

**Bharat Kumar Vs. Karnataka State Transport Appellate Tribunal**

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**Court :** Karnataka

**Decided On :** Aug-06-1993

**Reported in :** ILR1993KAR3591

**Judge :** Raveendran, J.

**Acts :** [Motor Vehicles Act, 1988](#) - Sections 59, 72, 72(2) and 74; Central Motor Vehicles Rules, 1989 - Rule 82 and 82(2)

**Appeal No. :** W.P. No. 38181 of 1992

**Appellant :** Bharat Kumar

**Respondent :** Karnataka State Transport Appellate Tribunal

**Advocate for Def. :** C.V. Kumar, HCGP

**Advocate for Pet/Ap. :** M.R. Venkatanarasimhachar, Adv.

**Disposition :** Petition rejected

**Judgement :**

ORDER

**Raveendran, J.**

1. The petitioner applied for grant of a stage carriage permit on 31.3.1992 under Section 70 of the [Motor Vehicles Act, 1988](#) (hereinafter referred to as 'the Act').

The second respondent (Regional Transport Authority, Mangalore), (hereinafter referred to as 'the RTA') considered the application on 7.8.1992 and granted the permit, subject however to the following condition:

'The grantee shall produce the documents of 1985 or later model vehicle within 30 days from the date of receipt of the proceedings of the Secretary assigning timings.... as the Authority is empowered under Section 72(2) of the Motor Vehicles Act to specify the particular description of vehicle...'

The petitioner challenged the said order before the first respondent Karnataka State Transport Appellate Tribunal (hereinafter referred to as 'the Tribunal') in Appeal No. 581/1992 contending that the condition regarding age of the vehicle, imposed by the RTA was contrary to the statute. The Tribunal allowed the appeal and modified the order of the RTA, by its order dated 11.11.1992 as follows;

'The Appellant shall be granted the permit in respect of 198(sic) model vehicle, subject to liability to replace the vehicle covered by the permit, by a less than 10 years old vehicle as and when the vehicle covered by the permit attains 10 years of age from the date of initial registration. This shall be a condition of the permit.'

Feeling aggrieved by the said order, the petitioner has filed this Writ Petition for quashing the condition regarding age of vehicle imposed by the Tribunal.

2. Sri M.R. Venkatanarasimhachar, learned Counsel for the petitioner, in support of his contention that the RTA had no power to impose a condition that the permit should be covered by a vehicle of particular age, invited reference to Section 72(2) of the Act which enumerates the conditions which may be imposed by the RTA while granting a stage carriage permit; he pointed out that age of the vehicle is not one of the conditions so enumerated; and therefore the RTA had no authority to require that a vehicle of a particular age, should be used to cover the permit. He next contended that the RTA can also impose any condition which is specified in the Rules or which may be prescribed under Section 72(2)(xxiv); but as no Rule has been framed and as no condition is prescribed under Section 72(2)(xxiv), specifying the age of the vehicle to be used for stage carriages, the RTA had no authority to impose any condition regarding age of the vehicle.

He also referred to Section 59 which provides that the Central Government may 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 requirement of the Act and the Rules made thereunder; the Central Government not having fixed the age for stage carriage under Section 59, he contended that the RTA cannot take upon himself the power to fix the age for stage carriages. In this context, he also referred to Rule 82(2) of the Central Motor Vehicles Rules, 1989 (hereinafter referred to as the Central Rules) which prescribes that no tourist permit shall be granted in respect of a motor vehicle which is more than two years old vehicle and that a tourist permit shall be deemed to be invalid from the date on which the vehicle covered by the permit completes seven years, where the vehicle is a motor cab and five years, where the vehicle is other than a motor cab, unless the vehicle is replaced. He contended that such age having not been fixed in regard to the stage carriage vehicles, the action of the R.T.A and the Tribunal in requiring a vehicle of a particular year was beyond their authority and therefore liable to be struck down. He also relied on the Decision of this Court in K.SUDHAKAR SHETTY v. THE REGIONAL TRANSPORT OFFICER, W.P.No. 11831 of 1991 DD 16.9.1991 in support of his contention.

3. On the other hand, Sri C.V. Kumar, learned Counsel for the respondents contended that the matter is specifically covered by Section 72(2) of the Act and the Decisions of this Court in W.P.No. 8630/1988 decided on 23.6.1988 and K.B. Balakrishna Rai v. Karnataka State Transport Appellate Tribunal & Anr., 1989(3) Kar.LJ. 393. He also relied on the Decision of the Supreme Court in K.J. Sheriff v. the Regional Transport Authority, DK and Anr., Subash Chandra v. State of UP, : [1980]2SCR1024 and the Decision of Madhya Pradesh High Court in Sheelchand & Co. v. State Transport Appellate Authority, Gwalior and Anr., A.I.R. 1964 MADHYA PRADESH .

