

(2005) 08 KAR CK 0003
In the Karnataka High Court
Case No : Writ Appeal No. 6459 of 1999

The Regional Transport Officer, Bangalore Central and Another	APPELLANT
Vs	
Tata Infotech Limited	RESPONDENT

Date of Decision : 09-08-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 2 (30), 2 (33), 2 (7), 40 (1), 40 (3)

Citation : (2005) 4 ACC 444 : AIR 2005 Kar 409 : (2005) 5 KarLJ 590 : (2005) 4 KCCR 2369

Hon'ble Judges : S.R. Nayak, J;C.R. Kumaraswamy, J

Bench : Division Bench

Advocate : S. Prakash Shetty, for the Appellant; Puttige R. Ramesh, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—The Regional Transport Officer, Bangalore Central and the Deputy Commissioner for Transport, Bangalore Division, being aggrieved by the order of the learned Single Judge dated 31st July, 1999 passed in Writ Petition Nos. 21327 to 21330 of 1999 have preferred this writ appeal.

2. The background facts leading to filing of this writ appeal require to be noted in the first instance and they are as follows:

On K.T. Rajashekar is the registered owner of vehicles bearing registration Nos. KA 01/A 1852, KA 01/A 1853, KA 01/A 1891 and KA 01/A 1892. On 1-4-1999 K.T. Rajashekar entered into an agreement with the respondent-company with regard to the leasing of the aforementioned four vehicles and, in that agreement, the respondent (herein is referred to as a "Lessee") On 3-4-1999 K.T. Rajashekar and the respondent herein made a joint application to the RTO, Bangalore Central, requesting the latter to record the lease agreement entered into between the parties in the R.C. Books. The RTO, Bangalore Central, issued an endorsement on 9-4-1999 rejecting the above request. Being aggrieved by the

above endorsement issued by the RTO, K.T. Rajashekar preferred Writ Petition Nos. 13191 to 13194 of 1999 and those writ petitions were dismissed by this Court as not maintainable by order dated 7-6-1999 on the ground that the possession of the vehicles was not handed over to the respondent-company herein in pursuance of the agreement dated 1-4-1999. When the matter stood thus, on 7-6-1999, the respondent-company took possession of the vehicles from the registered owner viz., K.T. Rajashekar. Thereafterwards, the respondent-company made an application to the RTO to register the vehicles in its name and that request was also rejected by the RTO by issuing an endorsement dated 15-6-1999. One more application was made to the RTO by the respondent-company for registering the vehicles in its name and that application was also rejected by the RTO by issuing an endorsement dated 21-6-1999. Being aggrieved by the above action of the RTO, the respondent-company filed Writ Petition Nos. 21327 to 21330 of 1999 on 23-6-1999. The learned Single Judge, by the order under appeal, has allowed the writ petitions. The operative portion of the order reads as follows.--

"For the foregoing reasons these writ petitions are allowed. The order bearing No. RTO.BNG(C) Regn./TR/99, dated 15-6-1999 as per Annexures-D1, D2, D3 and D4 and endorsement bearing No. RTO/BNG(C) REGN/TR/99, dated 21-6-1999 at Annexures-E1 to E4 issued by the first respondent are hereby quashed. The first respondent is directed to record the name of the petitioner-company as lessee in the R.C. Books of the vehicles and to classify the vehicles bearing Nos. KA 01/A-1852, KA 01/A-1853, KA 01/A-1891 and KA 01/A-1892 as private service vehicles".

3. On 4-1-2000, the respondent-company herein filed I. A. praying for return of documents in respect of three vehicles, except vehicle bearing registration No. KA 01/A 1892 or to permit withdrawal of Writ Petition Nos. 21327, 21328 and 21329 of 1999. This Court, on 9-1-2000 passed an order dismissing Writ Petition Nos. 21327 to 21329 of 1999 as withdrawn. Resultantly, what remains for decision making as on today is Writ Appeal No. 6459 of 1999 only which relates to the motor vehicle bearing registration No. KA 01/A 1892 (hereinafter for short referred to as the "subject vehicle").

4. At the time of hearing, Sri S. Prakash Shetty, learned Government Advocate, brought to our notice that his clients have no objection to record the name of the respondent-company as lessee of the subject vehicle in the RC book as directed by the learned Single Judge, but, they have every objection to treat the said vehicle as "private service vehicle" as defined under Sub-section (33) of Section 2 of the Motor Vehicles Act, 1988 (for short, the "Act"). Learned Government Advocate having drawn our attention to the definition of the terms "Owner" in Sub-section (30); "Private service vehicle" in Sub-section (33); "Public service vehicle" in Sub-section (35); "Stage carriage" in Sub-section (40); "Contract carriage" in Sub-section (7); "Educational Institution bus" in Sub-section (11); "Fares" in Sub-section (12) and "Permit" in Sub-section (31) of Section 2 and

also the provisions of Sub-section (1) of Section 40, Sub-section (3) of Section 43, Section 50 and Sub-section (1) of Section 51, would contend that the subject vehicle can never be regarded as a "private service vehicle" as claimed by the respondent-company and, therefore, the learned Single Judge is not justified in granting the kind of relief decreed by him. The crux of the agreement of the learned Government Advocate is that if the Court were to look only at the definition of the term "owner" as defined in Sub-section (30) and "private service vehicle" in Sub-section (33) of Section 2 of the Act, the subject vehicle might be regarded as "private service vehicle", but, if the Court were to take into account the other provisions of the Act noted above also, such an interpretation is impermissible and that there is every justification to treat the subject vehicle as a "public service vehicle".

