

Mahraj UddIn and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : May-26-2011

Reported in : 2011AIR(All)151;

Judge : Ashok Bhushan & Ran Vijai Singh

Appeal No. : WRIT A. No. 26114 of 2011

Appellant : Mahraj UddIn and Others

Respondent : State of U.P. and Others

Advocate for Pet/Ap. : Shri. S.N.Jaiswal

Judgement :

Ashok Bhushan, J.

Heard Shri S.N.Jaiswal, learned counsel for the petitioner and Shri S.P. Kesarwani, learned Additional Chief Standing Counsel for the respondents.

By this writ petition, petitioners have prayed for a writ of mandamus directing the respondent no.2, Regional Transport Officer, Meerut to permit the petitioners to ply their vehicles (Three Wheeler) upto the age of 20 years.

Counter and rejoinder affidavit have been exchanged between the parties.

Brief facts of the case as emerge from the pleading of the parties are:

The petitioners are owners of three wheeler vehicles who are plying their vehicles within the municipal limits of Meerut. The petitioners have been granted permit by the Regional Transport Officer, Meerut in accordance with the provisions of the Motor Vehicles Act, 1988 (hereinafter called the "Act 1988"). Petitioners' vehicles are almost 5 years old. The Regional Transport Officer, Meerut has put a remark on the permit issued to the petitioners that if the vehicles are more than 5 years old, the vehicles should be replaced by new model, which is within 5 years, otherwise the permit granted to them could be treated as cancelled automatically. The model condition of the three wheeler vehicles has been fixed as 5 years by the order of the State Transport Authority, Lucknow (hereinafter called the "S.T.A."). Prior to the order of the S.T.A. dated 23/2/2010, the maximum age of vehicles of auto rickshaw (Three Wheeler) in the city area was fixed as 7 years. The STA in its meeting dated 23/2/2010, took a decision in exercise of power under Section 68(4) of the Act, 1988 prescribing different age of the vehicles. The present writ petition has been filed by the owners of Auto Rickshaw (Three Wheelers). According to the decision of the STA dated 23/2/2010, tempo-taxi and auto rickshaw with regard to Meerut and certain other metropolitan cities the age of the vehicles has been fixed as 5 years, looking to the air pollution created by them.

The petitioners' case in the writ petition is that the decision of the STA dated 23/2/2010, was challenged before the State Transport Appellate Tribunal, (hereinafter called the "Tribunal") by certain vehicle owners by way of revision where the Tribunal passed a final order on 08/12/2010, in Revision no. 40/2010, Rajesh Yadav Vs. The State Transport Authority, U.P. Lucknow Through its Chairman/Secretary and Anr. and other connected revisions. The revisions were allowed and the orders impugned were set-aside and the age limitation for stage carriage buses plying on various routes, single storied vehicles were fixed as 20 years, for non-C.N.G. city buses 15 years, and for C.N.G. city buses 12 years. Relying on the said judgment of the Tribunal dated 08/12/2010, the petitioners claim that the age of their three wheelers be fixed as 20 years. Following prayers have been made in the writ petition by the petitioners:

"(i) to issue a writ, order or direction, in the nature of mandamus directing the respondent no.2, Regional Transport Officer, Meerut to permit the petitioners to ply their vehicles (Three Wheeler) upto the age of 20 years.

(ii) or to issue any other and further order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case.

(iii) to award cost of the writ petition to the petitioners."

Short Counter Affidavit has been filed by the respondents in which reliance has been placed on the directions issued by the STA dated 05/3/2010, issued on the basis of the resolution dated 23/2/2010.

Rejoinder affidavit has been filed by the petitioners, where the copy of the judgement of the Tribunal dated 08/12/2010 in Revision No.40/2010, as well as the order of this Court dated 27/1/2011 passed in Writ Petition No.62045/2010, Smt. Usha Sharma Vs. State of U.P. and Ors, has been brought on the record as Annexures 2 and 3 to the Rejoinder Affidavit.

We have heard learned counsel for the parties and have perused the record.

