
(1988) 06 BOM CK 0027

In the Bombay High Court

Case No : Writ Petition No. 90 of 1988

Smt. Ratanbai V. Kamat

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 13-06-1988

Acts Referred:

Goa, Daman and Diu Motor Vehicle Rules, 1965 — Rule 49(4)
Motor Vehicles Act, 1939 — Section 63(6)

Citation : (1988) 3 BomCR 447

Hon'ble Judges : G.F. Couto, J;G.D. Kamat, J

Bench : Division Bench

Advocate : S.D. Lotlikar, for the Appellant; G.U. Bhobe, G.A., for the Respondent

Judgement

G.D. Kamat, J.—The petitioner prays for a declaration that column 9 of Form P.Co. Sp. A prescribed under the Goa, Daman and Diu Motor Vehicles Rules, 1965 be struck down for being null and void on the ground that it is unconstitutional and at the same time prays for a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction quashing and setting aside the letter dated March 17, 1988 by the Officer on Special Duty (H.Q.) Directorate of Transport, respondent No. 3 which requires the petitioner to file a list of passengers who are travel in her vehicle.

2. The facts giving rise to this petition shortly stated are that the petitioner is a partner of the firm in the name and style of West Coast Tours and Travels. The firm carries on the business of conducting tours and transportation of passengers for hire and reward. On March 15, 1988 the petitioner made an application to the Regional Transport Authority u/s 63(6) of the Motor Vehicles Act, 1939, for short, the Motor Vehicles Act for the grant of a special permit for carrying passengers for hire in one for her transport vehicles from 1st April, 1988 to 2nd April, 1988. That application was made in the prescribed form which is styled as P. Co. Sp. A prescribed under the Goa, Daman and Diu Motor Vehicle Rules, 1965 for short the Rules of 1965. Along with the said application a communication was

addressed on the same day to the Officer on Special Duty (respondent No. 3) who was entrusted with the duty of processing and deciding applications for special permit on behalf of the respondent No. 2 stating that the list of passengers cannot be disclosed as the tourist party which is supposed to travel under the special permit in petitioner's vehicle cannot be ascertained as the tourist group will arrive in Goa from Hubli only on the date of travel from Panaji to Ambolim. It was however disclosed that Shri Sudin Sinari has engaged the vehicle. By the letter dated 17th March, 1988 the Officer on Special Duty informed the petitioner that the application cannot be considered as the petitioner has not furnished the list of passengers who were to travel by the vehicle and unless and until the list of passengers supposed to undertake the journey is furnished the request for special permit cannot be granted. This communication of respondent No. 3 that is challenged in this writ petition alongwith the unreasonable demand of list of passengers by column 9 of the prescribed form.

3. The learned Counsel Mr. Lotikar for the petitioner relying upon section 63(6) of the Motor Vehicles Act, 1939 says that the form P. Co. Sp. A and titled as "application for special permit in respect of contract carriage" more particularly column 9 thereof is not compatible with that section and the requirement is inconsistent. According to him it is not possible to furnish the details of passengers comprised as a tourist party who have engaged the vehicles and in any event the details of passengers who are proposed to be carried cannot be given in advance. He however relents and submitted that it is possible to furnish the list of passengers to be carried having regard to the nature of the business conducted by the petitioner being tours and travels.

4. He next points out that Form S.P. purported to be u/s 63(6) of the Motor Vehicles Act, 1939 and styled as Special permit has been enacted in Fourth Schedule to the Goa, Daman and Diu Motor Vehicles Rules, 1965 which requires the particulars of persons who have engaged the vehicle. It is his contention now that the impugned form more particularly column 9 is at loggerheads with the form which is enacted and prescribed in the Fourth Schedule of the Motor Vehicles Act, 1965. The form in the Schedule mentions only the names of passengers who engaged the vehicle and not the names of passengers who are to travel but column 9 of the impugned form requires the names of the persons who engage the vehicle and proposed to be carried.

5. In support of his contention he argues that if a party of any school or college or a marriage party is to be carried by an operator like the petitioner or persons in the like category it is impossible to known in advance who are the persons who are liable to travel on a particular day or who are the persons who are likely to attend marriage and that way be carried in the carriage and therefore the maximum that can be accepted of the persons in the trade is to submit the list or details of the persons or passengers to be carried only at the time when the journey is about to take place and that too dependent on the hour of the start of

the journey. In that the points out that in the event the journey is to start after the sunset it may not be possible to enter the list of passengers as by that time the office of the Directorate of Transport would be closed.

