

(1994) 02 DEL CK 0007

In the Delhi High Court

Case No : Civil Writ Petition No. 3987 of 1993 and Civil Writ Appeal No's. 3985, 3988, 3989, 3992, 3993, 3994, 3995, 3997, 4001, 4002, 4381, 4382, 4383, 4385, 5460, 5461, 5462, 5463, 5464, 5466 and 5467 of 1993

Lt. Governor and Others

APPELLANT

Vs

Mahabir Singh and Another

RESPONDENT

Date of Decision : 28-02-1994

Acts Referred:

Motor Vehicles Act, 1939 — Section 84, 86(I)

Citation : (1994) 1 AD 1037 : (1994) 53 DLT 773 : (1994) 107 PLR 24

Hon'ble Judges : K. Shivshankar Bhat, J;G.C. Mittal, J

Bench : Division Bench

Advocate : A. Ahlawat and Rani Chhabra, for the Appellant;

Judgement

K.S. Bhat, J.

(1) There are several writ petitions involving the same question as to whether the permit of the stage carriage vehicle could be cancelled or suspended, if the vehicle causes any serious accident affecting the limb or life of any human being. As an illustrative case we may refer to the accident in which Bus No.DL-IP-2798 was involved. A young boy died in the accident. A criminal case was registered in the Police Station and at the same time on 6.4.1993, a show cause notice was issued to the permit holder (first respondent) to submit his Explanation as to why his permit should not be cancelled/suspended and the bus be impounded. The permit holder replied stating that he had complained against the students of Haryana Shakti Senior Secondary School, Khanjhawla with the Principal of the School about their illegal activities and inspire of this the school authorities did not take any action and that the boy fell down from the front gate of the school and was crushed under the wheel of the bus. The driver ran away with the bus. The State Transport Authority which had issued the show cause notice considered the Explanation and thereafter made an order cancelling the permit. The permit holder filed an appeal before the State Transport Appellate Tribunal. The

Appellate Tribunal allowed the appeal and held that there was no condition in the permit which was contravened by the permit holder and Therefore, the cancellation of the permit was illegal. The State Transport Authority had held that condition No. 14 of the permit had been violated. The Appellate Tribunal held that condition No.14 referred by the transport authority was only a proposal which was not found in the permit at all and that this condition found in the brochure inviting the application for permits was actually not incorporated in the statutory permit. Hence the present writ petition.

(2) The learned Counsel for the petitioners contended that condition No.14 referred by the original authority must be read into the permit because the permit was issued on the basis of the brochure referred by the said authority. Alternatively it was contended that rash and negligent driving of the stage carriage was not permitted by the permit and the fact that there was a fatal accident in which the bus was involved, is a clear indication that the bus was used rashly and negligently.

(3) The learned Counsel for the contesting respondent is right when she pointed out that condition No.14 which was found in the brochure was not incorporated in the permit. Said condition reads thus:-

"THE permit holder shall exercise such supervision as is necessary to ensure that the vehicle is operated in conformity with the Motor Vehicles Act/Rules with due regard for the comfort, convenience and safety of passengers carried and shall not use or cause or allow to use the vehicle in the commission of an offence under the Indian Penal Code on local or special leave or any statutory control order. The vehicle shall be kept neat and clean at all times during the operation."

(4) However, we find that there is considerable force in the submission of the learned Counsel for the petitioners that plying of the vehicle rashly and negligently is an impermissible user of the vehicle and therefore. Section 86(1) (b) of the Motor Vehicles Act will be attracted.

(5) Section 84 of the Motor Vehicles Act (the Act for short), refers to the General Conditions attached to all permits. One of the conditions requires that the vehicle shall not be driven at a speed exceeding the speed permitted under the Act, which is 40 Kms. per hour. Section 86 which empowers the authority to cancel or suspend the permit gives six grounds for the said action. Section 86(i) which is relevant reads as follows:-

"CANCELLATION and suspension of permits. - (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 Section 84 or of any condition contained in the permit, or (b) If the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorised by the permit, or (c) if the holder of the permit ceases to own the vehicle covered by the permit, or (d) if the holder of the permit has obtained the permit by fraud or misrepresentation , or (e) if the holder of the goods carriage permit, fails without

reasonable cause, to use the vehicle for the purposes for which the permit was granted, or (f) if the holder of the permit acquires the citizenship of any foreign country; Provided that no permit shall be suspended or cancelled unless an opportunity has been given to the holder of the permit to furnish his Explanation "

(6) SUB-CLAUSE (a) refers to the breach of a positive condition. The petitioners rely on Sub-clause (b) to contend that using or causing or allowing a vehicle to be used in any manner not authorised by the permit, is a ground to cancel or suspend the permit. It was contended on behalf of the permit holder that the manner in which the vehicle should be used is referable to the carrying of goods or passengers and it has nothing to do with the safety measures to be followed by the permit holder or the employees of the permit holder.

