

(2011) 02 KAR CK 0060

In the Karnataka High Court

Case No : Writ Petition No's. 9643, 11780 of 2008, 33449, 34031-34035, 36232-36244, 37254, 37255, 38980-39009 of 2009, 3187-3191, 4981-85, 4986-90, 4991-94, 10856-10860, 30319-30323, 30324-30327, 32629-32633, 32634-38 and 32639-43 of 2010

Sri T. Nagaraj and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 24-02-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 41, 44, 67
Motor Vehicles Rules, 1989 — Rule 115, 124, 126

Citation : (2011) 3 KCCR 1915 : (2011) 8 RCR(Civil) 1303

Hon'ble Judges : Huluvadi. G. Ramesh, J

Bench : Single Bench

Advocate : B.R. Sundararaja Gupta, in W.P. Nos. 7932 of 2011, in W.P. Nos. 326290-32633, 32634-38, 32639-43, 30319-30323, 30324-30327, 3187-3191, 10856-10860, 4981-85, 4986-90 and 4991-94 of 2010, in W.P. Nos. 38648-38659, 34031-34035, 36232-36244 and 38980-39009 of 2009 and in W.P. Nos. 9643 of 2008, C.V. Kumar, in W.P. No. 9643 of 2008, K. Ravishankar, Adv in W.P. No. 33449 of 2009 and B. Pramod, in W.P. No. 37254 and 37255 of 2009, for the Appellant; K.M. Shivayogiswamy, HCGP in W.P. No. 7932 of 2011, in W.P. Nos. 326290-32633, 32634-38, 32639-43, 30319-30323, 30324-30327, 3187-3191, 10856-10860, 4981-85, 4986-90 and 4991-94 of 2010, in W.P. Nos. 38648-38659, 34031-34035, 36232-36244, 33449, 37254, 37255, 38980-39009 of 2009 and in W.P. No. 9643 of 2008 and in W.P. No. 11780 of 2008 for R1-R2 and B.R.S. Gupta, for R 4 in W.P. Nos. 11780 of 2008, for the Respondent

Judgement

Huluvadi. G. Ramesh, J.—Petitioners in these petitions have sought for to quash the notifications dated 7.10.2008 and 29.8.2009 at Annexures "A" and "C" issued by the 1st Respondent and for such other relief.

2. According to the Petitioners, the 1st Respondent has prohibited the registration of auto rickshaws other than four stroke engine vehicles, in the specified areas in the State of Karnataka by a notification dated 7.10.2008.

Thereafter, it has passed an order of stay of the said notification by order dated 31.10.2008 in so far as four stroke engine vehicles are concerned. Once again on 29.08.2009, it has withdrawn the order dated 31.10.2008 and prohibited the registration of auto rickshaws other than four stroke engine petrol vehicles in the specified places within the State.

3. According to the Petitioners, Chapter-V of Section 67 of the Motor Vehicles Act of 1988 relates only to regulating of permits in question and it does not pertain to registration of vehicles. In the absence of power being delegated to the 1st Respondent and also statutory provisions prohibiting registration of auto rickshaws other than four stroke engines by the Central Government by issuing a specific notification, the said impugned notification issued is wholly illegal and without authority of law so long as the vehicles in question comply with the requirement of the statutory provisions of Rule 47 of the Central Motor Vehicles Rules, 1989.

4. Heard.

5. It is the submission of the learned Counsel for the Petitioners that. Rule 115 of the Central Motor Vehicles Rules of 1989 has prescribed a condition for emission of smoke, vapour etc., from motor vehicles, wherein a provision is provided under the Rules that the vehicles shall be maintained in such condition and shall be so driven so as to comply with the standards prescribed in these rules. As such, in the absence of violation of any condition prescribed, preventing the registration of two stroke engine vehicles only subscribing to four stroke engine vehicles, is illegal and without authority of law.

6. Further, according to him. Rule 124 of the Central Rules provides for safety standards of components wherein the Central Government is empowered to specify, by issuing a notification, the relevant standards as specified by the Bureau of Indian Standards of any part, component or assembly to be used in the manufacture of a vehicle including construction equipment vehicle. As such, when there is no prohibition provided for manufacturing of two stroke engine vehicles and when no authorisation as such, is provided by the Central Government prohibiting the registration of two stroke engine vehicles in the places prescribed within the State of Karnataka, the notifications issued are unreasonable.

