

SUPREME COURT OF INDIA

Sharma Transports

Vs.

State of Maharashtra & Ors.

C.A.No.1507 of 2007

(G.S.Singhvi and H.L.Dattu,JJ.,)

02.08.2011

JUDGMENT

H.L.Dattu,J.,

1. These appeals and writ petitions are directed against the order of the High Court of Judicature at Bombay in Writ Petition No.3 of 1996 dated 21.07.2006, whereby the High Court has held that transporters (writ petitioners before the High Court) could only provide luggage space at the rear or the sides of a tourist vehicle as mandated by Rule 128(9) of the Central Motor Vehicles Rules, 1989 [hereinafter referred to as "the Rules"], and no luggage could be carried on the roof of the vehicle. The prayer in the writ petitions is to direct the respondents therein not to check, levy and collect the compounding fee from the vehicles of the petitioners.

2. The transport operators [hereinafter referred to as the "transporters"] are in appeal by special leave before us, claiming that they have the right to carry luggage of the passengers on the roof of their vehicles. In all, there are six appeals and three writ petitions before us, but for the sake of convenience, we will refer to the factual scenario in C.A. No. 1507 of 2007, as the same dicta will also be applicable to the rest of the matters.

3. The transporters operate tourist vehicles between the States of Karnataka and Maharashtra and have been granted tourist permits by the State Transport Authority of Karnataka under Section 88 of the Motor Vehicles Act, 1988 [hereinafter referred to as "the Act"]. The respondents, by their communication/circular dated 15.12.1995 had issued instructions to all the subordinate authorities under the Act to ensure that there was no luggage carried on the roof of the vehicles, as the same was not permissible under law. Due to this instruction, the checking authorities had started imposing and collecting fines to the tune of `1500/- for each entry and exit from the transporters for carrying goods on the roof of vehicles with tourist permits.

4. Aggrieved by this imposition and collection of fine, the transporters preferred a writ petition before the Bombay High Court inter-alia seeking the following relief/(s):

"i) Writ of Mandamus or any other appropriate Writ, Order or Direction and prohibit the 3rd and 4th Respondents and their sub-ordinate checking officers from checking, levying and collecting the compounding fee from the vehicles of the Petitioners on the alleged offence of carriage of goods on the top of the vehicle.

ii) A Writ in the nature of Certiorari or any other appropriate Writ, Order, Direction and quash memo receipts issued to several vehicles of the Petitioners vide Annexure 'C' produced in the Writ Petition.

iii) A Writ in the nature of Declaration or any other appropriate Writ, Order or Direction and direct the Respondent not to levy and collect illegal compounding fee for carriage of goods on the top of the Petitioners vehicles as per the limits prescribed.

iv) Direct the 3rd and 4th Respondents to refund the compound fee already collected from the Petitioners."

5. The Division Bench of the Bombay High Court dismissed the writ petition holding that by virtue of Rule 128 (9) of the Rules, luggage of the passengers could be stored only in the rear and side of the vehicle and not on the roof of the vehicle. The High Court held:

"15... The specifications are aimed at securing safety and security of the passengers so also the luggage and thus the same needs to be meticulously adhered to. It has been stated in the affidavit in reply that on account of the loading of the luggage on the roof of the vehicle in huge quantities or weights, unevenly kept, is likely to result in exposing the vehicle to accidents and as such the respondents insistence in not permitting keeping of the luggage on the roof of the vehicles is justified.

16. Having regard to the language used in sub rule 9(i) which mandates that the luggage holds shall be provided at the rear or at the sides or both, what is intended is exclusion of the making of a provision for luggage holds at any other place. Sub rule 9(i) is indicative of the mandatory nature of the provisions as the phraseology used is "that the luggage holds shall be provided at the rear or at the sides or both of the tourist vehicle...". 'Shall' is ordinarily used to indicate the provisions to be mandatory. It is also settled position of law that if a provisions (sic.) requires a thing to be done in a particular manner, it has to be so done, or not at all. When the provision indicate place or places where luggage holds are to be provided, by necessary implication, other places for luggage holds stand excluded. In this view of the matter we proceed to accept the interpretation of Rule 128(9) as contended by the learned counsel for respondents. We are not accepting the submission of the petitioner that in the absence of a specific restriction in regard to having luggage holds/carrier on the roof of the vehicle the petitioners cannot be prevented from carrying the goods/luggage on the roof of the vehicle. On the contrary we are of the clear view that luggage has to be

stored at the places specifically permitted by sub rule 9(i) viz., at the rear or at sides or both, but not the roof of the vehicle."