(7) It is needless to emphasize the importance of using the stage carriage vehicle only in the manner authorised by the permit. The question is whether plying the vehicle dangerously, rashly or negligently, could be considered as using the vehicle in a manner not authorised by the permit. The term "uses a vehicle" has many shades of meanings; the meaning cannot be confined to the concept of utility alone in the sense that the vehicle should be used to carry the passengers or goods. In a wider sense, the plying of the vehicle will be covered by the term "user" of the vehicle. In fact the very purpose of the permit is to enable the permit holder to use the vehicle for plying i.e. to carry the passengers from one stage to another for a consideration. It cannot be said that the vehicle can be used in a manner that may result in accidents. It is unnecessary to have a specific warning or require the permit itself that the vehicle shall not be driven rashly and negligently requirement is implicit in the very concept of permitting a vehicle to be stage carriage. A dangerously driven vehicle is a dangerous mechanics may cause injury to the limb or life of any human being. We are living when there is a great flow of traffic, in view of the vast movement of human either for work or pleasure. Transportation system is a part of our pre civilisation. As such an orderly system of transportation only could make safer in the cities or as a matter of fact, elsewhere also. The learned Counts contesting respondent contended that we cannot give such a liberal and meaning to the word "used" found in Section 86(1)(b) of the Act and the intention of the Parliament was to penalise a permit holder by cancel suspending it whenever the vehicle is involved in any accident, there was been a clear, specific clause in the permit or atleast in Section 84 to the effect "the vehicle to which the permit relates is not responsible for any accident also suggested by the learned Counsel for the first respondent that a suit at would have been found in Section 86(1) to the effect that the permit cancelled or suspended in case the vehicle is involved in an accident.

(8) We do not think that the absence of any clear and specific clause Section 84 or in Section 86 should deter us from giving a proper means provisions of Section 86. Having regard to the importance of the traffic growth of human as well as vehicular population in the cities and the need the menace of rash and negligent driving, the relevant provisions of the have to be construed properly, so

that the interest of the public could be guarded. A deterrent provision shall have to be found in a provision like 86 of the Act.

(9) It is well known that the words used in a statute are vehicles of is for the Courts to read into the words proper meanings so that the statute enforced in a manner the Parliament must have intended. The interpretation is the problem of understanding the meaning of words effectiveness as medium of expression to communicate a particular though learned Author Justice G.P. Singh states in his "Principles of Statutory Constructions" (1992 5th Edition page 3) -

"THE problem of interpretation is a problem of meaning of words effectiveness as medium of expression to communicate a particular A word is used to refer to some object or situation in the real world object or situation has been assigned a technical name referent. "W phrases are symbols that stimulate mental references to refer words of any language are capable of referring to different ref different contexts and times."

(10) The words, in addition to a hard central core of meaning have a periphery a dim fringe .(these words are again borrowed from the same learned A

(11) It is impossible to anticipate the varied situations that may arise in which the application of a particular legislation may be called for and situation Courts are to step in to give meaning to the words without wait for the Parliament to step in to clarify the law. The interpretative jurisdiction Courts is to read the statute not only literally but also make it functional and operative to meet all situations.

(12) In the sphere of torts an employer is vicariously liable and answerable to the commission or omission of the employee especially when the employee causes damages or injuries in the course of his employment. If this principle could be lifted and applied while construing the provisions of Section 86 of the Act, it can be said that a permit holder is liable and answerable to the society in general if the vehicle in respect of which the said permit is related is responsible for any accident. The cancellation or suspension of the permit is nothing but the response of the society when the vehicle is responsible for any accident. It is the responsibility of the permit holder to see that he employs not only a qualified but also a sane, efficient and competent driver so that the stage carriage is driven properly by virtue of the permit issued under the Act. We are of the view that Section 86(l)(b) of the Act could be invoked whenever it is proved that a vehicle, permitted as a stage carriage, is involved in any accident and the circumstances are such that an inference can be drawn that the vehicle is responsible for the accident.

(13) In all these cases before us the accident resulted in the death of human beings, and Therefore, the State Transport Authority thought it fit to cancel the permit. He has not considered whether such a serious penalty of cancelling the permit should be imposed without reference to other circumstances. There may be several factors which may have to be considered by the authority while

considering the nature of the penalty to be imposed. In a serious case where the accident is entirely due to the fault of the vehicle (when we use the word "vehicle" here, it certainly refers to the person who was driving the vehicle or who was responsible for the particular situation of the vehicle), the extreme penalty of cancelling the permit may be imposed. In other cases he may impose the penalty of suspending the license for some period. The discretion in this regard shall have to be exercised judicially.

(14) As already noted, in all these cases licenses were cancelled without discussing other factors. Only because the accidents were "fatal accidents", these vehicles have been kept out of the business for a considerable length of time by cancelling the permit, for example in writ petition No. C.W.3987/ 93 the license was cancelled on 5.5.1993. If the permit had been suspended for a period of six months or even 8 months, the said period would have been over by this time. In the absence of proper material to justify the imposition of the extreme penalty of cancellation, we consider that in these cases the appropriate penalty u/s 86 ought to have been suspension of the permit for some period. Since considerable time has elapsed from the respective dates of cancellation, we consider that the orders of cancellation shall be substituted by orders of suspending the licenses up to 28.2.1994 (i.e. today). Subject to this modification as to the penalty u/s 86, the order of the Transport Authority is affirmed and the order of the Appellate Tribunal is reversed. All these writ petitions are accordingly disposed of.