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**(1984) 09 SHI CK 0008**  
**In the High Court Of Himachal Pradesh**  
**Case No : C.W.P. No. 338 of 1984**

Parkash Chand Mehta

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

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**Date of Decision :** 05-09-1984

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 27, 31A, 34(4A)

**Citation :** AIR 1986 HP 38 : (1985) ShimLC 158

**Hon'ble Judges :** P.D. Desai, C.J.;H.S. Thakur, J

**Bench :** Division Bench

**Advocate :** M.L. Sharma and Dalip Sharma, for the Appellant; P.N. Nag, General, R.L. Sood, K.S. Patyal and M.G. Chitkara, for the Respondent

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## Judgement

P.D. Desai, C.J.—On Jan. 23, 1982 the petitioner made an application to the Registering Authority, Ghumarwin, District Bilaspur (respondent No. 2), stating that he had purchased truck No. HPB-1085 from respondent No. 4 and that full payment of the consideration for the vehicle to the extent payable to the said respondent was duly made and praying that the vehicle be transferred in the petitioner's name. An affidavit of respondent No. 4, which accompanied the application, was duly sworn on Jan. 13, 1982 before the Executive Magistrate, Bilaspur District, and it bears his signature in English. -The affidavit affirmed that the vehicle in question was sold by respondent No. 4 to the petitioner on Jan. 13, 1982, that the sale price agreed upon by and between the parties was Rs. 1,34,000/-, that a sum of Rs. 44,000/- was received by respondent No. 4 towards the sale price, that the balance amount of Rs. 90,000/- was payable to the United Commercial Bank, Beri, Tehsil Sadar, District Bilaspur, towards the repayment of loan of Rs. 90,000/- secured by respondent No. 4 against the vehicle and that the petitioner had accepted the liability of repayment of the said loan. Respondent No. 4 affirmed that he had no objection to the vehicle being transferred in the name of the petitioner. A copy of the affidavit is to be found at Annexure-A. The record of the second respondent was also made available for our inspection and the contents of the affidavit hereinabove set out are taken

from the original affidavit which is found on the said record. The application appears to have been processed and granted on the same day, that is, Jan. 23, 1982 and the transfer of ownership appears to have been ordered to be entered in the name of the petitioner in the certificate of registration by respondent No. 2. According to the stand taken by respondent No. 2 in the present proceedings, the necessary entry in the registration certificate was, however, not immediately made.

2. On March 12, 1982, the Manager, United Commercial Bank, Beri (respondent No. 3), addressed a letter, Annexure R-2/A, to respondent No. 2 pointing out that the vehicle in question was financed by the Bank by granting a loan of Rs. 95,000/- to respondent No. 4 and that since there were arrears of instalments, "the tax-token" might not be renewed and that the vehicle might be registered in the name of the Bank. On March 15, 1982 a notice, Annexure-B, was issued to the petitioner by respondent No. 2 to show cause why action in accordance with law and rules should not be taken because the vehicle was hypothecated with the United Commercial Bank, Beri, and its transfer was "against the terms and conditions of the hypothecation". The petitioner does not appear to have sent any reply to the show cause notice. However, on March 18, 1982, he made an application to respondent No. 2 requesting that an entry regarding the hire-purchase agreement in respect of the vehicle in question, which had been financed by the United Commercial Bank, Beri, be made in the registration certificate. On August 20, 1982, respondent No. 2 passed an order, Annexure-D, cancelling with immediate effect the order relating to the transfer of the vehicle made on Jan. 23, 1982 on the ground that the Manager, United Commercial Bank, Beri, had objected to the transfer "owing to huge amount in arrear of the loan granted against aforesaid vehicle to Shri Hoshiar Singh and the present owner was given enough time to settle the matter with the Bank concerned" and "the present owner failed to clear the outstanding amount as per assurance given to this office" and for that reason "the transfer of the aforesaid vehicle is prejudicial to the Bank's interests". Be it stated that Hoshiar Singh is respondent No. 4 herein and that "the present owner" referred to in the extracted portion is the petitioner.

