(2012) 03 AHC CK 0091

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1568 of 2010

Syed Maswood Akhtar APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 21-03-2012

Acts Referred:

Uttar Pradesh Motor Vehicles Rules, 1998 — Rule 136, 139

Citation : (2012) 4 ADJ 763 : (2013) 3 ALJ 382

Hon'ble Judges : Prakash Krishna, J;Ashok Bhushan, J

Bench : Division Bench

Advocate : S.K. Jaiswal, for the Appellant; A.C. Tripathi and C.S.C., for the Respondent

Judgement

1. Heard the learned counsel for the petitioner and Shri A.C. Tripathi, learned standing counsel for the respondents. Counter-affidavit has been filed by the respondents. With the consent of the learned counsel for the parties, the writ petition is being finally disposed of. Brief facts of the case which emerge from the pleadings of the parties are;

The petitioner claims to have purchased a bus having seating capacity of 37 persons which was registered with the District Transport Authority, Muzaffarpur. The petitioner after obtaining ''No Objection Certificate'' in favour of him from A.R.T.O, Maharajganj, thereafter applied for registration of vehicle before the office of Assistant Regional Transport Officer, Maharajganj. On 22.9.2010 during process of registration a physical report before A.R.T.O, Maharajganj was submitted that according to seating capacity of registration document it is 37 whereas the wheel base being 205 inches according to floor area there should be seating capacity of 54 persons.

2. The petitioner submitted an application on 22.9.2010 before the Registering Authority, Gorakhpur that his vehicle is 2x2 seater in which comfortably 37 seats are fixed and no additional seat can be put and for 54 seats 2x3 seats has to be fixed.

3. The petitioner in his application also requested that he should be informed as to whether he has to pay the tax to the extent of 37 seats or 54 seats. Report was submitted by Transport Authorities that according to the A.R.T.O''s note dated 22.9.2010 the tax of 54 seats be got deposited. The petitioner again objected to the aforesaid report by his letter dated 23.9.2010 stating that the petitioner be asked to deposit additional tax of 37 seats only, which is the actual seating accommodation. Petitioner filed a writ petition being writ petition No. 1395 of 2010 wherein an order dated 6.10.2010 was passed directing the Assistant Regional Transport Officer to decide the representation of the petitioner. Consequent thereof, a letter dated 18.10.2010 was issued to the petitioner determining that seating capacity of vehicle as 54. The said order dated 18.10.2010 refers to a detailed report submitted by Regional Technical Inspector dated 18.10.2010. Aggrieved by the said order, the petitioner has come up in this writ petition.

4. A counter-affidavit has been filed by the respondent Nos. 2 to 5 stating that the wheel base being 205 inches, the size of the seat being 38x38 centimetres it should be at least 54 seats including that of driver. In the counter-affidavit reference of Rule 136 to 139 of U.P Motor Vehicles Rules, 1998 was also made on which reliance was placed.

5. The learned counsel for the petitioner challenging the order contended that respondents misinterpreted the Rule 136 of U.P Motor Vehicles Rules, 1998. He submits that the requirement of the Rule is that the seat should not be less than of 38x38 centimetres size. He submits that there is no such requirement that such capacity should be determined on the basis of 38x38 centimetres. The case of the petitioner is that the seating measurement of seat is 45x45 centimetres. There is no provision in the rule nor the authorities can refuse registration on the aforesaid ground. The learned counsel for the petitioner submits that the order impugned has been issued on the basis of report dated 18.10.2010 of Technical Inspector which is based on calculation on the basis of 38x38 centimetres. He submits that the bus being 2x2 seater and the measurement of the seats being 45x45 centimetres, the tax can be demanded for more than of 37 seats.

6. Shri A.C. Tripathi, learned standing counsel refuting the submissions of the learned counsel for the petitioner contends that according to wheel base of the petitioner''s chesis there can be at least 54 seats accommodated in the floor area and the liability of the petitioner to pay tax is thus according to 54 seats. He refers to paragraphs 7 and 9 of the counter-affidavit in support of his submission and Rule 139 of 1998 Rules.

7. We have considered the submissions of the learned counsel for the parties and have perused the record. The basis of the order impugned is the technical report dated 18.10.2010. There is no dispute between the parties that wheel base of the petitioner bus is 205 inches. No fault can also be found out with the calculation which has been given in the order and the report that taking measurement of 38x38 centimeters 54 persons can be accommodated in the

floor area of the bus. The issue which has came up for consideration is interpretation of Rules 136 and 139 of the U.P Motor Vehicles Rules, 1998. It is reasonable to quote Rules 136 and 139 which is to the following effect.

