

L. Murthy Vs. Commissioner for Transport

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Court : Karnataka

Decided On : Apr-11-1986

Reported in : ILR1986KAR3057

Judge : Doddakale Gowda, J.

Acts : Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 - Rule 10

Appeal No. : W.P. Nos. 3696 and 3697 of 1986

Appellant : L. Murthy

Respondent : Commissioner for Transport

Advocate for Def. : S.V. Narasimhan, HCGP

Advocate for Pet/Ap. : B.B. Mandappa and ;Mohandas N. Hegde, Adv.

Disposition : Writ petition allowed

Judgement :

ORDER

Doddakale Gowda, J.

1. Order, dated 18-2-1986 of the Commissioner for Transport (first respondent) keeping petitioners under suspension pending regular departmental enquiry is

challenged, in these Writ Petitions.

2. Petitioner in first Writ Petition (Writ Petition No. 3696 of 1986) is a Senior Inspector of Motor Vehicles and petitioner in second case (Writ Petition No. 3697 of 1986) is a Stenographer in the Office of the Regional Transport Officer (hereinafter referred to as 'RTO'), Kolar.

Case of petitioner in first Writ Petition is that pursuant to a direction given by RTO on 24-1-1986 to check and inspect motor vehicle bearing No. ADC 3999 while circulating a complaint received regarding its misused and/or in discharge of his duties as Inspector of Motor Vehicles, intercepted said vehicle on 30-1-1986 at about 7-45 p.m. at Palar Bridge, when vehicle was on its way to Bangalore. from Tirupathi. Immediate defects found are noted in check-slip-Annexure-C and certain other defects noticed on detailed inspection on succeeding day are noted in Annexure-D. It is stated that as vehicle was intercepted during night, process of inspection could not be completed on the very day but completed on next, day, lodging the vehicle in the custody of Rural Police, Kolar. It is stated that necessary arrangements for transmission of passengers was made and vehicle produced before Judicial Magistrate First Class, Kolar, on 1-2-1986.

Case of Petitioner in Second Writ Petition is that he is only a Stenographer in the office of the RTO and has nothing to do with executive work.

3. Vehicle has been released on 1-2-1986 as per orders of learned Magistrate, Kolar.

4. On complaint, dated 3-2-1986 by power of attorney holder of owner of harassment and misconduct in seizing the vehicle and demand of illegal gratification of Rs. 2,000/-, first respondent got it re-checked by Head Quarters Assistant and an Inspector of Motor Vehicles by name D'Souza; in addition, appointed Head 'Quarters Assistant to hold a preliminary inquiry regarding said allegations. Based on the report of subsequent verification and preliminary inquiry report of Head Quarters Assistant, impugned order of suspension has been made by first Respondent.

5. Suspension order of RTO is a subject matter in Writ Petition No. 4447 of 1986. As parties have chosen to argue these two cases first, they are heard and disposed of by this common order.

6. Main ground of attack is that obedience of direction given by RTO, Kolar and/or exercise of power under Section 129-A of the Act read with Rule 322 of the Rules do not constitute misconduct warranting suspension much less a departmental enquiry. It is contended that impugned order based on re-checked report got conducted after the vehicle was released by learned Magistrate and that too when it was in the custody of owner after the incident and preliminary inquiry report conducted by Head Quarters Assistant, who is not well-disposed towards petitioners, for reasons mentioned in petitions, is illegal due to extraneous consideration and suffers from mala fides. It is further contended that exercise of power under Rule 10 of the Karnataka Civil Services (Classification, Control and Appeal) Rules (hereinafter referred to as 'CCA Rules') under the circumstances is an abuse of power.

7. Contention of Learned Government Pleader, is that, assuming for the sake of argument, that they have discharged their duties as directed by his superior officers and/or in exercise of statutory power, if they have exceeded their limitation in exercise of such power or misused their power, there is no bar or prohibition to initiate departmental enquiry and consequently to place them under suspension during contemplated enquiry. It is also contended that suspension, pending enquiry, not being a punishment and having regard to an alternative remedy provided under CCA Rules, there is no justification for interference in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

8. In Order to resolve this controversy, details of circumstances under which vehicle in question was seized and offence alleged to have been committed by operator/driver are required to be elucidated.

