

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.12403 of 2015

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

“to issue writ of Mandamus to declare the proceedings of the 2nd respondent dated 12.3.2015, bearing note No.7023/C16/HC/2014, confirming the proceedings of the 3rd respondent dated 11.7.2014, as illegal, arbitrary and violative of the provisions of the Motor Vehicles Act 1988 and consequently direct the respondents to register the petitioner's vehicle bearing temporary registration No.TS 09 TR 1946 as an "invalid carriage" and pass.”

According to the petitioner, he was affected by polio during his childhood, which resulted in an erosion of strength in his left leg and there is 45% disability for the petitioner in his left limb while his right leg is perfect and currently leading normal life and he has no other disabilities. The petitioner obtained driving license for driving a vehicle categorized as an “invalid carriage” on 08-01-2013. The said driving licence was granted on the strength of a medical certificate issued by the Medical Superintendent, District Hospital, King Koti, Hyderabad on 29-08-2011, wherein the Board certified the fitness of the petitioner to drive an automatic four-wheeler vehicle. In the year 2011, the petitioner purchased an automatic Hyundai I-10 vehicle bearing registration No.AP-11-AG-4477 and after verification by the Motor Vehicle authorities it was categorized as “invalid carriage” based on a report given by the Motor Vehicle Inspector to the effect that the company fitted automatic transmission vehicle was suitable for being driven by the petitioner without any further alteration.

The petitioner herein purchased a new Nissan Micro Car with automatic transmission on 17-06-2014 from Lakshmi Nissan (dealer) at Nagole, Hyderabad and took delivery with a temporary registration bearing No.TS-09-TR-1946 and thereafter the petitioner herein applied to the R.T.O. - 4th respondent herein on 01-07-2014 for registering his new car under the category of "invalid carriage" for availing the benefit of exemption from paying life tax with respect to the said vehicle.

The Assistant Secretary, Regional Transport Authority, East Zone, Hyderabad – 3rd respondent herein by way of proceedings in R.No.2850/A1/HE/2014, dated 11-07-2014 rejected the request of the petitioner for registration under "invalid carriage" category on the ground that vehicle is not being fitted with additional gadgets/contrivances, so as to convert the vehicle as invalid carriage as defined in Section 2 of A.P. Motor Vehicles Act, 1988.

As against the said rejection the petitioner herein filed appeal before the Joint Transport Commissioner, R.T.A., Hyderabad – 2nd respondent herein on 23-07-2014 and the 2nd respondent by way of proceedings vide Note No.7023/C16/HC/2014, dated 12-03-2015 rejected the appeal of the petitioner.

Calling in question the validity and the legal sustainability of the above said order of rejection, dated 11-07-2014 of the 3rd respondent as confirmed by the 2nd respondent vide proceedings, dated 12-03-2015, the present writ

petition has been filed.

Resisting the pleadings in the writ affidavit, a counter-affidavit has been filed by the 2nd respondent and a reply is also filed by the writ petitioner.

Heard Sri M.V. Pratap Kumar, learned counsel for the petitioner and learned Government Pleader for Transport for respondents, apart from perusing the material available before this Court.

It is contended by the learned counsel for the petitioner that the impugned orders are highly illegal, arbitrary and violative of Article 14 of the Constitution of India, besides being opposed to the very spirit and object of the provisions of Motor Vehicles Act. It is further contended by the learned counsel that there is absolutely no justification on the part of the respondents in refusing to consider the request of the petitioner for registration of the vehicle under “invalid carriage” category as the petitioner fulfills all the statutory requirements. It is also submitted by the learned counsel that earlier vehicle of the petitioner was registered as “invalid carriage” vehicle. It is also submitted by the learned counsel that respondents 2 and 3 erroneously did not take into consideration the report of the Motor Vehicle Inspector, dated 07-07-2014, recommending for registration as “invalid carriage”.

Learned counsel for the petitioner places reliance on the decision of this Court in the case of ***M. LAKSHMA REDDY V. STATE OF A.P. REP. BY ITS PRINCIPAL SECRETARY, TRANSPORT DEPARTMENT, HYDERABAD AND OTHERS***^[1].