5. Sri Puttige R. Ramesh, learned Counsel for the respondent-company, per contra, while supporting the order of the learned Single Judge, would maintain that the view taken by the learned Single Judge is in conformity with the law laid down by this Court in the case of P. Seetharam v. Regional Transport Authority, Tumkur" 1995 (6) Kar. L.J. 101 which has held the field for more than a decade. Sri Puttige Ramesh would also back his submission with reference to a recent judgment of a Division Bench of this Court in the case of K.T. Rajashekar and Others Vs. State of Karnataka and Others,

6. Having heard the learned Counsels for the parties, the only question that survives for decision in this appeal is: Whether the vehicle bearing No. KA 01/A 1892 could be regarded as a "private service vehicle" as defined in Sub-section (33) of Section 2 of the Act?

7. The term "private service vehicle" is defined in Sub-section (33) of Section 2 of the Act. It reads as follows.--

". "Private service vehicle" means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes".

The fact that the motor vehicle bearing registration No. KA 01/A 1892 is constructed to carry more than six persons including the driver is not in controversy. Similarly, the said vehicle is ordinarily used for the purpose of carrying persons for, or in connection with, the business of the respondent is also not in controversy. What is in controversy is that as per the learned Government Advocate the vehicle is used for the purpose of carrying persons for or in connection with the business of the respondent for hire or reward. This contention is put forth by the learned Government Advocate on the ground that under the agreement dated 1-4-1999 entered into between K.T. Rajashekar and the respondent-company it was agreed that the company would pay a monthly rent of Rs. 30,000/- with regard to each vehicle leased by K.T. Rajashekar and,

therefore, the subject vehicle should be regarded as a "public service vehicle". The term "public service vehicle" is defined under Sub-section (35) of Section 2 of the Act to mean any motor vehicle used to carry passengers for hire or reward and includes a maxi-cab, a motor cab, a contract carriage and stage carriage. A vehicle could be said to be a "public service vehicle" only if it carries passengers for hire or reward. In other words, the essential requirement of a public service vehicle is that it must carry passengers for "hire or reward". If a vehicle does not carry passengers for hire or reward, it cannot be described as a "public service vehicle" within the meaning of that term as defined in Sub-section (35) of Section 2 of the Act. In the instant case, the subject vehicle is ordinarily used by or on behalf of the respondent-company for the purpose of carrying only the employees of the respondent-company and no one else.

8. It was contended by the learned Government Advocate that the respondent-company could not be regarded as owner of the subject vehicle for the purpose of the definition of the term "private service vehicle". The above contention of the learned Government Advocate is not acceptable to us. It is true that in order to bring a motor vehicle within the meaning of "private service vehicle", such vehicle should ordinarily be used by or on behalf of the owner of such vehicle. The word "owner" is defined under Sub-section (30) of Section 2 of the Act. The word "owner" is defined to mean a person in whose name a motor vehicle stands registered and where such person is minor, the guardian of such minor and in relation to a motor vehicle which is the subject of a hire purchase agreement, or an agreement of lease, or an agreement of hypothecation, the person in possession of the vehicle under that agreement. Admittedly, the subject vehicle was leased in favour of the respondent-company under the agreement dated 1-4-1999. It is also admitted position that the possession of the subject vehicle was handed over to the respondent-company in terms of the agreement. Therefore, the respondent-company satisfies the definition of the term "owner" as defined under Sub-section (30) of Section 2 of the Act. If that is so, it is satisfactorily shown that the subject vehicle is ordinarily used by or on behalf of the respondent-company, which is the owner of the subject vehicle, for the purpose of carrying its employees. It is nobody's case that any passenger is carried in the subject vehicle for hire or reward. It is a fact that only the employees of the respondent-company are transported to and from the factory in connection with the trade or business of the respondent-company. It is also pointed out that the subject vehicle stands registered in the name of the respondent-company and, therefore, the respondent-company will be deemed to be the owner thereof. Since the subject vehicle answers the description of a "private service vehicle" as denned under Sub-section (33) of Section 2 of the Act, the respondent-company is justified in insisting that the subject vehicle should be shown and recorded as "private service vehicle" in the RC book. Therefore, no exception can be taken to the order of the learned Single Judge. In taking this opinion, we are fortified by the judgment of a learned Single Judge of this Court in the case of P. Seetharam and the judgment a Co-ordinate Division

Bench of this Court in the case of KT. Rajashekar.

9. In order to answer the question whether the subject vehicle is a "private service vehicle" as defined under Sub-section (33) of Section 2 of the Act, the relevant provisions are the definitions of the term "owner" and "private service vehicle" and other provisions to which our attention was drawn by the learned Government Advocate have no bearing on the decision making. The confusion in the submission of the learned Government Advocate stems from the failure to differentiate between the leasing of a motor vehicle by an owner and transferring the ownership of a motor vehicle by such owner. In the course of the arguments, since the learned Government Advocate submitted that the appellants have already complied with the direction issued by the learned Single Judge by recording the respondent-company as the lessee of the subject vehicle in the RC book and since they have no objection for that part of the writ, there is no need for us to consider the question whether the learned Single Judge is right in directing the appellants to record the name of the respondent-company as the lessee of the subject vehicle in the RC book.

10. In the result and for the foregoing reasons, we hold that the writ appeal is devoid of merit and it is accordingly dismissed, however, with no order as to costs.