9. One K. S. Kuppaswamy of Tirupathy complained to Joint Commissioner of Transport that a Motor Vehicle bearing No. AAC 8399 belonging to Shameem Tourist Corporation has met with an accident and is garaged near Drive-in-Theatre, Bannerghatta Road, Bangalore, but by affixing number plate to another

Motor Vehicle whose real number is ADC 3999 that is being operated from Bangalore to Tirupathi. Activities of owner plying the bus with bogus permit and duplicate number without paying taxes due to State are illegal. This complaint was forwarded to RTO, Kolar for necessary action, who, in turn, marked it to Inspectors of Motor Vehicles working under his control for necessary action. Direction reads thus:--

'No. DSA. PR. 2114. KLR/85, 6 Dated 24-1-1986.

Copy to all the Inspectors of Motor Vehicles of this Office for information and with a direction to check the above said Vehicles if found plying on the road with number plate of ADC 3999, the same may please be seized and take suitable action against the concerned and submit the report immediately. The complaint received through Transport Commissioner, Bangalore, vide Itr. No. TC. ENF. I. PR. 264/85. 6 dated 17.1.86.

Sd-

Regional Transport Officer. Kolar.'

In R. C. (Annexure-B) seized, there is an endorsement by Divisional Inspector of Railway Police, Kachigudda, Andhra Pradesh, that it is seized in connection with an accident.

10. Defects noted at the time of inspection on 30-1-1986 are--(i) that vehicle is being used as a stage carriage; collecting individual fares without furnishing list of passengers to concerned RTO as per interim order of Supreme Court; and (ii) failed to produce RC, IL, FC and DLC and bogus registration suspected-- vide Annexure-C. It is explained that as it was not possible to complete inspection on 30-1-1986 due to darkness after making necessary arrangements for transmission of passengers in K.S.R.T.C., bus was lodged in the custody of Rural Police Station, Kolar and a detailed inspection carried on, on the next day i.e., 31-1-1986. 23 defects noticed are mentioned in Annexure-D.

11. On an application presented on 1-2-1986 under Sections 451 and 457 of Code of Criminal Procedure, Judicial Magistrate First Class, Kolar, has ordered release

of vehicle.

Two days later, power of attorney holder complained to first respondent about harassment, misconduct in seizure and demand of illegal gratification of sum of Rs. 2,000/- for release of the vehicle and for not cancelling fitness certificate.

On receipt of such complaint, first respondent has got it re-examined through his Head Quarters Assistant and Inspector of Motor Vehicles by name D'Souza, apart from directing Head Quarters Assistant to hold a preliminary enquiry. Report of Inspector of Motor Vehicles made on subsequent verification and preliminary enquiry report of Head Quarters Assistant form the basis for impugned order.

12. Relief is resisted solely on the ground that it is a matter of subjective satisfaction and not a matter for judicial review. Suspension pending enquiry or contemplated enquiry is not made as 3 matter of course, but appointing authority after being satisfied about serious lapses or a gravity of offence alleged to have been committed may keep an officer under suspension. Undisputedly, no charge is framed so far in the instant case, but an enquiry is contemplated. The settled law on this aspect is stated thus in State of U.P. -v.- Jai Singh Dixit, 1. 1975(2) SLR 754:-

' 'Contemplation', the noun of the verb 'contemplate', is always a mental process. The process of mind or mental process can work subjectively as well as objectively. The objectivity of the mental process is occasioned by thinking or contemplating on something which can be physically observed or perceived. The subjectivity of the mental process is occasioned by something which is imagined and which cannot be physically observed or perceived by senses. It follows that when we say that a formal disciplinary inquiry is in view the meaning which is sought to be given to the words 'an enquiry is contemplated' and the view is to be based on objective consideration - it follows that there must be material which can be physically observed and perceived to form the basis of the formal inquiry. Since subjective consideration is eliminated, the mere hope or a mere theoretical formation of opinion that a formal inquiry will be held without any material basis for it being available is ruled out.'