7. Further, referring to Section 126 of the Central Rules which provides that every motor vehicle would be subjected to test at the level of the manufacturer, learned Counsel has submitted that such prohibition of registration is negating the very rules and when the manufacturer has complied with the requirement of Rules 115, 124 and 126 of the Central Motor Vehicles Rules, 1989 and based on which, two stroke engine vehicles have also been manufactured, prohibiting such operation of the vehicles in the cities mentioned in the notification is illegal.

8. Per-contra, the learned Government Pleader has submitted that Section 67 of the Motor Vehicles Act of 1988 provides the power to State Government to have

a control on the road transport and as per Clause (1)(a) and (1)(c) of Section 67 of the Act, the very notification issued is from the point of advantage offered to the public in specified cities to avoid undesirable consequences and hazards and for smooth traffic movement, and applies to only some of the cities and not all and Section 67 specifically authorizes the State Government to issue notification from time to time as it deems fit in the circumstances, whereas Rules 115, 124 or 126 of the Central Motor Vehicles Rules only refers to conditions and standards to be maintained at the level of manufacturing of motor vehicles and the same may not be applied to the cases on hand, wherein to regulate the traffic and to avoid deterioration of road system and also unhealthy competition such rules have been prescribed which are not either in violation of the Central Rules or in violation of any other provisions provided under the Motor Vehicles Act, 1988.

9. In the detailed statement of objections filed in W.P. No. 38648/2009 it is contended that, Section 44 of the Act empowers the registering authorities to refuse to register any vehicle if it is mechanically defective or fails to comply with the requirements of the Act. Even Section 41 of the Act makes it clear that, it is not a vested right to get any vehicle registered merely by complying with the provisions of Section 41 alone, but, he must comply with all the requirements of the Act in order to get the vehicle registered.

10. The learned Government Pleader has also referred to the decision of this Court in W.P. No. 9195/2009 dated 29.5.2009 and writ appeal filed against the said order in W.A. No. 2255/2009 disposed of on 10.07.2009 wherein in connection with the non availability of LPG filling stations, the conditions were modified and indirectly the notifications were upheld to the effect that, wherever the LPG refilling stations are available then invariably auto rickshaws will have to have LPG kit. Accordingly, it is submitted that there is no infirmity or illegality in the notifications issued.

11. In the light of the arguments advanced, let me consider whether the impugned Notifications issued as per Annexures A and C dated 7.10.2008 and 29.8.2009 respectively, requires interference?

12. The learned Single Judge of this Court in the decision rendered in W.P. No. 9195/2009 dated 29.5.2009, while examining the Notification issued at Annexure "A", has observed that what is manifest is that the Transport Department of Government of Karnataka in exercise of jurisdiction under Sub-section (1) of Section 67 of the Motor Vehicles Act, 1988 has issued directions to the RTA wherever LPG retro fitment and refilling facility is available in the State of Karnataka, and it means, where it is not available, this notification would have no application. However, the Division Bench in W.A. No. 2255/2009 disposed of on 10.07.2009 while modifying the said order has held that, the RTO before cancelling the permits or licence granted to the auto rickshaws, shall examine the availability of LPG refilling stations very near to the city or Taluk Headquarters or Hobli Headquarters where the auto rickshaws are plying and

thereafter, to take appropriate action in accordance with law and it has also directed the RTO to see that adequate LPG refilling stations are established.

13. In the Notification issued at Annexure "A", it is stated that, "auto rickshaw cabs registered and covered by permits for its use within the Corporations, District and Taluk Headquarters of Mysore, Hubli, Hubli-Dharwar, Belgaum, Gulbarga, Mangalore, Udupi, Tumkur, Davangere, Puttur. Shimoga and Hassan where LPG retrofitment and refilling facility is available in the State of Karnataka, shall be fitted with approved LPG kits". However, in the places where there are no LPG refilling stations, it was permitted to register auto rickshaws with only four-stroke petrol engines.

