

B. Rahamathulla Khan and ors. Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Aug-26-1988

Reported in : AIR1989Kant157; ILR1988KAR2646; 1988(3)KarLJ395

Judge : Prem Chand Jain, C.J. and ;K. Shivashankar Bhat, J.

Acts : Karnataka Motor Vehicles Rules, 1963 - Rule 366; [Constitution of India](#) - Article 19; [Motor Vehicles Act, 1939](#) - Sections 111A

Appeal No. : Writ Appeal Nos. 333, 334 and 412 of 1988, W.P. Nos. 20899 of 1986, 7219 to 7222, 10540, 11032 to 11

Appellant : B. Rahamathulla Khan and ors.

Respondent : State of Karnataka and ors.

Advocate for Def. : S.V. Jagannath, Govt. Adv., ;B.B. Mandappa and ;Jaya Kumar S. Patil, Adv.

Advocate for Pet/Ap. : P.R. Srirangaian, ;M.R.V. Achar, ;C.S. Shanthamallappa, ;M. Rangaswarny, ;C. Narasimhachar and ;S.V. Krishnaswamy, Adv.

Judgement :

Prem Chand Jain, C.J.

1. Whether a provision in R. 366 of the Karnataka Motor, Vehicles Rules, 1961, authorising any police officer not below the rank of a Sub-Inspector of Police

deputed from the State Police, Department to*' the Karnataka State Road Transport Corporation to seize and detain vehicles, is violative of Art. 19(1)(g) of the Constitution is the significant question in, these cases.

2. Rule 366 of the Karnataka Motor Vehicles Rules, 1963, (hereinafter referred to as 'the Rules'), the vires of which has been challenged, reads as under

'Officers authorised to, seize and detain: vehicles - Police officer not below the rank of a Sub-Inspector of Police, any Police Officer not below the rank of a Sub-Inspector of Police deputed, of the State Police Department to the Karnataka State Road Transport Corporation and any officer of the, Motor-Vehicles Department not below the rank of an Inspector of Motor Vehicles may, if he has reason to believe that a Motor Vehicle has been or is being used in,' contravention of the provisions of S. 22 of the Act or without the permit required by sub-sec. (1) of S. 42 of the Act or in contravention of any condition of such permit relating to the route in which or the area in which or the purpose for which the vehicle may be used, seize and detain-the vehicle and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle.'

(Underlining by us)

3. The case of the appellants/petitioners is that since the Karnataka State Road Transport Corporation (hereinafter referred to as the Corporation) is a competitor in the field, the officers on deputation from the State Police Department and the Motor Vehicles Department would be employees of the Corporation. Hence the underlined portion of the rule is violative of Art. 19(1)(g) of the Constitution.

4. The question which requires our determination is directly considered by a learned single Judge of this, Court in Smt.Anandamma v. State of Mysore ILR, (1974) Kant 244 wherein it is observed thus:

'From these provisions, it becomes clear that a Government servant transferred to a foreign service will continue to remain as a Government servant. The police officers who are deputed to the Corporation, therefore, remain the police officers of the State Police Department though they are under the, administrative control of

the Corporation. If the police officers are not the employees under the Corporation, the contention for the petitioners that the Corporation being rival operator is placed in an advantageous position cannot be accepted. Rule 366 does not authorise any one of the Corporation employees to inspect or seize the vehicles of the petitioners. In that view, the principle stated in the decision in *G.T. Venkataswamy Reddy v. State of Mysore* (1966) 1 Mys LJ 542 relied upon by Mr. Rangaswami is of no assistance to him.

6. There is no substance in the contention that the police officers deputed to the Corporation have no power to inspect and check the public service vehicles. Rule 165 confers power on any police officer not below the rank of a Sub-Inspector of Police or Sergeant to call upon the driver of any public service vehicle to stop the vehicle and to keep it at rest for such time as is necessary for the purpose of inspection so as to satisfy, himself that the provisions of the Motor Vehicles Act and the Rules and the conditions of the permit of the vehicles are being complied with. The police officers deputed to the corporation so long as they remain, as Police Officers of the State Police Department could exercise such power and they could also exercise the power to seize the vehicle under R. 366 of the Rules.