4. Section 72(2) of the Act begins as follows:-

'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....'

Sri. C.V. Kumar, submitted that the words 'Specified description' not only referred to class, make or number of cylinders or horsepower, but also included the year of manufacture.

Section 72(2) is in pari materia with Section of the Motor Vehicles Act, 1939, the corresponding portion of which was as follows: -

'The Regional Transport Authority, if it decides to grant a stage carriage permit, may grant the permit for a service of stage carriages of a specified description or for one or more particular stage carriages, 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.....'.

The words 'Stage carriage of specified description' in Section 48(3) were the subject matter of interpretation in several Decisions. In Sheelchand's case a Division Bench of Madhya Pradesh High Court considered the words 'Specified Description' in Section 48(3) of the old Act and held as follows:-

'If the stage carriage for which a permit can be granted has to be of a 'specified description' then it follows that the Regional Transport Authority has the power to say that the stage carriage for which a permit has been granted shall be of a particular year of manufacture. The specific description of a stage carriage is not confined to its class, name, maker number of cylinders or horse-power, but also includes the year of manufacture. In the detailed description of a vehicle which is to be inserted in the certificate of registration given in Form-G in the first schedule, the year of manufacture has to be mentioned. The whole idea in requiring that the service of a stage carriage shall be run with a stage carriage of a particular year of manufacture is to ensure reliability and efficiency of the service and the safety of the travelling public. Sections 47 and 48 of the Act, read together, clearly show that the statutory powers to issue permits with certain conditions of stage carriages are not meant for the benefit and protection of permit-holders but are meant for the benefit of the general public, if the contention advanced by the learned counsel for

the petitioners is accepted then the result would be that a person, who has obtained a permit for the service of a stage carriage, would be at liberty to run the service with ramshackle vehicles or with vehicles which are not roadworthy. The running of a stage carriage service with such vehicles would be irregular, unreliable and would endanger the safety of the travelling public. Such a service would then be one being run in the interest of the permit holder and not for the benefit of the general public. In our opinion, the words 'stage carriages of a specified description', which occur in Section 48(3) are wide enough to give to the Regional Transport Authority power to attach to a permit, while granting it, a condition that the service shall be run with a stage carriage of a particular year of manufacture.'

5. In Subhash Chandra's Case, the Supreme Court while dealing with Section 51(2)(x) of the 1939 Act, had occasion to refer to the meaning of the words 'specified description' occurring in Section 48(3). The Supreme Court's attention was invited to the Decision of Allahabad High Court in *MASI ULLAH v. STATE TRIBUNAL APPELLATE*, AIR 1967 Allahabad 126 wherein the words 'specified description' in Section 48(3) of the Act were held to mean, only enumeration of essential qualities and not the year of manufacture of the vehicle, relying on the meaning of the word 'description' given in Webster's New international Dictionary. The Supreme Court did not agree with the said interpretation and after referring to the meaning of the word 'description' in Black's Law Dictionary, held as follows:

'So, dictionary versus dictionary leaves the matter at large, apart from the plain function of the Court to gather the meaning, not under the dictatorship of dictionaries but guided by the statutory purpose without being deflected by togomathic exercises, the mischief to be countered and the public interest to be advanced. We are clear that a later model is a better safeguard and, more relevantly to the point, the year of the make and the particulars of the model are part of the description.'

In view of the said enunciation by the Supreme Court, the words 'specified description' clearly mean and include the year of manufacture also.

6. Balakrishna, J. in RAMACHANDRA v. SECRETARY, RTA, : ILR 1988 KAR2425 has held that imposition of a condition regarding age of the vehicle, as a condition of permit, was without the authority of law. Subsequently in K.J. Sheriff v. The RTA, O.K. and Anr., he held that prescription of age of vehicle was justifiable in regard to stage carriages, He observed that when he earlier decided Ramachandra's case the Decisions of the Supreme Court in Subhash Chandra's case in S.K.BHATIA v. STATE OF U.P., : [1983]3SCR595 were not brought to his notice.

