

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.684 of 2018
Date of Decision:23.04.2018

Sunil Bhasin

..... Petitioner

Vs.

Union of India and others

..... Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.Kameshwar Gumber, Advocate,
for the petitioner.

Mr.Sudhir Nar, Advocate,
for the UOI.

RAKESH KUMAR JAIN, J.

The petitioner has challenged the validity of letter No.RT-11021/38/2017-MVL dated 7.12.2017, issued by the Ministry of Road Transport and Highways, Government of India, to all the Principal Secretaries (Transport)/the Secretaries (Transport)/the Transport Commissioners of all the States/UT Administrations on the subject of taking action against unauthorized fitment of crash guard/bull bar on the motor vehicles.

The petitioner is allegedly doing the business of manufacturing of safety guards, commonly known as crash guards/bull bars. He is aggrieved against the impugned letter dated 7.12.2017, issued by the Ministry of Road Transport and Highways, Government of India, by which strict action has been proposed for the unauthorized fitment of crash guards/bull bars on the motor vehicles which is stated to be in contravention of Section 52 of the Motor Vehicles Act, 1988 [for short 'the Act'] and attracts penalty under Sections 190 and 191 of the Act.

Learned counsel for the petitioner has submitted that the fitment of the crash guards/bull bars in the motor vehicles is not an alteration in the vehicle but it is only an after market fitment which is pedestrian friendly and capable to minimize the impact of an injury in case of an accident. It is also submitted that it does not violate Section 52 of the Act because neither there is alteration in the motor vehicle nor there is any such detail provided in the Registration Certificate of a motor vehicle which is issued in terms of Rule 48 of the Central Motor Vehicle Rules, 1989 [for short 'the Rules']. It is also submitted that the crash guard/bull bar is just a guarding accessory/preventive shield, fitted in front and rear portion of the car, which protects not only the cars but also its occupants. It is further submitted that as per the information derived under the Right to Information Act, 2005, the definition of crash guard/bull bar did not come under the Rules because these are the after market fittings. It is also submitted that the proposed action in terms of the impugned letter violates the fitment right of the petitioner enshrined under Article 19(1)(g) of the Constitution of India.

In reply, filed by respondents No.1 & 2, it is averred that the fitment of crash guards/bull bars threatens the life of pedestrians/drivers/passengers of vehicles because these are heavy steel/metal bars, installed in front or rear side of all sorts of vehicles, may be small/medium, or heavy built. It is further averred that the matter regarding the fitment of crash guards/bull bars was examined by the Ministry, referred to the Central Motor Vehicle Rules - Technical Standing Committee [for short 'CMVR-TSC'] and the committee, in its 50th meeting, held on 5.9.2017, concluded that *"fitment of crash bars and bull bars as after market fitment on vehicles pose a threat to pedestrian safety. Therefore, it was*

in CMVR also do not allow such fitments. It was decided that the Ministry of Road Transport and Highways may issue an advisory to the State Authorities". It is further averred that the Ministry of Road Transport and Highways issued the advisory vide the impugned letter dated 7.12.2017 that not only such kind of fittings are in contravention of Section 52 of the Act but also attract the penalty under Sections 190 & 191 of the Act. It is further averred therein that the crash guard/bull bar not only changes the dynamics, kerb weight and dimensions of the motor vehicle but also make the vehicle more unsafe both for the pedestrians and the occupants. The vehicle has crumple zones and sensors which are essential for the proper working of the safety features like deployment of air bags, seat belts etc. in order to protect both the occupants as well as pedestrians and that the petitioner cannot seek the protection under Article 19(1)(g) of the Constitution of India as it is not absolute because the Government can put restriction on the rights if it is against the public safety.

I have heard learned counsel for the parties and perused the record.

