

Madras High Court

C.Paulraj vs The Secretary on 1 July, 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01/07/2011

CORAM

THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

W.P.(MD) NO.9795 of 2008

AND

W.P.(MD) NO.11415 of 2008

C.Paulraj

... Petitioner in both WPs'

Vs.

W.P.(MD) NO.9795 OF 2008

1.The Secretary

Ministry of Transport  
Chennai.

2.The Transport Commissioner

Chennai - 600 005.

3.Regional Transport Officer

Tirunelveli - 627 007.

4.Assistant Registering Authority

Transport Department

Valliyoor, Tirunelveli District - 627 117. ...

Respondents

W.P.(MD) NO.11415 OF 2008

1.The Union of India

by its Secretary  
Ministry of Transport  
New Delhi.

2.The State of Tamil Nadu

by its Secretary  
Department of Transport  
Fort St. George, Chennai - 600 009.

3.The Central Co-ordination Committee

[Constituted under Persons with



2.The petitioner purchased an auto-rickshaw with registration no.TN74-C-0630. He modified the same, so as to make it an invalid carriage that could be operated by him. That is, he fitted hand break instead of foot break, by using the services of a mechanic. The said modification was approved by the Assistant Registering Authority, Transport Department, Valliyoor, Tirunelveli District, the fourth respondent in W.P.(MD)No.9795 of 2008, on 06.12.1999 and the same was recorded in the R.C. book. He was also exempted from payment of tax, as per G.O.Ms.No.3352, Home (Transport) Department, dated 29.12.1976, so long as the vehicle exclusively is used by him as a physically challenged person.

3.The petitioner sold the said auto-rickshaw and purchased a second hand Maruthi-800 CC Car with registration no.TN04-B-7688. He made alterations in the said Car so as to make it as an invalid carriage. That is, the clutch, break and accelerator were brought to hand operation instead of leg operation. The said modifications were also approved and recorded by the fourth respondent in W.P.(MD)No.9795 of 2008 in the R.C. book on 03.06.2002.

4.Thereafter, the petitioner purchased a new Marthi-800 CC Car on 25.06.2008, with Chassis No.2721645 and Engine No.3967599, and similar modifications were done in the new Car as was done in the earlier Car bearing registration no.TN04-B-7688, so as to make it as an invalid carriage. Thereafter, when he approached the third respondent in W.P.(MD) No.9795 of 2008 seeking permission for conversion of Motor Car into invalid carriage and to register the same under the description "invalid carriage", the third respondent issued a communication dated 16.07.2008 refusing to entertain his application on the ground that the Car that was sought to be registered as invalid carriage, is not an invalid carriage as defined under Section 2(18) of the Motor Vehicles Act, 1988. Further it was stated that the Motor Vehicles Act does not permit the conversion of a Car into an invalid carriage.

5.In these circumstances, the petitioner has filed the writ petition in W.P.(MD) No.9795 of 2008 seeking a direction to the respondents 1 and 2 to allow the third and fourth respondents to treat his vehicle viz., Maruthi-800 CC, bearing Chasis No.2721645 and Engine No.3967599 as "invalid carriage" and to issue permanent registration of the said vehicle in his favour.

6.The petitioner filed another writ petition in W.P.(MD) No.11415 of 2008 seeking a direction to the Central Co-ordination Committee and the State Co-ordination Committee, constituted under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, to advise the Secretary, Ministry of Transport, Government of India to appropriately enable the physically challenged persons to alter the vehicles to suit their requirement and register the same under the Motor Vehicles Act, 1988.

7.In both the writ petitions, the respondents have not filed counter affidavit.

8.While the relief claimed in W.P.(MD) No.9795 of 2008 is relating to the petitioner, the relief claimed in W.P.(MD) No.11415 of 2008 is to benefit all the physically challenged persons, as they are facing difficulties in registering the vehicles as invalid carriage, on making modifications, so as to drive those vehicles.

