

(2005) 07 RAJ CK 0064
In the Rajasthan High Court

Bhagwan Das and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-07-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 52

Citation : (2006) 2 ACC 262 : (2006) 1 WLC 204

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Judgement

Prakash Tatia, J.—Heard learned Counsel for the petitioner as well as learned Counsel for the respondents.

2. These two writ petitions, S.B. Civil Writ Petition Nos. 1098/2004 and 1165/2004 have been filed by Hukam Singh and Bhagwan Das respectively. According to learned Counsel for the petitioner, the facts of both the cases are identical, though the vehicles involved are different but question of facts and law of one petition will sufficiently represent the correct factual aspect of the other case and, therefore, both the petitions may be decided together.

3. The facts of the case of Bhagwan Das, which are identical to the facts of the case of Hukam Singh will be sufficient to decide these two writ petitions, therefore, the facts of the case of Bhagwan Das are that a Bus No. DL-1P-0860 was originally registered in Kullu Manali, Himachal Pradesh. The seating capacity as per dimensions and specifications, was 54 persons including the driver and conductor seats. The registration certificate for the vehicles in question was issued by the Vehicle Registration Authority under the Motor Vehicles Act where the seating capacity for the vehicle has been mentioned for 54 in total. The vehicle was brought to Delhi where a provisional registration number was given to the vehicle as DS-141B-0860. The petitioner Bhagwan Das purchased the said vehicle from one Banwarilal of Kullu Transport Company on 23rd June, 1992 at Delhi. The vehicle after purchase brought into the State of Rajasthan under a temporary permit from the Secretary, State Transport Authority, Delhi. This

permit was issued showing seating capacity as 36 (2 x 2) seats. The petitioner submitted an application before the RTA, Jodhpur for grant of non-temporary stage carriage permit for Thaiyad-Mohangarh route. The RTA granted a non-stage carriage permit on 2.7.1992 in favour of the petitioner on Thaiyad-Mohangarh route, which was later extended upto Jaisalmer. On complaint of one Shri Gopal Singh, the Motor Vehicles Sub-Inspector, RTA, Jodhpur issued a notice to the petitioner for cancellation of permit. The petitioner filed reply stating that seating capacity of the vehicle in question was only 36 (2 x 2) seats and not 54 seats. The RTA, Jodhpur by order dated 25th June, 1993 cancelled the permit granted in favour of the petitioner for the route Thaiyad-Mohangarh extended upto Jaisalmer. The RTA, Jodhpur further ordered that tax for the remaining 18 seats may be recovered from the petitioner and he may be prosecuted for making alteration in the permit.

4. The petitioner preferred appeal against the order of the RTA, Jodhpur, which was allowed by the appellate authority, STAT by order dated 4th September, 1993 who set aside the order of the RTA. It appears that petitioner submitted an application before the concerned authority for issuing registration certificate of the vehicle in Rajasthan and he produced the order of STAT dated 4th September, 1993 before the said authority. The petitioner when received the registration certificate on 20th October, 1993, he found that in spite of the decision of STAT, Rajasthan, Jaipur the capacity of the vehicle was shown 54 instead of 36. Therefore, petitioner preferred S.B. Civil Writ Petition No. 5637/1993 before this Court and sought direction against the first respondent, i.e., District Transport Officer to correct and amend the registration certificate of the vehicle in question providing the seating capacity of the vehicle as 36 (2 x 2) instead of 54.

5. The said Writ Petition No. 5637/1993 was decided by this Court vide judgment dated 21st August, 2000 wherein this Court took note of the fact that in original registration certificate of the vehicle in question, the seating capacity was shown as 54, but subsequently at Delhi in provisional registration certificate, it has been altered showing 36 in place of 54 seating capacity. This Court observed that no material has been placed on record to show that how the said alteration was made. This Court held that the decision of the STAT was not final so far as it relates to the seating capacity of the vehicle. This Court in the above writ petition of the petitioner after considering Section 52 of the Motor Vehicles Act held that as per provisions of the Motor Vehicles Act, alteration in motor vehicles cannot be made, which is not in consonance with the particulars as contained in the original registration certificate, unless and until a notice has been given to the registering authority within whose jurisdiction the owner resides or carry on business where the vehicle is normally kept and the approval has been obtained to make such alteration.

