

RAJASTHAN HIGH COURT

Arawali Taxi Operators Union

Vs.

State of Rajasthan

Civil Special Appeal (Writ) No. 728 of 2001

(N.N. Mathur and O.P. Bishnoi, JJ.)

15.09.2003

JUDGEMENT

Mathur, J.

1. The appellant, a Taxi Operators Union challenged one of the conditions attached to the contract carriage permit prohibiting to fit luggage carrier on the roof of the jeep being arbitrary and unreasonable. Learned single Judge dismissed the petition relegating the petitioner to alternate remedy under Section 89 of the Motor Vehicles Act.

2. It is well established that High Court has power to issue in a fit case an order prohibiting an Executive Authority from acting without jurisdiction more particularly, in case where such an action is likely to subject a person to lengthy proceedings and unnecessary harassment. It is not necessary to tress all the judgments on the point, suffice to refer the decision of Apex Court in *Whirlpool Corporation v. Registrar of Trade Mark, reported in* ¹ wherein the Court reviewed almost all the cases on the point and reiterated three well established exceptions wherein writ jurisdiction does not operate as bar, inspite of existence of statutory remedy. The Court held, thus (Para 15 of AIR):-

"Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by the Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the

enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

3. It is contended by the learned counsel that impugned condition No. 4 of the permit restraining the contract carriage permit holders from installing or attaching a luggage carrier on a taxi jeep is illegal being arbitrary, without authority of law, unreasonable and, thus, violative of Article 14 of the Constitution of India. It is also submitted that such a condition is foreign to the conditions contained in Section 74. Thus, the Transport Authority has acted completely without jurisdiction in attaching such arbitrary condition.

4. On the other hand, it is submitted by the learned counsel for the department that the roof of the jeep is not a hard top of metal but it is covered by the canvas cloth or raxin. It is further submitted that the condition of not allowing a fixed luggage carrier on a taxi jeep has been imposed in view of increase in number of cases of overloading. It is reported that luggage carrier is being used for taking the passengers on the roof of the jeep. It is submitted that specification of jeep is not meant to fix luggage carrier. It is further submitted that fixing of luggage carrier on the jeep is not only unauthorized but also dangerous and against the norms of safety. Thus, according to the respondents, the condition attached with the taxi jeeps of not permitting to fix luggage carrier is not only in the interest of public safety but also in accordance with the provisions of Section 74(2)(ix)(b) and 74(2)(xiii). It will be convenient to refer Section 74 of the Motor Vehicles Act which reads as follows:-

"74. Grant of contract carriage permit.- (1) Subject to the provisions of subsection (3), a Regional Transport Authority may, on an application made to it under Section 73, grant a contract carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit:

Provided that no such permit shall be granted in respect of any area not specified in the application.

(2) The Regional Transport Authority, if it decides to grant a contract carriage permit, may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:-

(i) that the vehicles shall be used only in a specified area or on a specified route

or routes;

(ii) that except in accordance with specified conditions, no contract or hiring, other than an extension or modification of a subsisting contract, may be entered into outside the specified area;

(iii) the maximum number of passengers and the maximum weight of luggage that may be carried on the vehicle, either generally or on specified occasions or at specified times and seasons;

(iv) the conditions subject to which goods may be carried in any contract carriage in addition to, or to the exclusion of, passengers;

(v) that, in the case of motorcabs, specified fares or rates of fares shall be charged and a copy of the fare table shall be exhibited on the vehicle;

(vi) that, in the case of vehicles other than motorcabs, specified rates of hiring not exceeding specified maximum shall be charged;

(viii) that, in the case of motorcabs, a specified weight of passengers' luggage shall be carried free of charge, and that the charge, if any, for any luggage in excess thereof shall be at a specified rate;

(viii) that, in the case of motorcabs, a taximeter shall be fitted and maintained in proper working order, if prescribed;

(ix) that the Regional Transport Authority may, after giving notice of not less than one month,-

(a) vary the conditions of the permit;

(b) attach to the permit further conditions;

(x) that the conditions of permit shall not be departed from save with the approval of the Regional Transport Authority;

(xi) that specified standards of comfort and cleanliness shall be maintained in the vehicles;

(xii) that, except in the circumstances of exceptional nature, the plying of the vehicle or carrying of the passengers shall not be refused.

