s 112 that is, offences under the Act.

13. It is important that the rules framed by the State government in the exercise of its powers u/s 21 of the Act do not create any offences, assuming that the rule-making power could extend that far. The rules provide for contingencies of divers kinds like licensing of drivers and conductors, registration and control of motor vehicles, construction, equipment and maintenance of vehicles, etc. There is no rule among the 316 rules which are contained in the Rules of 1959, which either creates an offence or prescribes a penalty for any offence. The rules prescribe norms; breaches thereof become offences under the Act and the Act provides for the punishment and penalties for those offences. Thus, the breach of a rule constitutes an offence not under the Rules but under the Act.

14.The relevant pre-condition of Section 17 being that the person who is proposed to be disqualified for holding a driving licence must be convicted of an offence under the Act and as the petitioner was convicted for the contravention of Rule 26 (34), which constitutes an offence under the Act, he was liable to be disqualified under S. 17 (1).

15.The argument that the power to disqualify an offender can be exercised only if he is convicted of an offence directly connected with the act of driving fails to impress us. There is intrinsic evidence in Section 17 itself to show that the power conferred by sub-section (1) can be exercised even if the breach is of a rule of conduct not directly connected with the act of driving. Clause (c) of Section 17 (5) provides that a Court "shall" order disqualification of an offender convicted u/s 123 of the Act unless for special reasons to be recorded in writing it thinks fit to order otherwise. Now, acts which constitute an offence u/s 123 are uncorrelated to the want of care involved in the act of driving, That section makes it an offence to drive an unregistered vehicle or to drive a motor vehicle without the permit required by Section 42 (1) of in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used or a condition relating to the maximum number of passengers or the maximum weight that may be carried on the vehicle. You may drive your vehicle with all the care in the world but if you have transgressed the conditions of your permit., you are liable to be convicted u/s 123 and that conviction entails a disqualification u/s 17 (1) read with Section 17 (5) (c). It is therefore manifest that the power to suspend the driving licence is not conditioned by the circumstance that the offender must be guilty of an offence connected directly with the act of driving.

16.In fact, Section 17 (1) in terms provides that the penalty of disqualification may be imposed even "Where a person is convicted of an offence in the commission of which a motor vehicle was used". To a proposed suspension of a driving licence, it is no answer to say " "True, I used my car to transport illicit liquor but I took all the care possible while driving my car." If the car is used in the commission of an offence, the licence is liable to be suspended without more.

17.Section 15 of the Act furnishes some clue to the question whether in order to suspend a driving licence it is necessary that the driver must be guilty of an offence involving the act of driving. That section confers on the "licensing authority" the power to disqualify a person for holding a driving licence, in cases where, inter alia, the driver is a habitual criminal or a habitual drunkard or has used a motor vehicle in the commission of a cognizable offence. If Executive authorities can suspend the driving licence for reasons unconnected with the act of driving, it could not have been intended that Courts of law should possess a lesser power.

18.The petitioner's reliance on Schedule V and Sections 18 and 19 of the Act in support of the submission that the breach of a rule of conduct cannot involve the driver in suspension of his licence, is misplaced. Schedule V specifies "offences

on conviction of which an endorsement shall be made on the licence of the person affected". It does not deal with the power to suspend the licence. Section 18 provides for the "Effect of disqualification order", while Section 19 provides, inter alia, for the modes of endorsement. None of these provisions bears out the petitioner's submission.

19. It is urged that Section 112, on its terms, can apply only if "no other penalty is provided for the offence" and since suspension of a licence is a "penalty", breaches which attract that penalty would stand excluded from the compass of Section 112. The argument proceeds that it could not have been intended that the breach of a Rule could be penalized by suspension of the license but is not punishable u/s 112. We are unable to agree that disqualification of a driver for holding a driving licence is a "Penalty" within the meaning of S. 112, Chapter IX of the Act is entitled "Offences, Penalties and Procedure" and Section 112 which occurs in that chapter uses the word "penalty" to comprehend the punishments prescribed for diverse offences, as detailed in that chapter. Section 17 occurs in Chapter II called "Licensing of Drivers of Motor Vehicles" and though suspension may involve serious consequences, it is not a "penalty" prescribed for an offence, within the meaning of Section 112. It is clear from the context of that Section that the word "penalty" is used in the sense of "sentence" following upon a conviction. The context is that if no other penalty is provided for the offence, the offence would be punishable with a sentence of fine, indicating thereby that if no other sentence is provided, the sentence of fine may be imposed.

20. Finally, we see no merit in the contention that the words of S. 17 (1) must be construed in the light of the provisions of sub-sections 2 to 5 of Section 17. Section 17 (1) confers on the Courts the power to disqualify a driver for holding a licence. Sub-sections 2 to 5 merely regulate the exercise of that power.

21. We are therefore of the opinion, and we say so with respect to the learned Single Judges who decided to the contrary, that person who contravenes a rule framed under the Act, commits an offence under the Act and on his conviction for that offence, he is liable to be disqualified u/s 17 (1) for holding a driving licence.

22. The papers may now be sent back to the learned Chief Justice, for passing final orders.

23. Answer accordingly.