

V.Bava Vs. State of Kerala

V.Bava Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/1162096

Court : Kerala

Decided On : Aug-14-2014

Judge : Honourable the Ag.Chief Justice Mr.Ashok Bhushan

Appellant : V.Bava

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN & THE HONOURABLE MR.JUSTICE V.CHITAMBARESH THURSDAY, THE14H DAY OF AUGUST201423RD SRAVANA, 1936 WA.No. 1621 of 2013 () IN WP(C).15802/2013 ----- AGAINST THE

JUDGMENT

IN WP(C) 15802/2013 of HIGH COURT OF KERALA DATED3009-2013 APPELLANT(S)/PETITIONER: ----- V.BAVA, S/O.SULAIMAN VALAVATHU HOUSE, POST POOKKAYIL BAZAAR, TIRUR-676107 MALAPPURAM DISTRICT. BY ADV. SRI.C.M.MOHAMMED IQUABAL RESPONDENT(S)/RESPONDENTS: ----- 1. STATE OF KERALA REPRESENTED BY SECRETARY TO THE GOVERNMENT TRANSPORT DEPARTMENT GOVERNMENT SECRETARIAT THIRUVCANANTHAPURAM-695001.

2. THE DEPUTY TRANSPORT COMMISSIONER CENTRAL ZONE-1, THRISSUR. 678 011.

3. THE ADDITIONAL REGISTERING AUTHORITY, TIRUR POST TIRUR, PIN-676101.

4. THE ASSISTANT MOTOR VEHICLE INSPECTOR TIRUR POST, TIRUR PIN-676101.

5. MAHINDRA NAVISTAR AUTOMOTIVES LTD. GATEWAY BUILDING, APPOLLO BUNDER, MUMBAI-400 001 REPRESENTED BY ITS MANAGING DIRECTOR. R BY SR. GOVERNMENT PLEADER SRI.P.I.DAVIS. THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON0608-2014, THE COURT ON1408-2014 DELIVERED THE FOLLOWING: APPENDIX IN WA.No.1621 of 2013 ANNEXURE A1 TRUE COPY OF THE

ORDER

DATED276.2013 IN W.P.(C) NO.15802/2013 OF THIS HON'BLE COURT. //TRUE COPY// P.S. TO JUDGE. "C.R." ASHOK BHUSHAN, Ag.CJ & V. CHITAMBARESH, J ----- W.A.No.1621 of 2013 ----- Dated this the 14th day of August, 2014

JUDGMENT

Chitambaresh, J.

The issue in this Writ Appeal pertains to the entry of alteration in the Certificate of Registration of a vehicle or in other words the registration of an altered vehicle. The Additional Registering Authority and the Assistant Motor Vehicles Inspector are termed as 'the registering authority' and 'the vehicle inspector' hereafter for brevity.

2. The appellant is the registered owner of a goods carriage vehicle (Mahindra Load King Super) bearing registration number KL-10T807covered by Ext.P1 certificate of registration. The appellant applied for sanction to alter the vehicle by retro fitment of tipper mechanism in order to use the goods vehicle as a tipper

lorry. The registering authority rejected the application by Ext.P2 order stating that the alteration would be at variance with the WA.No.1621/2013 2 particulars specified by the manufacturer. The said order was set aside in W.P.(C) No.13671/2002 filed by the appellant by Ext.P3 judgment directing reconsideration of the issue. The registering authority thereafter accorded sanction by Ext.P4 order further directing the vehicle to be produced after alteration before the Vehicle Inspector. The appellant contends that he had spent ` 1,60,000/- for alteration of the vehicle evidenced by Ext.P5 receipt issued by the body builder and engineer.

3. The registering authority however refused to register the altered vehicle by Ext.P6 order on the ground that its basic features are changed even affecting its stability prejudicially. It was stated therein that the chassis of the vehicle is designed to bear the load distributed equally unlike in a tipper lorry designed to take load at a single point. The revised order of the registering authority was also set aside in W.P.(C) No.25184/2012 by Ext.P7 judgment directing reconsideration of the issue. The vehicle was thereafter inspected by the vehicle inspector who WA.No.1621/2013 3 reported that the alteration of the vehicle cannot be approved. The registering authority on the basis of the report reiterated its stand in not entering the alteration of the vehicle in its certificate of registration by Ext.P8 order. The said order was not interfered with in W.P.(C) No.7660/2013 by Ext.P9 judgment wherein the appellant was relegated to an appeal before the Deputy Transport Commissioner.

4. Ext.P10 appeal accordingly filed by the appellant was rejected by Ext.P11 order on the premise that the chassis of the vehicle is not an approved tipper chassis variant. The challenge to the appellate order in W.P (C) No.15802/2013 by the appellant failed and hence this Writ Appeal asserting that the alteration of the vehicle is sanctioned by law. The appellant placed heavy reliance on Jayachandran.K and others v. Regional Transport Officer and others [2012 (4) KLT729 in support of his contentions. The appellant pointed out that alteration of the vehicle was carried out after obtaining prior approval of the registering authority by Ext.P4 order. It is the case WA.No.1621/2013 4 of the appellant that sanction cannot be refused thereafter to register the altered vehicle especially when he has expended considerable amount. The respondents on the other hand

maintained that the impugned orders of the authorities in refusing to register the altered vehicle are well founded.