3. By an order passed within four days thereafter, that is, on August 24, 1982, by respondent No. 2, Annexure-C, the order dated August 20, 1982, Annexure-D, was superseded and the order relating to the transfer of ownership in favour of the petitioner made on Jan. 23, 1982, was restored "keeping in view the facts placed before the undersigned by the parties concerned". A copy of the order appears to have been forwarded to respondent No. 3 with an endorsement that "matter was discussed in length with your representative and Sh. Parkash Chand Mehta has bound himself for the payment of balance of loan and interest payable to the Bank". It would thus appear that the order, Annexure-C, was passed after the matter pertaining to the repayment of the dues of the United Commercial Bank was discussed with a representative of the said Bank and after the petitioner undertook to repay the balance of the dues together with interest.

Against the aforesaid order, Annexure-C, respondent No. 4 preferred an appeal u/s 35 of the Motor Vehicles Act, 1939. By an order made on July 11, 1983 by the Appellate Authority, Annexure E, the operation of the order dated August 24, 1982, Annexure-C, was stayed and the order dated Aug. 20, 1982, Annexure-D, was ordered to remain operative till further orders. Consequentially, the order cancelling the direction relating to the transfer of the vehicle in question in favour of the petitioner revived once again. According to the petitioner, the appeal has since been dismissed.

4. It appears that while the vehicle was till in possession of the petitioner, respondent No. 4 allegedly removed the same from the custody of the petitioner. The petitioner thereupon appears to have lodged a complaint for the offence punishable u/s 379 read with Section 34 of the Indian Penal Code at Police Station, Sadar, District Bilaspur. The matter ultimately reached the Court of the Chief Judicial Magistrate, Bilaspur, since both the petitioner and respondent No. 4 made applications u/s 457 of the Code of Criminal Procedure in the said Court. The learned Chief Judicial Magistrate, Bilaspur, found in the course of his order recorded on July 19, 1983, Annexure F that prima facie, the petitioner was the owner of the vehicle in question and that he was entitled to retain it. Under the circumstances, the vehicle was ordered to be given on sapurdari to the petitioner on his furnishing a sapurdari bond in the sum of Rs. 1,50,000/- with an undertaking that he would not dispose of the vehicle and would produce it, whenever called upon, in the Court or before the police.

5. On April 23, 1984 respondent No. 4 made an application to respondent No. 2 praying, inter alia, that the petitioner be directed to pay the arrears of loan with interest to the Bank and that if he was not ready to clear the loan accordingly, then, the order relating to transfer of ownership in his favour be cancelled and the vehicle in question be entered and delivered to respondent No. 4. Respondent No. 2 thereupon issued a notice on May 8, 1984 to respondent No. 3 requesting him to attend his office on May 16, 1984 "along with facts of the case and arrear of loan payable to your Bank against aforesaid vehicle." Copies of the notice were endorsed to the petitioner and respondent No. 4 and both of them were also directed to appear before respondent No. 2 "along with facts/documents" on the same day. Respondent No. 3 addressed a letter to respondent No. 2 on June 19, 1984 stating that respondent No. 4 had not cleared the dues of the Bank and that, as such, he was not authorised to sell the vehicle. Respondent No. 3, therefore, requested respondent No. 2 "to kindly restore ownership in the name of Sh. Hoshiar Singh with bank as hypothecates." As a result of these proceedings, respondent No. 2 passed an order on June 20, 1984, Annexure I, the material part of which reads as follows :

"Whereas vehicle No. HPB-1085 has been financed by the UCO Bank. Berri, as intimated by the Manager, UCO Bank, Berri, vide his letter dated 19th June, 1984, and a sum of rupees 82270-32 as loan is still payable to Bank against the aforesaid vehicle.

Whereas from the perusal of record it reveals that lien of bank stand entered in the record of registration.