7. The power conferred under Rule 366 is not arbitrary. It is only when the police officer has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of S. 22 of the Act or without the Permit required by sub-sec. (1) of S. 42 of the Act or in contravention of any condition of the permit of the vehicles, that he could seize and detain the vehicle for the purpose of taking further action. This provision is not designed to be used as a handle for indiscriminate seizures nor does it permit capricious acts with a view to make a roving enquiry into the affairs of the vehicle. It does not also enable the police officer to fish out materials on the off chance of getting something to justify the act of seizure. It is accepted law that the words 'has reason to believe' suggest that the belief must be an honest and reasonable one based upon reasonable grounds and the basis of the action should not be on irrelevant consideration. Though the said expression borders on subjectiveness, yet, it has to satisfy the reasonable objective test as well. The contention that R. 366 confers arbitrary power of seizure to the police officers cannot therefore be accepted.'

The learned single Judge relying on the aforesaid judgment and also various other judgments of the Supreme Court has upheld the vires of the impugned portion of R. 366, as a result of which Writ Petitions Nos. 18169, 18170 and 18204 of 1987 out of which Writ Appeals Nos. 333, 334 and 412 of 1988 have arisen have been dismissed.

5. It was contended by Mr. Rangaswamy, learned counsel for, the appellants/petitioners that the Corporation is a rival in business to the private operators of motor vehicles running in the State and is intimately connected with the running of motor vehicles, that the Flying Squad attached to the Corporation consists of the Police Squad deputed from the State Police Department to the Corporation who are paid by the Corporation and act in accordance with the directions of the Corporation, and that such police, officers would be over zealous in discharging their, duties of stopping a vehicle and in searching, seizing and detaining motor vehicles belonging to others and at the same time excessively lenient in the case of vehicles belonging to their own department. It is on these facts that Mr. Rangaswamy sought to argue that the underlined portion of the rule is violative of Art. 191(1)(g) of the Constitution. In support of his contention, the learned counsel placed reliance on the judgment of the Supreme Court in *Ishwar Singh v. State of Rajasthan* : [1987]1SCR300

6. On the other hand, the stand taken by Sri Sundaraswamy, learned counsel for the Corporation, is that the Police Officers are only on deputation with the Corporation, that they are not under the disciplinary control of the Corporation, that they have nothing to do with the business of the Corporation, that work is allotted to them by the Chief Security Officer, that the Work of the Police Officers is of a very limited nature, that they have no adjudicating powers, that under the Rules no despotic powers have been given to the Police Officers and that at best a particular act of a Police Officer may be liable to be struck down being arbitrary and violative of principles of natural justice. Sri Chandrashekharaiyah, learned State Counsel, adopted the arguments of Sri Sundaraswamy and further buttressed them by contending that the Police Officers who are sent to Corporation are only to do the statutory duties cast under the Motor Vehicles Act, that the transfers etc. are made by the Inspector General of Police and that the Police Officers can never

be influenced by the Corporation Authorities.

7. The learned single Judge while negating the plea of the appellants has proceeded on the premise that the Police Officers and Officers of the Motor Vehicles Department of the State are not the employees of the Corporation that their service conditions are those that are framed in their respective departments under the proviso to Art. 309 of the Constitution or under the Police Act, that they are not governed by Service Regulations of the Corporation, and that in the administrative hierarchy they do, not find a place. For this the learned single Judge has sought support from the judgments, in (1) C. Muniyappa Naidu v. State of Karnataka ILR (1976) 1 Kant 265: (1976 Lab IC 1119), (2) C. Muniyappa Naidu v. State of Karnataka (1976) 1 Kant LJ 548, (3) C.Muniyappa Naidu v. State of Karnataka : (1977)ILLJ257SC , (4) Mushtaq Ahmed v. State of Karnataka (1983) 1 Kant LJ 276, (5) State of Bihar v. J. A, C. Saldhana : 1980 CriLJ98 (6) C. M. Prasad v. State of Karnataka (1984) I Kant LJ 219 and (7) Transport Commr. Hyderabad v. S. Sardar Ali : [1983]3SCR729 , besides Anandamma's case (ILR (1974) Kant 244), which is directly on the point. The: learned single Judge has also made reference to the judgments of the Supreme Court in M/s Krishna Bus Service Pvt. Ltd. v. State of' Haryana : AIR 1985 SC1651 and Ishwar Singh v. State of Rajasthan : [1987]1SCR300 .

