

# ANDHRA PRADESH HIGH COURT

Gopalakrishna Motor Transport Co. Ltd

Vs.

Secretary Regional Transport Authority

Writ Appeals Nos. 31 and 32 of 1956, in W.P. Nos. 114 and 115 of 1956

(Subba Rao, C.J. and Viswanatha Sastri, J.)

17.02.1956. 06.04.1956

## JUDGMENT

### **Subba Rao, C.J.**

1. Writ Appeal No. 31 of 1956 : This is an appeal against the order of Krishna Rao J., dismissing the petition filed by the appellants under Article 226 of the Constitution of India.

2. The appellants are Sri Gopalakrishna Motor Transport Company Limited, Vijayawada, represented by the Official Liquidators. The company owns a stage carriage MDK 1456, and has a permit issued under the Motor Vehicles Act (hereinafter referred to as the Act) to ply the same on Vijayawada - Bander route. On 18-2-1955, the Regional Transport Officer checked the bus and found that it was over-loaded by four adult passengers. Though, when called upon to show cause why the permit should not be suspended they denied the offence, they, later on, admitted the over-loading. On that admission, the permit was suspended for one month by the Regional Transport Authority. The appellants preferred an appeal against the order to the Central Road Traffic Board, Andhra. Before the Appellate Tribunal also, the offence was not denied but the constitution of the Regional Transport Authority was questioned. The appellate Tribunal also found that the Regional Transport Officer checked the vehicle and seized the trip-sheet and that the conductor also signed the trip-sheet. In the circumstances, the Tribunal held that the offence had been established. The appellants preferred a revision to the Government. Before the Government, for the first time, a new contention was raised to the effect that the check was not in conformity with the instructions issued by the Government. But the Government held that, as over-loading was established, the suspension was correct. The appellants then filed a petition under Article 226 of the Constitution of India to quash the orders of the Tribunals and the Government. That application came before Krishna Rao J., The only point pressed before him was that the suspension was illegal as the instructions issued by the Government for checking the bus were not strictly followed. The learned Judge held that, as over-loading constituted breach of

one of the conditions of the permit, the Regional Transport Authority was justified in suspending the permit. Hence the appeal.

3. Learned Counsel raised before us three points :

1. That under the Motor Vehicles Act and the Rules framed thereunder, there cannot be constructive liability and for the transgression of the conditions laid down in the permit by a conductor, the owner cannot be punished.
2. In the present case, the conductor had overloaded the bus contrary to the express directions given by the liquidators and, therefore, the Regional Transport Authority should not have in the exercise of their discretion suspended the permit.
3. As the check of the bus was made not in strict compliance with the instructions given by the Government, the order of suspension passed on that check was illegal.

The first two points were not raised either before Two Tribunals or before the Government. The third question was not raised before the Tribunals but pressed before the Government.

4. In the present case, a writ can be issued only if there is an error on the face of the record, for it is not suggested that the Tribunal acted without jurisdiction or with mala fides. There cannot be obviously an error on the face of the record in regard to questions which were never raised before the Tribunals. But, as these questions are raised in other writs and as we have heard the arguments of the learned counsel, we shall proceed to express our views on the same.

5. Learned Counsel for the appellants relied upon the following provisions of the Act in support of his contention that, under the Act, vicarious liability is excluded and, therefore, the permit issued to the owner cannot be suspended for the offence committed by the conductor.

Section 60 (1) :

The transport authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit (a) on the breach of any condition specified in sub-section (3) of Section 59 or of any condition contained in the permit.

Section 42 (1) :

No owner of a transport vehicle shall use, or permit the use of, the vehicle in any public place, save in accordance with the conditions of a permit granted or countersigned by a Regional or Provincial Transport Authority authorizing the use of the vehicle in that place in the manner in which the vehicle is being used.

Section 72 (2) :

Except as may be otherwise prescribed, no person shall drive or cause or allow to be driven in any public place any motor vehicle which is not fitted with pneumatic tyres.

Section 72 (3) :

No person shall drive or cause or allow to be driven in any public place any motor vehicle or trailer.