Shri S.N.Jaiswal, learned counsel for the petitioners in support of the writ petition submits that the decision of the STA dated 23/2/2010, having been set-aside by the Tribunal, the petitioners are entitled to ply their vehicles up to 20 years and the model condition put in the petitioners permit by which it was endorsed that the vehicles shall be changed after 5 years, failing which it shall be treated to be cancelled be set-aside is unjustified. Reliance has been placed on the orders of this Court passed in Writ Petition No.22378/2010 decided on 10/5/2007 and Writ Petition No.14050/2010 decided on 18/3/2010 wherein both the Division Benches of this Court disposed of the writ petitions with certain directions.

Shri S.P. Kesarwani, learned Additional Chief Standing Counsel appearing for the respondents has relied on the circular dated 05/3/2010, issued by the STA prescribing various age for all categories of vehicles including three wheelers. He submits that for non-C.N.G. vehicles i.e. tempo and auto rickshaw, maximum age has been fixed as 5 years with regard to the metropolitan cities, and for other cities

for non-C.N.G. vehicles age has been fixed as 8 years and for C.N.G. vehicles i.e. tempo and auto rickshaw in rural area the age has been fixed as 10 years.

Shri S.P. Kesarwani, learned Additional Chief Standing Counsel appearing for the respondents has however, not disputed that the order of the STA has been set-aside by the Tribunal vide judgment and order dated 08/12/2010, in revision.

The first issue which is to be considered is as to whether the Regional Transport Authority, (hereinafter called the "R.T.A") while granting permits can impose model condition for grant of permit i.e. fixing of age of the vehicles. Section 68(4) of the Act, 1988 is relevant in this context. Section 68 (3) and (4) of the Act, 1988 which are relevant in the present case are quoted below:

"68.Transport Authorities-

(1)

(2).....

(3) The State Transport Authority and every Regional Transport Authority shall give effect to any directions issued under section 67 and the State Transport Authority shall, subject to such directions and save as otherwise provided by or under this Act, exercise and discharge throughout the State the following powers and functions, namely :-

(a) to co-ordinate and regulate the activities and policies of the Regional Transport Authorities, if any, of the State ;

(b) to perform the duties of a Regional Transport Authority where there is no such Authority and, if it thinks fit or if so required by a Regional Transport Authority, to perform those duties in respect of any route common to two or more regions;

(c) to settle all disputes and decide all matters on which differences of opinion arise between Regional Transport Authorities;

[(ca) Government to formulate routes for plying stage carriages; and]

(d) to discharge such other functions as may be prescribed.

(4) For the purpose of exercising and discharging the powers and functions specified in sub-section (3), a State Transport Authority may, subject to such conditions as may be prescribed, issue directions to any Regional Transport Authority, and the Regional Transport Authority shall, in the discharge of its functions under this Act, give effect to and be guided by such directions."

Under Section 68 (3) of the Act, 1988, the STA subject to the directions issued by the State Government under Section 67 shall exercise and discharge throughout the State the functions and powers as enumerated in sub-section 3. One of the functions provided in sub-section 3 is to co-ordinate and regulate the activities and policies of the R.T. A.

The question as to whether model condition for grant of permit can be laid down by the STA came up for consideration before the Division Bench of this Court in 1995 AWC 890, Smt. Munni Devi Vs. Regional Transport Authority, Meerut and Ors. In the aforesaid case, the R.T.A., Meerut while granting permit has put a condition that not more than 10 years old vehicles be provided. The said condition was challenged by means of writ petition by stage carriage permit holders. It was held by the Division Bench that the STA can issue direction regarding fixation of age of vehicles. Even grant of permit by the R.T.A of the vehicle owners having 10 years old vehicles was upheld. Following was laid down in para 6 which is quoted below:

"6.State Transport Authority, Lucknow (hereinafter referred to as S.T.A.) has fixed the model condition of twenty years for vehicles to be placed under stage carriage permits with the result that an operator is entitled to ply a vehicle which is not more than twenty years old. S.T.A. has also, in this connection, issued direction on 9.3.1993 under sub-section (4) of Section 68, to all the R.T.A.s. in this State requiring them to impose only twenty years model condition for plain routes and ten years model condition for hill routes. These directions have been issued by the S.T.A. in view of the difference of opinion on the question of model condition between the R.T.As. in this State. There is no dispute that S.T.A. can issue such a direction. Direction issued by S.T.A. under the above provisions is binding on the