7. In Balakrishna Rai's case, an application for replacing a 1987 model vehicle with a 1983 model vehicle was rejected. The petitioner therein contended that there was no rule prescribing that a particular model vehicle should be provided by a permit holder; that as long as the vehicle was roadworthy, there was no bar contained either in the Act or in the Rules prohibiting the permit holder to cover the permit by such vehicle, irrespective of the model (year) of the vehicle and in the absence of any rule prescribing the age of the vehicle under Section 48(3) of the Act, the R.T.A. had no power to impose a condition that a particular year model should be covered by the Permit It was also contended that when the Certificate of Registration for a Transport Vehicle was valid for 15 years and when the vehicle was certified as roadworthy, there was no prohibition for allowing such vehicle to cover the permit irrespective of the fact that the vehicle was of a old model. On behalf of the Department, it was contended that the R.T.A, was required to safeguard the interest of the public generally and in order la ensure and safeguard the interest of the public, it was necessary for them to impose a condition that the permit should be covered by the latest model vehicle. Considering these conditions, this Court after referring to the earlier Decisions of this Court held as follows:

'Thus it is now fairly settled that irrespective of the fact that no rule is framed under Section 48(3)(xxiii) of the Act, it is still open to the RTA or STA as the case may be, to impose a condition regarding the model of the vehicle while granting or renewing the permit or granting variation of conditions of the permit.'

8. The Principles laid down in the aforesaid Decisions rendered under the Motor Vehicles Act, 1939, are equally applicable to grant of Stage Carriage permits under Section 72(2) of the [Motor Vehicles Act, 1988](#). It is significant that in regard to stage carriage permits, the RTA is given the discretion to specify the description of the vehicle, instead of the description being specified by framing Rules or the issue of a Notification by the Government. The reason is not far to seek, in regard to stage carriage permits, different descriptions may be necessary for different routes, having regard to the road conditions, climatic conditions, volume of traffic, length of journey and other factors having a bearing on passenger safety and comfort. Such specifications being in the interest of public, it has to be held that prescription of the year or model of vehicle for being used as a stage carriage, is reasonable and valid. To recall the words of Krishna Iyer, J in this context in Subhash Chandra's case;

'The short question is whether the prescription that the bus shall be atleast a seven year old model is relevant to the condition of the vehicle and its passenger's comparative safety and comfort on our chaotic high-ways. Obviously it is. The older the model, the less the chances of the latest safety measures being built into the vehicle. Every new model incorporates new devices to reduce danger and promote comfort. Every new model assures its age to be young, fresh and strong, less likely to suffer sudden failures and breakages, less susceptible to wear and tear and mental fatigue leading to unexpected collapse. When we buy a car or any other machine why do we look for the latest model? Vintage vehicles are good for centenarian display of the curious and cannot but be mobile menaces on our notoriously neglected highways. We have no hesitation to hold from the point of view of the human rights of road users, that the condition regarding the model of the permitted bus is within jurisdiction, and not to prescribe such safety clauses in abdication of statutory duty.'

9. The learned Counsel for the petitioner next contended that the Scheme of the new Act is to liberalise grant of permits to private operators and that the several restrictions in regard to grant of permits found in the old Act, no longer exist. But it should not be forgotten that the liberalisation of grant of stage carriage permits is intended to increase passenger comfort and convenience and not to risk

passenger safety or reduce road safety standards, pollution control measures and standards of transportation of passengers.

10. He lastly contended that a new provision has been introduced in the 1988 Act regarding fixation of age limit of motor vehicles and that the earlier Act did not contain a similar provision. He referred to Section 59 of the Act, the relevant portion of which is extracted below:

'59. POWER TO FIX THE AGE UNIT 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,'

He contended that under the said Section, the Central Government has been given the power and authority to specify the life of a motor vehicle having regard to the public safety, convenience and objects of the Act and unless the Central Government exercises such power by issuing a notification under Section 59 fixing the age limit, it has to be deemed that there is no age limit in regard to the vehicle to be used to cover a particular permit, so long as the vehicles held a fitness certificate granted under Section 56 of the Act. He also contended that as the power to fix the age is vested with the Central Government under Section 59, the B.T.A. did not have power under Section 72(2) to prescribe any age limit in regard to vehicles to be covered by permits.

11. Section 72 dealing with grant of Stage Carriage Permits, is a part of Chapter V dealing with control of Transport vehicles. Specifying the description of stage carriage vehicles and imposing conditions relating to grant of permits for stage carriages are matters relating to control of Transport vehicles falling under Chapter V. But Section 59 providing for prescription of maximum age of vehicle is a part of

Chapter IV which deals with Registration of Motor Vehicles. They are distinct and separate subjects.