8. We have given our thoughtful consideration to the entire matter and have gone through the various judgments to which reference has been made by the learned single Judge and which were also cited before us during the course of arguments. As we look at the whole matter, we find that the point in issue is directly covered by the judgment of the Supreme Court in Ishwar Singh's case : [1987]1SCR300 , and any attempt on our part to independently arrive at a conclusion' on the basis of other judgments may not be necessary. As has been observed earlier, the learned single Judge has made reference to Ishwar Singh's case and has also reproduced certain observations from that judgment. But the relevant observations occur in para 10, which read as under:

'It may be that the Corporation is established by the Government with the capital contributed by the Central Government or the State Government and it may also

be that for the purposes of Part III of the Constitution the Corporation is treated as 'a State'. Nevertheless the officers of the Corporation cannot be treated as persons falling within the meaning of the expression 'other persons' S.129 or S.129A of the Act , even though some of them may be officers and servants of the Corporation. In view of the foregoing we hold that the Deputy General Manager (Traffic), the Assistant Depot Managers and the Traffic Inspectors of the Corporation could not have been authorised by the State Government to discharge the power under S. 129-A of the Act. The impugned Notification has to fail on this account only. We also hold that the reasons given in support of the decision in Krishna Bus Service case : AIR 1985 SC1651 (supra) are equally applicable to this case also.'

(Underlined by us)

During the course of arguments, Mr. Rangaswamy, learned counsel, had laid stress on the underlined portion of the observations extracted above, and had built his case only on the basis of those observations. We have read and re-read the judgment and find no escape from the conclusion on the basis of the underlined portion of the above observations that the power given to the Police Officers who are deputed from the State Government to the Corporation for searching, seizing and detaining motor vehicles, is violative of Art. 19(1)(g) of the Constitution. There is no gainsaying that the Corporation is a rival in business to the private operators of motor vehicles in the State and is intimately connected with the running of motor vehicles. After deputation, the Police Officers are directly under the administrative control of the authorities of the Corporation. It is correct that initially the transfer is made by the Inspector General of Police; but after they assume charge in the Corporation their posting and functioning is controlled by the authorities of the Corporation and the Inspector General of Police has nothing to do with the functioning of those police officers. The Inspector General of Police cannot interfere at any time with the working of those officers till they remain on deputation with the Corporation. During the period they are in the Corporation, their confidential reports are also written by the authorities of the Corporation.

9. We do not agree with Mr. Sundaraswamy, learned counsel for the Corporation, that a police officer, even after deputation, would not show any partiality to the vehicles of the Corporation as he is expected to do his work in accordance with the Rules. We have to see the ordinary human conduct. It is beyond our comprehension that a person who is on deputation in the Corporation and whose Annual Confidential Reports are to be written by the authorities of the Corporation and whose entire functioning and working is controlled by the authorities of the Corporation would not succumb to a feeling favourable to the Corporation for which that person is discharging his duties. As is observed by the Supreme Court in Krishna Bus Service's case : AIR 1985 SC1651 , the powers of stopping the motor vehicles and the powers of inspection, search, seizure and detention exercised under the Motor Vehicles Act are serious restrictions on the fundamental right of the operators of motor vehicles guaranteed under Art. 19(1)(g) of the Constitution and these powers can be considered as reasonable restrictions only when they are exercised properly in the interest of general public. That being so, again as observed by the Supreme Court in that very case, such powers should be entrusted to a person, who is expected to exercise them fairly and without bias. Can it be said that police officers who are on deputation with the Corporation would exercise the power of search, seizure and detention fairly and without bias when their immediate boss is the Corporation which is a rival in business to the private operators of motor vehicles in the State and is intimately connected with the running of motor vehicles? The answer obviously has to be in the negative. The police officers who form a flying squad have no such independence of functioning which can permit them to discharge their duties in a fair and reasonable manner.

10. In Krishna Bus Service's case : AIR 1985 SC1651 on which also reliance was placed by Mr. Rangaswamy, the question that arose for determination was whether the appointment of the General Manager of Haryana Roadways as an officer who can exercise the powers exercisable by a Deputy Superintendent of police under the Motor Vehicles Act was valid or not. On that question, Venkataramaiah, J. speaking for the Court has observed thus: -