9.The grievance of the petitioner is that the manufacturers have now stopped manufacturing the vehicles specially designed for disabled persons, due to economic considerations, which forced the disabled persons to make alterations with the help of mechanics in the workshops to convert the vehicle as invalid carriage and the physically challenged persons are facing difficulties in registering those vehicles as invalid carriage. Without registering the vehicles as invalid carriage, they could not take those vehicles to ply on the roads and the mobility of the physically challenged persons would be severely affected. Further, the Government of India remedied the situation in so far as the two wheelers are concerned, by issuing a notification in No.RT-11012/12/01/MVL, dated 23.07.2008, under Section 52 of the Act, for conversion of two wheelers as invalid carriage. According to him, the respondents 3 and 4 in W.P.(MD) No.11415 of 2008 shall take the issue in respect of the four wheelers also, with the first respondent Government of India, for the benefit of the disabled persons.

10.Heard the submissions made on either side.

11.The petitioner approached the third respondent in W.P.(MD) No.9795 of 2008 with representation dated 14.07.2008, to register his vehicle viz., Maruthi-800CC Car, bearing Chassis No.2721645 and Engine No.3967599, as "invalid carriage", with some modifications, but without changing the basic feature. The modifications were limited to the extent of bringing hand operation of clutch, break and accelerator instead of leg operation. The said modifications were done by a local mechanic in the workshop.

12.But the third respondent Regional Transport Officer, Tirunelveli, by a letter dated 16.07.2008 refused to register the same as invalid carriage, as it is not an invalid carriage as per Section 2(18) of the Motor Vehicles Act. The contents of the said letter dated 16.07.2008 of the third respondent Regional Transport Officer, Tirunelveli, is extracted hereunder:

"I invite your attention to your representation in the reference first cited.

As per section 2(18) of the Central Motor Vehicle Act 1988 "invalid carriage" means a motor vehicle specially designed and constructed, and not merely adapted, for the use of person suffering some physical defect or disability, and used solely by or for such person.

In your representation you have sought permission to convert your Motor Car into an invalid carriage. The alteration of car into invalid carriage is not allowed as per the amended MV Act. In view of the above provision of the act the request for alteration of motor car into invalid carriage cannot be allowed."

13.According to the third respondent, the Motor Vehicles Act does not permit conversion of Car into invalid carriage and as per Section 2(18) of the Motor Vehicles Act, 1988 "invalid carriage" means a motor vehicle specially designed and constructed, and not merely adapted, for the use of person suffering some physical defect or disability, and used solely by or for such person.

14.The petitioner has stated that he had no other option except to

avail the service of a mechanic to make alterations in the Car to convert it into an invalid carriage, since the Maruthi company, which was manufacturing the special vehicles for disabled persons in the last decades, have now stopped the manufacture of such vehicles. It is also categorically averred by the petitioner that no company is manufacturing the specially designed vehicles for the disabled, both in two-wheeler and four wheeler sectors, for the past five years. The said fact is not disputed by the learned counsels appearing for the respondents.

15. At this juncture, it is relevant to note that Section 2(18) of the Motor Vehicles Act, 1988 was considered by a learned Judge of this Court in W.P.(MD) No.4482 of 2008 (decided on 16.05.2008) (R.RAMASAMY VS. THE SECRETARY, MINISTRY OF TRANSPORT, CHENNAI AND OTHERS) wherein the learned Judge has held that conversion made by a private mechanic, without changing the basic feature of the motor vehicle, can be registered as invalid carriage, by the registering authorities. The word "adapted" in Section 2(18) of the Motor Vehicles Act, 1988 was interpreted by this Court and is held that it means only "suitable" and it should not be understood that only a vehicle specially manufactured by the manufacturer could alone be registered as invalid carriage. At this juncture, it is relevant to extract paras 18.3 to 18.10 of the said judgment, which reads as under:

"18.3. As per Section 2(18) the expression "invalid carriage" means a motor vehicle specially designed and constructed, and not merely adapted, for the use of a person suffering some physical defect or disability, and used solely by or for such person. The expression "adapted" has not been defined in the statute. As per Concise Oxford Dictionary 10th Edition, the word "adapt" is a verb, which means "make suitable for a new use of purpose".

