

(2012) 06 KAR CK 0065

In the Karnataka High Court

Case No : Writ Petition No. 29453-455 of 2011 and W.P. No. 16639-641 of 2012
(MV)

Somashekhar, Bangalore Auto Drivers Souharda Co-Op Ltd.,
and Syed Samiulla

APPELLANT

Vs

State of Karnataka and Others
 Mohammad Zabeer,
Thirunavakkarasu and Abdul Khader Vs State of Karnataka
and Others

RESPONDENT

Date of Decision : 01-06-2012

Acts Referred:

Karnataka Motor Vehicles Rules, 1989 — Rule 82, 82 (1), 82 (5), 82 (6)
Motor Vehicles Act, 1988 — Section 74 (3), 74 (3) (a)

Citation : (2012) 06 KAR CK 0065

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Puttige R. Ramesh and Smt. Lakshmi S. Holla, in W.P. No. 29453-455/2011 C/w W.P. No. 16639-641/2012 MV and Sri. S.V. Krishnaswamy, in W.P. No. 16639-641/2012, for the Appellant; K.M. Shivayogiswamy, AGA for R1 to R12 and Sri B.R.S. Gupta, for R13 in W.P. No. 29453-455/2011 and Sri. K.M. Shivayogiswamy, AGA in W.P. No. 16639-641/2012, for the Respondent

Judgement

B.S. Patil

1. Petitioners in W.P.Nos.29453-29455/2011 have sought for several reliefs. During the course of arguments Sri Puttige Ramesh, Learned Counsel appearing for the petitioners has made it clear that except prayer No. 2, the other reliefs do not survive for consideration. Prayer No. 2 sought in these writ petitions reads as under: To issue a writ of mandamus or any other appropriate writ or order or direction directing respondent NIDS.1 and 2 to ensure that no transfer or Auto-Rickshaw permits are permitted.

Petitioner Nos. 1 & 3 are the registered owners of auto-rickshaws. Petitioner No. 1 is also the President of petitioner No. 2-Society consisting of auto-rickshaw drivers as its members. Petitioner No. 2-Society is registered under the

provisions of the "Karnataka Co-operatives Societies Act, 1959. 2. It is the case of the petitioners that as the action of the State and the policy pursued by it in granting permission for transfer of permits of the auto-rickshaws seriously affects the petitioner-society and its members who are the owners and permit holders of auto-rickshaws, they have approached this Court seeking a direction to the State Government and the Commissioner for Transport - respondents 1 & 2 herein to ensure that no transfer of auto-rickshaw permits are permitted.

3. In the other batch of writ petitions bearing Nos. 16639- 16641/2012 filed by the drivers-cum-owners of the auto rickshaws, similar reliefs are sought and Sri. S.V. Krishnaswamy, Learned Counsel appearing for the petitioners submits that the relief sought in these writ petitions is also confined to the direction sought against respondents 1 & 2 to ensure that no transfer of auto-rickshaw permit is permitted. In respect of other reliefs, he does not press the writ petitions.

4. It is relevant to notice certain facts that are essential for the disposal of these writ petitions.

5. Bangalore City has been experiencing sharp upsurge in the population. The State Government having regard to the population of the city has from time to time increased the number of auto-rickshaws for which permits could be granted. In this regard, notifications are issued from time to time. It is necessary to refer to some of them as adverted to by the petitioners in W.P.Nos.29453-455/2011.

6. In exercise of the powers u/s 74(3) of the Motor Vehicles Act, 1988 (for short, "the Act") which enables the State Government to fix a ceiling regarding the number of contract carriage permits that can be issued, the State Government issued notification dated 10.09.2003 fixing the limit of auto-rickshaw permits as 75,000 for the City. A copy of this notification is produced at Annexure-A. It is relevant to notice that prior to the said notification, the maximum limit was fixed at 70,000. Certain conditions for issuance of permits to the additional 5000 auto-rickshaws were required to be adhered to. The said conditions are as under:

1. Issuance of permits only to the auto-rickshaws having LPG kite shall be made compulsory.

2. The ownership of the auto-rickshaws having LPG kit shall compulsorily be made to vest with the drivers of such auto-rickshaws.