Whereas as provided under Rules 3-22 (Sub-rules 1 to 6) the ownership of any vehicle cannot be transferred without having N. O. C. from the financier,

Whereas from the perusal of record, no objection certificate from financier has not been obtained and as such the entry in respect of ownership of vehicle be transferred and entered in record of Registration in the name of Sh. Hoshiar Singh."

Copies of the order were forwarded to the petitioner and respondents Nos. 3 and 4 and the petitioner was directed to produce the Registration Certificate "for making necessary amendment in the same".

6. On July 4, 1984 the petitioner made an application to respondent No. 2 seeking review of the aforesaid order dated June 20, 1984. The previous history relating to the transfer of the vehicle in the petitioner's name was briefly set out and the prayer was that having regard to the course of proceedings, an entry relating to the transfer ownership of the vehicle be made once again in the name of the petitioner. On July 18, 1984 the application was rejected and the original registration certificate, in respect of the vehicle in question was ordered to be cancelled and a duplicate registration certificate was ordered to be issued in favour of respondent No. 4.

7. The petitioner has thereupon instituted the present petition seeking the relief, inter alia, restraining respondent No. 2 from effecting any change in the registration certificate in respect of the vehicle in question.

8. Section 31 of the Motor Vehicles Act 1939 (hereinafter referred to as "the Act") deals with the transfer of ownership of a motor vehicle. It lays down the procedure to be followed by the transferor and the transferee for the purpose of effecting an entry of transfer of ownership in the certificate of registration. The transferee is under an obligation to report within fourteen days of the transfer the fact of such transfer to the registering authority within whose jurisdiction the transfer is to be effected and to forward to the same authority certain documents within forty-five days of the transfer. The transferee is also obliged, within thirty days of the transfer, to report the transfer to the registering authority within whose jurisdiction he resides and to forward the certificate of registration to that registering authority together with the prescribed fee etc. in order that particulars of the transfer of ownership may be entered in the certificate of registration. Section 31-A of the Act enacts special provision regarding motor vehicles subject to hire-purchase agreement. The provisions of the said Section are also applicable, so far as may be, to a motor vehicle which is subject to hypothecation. Under the relevant provisions of Section 31-A, the registering authority is under a duty to make an entry in the certificate of registration regarding the existence of hire-purchase agreement where an application for registration of a motor vehicle held under such an agreement is made to him. No

entry regarding the transfer of ownership of any motor vehicle which is held under a hire-purchase agreement can be made in the certificate of registration except with the written consent of the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into a hire-purchase agreement. Where the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into a hire-purchase agreement satisfies the registering authority that he has taken possession of the vehicle owing to the default of the registered owner under the provisions of the agreement and that the registered owner refuses to deliver the certificate of registration or has absconded, the registering authority is empowered, after giving the registered owner an opportunity to make such representation as he may wish to make, to cancel the certificate and issue a fresh certificate of registration to the person with whom the registered owner has entered into hire-purchase agreement. Section 34 of the Act deals with the cancellation of registration. Sub-section 4A of Section 34 provides that if a registering authority is satisfied that the registration of a motor vehicle has been obtained on the basis of documents which were, or by representation of facts which was false in any material particulars, the registering authority is under a duty, after giving the owner an opportunity to make such representation as he may wish to make, and for reasons to be recorded in writing, to cancel the certificate of registration of vehicle. These are the material statutory provisions to which our attention was drawn and which require to be noticed for the purposes of the present case.