6. Insofar as inconsistency is concerned, he argues that section 63(6) of the Motor Vehicles Act does not require that the person or persons engaging the vehicle must be carried or must travel.

He placed reliance in the decision made on 8th September, 1982 delivered by the High Court of Karnataka in *The State of Karnataka v. K.T. Rajeshkar and another*. We have gone through this decision and we notice that a similar form at least a column similar to column 9 of the impugned form was under attack before the Karnataka High Court. A writ petition filed by K.T. Rajeshkar succeeded before the learned Single Judge who struck down the form similar to the impugned form and more particularly column 9 on the ground that the same is not compatible with section 63(6) of the Motor Vehicles Act, 1939. An appeal by the State of Karnataka was dismissed on the view that it is not required of the operator to furnish the details or names of passengers or persons to be carried before the journey is to be undertaken as was insisted by the form prescribed. It is not necessary for us to go into further details of that decision. We may observe that the challenge by the petitioner has considerable merit.

7. Shri Bhobe, learned Government Advocate relying upon section 63(6) of the Act mentions that this very sub-section provides that names of passengers to be transported is required to be furnished when application for special permit is made. This according to him can be read in sub-section (6) itself when it lays down clearly that a vehicle covered by contract carriage by a special permit has to use the vehicle as a whole without stopping to pick up or set down along the line of route of passengers not included in the contract (underlining supplied). He next brought our attention to Rule 4.9 of the Rules of 1965 which deals with forms of permit. Sub-rule (4) of Rule 4.9 of the Rules of 1965 says:---

"(4) Every contract carriage other than taxi autorickshaw shall maintain a list of passengers travelling in the vehicle in the form indicated in the Fourth Schedule in respect of each trip and such list shall be produced before the checking officer on demand."

Mr. Bhobe now says that on reading this sub-rule (4) of Rule 4.9 and section 63(6) of the Motor Vehicles Act it is not possible to hold that the form S.P. prescribed in Fourth Schedule of the Rules can be said to cover the case for an application for special permit. He therefore suggests that there is no form prescribed that in the absence thereof it must be held that it is obligatory on the part of the Operator like the petitioner to give the list or details of the passengers or persons who are to be transported by a contract carriage under a special permit.

The learned Government Advocate says that it is necessary to insist upon the names of passengers to be carried and that is to alleviate the misuse by the

Operators and mischief of converting contract carriages into something like stage carriages. He also mentions that there is another good reason for such insistence namely in the event of an accident, the authorities can at once know the names of the passengers who are the victims of such accident. On all these counts he says that it is necessary the Transport Authority must know in advance the names of passengers to be transported by or under a special permit.

8. "9. Details of the passengers who have engaged the vehicle and are proposed to be carried.

Serial Full Name of father/ age

No. Name husband "

This column is not compatible with section 63(6) of the Motor Vehicles Act. It be noted that a persons or persons engaging the vehicle need not necessarily travel in that vehicle. More of ten it may not be possible for the operator to know in advance the names and details of the tourist parties or of each and every passenger. We may however observe that the details of the persons who engage the vehicle can no doubt be given as such persons enter into contract with the operator well in advance before the journey and we find no difficulty on this scope.

9. We are however in agreement with the learned Government Advocate that it is desirable that the transport authority is made aware of the passengers to be carried out however this can be taken care of by prescribing a new form or by inserting an adequate column in the form by making suitable amendments to the impugned form which is at page. 11. We may point out that the petitioner has not challenged the entire form or form or any other column except column 9.

In view of the discussion we have no difficulty in holding that column 9 cannot stand the scrutiny of the law and the same is therefore liable to be struck down.

10. We recommended to the Transport Authorities. Government to amend the form to make an appropriate provision so as to bring the said form within the ambit and scope of section 63(6) of the Motor Vehicles Act and sub-rule (4) of Rule 4.9 of the Rules of 1965 and to make a provision for list of passengers to be forwarded by the operators a little before the journey commences and not at the time of making an application for special permit and further to provide that when a journey is to be under taken after the office hours to submit such a list either at the Police Station or wherever it may be convenient for the Department to think fit.

11. In view of the discussion above we make the rule absolute in terms of prayers (a) and (b) of the petition. There shall be however no order as to costs.