(2015) 03 UK CK 0055

In the Uttarakhand High Court

Case No : Writ Petition No. 157 of 2013 (PIL)

Shrikumar	APPELLANT
Vs	
State of Uttarakhand and Others	RESPONDENT

Date of Decision : 03-03-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 110, 212, 3

Citation : (2015) 03 UK CK 0055

Hon'ble Judges : K.M. Joseph, C.J;V.K. Bist, J

Bench : Division Bench

Advocate : Lok Pal Singh, for the Appellant; Subhash Upadhyay, Chief SC, Advocates for the Respondent

Judgement

K.M. Joseph, C.J—This is a writ petition filed under Public Interest Litigation jurisdiction. Very briefly put the case of the petitioner is as follows:

Respondent Nos. 5 to 8 are manufacturers/suppliers of Electric Auto Rickshaw, which is being manufactured and sold without any manufacturing license and without imposition of VAT on it. It is alleged that no Rule has been framed for registration of the Electronic Auto Rickshaw. Neither there is any provision for insurance of the motor vehicle auto rickshaw, nor its passengers. No provision has been made for driving license or the identity of the Electronic Auto Rickshaw (E rickshaw). It is, accordingly, that the petitioner, making further allegation, which includes his representation made to respondent Nos. 1 to 4 and inaction on their part, has sought the following reliefs:

i) Issue a writ, order or direction in the nature of mandamus commanding/ directing the respondent Nos. 1 to 4 immediately stop the manufacturing, sale and plying the E Auto Rickshaw in the State of Uttarakhand.

(ii) Issue a writ, or direction in the nature of mandamus commanding/directing the respondent Nos. 1 to 4 not to permit the plying of E Auto Rickshaw in Haridwar unless the manufacturers dealers, owners of E Rickshaw obtained the certificates from the competent authorities for manufacturing of E Rickshaw, selling of E Auto Rickshaw with the Sale Tax Department and without registration from the Transport Department and without valid license of the drivers from the Transport Department.

iii) Issue any relief, which this Hon''ble Court may deem fit and proper in the circumstances of the case be passed in favour of the pubic at large.

vi) Cost of the petition be awarded in favour of the public at large.

Notices were issued and the matter was settled for hearing. We have already passed an interim order dated 17th September 2014, which reads as follows:

This is a Public Interest Litigation filed pointing out the illegal plying of battery operated rickshaws (commonly known as E-rickshaws).

2. We have heard learned counsel for the parties including the learned Advocate General.

3. Shri Arvind Vashistha, learned Senior Counsel for respondent No. 8 took a contention that since the matter is covered by Rule 2(u) of the Central Motor Vehicles Rules, 1989, it is not to be treated as a motor vehicle and, therefore, there is no need to get it registered under the Motor Vehicles Act. The 8th respondent is carrying on business of sales of such vehicles in the State of Uttarakhand. Today, the learned Advocate General would point out that the provision which is relied on by the learned counsel for the 8th respondent has been substituted by the Notification published on 24th April 2014. Therein, in Rule 2(u) of the Central Motor Vehicles Rules 1989, in place of the previous proviso, the proviso, which is relied on by the 8 respondent has, however, been substituted. The proviso to Rule 2(u) of the said Rules reads as follows:-

Provided that a two wheeled battery operated vehicle shall not be deemed to be a motor vehicle if all the following conditions are verified and authorized by any testing agency specified in rule 126, namely:-

(a) vehicle is equipped with an electric motor having thirty minute power less than 0.25kW;

(b) maximum speed of the vehicle is less than 25 km/hr;

(c) vehicle is fitted with suitable brakes and retro reflective devices, i.e. one white reflector in the front and one red reflector at the rear;

(d) unladen weight (excluding battery weight) of the vehicle is not more than 60 kg;

(e) in case of pedal assisted vehicle equipped with an auxiliary electric motor, in addition to above, the thirty minute power of the motor is less than 0.25kW, whose output is progressively reduced and finally cut off as the vehicle reaches a speed of 25 km/hr, or sooner, if the cyclist stops pedalling.

4. Learned Senior Counsel for the 8th respondent has a case that the sale as such is not prohibited and the 8th respondent is only indulging in sales of three-wheelers which are manufactured by others.

5. Thus, the exemption from it being treated as a motor vehicle after the substitution is available only to a two-wheeler which satisfies the conditions mentioned therein. Since, we are in this case concerned with the three-wheelers, quite clearly it will be a motor vehicle, and it will be subjected to all the restrictions, which a motor vehicle subjected to under the Motor Vehicles Act and any other law for that matter. In such circumstances, we are inclined to pass the following interim order:-

We record the submission of the learned Advocate General that the battery operated rickshaws (commonly known as E-rickshaws), are not being allowed to ply. Besides recording it, we direct that respondent Nos. 1 to 3 will take steps as per law to see that the vehicles in question, commonly known as E-rickshaws, will not be allowed to be plied till such time as they comply with the legal provisions in place.

Regarding the issue relating to sale by the 8th respondent, pending further consideration and final orders in the matter, we direct, however, that if the 8th respondent proceeds with the sale of the vehicles in question, he shall specifically indicate in the invoice that the vehicles in question cannot be plied, except after obtaining whatever permission is required as per law in respect of a motor vehicle.