On the contrary, reiterating the averments in the counter-affidavit, it is vehemently contended by the learned Government Pleader for Transport that there is no illegality nor any legal infirmity in the impugned orders and in absence of the same the writ petition is not maintainable and the petitioner is not entitled for any relief in this writ petition filed under Article 226 of the Constitution of India.

It is further submitted by learned Government Pleader that an automatic transmission vehicle is a vehicle designed to be driven by any normal person in the traffic condition but the subject vehicle is not a specifically designed and constructed vehicle to be adapted to be driven by the physically challenged person. It is also contended that the physically challenged person driving an automatic transmission vehicle is prone to pose a threat to himself and to the other road users. It is further submitted that if such automatic transmission vehicles are permitted to be registered as "invalid carriages", there would be huge loss of revenue to the Government. It is also submitted that as per Circular No.14/4928/2012, dated 18-10-2012 issued by the Transport Commissioner, if fitments are not made, prescribed Life Tax can be collected. It is further submitted that the impugned action is in accordance with Section 2 (18) of Motor Vehicles Act, 1988.

The only issue that emerges for consideration in the present writ petition is whether the petitioner is entitled to have his vehicle registered as "invalid carriage" as defined under Section 2 (18) of the Motor Vehicles Act, 1988?

At this juncture it may be appropriate to refer to Section 2 (18) of the Motor Vehicles Act, 1988, which reads as under:

“Section 2 (18) in the Motor Vehicles Act, 1988

(18) “invalid carriage” means a motor vehicle specially designed and constructed, and not merely adapted, for the use of a person suffering from some physical defect or disability, and used solely by or for such a person;”

In the present writ petition there is absolutely no controversy with regard to the reality that the petitioner is a physically challenged person with 45% disability and evidencing the same a Medical Certificate, dated 29-08-2011 issued by the District Medical Board is filed. The sum and substance of the case of the petitioner is that the question of there being any fitment of additional gadgets or contrivances does not arise when the motor vehicle sought to be registered by the petitioner has been manufactured as an automatic transmission vehicle by the manufacturer itself and there is no further need for any additional fitment or gadgets for the purpose of enabling the petitioner to drive the vehicle. Hence, the application of the instructions in the circular, dated 18-10-2012 for additional gadgets or contrivances is vitiated by non-application of mind.

On the contrary, it is the case of the respondents that unless the vehicle sought to be registered does contain additional gadgets the petitioner cannot make any request for its registration under “invalid carriage” contrary to the circular, dated 18-10-2012.

In the present case, even as per the counter-affidavit filed by the respondents, the Motor Vehicles Inspector inspected the

said vehicle and gave report on 07-07-2014 that the vehicle is an automatic transmission vehicle with no mechanical operations.

The Assistant Secretary, Regional Transport Authority, East Zone, Hyderabad – 3rd respondent herein by way of proceedings in R.No.2850/A1/HE/2014, dated 11-07-2014 rejected the request of the petitioner for registration under “invalid carriage” category on the ground that vehicle is not being fitted with additional gadgets/contrivances.

Aggrieved by the said order of rejection, the petitioner herein filed appeal before the Joint Transport Commissioner, R.T.A., Hyderabad – 2nd respondent herein on 23-07-2014, raising a number of grounds and contentions. The 2nd respondent by way of proceedings vide Note No.7023/C16/ HC/2014, dated 12-03-2015 rejected the appeal of the petitioner. A perusal of the said order abundantly makes it clear that except concurring with orders of the Assistant Secretary, the 2nd respondent did not refer even to the contents of the appeal filed by the petitioner herein. The said action on the part of the 2nd respondent is highly illegal and arbitrary.

