

Arun Kumar Vs State Transport Authority and Others

Court: Delhi High Court

Date of Decision: Aug. 20, 2009

Acts Referred: Delhi Motor Vehicles Rules, 1993 " Rule 123, 123(10), 123(6), 123(7), 123(8)
Motor Vehicles Act, 1988 " Section 177, 178, 179, 180, 181

Citation: (2009) 162 DLT 647

Hon'ble Judges: Veena Birbal, J; Badar Durrez Ahmed, J

Bench: Division Bench

Advocate: R.K. Kapoor and Harish Chandra Pant, for the Appellant; Rajeev Nanda, Sanjay Dubey and Pankaj Singh, for the Respondent

Final Decision: Dismissed

Judgement

Badar Durrez Ahmed, J.

This writ petition is directed against the seizure / detention of vehicles belonging to the petitioner, bearing

registrations numbers, RJ- 09-PA-0065, RJ-09-PA-0465, RJ-09-PA-0665, RJ-09-PA-0865, RJ-01- PA-2265, RJ-01-PA-2465, RJ-01-PA-

2665, RJ-01-PA-2865. The seizure/detention of the said vehicles has been challenged on the ground that they have been seized / detained u/s

207(1) of the Motor Vehicles Act, 1988 (hereinafter referred to as ""the said Act""), without there being any rules for the same framed by the

Central Government. In the same breath, the petitioner has challenged the Delhi Motor Vehicles (Second Amendment) Rules, 2004, whereby

Sub-rules (7), (8), (9) and (10) have been added after Rule 123(6) of the Delhi Motor Vehicles Rules, 1993. The said Sub-rules (7), (8), (9) and

(10), which have been inserted by virtue of the Delhi Motor Vehicles (Second Amendment) Rules, 2004, are as under:

(7) Any police officer(s) or the person(s) appointed as officer(s) u/s 213 of the Act and specified as such in Rule 123, not below the rank of a

Sub- Inspector, shall have power, if they have reasons to believe that a motor vehicle has been or is being used in contravention of the provisions

of Section 3 or Section 4 or Section 39 or without the permit required by Sub-section (1) Section 66 or in contravention of any condition of such

permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, to seize and detain the vehicle, and

shall keep the same in safe custody of the nearest police station or police post or traffic police circle office or any other designated place declared

by the Delhi Police or in the designated impounding pits of the Transport Department against a proper receipt to be given by him in Form O.S.S.

to the owner or in charge of the vehicle from whose custody the vehicle was seized and detained.

(8) The officer in charge of the Police Station or Police Post or Traffic Inspector of the circle or the officer in charge of the impounding pit shall

ensure that the vehicle is kept in safe custody along with the goods contained therein, if any, at the time of keeping the same in his custody.

(9) The concerned person may get the vehicle released within a period of ten days from the date of seizure or detention of the vehicle, as the case

may be, after complying with the requirements of law and on approval of the competent authority.

(10) In case the vehicle is not released within the period specified in Sub-rule (9), then, rental charges at the rate of one hundred rupees per day,

subject to a maximum of one thousand rupees, shall be charged after the expiry of the said period of ten days from the date of seizure or detention

of the vehicle.

By virtue of the said amendment, the Government of NCT of Delhi has prescribed the manner in which the power u/s 207(1) of the said Act has to

be exercised in respect of seizure and detention of the vehicles.

2. At this juncture, we may point out that in CW 4686/1998, entitled M/s Sreenath Travel Agency and Anr. v. Lt. Governor of Delhi and Ors.

[decided on 07.07.2003], the question of seizure / detention of motor vehicles u/s 207 of the said Act was in issue. The point raised in that petition

was that as per Section 207, the seizure and detention was to be done only in a "prescribed manner. and, "prescribed manner., as defined under

the Act by virtue of Section 2(32), meant "prescribed by the rules". Since no rules had been framed, such seizure and detention would be invalid.