The exercise of power by appointing authority circumscribed by various factors which lead to satisfy as to whether a delinquent official should be kept under suspension or not; thereby suspension order can only be based on objective consideration and not on subjective satisfaction.

13. Reasons assigned to keep petitioners under suspension are :--

'.... harassment and misconduct in seizing the vehicle and demanding illegal gratification for releasing the vehicle and cancelling the F.C. of the vehicle thereafter.... The preliminary enquiry reveals that there is a prima facie case to support the allegations made regarding gross misconduct and moral turpitude on the part of the above officials. It is therefore hereby ordered that Sri L. Murthy, Sr. Inspector of Motor Vehicles and Sri T.G. Srinivasa Rao, Stenographer, Regional Transport Office, Kolar, be placed under suspension with immediate effect pending regular departmental enquiry against them.'

14. Two ways of testing the correctness of these submissions are - (i) whether first Petitioner had power of interception ; and inspection (ii) whether there was any direction by his superiors to check the vehicle in question.

As per Rule 322 of Karnataka Motor Vehicle Rules officer of the Motor Vehicles Department not below the rank of a Motor Vehicles Inspector is authorised to demand- information from the owner of the Motor Vehicle under Section 88 of the Act. In addition RTO, as per note extracted above, has directed all Motor Vehicles Inspectors working under him to check and inspect the said Vehicle if found. On both these counts, it can safely be held that interception, inspection, check and initiation of criminal proceeding against owner and calling upon him to produce the vehicle after fifteen days for re-grant or renewal of fitness certificate in case defects pointed out are rectified, first Petitioner was well within its power in seizing the Vehicle. Plea of petitioners is that RTO was present at the time of inspection, which means there was no scope for misconduct or for demanding illegal gratification from the operator. In check report, dated 30-1-1986 it is stated that vehicle was being used as a stage carriage collecting individual fares without furnishing list of documents to concerned officers as has been directed by Supreme Court. Nowhere first respondent asserted existence of a permit to

vehicle to ply from Tirupathi to Bangalore and compliance of interim order of Supreme Court in case of assertion of vehicle being used as a Tourist Vehicle. Without declaring inspection, check report as illegal or without jurisdiction, action taken by first petitioner cannot be characterised as misconduct.

15. Reply given to contentions urged that as an Inspector of Motor Vehicles, he has discharged his duties apart from obeying the direction of his superiors, reads thus :--

'It is respectfully submitted, pendency of the case before the Criminal Court has nothing to do with the issuance of fitness certificate. The first respondent having regard to the scope and ambit of Rule 367(1) of the Karnataka Motor Vehicles Rules, he has exercised his power in accordance with Rules in inspecting the vehicle. The petitioner who is a subordinate official of the department has made bold to question the competency of the Head of the Department in taking action under the provisions of the Karnataka Motor Vehicles Rules and this conduct of the petitioner, disentitles him from discretionary relief.'

It is contended that in the absence of an appeal presented under Section 35 of the Act read with Rule 82 of the Rules, re-inspection conducted with a view to discredit the contents of the check report and also to prevent him from submitting further charge sheet against owner is an interference in the course of administration of justice. It is unnecessary to decide whether first respondent in exercise of power under Rule 367-A of the Rules can get it re-inspected or re-checked. Assuming for the sake of argument that there is such power, material collected at the time of re-check cannot form the basis to pass impugned order.

16. It is also contended that in the absence of RC, re-inspection conducted is only a farce. Sri Mohammed Bashir, power of attorney holder, who has acknowledged the receipt of CFX and CFC, got the vehicle released at the hands of Judicial Magistrate First Class, Kolar, has not made any complaint and steps taken on the complaint of Sri Mohammed Zahir who was in nowhere in the picture must be held to have been based on extraneous consideration. There is not even an indication or a prima facie finding that in exercise of statutory power, petitioners have exceeded their limits as contended by learned Government Pleader.

17. Impugned order based on re-verification certificate and preliminary enquiry report lend support to the contention that first respondent has attempted to defeat the due course of justice or prevent the course of justice or to pervert the course of justice. It is, in this context, Sri Narasimha Murthy, Learned Counsel for petitioner, is right in submitting that there is a travesty of justice and entire establishment would be demoralised in ease of upholding the validity of such action.

