

Satya Dev Sood and ors. Vs. State of H.P. and ors.

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Court : Himachal Pradesh

Decided On : Apr-19-1993

Reported in : AIR1994HP17

Judge : Devinder Gupta and; Lokeshwar Singh Panta, JJ.

Acts : [Motor Vehicles Act, 1939](#) - Section 38; ;[Motor Vehicles \(Amendment\) Act, 1988](#) - Section 56; ;Punjab Motor Vehicles Rules, 1940 - Rule 3.12

Appeal No. : C.W.P. No. 237 of 1984

Appellant : Satya Dev Sood and ors.

Respondent : State of H.P. and ors.

Advocate for Def. : G.D. Verma, Addl. A.G.

Advocate for Pet/Ap. : Trilok Chauhan,; Chhabil Dass and; A.K. Goel, Advs.

Disposition : Petition allowed

Judgement :

Devinder Gupta, J.

1. Petitioners have questioned the legality and validity of Memorandum (Annexure PB) dated 18th April, 1984 issued by the Commissioner Transport, Himachal Pradesh, Shimla.

2. Petitioners, the petty transporters are owning and possessing public carrier trucks having national permits. For purchase of their vehicles they had obtained loan from various financial institutions namely Nationalised or non-Nationalised Banks, Himachal Pradesh Financial Corporation etc. It is their case that respondent No. 2 on 18th April, 1984 issued a Memorandum, purporting to insist upon the production of no objection certificate from financial institutions at the time of issuance/renewal of certificate of fitness. This requirement, according to petitioners is not in consonance with the provisions of law and the same is under challenge being ultra vires and unconstitutional.

3. Writ petition is contested by respondents. Reply has been filed on the affidavit of Secretary State Transport Authority, wherein it has been stated that requisite instructions have been issued by the Commissioner, insisting upon the production of no objection certificate from the financing institutions, at the time of issuing a fitness certificate, in view of the provisions of Rule 3.12 of the Punjab Motor Vehicles Rules, 1940, which are applicable in the instant case. It has also been stated that Section 38 of the [Motor Vehicles Act, 1939](#) and the Rules framed thereunder deal with the manner, for issuance of fitness certificate or renewal thereof. Board of Inspection consists of Registering and Licencing Authority of the Area and the Motor Vehicles Inspector (Technical) of the Transport department with its member. Period of validity of this certificate of fitness in Himachal Pradesh is six months whereafter the same has to be got renewed for further period. Since the Registering and licencing Authorities in Himachal Pradesh are also Assessing Authorities under the Himachal Pradesh Motor Vehicles Taxation Act, 1972, while presiding over the Board of Inspection, they have the right to ensure the clearance of Government dues and taxes. Vehicle is produced before the Board of Inspection for issuance of or renewal of road fitness certificate and since the Licencing Authorities have to ensure payment of Government dues, therefore, at the time of issue or renewal of fitness certificate they are within their right to ensure the payment of Government dues by the owners of the vehicles and for the same reasons they are also within their rights to insist upon the payment of dues of the financing institutions. In order to safeguard the public fund, it is necessary to ensure prompt recovery of the dues.

4. We have heard the learned counsel for the parties and gone through the record.
5. When the writ petition was preferred, Motor Vehicle Act, 1939 (hereinafter referred to as the old Act) was in operation, which has since been repealed and substituted by Motor Vehicles Act, 1988, Act No. 59 of 1988 (hereinafter referred to as the Act).
6. Section 38 of the old Act, corresponding to Section 56 of the Act is the relevant provision for issuance of certificate of fitness for transport vehicles. Section 38 provided the maximum validity period of a certificate of fitness of two years with a minimum of 6 months with periodical renewal thereof.
7. Section 56 of the Act says that transport vehicle shall not be deemed to be validly registered for the purposes of Section 39 unless it carries a certificate of fitness in such form, containing such particulars and information as may be prescribed by the Central Government. Certificate of registration is to remain effective for such period as may be prescribed by the Central Government. Rule 62 of the Motor Vehicle Rules 1989, (hereinafter referred to as the Rules) deal with the validity of certificate of fitness and says that the same shall be in form 38 and when granted or renewed will be valid for periods, as specified therein, namely for new transport vehicle for two years. For other vehicles, different periods have been specified.
8. The stand of the respondents has been that relevant instructions were issued in consonance with the provision of Rule 3.12 of the Punjab Motor Vehicles Rules, 1940 as applicable to the Himachal Pradesh, which authorises the Board of Inspection either to issue and renew the certificate of fitness or refuse to issue or renew such a certificate. Since there is power to refuse the issuance or renewal, it is within the competence of respondents to have issued the requisite instructions to insist upon the production of no objection certificate even at the time of renewal. Neither in Section 56 nor in Rule 62 and even not in, Rule 3.12 of the Punjab Motor Vehicles Rules, 1940 we are in a position to find out such a requirement of production of no objection certificate from the financing institutions at the time of either issuance of fitness certificate or renewal thereof.

9. Rule 3.12 of the Punjab Motor Vehicles Rules, 1940 is in the following words:

'3.12. Procedure of Board of Inspection.

(1) A Board of Inspection before which vehicle is produced for the issue or renewal of a certificate of fitness may-

(a) issue a certificate of fitness or renew the former certificate in respect of vehicle.

