

A. Rafeek Vs. Union of India and Others

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Court : Andhra Pradesh

Decided On : Nov-21-1991

Reported in : AIR1992AP331; 1992(1)ALT260

Judge : P.L. Narasimha Sarma, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 53, 58, 81, 83, 87 and 88(8); Central Motor Vehicles Rules - Rules 6, 88 and 88(2); [Constitution of India](#) - Articles 14 and 19(1); [Motor Vehicles Act, 1939](#) - Sections 63(10)

Appeal No. : W.P. No. 15059 of 1991

Appellant : A. Rafeek

Respondent : Union of India and Others

Advocate for Def. : D. Vijaya Kumar, The Govt. Pleader for Transport

Advocate for Pet/Ap. : Noushad Ali, Adv.

Judgement :

ORDER

1. This writ petition was filed to declare the provisions of Rule 88 of the Central Motor Vehicles Rules as ultra vires of the provisions of S.81 of the Motor Vehicles Act and also as unconstitutional being violative of Arts. 14 and 19(1)(g) of the [Constitution of India](#).

2. The petitioner is the owner of goods vehicle bearing registration No. APJ-9066. The vehicle was registered on 19-11-1982. National permit was granted under S. 63(10) of the Motor Vehicles Act 1939 (Act 4 of 1939) valid from 18-5-1987 to 17-5-1992. It is stated that the present authorisation is also valid up to 31-3-1992 for which period the tax was paid by the petitioner. In the meanwhile, Motor Vehicles Act 59 of 1988 came into force with effect from 1-7-1989. The National permit is governed by Rule 6 of the Rules made under the old Act 4 of 1939 (hereinafter referred to as 'old Act') i.e., National Permit Rules, 1975. The validity of the permit and the duration as well as eligibility of the vehicle for obtaining National Permit was governed by S. 53 of the old Act. Rule 6 made thereunder prescribes the age of the vehicle for being eligible to obtain permit. In the corresponding new Act, the relevant section and the Rules are S.81 and Rule 88. Section 81 is the corresponding section in the new Act for S.58 of the old Act, while Rule 88 is the corresponding Rule for Rule 6 of the old Act with a slight variation with which we are concerned in this writ petition. The writ petitioner is questioning the Rule 88 as ultra vires of S.81 of the New Act. The relevant Rule as well as S.81 in so far as they are relevant for the purpose of this writ petition are extracted below.

'Section 81. Duration and renewal of permits:-- (1) A permit other than atemporary permit issued under S. 87 or a special permit issued under sub-sec. (8) of S. 88 shall be effective without renewal for a period of five years;

Provided.....

(2) A permit may be renewed on an application made not less than fifteen days before the date of its expiry.

Rule 88 :-- Age of motor vehicle for the purpose of National Permit :--

(1) No National Permit shall be granted in respect of a goods carriage which is more than nine years old at any point of time.

(2) A National Permit shall be deemed to be invalid from the date the vehicle covered by the permit completes nine years from the date of the initial registration.....'

The petitioner submits that sub-rule (2) of Rule 88 which creates a deeming invalidation of the permit of a goods carriage after the completion of nine years period from the date the said vehicle was registered, is bad. The contention is that a goods carriage for which national permit was granted for a period of five years, completes the maximum age of nine years, the vehicle may not ply under the said permit after the maximum period of nine years, but the permit cannot be deemed to be invalid after the expiration of the period nine years. It is open to the permit holder to replace the said vehicle and ply the said replaced vehicle under the permit till the expiration of the period for which national permit was issued. In other words, the contention is that the life of the vehicle and the life of the permit are not conterminuous. If the vehicle is not eligible to run under the said permit beyond a particular period, the petitioner is entitled to replace the vehicle and run the replaced vehicle for the balance of the period for which the national permit was issued. Sub-rule (2) of Rule 88 which says that the national permit is deemed to be invalid on the expiry of the eligible age of the vehicle, covered by the permit, is bad.

3. On the other hand, the learned Government Pleader contended that the real meaning and content of sub-rule (2) of Rule 88 is that the particular vehicle which is covered by the permit, when it completes nine years from the date of its initial registration, that permit will be deemed to be invalid so far as that vehicle is concerned. It is open to the petitioner to replace the said vehicle which completed nine years of age from the date of initial registration by another vehicle which is eligible to obtain the national permit and run the vehicle for the unexpired portion covered by the said permit.

4. In a judgment in *Radhey Shyam Sharma v. Regional Transport Authority, Kothgodem*, : AIR1991 All158 a Division Bench of the Allahabad High Court considered the validity of rule 88 and held that the object of Clause (2) of Rule 88 is to enforce the model condition of nine years provided for by Cl. (1) and the same was issued for protecting the public. The learned Judges clearly mentioned that the national permit cannot remain valid after the vehicle completes nine years unless it is replaced by another vehicle of less than nine years old. In fact, S.83 of the new Act enables the holder of a permit, with the permission of the authority, for

which the permit was granted, to replace any vehicle covered by the permit by another vehicle of the same nature. Therefore, replacement of a vehicle covered by the national permit is also contemplated under the provisions of the new Act. The purport of the rule read with relevant sections viz., Ss.81 and 83 is that they treat the vehicle and the permit as separate. For a vehicle to run under national permit its age should not cross nine years, while the national permit can be granted for a period of five years at a time and renewal also is for five years at a time. If the permit as originally granted or renewed goes beyond the age of the vehicle, according to rule as I understand it, that national permit is deemed to be invalid so far as that vehicle is concerned. That does not mean that the petitioner is not entitled to replace that vehicle and run another vehicle of the same nature with the same permit for the unexpired period of the permit. The intention of the legislature is expressed in the Sections as well as the rule as mentioned above. If they are so construed, the rule is not violative of the section as contended by the learned counsel for the petitioner. The judgment referred to supra (1) dealt with this aspect, though the said matter arose under the provisions of the old Act and the rules made thereunder. In view of the judgment referred to above, it is open to the petitioner to replace his vehicle bearing Registration No. APJ 9066 by another goods vehicle which is eligible to run under the national permit issued to the petitioner till its period expires i.e. till 17-5-92. It is always open to him to seek for renewal and it is for the authorities to dispose of the same in accordance with law. In view of the fact that the national permit issued for the present vehicle which is deemed to have become invalid, in respect of the said vehicle, the petitioner has to replace it by another vehicle. Naturally some time is required for the same. Taking into consideration the above aspects, I deem it just and proper to allow three months' time to the petitioner to run the present vehicle APJ-9066 on the strength of the existing national permit. This order passed in view of the fact that my learned brother P. Venkatarama Reddy J passed a similar order in W.P. Nos. 1368 and 13622 dt. 23-10-91. The learned Judge dismissed these writ petitions filed for similar reliefs and granted time as mentioned above.

5. The writ petition is accordingly disposed of. No costs.

6. Order accordingly