3 To compulsorily prohibit the transfer or sale, etc., for any reason, of the permits of the owners of auto-rickshaws having LPG kits.

4. In the event the owner of the auto-rickshaw having LPG kit dies, the permit of his auto-rickshaw shall be transferred only in the name of the legal heirs of the deceased.

7. It is thus necessary to emphasize that ownership of the auto-rickshaw having LPG Kit shall be made compulsory to vest with the drivers of auto-rickshaws and prohibition was imposed for transfer or sale etc., for any reason of the permits by

the owners of the auto-rickshaws having LPG Kits.

8. On 25.03.2008, one more notification was issued by the Deputy Commissioner enhancing the auto-rickshaw permits from 75,000 to 80,000. This is evident from Annexure-C notification. A perusal of the said notification also makes it clear that conditions 3 & 4 as incorporated in Annexure-A notification were reiterated. By yet another notification dated 24.02.2010, the strength of the auto-rickshaw permits in the city came to be increased to 85,000. This is evident from the notification - Annexure-D. It is relevant to again point out that even in Annexure-D, it is made clear that permits shall only be granted to applicants who were having driving license and owning auto-rickshaws. It was also incorporated as one of the conditions in this notification that permit shall not be granted in favor of a person who is already having a auto-rickshaw permit. In fact, petitioners have stated in the writ petitions that Annexure-D notification was challenged before this Court in W.P. No. 24000/2010 and by order dated 04.02.2010 the challenge made was repelled and the legality and correctness of the notification has been upheld.

9. The case of the petitioners is that the State Government, instead of acting in conformity with the notifications that are aimed at avoiding grant of permits in favor of persons who do not possess driving license of auto-rickshaws and persons who already possess one permit for running auto rickshaw, without framing any rules and without providing any procedure for transfer of permits from the permit holder of auto-rickshaws in favor of others who are desirous to possess auto-rickshaw permits has been permitting the transfer of auto-rickshaw permits merely following the procedure prescribed under Rule 82 of the Karnataka Motor Vehicles Rules (for short, the Rules").

10. It is the contention of the Learned Counsel for the petitioners that despite a clear embargo placed by way of Sub-rule (6) of Rule 82 of the Rules making it clear that the procedure provided for transfer of permit vide Sub-rules (1) to (5) of Rule 82 of the Rules shall not apply in respect of transfer of contract carriage permit issued for motor cabs, the respondent - authorities have been effecting transfer of auto-rickshaw permits which falls within the definition of motor cab by simply following the procedure provided under Sub-rules (1) to (5) of Rule 82 of the Rules. In other words, the contention of the Learned Counsel for the petitioners is that contrary to the intention expressed in the notifications that are issued from time to time regulating grant of auto rickshaw permits, the State Government has been acting in violation of the conditions prohibiting grant of permits in favor of persons already possessing one permit in respect of auto-rickshaw and persons who are not the drivers of auto-rickshaws.

11. Learned Counsel for tile petitioners draws the attention of the Court to a communication addressed by the Commissioner for Transport, Bangalore, to the Principal Secretary to the Government, Transport Department, Bangalore, on 17.03.2011 which is produced at Annexure-F Whereunder it is categorically described as to how it had become a common practice to get the permit granted

in black market and sell the permit for a sum ranging from Rs. 30,000/- to Rs. 35,000/-. Reference is also made in the said letter to the plight of the auto drivers as to how it had become difficult for them to avail loans. Reference is also made to the situation where moneyed persons would become the owners of 20 to 30 auto-rickshaws and in addition certain undesirable element of the underworld had started participating in the auto-rickshaw business, resulting in the poor auto drivers being compelled to distribute their hard earned money to the owners of auto-rickshaw. It is also pointed out in the said communication as to how the interest of the commuters would be affected in view of such prattle being resorted to. The Commissioner for Transport has made a recommendation for increase of the number of auto-rickshaws by increasing the grant of auto rickshaw permits in Bangalore City.

12. Considering the recommendation made by the Commissioner for Transport, the State Government issued yet another notification dated 23.02.2011 vide Annexure-G thereby increasing the number of auto rickshaw permits from 85,000 to 1,25,000 again imposing similar conditions as per conditions 2 & 3.