(b) defer a decision regarding the issue or renewal of a certificate of fitness pending the rectification of certain defects; or

(c) refuse to issue a certificate or renew the former certificate.

10. If the course described at (b) is followed, the Board of Inspection shall supply the owner of the vehicle or his agent with a list of the defect requiring correction in Form C.F.X., and pending the carrying out of the repairs shall suspend and impound any certificate of fitness previously in force in respect of the vehicle. In completing Form C.F.X. the Board of Inspection shall note the conditions under which it shall be permissible for the vehicle to be used pending the grant or renewal of the certificate. These conditions shall in no case permit the use of the vehicle for the conveyance of passengers for hire or reward or for the carriage of goods other than goods carried in connection with the repairing of the vehicle.

(2) If a Board of Inspection defers its decision under Clause (b) in the preceding sub-rule and supplies the owner of the vehicle or his agent with a list of defect in Form C.F.X. and if thereafter the vehicle is not produced for further examination within a period of two months (or longer period as may have been specified by the Board of Inspection in the Form CFX) the certificate of fitness if it has already expired, shall be deemed to be cancelled with effect from the date when it was suspended.

(3) In issuing or renewing a certificate of fitness the Board of Inspection shall endorse thereon the period for which the certificate shall remain effective and the date, time and place appointed for the next inspection of the vehicle.

(4) The fee for the grant of renewal of a heavy motor vehicle and a light motor vehicle shall be fifty rupees and thirty rupees, respectively.'

11. The requirement of production of no objection certificate from a financier is to be found only in Section 51 of the Act (Section 31A of the old Act) at the time when application for registration of a motor vehicle, which is held under hire-purchase lease or hypothecation agreement is made. A certificate is required to be produced at the time of registration of such a motor vehicle. As such production of such no objection certificate can be insisted upon by the authorities not only at the time of issuance of certificate of registration but also at the time of renewal of the certificate of registration.

12. Certificate of fitness, which is required to be issued under Section 56 of the Act is not the certificate of registration. Both the certificates are not issued by the same authority. Certificate of fitness of a transport vehicle is required, to be issued by a Board of Inspection, which as per requirement of Rule 3.12 of Punjab Motor Vehicles Rules, 1940 is enjoined with a duty to inspect the vehicle and find out defect(s), if any. Board of Inspection is then required to supply to the owner of the vehicle or his agent with list of defects, if any, requiring corrections thereof in form CFX and pending the carrying out of the repairs either to suspend or impound any certificate of fitness. Issuance of such certificate can be deferred by the Board of Inspection, if the defects are found still persisting or the same are not removed within a specified period. A certificate of fitness cannot be refused for the reason that no objection certificate has not been produced from the financier or in not having cleared financial liability, since such a requirement is not one of the requirements of law. May be, under the Motor Vehicles (National Permits) Rules, 1975 such a certificate is required to be produced at the time of issuance of permit or its renewal but at the time when vehicle is to be certified as fit for being plied on road, as per requirement of Section 56 or for renewal of such a certificate such production of no objection certificate cannot be insisted upon.

13. The reasons which prevailed with the respondent No. 2 while issuing instructions, Annexure PB are apparent in the Memorandum itself which says:--

'Rule 3.12 of the Punjab Motor Vehicles Rules, 1940, as applicable in Himachal Pradesh deals with the procedure of Board of Inspection in so far as issue of fitness certificate or renewal thereof is concerned.

Clause (c) of the aforesaid rule reads--'refuse to issue certificate or renew the former certificate'. This provision of the rules empowers the Board of Inspection either to refuse or to issue or renew the certificate of fitness. These provisions- of the rules are required to be adhered to in the same spirit in which these were laid and while refusing to issue a certificate or renew the former certificate, the Board of Inspection taking other things into consideration, was to take into consideration that the vehicles which have been produced before the Board of inspection have paid due token tax, passenger/goods tax wherever applicable and also whether such vehicles as are held under hire purchase agreement or hypothecated with the financial institutions have obtained 'No Objection Certificate' from such institutions and failure to satisfy the Board of Inspection for the aforesaid requirements, shall be a sufficient cause to refuse to issue the certificate of fitness or renew the former certificate.'

14. Reading of above quoted portion would show that respondent No. 2 thought that when power is vested in the Board of Inspection even to refuse the issuance of certificate or renewal of the former certificate, it might be within its competence to issue further direction requiring the owner of a vehicle to produce 'no objection' certificate from the financing institutions. It was for this reason that it directed that the Board of Inspection should be satisfied that all dues have been cleared off. Payment or nonpayment of dues of a financier would not be a relevant factor to be examined at the time when a decision has to be taken by the Board that whether vehicle is or is not fit for being plied on the roads. In the absence of any statutory power in this behalf, we find that respondent No. 2 exceeded its authority and jurisdiction while issuing instruction Annexure PB in insisting upon the owners of vehicles as are held under hire purchase agreement or hypothecated with financing institutions to produce no objection certificate at the time of issuance or renewal of certificate of fitness.

15. Consequently, the writ petition is allowed. Memorandum (Annexure PB) to the extent aforementioned is quashed and set aside leaving the parties to bear their respective costs.

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