R.T.A. which is to "give effect to and be guided by such directions". R.T.A. while granting permits by the impugned resolution has referred to the aforesaid directions of S.T.A. and was conscious of the fact of fixation twenty years model condition by it and, therefore, it has not fixed any model condition contrary to that fixed by S.T.A. What it has done is that it has granted permits to persons holding vehicles of not more than ten years old. Fixing the model condition and granting permits to better models are two different things. By model condition, the maximum period upto which a vehicle can be used as a stage carriage under a permit is fixed. Without transgressing the model condition, it is always open to the transport authorities to grant permits to those applicants who have vehicles of better model. Such a condition is in the interest of travelling public. The order of the R.T.A. thus is not contrary to the direction issued by the S.T.A."

The judgment of the Apex Court in AIR 1980 SC 800, Subhash Chandra and Ors. Vs. State of U.P. and Ors, had occasion to consider a condition in Section 51(2) (x) of the Motor Vehicles Act, 1939 to the effect that vehicle should not be more than seven years of age from the date of registration during the validity of permit. The above provision was challenged. The Apex Court upheld the said condition. Following was laid down in paragraph 4 which is quoted below:

"4. Section 51(2) (x) authorises the impost of any condition, of course, having a nexus with the statutory purpose. It is undeniable that human safety is one such purpose. The State's neglect in this area of policing public transport is deplorable but when it does act by prescribing a condition the court cannot be persuaded into little legalism and harmful negativism. The short question is whether the prescription that the bus shall be at a seven-year old model one is relevant to the condition of the vehicle and its passengers' comparative safety and comfort on our chaotic highways. 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 curios 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 is abdication of statutory duty."

Another Division Bench judgment of this Court in AIR 1991 All 158, Radhey Shyam Sharma Vs. Regional Transport Authority, Kathgodam, Nainital, had occasion to consider Rule 88 of Central Motor Vehicles Rules, 1989 which provided that motor vehicle covered under permit should not be more than 9 years old with regard to national permit. The model condition on the basis of the aforesaid rule was challenged and came up for consideration before the Division Bench of this Court in a writ petition. The Division Bench upheld the vires of the rules and also the condition. Following was laid down in paragraph 22 which is quoted below:

"22. In view of the reports mentioned above and for the reasons given in the counter-affidavit, Government was fully justified in fixing the age/model condition of nine years of vehicles for use under national permit and it cannot be said that there was no reasons or material with the Government for framing the impugned rules. In fact from the perusal of the aforesaid reports and the reasons given in the counter-affidavit of the Government, we are satisfied that the Government was fully justified in fixing the age limit of nine years of a vehicle for operation under national permit."

The copy of the circular dated 05/3/2010, issued by the STA on the basis of the resolution dated 23/2/2010, issued in exercise of power under Section 68(4) of the Act, 1988 has been brought on record as Annexure SCA-1.

A perusal of the aforesaid circular dated 05/3/2010 clearly indicates that the STA noticed the earlier period fixed with regard to various categories of vehicles including the mini bus, school bus, city bus and auto rickshaw in different districts including District Meerut. It was noticed that non-C.N.G. vehicles are creating serious air pollution and keeping in view the traffic problem, it is necessary to fix the age of the vehicles for safety and benefit of the general public.

In the present case, we are concerned with the three wheelers only. It is useful to notice that in Meerut and in other metropolitan cities for non-C.N.G.vehicles (three wheelers) 5 years period had been fixed and for C.N.G. vehicles 7 years period has been fixed, and in districts other than metropolitan cities, C.N.G. vehicles ten years has been fixed and for non-C.N.G. vehicles 8 years has been fixed.