13. In the light of the above, it is contended by the petitioners that the action of the State and its authorities in permitting the transfer of auto-rickshaw permits by resorting to Rule 82 of the Rules without laying down any guideline or procedure consistent with the conditions incorporated in the notifications issued from time to time regulating grant of auto-rickshaw permits and prohibiting the issue of permits in favor of persons who do not possess auto-rickshaw licenses and persons who possess more than one permit is illegal. This contention of the Learned Counsel for the petitioners is supported by Mr. Gupta who has appeared for respondent No. 13 - Akhila Karnataka Shramajeevigala Kshemabhivrudhi Sangha, which has come on record by filing impleading application.

14. Learned Additional Government Advocate has filed statement of objections supporting the action of the State and resisting the contentions urged by the petitioners. He has taken me through the provisions contained u/s 82 of the Act and Rule 82 of the Rules. It is his main contention that in the wake of the provisions contained u/s 82 of the Act which provide:: for transfer of permits with the prior permission of the Authority which granted the same, the relief sought by the petitioners cannot be granted. It is his further submission that at present the procedure stipulated in Rule 82 of the Rules is followed for transfer of auto-rickshaw permits.

15. Learned Counsel Mr. C.V. Kumar has advanced his arguments on behalf of the impleading applicant - Bangalore Auto Rickshaw Dealers and Drivers Association. He has contended that the association is a proper and necessary party to come on record as they intend to support the action of the State in following the procedure prescribed under Rule 82 of the Rules and in permitting transfer of auto-rickshaw permits. He has adopted the contention of the learned Additional Government Advocate. In addition, he points out that as per Section 74(3)(a), the State Government is eluted to limit the number of contract carriages by

specifying the same in the notification, operating on city routes. He urges that the said provision does not enable the State Government to prohibit the transfer of permits.

16. Upon consideration of the respective contentions and the provisions contained u/s 82 of the Act and Rule 82 of the Rules and in the background of the notifications issued by the State Government from time to time produced at Annexures-D & G, it emerges that transfer of permit is provided as per Section 82 of the Act. Sub-section (1) of Section 82 reads as under:

(1) Save as provided in sub-section (2), a 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 authorized by the permit.

17. It is thus evident that a permit shall not be transferred from one person to another except with the permission of the transport authority, which granted the permit. Power is vested with the transport authority which granted the permit, to grant permission for transfer of permit. What factors the authority can keep in mind while granting such permission is a matter that can be certainly regulated by the Rule Making Authority which is the State Government in the instant case. In fact, in order to regulate the procedure for transfer of permit, the State Government has enacted the Rules in Rule 82. Sub-rule (1) to (5) of Rule 82 of the Rules together lay down the procedure to be followed for transfer of permit. The Rule Making Authority by enacting sub-rule (6) of Rule 82 of the Rules has made it clear that the procedure provided under sub-rules (1) to () of Rule 82 of the Rules shall not apply in respect of transfer of contract carriage permits issued for motor cabs. Therefore, the intention of the Rule Making Authority is clear, in that, the procedure provided for transfer of permit under Rule 82 of the Rules shall have no application for transfer of contract carriage permits. It is in this background that the State Government was asked to point out whether any separate Rules have been framed or separate procedure is evolved for the purpose of regulating the transfer of motor cab permits.

18. In the statement of objections, it is specifically stated that the very procedure provided in Rule 82 of the Rules is followed even for the purpose of considering the application for transfer of auto-rickshaw permits. If that is so, then as rightly pointed out by the Learned Counsel! for the petitioners, the requirement spelt out and the procedure provided under sub-rules (1) to (5) of Rule 82 of the Rules do not disentitle or restrict transfer of permits in favor of persons who already possess auto-rickshaw permits or who do not have license to drive the auto-rickshaws. The notifications that are produced at Annexures-C, D & G, as already adverted to above consistently require that no permit shall be granted in favor of a person who is already having an auto-rickshaw permit. It is therefore clear that what is sought to be prevented by issuing notifications vide Annexures-C, D & G is sought to be nullified by the present action of the State

Government in indiscriminately permitting the transfer of auto-rickshaw permits. If the grant of auto-rickshaw permits is prohibited in favor of persons not possessing auto-rickshaw licenses and persons already possessing auto-rickshaw permits, then it is not understandable how the State would permit the transfer of auto-rickshaw permits from one person to another disregarding the intention behind the restriction imposed for indiscriminate grant of auto-rickshaw permits. The policy of the State has to be consistent in this regard. While one can really see a laudable object in the notifications in imposing the conditions by way of restriction for grant of auto-rickshaw permits, in certain cases there is no reason for the State to act contrary to the said intention in not insisting for the said requirement where providing for transfer of permits.