One of us (Badar Durrez Ahmed, J) heard that petition and agreed with the point urged on behalf of the petitioner and directed that, since no rules

had been framed and, accordingly, no manner of seizure and detention had been prescribed, the power to seize and detain, itself, could not be

exercised. It was also held that until the rules prescribing the manner of seizure / detention of vehicles u/s 207(1) of the said Act are made and

enforced, no vehicle could be impounded in exercise of the power conferred under the said Section. The Lt. Governor of Delhi, being aggrieved

by the said decision, preferred an appeal being LPA No. 567/2003. During the pendency of the appeal, the rules impugned herein, came to be

framed by the Government of NCT of Delhi. In view of the fact that rules had been framed u/s 207(1) read with Section 212 of the said Act, the

learned Counsel appearing on behalf of the Lt. Governor of Delhi, did not press the appeal and the appeal was dismissed as withdrawn by virtue

of the order dated 16.07.2004, by the Division Bench hearing the said LPA No. 567/2003.

3. The present petition challenges the said rules on the ground that the Government of NCT of Delhi did not have the power to frame such rules,

which means that there are no rules which exist even today and, therefore, the petitioner's vehicles could not be seized / detained. The learned

Counsel for the petitioner drew our attention to the scheme of the Act. He submitted that the Act has been divided into several Chapters and at the

end of most of the Chapters, there are provisions which empower either the State Government or the Central Government to make rules in respect

of the contents of the respective Chapters. For example, Chapter II, which deals with "licencing of drivers of motor vehicles., contains Sections 27

and 28, which empower the Central Government and the State Government, respectively, to make rules. Chapter III, which deals with "licencing

of Conductors or Stage Carriages., has only empowered, by virtue of Section 38, the State Government to make rules in respect of the provisions

of that Chapter. Similarly, Chapter IV, which deals with "registration of motor vehicles., has once again empowered, by virtue of Sections 64 and

65, the Central Government and the State Government, respectively, to make rules in respect of the subject matter of the said Chapter IV. There

are other Chapters which indicate that either the Central Government or the State Government or both have been given powers to make rules in

respect of the provisions contained in those Chapters.

4. The learned Counsel for the petitioner then drew our attention to Chapter XIII, which deals with "offences, penalties and procedure. and is

comprised of Sections 177 to 210. There is no express provision in this Chapter with regard to the power of making rules. Section 207 of the said

Act falls within this Chapter. It is, therefore, the contention of the learned Counsel for the petitioner that since the Motor Vehicles Act, 1988, is a

Central Act, the only rule making power would be that of the Central Government, when no specific rule making power has been given to the State

Governments in respect of the matters contained in Chapter XIII.

5. The learned Counsel for the petitioner placed reliance on the decision of a Division Bench of this Court in the case of Pioneer Silk Mills Pvt.

Ltd. and Another, Sanghi Textiles Processors Pvt. Ltd. and Others, Karan Textile Industries Pvt. Ltd. and Others, Dilip Textiles (P) Ltd. and

Another, Sri Ram Mills and Another, Hyderabad Silk Mills Pvt. Ltd. and Another and S. Kumars Ltd. and Another Vs. Union of India and

Others, . He made particular reference to paragraphs 37, 38, 39 and 40 of the said decision to submit that insofar as penalty provisions are

concerned, specific power has to be indicated and the same cannot be inferred by necessary implication.

6. The learned Counsel appearing on behalf of the respondent submitted that the power to make rules is discernible from Section 207(1) itself and

that the power has been clearly given to the State Government. He referred to Section 207 of the said Act which reads as under:

207. Power to detain vehicles used without certificate of registration permit, etc.

(1) Any police officer or other person authorised in this behalf by the State Government may, if he has reason to believe that a motor vehicle has

been or is being used in contravention of the provisions of Section 3 or Section 4 or Section 39 or without the permit required by Sub-section (1)

of Section 66 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the

vehicle may be used, seize and detain the vehicle, in the prescribed manner and for this purpose take or cause to be taken any steps he may

consider proper for the temporary safe custody of the vehicle:

Provided that where any such officer or person has reason to believe that a motor vehicle has been or is being used in contravention of Section 3

or Section 4 or without the permit required by Sub-section (1) of Section 66 he may, instead of seizing the vehicle, seize the certificate of

registration of the vehicle and shall issue an acknowledgment in respect thereof.