12. Section 39 in Chapter (V deals with the necessity for registration of Motor Vehicles, Section 66 in Chapter V deals with the necessity for permits for Motor Vehicles, There is a difference between obtaining registration of a motor vehicle and obtaining a permit to use a vehicle as a Transport vehicle. Registration of a motor vehicle under Section 39 is a mandatory requirement in regard to all motor vehicles, whereas, obtaining a permit under Section 68 is obligatory only for vehicles intended to be used as transport vehicles, It is therefore not possible to contend that compliance with the conditions prescribed for obtaining a registration of a vehicle, is also sufficient to obtain a permit. Even if a vehicle has fulfilled all conditions for obtaining a registration certificate, it does not follow that the owner of such vehicle will be entitled to a permit. Unless the conditions prescribed in the relevant provisions of Chapter V are fulfilled, the owner of a registered vehicle will not be entitled to get a permit, it is in this background that Section 59 in Chapter IV of the Act has to be examined.

13. Section 59 provides that the Central Government may, having regard to the public safety, convenience and objects of the Act, 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 the Act. Thus, Section 59 enables the Central Government to fix the life of a motor vehicle for the purpose of issue of Certificate of Registration under Section 39 or a fitness certificate under Section 56. That is, if the Central Government fixes the age limit of a Motor Vehicle, under Section 59, after expiry of the said period, the vehicle will not be eligible to have a registration certificate at all. This has nothing to with the issue of permit under Section 72 nor related to the power that is given to the State Government to frame any rules in regard to grant of stage carriage permits or the power of the RTA to specify the description or attach any conditions relating to grant of stage carriage permit under Section 72(2). Prescription of age limit under Section 59 cannot relax the conditions regarding the issue of permit for stage carriage to a vehicle of 'Specified description' under Section 72(2). For example, let us assume that the Central Government specifies the 'life' of a Motor

Vehicle as 25 years, by a notification. That does not mean the RTA is bound to accept a Motor Vehicle which is 24 years old, for covering a Stage Carriage permit. Different conditions may be prescribed for different types of transport vehicles, that is for stage carriages, contract carriages and goods carriages. Different age limits may be prescribed for different types of transport vehicles, either by the Rules framed by the State Government or the conditions attached or stipulated by the RTA. Section 59 contemplates prescription of the 'life', that is 'maximum age limit' for purpose of registration under Section 39 of the Act. That is, after expiry of the 'life' that may be specified under Section 59, the vehicle will not be deemed to comply with the requirement of the Act or Rules and will not be eligible for registration. Section 59 does not deal with fixation of age or requirement of a particular model vehicle, for the purpose of grant of permits. That is done under Section 72 or 74 as the case may be.

14. The contentions of the learned Counsel for the petitioner that Rule 82 of the Central Rules is framed in pursuance of the power conferred under Section 59, that as the said Rule prescribes age limit only for tourist vehicles and does not prescribe any age limit for stage carriages and as long as the vehicle holds a valid Registration Certificate and Fitness Certificate, it is entitled to be used as a stage carriage is fallacious. Rule 82 is found in the Chapter relating to control of Transport Vehicles and not Chapter III of the Central Rules dealing with Registration of Motor Vehicles. Rule 82 is not a Notification specifying the life of a Motor vehicle. This can be demonstrated by an illustration. Let us consider a motor cab, which is 8 years old. No tourist permit can be granted in respect of it, having regard to the bar contained in Rule 82(2)(a). Even if a tourist permit had been granted before it was two years old, it will become invalid on the expiry of five years under Rule 82(2)(b). But the Motor Cab can nevertheless be used as a non-tourist private Motor Vehicle until the expiry of the age limit that may be prescribed under Section 59.

15. The Decision in Sudhakar Shetty's Case is of no assistance to the petitioner as it was rendered without reference to the Decision of the Supreme Court in Subhash Chandra's case and the earlier Decisions of this Court in Sheriff's case and Balakrishna Rai's case and without reference to the express power under

Section 72(2). The relevant portion of the order in Sudhakar Shetty's case, start with the words 'I am not placed with any other provision under which the Regional Transport Authority may insist upon a particular model of vehicle to be used under the Permit.'

16. In these circumstances, I hold that the requirement relating to prescription of the age is valid. The State Government may however consider framing of necessary Rules under Section 72(2) or prescription of conditions under Section 72(2)(xxiv) regarding age of vehicle to avoid complaints of arbitrariness and to have uniformity.

17. As the decision of the RTA was rendered nearly a year ago, the order of the Tribunal requires to be modified as follows:

The Appellant shall be granted a permit subject to the same being covered by a 1985 years Model or later year vehicle. If the Vehicle becomes more than 10 years old, the permit holder shall replace it with a less than 10 year old vehicle subject to satisfaction regarding roadworthiness, adequate amenities to passengers and soundness of engine. On the request of the petitioner and the special circumstances pleaded by the petitioner nine months time is granted to the petitioner to comply with the order to cover the permit with a 1985 Model Vehicle.

Subject to the said modification, this Petition fails and is accordingly rejected.

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