6. The transporters are represented by Shri. Rakesh Dwivedi, learned senior counsel, and Ms. Madhavi Divan, learned counsel appears for the respondent-State.

7. The learned senior counsel, Shri. Rakesh Dwivedi, submits that in Rule 128 (9), there is no express bar on carriage of luggage on the roof of the vehicles. He states that the Rule requires that the transporters should provide space for the luggage of the passengers at the rear and the sides of the vehicle, but does not prohibit carrying the luggage on the roof of the vehicle. On the contrary, the learned senior counsel states that Rule 93, which regulates the overall dimensions of motor vehicles, by virtue of Rule 128 (1), gets incorporated into Rule 128. Shri. Dwivedi pointed out to the Explanations to sub-Rule (3) and sub-Rule (3A), where it is expressly stated that any ladder provided for uploading luggage on the roof of a vehicle shall be excluded while calculating the "overall length" of the vehicle. He also refers to sub rule (4), (6A) and (8) of Rule 93. In view of this, the learned senior counsel would contend that in the absence of an express bar of carrying luggage on the roof of the vehicle, a vehicle could carry luggage on the roof of a vehicle. Shri. Dwivedi further draws our attention to Rule 125C and the Automotive Industry Standards Code of Practice for Bus Body Design and Approval ("AIS specification" for short) to contend that there is no express prohibition from carrying luggage on the roof of the vehicle.

8. Summing up the arguments, Shri Dwivedi would urge before us that on a conjoint reading of the Rules, it is clear that there was no prohibition for the transporters to carry luggage of the passengers on the roof of tourist vehicles. It is also argued that such restriction of carrying the luggage on the roof of a vehicle unreasonably restricts the right of the transporters to carry on trade or business which would be violative of Article 19(1)(g) of the Constitution. In aid of his submissions, Shri Dwivedi, learned senior counsel, draws our attention to a view taken by the Karnataka High Court.

9. Per contra, Ms. Madhavi Divan, learned counsel for the respondent, states that Rule 128 (9) requires that sufficient space be provided at the rear and/or the sides of the vehicle. Ms. Divan lays emphasis on the phrase "sufficient space and size" and contends that the transporter is required compulsorily to provide adequate space for the luggage of the passengers of a tourist vehicle. She states that there is a limit on how much luggage a passenger can carry and such luggage must be stored only in the luggage compartment provided for in accordance with Rule 128 (9). The learned counsel further submits that the incorporation of Rule 93 into Rule 128 is only for the purpose of complying with the dimensions of the vehicle laid down in that Rule and the reference to the ladder for loading luggage on the roof is only for the purpose of excluding the length of the ladder, while calculating the overall dimensions of the vehicle, and does not, in any way, imply that a tourist vehicle may carry luggage on the roof of the vehicle. She further states that Rule 128(9) is a special provision for tourist vehicles only and they would override any general provision like Rule 93, and that loading any luggage on the roof of a vehicle is detrimental to the balance of the vehicle and thereby the safety of the passengers inside the vehicle. Ms.

Divan also states that the transporters are duty bound by Rule 128(9) to ensure that there is sufficient space to house the luggage of the passengers and any plea of placing the extra luggage on the roof of the vehicle due to insufficiency of space in the compartment at the rear and/or sides of the vehicle, would itself be a violation of the Rule. By placing reliance on case laws, the learned counsel states that if something is provided for in a particular manner, then it must be done in that manner, or not at all. She further states that there is a clear distinction between luggage and goods as defined by Section 2(13) of the Act, and that the real intention of the transporters by this appeal is to carry goods on the roof of the tourist vehicles, as is clear from their prayer in the writ petition before the High Court. Both the learned counsel have cited some case laws before us, which we will deal with, as and when required.

10. The issue involved is whether a transporter can provide luggage carriers on the roof of his vehicle.

11. The transporters are the permit holders of the tourist vehicles. The vehicles are registered as tourist vehicles and endorsement is recorded on the Registration Certificate that tourist vehicle complies with all the requirements of Rule 128 of the Rules. Section 2 of the Act defines the meaning of the expression 'contract carriage'. Section 2(43) defines the meaning of the expression 'tourist vehicle' to mean a contract carriage, constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf. Section 110 of the Act authorizes the Central Government to make rules regulating the construction, equipment and maintenance of motor vehicles and trailers with respect to matters enumerated in Clause (a) to (p) of the Section. In exercise of the power so conferred, the Central Government has framed special provisions with respect to tourist vehicles other than motor cabs, etc. Apart from others, it provides for specification for dimension and luggage holds for a tourist vehicle. Rule 128(1), by way of incorporation, provides that the dimension of a tourist vehicle shall conform to the dimensions specified in Rule 93 of the Rules. Rule 128(9) provides that the luggage holds shall be provided at the rear or at the sides or both, of the tourist vehicle. The relevant portion of Rule 93 of the Rules is as under:

"Overall dimension

93. Overall dimension of motor vehicles.--(1) The overall width of a motor vehicle, measured at right angles to the axis of the motor vehicle between perpendicular planes enclosing the extreme points, shall not exceed 2.6 metres. Explanation.-- For purposes of this rule, a rear view mirror, or guard rail or a direction indicator rub-rail (rubber beading) having maximum thickness of 20 mm on each side of the body shall not be taken into consideration in measuring the overall width of a motor vehicle.

.....

(3) In the case of an articulated vehicle or a tractor-trailer combination specially constructed and used for the conveyance of individual load of exceptional length,--

(i) if all the wheels of the vehicle are fitted with pneumatic tyres, or

(ii) if all the wheels of the vehicle are not fitted with pneumatic tyres, so long as the vehicle is not driven at a speed exceeding twenty-five kilometers per hour, the overall length shall not exceed 18 metres.

Explanation.--For the purposes of this rule "overall length" means the length of the vehicle measured between parallel planes passing through the extreme projection points of the vehicle exclusive of--

(i) a starting handle;

(ii) any hood when down;

(iii) any fire-escape fixed to a vehicle;

(iv) any post office letter-box, the length of which measured parallel to the axis of the vehicle, does not exceed 30 centimeters;

(v) any ladder used for loading or unloading from the roof of the vehicle or any tail or indicator lamp or number plate fixed to a vehicle;

(vi) any spare wheel or spare wheel bracket or bumper fitted to a vehicle;

(vii) any towing hook or other fitment which does not project beyond any fitment covered by clauses

(iii) to (vi).

(3-A)The overall length of the construction equipment vehicle, in travel shall not exceed 12.75 metres:

Provided that in the case of construction equipment vehicle with more than two axles, the length shall not exceed 18 metres.

Explanation.--For the purposes of this sub-rule "overall length" means the length of the vehicle measured between parallel planes through the extreme projection points of the vehicle, exclusive of--

(i) any fire-escape fixed to a vehicle;

(ii) any ladder used by the operator to board or alight the vehicle;

(iii) any tail or indicator lamp or number plate fixed to a vehicle;

(iv) any sphere wheel or sphere wheel bracket or bumper fitted to a vehicle;

(v) any towing hook or other fitments;

(vi) any operational attachment on front, rear or carrier chassis of construction equipment vehicle in travel mode.

....."

Rule 128(9) of the Rules is as under:

"...

(9) Luggage.--(i) Luggage holds shall be provided at the rear or at the sides, or both, of the tourist vehicle with sufficient space and size, and shall be rattleproof, dustproof and waterproof with safety arrangements;

(ii) The light luggage racks, on strong brackets shall be provided inside the passenger compartment running along the sides of the tourist vehicle. Except where nylon netting is used, the under side of the rack shall have padded upholstery to protect the passengers from an accidental hit. The general design and fitment of the rack shall be so designed as to avoid sharp corners and edges."

12. Chapter V of the Act relates to control of transport vehicles. Section 66 prescribes the necessity of a permit, without which, the vehicle cannot be used in any public place. Section 84 deals with general conditions attaching to all permits. These conditions are deemed to be incorporated in every permit. One of the general conditions is that the vehicle is, at all times, to be so maintained as to comply with the requirements of the Act and the Rules made thereunder. The authorities are empowered to cancel or suspend the permit on the breach of any of the general conditions specified in Section 84 or any other condition which is contained in the permit. Section 86 of the Act lays down the power of cancellation and suspension of permit and Section 200 of the Act confers power on the State Government that it may, by notification in the official gazette, specify the various compounding fees for the breach of the permit conditions.

13. Rule 128 (9) is a special provision meant for laying down specifications for a tourist vehicle. The sub-Rule specifically provides that in a tourist vehicle, the permit holder should only provide luggage holds at the rear or at the sides or both, of the tourist vehicle with sufficient space and size. When the Rules specifically make a provision in regard to the place where luggage holds shall be provided by necessary implication, it goes to exclude all the other places of the tourist vehicle for being used as luggage holds. In our view, since the language of the Rule is clear and unambiguous, no other construction need be resorted to understand the plain language of the sub-Rule (a) of Rule 128 of the Rules. Rule 128 is a special provision for tourist vehicles which excludes General Rule 93 to the extent of conflict between the former and the later.