19. It is also relevant to notice at this stage the important factors that were highlighted by the Transport Commissioner in his communication addressed to the Principal Secretary to Government, copy of which is produced at Annexure-F. The evil practice resorted to by the moneyed persons in accumulating number of auto-rickshaw permits and trading in the business of running the auto-rickshaws by engaging several drivers exploiting them to the fullest extent and thereby making almost an underworld business ultimately resulting in affecting the interest of the commuters. It is perhaps this aspect of the matter that has been taken note of by the State Government while issuing the latest notification in terms of Annexure-G imposing similar conditions while increasing the limit of auto-rickshaw permits to be issued in Bangalore City from 85,000 to 1,25,000. If this is the laudable object that the State has taken note of, then one fails to understand why the State intends to take a retrograde step in this connection in enabling indiscriminate transfer of auto-rickshaw permits by dispensing with these restrictions and taking recourse to Rule 82 of the Rules. Though Section 82 provides for transfer of permits with the prior approval of the transport authority which has granted the permit, it cannot be said that no regulatory measures or restrictions can be placed in public interest which will guide the competent authority while granting such permission for transfer of permit. In fact, the modification Annexure-G is issued in exercise of the power vested in the State Government u/s 74(3)(a) of the Act. This notification is not under challenge in these writ petitions. In fact, it is stated at the bar that this notification is upheld by this Court on 13.07.2011 in W.RNos.12987-989/2011 and connected cases and the Division Bench has dismissed the writ appeals filed against the said order passed by the learned Single Judge, on 26.09.2011 in W.A.No.5597-99/2011. Thus, it has to be stated that while the petitioners cannot seek a mandamus against respondent Nos. 1 & 2 to prohibit the transfer of auto-rickshaw permits, the fact remains that respondent Nos. 1 & 2 cannot indiscriminately resort to grant permission for transfer of auto-rickshaw permits ignoring the intention expressed in the notifications issued on 23.03.2011 vide Annexure-G making it clear that auto-rickshaw permits shall only be granted to applicants who had auto-rickshaw driving license and the same shall not be granted in favor of a person who is already having a auto-rickshaw permit. The State Government has

to evolve a proper procedure guiding the transfer of Auto-rickshaw permits and the present procedure adopted in following the procedure provided under Rule 82 of the Rules is not in accordance with law, in as much as sub-rule (6) of Rule 82 of the Rules itself makes it clear that the procedure prescribed in that Rule shall not be applicable for transfer of auto-rickshaw permits. It has to be further stated that the State Government has to keep in mind the conditions governing the grant of permit as stated in the impugned notification - Annexure-G while evolving such procedure regulating the transfer of auto-rickshaw permits. As otherwise, it will defeat the very purpose for which those conditions are imposed while issuing the notification dated 23.03.2011. As long as the said notification dated 23.03.2011 holds the field and as long as the State Government intends to address the menace associated with moneyed persons possessing several auto-rickshaw permits unto themselves depriving the auto-rickshaw drivers to own such permits, by exploiting their position, it is necessary that the State Government comes up with a stand consistent with its object and enacts a procedure governing the transfer of auto-rickshaw permits, as early as possible. Therefore, this writ petition deserves to be and is allowed in part in the following terms?

(i) The State Government she ensure that the transfer of auto-rickshaw permits is consistent with the conditions imposed in the notification dated 23.03.2011 at Annexure-G regulating the grant of auto-rickshaw permits.

(ii) The State Government shall take necessary steps as expeditiously as possible to evolve a procedure regulating the transfer of auto-rickshaw permits by incorporating such conditions which are consistent with Annexure-G notification.