(2) Where a motor vehicle has been seized and detained under Sub-section (1), the owner or person in charge of the motor vehicle may apply to

the transport authority or any officer authorised in this behalf by the State Government together with the relevant documents for the release of the

vehicle and such authority or officer may, after verification of such documents, by order release the vehicle subject to such conditions as the

authority or officer may deem fit to impose.

7. Referring to Sub-section (1) of Section 207, the learned Counsel submitted that at the commencement of the said provision itself, it is indicated

that ""any police officer or other person authorized in this behalf by the State Government may...."" This, according to him, clearly indicates that the

police officer or person has to be authorized by the State Government and, therefore, it is the State Government which has to prescribe the manner

in which the vehicles should be seized and detained. He submits that the power of seizure and detention, which has been given to the State

Government, is an implied power to make rules for such seizure and detention. According to him, the rule making power is embedded in Section

207(1) itself and, therefore, the State Government had the power to prescribe the manner in which the vehicles are to be seized and detained for

contravention of the provisions of Sections 3 or 4 or Section 39 or where the vehicle is without permit as required under Sub-section (1) of

Section 66 of the said Act or where the vehicle has contravened any condition of such permit etc. The learned Counsel for the respondent placed

reliance on the following decisions:

i) Jamal Uddin Ahmad Vs. Abu Saleh Najmuddin and Another,

ii) Reserve Bank of India and others Vs. Peerless General Finance and Investment Company Ltd. and another,

8. We have heard the counsel for the parties and, at the outset, we may state that we are inclined to agree with the counsel for the respondent. As

mentioned above, in the case of Sreenath Travel Agency and Anr. v. Lt. Governor of Delhi and Ors. (supra), the seizure and detention of vehicles

u/s 207(1) of the said Act was found to be illegal on the ground that there were no rules prescribing the manner of such seizure and detention. A

direction had also been given that unless and until the rules are framed prescribing the manner for seizure and detention, any further seizure and

detention would be illegal u/s 207(1) of the said Act. Subsequent thereto, the State Government has come out with the rules and prescribed the

manner in which the vehicles are to be seized and detained. It has even authorized personnel equivalent to and above the rank of Sub-Inspectors to

seize and detain such vehicles. While it is true that there is no express provision in Chapter XIII or anywhere in the Act empowering the State

Government or the Central Government, for that matter, to make rules with regard to prescribing the manner of seizure and detention of vehicles

u/s 207(1), we are of the view that the power is traceable to the provisions of Section 207(1) itself, when the State Government has been

empowered to authorize personnel to seize and detain vehicles which contravene the provisions of the said Act. The State Government, thus,

impliedly has the power to prescribe the manner for seizing and detaining such vehicles. Now that the State Government has indicated such

prescribed manner by formulating rules by virtue of the 2004 amendment to the 1993 rules, the prescribed manner which was absent earlier, is

now in place. Therefore, the petitioner can have no grievance with regard to the fact that the seizure and detention of the vehicles was not in

accordance with the prescribed manner. There is, therefore, no question of there being any challenge to the said rules as, according to us, the same

are intra vires the Motor Vehicles Act, 1988 and, in particular, Section 207(1) of the said Act itself. The writ petition is accordingly dismissed.

9. We make it clear that the learned Counsel for the petitioner had only pressed for prayers ""a"", ""b"" and ""c"" before us and had not pressed for

prayer ""d"", seeking liberty to raise that challenge in an appropriate matter. We grant that liberty. This writ petition stands dismissed. No costs.