(xiii) any other conditions which may be prescribed.

3(a) The State Government shall, if so directed by the Central Government, having regard to the number of vehicles, road conditions and other relevant matters, by notification in the Official Gazette, direct a State Transport Authority and a Regional Transport Authority to limit the number of contract carriage generally or of any specified type as may be fixed and specified in the notification, operating on city routes in towns with a population of not less than five lakhs.

(b) Where the number of contract carriages are fixed under clause (a), the Regional Transport Authority shall, in considering an application for the grant of permit in respect of any such contract carriage, have regard to the following matters, namely:-

(i) financial stability of the applicant;

(ii) satisfactory performance as a contract carriage operator including payment of tax if the applicant is or has been an operator of contract carriages; and

(iii) such other matters as may be prescribed by the State Government:

Provided that, other conditions being equal, preference shall be given to applications for permits from:-

(i) the Indian Tourism Development Corporation;

(ii) State Tourism Development Corporations;

(iii) State Tourism Departments;

(iv) State Transport Undertakings;

(v) co-operative societies registered or deemed to have been registered under any enactment for the time being in force;

(vi) ex-servicemen."

5. General conditions attached to all permits are under Section 84 of the Act which reads as follows:-

"84. General conditions attaching to all permits.- The following shall be conditions of every permit:-

(a) that the vehicle to which the permit relates carries valid certificate of fitness

issued under Section 56 and is at all times so maintained as to comply with the requirements of this Act and the rules made there under;

(b) that the vehicle to which the permit relates is not driven at a speed exceeding the speed permitted under this Act;

(c) that any prohibition or restriction imposed any fares or freight fixed by notification made under Section 67 are observed in connection with the vehicle to which the permit relates;

(d) that the vehicle to which the permit relates is not driven in contravention of the provisions of Section 5 or Section 113;

(e) that the provisions of this Act limiting the hours of work of drivers are observed in connection with any vehicle or vehicles to which the permit relates;

(f) that the provisions of Chapters X, XI and XII so far as they apply to the holder of the permit are observed; and

(g) that the name and address of the operator shall be painted or otherwise firmly affixed to every vehicle to which the permit relates on the exterior of the body of that vehicle on both sides thereof in a colour or colours vividly contrasting to the colour of the vehicle centered as high as practicable below the window line in bold letters.

6. We have carefully read Sections 74 and 84 of the Act but we do not find any provision which permits imposition of impugned condition. It appears that the Transport Authority has invoked clause (xiii) i.e., the residuary clause. The only reason given for imposing the condition is reported cases of its misuse. In our view, simply chances of misuse, cannot be a ground to impose a condition not provided under the statute. There may be occasions when jeeps are to carry luggage, in such circumstances, the luggage carrier becomes a necessity. It is for the department to ensure that luggage carrier is not misused. The grievance of the appellant-petitioner Union that common passengers abstain from hiring jeep taxis as it cannot carry their luggage and this has adversely affected their business. In our view, the imposition of impugned condition No. 4 is arbitrary, unreasonable and without authority of law. The Transport Authorities are required to be more vigilant and not to allow the misuse of luggage carrier. Stringent conditions may be put that even a single instance of carrying passenger on the luggage carrier, would be sufficient to cancel the permit. However, there cannot be a complete ban on fixing a luggage carrier on the top of the taxi jeeps.

7. Consequently, the special appeal is allowed. The judgment of the learned single Judge dated 26-7-2001 is set aside. The writ petition is allowed. It will be open for the individual taxi permit holder to apply to the Transport Authority for deletion of condition No. 4. It will also be open for the Transport Authority to obtain an appropriate undertaking from the individual taxi permit holder that if they misuse the luggage carrier fixed on the jeep, their permit will be liable to be cancelled. No order as to costs.

Appeal allowed.

Cases Referred.

1. (1998) 7 JT (SC) 243: (AIR 1999 SC 22)