9. Now, the sale of a vehicle, under the general law, is complete when the consideration is paid and the vehicle is delivered, whether or not the transfer is registered under the Act. However, the certificate of registration is an important document constituting prima facie evidence of the ostensible ownership of a vehicle and imposing upon the person, whose name is entered therein as the owner of a vehicle, the liability to pay taxes and to perform duties and obligations under the Act. Since no person can drive any motor vehicle and no motor vehicle can be caused or permitted to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered, the certificate of registration, which bears the name and address of the registered owner, is an essential adjunct for the practical utility of any vehicle. Detailed provisions are, therefore, found to have been made in the Act with regard to the methodology of registration, including refusal of registration or its renewal, suspension and cancellation of registration and entry of transfer of ownership in the certificate of registration. Having regard to the nature and content of the power of registration and the consequence of its exercise upon the owner of a motor vehicle and in view of the procedure prescribed in regard to the registration and its renewal, suspension, cancellation etc., including the right of hearing as well as of appeal conferred on the owner of a motor vehicle, it is manifest that the power exercised by the Registering Authority in regard to these various matters is quasi-judicial in nature. Against

the aforesaid background, the question which arises for consideration is whether respondent No. 2 in his capacity as Registering Authority acted within the bounds in making different orders from time to time in respect of the change of ownership of the vehicle in question.

10. It was not in dispute that the various orders, hereinunder challenge, made by respondent No. 2 in the purported exercise of the powers conferred by the Act upon the Registering Authority, could be sustained, only if the exercise of power is traceable to the power of review or cancellation. The crucial question, therefore, is whether such power exists and, if so, whether the conditions for the exercise thereof are shown to be present on the facts and in the circumstances of the case.

11. It is well settled that the power of review is not an inherent power. It must be conferred by law, either specifically or by necessary implication See : Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, and Mehar Singh Nanak Chand Vs. Shri Naunihal Thakar Das and Others, . No provision in the Act was brought to our notice from which it could be gathered that the Registering Authority had the power, express or implied, to review his own order. The order passed by respondent No. 2 on Jan. 23, 1982, upon the application made by [he petitioner, duly supported by an affidavit of respondent No. 4, directing that in the certificate of registration an entry relating to the transfer of ownership of the vehicle in question in favour of the petitioner be made, could not, therefore, have been reviewed. Be it stated that the question whether the said order is correct or valid in law, does not arise for consideration in this petition which is instituted by the petitioner to challenge the validity of the subsequent orders. So long as that order is not shown to have been set aside or declared void by respondent No. 2 or by any other competent authority in accordance with law, it must be regarded as having continued to remain in operation notwithstanding the subsequent exercises undertaken by respondent No. 2 from time to lime to affirm, modify or vacate the same.

12. The power of cancellation, which is the only other source of power in the exercise of which respondent No. 2 could have passed the various orders subsequent to the original order dated Jan. 23, 1982, is to be found in Sections 33 and 34 of the Act. Sub-section (4A) of Section 34, however, is the only relevant provision which requires to be noticed in the context of the present case. While considering the applicability of the said sub-section, we are assuming, without deciding, that the power thereunder conferred is exercisable even in respect of cancellation of an entry made in a certificate of registration relating to the transfer of ownership of a motor vehicle. For the applicability of the said sub-section, it must be shown that there was material before the Registering Authority on the basis of which he could have been satisfied that the registration of a motor vehicle or an entry in the certificate of registration relating to the transfer of ownership, as the case may be, was obtained on the basis of documents which were, or by representation of facts which was, false in