5. We heard Mr.C.M.Mohammed Iquabal, Advocate on behalf of the appellant and Mr.P.I.Davis, Senior Government Pleader on behalf of the respondents.

6. Section 52(1) of the Motor Vehicles Act, 1988 ('the Act' for short) after amendment by Act 27 of 2000 does not speak of prior approval of the registering authority to make alteration. Section 52 (1) of the Act prohibits the alteration of the vehicle in such a manner that they are at variance with those originally specified by the manufacturer. Rules 96 and 103 of the Kerala Motor Vehicles Rules, 1989 ('the Rules' for short) cast a duty on the authorities to inspect the vehicle after alteration. The registering authority in the instant case had called for a report from the Vehicle Inspector about the alteration made WA.No.1621/2013 5 discernible from Ext.P8 order. The report filed in accordance with Rule 96(3) of the Rules throws an insight into the safety of the vehicle after alteration and reads as follows:- "As per the RC produced, the type of body was open before the alteration. Now a tipping mechanism has been fitted in the vehicle to lift the load body for unloading the goods. The chassis frame of the vehicle was the old one which was designed to carry the UDL (uniformly distributed load) in the load body. While tipping load body, the load will concentrate to the rear portion of the chassis frame, which will exert a high shear force and will develop a high bending moment at the rear portion of the frame. The present frame is not designed to carry this much shear force and bending moment. The location of the point of contraflexure will also change. Thus it may be noted that by altering in this manner, the mechanical parameters and design parameters viz., center of gravity, moment of inertia, shear force, bending moment, location of point of contraflexure etc. are changing, which affect the balancing of the vehicle in the static as well as in the dynamic conditions. Again it may be noted that the structure WA.No.1621/2013 6 required for supporting UDL (uniformly distributed load) is not the same that required for supporting concentrated load. It may be noted that no approval from any testing authority was there for this altered vehicle. No speed governor was fitted in the vehicle. The ULW was 2240 Kg before the alteration but the same has been changed 3020 Kg after alteration." Thus the registering authority had relied

on the report of the vehicle inspector to hold that the alteration impaired the safety of the vehicle making it unfit for use on the road after registration.

7. The reliance on Jayachandran's case (supra) is misplaced in as much as the same dealt with the body built on the chassis of the vehicle having proto type certification. The question therein was as to whether the body on the chassis has to conform to the proto type dimensions when the vehicle is brought for initial registration. The circular issued by the Commissioner interdicting alteration to be recorded in the certificate of registration against the proto type certification was read down as a note of caution. It WA.No.1621/2013 7 was clarified that the circular is not meant to curb the powers of the registering authority conferred under the Act and the Rules framed thereunder. But the instant case is one where the vehicle was initially registered and used as goods carriage vehicle and is now altered to be used as a tipper lorry. We also note that the judgment in Jayachandran's case has been stayed by the Supreme Court in Special Leave to Appeal (C) Nos.13228 - 13231/2013 pending.

8. The registering authority had relied on the report of the Vehicle Inspector obtained under Rule 96(3) of the Rules to gauge the safety of the vehicle after alteration. It was found that the chassis of the vehicle is designed to carry an uniform distributed load to be used as a goods vehicle as recorded in the certificate of registration. The load will be concentrated on the rear portion of the chassis frame by the exertion of shear force and bending moment while tipping the load. The finding that the chassis of the vehicle is ill-suited to bear such shear force and bending moment at the time of tipping the load cannot WA.No.1621/2013 8 at all be overlooked. Even the location of the contraflexure and the mechanical parameters like center of gravity and moment of inertia would change by the alteration done for the vehicle. The unladen weight of the vehicle was also drastically changed affecting its motorability and safety justifying the registering authority in their action. The sanction earlier granted for alteration was only subject to final verification as to the safety of the vehicle under Rule 103 of the Rules. The Deputy Transport Commissioner has also held that the altered vehicle does not have an approved tipper chassis variant as per Rule 126 of the Central Motor Vehicle Rules, 1989. The finding of the authorities that the alteration

effected violates Section 52 of the Act and Rule 126 of the Central Motor Vehicles Rules, 1989 is well founded and cannot be said to be arbitrary.

9. We do not find any ground to interfere with the judgment of the learned single Judge affirming the stand of the authorities in refusing to record alteration in the certificate of registration. We WA.No.1621/2013 9 however make it clear that the appellant is free to reconvert the vehicle to its original form and operate the same as a goods vehicle as before. The Writ Appeal is dismissed. No costs. ASHOK BHUSHAN, Ag. Chief Justice. V. CHITAMBARESH JUDGE nj.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com