6. Rule 7.14 of the Motor Vehicles Act, 1990 provides that every public service vehicle other than a motor cab shall conform to the norms of seating space, back

rest, size and type of seats provided in the table given therein. It will be worthwhile to mention here that respondent Transport Authority in the above writ petition of the petitioner produced sketch map showing the seating arrangements required to be made in the subject vehicle in accordance with Rules 7.14 and 7.16. After taking note of the fact mentioned in the original registration certificate containing capacity of 54 persons for the vehicle and after finding that the entries made in the temporary registration certificate issued by the Transport Authority at Delhi has been issued contradicting the original registration certificate, therefore, that temporary registration certificate cannot be accepted. The Court specifically took note of the fact that the petitioner himself admitted that he did not apply before the registering authority for alteration in said vehicle with respect to seating capacity. This Court on facts also found that seating capacity determined in accordance with the provision of Rule 7.14 and Rule 7.16 of the Rules of 1990 then as per sketch shown by the respondents, the seating capacity of the subject vehicle comes to 54 persons. This Court specifically held that in view of this, no correction is called for in the registration certificate of the subject vehicle in Col. No. 13 with respect to its seating capacity 54.

7. As stated earlier, the facts of the case of Hukam Singh and Bhagwan Das are identical, therefore, the Hukam Singh's Writ Petition No. 5686/1993 was also decided by this Court in the light of the judgment delivered in the case of Bhagwan Das, referred above.

8. The decision of this Court in petitioner's writ petitions dated 21.8.2000 and 1.12.2000 were challenged by the petitioner by filing special appeals. The Division Bench dismissed both the special appeals. Therefore, the controversy so far as seating capacity in vehicle in question is concerned, stands concluded by the judgment of the learned Single Judge dated 21st August, 2000 as well as by the judgment of the Division Bench dated 18th December, 2000 and it has been held that the vehicles have seating capacity of 54 persons and the petitioners never applied for alteration of their vehicles for reducing seating capacity of the vehicles.

9. It appears from the facts of the case that despite this final adjudication, a letter was submitted by the owner of the vehicle-petitioner on 11.1.2001 before the Transport Commissioner, Jaipur and that was forwarded by the Transport Commissioner, Jaipur to District Transport Officer, Jaisalmer. The copy of the letter dated 11.1.2001 is placed on record as Annexure-6. In this letter, the petitioner submitted that when he brought the vehicle in question from Delhi to Rajasthan, the vehicle had 36 seats only and today also the same 36 seats are in the vehicle. He further submitted that he did not alter the vehicle in any manner and also has not reduced the seats. He again despite the judgment of this Court against him, asserted that he was given temporary permit showing 36 seats for the vehicle and his permit was wrongly cancelled and his vehicle was wrongly assessed for 54 seats. However, after narrating above facts, he submitted that he approached the High Court by filing the writ petition (supra), and he could not

get decision in his favour. He submitted that he is prepared to submit more documents so that his vehicle may be assessed taking into account seating capacity as 36. It will be worthwhile to mention here that in the last paragraph of this letter dated 11.1.2001 he very specifically stated that in the bus there are 36 seats (2 x 2), which was kept as it is from the date of purchase and he is keeping the same as it is. This letter was forwarded by the Transport Commissioner to the District Transport Officer, who on the basis of physical verification of the vehicle approved the vehicles registration with seating capacity of 46 persons. In the year 2003, the Dy. Commissioner (Tax) wrote a letter to office of District Transport Officer directing DTO to treat the capacity of the vehicle 46 in place of 54 from the date of re-registration of vehicle, i.e., 14.10.1993 despite High Court's judgment against it.