Section 72 (4) :

Where the driver or person in charge of a motor vehicle or trailer driven in contravention of sub-section 2 or clause (a) of sub-section 3 is not the owner, a Court may presume that the offence was committed with the knowledge of or under the orders of the owner of the motor vehicle or trailer.

Section 112 :

Whoever contravenes any provision of this Act or of any rule made thereunder shall, if no other penalty is provided for the offence, be punishable with fine which may extend to twenty rupees, or, if having been previously convicted of any offence under this Act he is again convicted of an offence under this Act, with fine which may extend to one hundred rupees.

Section 123 (1) :

Whoever drives a motor vehicle or causes or allows a motor vehicle to be used or lets out a motor vehicle for use in contravention of the provisions of sub-section (1) of Section 42 shall be punishable for a first offence with fine which may extend to five hundred rupees and for a subsequent offence if committed within three years of the commission of a previous similar offence with a fine which shall not be less than one hundred rupees and may extend to one thousand rupees."

6. Relying upon these provisions, learned Counsel argues that, wherever the Legislature intended to make a person other than the person who actually contravened the rules liable, they have expressly stated so. Section 42 prohibits the owner of a transport vehicle to use it or permit another to use it in any public place except in accordance with the conditions of the permit. Section 72 (2) prohibits a person not only from driving but also from causing or allowing a motor vehicle which is not fitted with pneumatic tyres to be driven in a public place. Section 72 (3) also enjoins on a person a duty not only not to drive but also not to allow or cause another to drive a motor vehicle in a public place with a weight over the prescribed limits and sub-section 4 allows

a Court to presume that the offence mentioned in that section was committed with the knowledge of the owner. Section 123 makes not only the driver but also the person, who causes or allows the motor vehicle to be used in contravention of the provisions of sub-section 1 of Section 42, liable for punishment. It is true that certain provisions expressly recognise vicarious liability. But the Act makes a distinction between criminal offences and administrative punishments for the breach of the rules. In the case of criminal offences, unless the statute expressly imposes a constructive liability, only the person who commits the offence, can be prosecuted. The aforesaid provisions, therefore, expressly made not only the driver, who plied the bus in contravention of specific rules but also the person, who caused or allowed that contravention to be made, liable for the offence. It does not follow from the aforesaid provisions that, even in regard to the provisions designed for administrative control, the same principle should be invoked. If the Legislature intended to exclude constructive liability even within the region of administrative control, they should have expressly stated so. At this stage, the provisions relevant to the suspension or cancellation of a permit may be read :

Section 48 :

A Regional Transport Authority may, after consideration of the matters set forth in sub-section (1) of Section 47

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(d) attach to a stage carriage permit any prescribed condition or any one or more of the following conditions namely :

xx xx

(iv) that not more than a specified number of passengers and not more than a specified amount of luggage shall be carried on any specified vehicle at any one time. Section 60 :

The transport authority, which granted a permit may cancel the permit or may suspend it for such period as it thinks fit.

(a) on the breach of any condition specified in sub-section 3 of Section 59 or of any condition contained in the permit."

7. Government in exercise of powers conferred upon it under the Act framed detailed rules for administrative control. It is not disputed that one of the conditions of the permit is that the vehicle in question should not carry more than a specified number of passengers. Under the express terms of Section 60, if the said condition is contravened, the Transport Authority may cancel the permit or may suspend it.

The liability to suspend the permit does not depend upon the person who contravenes the condition but only on the contravention of the condition. The owner takes the permit subject to the condition and it is his duty to see that the condition is not contravened. If the condition is contravened, the permit is cancelled or suspended as the case may be and it is immaterial whether the agent of the owner does it of his accord or with the permission of the owner. The

owner, who has taken the permit subject to a condition, cannot complain if the permit is suspended for breaking the condition. The condition is certainly essential for the control of motor vehicles in public interests. We cannot read into Section 60, on the analogy of the limits of criminal liability imposed by statutes or implied by courts, words or conditions which are not there. We, therefore, hold that a permit can be cancelled even though a condition of the permit is broken by the conductor or other agent of the owner with or without his knowledge or even contrary to his instructions.