18. Contention of petitioner in Writ Petition No. 3697 of 1986 is that he being a Stenographer has nothing to do with the seizure or check. Hence, impugned order suspending him suffers from non-application of mind, impugned order do not indicate how a Stenographer can be held responsible in seizure of the vehicle which is purely an executive Act, Even on this aspect also, it must be held that there is no application of mind.

19. If the suspension order made on the basis of misconduct in seizing or checking the vehicle is held to be illegal or effaced, then the question is whether impugned order can still be sustained.

Supreme Court in S. Pratap Singh -v.- State of Punjab, : (1966)ILLJ458SC has held thus :--

'It may be also possible to prove that an act of the public body, though performed in good faith and without the taint of corruption, was so clearly founded on alien and irrelevant grounds as to be outside the authority conferred upon the body, and therefore inoperative. It is difficult to suggest any act which would be held ultra vires under this head though performed 'bona fide.'

(Vide Pages 90-91)

It was really the first aspect of ultra vires that was stressed by Lord Parker when in Vatcher v. Paull, 1915 AC 372 at p. 378 of the report he spoke of a power exercised for a purpose or with an intention beyond the scope of or not justified by the instrument creating the power. In legal parlance it would be a case of a fraud on a power, though no corrupt motive or bargain is imputed. In this sense, if it could be shown that an authority exercising a power has taken into account -- it

may even be bona fide and with the best of intentions, as a relevant factor something which it could not properly take into account, in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad. Sometimes Courts are confronted with cases where the purposes sought to be achieved are mixed, - some relevant and some alien to the purpose. The Courts have, on occasions, resolved the difficulty by finding out the dominant purpose which impelled the action and where the power itself is conditioned by a purpose, have proceeded to invalidate the exercise of the power when any irrelevant purpose is proved to have entered the mind of the authority (See *Sadler -v.- Sheffield Corporation*, 1924 1 Ch. 483 as also Lord Denning observed in *Fitzwilliam's (Earl) Wentworth Estate Co. -v.- Minister of Town and Country Planning*, 1951-2 KB 284 at p. 307). This is on the principle that if in such a situation the dominant purpose is unlawful then the act itself is unlawful and it is not cured by saying that they had another purpose which was lawful.'

(underlining is mine)

In view of this legal position, it is not possible to sustain the impugned order on other grounds.

20. It is nothing but usual, a pin-pricked operator by seizure, complains high-handedness, ill-treatment and demand of illegal gratification etc. It is submitted that having regard to the previous action taken by petitioner in inspecting or seizing vehicle of Shameem Transport Corporation, first respondent should have been slow in taking action or swallowed such allegation with a pinch of salt. It is also submitted that in the presence of superior officer viz., RTO it is impossible for either of these petitioners to ill-treat, harass or demand illegal gratification.

As departmental enquiry is contemplated, less said the better on other aspect except stating that inconsistent statements made regarding demand of illegal gratification, in statement of objections in all the three cases will not lend support to sustain impugned order of suspension. Sri Narasimha Murthy, learned Senior Counsel, drawing my attention to some of the passages in statement of objection contended that first respondent has also pre-judged the issue and that itself would indicate that he is biased or prejudiced and an order of suspension made under

these circumstances must be held to have been based on extraneous considerations.

21. Orders of suspension under Rule 10 of CCA Rules are rarely interfered with. If suspension order is made on application of mind as required by law, in good faith and not arbitrarily, certainly, it is not a matter for interference. But, Court will never decline to interfere if it is of the view that exercise of statutory power is mala fide or condition precedent for exercise of such power, does not exist and/or is based on extraneous consideration. Chronological events narrated and from various orders passed by different authorities, I feel that alternative remedy available is not efficacious. In view of foregoing conclusion that exercise of power by first respondent is not bona fide and dominant purpose on which petitioners are kept under suspension being misconceived, there is no other choice except to declare it as null and void.

22. For the reasons stated above, Writ Petitions are allowed. Impugned order is hereby quashed reserving liberty to first respondent to proceed with the departmental enquiry. Rule made absolute.