The impugned letter dated 7.12.2017 has been issued by respondent No.1, keeping in view the recommendation made by the CMVR-TSC and has referred to the violation of Section 52 of the Act. Section 52 of the Act read as under: -

52. Alteration in motor vehicle.

- (1) No owner of a motor vehicle shall so alter the vehicle that the particulars contained in the certificate of registration are at variance with those originally specified by the manufacturer :

Provided that where the owner of a motor vehicle makes modification of the engine, or any part thereof of a vehicle 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, such modification shall be carried out subject to such conditions as may be prescribed

Provided further that the Central Government may prescribe specifications conditions for approval, retrofitment and other related matters for such conversion kits;

Provided also that the Central Government may grant exemption for alteration of vehicles in a manner other than specified above, for any specific purpose.

(2) Notwithstanding anything contained in sub-section (1), a State Government may, by notification in the Official Gazette, authorise, subject to such conditions as may be specified in the notifications, and permit any person owning not less than ten transport vehicles to alter any vehicle owned by him so as to replace the engine thereof with

engine of the same make and type, without the approval of registering authority.

(3) Where any alteration has been made in motor vehicle without the approval of registering authority or by reason of replacement of its engine without such approval under sub-section (2), the owner of the vehicle shall, within fourteen days of the making of the alteration, report the alteration to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration to that authority together with the prescribed fee in order that particulars of registration may be entered therein.

(4) A registering authority other than the original registering authority making any such entry shall communicate the details of the entry to the original registering authority.

(5) Subject to the provisions made under sub-section (1), (2), (3) and (4), no person holding a vehicle under a hire-purchase agreement shall make any alteration to the vehicle except with the written consent of the registered owner.

Explanation. - For the purpose of this section, "alteration" means a change in the

*structure of a vehicle which results in change
in its basic feature.”*

The aforesaid provision says that the owner of a motor vehicle is not supposed to alter the vehicle to change the particulars contained in the Certificate of Registration which are originally specified by the manufacturer. In this regard, it would be relevant to refer to the Certificate of Registration, which is provided in Form 23 and is made available by the petitioner as Annexure P-2, which read as under:-

“

FORM 23

(See rule 48)

CERTIFICATE OF REGISTRATION

Registration Number.....

Brief description of vehicle.....(e.g.
Fiat/Ambassador/Maruti car, Tata, Ashok Leyland goods
vehicle, trailer, motor cycle with/without gear, motor cycle
with side car, etc.)

Purchased from the Dealer Name & Address
:.....

Name of Registered Owner

Son/wife/daughter of

Full address (Permanent)

Full address (Temporary)

PAN Number (optional)

Signature of Registering Authority

Date.....

Specimen Signature of the Registered Owner to be affixed and
attested by Registering Authority with his seal

DETAILED DESCRIPTION

1. Class of vehicle

The motor vehicle is

(a) a new vehicle

(b) ex-army vehicle

(c) imported vehicle

(d) Migration from other States

.....

2. Maker's name

.....

Dealer's name and address

.....

3. Type of body

.....

4. Month and year of manufacture

.....

5. Number of cylinders

.....

6. Chassis Number

.....

7. Engine number or motor number in the case of Battery

.....

Operated Vehicles

.....

8. Fuel used in the engine

.....

9. Horse Power (B.H.P.)

.....

10. Cubic Capacity

.....

11. Maker's Classification

.....

12. Wheel base

.....

13. Seating capacity (including driver)

.....

14. Unladen weight

.....

15. Colour or colours of body, wings and front end

.....

Additional particulars in the case of all transport vehicles other than motor cabs.

16. Gross vehicle weight

(a) as certified by the manufacturer

..... kgms.

(b) as registered

..... kgms.

17. Number, description, size and ply rating of tyres, as declared by the manufacturer]

(a) Front axle

.....

(b) Rear axle

.....

(c) Any other axle

.....

(d) Tandem axle

.....

18. Registered axle weight

.....kgms.

(a) Front axle

.....kgms.

(b) Rear axle

.....kgms.

(c) Any other axle

.....kgms.

(d) Tandem axle

.....kgms.

Additional particulars of alternative or additional Semi-Trailer

Registered with an Articulated vehicle

19. Type of body

.....

20. Unladen weigh

.....