8. There is some force in the second contention. Section 60 (1) does not impose an automatic duty on the part of the Transport Authority to suspend or cancel a permit, if its condition is broken. It confers on them a duty to exercise discretion having regard to the facts of each case. Circumstances may be visualized when the Transport Authority may, in the exercise of discretion, excuse a transgression in a particular case if, in their opinion, there are valid reasons for doing so. The present case may be one of such cases. The appellants are Official Liquidators of the Company in liquidation. They have given specific instructions to the bus conductors not to over-load buses and they were informed that they would be removed from service if the rules are contravened. It may be presumed that they had punished the conductor, who was responsible for the over-loading in the present case. Perhaps, this is one of the cases where another Tribunal might have excused the present transgression of the rule with a warning not to repeat it. But when the authorities concerned suspended the permit, we cannot say that they had not discharged their duty or had acted without jurisdiction or unreasonably. The manner of the exercise of discretion should be left only to the Tribunals and this Court will only interfere if the discretion is exercised mala fide or capriciously or taking into consideration extraneous circumstances.

9. Lastly, learned Counsel relied upon G. O. No. 2771 dated 31-7-1952 issued by the Government of Andhra and argued that the said order was issued by the Government under Section 43-A of the Act prescribing the manner of checking a bus for over-loading. Under that G. O. the following directions are given :

- "1. The Police and Transport Authorities etc., empowered to check transport vehicles for detecting offences like overloading, charging of excess fares, etc., should invariably make entry in the trip-sheet and other records kept in the vehicles besides the entries recorded in the note book or diary of the checking officers.
2. They should try and obtain the names and addresses of a few responsible passengers travelling in the bus at the time of check so that they may be cited as witnesses if necessary.
3. They can also get the signature of the conductor, driver or checking inspector in their diary to substantiate the fact that the vehicle was checked; and
4. The checking for overloads should be done not at halts but at some other place on the route while the bus is in motion.

10. Government has power to frame rules and also to issue administrative directions of a general

character under Section 43-A of the Act. Apart from Section 43-A, Government has no power to issue any administrative directions to the authorities. It is, therefore, clear that the G. O. was only issued under Section 43-A of the Act. In so far as the order was couched in mandatory terms, it is incumbent upon the officers concerned to comply with it. But the question is what is the result of non-compliance with the directions given by the Government. The power to suspend a permit for breach of the conditions specified in the permit does not depend upon the instructions of the Government. It is conferred on the Transport Authority under Section 60 of the Act. It is the duty of the Transport Authority to decide on the facts of each case whether any condition of the permit is contravened. Any instructions given under Section 43-A cannot override the discretionary power conferred upon the Transport Authority under Section 60. It is true that the Government order contains salutary instructions intended to serve a dual purpose, namely, preventing harassment of the conductors by police officers and at the same time providing a machinery for placing disinterested evidence before the Transport Authority. The said instructions cannot and do not lay down a rule of evidence to the effect that, if the conditions are complied with, the check would be conclusive evidence of over-loading. It cannot be contended that, notwithstanding the check in strict conformity with the directions, the conductor or the owner cannot seek to establish that the check was a collusive one and that, as a matter of fact, there was no over-loading. There may be cases, though they may be rare, where the whole check may be stage-managed. If that be so, it would be illogical to hold that, if the conditions were not complied with, it cannot be established aliunde by other unimpeachable evidence that there was over-loading as a matter of fact. In the present case, before the Regional Transport Authority, the appellants admitted the fact of over-loading and, in such cases, no question of proof would arise. We, therefore, hold that the order of the Government contained only administrative instructions issued under Section 43-A. It is true that some of the administrative instructions impose a mandatory duty on the officers concerned and if they do not discharge their duty, Government may take disciplinary action against them. But, in our view, non-compliance with those directions cannot affect the finding the Authority arrived at on other material on the question of over-loading. We cannot, therefore, accept this contention either.

11. In the result, we confirm the order of the learned Judge and dismiss the appeal with costs. Advocate's fee Rs. 100/-.

12. Writ Appeal No. 32 of 1956 : For the reasons mentioned in Writ Appeal No. 31 of 1956, this appeal also is dismissed with costs. Advocate's fee Rs. 100/-.  
Appeals dismissed.