

(2016) 04 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : CWP No.25990 of 2015 (O&M)

Ludhiana Auto Rickshaw Association (Regd.)	APPELLANT
Vs	
State of Punjab and others	RESPONDENT

Date of Decision : 28-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 43(1)
Motor Vehicles Act, 1988 — Section 2(22), 2(25)

Citation : (2016) 3 PLR 680 : (2016) 4 RCRCivil 92

Hon'ble Judges : Rakesh Kumar Jain, J.

Bench : Single Bench

Advocate : Sardavinder Goyal, Advocate, for the Appellant; V. Ramswaroop, Addl. A.G., Punjab, Rajesh Garg, Senior Advocate, with Brijender Kaushik, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Rakesh Kumar Jain, J. (Oral) - This petition is filed by the Ludhiana Auto Rickshaw Association (Regd.) for setting aside the orders dated 29.05.2014 and 03.12.2015 and also for a direction to the respondent-State not to allow maxicab to run in the garb of auto rickshaw.

2. Counsel for the petitioner has submitted that the Transport Department of the Government of Punjab issued a notification dated 04.09.1975, in exercise of the powers conferred under Section 43(1) of the Motor Vehicles Act, 1939 (hereinafter referred to as the "Act of 1939") to the following effect:-

"In view of the hardship experienced by the travelling public, the State Transport Authority, Punjab, shall ensure that Auto-Rickshaw is allowed to ply during day and night within a radius of 10 miles of its headquarters as recorded in the route permit irrespective of the municipal limits."

The petitioner has attached a sample of permit as Annexure P-2, wherein the

type of vehicle is mentioned as "Three Wheeler", the route area has been given as "within the limits of Municipal Corporation, Ludhiana" and that the vehicle could carry 4 (3+1) passengers in all. He has submitted that the State Transport Commissioner, Punjab, vide his letter dated 29.05.2014, addressed to all the District Transport Officers in the State of Punjab, has ordered that the "the cargo and passenger Autos of Continental Engines Limited having (1+5) seats, Atul Gem, Passenger Three Wheeler Autos, sold by M/s M.R.P.C. Expo. Pvt. Ltd. Authorized Dealer of M/s. Atul Auto Ltd., Ludhiana are hereby approved for issuance of Motor Cab Permit throughout the State of Punjab". He has referred to a sample permit of the maxicab which is attached as Annexure P-5, which has been issued for the area of whole of the State of Punjab, having the maximum sitting capacity of 5+1 in all. He also referred to a letter dated 11.03.2013 of the State Transport Commissioner, Punjab, addressed to the District Transport Officers, Ludhiana, Jalandhar & Amritsar, directing that the cargo passengers motorcab vehicles having a seating capacity of 4+1, to be sold by the distributors mentioned in that letter, would not ply within the municipal limits of the cities of Ludhiana, Jalandhar and Amritsar till further orders by this Court. He has referred to a communication of the State Transport Commissioner, Punjab addressed to the District Transport Officer, Ludhiana on the subject of CWP No.17098 of 2015 titled as "Jalandhar Auto Rickshaw Workers Union v. State of Punjab and others" wherein, while referring to Section 40 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act"), it is averred that "except this the Hon'ble Punjab and Haryana High Court has stayed the plying of Motor Cab (Auto Rickshaws) run on diesel fuel in the Municipal Limits of Ludhiana, Jalandhar and Amritsar. In these cases registration has to be done in accordance with the provision of Section 40 of Motor Vehicle Act, 1988. Keeping in view of these fact, vehicles of applicants having residence address falling in Municipal Limits of these Three Cities has to be registered as per section 40 of the Motor Vehicle Act, 1988 and condition be imposed that these Motor Cab (Auto Rickshaws) will ply in Municipal Limits of rest of the cities except Municipal Limits of Ludhiana, Jalandhar and Amritsar".