any material particular. An attempt was made on behalf of the respondents to take shelter behind this provision in order to sustain some of the various orders passed from time to time by respondent No. 2 subsequent to the passing of the original order dated Jan. 23, 1982. It was urged on behalf of the respondent that in the course of the application dated Jan. 23, 1982, made by the petitioner to respondent No. 2 for effecting an entry in the certificate of registration regarding the change of ownership, it was not disclosed that the purchase of the vehicle in question was financed by the United Commercial Bank, Beri, and that the vehicle was duly charged and hypothecated in favour of the Bank by respondent No. 4 to secure the loan of Rs. 95,000/- and that under those circumstances the transfer of ownership of the vehicle was obtained by the petitioner by suppression of material facts and such transfer was liable to be cancelled. The contention has been stated merely to be rejected. It has been pointed out earlier that along with the application for effecting the change, an affidavit duly sworn by respondent No. 4 was attached. The said affidavit clearly disclosed the fact that a loan was secured by the said respondent against the said vehicle from the United Commercial Bank, Beri, that a sum of Rs. 90,000/- was outstanding against the said loan and that the said amount was agreed to be paid by the petitioner to the Bank to discharge the liability. The fact, therefore, that the vehicle was purchased with the aid of finances advanced by the United Commercial Bank, Beri, against the vehicle and that the loan was not cleared and that the petitioner had agreed and undertaken to clear the balance outstanding against the said loan was brought to the notice of the Registering Authority by an affidavit annexed to the application which must be regarded as forming part of the application. Once the above mentioned facts were disclosed to respondent No. 2, he must be regarded as having been put to notice in respect of all the material facts including the finances provided by the Bank to respondent No. 4 for the purchase of the vehicle in question. Upon the disclosure of those facts, it was the duty of respondent No. 2 to probe deeper into the matter and to ascertain whether, having regard to the provisions of Section 31-A of the Act and the terms and conditions, if any, subject to which the loan was advanced, an entry in the certificate of registration with regard to the change of ownership could be legitimately made. On the facts and in the circumstances of the case, therefore, it is not possible to hold that the change in the entry relating to the ownership of the vehicle was obtained on the basis of documents which were, or by representation of facts which was, false in any material particular.

13. There is another good reason why the attempt to justify the impugned actions on the strength of Section 34 cannot succeed. Before exercising powers under Sub-section (4-A) of Section 34, it is the duty of the Registering Authority to give to the owner an opportunity to make such representation as he may wish to make against the proposed action. In order that the opportunity so afforded is real and not illusory, it is not sufficient merely to inform the owner that it is proposed to cancel the certificate of registration or the entry therein made relating to the ownership of the motor vehicle, as the case may be. For

effectively availing of the opportunity to show cause, the owner must know what is against him and what he has to answer. In other words, the show cause notice must contain all the relevant particulars on the basis of which the Registering Authority has reached the satisfaction that the registration or the change in the entry relating to the ownership of the vehicle was obtained on the basis of documents or representation of facts which were false in any material particular. Furthermore, the materials, if any, on the basis of which such satisfaction was arrived at must also be disclosed to the owner. Then only will the owner be able to meet with the allegations and to correct or controvert the materials on which the allegations are founded. Besides, the requirement of recording reasons in writing before exercising powers of cancellation under Sub-section (4-A) indicates that the Registering Authority has to arrive at an objective decision in terms of the statutory provision after taking into account all the facts and circumstances of the case including the explanation, if any, offered by the owner in reply to the show-cause notice. The actions taken from time to time by respondent No. 2 in the instant case do not comply or, at any rate, adequately comply with all the aforesaid requirements of Sub-section (4-A) of Section 34 of the Act as explained above. Indeed, the terms of the order dated Aug. 20, 1982, Annexure-D, and those of the order dated Aug. 24, 1982, Annexure-C, read together leave no scope for the justification of the impugned actions on the basis of Sub-section (4-A) of Section 34. In our opinion, therefore, it is not possible to sustain the impugned orders and actions on the basis of the power of cancellation conferred upon the Registering Authority by the relevant provisions of law.

14. For the foregoing reasons, all orders, save and except the order dated Jan. 23, 1982, whereunder an entry relating to the transfer of ownership in respect of the vehicle in question in favour of the petitioner was ordered to be made in the certificate of registration, are quashed and set aside. The vehicle will accordingly stand registered in the name of the petitioner till and so long any change is effected in the certificate of registration in that regard in accordance with law and in light of the observations made in the course of this judgment.

15. It may be clarified that there are civil disputes between the petitioner on the one hand and respondents Nos. 3 and 4 on the other. In the present proceeding, we have not gone into those questions and we are not called upon to pronounce decision on the merits of such disputes. This decision will not, therefore, prejudice the claims and right of the parties in that regard.

16. Rule made absolute accordingly with no order as to costs.