18.4. The expression "adapted" has been used in various definition clauses such as in Sections 2(14), 2(18), 2(22), 2(25), 2(26), 2(28), 2(29), 2(33), 2(35), 2(40) and 2(43). Meaning has to be ascribed to such expression keeping in view the context in which it has been used. Though ordinarily the word "adapted" can be considered as past tense of the verb "adapt", at times such expression "adapted" can be considered as adjectival. Understood in such a sense, the expression can mean "suitable".

18.5. In the context in which it has been used in Section 2(18) the word "adapted" means suitable. It becomes more clear when the preceding expression refers to "a motor vehicle specially designed and constructed, and not merely adapted".

18.6. In several decisions, such expression "adapted" has been understood to mean "suitable" or "suited".

18.7. In AIR 1975 ~~BOMBAY~~ ORES LTD. V. STATE OF ORISSA), it was observed:-

"19. While dealing with the English cases it must not be forgotten that the definition of "motor vehicle" in the Road Traffic Act imports the element of intention into the definition for ascertaining whether a vehicle is a motor vehicle. In Maddox v. Storer<sup>8</sup> Lord Parker, C.J. was construing the word

"adapted" when used disjunctively with "constructed." He observed:

"One can get illustration after illustration, on looking at the Act itself, where 'adapted', when used disjunctively with 'constructed' must mean a physical alteration, and, as it seems to me, other cases where the word 'adapted' alone is used and where it must be given the adjectival meaning of being fit and apt for the purpose."

But where the word "adapted" alone has been used such as in sub-paragraph (2) of paragraph 1 of the First Schedule to the Road Traffic Act, 1960, he was of the view that it was wholly inapt to mean "altered so as to make fit". He asked "How do you alter a motor-car so as to make it fit to carry not more than seven passengers"? It is clearly there standing on its own, susceptible only of meaning "fit and apt for the purpose."

....

22. As usual references have been made to the Dictionaries but quite often it is not possible to hold a dictionary in one hand and the statute to be interpreted in the other for ascertaining the import and intent of the word or expression used by Legislature. The shade of meaning of a word, its different connotations and collocations which one finds in a dictionary does not relieve us of the responsibility of having to make the ultimate choice of selecting the right meaning. We choose that meaning which is most apt in the context, colour and diction in which the word is used. The use of a dictionary ad lib without an analysis of the entire Act, its purpose and its intent, for ascertaining the meaning in which the Legislature could have used the word or expression may not lead us to the right conclusion. With this caution before us for avoiding any of the aforesaid methods which might lead to a possible incongruity, we will examine the different facets to which our attention has been drawn.

23. The meaning of the word "adapted" in Section 2(18) of the Act is itself indicated in Entry 57 of List II of the Seventh Schedule to the Constitution, which confers a power on the State to tax vehicles whether propelled mechanically or not and uses the word "suitable" in relation to its use on the roads. The words "adapted for use" must therefore be construed as "suitable for use". At any rate, words "adapted for use" cannot be larger in their import by including vehicles which are not "suitable for use" on roads. In this sense, the words "is adapted" for use have the same connotation as "is suitable" or "is fit" for use on the roads. (emphasis added).

18.8. Similar meaning was attributed by the Supreme Court in AIR 1992 SC 1371 (M/S.CENTRAL COAL FIELDS LTD. V. STATE OF ORISSA AND OTHERS).

18.9. In (2004) 6 SCC 210 (GOVERNMENT OF A.P. AND ANOTHER V. ROAD ROLLERS OWNERS WELFARE ASSOCIATION AND OTHERS), the Supreme Court, while considering the question as to whether a road roller is a motor vehicle within the meaning of Section 2(28) of the Motor Vehicles Act, observed:

"5.....Undoubtedly, a roadroller is meant for repairing roads. This itself shows that it is adapted for use on roads. A roadroller is not capable of being used off the road. Merely because its purpose is to repair roads does not mean that it is not suitable or not adapted for use on roads. We fail to

understand from where the High Court concludes that the connotation of vehicle must mean a conveyance for carrying people or goods. The definition of motor vehicle does not so provide. Merely because a vehicle does not carry passengers or goods does not mean that it ceases to be a motor vehicle. So long as it is a vehicle, which is mechanically propelled, and is adapted for use on roads, it is a motor vehicle within the meaning of the Motor Vehicles Act, 1988."