3. During the pendency of the this petition, CM Nos.1787-88 of 2016 have been filed by the dealers who wanted themselves to be impleaded as respondent Nos.6 to 11. The application was allowed on 12.02.2016. On 30.03.2016, the Court had directed the State Transport Commissioner, Punjab to be present in the Court. He appeared on the date fixed and filed his affidavit today dated 28.04.2016, in which the following averments have been made:-

"3. That in the instant case in accordance with the latest position, it is respectfully submitted that the District Transport Officer, Ludhiana i.e. the respondent no.4 in the instant Civil Writ Petition was written vide letter no.STC-P(P-3)/13624 dated 01.04.2016 that vide Head Office letter no.STC-P(P-3)/14230 dated 29.05.2014 approval was accorded to issue Motor Cab permits for the State of Punjab to Atul Gem 1+5 passenger three wheeler vehicles of authorized dealers M/s M.R.P.C. Expo Pvt.Ltd. of M/s Atul Auto Ltd.

Ludhiana in accordance with the cargo & passenger autos to be sold by M/s Continental Engines Ltd.(CEL).

4. That in the aforesaid Head Office letter dated 29.05.2014, the District Transport Officer, Ludhiana i.e. respondent no.4 was specifically written that Motor Cab permits may be issued to the above said 1+5 passenger three wheeler vehicles but he has issued Maxi Cab permits to two Contract Carriage permit no.3569/Taxi/Maxi Cab/Ludhiana/2014 and 3632/Maxi Cab/Ludhiana/2014 in place of Motor Cab permits. This is a violation of the orders of the Head Office and a serious lapse on his part. Therefore, clarification was sought in this regard from the District Transport Officer, Ludhiana i.e. respondent no.4.

5. That in response to aforesaid letter dated 01.04.2016, the District Transport Officer, Ludhiana i.e. respondent no.4 has intimated that by mistake Maxi Cab in place of Motor Cab has been mentioned on the above said two permits. He has further intimated that a notice u/s 74 of the Motor Vehicles Act, 1988 is being issued to the permit holders in order to rectify the error. He has further intimated that apart from above appropriate action will be taken against any such permit holder if it comes to notice.

6. That vide letter no.STC-P(P-3)/17926 dated 25.04.2016, the District Transport Officer, Ludhiana i.e. respondent no.4 has been directed that notices may be issued to all permit holders on which by mistake Maxi Cab in place of Motor Cab has been mentioned and rectify the error on the permits as well as in the office record. He has also been directed to submit the report in this regard within a week positively and responsibility of the official committing such lapse may be fixed and forwarded to head office i.e. the office of the answering deponent for further necessary action."

4. Counsel for the petitioner has submitted that the petitioner is basically aggrieved of the inaction on the part of the respondents in not restricting the auto rickshaws, which are being plied in the garb of maxicab. It is submitted that as per Section 2(22) of the Act, maxicab means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward. However, he has not raised any objection in regard to the plying of the motorcab which is defined under Section 2(25) which means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward.

5. He has also submitted that the word "auto rickshaw" is not defined either in the Act or the Rules as it is generally presumed to be the vehicle which is being run on three wheels and has the sitting capacity of 3+1 passengers in all, whereas learned senior counsel appearing on behalf of the distributors has submitted that they are selling the autos running on three wheels having the sitting capacity of 3+1, 4+1 and 5+1 which fall within the definition of motorcab for which the petitioner has no objection. It is, however, submitted that the motorcabs, though being run on diesel fuel, are ordered not to be registered in

District Ludhiana in spite of the fact that the said auto rickshaws, being sold by the dealers-respondent Nos.6 to 11, are of BS-III pollution stage, which are better in emission than the CNG pollutant norms.

6. I have heard learned counsel for the parties and perused the available record with their able assistance.

7. As a matter of fact, the present litigation has a past of its own which is reflected from the order dated 23.07.2009 passed in CWP No.13490 of 2008 (a Public Interest Litigation), in which the following directions were issued by this Court:-

"1) The Chief Secretary of Government of Punjab shall convene a meeting of all those connected with a possible switchover from diesel to LPG/CNG as a fuel. He may invite, for the said meeting, officers from the Gas Authority of India Limited, and the Petroleum Corporations like Indian Oil Corporation, Bharat Petroleum and Hindustan Petroleum. The meeting would address the issues referred to above and attempt to draw up a road map that would give a clearer picture regarding the proposed switch over and the time frame within which it would be implemented. A status report shall be placed before this Court by the next date of hearing.