136. Seating room.--(1) In every public service vehicle other than a motor-cab and tourist vehicle, there shall be provided for each passenger reasonably comfortable cushioned seat a of not less than 38x38 centimetres measured on straight lines along and at right angle to the front of each seat, and-

(i) when the seats are placed along the vehicle, the back of the seats on one side shall be least 1.40 meters distance from the back of the seats on the other side;

(ii) when the seats are placed across the vehicle and are facing in the same direction there shall be everywhere a clear space of not less than 70 centimetres between the back of the seats; and

(iii) when seats are placed across the vehicle and are facing each other, there shall be everywhere a clear space of not less than 1.30 metres between the back of facing seats.

(2) The back of all seats shall be to a height of 50 centimetres above seat level."

137. xxxxxxxxxxxxxxxx

138. xx xx xx xx xx xx xx xx

139. Limit of seating capacity.-- Notwithstanding anything contained in these rules no public service vehicle, other than a motor-cab of a tourist vehicle, shall be registered for a number of passengers in excess of that number obtained by subtracting 90 kilograms, from the difference in kilograms between the gross vehicle weight and unladen weight of the vehicle and dividing the resulting figure by 150 in the case of a single-decked vehicle and 130 in the case of a double-decked or for such number of passengers that, when the vehicle is loaded in a normal manner the axle weight of any axle will exceed the registered axle weight for that axle.

8. A perusal of the Rule 136 indicates that in every public service vehicle there shall be provided for each passenger reasonably a comfortable cushioned seat of not less than 38x38 centimetres.

9. The object and intention of the Rule as is clearly indicated in the Rule itself is to provide reasonably a comfortable cushioned seat to each passenger. The measurement of 38x38 centimetres is requirement of minimum measurement of the seat since the Rule used the words "not less than 38x38 centimetres". Emphasis in the Rule is that the seat should conform to the above measurement at least since seats having lesser measurement shall be uncomfortable to the passengers. Rules cannot be read so as to mean that all seats in a vehicle should be of 38x38 centimetres. The Rule does not prohibit any vehicle to have a seat having a greater or larger measurement. If a vehicle has seats of more than 38x38 centimeters it cannot be said that any part of the Rule is violated. The bus

of the petitioner was registered with 37 seating capacity which is clear from registration certificate annexure-1 to the writ petition. The vehicle has been bought after ''No Objection Certificate'' from the A.R.T.O Muzaffarpur and in the process of registration the report was submitted that the petitioner is liable to pay tax on 54 seats which was objected by the petitioner and the matter came to be considered by the authorities thereafter. The calculation in the report dated 18.10.2010 pre supposes that floor, of the vehicle should be divided by 38x38 centimetres and the seats be determined accordingly. The Registering Authority clearly misinterpreted the Rule 136 and has read in the Rule something which is not in the Rule. Although the learned standing counsel has referred to circular dated 31.7.1985 of the Transport Commissioner in which certain directions were issued to the Regional Transport Officers. However, no power of the Transport Commissioner has been referred before us nor relied upon to issue such circular which may not be in conformity with the express provision of Rule 136. The said letter dated 31.7.1985 is in the nature of administrative instructions by the Transport Commissioner and not more than that.

10. The learned standing counsel has also referred to Rule 139 which begins with Heading ''Limit of seating capacity''. Rule 139 limits the seating capacity taking into consideration the gross weight of vehicle. The intention is that number of passengers should not exceed to certain calculation with regard to weight of the vehicle. Present is not a case where any violation of Rule 139 has been relied upon or referred to. It is not the case that the number of seats of the petitioner''s vehicle in any manner violates the requirement under Rule 139. Rule 139 has no application in the facts of the present case.

11. In view of the above discussions, we are of the view that the order dated 18.10.2010 directing the petitioner fixing the seating capacity of the petitioner''s bus as 54 cannot be sustained and is hereby set aside. We hold that in view of seats of the size of 45"x45", the petitioner is liable to pay tax to the extent of 37 seats. The respondents shall take consequential action in accordance with law. The excess tax deposited by the petitioner may be adjusted according to law. The petition is disposed of accordingly.