10. Despite the fact that the petitioner successfully obtained the benefit of reduction in tax liability from the Transport Department against the decision of the High Court in his own writ petition, the grievance of the petitioner is that the District Transport Officer committed error of law in fixing the liability of the petitioner for 10 passengers' tax. The ground of challenge is that the DTO is the assessing authority and he failed to exercise jurisdiction as he merely obeyed the direction of the higher authority, Dy. Commissioner, Taxes and, therefore, on this count alone, the order of the DTO dated 22nd August, 2003 is liable to be set aside. It is also submitted that the order dated 19th July, 2001 permitting 46 seats and consequential endorsement in the registration certificate dated 31st July, 2001 became final and, therefore, the DTO has no jurisdiction to charge the tax contrary to the lawful order passed holding that seats in the vehicle shall be treated to be 46 as per Rule 7.14 of the Rules of 1990. It is also submitted that otherwise also, the operation of the order could not have been made retrospective.

11. A detailed reply has been filed by the respondents justifying the action of the respondents in passing the order dated 22nd August, 2003. The respondent has placed on record several documents also.

12. In view of the judgments dated 21.8.2000 and 18.12.2000 of this Court delivered in the case of petitioner's writ petition as well as in special appeal, the question so far as vehicle having 54 seats at the time of entering into Rajasthan has been decided by this Court finally.

13. Till the year 2000, the petitioner did not apply for permission to alter the vehicle is an admitted fact as recorded in the judgment of this Court dated 21.8.2000. Therefore, any order of any authority reducing the seating capacity of the vehicles in question is void and without jurisdiction as it is against the decision of this Court. The owners of the vehicle could not have raised the issue again about vehicles, capacity and the authorities had no jurisdiction to take view just contrary to the decision of this Court, which has been decided by this Court after hearing both the parties. Therefore, it is held that in view of the judgment of this Court in S.B. Civil Writ Petition Nos. 5637/1999 and 5686/1999 decided

on 21.8.2000 and Division Bench dated 18.12.2000 owners of the vehicle are liable to pay the tax and all other amount to the State calculated on the basis of capacity of the vehicle 54 and no less.

14. The question remains is that whether the petitioner ever applied for alteration in the vehicle to reduce his tax liability for the vehicle. For this learned Counsel for the petitioner invited attention of this Court to the application dated 15th May, 1998 (Annexure-5), which according to petitioner is the application filed u/s 52 of the Motor Vehicles Act. The Rule 52 is as under:

52. Alteration in motor vehicle--(1) No owner of a motor vehicle shall so alter the vehicle that the particulars contained in the certificate of registration are no longer accurate, unless--

(a) he has given notice to the registering authority within whose jurisdiction he has the residence of the place of business where the vehicle is normally kept as the case may be of the alteration he proposes to make; and

(b) he has obtained the approval of that registering authority to make such alteration:

Provided that it shall not be necessary to obtain such approval for making any change in the unladen weight of the motor vehicle consequent on the addition or removal of fittings or accessories, if such change does not exceed two percent of the weight entered in the certificate of registration:

Provided further that modification of the engine, or any part thereof, of a vehicle for facilitating its operation by a different type of fuel or source of energy including battery, compressed natural gas, solar power or any other fuel or source of energy other than liquid petroleum gas shall be subject to such conditions as may be prescribed.

(2) Where a registering authority receives a notice under Sub-section (1), it shall within seven days of the receipt thereof, communicate by post to the owner of the vehicle its approval to the proposed alteration or otherwise:

Provided that where the owner of the motor vehicle has not received any such communication within the said period of seven days, the approval such authority to the proposed alteration shall be deemed to have been given.

(3) Notwithstanding anything contained in Sub-section (1) a State Government may, by notification in the Official Gazette, authorise, subject to such conditions as may be specified in the notification, the owners of not less than ten transport vehicles to alter any vehicle owned by them so as to replace the engine thereof without the approval of the registering authority.