From the judgements as noticed above, it is clear that the STA had full jurisdiction to fix the age of vehicles to be plied under the permits. Learned counsel for the petitioners have placed reliance on the Division Bench judgements of this Court in Writ Petition Nos.22378/2007 decided on 10/5/2007, and 14050/2010 decided on 18/3/2010. It is useful to quote the judgment dated 10/5/2007 passed in Writ Petition No.22378/2007 which is to the following effect:

"After hearing learned counsel for the petitioner Shri S.N. Jaiswal and Shri C.K. Rai, learned Standing Counsel we dispose of this writ petition in terms of the judgement and order of this Court dated 15.10.2003 passed in Civil Misc. Writ Petition No.46190 of 2003 (Ram Prakash and Anr Vs. State of U.P. and Ors) wherein this Court had issued the following directions:

"The Secretary, Regional Transport Authority respondent no.2 shall issue permit to the petitioners after verifying the fact that the petitioners have vehicles which are roadworthy and fit in condition. He will also ensure that the vehicles which are owned by the petitioners are of the model which is within the period of 20 years."

A perusal of the aforesaid judgment clearly indicates that the said judgment was given on the basis of earlier judgment and order of this Court dated 15/10/2003, passed in Writ Petition No.46190/2003, Ram Prakash and Anr Vs. State of U.P. and Ors.

Obviously, the decision under challenge in Ram Prakash's case (supra) was a decision of STA prior to 15/10/2003, and the judgements relied by the petitioners counsel were on the basis of the judgment of the Division Bench in Writ Petition 46190/2003 which has no relevance with regard to the subsequent decision of STA taken on 23/2/2010.If the age of the vehicle can be prescribed by the STA under the provisions of the Act, 1988, which has been answered as Yes by the

Division Benches of this Court as noticed above, there is no lack of jurisdiction in the STA in fixing the age of vehicle by its resolution dated 23/2/2010. Thus, the Division Bench judgement of this Court dated 10/5/2007 passed in Writ Petition No.22378/2007 relying on the earlier Division Bench judgment of this Court in the case of Ram Prakash (supra) is no longer applicable in view of the subsequent decision and resolution of the STA taken 23/2/2010.

Now comes the judgment of the Tribunal which has been heavily relied by the learned counsel for the petitioners in Revision No.40/2010 Rajesh Yadav (supra) decided on 08/12/2010, copy of which has been filed as Annexure- 2 to the Rejoinder Affidavit. It is useful to note para 3 of the judgment which noticed that the challenge made in the revision was by the vehicle owners having stage carriage permit plying buses. From the perusal of para 3 of the aforesaid judgment, it is clear that types of vehicles whose owners had come up in the revision were city bus stage carriage both C.N.G and non-C.N.G. The Tribunal also relied on the judgment of Prakash Sharma (supra) in Writ Petition No.46190/2003. It is useful to quote paragraphs 3 and 4 as well as the operative portion of the judgment dated 08/12/2010 passed by the Tribunal.

"3. Before me the types of vehicles whose owners come up in revisions for city bus stage carriage, the age limit for single storied vehicles before 23.2.2010 was 20 years and for Non C.N.G. city bus was 15 years and for C.N.G. city bus was 12 year. The Hon'ble High Court's order dated 09.4.2010 passed in writ petition-A No.19461 of 2010 Sri Guru Ram Public School through Principal Vs. State of U.P. and others has been cited wherein relying on the order dated 5.10.2003 passed in Civil Misc. Writ Petition No.46190 of 2003 Ram Prakash and another Vs. State of U.P. and others, the Hon'ble High Court has laid down as follows:

"The respondent no.3 shall issue permit to the petitioner after verifying the fact that the petitioner has a vehicle which is roadworthy and fit in condition. He will also ensure that the vehicle which is owned by the petitioner is of the model which is within the period of 20 years".

4. Above mentioned order of the Hon'ble High Court is applicable to the revisions before me. Therefore, it is hereby directed that the age limit for the stage

carriages; single stored vehicles shall be 20 years and for non-C.N.G. city bus shall be 15 years and for C.N.G. city bus shall be 12 years as existed before 23.2.2010 with this observation all the revisions are disposed of.

.....

ORDER

Revisions are allowed. Impugned orders are set aside. It is hereby directed that the age limit for the stage carriage plying on various routes: single storied vehicles shall be 20 years and for non-C.N.G. city bus shall be 15 years and for C.N.G. city bus shall be 12 years as existed before 23.2.2010. However, the age limit for C.N.G. vehicles in Ghaziabad shall be 15 years.

Record received from the lower authorities be sent back to their offices.