It is the further contention of learned counsel for the petitioner that the issue in the present case is squarely covered by the judgment of this Court in M. Lakshma Reddy v. State of A.P. rep. by its Principal Secretary, Transport Department, Hyderabad and others (1 supra) and paragraph Nos.9 to 13 of the said judgment read as under:

“9. It is unfortunate that the Joint Transport Commissioner, in spite of the letter from M/s. Mahavir Auto that Skoda Auto India Pvt. Ltd. Manufacturers Octavia Rider Automatic

Transmission is suitable for Mr. Laxma Reddy and that the vehicle is not merely adopted by the local showroom - doubted the suitability of the car for the use of the petitioner. The Joint Commissioner reasoned that the dealer did not mention as to what categories of persons are eligible to drive such vehicles. This information is wholly irrelevant in order to give exemption to the petitioner. If the authority wants to know the persons who are eligible it could have addressed a letter to the manufacturer. When the dealer specifically mentions that the petitioner can use the vehicle, we do not see why question of academic nature could be posed. Had the petitioner been claimed exemption for the first time such sort of objections could have been sustained, when earlier the very Transport authorities had issued driving license to the petitioner to drive scooter as well as cars and when an highly advanced technology vehicle is introduced, there is no meaning in questioning the petitioner's capability of driving such a car. If really, the authority entertains a doubt as to the capacity of the petitioner in driving the vehicle, the authority could have conducted a pre driver evaluation in order to judge the suitability of the vehicle for the petitioner. Without conducting any test whatsoever apprehending that it would endanger to the lives of other road users would show apathy towards physically challenged persons. The authority did not seek any supportive technical advise, even when the car dealer certified that it could be used by all the persons including the petitioner, a physically challenged person. The reason for rejection ex-facie cannot be upheld.

10. The Commissioner could have seen that a physically challenged person if provided with an automobile, he would feel enormous sense of freedom and independence. He can do his own work by going places. The lack of mobility is a reality for many disabled persons. These vehicles obviously are adoptive vehicles. At any rate, without evaluating the petitioner's capability of driving such a car, declining exemption is undoubtedly arbitrary exercise of power. Road traffic authorities, in view of traffic safety, are held to consider both, the handicapped individual's interest is obtaining a licence and society's claim to safety.

11. Numerous studies have established the fact that disabled drivers, in particular those with impairment of the limbs, are neither more accident-prone nor otherwise more conspicuous in road traffic than the non-disabled. The view that the driver with a physical disability poses particular risks, has been invalidated by extensive factual data and thorough literature review (vide In re Fitness for automobile driving of physically handicapped patients by Ekkernakamp A, Gerlach D).

12. To sum up, the petitioner has been driving cars from 1990

onwards viz., for the last 16 years. Now he intends to go for much more technically advanced Skoda Octavia Rider (Automatic Transmission). The manufacturer says that the car is suitable for the petitioner to drive. He further clarified that it is manufactured by the very company. The very petitioner in his representation, dated 3.3.2006, made a mention as to the suitability of the said car. The authority can as well evaluate the petitioner's capability of driving such a car. The reason for refusal to grant exemption is on extraneous consideration. There was no basis for him to come to such a conclusion. In the circumstances, the impugned memo is liable to be struck down as illegal.

13. In the result, the Memo, dated 18.4.2006 is struck down as illegal. The respondents are directed to consider the representation of the petitioner, dated 3.3.2006, and accord necessary tax exemption if he is entitled to, in the light of the directions given above."

The order of the 3rd respondent, dated 11-07-2014 in clear and unequivocal terms discloses that Motor Vehicle Inspector reported that the car is automatic transmission with no mechanical alternations made to the vehicle and the petitioner can drive and the vehicle can be registered as "invalid carriage". In view of all those aspects this Court deems it apt to remand the matter for fresh consideration in the light of the above legal and factual situation.

For the aforesaid reasons and having regard to the ratio laid down in the above referred judgment, the writ petition is allowed, setting aside the impugned proceeding vide note No.7023/C16/HC/2014, dated 12-03-2015 of the 2nd respondent and proceedings of the 3rd respondent vide R.No.2850/A1/HE/2014, dated 11-07-2014 and the matter is remanded to the 3rd respondent to consider the application of the petitioner herein, dated 01-07-2014 and pass appropriate orders as

per law keeping in view of the principles laid down in the above referred judgment after giving opportunity of being heard to the petitioner herein. It is open for the petitioner herein to produce a copy of the said judgment before the authorities. This exercise shall be completed within one month from the date of receipt of a copy of this order.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. There shall be no order as to costs.

A.V. SETHA SAI, J

August 12, 2015

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THE HON'BLE SRI JUSTICE A.V. SETHA SAI

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August 12, 2015

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