18.10.From the aforesaid decisions, it is apparent that the expression "adapted" has been used in different provisions of the Motor Vehicles Act which carries the meaning of "suitable" or "capable of being used" on the road. It is used as an "adjectival" expression rather than a verb."

16.In the said judgment, the learned Judge went into detail on the issue and held that after the Motor Vehicles Act, 1988 was amended by Act 27 of 2000, there is no prohibition for any person including physically challenged persons to convert the motor vehicles as invalid carriage, so long as the alterations made does not change the basic feature of the vehicle. The learned Judge also held that the change of system from leg operation to hand operation, in so far as the clutch, break and accelerator in Cars are concerned, the same would not cause a change in the basic feature of the vehicle. The said judgment attained finality, as no appeal was preferred against the same, and the same was also not disputed by the learned counsels appearing for the respondents. In this regard, I feel it appropriate to extract para 10 of the said judgment, as under:

"10.The provisions contained in Section 52, as they stand now, do not contemplate any specific prior permission for making any alteration, save and except what is contemplated in the present Section 52(2). Moreover, Section 52(1) as it stands now contemplates that the owner of a motor vehicle should not alter the vehicle in such a manner that the particulars of the alteration would be at variance with the particulars originally specified by the Manufacturer. Where the change in the structure of the vehicle does not have the effect of changing the basic features of the vehicle, it does not come within the prohibition contemplated in Section 52(1). The above becomes clear if reference is made to the Explanation, which lays down that for the purpose of Section 52 "alteration" means a change in the structure of a vehicle which results in a change in its basic feature."

17.In view of the categorical pronouncement of this Court in the aforesaid judgment, in my view, the prayer as sought for in the writ petition in W.P.(MD) No.9795 of 2008 has to be allowed.

18.In so far as the writ petition in W.P.(MD) No.11415 of 2008 is concerned, though the prayer is for alteration of vehicles to suit the requirement of physically challenged persons seeking statutory recognition of alteration of vehicles for registering the same as "invalid carriages", it is submitted that so far as two - wheelers are concerned, the Government of India has already issued a notification in No.RT-11012/12/01/MVL, dated 23.07.2008 under Section 52 of the Motor Vehicles Act, taking into account the non- availability of invalid carriages in the market.

19.The petitioner has categorically pleaded that now both the three wheelers and four wheelers are not available in the market, as it is not economically viable for the manufacturers to manufacture and market them for the physically challenged persons.

20.The object of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is to give effect to the proclamation on the full participation and equality of people with disabilities in the Asian and Pacific Region. If the mobility of the physically challenged persons are curtailed, that would result in perpetuating the inequality and the object of the Act could be defeated. One of the objects of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities. That is, the State should make available the invalid carriages in the market. Till such time, the State should permit the physically disabled persons to convert their vehicles into invalid carriage, as otherwise, the rehabilitation of the persons with disabilities could never happen.

21.Likewise, the other objects of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 are to create barrier free environment; to remove any discrimination in the sharing of development benefits; to counteract any situation of the abuse and the exploitation; to lay down strategies for comprehensive development of programmes and services and equalisation of opportunities and to make special provision for the integration of persons with disabilities into the social main stream.

22.In my view, until the manufacturers are manufacturing the specially designed vehicles for the physically disabled persons, it is difficult to achieve the aforesaid objects of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Atleast, the physically challenged persons shall be permitted to convert the vehicle as "invalid carriage" as that could enable them to drive those vehicles, without changing the basic feature and the same is permissible under Section 52 of the Motor Vehicles Act and has been approved by this Court in the judgment dated 16.05.2005 passed in W.P.(MD) No.4482 of 2008, referred to above.