14. On a close examination of the argument on the incorporation of Rule 93 into Rule 128, we find that it is not the whole Rule 93 that is incorporated into Rule 128. On a plain reading of Rule 93 (3) and (3A), on which the transporters have heavily relied upon, it is clear that these Sub-Rules are not applicable to tourist vehicles, as sub- Rule (3) is applicable only to "an articulated vehicle or a tractor- trailer combination specially constructed and used for the conveyance of individual load of exceptional length" and sub-Rule (3A) is applicable to "construction equipment vehicle". Only sub- Rule (1) of Rule 93, which is in reference to "a motor vehicle", will be incorporated and read into Rule 128 by virtue of sub-Rule (1) of Rule 128. In other words, the effect of Rule 128(1) with regard to the conformation to the dimensions specified in Rule 93 are applicable to tourist vehicles and no other sub-Rule. Therefore, we are not inclined to agree with Shri Dwivedi that Rule 93 must be fully

incorporated into Rule 128, thereby implying that the transporters may load goods on the roof of a tourist vehicle due to the reference to a ladder to upload luggage found in sub-Rules (3) and (3A). Both these sub rules specifically refer to vehicles that are for the purpose of carrying heavy loads and not for carrying tourists.

15. The cardinal rule of interpretation is to allow the general words to take their natural wide meaning unless the language of the Statute gives a different indication of such meaning and is likely to lead to absurd result, in which case their meaning can be restricted by the application of this rule and they may be required to fall in line with the specific things designated by the preceding words. When the language used in the statute is clear and unambiguous, it is the duty of the court to give effect to it.

16. In *Grasim Industries Ltd. v. Collector of Customs, Bombay*¹, this Court took the view:

"10. No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so, what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided..."

17. In *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.*², this Court held:

"24. True meaning of a provision of law has to be determined on the basis of what it provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute."

18. In the case of *Harshad S. Mehta v. State of Maharashtra*³, this Court opined:

"34. There is no doubt that if the words are plain and simple and call for only one construction, that construction is to be adopted whatever be its effect..."

19. In the case of *Union of India v. Hansoli Devi*⁴, this Court observed:

"9...It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act..."

20. In the case of *Patangrao Kadam v. Prithviraj Sayajirao Yadav Deshmukh*,(2001) 3 SCC 594, this Court took the view:

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

21. In light of the above, we are not inclined to agree with the submissions of the learned senior counsel for the appellants that Rule 128 (9) does not place a prohibition on carrying of luggage on the roof of a tourist vehicle. If that was so, it would have to be incorporated thus in the bare language of the provision. Since there is no ambiguity in the language of Rule 128 (9), there is no reason for us to read the same into the Rules.

22. In the case of *Taylor v. Taylor*⁵, the Court took a view that if a particular method is prescribed for doing a certain thing by the Statute, it rules out any other method. This view has been adopted by the Privy Council in the case of *Nazir Ahmed v. King Emperor*⁶, By this logic, we are inclined to accept the argument of Ms. Divan that the luggage of the passengers may only be stored in the compartments provided at the sides and/or at the rear of the bus, as the buses are mandated to provide sufficient space for the storage of luggage.

23. There is another argument advanced on behalf of the transporters before us, who claim that the prohibition to carry luggage of the passengers on the roof of the vehicle is an unreasonable restriction and, therefore, violative of Article 19(1)(g) of the Constitution. In our view, the restriction imposed by the Rule is a reasonable restriction keeping in view the safety of the passengers in a tourist vehicle. Therefore, the Rule cannot be said either arbitrary or unreasonable or violative of Article 19(1)(g) of the Constitution. At the time of hearing of the appeals, reference was made to AIS specifications to contend that specification so provided support the interpretation given by the Karnataka High Court to Rule 128(a) of the Rules. In our view, this submission of the learned counsel for the appellants has no merit and is, therefore, rejected.

24. In the result, the appeals and writ petitions fail. They are dismissed. Costs are made easy.

Judgment Referred.

¹(2002) 4 SCC 0297

²(2003) 2 SCC 0111

³(2001) 8 SCC 0257

⁴(2002) 7 SCC 0273

⁵(1875-76) L.R. 1 Ch. D. 426

⁶AIR 1936 PC 0253