
(1988) 03 KAR CK 0008
In the Karnataka High Court
Case No : W.P. Nos. 3461 & 3462/1988

Smt. G. Kamala and Another

APPELLANT

Vs

Asst. R.T.O. Puttur and Others

RESPONDENT

Date of Decision : 28-03-1988

Acts Referred:

Motor Vehicles Act, 1939 — Section 33(1)(B)

Citation : (1988) 2 KarLJ 205

Hon'ble Judges : H. G. Balakrishna, J

Judgement

Balakrishna, J.-The petitioner who is common in these two Writ Petitions, is a registered owner of the vehicle bearing No. CAW. 392 and has been operating the vehicle by obtaining special permit under Section 63(6) of the Motor Vehicles Act 1939 (hereinafter referred to as the "Act"). The petitioner is operating the said vehicle With valid permit. When the said vehicle was checked by the Inspector of Motor Vehicles on 24-7-1987 at 6.15 A.M. near Gundiya he found that 21 adult passengers were carried from Bangalore to Mangalore by collecting Rs. 60/- per head individually from the passengers. At the same time on the date of checking, it was found that the vehicle was not covered by any permit at all to perform the said journey. The driver of the vehicle is stated to have compounded the offence by paying Rs. 1000/- on the spot under receipt No 95459 dated 24-7-1987. Consequent to the submission of the check report, the first respondent issued a show cause dated 19-8-1987. The petitioner did not appear on 15-10-1987 and did not furnish any written statement. Thereafter, on 30-10-1987, the case was decided on merits. Respondent No. 1 suspended the Certificate of Registration for a period of 60 days. Against this order, the petitioner preferred an appeal before the 3rd respondent who confirmed the order of the first respondent on 27-1-1988. Hence, the petitioner is aggrieved by the impugned order in Writ Petition No. 3461/1988.

The learned Counsel for the petitioner conceded that the vehicle was operating without valid permit. However, he submitted that the suspension order is too harsh and deserves sympathetic consideration for reducing the period of

suspension. I have perused the order of the 3rd respondent. But I am not satisfied with the reasoning given for confirming the period of suspension of 60 days. It is one of the elementary principles to be followed while fixing the period of suspension by way of punishment, that the period of suspension should be commensurate with the gravity of the wrong committed or the violation of law committed. No law is shown by the consideration of which, the mind of the first respondent was influenced nor from the order of the 3rd respondent any reason as to why the suspension of the registration certificate was ordered for a period of two months. In the circumstances, it would be reasonable for me to reduce the period of suspension to 30 days instead of 60 days since the punishment is too harsh.

In Writ Petition No. 3462/1988, the facts are slightly different. The redeeming feature is that the vehicle was covered with special permit upto 6-11-1986 vide Special Permit No. 9996/86 87 whereas the vehicle was checked on 5-11-1986. The only point for consideration in this case is whether it is open to the authority concerned to take action under the provisions of Section 33(1)(b) of the Act or whether action could be taken only Under Section 60 of the Act. The principle is well settled by virtue of the ruling of the Division Bench of this Court in A.B. Chinagi v. Registering Authority and Regional Transport Officer (reported in 1988(1) Kar.L.J. 46 (DB): ILR 1988 Karnataka 59). The facts of the above case and the facts of the instant case are similar and the principles laid down by the Division Bench are attracted. The Division Bench of this Court held as follows:

"To attract the applicability of this Clause, what has to be shown is that the vehicle without a permit was being used for hire or reward. Section 33(1) (b) encompasses within its fold vehicles which have no permit, while Section 60 envisages those vehicles which are possessed of a valid permit; but are being used by contravening the conditions of the permit. The provisions of Section 33(1)(b) would be attracted only to those cases where a vehicle is without any permit whatsoever as is being used for hire or reward".

In this case, the vehicle was covered by a special permit on the date when the cause of action arose i.e., when the vehicle was checked and contravention of the conditions of permit was discovered-In these circumstances, it is not open to the authority-respondent No. 2 to take any action against the petitioner under Section 33(1)(b) of the Act.

In the result, rule is issued and made absolute. The impugned orders, vide Annexures, A, B and C are quashed. The suspension period of the Registration Certificate of the vehicle bearing Registration No CAW 392 is reduced from two months to 30 days only. The writ petition is allowed.

Sri. K. Srinivasagowda, learned High Court Government Pleader is permitted to file his memo of appearance for the respondents within two weeks from today.

Writ Petition Allowed.