23.Furthermore, the respondents 3 and 4 in W.P.(MD) No.11415 of 2008 are statutory bodies constituted under Sections 3 and 13 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Sections 8 and 18 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 deals with the functions of the Central Co-ordination Committee and State Co-ordination Committee, which reads as follows:

"8.Functions of the Central Co-ordination Committee. -(1) Subject to the provisions of this Act, the function of the Central Coordination Committee shall be to serve as the national focal point on disability matters and facilitate the continuous evolution of a comprehensive policy towards solving the problems faced by persons with disabilities.

(2) In particular and without prejudice to the generality of the foregoing, the Central Coordination Committee may perform all or any of the following functions, namely:-

(a) review and coordinate the activities of all the Departments of Government and other Governmental and non-Governmental Organizations which are dealing with matters relating to



persons with disabilities;

(b) develop a national policy to address issues faced by, persons with disabilities;

(c) advise the Central Government on the formulation of policies, programmes, legislation and projects with respect to disability;

(d) take up the cause of persons with disabilities with the concerned authorities and the international organizations with a view, to provide for schemes and projects for the disabled in the national plans and other programmes and policies evolved by the international agencies;

(e) review in consultation with the donor agencies their funding policies from the perspective of their impact on persons with disabilities;

(f) take such other steps to ensure barrier-free environment in public places, work-places, public utilities, schools and other institutions;

(g) monitor and evaluate the impact of policies and programmes designed for achieving equality and full participation of persons with disabilities;

(h) to perform such other functions as may be prescribed by the Central Government.

18.Functions of the State Co-ordination Committee. - (1) Subject to the provisions of this Act, the function of the State Co-ordination Committee shall be to serve as the state focal point on disability matters and facilitate the continuous evolution of a comprehensive policy towards solving the problems faced by persons with disabilities.

(2) In particular and without prejudice to the generality of the foregoing function the State Coordination Committee may, within the State perform all or any of the following functions, namely:-

(a) review and coordinate the activities of all the Departments of Government and other Governmental and Non-Governmental Organizations which are dealing with matters relating to persons with disabilities.,

(b) develop a State policy to address issues faced by persons with disabilities;

(c) advise the State Government on the formulation of policies, Programmes, legislation and projects with respect to disability;

(d) review, in consultation with the donor agencies, their funding from the perspective of their impact on persons with disabilities;

(e) take such other steps to ensure barrier-free environment in public places, work places, public utilities, schools and other institutions;

(f) monitor and evaluate the impact of policies and programmes designed for achieving equality and full participation of persons with disabilities;

(g) to perform such other functions as may be prescribed by the State Government."

24. In the result,

(i) the third respondent in W.P.(MD) No.9795 of 2008 is directed to treat the petitioner's vehicle Maruthi-800 CC Car bearing Chassis No.2721645 and Engine No.3967599 as an invalid carriage and issue permanent registration in favour of the petitioner, in the light of the judgment of this Court dated 16.05.2008 in W.P.(MD) No.4482 of 2008, within a period of four weeks from the date of receipt of a copy of this order; and

(ii) in accordance with Sections 8 and 18 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the respondents 3 and 4 in W.P.(MD) No.11415 of 2008 are directed to consider the issue relating to conversion of vehicles into invalid carriage and advise suitably the first respondent - Government of India, to appropriately enable the physically challenged persons to alter the three wheeler and four wheeler vehicles also to suit their requirements and register the same under the Motor Vehicles Act, as expeditiously as possible.

25. Both the writ petitions are disposed of with the aforesaid observations and directions. No costs.

TK To

1. The Secretary Ministry of Transport Chennai.

2. The Transport Commissioner Chennai - 600 005.

3. Regional Transport Officer Tirunelveli - 627 007.

4. Assistant Registering Authority Transport Department Valliyoor, Tirunelveli District - 627 117.

5. The Secretary to Government Ministry of Transport Government of India New Delhi.

6. The Secretary to Government Government of Tamil Nadu Department of Transport Fort St. George, Chennai - 600 009.

7. The Central Co-ordination Committee [Constituted under Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995] Office of Minister of Welfare New Delhi.

8.The State Co-ordination Committee [Constituted under Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995] Office of Minister of Welfare Fort St.George, Chennai - 600 009.