

(1999) 05 RAJ CK 0026

In the Rajasthan High Court

Case No : Civil Writ Petition No. 636 of 1999

Shrinath Travel Agency

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 13-05-1999

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 82 , 83, 84, 85, 85A

Constitution of India, 1950 — Article 226

Motor Vehicles (All India Permit for Tourist Transport Operators) Rules, 1993 — Rule 1

Motor Vehicles Act, 1988 — Section 2(40), 2(7), 212

Citation : AIR 2000 Raj 83 : (2000) 1 RLW 34 : (2000) 1 WLC 376 : (1999) 1 WLN 640

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : B.L. Maheshwari and R.K. Rathi, for the Appellant; R.P. Dave and B.S. Bhati, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—The petitioner M/s. Shrinath Travel Agency has prayed in this petition that the respondents be directed not to interfere in the operation of the vehicles by the petitioner under the permits granted to it as All India Tourist permit under the Motor Vehicles (All India Permits for Tourist Operators) Rules, 1993. It is further prayed that the respondents be restrained from illegally harassing the petitioner by illegal detention and seizure of the vehicles and to protect the life and property of the petitioner.

2. The petitioner claims to be the holder of All India Tourist permits as a tourist-transport operator from the State of Rajasthan and also from the State of Gujarat and opted the Rajasthan State as one of the States to ply on the authorisation issued under the Motor Vehicles (All India Permit for Tourist Transport Operators) Rules, 1993 (in short, the Rules of 1993). The list of vehicles covered under the tourist-transport permits is annexed as Schedule A to the petition having as many as 62 vehicles.

3. It is the case of the petitioner that Transport authorities and Police Department deliberately started to harass the petitioner and other operators by illegally detaining and seizing their vehicles, therefore, the representation Annex. 2 was submitted by the luxury-bus operators on 20-8-98. However, the same was not at all considered.

4. On 29-12-98, vehicle No. RJ-30/P-0061, covered under the permit in the name of the petitioner, was seized by the respondent authorities and in the seizure Panchnama it is stated that at the time of checking 38 passengers were found in the bus and 23 passengers were travelling from Udaipur to Jaipur and 7 passengers were travelling from Nathdwara to Jaipur which was in breach of the conditions of the permit. It was also mentioned that the tax paid of Rs. 12,000/- but the SRT comes to Rs. 9,000/-per month and the difference of tax was due. Similarly, on 2-2-99, bus No. RJ-01/P-1188 was seized on the allegation that as per the passenger-list there were 24 passengers mentioned in it but, at the time of checking, there were 29 passengers sitting in the bus and 5 passengers boarded on the way and the driver failed to produce any copy of the contract showing that the vehicle was covered under the tourist permit. The seizure Panchnama is Annex. 3.

5. It is further the case of the petitioner that the respondent Department has started intentionally checking from 2-2-99 to 9-2-99 and irrespective of the fact whether there is any lacuna or not in the relevant papers and in breach of any conditions or law they started to detain the vehicles of the petitioner on the spot and also of other operators and were not releasing the same for 2 to 3 days unless the amount was paid. It is further stated that because of the target of collecting the revenue the respondent Department started to collect the money from the petitioner and other operators in the name of tax of penalty etc. Therefore, this petition.

6. Learned counsel Shri R.P. Dave and Shri B.S. Bhati, appearing for the respondents, raised preliminary objections about the maintainability of this writ petition on the ground that the petitioner may be the owner of 62 vehicles but he cannot file one petition for 62 vehicles because it will be a separate cause for each vehicle and the petitioner instead of filing 62 petitions has filed only one petition, therefore, this petition should be dismissed. There is lot of force in this preliminary objection raised by learned counsel for the respondents. I am of the firm opinion that the petitioner should have filed separate 62 petitions for 62 vehicles as for every vehicle there was a separate cause. Hence, on this ground alone the petition was required to be dismissed.