14. The grievance of the Petitioners in these cases is, the Notifications issued prescribing to operate only four stroke engine petrol auto rickshaws and not allowing to register two stroke engine auto rickshaws, is totally working out hardship to the persons who have already booked the vehicles and got it registered and also, having regard to the increase in the fuel cost as well as the engine cost from time to time, it is not viable for the Petitioners to operate four stroke engine petrol auto rickshaws.

15. The Notification issued has imposed a condition on the authorities before registration of any auto rickshaws with effect from 01.10.2009 that, they must have a four stroke petrol engine wherever LPG stations are not available and, wherever LPG stations are available in the cities mentioned above, invariably the auto rickshaws have to run with four stroke engines having LPG kit. The approach and motive of the Government of course, is laudable and also in pursuance to Section 67 of the Motor Vehicles Act of 1988. However, so far as the use of two-stroke engine petrol auto cabs or engines which are being run by diesel are concerned, there may not be any apprehension to run the same outside the areas mentioned in the Notification.

16. The main grievance of the Petitioners in these cases is, they have already purchased two stroke petrol engine vehicles and by such imposition of condition, they cannot replace the existing vehicles with new ones. Accordingly, expressing their economic hardship, they have sought for quashing the notification issued stating that, in the absence of any such authorisation and also when the Central Motor Vehicles Rules 115, 124, 126 of 1989 have provided for safety measures before registration on the point of safety of the commuters or also on the point of unhealthy competition, such issuance of Notification is illegal and arbitrary.

17. It is noticed, as and when the cities are overcrowded, the operation of smaller vehicles like auto rickshaws are restricted to the outer limits of the city to avoid congestion and also to maintain road traffic system. The object behind introducing four stroke engine vehicles run by petrol is having regard to its new design, which do provide for lesser pollution apart from periodical test provided to keep the vehicle with minimum emission. In the circumstances, when already this Court, with regard to availability of LPG filling stations in the Division Bench

decision noted above, has relaxed the condition to the extent to operate with LPG kits wherever refilling stations are available and also a direction has been issued to the RTO before cancelling the permits or license granted to the auto rickshaws, to examine the availability of LPG refilling stations very near to the City or Taluk Headquarters or Hobli Headquarters where these auto rickshaws are plying and thereafter, to take appropriate action in accordance with law and also to establish adequate refilling stations, though the notification issued dated 7.10.2008 appears to be indirectly avoiding the registration of two stroke engine auto rickshaws, it is not as if the registration of two stroke engines are totally prohibited and that it is permissible elsewhere except the places mentioned in the notification having regard to the road traffic system and the level of pollution in the cities mentioned above and to have a regulation at the time of registration of vehicles. However, it is also for the State to take measures to provide LPG fuelling stations wherever such prohibition has been imposed, to operate other type of vehicles than the four stroke petrol autorickshaw cabs.

18. Since already the Division Bench of this Court has relaxed the conditions of Notification, what remains to be considered is only with regard to use of four stroke petrol engine vehicles in other areas where LPG fuelling station is not available. Since it is made clear that the State shall take positive steps to establish LPG stations in other places, the notification issued only to run four stroke petrol engine vehicles/auto rickshaw cabs in the places mentioned in the notification cannot be said to be in negation of the rules provided under the Central Motor Vehicle Rules. Section 67 of the Motor Vehicles Act, 1988 is an enabling provision. However, when such conditions imposed in the Notification are not in derogation and rather they are to promote the object of Section 67 having power to issue Notifications, the State Government has rightly taken steps by notifying only specified cities to operate with bi-fuel engines.

19. It appears, during the pendency of the matters, by virtue of the interim order passed, some of the vehicles with two stroke engine are said to have been registered. If they are ordered to be replaced or removed from operation in the cities mentioned above, it works out hardship to the Petitioners. Hence, it is made clear that from today onwards this rule shall come into force, so that the registering authorities shall not order to register two stroke engine vehicles and other vehicles i.e., the vehicles so far registered from the date of tiling of the petitions till the disposal of the writ petitions, are saved. However, there may not be any apprehension to register other type of vehicles than the vehicles mentioned in the Notifications above in cities and towns, which are not specified in the Notification.

Accordingly, these petitions are disposed of Consequently, Misc. W. 8379/2010 and Misc. W. 8380/2010 filed for directions and Misc. W. 921/2010 filed for vacating stay respectively does not survive for consideration.