A copy of this judgment be kept on the record of each of Revisions Nos.21/2010 to 41/2010, 43/2010 to 64/2010, 69/2010, 99/2010, 100/2010, 104/2010,107/2010 to 158/2010,175/2010 to 177/2010 and 199/2010 and the original judgment be retained on the record of Revision No.20/2010.

Sd/-illegible

8.12.10

(Suresh Kumar Srivastava)

Chairman"

Thus, before the Tribunal, the city bus owners both CNG and non-CNG had challenged the decision of the STA and from the operative portion of the judgment, it is clear that the direction was issued fixing age limit for single storied vehicle and for non-C.N.G. vehicles city bus 15 years and for CNG city bus 12 years as existed before 23/2/2010. The judgment of the Tribunal confines to single storied vehicles, non-CNG and CNG city buses and there is no consideration of cases of auto rickshaw/tempo nor any direction in the operative portion has been given by the Tribunal with regard to auto rickshaw/tempo. Thus, in the judgment of the

Tribunal dated 08/12/2010, there is no direction with regard to the fixing of age of auto rickshaw/Tempo and the said judgment can be relevant only to the extent of directions issued. However, there is one aspect of the matter which has been emphasised by the learned counsel for the petitioners which cannot be lost sight of that the Tribunal has set-aside the order of the STA and the consequence of which shall be that the entire order is to be treated as set-aside.

We are also of the view that treating the order of the STA to be set-aside for buses/mini buses and implementing the said decision with regard to auto rickshaw/tempo shall not be appropriate. We, however are constrained to observe that the Tribunal has passed the order heavily relying on the Division Bench judgment of this Court in Writ Petition No.46190/2003 decided on 05/10/2003, in Ram Prakash (supra) which directions were relevant at the time when there was no other decision of STA. When the STA has taken a subsequent decision giving appropriate reason, the judgment of the Division Bench of this Court in Writ Petition No.46190/2003 decided on 05/10/2003, in Ram Prakash (supra) cannot be read too far, nor the said judgment in anyway fetters the power of the STA to fix the age of the vehicles or put any model condition in the permit. It is to be noted that in this writ petition there is no challenge to the decision of S.T.A. dated 23/2/2010, thus the reliance on the said order by the counsel for the petitioners cannot be said to be misplaced. However, as observed above, the judgment of the STA dated 23/2/2010, as circulated by circular dated 05/3/2010, having been set-aside, it shall not be appropriate to rely on the same. In the circular dated 05/3/2010, the age of the vehicles as existed prior to 23/2/2010, has been mentioned in the tabular form which is part of the rejoinder affidavit as Annexure-1.

With regard to city Meerut, for urban areas the age of auto rickshaw was 7 years and the age of tempo/taxi for rural areas was 10 to 15 years prior to 23/2/2010. Thus, the age of auto rickshaw in the city of Meerut as was existing before 23/2/2010, has to be followed and applied treating the judgment passed by the S.T.A. dated 23/2/2010 to be set-aside by the Tribunal. We make it clear that age of vehicles existing prior to 23/2/2010 shall hold field till any other decision is taken by S.T.A. or order dated 08/10/2010 of the Tribunal is set-aside.

In view of the foregoing discussions and conclusions, we dispose of this writ petition with the following directions:

1. The S.T.A. is fully justified to put model condition regarding age of vehicles (including three wheeler).
2. The decision of the STA dated 23/2/2010, which is the basis for putting model condition in the petitioners permit that vehicles are to be changed after 5 years, having been set-aside, the period of 5 years in the model condition in the permits of the petitioners shall stand substituted by the period of 7 years which was prevalent prior to 23/2/2010.
3. The model condition in the petitioners vehicles (which are three wheelers) shall be read to the effect that the petitioners have to change their vehicles after 7 years, failing which their permits shall be treated to be automatically cancelled.
4. That the above directions shall continue till the STA takes any other decision fixing any other age of vehicles (three wheelers) in accordance with law.

The prayer of the petitioners that a direction be issued to the respondent no.2, Regional Transport Officer, Meerut to permit the petitioners to ply their three wheelers up to the age of 20 years, cannot be granted and is refused.

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