2. Thereafter, the matter was taken up today.

3. We heard Mr. Lok Pal Singh, learned counsel for the petitioner, Mr. Arvind Vashistha, Senior Counsel appearing on behalf of respondent No. 8 and learned Chief Standing Counsel.

4. There is no dispute that the Ministry of Road Transport and Highways had issued Notification dated 24th April 2014 which, inter alia, reads as follows:

MINISTRY OF ROAD TRANSPORT AND HIGHWAYS NOTIFICATION New Delhi, the 24th April, 2014

G.S.R. 291 (E) Whereas the draft of certain rules further to amend the Central Motor Vehicles Rules, 1989 was published, as required under sub-section (1) of Section 212 of the Motor Vehicles Act, 1988 (59 of 1988), vide notification of the Government of India in the Ministry of Road Transport and Highways, number G.S.R. 120 (E), dated the 22nd February, 2013 in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), inviting objections and suggestions from all persons likely to be affected thereby, before expiry of the period of thirty days from the date on which copies of the Gazette of India containing the said notification were made available to the public;

And, whereas, copies of the Gazette notification in which the said notification was published were made available to the public on 22nd February 2013;

And, whereas, the objections and suggestions received from the public in respect on the said draft have been considered by the Central Government;

Now, therefore, in exercise of the powers conferred by Section 110 of the said Motor Vehicles Act, 1988, the Central Government hereby makes the following rules further to amend the Central Motor Vehicles Rules, 1989, namely:

1.(1) These rules may be called the Central Motor Vehicles (5th Amendment) Rules, 2014

(2) Subject to the other provisions of these rules, they shall come into force on the date of their final publication in the Official Gazette.

2. In the Central Motor Vehicles Rules, 1989 (hereinafter referred to as the said rules), in rule 2, in clause (u) for the proviso, the following shall be substituted, namely:

Provided that a two wheeled battery operated vehicle shall not be deemed to be a motor vehicle if all the following conditions are verified and authorized by any testing agency specified in rule 126, namely:

(a) vehicle is equipped with an electric motor having thirty minute power less than 0.25kW;

(b) maximum speed of the vehicle is less than 25 km/hr;

(c) vehicle is fitted with suitable brakes and retro reflective devices, i.e. one white reflector in the front and one red reflector at the rear;

(d) unladen weight (excluding battery weight) of the vehicle is not more than 60 kg;

(e) in case of pedal assisted vehicle equipped with an auxiliary electric motor, in addition to above the thirty minute power of the motor is less than 0.25 kW, whose output is progressively reduced and finally cut off as the vehicle reaches a speed of 25 km/hr, or sooner, if the cyclist stop pedaling.

3. In the said rules, in rule, 33 for the words "dealer" at both the places where they occur, the words and figures "dealer or manufacturer of automobiles ancillaries or a test agency specified in rule 126" shall be substituted.

4. In the said rules, in rule 35, in sub rule (1), for the words "dealer" the words "dealer or manufacturer of automobile or automobiles ancillary or a test agency specified in rule 126" shall be substituted.

5. Thereafter, the position, after the issuance of the Notification is that three wheelers are not entitled for exemption from being classified as motor vehicle. In other words, only two wheelers, which fulfill those conditions under the Notification, will go outside the purview of the motor vehicle as provided therein.

In this case, we are not concerned with two wheelers; we are concerned with the three wheelers. Respondent No. 8 appears to be a dealer dealing in such vehicles.

6. There is no dispute raised by Shri Arvind Vashistha that, after the Notification, the three wheelers will not come within the purview of the exemption, which means that the three wheeler would necessarily be treated as a motor vehicle with concomitant consequence of it having to be registered as a motor vehicle, the requirement of license for driving it and all other requirements, which flow from being covered as motor vehicle under the Motor Vehicles Act. In such circumstances, the three wheeler would necessarily have to be dealt with as a motor vehicle under the Motor Vehicles Act for all purposes. Consequently, the State and its officers would be under an obligation to treat the three wheeler as a motor vehicle and enforce all the laws relating to the motor vehicle in respect of three wheelers.

7. Accordingly, the writ petition is disposed of directing the official respondents to enforce the provisions relating to the Motor Vehicles Act and every other law relating to the motor vehicle in respect of three wheelers (E rickshaw). We make it clear that no three wheelers vehicle known as "E rickshaw" will be allowed to be plied till such time as they comply with the legal provisions in place.

8. Learned counsel for the petitioner has brought to our notice Rule 42 of The Central Motor Vehicle Rules, 1989. The said rule reads as follows:

Delivery of Vehicle Subject to Registration. No holder of a trade certificate shall deliver a motor vehicle to a purchaser without registration, whether temporary or permanent.

Therefore, in terms of said Rule, at the time of sale of the motor vehicle, registration itself must be taken whether temporary or permanent. This Rule must be enforced in respect of vehicle in question. We, therefore hold that the persons engaged in the sale of E rickshaw will be obliged to comply with the provisions of Rule 42 and it becomes bounden duty of the Authorities to ensure that Rule 42 is complied with. The State and its Authorities will issue Press Releases indicating the position of the law regarding the E rickshaw from time to time.