'10. The powers of stopping the motor vehicles and the powers of inspection; search, seizure and detention exercised under the Act are serious restrictions on the fundamental right of the operators of motor vehicles guaranteed under Art. 19(1)(g) of the Constitution. These powers can be considered as reasonable restrictions only when they are exercised properly in the interests of the general public. They should be reasonable both from the substantive as well as the procedural standpoint. Such powers should, therefore, be entrusted to a person who is expected to exercise them fairly and without bias. The General Manager of Haryana Roadways who is a rival in business to the private operators of motor vehicles in the State and is intimately connected with the running of motor vehicles cannot be expected to discharge his duties in a fair and reasonable manner. An unobstructed operation of the motor vehicles by private owners operating along the same route or routes would naturally affect the earnings of the Haryana Roadways. There is therefore every likelihood of his being over zealous in discharging his duties of stopping a vehicle and in searching, seizing and detaining motor vehicles belonging to others and at the same time excessively lenient in the case of vehicles belonging to his own department. If in discharging his duties in the case of vehicles belonging to others he fails to give due regard to the interests of the owners thereof he would be violating their fundamental right to carry on business in a reasonable way. If he is too lenient in inspecting the vehicles belonging to his own department, the interests of the travelling public at large would be in peril. In both the cases there is a conflict between his duty on the one hand and his interest on the other. Moreover administration must be rooted in confidence and that confidence is destroyed when people begin to think that the officer concerned is biased. This is not a case, which is governed by the rule of necessity. As it is, there are many other officers who are entrusted with the powers of the police officers under the Act. There was therefore no necessity to appoint the General Manager of Haryana Roadways also to exercise the said powers. We are therefore of the opinion that the appointment of the General Manager, Haryana Roadways who is directly responsible for running its motor vehicles as one of the officers who can exercise the powers of a Deputy Superintendent of Police under the Act imposes an unreasonable restriction on the fundamental right of the private motor vehicles operators and is therefore violative of Art. 19(1)(g) of the

Constitution. We however make it clear that the appointment of other officers of the State Government is not bad even though the Government is the owner of the vehicles as their connection with the running of the vehicles is too remote. The appointment of the General Manager as an officer who can exercise the powers of the Deputy Superintendent of Police under the Act is also not in the interests of the general public since the large number of motor vehicles owned by the Haryana Roadways would not be subject to inspection and checking by an independent agency. Can we expect a fair investigation by a police officer into a criminal case in which his own kith and kin are involved as the accused? The position is not different in this case. The Legislature could not have intended while enacting S. 133A of the Act that a person who was himself directly responsible for the proper running of the motor vehicles according to law could be appointed as the inspecting and investigating officer by the State Government for the purpose of enforcing the Act.'

In view of the aforesaid findings, the notification conferring powers on the General Manager of Haryana Roadways was quashed. It may be pertinent to observe that the General Manager of Haryana Roadways is a post which is manned by an officer of the State Service or an I.A.S. Officer. In other words, the post is held by a deputationist. If the conferment of power of the Deputy Superintendent of Police on such a high authority could be quashed, we fail to understand as to how the exercise of such power by the police officers on deputation can legally be sustained. In our view, the observations reproduced above in Krishna Bus Service's case : AIR 1985 SC1651 and the underlined portion of para 10 in Ishwar Singh's case : [1987]1SCR300 leave no scope for deciding the question differently in the light of the other judgments on which reliance has been placed and which have been referred, in the earlier part of the judgment. Moreover, it may not also be out of place to mention that in all those cases, the point in issue was entirely different, which would have no bearing on the facts of the case in hand. In this view of the matter, we find no escape from the conclusion that the power of search, seizure or detention given to the police officers not below the rank of a Sub-Inspector of Police deputed from the State Police Department to the Corporation is violative of Art. 19(1)(g) of the Constitution. In the view we have taken, with respect we find that the ratio of the decision in Anandamma's case JLR

(1974) Kant 244) is no longer a good law.

11. Consequently, we allow these appeals and set aside the judgment of the learned single Judge. We also allow the writ petitions and strike down the underlined portion of R. 366 of the Rules and forbear the, police officers on deputation with the Corporation from exercising the powers of stopping, searching, seizing and detaining the motor vehicles in exercise of the power under the said Rule. In the circumstances of the case we make no order as to costs.

ORDER

12. Mr. S. V. Jagannath prays that these cases may be certified as fit ones to appeal to the Supreme Court as substantial question of law of general importance which needs determination by the Supreme Court is involved. In our view, no such question arises in these cases especially when there are direct decisions of the Supreme Court in *Ishwar Singh v. State of Rajasthan* : [1987]1SCR300 and *M/s. Krishna Bus Service Pvt. Ltd. v. State of Haryana* : AIR 1985 SC1651 . Consequently, the prayer is declined.

13. Mr. Jagannath prays that the operation of the judgment be stayed for six weeks to enable the State to go to the Supreme Court. This prayer is unjust especially when in some of the proceedings involved in these cases the Supreme Court had granted stay in favour of the operators. Consequently, this prayer also is declined.

14. Appeals allowed.