(4) Where any alteration has been made in a motor vehicle either with the approval of the registering authority given or deemed to have been given u/s (2) or by reason of replacement of its engine without such approval u/s (3), the owner of the vehicle shall, within fourteen days of the making of the alteration,

report the alteration to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration to that authority together with the prescribed fee in order that particulars of the alteration may be entered therein.

(5) A registering authority other than the original registering authority making any such entry shall communicate the details of the entry to the original registering authority.

15. The application dated 15th May, 1998 (Annexure-5) submitted by the petitioner is as under:

("Hindimatter omitted")

16. A bare perusal of the above application shows that the application dated 15th May, 1998 is not an application filed u/s 52 of the Motor Vehicles Act. In this application the contention of the petitioner is that he purchased the vehicle with 36 seats and in this application he nowhere stated that he is intending to reduce the seats from 54 to 36 or he is altering the vehicle to reduce the seats or he is seeking permission to alter the vehicle so as to reduce the seats from 54 to 36. His contention in the above application is only that much time has passed and he is suffering because of the wrong entry about the capacity of the vehicle and he wants to sell the vehicle in question. Therefore, the vehicle may be examined. It is strange that an application, which was filed in the year 1998 and that too, containing no permission for alteration in the vehicle has been sought to be used in the year 2001 for getting reduction in tax liability for the vehicle in question. Not only this, but the important material fact has been suppressed by the petitioner that in petitioner's earlier writ petition filed in the year 1993, which was decided in the year 2000, the Court recorded the petitioner's admission that he never applied before the registering authority for alteration in the vehicle in question with respect to the seating capacity. This admission of the petitioner neither has been explained nor has been challenged any time before the same bench by filing review petition or by challenging in the D.B. Special Appeal against the order of the learned Single Judge.

17. If the contention of the petitioner is accepted that he submitted application on 15th May, 1998 (Annexure-5) and on the basis of this application the seating capacity for the vehicle was re-determined by the District Transport Officer then that also appears to be absolutely wrong because the concerned authority could not have treated this application to be an application seeking permission to alter the vehicle and to reduce the seats nor it could have been treated to be an application intimating that the petitioner has altered the vehicle and reduced the seats. Another significant fact is that there is no mention of this application dated 15th May, 1998 in the order dated 19th July, 2001. The order dated 19th July, 2001 appears to have been passed only on the same day as it has been recorded in the order that today on 19th July, 2001 owner of the vehicle presented himself and stated that he has converted the vehicle having seats 3 x 3 as per Rule 7.14

and the vehicle may be inspected. The vehicle was inspected on the same day, i.e., 19th July, 2001 and the authority determined the seating capacity again and held that vehicle is having seating capacity of 46 persons. However, this order was found doubtful by the department itself as it is clear from the factual reports, which has been submitted before this Court along with the letter Annexure R/8. Be that as it may, in view of the positive admission of the petitioner that his only application seeking permission to reduce the seats in the vehicle is 15th May, 1998 and that is in fact, not the application for seeking permission to reduce the seats or for alteration in the vehicle, therefore, any order passed by the authority including the order dated 19th July, 2001 has been passed without there being any application of the petitioner and has been passed absolutely illegally. The authority concerned did not apply its mind that the petitioner's entire contention that vehicle was containing 36 seats was not available on 19th July, 2001 to the petitioner in view of the two judgments of this Court delivered in the case of the petitioner's writ petition and appeal (supra). Not only this, but till 11.1.2001 the contention of the petitioner in writing before the Transport Department itself was that he purchased the vehicle with 36 seats and he kept the vehicle as it is as it was purchased. Therefore, even in application dated 11.1.2001 it was not the case of the petitioner that he altered the vehicle under assumption that his application dated 15th May, 1998 stands allowed for alteration in the vehicle automatically on expiry of period within which the authority should have passed the order refusing permission. Therefore, the contention of learned Counsel for the petitioner that petitioner is lawfully entitled to reduce the seats from 54 to 36 as the application of the petitioner dated 15th May, 1998 was not decided by the competent authority within a period of one week, which permits the deeming sanction for alteration of the vehicle, is not correct.

