

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 08.11.2017
CORAM:
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN
W.A.No.923 of 2013

1.The Transport Commissioner,
Chepauk, Chennai 5.

2.The Regional Transport Officer,
Sivagangai 630 561 Appellants
versus
M.Abdul Rahman ... Respondent

Appeal filed against the order passed by this Court dated 23.01.2013 passed in W.P.No.33365 of 2012

WP.No.33365 of 2012:Writ Petition filed under article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent in Lr.R.No. 32012/B1/2012 dated 12.07.2012 and quash the same as illegal arbitrary and consequently direct the second respondent to grant permission for conversion of petitioners Omni buses bearing registration No.TN33 AD 3444 and TN33 AD 3939 into Goods Vehicle

For appellants : Ms.A. Srijayanthi, Spl.G.P.
For Respondent : Mr.B.Vijay

J U D G M E N T

(made by K.K.SASIDHARAN, J.)

Introductory :-

Whether conversion of omni bus into a Goods vehicle is permissible under Section 52 of the Motor Vehicles Act, 1988, is the substantial question that arises for consideration in this intra court appeal, filed by the State, challenging the order permitting such conversion by the learned Single Judge.
The facts:-

2. The respondent purchased two omni buses bearing registration Nos.TN 33 AD 3444 and TN33 AD 3939. The buses were shown as Heavy Motor Vehicle Contract Carriage in the respective certificates of registration.

3. The respondent submitted applications before the Regional

Transport Officer, Sivagangai, seeking permission for conversion of omni buses as goods vehicles. The Regional Transport Officer, (hereinafter referred to as RTO), Sivagangai, rejected the applications on the ground that such conversions are not legally permissible.

4. The respondent in his Writ Petition before the writ Court in W.P.No.33365 of 2012 contended that conversion of omni buses into goods vehicle cannot be regarded as material alteration, as contemplated under Section 52 of the Motor Vehicles Act, 1988 (hereinafter referred to as M.V. Act).

5. The learned Single Judge concurred with the submissions made on behalf of the respondent and allowed the Writ Petition. Feeling aggrieved, the State has come up with this appeal.

Submissions:-

6. The learned Special Government Pleader contended that the order passed by the learned Single Judge is in violation of Section 52 of the M.V.Act, which prohibits alteration in a motor vehicle. According to the learned Special Government Pleader, only in a limited sphere, modification is possible. Conversion of omni bus into goods vehicle would not come within the meaning of first proviso to Section 52 of the M.V.Act. The learned Single Judge therefore erred in permitting conversion.

7. The learned counsel for the respondent while justifying the order passed by the learned Single Judge submitted that there is no material alteration and as such, conversion is permissible. The learned counsel contended that so long as the original specification of the manufacturer remains, proviso to Section 52 enables modification of the vehicle. The learned counsel therefore submitted that the learned Single Judge was correct in allowing the Writ Petition.

Analysis:-

8. The respondent has purchased two omni buses and registered them before the Registering Authority, Sivagangai. It was registered as heavy motor vehicle/ contract carriage. The certificate of registration indicates that the vehicles were registered as Heavy Motor Vehicle Contract Carriage.

9. The respondent submitted applications for conversion of the omni buses into goods vehicles by placing reliance on the circular No.56/2007 dated 7 November 2003 issued by the Transport Commissioner, permitting conversion by way of modification of the engine. The Registering Authority, taking into account Section 52 of the Motor Vehicles Act, 1988, rejected the application. When a challenge was made to the order passed by the RTO, the learned Single Judge opined that the proviso to Section 52 of the M.V. Act permits such conversion.

10. Section 52 of the M.V. Act prohibits alteration of vehicle which is in variance with the particulars contained in the certificate of registration, which was done pursuant to the specification given by the manufacturer. The first proviso to Section 52 of the M.V. Act permits modification of the engine for facilitating its operation by different type of fuel or source of energy including battery, compressed natural gas, solar power, liquid petroleum gas or any other fuel or source of energy, by fitment of a conversion kit. The circular issued by the Transport Commissioner dated 7 November 2003 was in tune with the first proviso to Section 52 of the Motor Vehicles Act. However, there is absolutely no provision in the M.V. Act permitting conversion of omni buses into goods vehicle.

11. The basic feature of the vehicle owned by the respondent is sought to be changed. The vehicle was destined as a Passenger vehicle and the same is sought to be changed as a goods vehicle. The statutory prohibition contained under section 52 of the M.V. Act would not permit such alteration. The alteration of a passenger vehicle into a goods vehicle would involve major changes in the basic structure of the vehicle. Normal wheel base of the passenger vehicle is 5334 mm. But the wheel base of a goods vehicle is 4470 mm. Likewise, rear overhang of the passenger vehicle is 3300 mm. But the rear overhang of the goods vehicle is 2548 mm. In case this basic feature is changed, it would amount to major structural changes in the vehicle which is prohibited under Section 52 of the Motor Vehicles Act, 1988.

12. The conversion of vehicle from passenger to goods would involve even the change in wheel base and rear over hand. Similarly, the safety specification for passenger vehicle and goods vehicle is also different. There is no question of conversion of vehicle without making structural changes which again would involve safety concern.

13. In case the goods vehicle body is converted as a passenger vehicle, chassis floor space of such load body will be more compared to the floor space available in conventional type of lorry having wheel base of 176" and rear overhang not exceeding 60%. The pay load of passenger chassis will be approximately 4000 kgs only whereas for goods vehicle, pay load will be 9000 kgs to 10,000 kgs. In case there is conversion, it would cause damage to the chassis and the ultimate result would be road accidents. The chassis approved for passenger type of vehicle by any of the testing agency specified in Rule 126 of the Central Motor Vehicles Rules 1989 cannot be used for goods type of vehicle as it would lead to accidents. These vital aspects were not considered by the learned Single Judge.

14. The Mandamus issued by the learned Single Judge directing the Regional Transport Officer, Sivagangai, to permit the respondent to convert the vehicle was in clear violation of Section 52 of the Motor Vehicles Act. We therefore set aside the order dated 23 January 2013 and dismiss the Writ Petition in W.P.No.33365 of 2012.

15. In the upshot, we allow the intra court appeal. No costs. Consequently, connected M.P.s, are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Transport Commissioner,
Chepauk, Chennai 5.

2.The Regional Transport Officer,
Sivagangai 630 561

+1 cc to Mr.B.Vijay Advocate sr 79277

+1 cc to Govt Pleader sr 79913

W.A.No.923 of 2013

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