21. Number, description and size of tyres on(each) axle

.....

22. Registered axle weight (in respect of each axle)

This certificate is valid from.
.....to.....

Date.....

--

The motor vehicle above described is

—

Signature of the Registering Authority

(i) Subject to a Hire -purchase agreement with

(ii) Subject to Lease agreement with

(iii) Subject to Hypothecation in favour of

Specimen signature of the Financier (to be affixed) and attested
by the Registering Authority with his seal

This certificate is renewed:

Signature of the Registering Authority

Date.....

From.....to.....

Date Signature of the Registering Authority

From.....to.....

Date Signature of the Registering Authority

Fromto.....

Date Signature of the Registering
Authority

Fromto.....

Date Signature of the Registering Authority

Note. --

(i) This shall be in the form of a book having sufficient pages
for recording transfer of ownership, change of address, Hire -
purchase endorsement, cancellation of Hire - purchase entries,
alteration, suspension and cancellation of Certificate of
registration, etc. Such entries shall be duly numbered serially in
chronological order date -wise.

(ii) Strike out whichever is inapplicable.

(iii) Wherever transfer of ownership/change of address/note
and cancellation of endorsement of any agreement is recorded,
specimen signature of the Registered Owner and Financier as

The case may be, shall be affixed, sealed and attested by the Registering Authority next to the recording in such manner that part of impression of the seal or stamp and attestation shall fall upon the signatures .

(iv) For two - wheeler and cars, a book be provided without Additional particulars of the transport vehicle and Trailer or Semi - Trailer.

(v) For transport vehicles, a book can be provided without the column of Renewal of Registration”

The argument of the petitioner that the crash guard/bull bar does not change the basic features of the motor vehicle being an after market fitment does not appear to be correct because the weight of an average steel bar is between 35-80 kg (source google) whereas the Certificate of Registration specifically provides the unladen weight of the vehicle. The unladen weight of the vehicle means weight of the vehicle without passengers. The manufacturer of the vehicle specifically gives the unladen weight of the vehicle but with the addition/fixation of a crash guard/bull bar, the unladen weight of the vehicle would definitely increase and that would be in contravention of the weight mentioned in the Certificate of Registration. The explanation to Section 52 of the Act says that *“for the purpose of this section, “alteration” means a change in the structure of a vehicle which results in change in its basic feature”*. Unladen weight is also a basic feature of the Motor Vehicle, therefore, Section 52 of the Act says that no owner of the motor vehicle shall so alter the vehicle that the particulars contained in the Certificate of Registration are at variance with those originally specified by the manufacturer.

In today's scenario, high-tech vehicles are being manufactured, containing large number of features, which gets activated with the help of the sensors like the air bags open at a particular volume of impact and the

motor vehicles are given a particular aero dynamic shape etc. The Rules deals with the every minute detail of construction and maintenance of the vehicle. The standards, sizes and specifications, which the manufacturer of the vehicle requires to adhere to while manufacturing vehicle are exhaustively dealt with under the Rules and what is permitted has been specifically provided for and what is not specifically stated is obviously excluded from the Rules. In the name of after market fittings, the features of the motor vehicle cannot be changed in such a manner that it may cause threat to the lives of the pedestrians and the occupants and the word 'alter' cannot be read in isolation but it has to be read together with the particulars contained in the certificate of registration in which unladen weight is one of the important feature. Section 52(3) of the Act provides that in case any alteration has been made in the motor vehicle without approving from the Registering Authority, the matter has to be reported to the Registering Authority within whose jurisdiction the owner resides.

Thus, in my opinion, the petitioner has failed to make out a case for the purpose of assailing the validity of the impugned letter dated 7.12.2017 because neither the Act nor the Rules permits the use of crash guard/bull bar especially when it is not a part of the manufactured motor vehicle and changes/alters its basic features of unladen weight.

Dismissed.

(RAKESH KUMAR JAIN)
JUDGE

23.04.2018

Vivek

Whether speaking /reasoned : Yes/No

Whether Reportable : Yes/No