18. It will be worthwhile to recapitulate the facts again. This Court decided the issue of capacity of the vehicle by recording specific finding as that was the only issue involved in the writ petition of the petitioner. In spite of it, the DTO in order dated 22nd August, 2003 merely took note of the fact that the writ petition of the petitioner has been dismissed by the High Court and appeal against the judgment of the learned Single Judge was dismissed by the learned Division Bench and did not apply its mind at all.

19. The respondents in their reply filed in S.B. Civil Writ Petition No. 1098/2004, Hukam Singh v. State of Rajasthan at page No. 92 admitted that the vehicle was examined by the DTO, Jaisalmer and he found that seating capacity has been reduced to 46. Be that as it may, the said order could not have been passed unless it was the case of the petitioner owner of the vehicle that he reduced the seats, As stated earlier in the application dated 11.1.2001 the petitioner clearly admitted that he has not altered the vehicle till 11.1.2001, therefore, if any application has been filed seeking permission to reduce the seating capacity in the vehicle and that reduction is permissible as per Section 52 of the Motor Vehicles Act and as per the Rules 7.14 and 7.16, the petitioner could not have

been permitted to pay less tax by reducing the seats because of the reason that as per Rules 7.14 and 7.16 of the Rules of 1990 every public service vehicle other than a motor cab is required to conform to the norms of seating space, back rest, size and type of seats provided in the table given under the rules. This aspect has also not been considered by the concerned authority in its order dated 19th July, 2001 and he proceeded to order only on the ground that the seats have been reduced without verifying whether it was the case of the petitioner or not, which in fact is not and without finding whether petitioner ever applied for alteration in the vehicle or not? Therefore, the order dated 19th July, 2001 cannot be allowed to stand, though has not been challenged by the respondents and which has been placed on record by the respondents themselves, but the decision given by this Court in petitioner's writ petition required to be given due effect and this Court very clearly held that the owner of the vehicle has right to get the alteration in the vehicle by moving appropriate application u/s 52 of the Motor Vehicles Act and alteration can be in conformity with the Rules 7.14 and 7.16 of the Rules of 1990. In this case, the petitioner neither applied for alteration in the vehicle nor it is the case of the petitioner that he reduced the seating capacity of the vehicle.

20. This Court since found that there is no application for reducing the seats of the vehicle, therefore, in fact, the petitioner could have been charged with the tax treating the vehicle having the capacity of 54 persons until and unless a valid order is passed for permitting petitioner to reduce the seats and reduction of the seats can be recognized and accepted under the Rules of Motor Vehicles Act.

21. The question though has been raised by the petitioner about the validity of the order dated 22nd August, 2003 (Annexure 7), but here root question is that whether the petitioner's vehicle can be recognized having capacity of 46 seats despite the decision of this Court in petitioner's writ petition and, therefore unless that question is decided, it will be of no use to question the order of the District Transport Officer, dated 22nd August, 2003. This Court can suo motu take note of the fact that If the orders of this Court have been flouted or any finding has been recorded contrary to any decision given by this Court then this decision of the lower authority cannot be given precedence over the judgment of this Court. Otherwise also a decision between the parties is final and could not have been made subject matter in subsequent litigation. Therefore, originally, the vehicle was containing 54 seats is the issue decided finally and cannot be reopened by any authority. So far as reduction of seats in the vehicle is concerned, that order dated 19th July, 2001 is found to be absolutely illegal and without application of mind and appears to be contrary to Section 52 and Rules 7.14 and 7.16 and the table appended under the rules for determining the capacity of the passenger in the vehicle. Therefore, the petitioner cannot avoid tax liability for the vehicle for 54 passengers carrying capacity from beginning.

22. In view of the above, the writ petitions of the petitioners are dismissed with directions to the respondents as mentioned above.