

(1988) 07 KAR CK 0020
In the Karnataka High Court
Case No : W.P. No. 22987/1982

Smt. Venkamma

APPELLANT

Vs

Regional Transport Officer and Registering Authority, Bellary

RESPONDENT

Date of Decision : 06-07-1988

Acts Referred:

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

Citation : (1988) 2 KarLJ 247

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

Judgement

Balakrishna, J.-The petitioner is aggrieved by the order passed by the Registering Authority and Regional Transport Officer, Bellary, vide Annexure-A suspending the registration certificate of the petitioner in respect of her Ambassador Car bearing Registration No. MYW 3616 for a period of 60 days with effect from the date of surrender of valid document, failing which action would be taken under Section 113 of the Motor Vehicles Act. Apparently, the said order was passed by exercising power under the provisions of Section 33(1) (b) of the Motor Vehicles Act 1939.

2. The case of the petitioner is as follows:

The petitioner had spared her Ambassador Car with registration No. MYW 3616 to, her brother B. Marappa's family and children for the purpose of attending Ambabai Fair being held in Raichur District. During the journey the vehicle was checked by the Flying Squad-B, Gulbarga on 13-1-79 at Sindbanur and thereafter a show cause notice dated 11-5-1982 was issued to the petitioner by the Regional Transport Officer and the Registering Authority, Bellary who is the respondent in this Writ Petition. The petitioner furnished an explanation on 21-5-1982 denying the allegation that she had given the car on hire basis to the family members of Bhimappa and contended that she had not given the car for any material consideration whatsoever and had only spared the car to her brother Marappa's family to enable them to attend the Ambabai Fair in Raichur District.

3. The said explanation was looked into by the respondent and the impugned order vide Annexure-A came to be passed.

4. For the sake of convenience and also since it is relevant for the purpose of deciding the case, the relevant portion of the impugned order is reproduced below:

"Owner has furnished her explanation stating that she had not used the vehicle on hire. The explanation furnished by the registered owner is not satisfactory and there is nothing to disbelieve the report of Police Inspector, who has issued the checking report. Therefore, the following orders are passed."

5. It is contended by the learned Counsel Sri M.R.V. Achar, on behalf of the petitioner that Annexure-A is liable to be quashed for two reasons. The first reason is that the impugned order is not supported by reasons. The second is that the order passed by the respondent is devoid of jurisdiction, inasmuch as the check-report was submitted by the Flying Squad, Gulbarga, when the vehicle was intercepted at Sindhanoor, Sindhanoor is in Raichur District whereas, power has been exercised by the Regional Transport Officer and the Registering Authority, Bellary.

6. According to the learned Counsel for the petitioner, it is only the Registering Officer and the Registering Authority, Gulbarga who can exercise such power in accordance with law.

7. The points for consideration in this case are whether the impugned order is liable to be quashed as not being a speaking order and whether the respondent acted without jurisdiction.

8. This Court has taken a consistent view that whenever a quasi-judicial authority acts in the exercise of a statutory power which would result in civil consequences, it is mandatory that it must pass a speaking order. The obligation to assign reasons arises out of a residuary duty imposed by rules of natural justice. Not only reasons should be given but also cogent reasons. After all, "the life of law is logic" as Lord Coke said. I must observe that the impugned order is perfunctory and does not predicate any rational basis to negative the petitioner's explanation.

9. Mere allegation is not proof. There ought to be something more to it to stigmatise under penal powers. Conclusions have to be drawn through logic and logic derived from verified allegations of fact. Mere conjecture cannot be a valid substitute for tangible evidence.

10. In the instant case there is no evidentiary material to support the check report and no valid reasons are given to reject the explanation offered by the petitioner. The impugned order does not reveal why the explanation is not satisfactory. What weighed in the mind of the respondent is his implicit faith in the report of the police officer who prepared the check-report. That in truth is the sole basis for the impugned order. In the above circumstances, I am inclined to

hold that the impugned order is capricious. A capricious order cannot bear legal scrutiny.

11. A decision of this Court in *M.S. Hemashankar v. Regional Transport Officer & Another* (1986(1) Kar.L.J. 286) has been brought to my notice by the learned Government Pleader in support of his contention. In that case, the vehicle was used with a valid permit. When the vehicle was checked by the Motor Vehicle Inspector it was found that the vehicle was being used to carry individual passengers for hire and reward. In the first instance, the owner or his authorised representative did not respond to the show cause notice and an *ex parte* order came to be passed suspending the licence. On appeal, the order was set aside and the matter remanded with a direction to issue a fresh show cause notice accompanied by the copy of the check-report of the Motor Vehicles Inspector. In response to that, the owner made a representation in writing and she was also represented by a Counsel and thereafter the impugned order was passed. Challenging the impugned order in a writ petition, the petitioner raised two contentions. The first contention was that the petitioner did not have an adequate opportunity to cross examine the witness. The second contention was that the material on which the Registering Authority relied in order to initiate proceedings was not furnished to the owner.

12. It was held "that the owners facing the proceedings under Clause(h) of Sub-section (1) of Section 33 of the Act are not entitled to an oral hearing or has the right to cross-examine any witnesses. The material on which the charge is based must be made available to the owner along with the show cause notice. That material is only to make an effective representation and no more. The check report contains the details of the check made by the Motor Vehicles Inspector, the time, the result of the check and the summary of events leading to the charge. Apart from these materials, the owner of the vehicle is not entitled to any other material for making an effective representation against the charge."

13. In the instant case, the facts are somewhat dissimilar. Though the check report was issued, there was no material available even to the respondent to arrive the finding that the petitioner had hired out the vehicle for material consideration to Bhimappa and family. What the respondent has stated is that the explanation furnished by the registered owner is not satisfactory and that there is nothing to disbelieve the report of the police Inspector who had issued the check report. Beyond this there is not even an iota of evidence which indicates the passing of material consideration, even to enable the respondent to pass the impugned order. Though I share the view expressed by the learned Judge in the aforementioned case regarding non-availability of the right to cross-examine, I find that the decision cited is not attracted to the peculiar facts of this case. The impugned order cannot stand legal scrutiny at all. I would go one step further and add that the power exercised is not only arbitrary but also unguided. An order which results in penal consequences cannot be passed in a mechanical and casual manner. There is no reasoned finding on disputed questions of fact.

As regards the second question, the learned Government Pleader Sri P.R. Ramesh contended that the respondent did have the jurisdiction to pass the impugned order and he placed reliance on the case of Mohd. Ilyas v. R.T.O. reported in AIR 1987 Kar. P. 137 where it was held that though the check report came from Tamil Nadu, the Registering Authority in Karnataka did not cease to have jurisdiction to initiate action for violation of conditions of permit.

14. In view of the finding which I have given on the first point, it will not be necessary for me to deal with the second point urged by the petitioner.

15. For the reasons stated above, I allow this Writ Petition and quash the impugned order vide Annexure-A. However, I make it clear that it is open to the respondent to take such fresh action as deemed fit in the light of the observations made above in accordance with law.

16. Sri P.R. Ramesh, learned High Court Government Pleader is directed to take notice for the respondent and also to file his memo of appearance within two weeks.

Writ petition allowed.