2) Pending further orders from this Court, the issue of permits to auto rickshaws and public transport buses (city buses) run on diesel within the Municipal Corporation limits of the three cities mentioned above shall remain stayed. This order would not prevent the State Transport Authorities in Punjab from issuing permit for auto rickshaws which run on LPG or CNG. Auto rickshaws that can run on any other non-polluting fuel can also be permitted."

8. As a result of the aforesaid directions, the issuance of permits to auto rickshaws and public transport buses (city buses) run on diesel within the Municipal Corporation limits of three cities, namely, Ludhiana, Jalandhar and Amritsar were stopped.

9. Later on, the order dated 23.07.2009 was modified vide order dated 04.08.2014 passed by the Division Bench observing that "keeping in view the Emission norms of new diesel buses belonging to the State of Punjab is almost equivalent to the emission of CNG, therefore, we allow the State of Punjab to issue permits for 165 buses to be run in the Municipal Corporations of Amritsar and Ludhiana".

10. There was a further modification in the order dated 23.07.2009 on 15.03.2015 to the effect that "the renewal of the permit and registration of the vehicles shall proceed with and if the vehicle is already purchased and registered, that will be allowed to ply until further orders".

11. The issue raked up in this case by the Ludhiana Auto Rickshaw Association is that the Department of Transportation, Punjab should not allow plying of three wheelers/auto rickshaws, having the sitting capacity of more than 6 passengers,

in the name of auto rickshaw much-less maxicab. Ironically, the word "auto rickshaw" or "three wheeler", as it is popularly called, is not defined anywhere, as submitted by learned counsel for the parties but generally a vehicle, plied on three wheels, is being called as an auto rickshaw in popular parlance whether it has the sitting capacity of 3+1, 4+1 or 5+1. However, it is pertinent to mention that a vehicle having the sitting capacity of not more than 6 passengers is defined as motorcab under Section 2(25) of the Act and a vehicle having sitting capacity of more than 6 passengers is defined as maxicab under Section 2(22) of the Act. It is conceded by the Transport Commissioner that there has been a serious lapse on the part of District Transport Officer, Ludhiana who had issued permits to the maxicabs in the name of motorcabs for which explanation has already been sought and action is being initiated to stop those maxicabs which are being run in the city of Ludhiana as auto rickshaw.

12. The petitioner has not raised any dispute for sale-cum registration for the motorcab in Ludhiana but has raised an objection about its plying in Ludhiana on the ground that it also falls within the definition of auto rickshaw.

13. This argument is seriously opposed by the respondents on the ground that since the auto rickshaw is not defined anywhere and the word mentioned by the Division Bench is only "auto rickshaw", therefore, it has to be considered to be the vehicle having sitting capacity of 3+1, otherwise the other vehicles, in which there are 5+1 seats, are called the auto rickshaw, has been specifically defined as motorcab in the Act. Since the word "auto rickshaw" is not specifically defined either in the Act or even in the order by which its transportation was stayed on 23.07.2009, therefore, at present it is ordered that it would be a three-wheeler having the sitting capacity of 3+1, otherwise a vehicle having the sitting capacity of 5+1 is specifically defined as motorcab and a vehicle of the sitting capacity of more than 6 passengers is defined as maxicab.

14. In view of the aforesaid discussion, the present petition is hereby disposed of with a direction to the official respondents that they would not give any permit to the maxicabs for the purpose of plying as an auto-rickshaw in the city of Ludhiana as the maxicab is the vehicle which can carry more than 6 passengers. There shall also be no registration of sale and purchase of the maxicab in District Ludhiana and the permits which have been inadvertently granted to the maxicabs, as admitted by the official respondents, shall be cancelled within a period of one month from the date of receipt of certified copy of this order.