

Reserved

IN THE HIGH COURT OF UTTARAKHAND AT

NAINITAL

WRIT PETITION NO. 117 OF 2009 (MS)

Vijay Goyal

.....Petitioner.

Versus

State of Uttarakhand and others.

...Respondents.

Mr. Gopal Narain, Advocate holding brief of Mr. Mohinder Singh Bisht, Advocate for petitioner.

Mr. K.P. Upadhyay, Addl. Chief Standing Counsel for State of Uttarakhand / respondents.

With

WRIT PETITION NO. 140 OF 2009 (MS)

Dharam Singh Rana

.....Petitioner.

Versus

State of Uttarakhand and others.

...Respondents.

Mr. Gopal Narain, Advocate for petitioner.

Mr. K.P. Upadhyay, Addl. Chief Standing Counsel for State of Uttarakhand / respondents.

22nd May, 2009

Hon'ble Sudhanshu Dhulia, J.

In both these petitions, the petitioners have challenged the order dated 27.12.2008 of the Regional Transport Authority, by which the Stage Carriage Permit under the Motor Vehicles Act can only be granted to those applicants who have a new vehicle. Since the subject matter and in fact the order impugned are the same, these two petitions are being disposed of by a single order.

According to the petitioner, the order of the Regional Transport Authority (hereinafter referred to as “RTA”) is totally without jurisdiction as the RTA does not have the jurisdiction or power to fix the age of a vehicle and such power lies exclusively in the domain of the Central Government under Section 53 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act”).

The State Counsel in its counter affidavit has, however, stated that the RTA has only powers to pass such an order and this power has been given to the RTA under Section 72 of the Act, for ready reference, therefore, Section 59 as well s Section 72 are reproduced as under:

“59. Power to fix the age limit of motor vehicle.—(1) the Central Government may, having regard to the public safety, convenience and objects of this Act, by notification in the Official Gazette, specify the life of a motor vehicle reckoned from the date of its manufacture, after the expiry of which the motor vehicle shall not be deemed to comply with the requirements of this Act and the Rules made thereunder:

Provided that the Central Government may specify different ages for different classes or different types of motor vehicles.

(2) Notwithstanding anything contained in subsection (1), the Central Government may, having regarding to the purpose of a motor vehicle, such as, display or use for the purposes of a demonstration in any exhibition, use for the purposes of technical research or taking part in a vintage or special order, subject to such conditions as may be specified in such notification, any class

or type of motor vehicle from the operation of sub-section (1) for the purpose to be stated in the notification.

(3) Notwithstanding anything contained in section 56, no prescribed authority or authorised testing station shall grant a certificate of fitness to a motor vehicle in contravention of the provisions of any notification issued under sub-section (1).

72. Grant of stage carriage permit.—(1) Subject to the provisions of Section 71, a Regional Transport Authority may, on an application made to it under section 70, grant a stage carriage permit in accordance with the application or with such modification as it deems fit or refuse to grant such a permit:

Provided that no such permit shall be granted in respect of any route or area not specified in the application.

(2) The Regional Transport Authority, if it decides to grant a stage carriage permit, may grant the permit for a stage carriage of a specified description and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:--

- (i) that the vehicles shall be used only in a specified area, or on a specified route or routes;
- (ii) that the operation of the stage carriage shall be commenced with effect from a specified date;
- (iii) the minimum and maximum number of daily trips to be provided in relation to any route or area generally or on specified days and occasions;
- (iv) that copies of the time-table of the stage carriage approved by the Regional Transport Authority shall be exhibited on the vehicles and at specified stands and halts on the route or within the area;
- (v) that the stage carriage shall be operated within such margins of deviation from the approved time-table

as the Regional Transport Authority may from time to time specify;

(vi) that within municipal limits and such other areas and places may be prescribed, passengers or goods shall not be taken up or set down except at specified points;

(vii) the maximum number of passengers and the maximum weight of luggage that may be carried on the stage carriage, either generally or on specified occasions or at specified times and seasons;

(viii) the weight and nature of passengers' luggage that shall be carried free of charge, the total weight of luggage that may be carried in relation to each passenger, and the arrangement that shall be made for the carriage of luggage without causing inconvenience to passengers;

(ix) the rate of charge that may be levied for passengers' luggage in excess of the free allowance;

(x) that vehicles of a specified type fitted with body conforming to approved specifications shall be used:

Provided that the attachment of this condition to a permit shall not prevent the continued use, for a period of two years from the date of publication of the approved specifications, of any vehicle operating on that date;

(xi) that specified standards of comfort and cleanliness shall be maintained in the vehicles;