7. The second objection raised by learned counsel for the respondents was that for the vehicles mentioned in Schedule A to the petition the petitioner is approaching Courts to Courts and obtaining orders of restraining the Transport authorities from seizing the vehicles and under the garb of such orders plied the same vehicles in contravention of the conditions of the permits. In the reply-affidavit it has been clearly pointed out that before filing this petition the

petitioner filed suit No. 194/96 before the Court of Civil Judge (Jr. Div.), Udaipur City (North) on March 19, 1998 with the same prayer that the vehicles mentioned in Schedule A to this petition may not be seized. Similarly, the petitioner filed suit before the Court of Civil Judge (Sr. Div.), Ahmedabad (Rural) with the similar prayer for the same vehicles and obtained orders. Against that order the State of Rajasthan approached the Gujarat High Court at Ahmedabad and got the order passed by the trial Court stayed. Appeal against that order was also dismissed by the relevant Bench of the Gujarat High Court. Thereafter, S. B. Civil Writ Petition No. 861/ 99 was filed by one Jagdish Chandra before the Jaipur Bench of this Court at Jaipur. This is the modus operandi of the petitioner and other operators to defeat the purpose of checking and collecting the tax and penalty from them. It was, therefore, submitted that the petitioner had alternative remedy of civil suit before the appropriate Civil Court and when the petitioner and others also filed suit before the Civil Courts of State of Rajasthan as well as State of Gujarat then this Court should not entertain such writ petition and should dismiss it solely on this ground.

8. There is lot of force in this second preliminary objection raised by learned counsel for the respondents. It appears that the persons like petitioner and other operators are filing suit after suit before the Civil Courts at different places and, after obtaining ex parte interim orders, continue to ply their vehicles in an illegal manner. The modus operandi of the petitioner and other operators is apparent. This Court has to view this seriously. When the petitioner had an alternative remedy of suit and, in fact, the same was availed of and the suit was already filed by the petitioner for the same vehicles then this Court would not entertain such writ petition.

9. On merits, learned counsel Shri Maheshwari submitted that the petitioner is a recognised tourist-transport operator and they are separate class and they cannot be harassed by the respondents in this manner. It was further submitted by Shri Maheshwari that the petitioner was granted permit under the scheme framed under the 1993 and Rule 1(4) of the Rules of 1993 clearly provides that the conditions prescribed in Rules 82 to 85A of the Central Motor Vehicles Rules, 1989 (in short, the Rules of 1989) shall not apply to the permits granted under the scheme. He, therefore, submitted that additional condition of Rule 85 (of 1989 Rules) will not apply to the petitioner. This submission of Mr. Maheshwari has to be rejected for the simple reason that the tourist vehicle is defined u/s 2(40) of the Motor Vehicles Act, 1988 and as per the definition the tourist vehicle or the contract carriage cannot be treated as stage carriage. Contract carriage means motor vehicle carrying passengers for hire or reward or on contract, whether express or implied for the use of such vehicle, as a whole for the carriage of passengers mentioned therein, and entered therein, and entered into by a person with the holder of permit in relation to such vehicle or any person authorised in this behalf for a fixed or agreed rate or sum. From the reply affidavit it is clear that the petitioner used to ply the vehicle as stage carriage and by this petition the declaration is sought that it can use the tourist vehicle as

stage carriage. The petitioner's vehicle is a contract carriage and it cannot be plied otherwise except as provided under the definition contained in Section 2(7) of the Motor Vehicles Act, 1988. Learned counsel for the respondents have relied upon the Supreme Court Judgment in support of their submission in case of *Nirmala Jagdishchandra Kabra Vs. The Transport Commissioner and others*, In *Nirmala's case (supra)*, the Supreme Court observed (Para 4) :

"It is true that if the holder of the vehicle obtains a contract carriage, the owner may carry a passenger or passengers for hire or reward on contract, whether expressed or implied, for the use of such vehicle as whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum. In other words, the very permit for which the contract for carriage of the passengers granted should Contain the names of passengers to carry from one destination to another destination without picking up or setting down en route for hire or reward but when the holder of permit is another and permits them to carry the passengers and makes the contract dehors those mentioned in the list of passengers, enclosed to the permit as contract carriage and takes the passengers from one destination to another, even without picking up or setting down en route, the necessary consequence would be that the vehicle has been or is being used as a stage carriage but not a contract carriage."

and held that the authority had rightly detained the vehicle for the contravention of the conditions of the contract.

10. Before parting, I must state that learned counsel Shri Maheswari for the petitioner tried to rely upon the unreported Judgment of Punjab and Haryana High Court, delivered on July 14, 1998 in writ petition No. 12119/96 (since reported in *Indo Canadian Transport Co. Vs. Union of India (UOI) and Others*, I have refrained myself from dealing with the same as the matter is squarely covered by the Supreme Court judgment against the petitioner on merits.

11. In view of the above discussion, the aforesaid preliminary objections raised by learned counsel for the respondents are upheld and the petition is dismissed on merits as well. The stay granted earlier stands vacated forwith.