

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No.6003 of 2016

* Rajdhar s/o Renkuba Thale,
Age 50 years,
Occupation : Service,
R/o. Plot No.2, Sainagar,
Opposite to D.K.M.M. College,
New Pahadsingpura,
Aurangabad. **.. Petitioner.**

Versus

- 1) The State of Maharashtra
Through the Secretary,
Transport and Excise,
Home Department,
Mantralaya, Mumbai.
- 2) The Commissioner or Transportation,
Administrative Building, 4th Floor,
Government Colony Wandre (East)
Mumbai.
- 3) The Regional Transport Officer,
Aurangabad. **.. Respondents.**

Shri. A.A. Shelke, Advocate, holding for Shri. Prashant D. Suryawanshi, Advocate, for petitioner.

Shri. S.N. Kendre, Advocate, for respondent Nos.1 to 3.

CORAM: T.V. NALAWADE, J.

DATE : 15 OCTOBER 2016

JUDGMENT:

1) Rule. Rule made returnable forthwith. Heard both sides by consent for final disposal.

2) The petition is filed to challenge the order made in Appeal No.16/2016 by respondent No.2.

3) The petitioner had filed application in the office of the R.T.O. Aurangabad for registering his vehicle viz. Maruti Alto K 10 (VXI) as vehicle of handicapped person as he wanted to get exemption from the payment of excise duty, as he wanted to take benefit of one Government Resolution issued in that regard. He had filed record like disability certificate issued by the Medical Board showing that he is handicapped as his left lower limb is affected due to Post Polio Residual Paralysis. This disability is permanent in nature and there is no likelihood of improvement in the condition as per the certificate. Another certificate which is issued by Government Medical College and Hospital Aurangabad to the same effect was produced and extent of the disability is said to be 56%. The certificate obtained from Maruti Suzuki Company was also produced which is to the effect that the

aforesaid vehicle suits the disability of the petitioner and he is unlikely to have any problem in driving this vehicle. Affidavit was also filed in support of his contention by the petitioner. He had applied to the Department of Heavy Industry and on the basis of notification of the Central Government No.12/2012-Central Excise dated 17-3-2012, certificate is issued that the petitioner is in a position to drive the vehicle of aforesaid make which is having automatic transmission (AMT). This certificate is issued to enable him to avail the excise duty concession given in the aforesaid Central Government notification.

4) The R.T.O. Officer rejected the claim by holding that such registration is possible only in respect of invalid carriage defined in section 2(18) of the Motor Vehicles Act 1988. It appears that the officer rejected the claim by holding that the aforesaid vehicle was not specially designed and constructed and it was sold as automatic transmission vehicle. The appellate authority endorsed this view given by the R.T.O. Officer.

5) In addition to aforesaid notification of the year 2002, there is one circular bearing No.640/31/2002-CX

issued by the Central Board of Excise & Customs. Clauses

4 and 5 of the Circular are as under :-

"(4) Since auto-transmission is one of the special devices required by person, with left leg disability, the Ministry of Industry has been issuing appropriate certificates in respect of auto-transmission motor vehicles for extending concessional rate of duty to such handicapped persons. The concession will obviously not be available to all automatic transmission vehicles, but in respect of those vehicles which are bought by physically handicapped persons and who produce necessary certificate from Ministry of Industry.

(5) In view of the above, it is clarified that the concession should not be denied in respect of any motor vehicle with special features (like auto transmission) which is capable of being used by a handicapped person and for which necessary certificate from the Ministry of Industry is produced in this regard."

6) The aforesaid Circular shows that if company has started manufacturing the vehicles which are suitable to handicapped person like the petitioner and he opts to purchase such vehicle then in that case also the benefit of the notification needs to be given to such person. It appears that this Circular which is produced by the petitioner, is not considered by the R.T.O. Officer and the appellate authority. It is the policy of the Government to see that such handicapped persons get some concession if

vehicles are specially designed and constructed to make them suitable for such persons. In the course of time, due to advancement in the technology, due to which AMT vehicles came to be manufactured, persons like present petitioner can use such vehicles and for that a vehicle is now not required to be specially designed and constructed. Considering the disability of the present petitioner he may not be in a position to use his left limb for driving such vehicle. In view of these circumstances this Court holds that the decisions given by the appellate authority and the R.T.O. officer cannot sustain in law.

7) In the result, the petition is allowed. The orders made by the R.T.O. Officer and the appellate authority are quashed and set aside. Direction is given to give the benefit to the petitioner of the relevant notifications within two months from today. Rule made absolute in the aforesaid terms.

Sd/-
(T.V. NALAWADE, J.)

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