(xii) the conditions subject to which goods may be carried in the stage carriage in addition to or to the exclusion of passengers;

(xiii) that fares shall be charged in accordance with the approved fare table;

(xiv) that a copy of, or extract from, the fare table approved by the Regional Transport Authority and particulars of any special fares or rates of fares so approved for particular occasions shall be exhibited on the stage carriage and at specified stands and halts;

(xv) that tickets bearing specified particulars shall be issued to passengers and shall show the fares actually charged and that records of tickets issued shall be kept in a specified manner;

(xvi) that mails shall be carried on the vehicle subject to such conditions (including conditions as to the time in which mails are to be carried and the charges which may be levied) as may be specified;

(xvii) the vehicles to be kept as reserve by the holder of the permit to maintain the operation and to provide for special occasions;

(xviii) the conditions subject to which the vehicle may be used as a contract carriage;

(xix) that specified arrangements shall be made for the housing, maintenance and repair of vehicle;

(xx) that any specified bus station or shelter maintained by Government or a local authority shall be used and that any specified rent or fee shall be paid for such use;

(xxi) that the conditions of the permit shall not be departed from, save with the approval of the Regional Transport Authority;

(xxii) that the Regional Transport Authority may, after giving notice of not less than one month,--

(a) vary the conditions of the permit;

(b) attach to the permit further conditions;

Provided that the conditions specified in pursuance of clause (i) shall not be varied so as to alter the distance covered by the original route by more than 24 kilometres, and any variation within such limits shall be made only after the Regional Transport Authority is satisfied that such variation will serve the convenience of the public and that it is not expedient to grant a separate permit in respect of the original route as so varied or any part thereof;

(xxiii) that the holder of a permit shall furnish to the Regional Transport Authority such periodicals returns, statistics and other information as the State Government may from time to time prescribe;
 (xxiv) any other conditions which may be prescribed.”

A perusal of Section 59 of the Act shows that the Central Government has power to notify the life of a motor vehicle, the life or the period, which is reckoned from the date of its manufacture. In other words, it is within the powers of the Central Government to specify the life of a motor vehicle inasmuch as after such a life has expired such a motor vehicle shall not be deemed to be in compliance with the requirements of the Motor Vehicles Act and the rules framed thereunder. The Central Government may fix the age if it finds just and proper, and such would be the age of the motor vehicle during which the vehicle can ply on routes and be called a “motor vehicle”. However, the purpose of Section 72 of the Act is entirely different. Section 72 of the Act gives an authority and powers to the RTA, who can before granting the licence to a person for a particular route to ply stage carriage can prescribe conditions and one of the conditions is enumerated in Section 72 (2) (x), which is “that vehicles of a specified type fitted with body conforming to approved specifications shall be used. Section 72 (2) (xi) further says “that specified standards

of comfort and cleanliness shall be maintained in the vehicles”. Moreover, under Section 72 (2) (xiv) of the Act, the RTA can prescribe “any other condition” as such if the RTA has come to the conclusion keeping mind that the State of Uttarakhand is largely a hill state and the permit shall only be granted to the new vehicle this Court finds no anomaly in the same as the order is within the jurisdiction of the RTA. It cannot be held that the order is bad or without jurisdiction. The RTA has also to consider the safety of the vehicle as well as the safety of the passengers and if a condition has been prescribed in the permit, which caters to this aspect, such an order is perfectly justified.

Another contention of the petitioners is that in the erstwhile State of U.P., the State Transport Authority on 9.3.1994 had passed a resolution dated 3.9.1991 fixing the age limit of the stage carriage vehicle, which are plying in the plain areas as 20 years and for the hill areas as 10 years from the date of registration. It has also been stated by the petitioners that the State Transport Authority in its meeting dated 9.3.1994 has further resolved to abide its earlier resolution dated 3.9.1991. This is also the contention of the petitioners that once these resolutions have been passed fixing the age of vehicle, the subsequent order passed by the RTA,

Uttarakhand is not justified. This contention of the petitioners has no force inasmuch as Uttarakhand is a new State and the RTA in Uttarakhand has got powers under Section 72 of the Act for fixing any condition before granting permit to the stage carriage vehicle and if in the wisdom of the RTA it is necessary that the permit can only be given to new vehicle, the same cannot be held to be unreasonable merely because on the earlier occasion, certain age of these vehicle were fixed as 20 years or 10 years by the erstwhile RTA of Uttar Pradesh.

In view of the aforesaid observations, the writ petitions are liable to be dismissed and are hereby dismissed. No order as to costs.

(Sudhanshu Dhulia, J.)

22.5.2009

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