
(1994) 07 RAJ CK 0058
In the Rajasthan High Court
Case No : Civil Spl. Appeal No. 560 of 1992

State of Rajasthan

APPELLANT

Vs

Roshan Lal Inder Lal Choudhary

RESPONDENT

Date of Decision : 21-07-1994

Acts Referred:

Motor Vehicles Act, 1939 — Section 32(2)

Citation : AIR 1995 Raj 31 : (1994) 2 RLW 250 : (1995) 1 WLC 301 : (1994) 2 WLN 549

Hon'ble Judges : Gokal Chand Mital, C.J;N.K. Jain, J

Bench : Division Bench

Advocate : S.S. Bhandawat, A.A.G, for the Appellant; R.N. Munshi, for the Respondent

Judgement

Gokal Chand Mital, C.J.—The respondent is owner of vehicle No. RSY 2815 of 1973 model and has permit for passenger bus having seating capacity of 54. On 3rd of May, 1986, he gave notice to the Registering Authority to seek approval for alteration of seating capacity from 54 to 40. He did not receive any reply within 7 days and, therefore, under proviso to Section 32(2) of the Motor Vehicles Act, 1939 he deemed that approval was granted and made alteration in the seating capacity after depositing the necessary fees.

2. On 15th of December, 1986, the bus was inspected by the concerned Authorities and the variation in the seating capacity was found and the respondent was asked to explain. The explanation was furnished that he had submitted the application for alteration of seating capacity on 3rd of May, 1986 which was entered in the Inward Register at serial No. 3050(1) and since no order of approval was passed, it had been deemed that the approval was granted. The Registering Authority was not satisfied and passed the order Annexure-6 dated 16th January, 1987 refusing to grant permission for alteration of the seating capacity.

3. The aforesaid order was challenged by the bus owner in a writ petition filed

before this Court and a learned single Judge found on examination of evidence that the bus owner had applied to the Registering Authority vide Entry 3050 on 3rd of May, 1986 and that Entry seems to have been interpolated by changing the number of the vehicle. In this view of the matter, the learned single Judge proceeded to rely on the proviso to Section 32(2) of the Motor Vehicles Act, 1939 and said that after the expiry of (sic) from the date of notice, it had to be (sic) that the approval was granted for changing the number of seats. As a result, the writ petition was allowed, order Annexure-6 dated 16th January, 1987 was quashed and it was declared that the writ petitioner's application seeking permission for alteration in the Registration Certificate which was filed on 3rd of May, 1986 was deemed to be approved on the expiry of 7 days without any communication from the Registering Authority.

4. This is State's special appeal from the aforesaid order.

5. After hearing the learned counsel for the parties at length, we are of the view that the learned single Judge has recorded a finding that the writ-petitioner had filed an application on 3rd of May, 1986 vide Entry 3050 seeking approval for changing the seating capacity from 54 to 40.

6. We are in agreement with the learned counsel for the State that normally the High Court will not go into the disputed questions of fact, but the facts of this case demonstrate that for doing justice, it was necessary to go into the facts. In this case, the District Transport Officer, who is also Registering Authority, vide impugned order proceeded on the assumption that the writ-petitioner applied on 3rd of May, 1986 vide Entry 3050 and yet did not give the benefit of deeming provision contained in Section 32(2) and rejected the application for alteration in the seating capacity. Accordingly, for the valid reasons given by the learned single Judge, we agree with him that the writ-petitioner had filed an application on 3rd of May, 1986 seeking permission for changing the seating capacity from 54 to 40 and since that application was not decided within 7 days as required by law, it be deemed that the approval for changing the seating capacity was granted. Thereafter, the writ-petitioner filed the necessary fees and carried out the changes in his bus and on inspection after changing the vehicle was found to be in order for plying on high way.

7. It was then argued by the learned counsel for the State that in spite of the approval (sic) to have been granted for changing the seating capacity from 54 to 40, u/s 32(4) of the Motor Vehicle Act, 1939, a duty was cast on the writ petitioner for intimating to the Registering Authority within a period of 14 days of the making of the alteration in his bus along with the Certificate of Registration together with the prescribed fees etc. so that the particulars of the alteration may be entered in the Registration Certificate also. Meaning thereby that on the Registration Certificate also, the change brought about in the seating capacity with approval be indicated from 54 to 40. In this case, we find that there is no averment on record on behalf of the writ petitioner whether he made intimation within 14 days or thereafter and whether on the Registration Certificate change

has been carried out by the appropriate Authority or not. In this view of the matter, the operative order of the learned single Judge deserves to be corrected and has to be brought in consonance with the case relied upon on behalf of the writ petitioner before the learned single Judge, namely, Allah Noor and Another Vs. State Transport Appellate Tribunal and Others, In the writ petition, relief claimed was that the order declining permission to change the seat capacity be set aside and it be deemed that under the deeming provision, the permission for change of the seating capacity was granted, but the learned single Judge proceeded to declare that the Registration Certificate be deemed to have been approved on the expiry of 7 days.

8. Accordingly, we make the following operative order in this case:--

By virtue of deeming provision contained in Section 32(2), permission for changing of the seating capacity from 54 to 40 was granted.

In case the writ petitioner has already applied to the Registering Authority for bringing change on the Registration Certificate and that has already been granted, then nothing further has to be done in this case. If that has not been done, we direct the Registering Authority to make necessary changes in the Registration Certificate pertaining to the seating capacity of the writ petitioner's vehicle No. RSY 2815 from 54 to 40.

In case the petitioner has not applied so far for change of the seating capacity in the Registration Certificate, whatever consequences flow against the writ petitioner will flow until the change in the seating capacity is brought about in the Registration Certificate.

9. With the aforesaid order, the special appeal stands disposed of.