

AIR 1993 Raj 76 : (1992) 3 WLC 314 : (1992) 2 WLN 489

Rajasthan High Court

Case No: .C.S.A. No. 183/91

Regional Transport
Authority, Jodhpur

APPELLANT

Vs

Sita Ram

RESPONDENT

Date of Decision: Oct. 22, 1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 3 Rule 4(6)#Constitution of India, 1950 " Article 14, 165(2)#Evidence Act, 1872 " Section 114#General Clauses Act, 1897 " Section 24#High Court of Judicature for Rajasthan Rules, 1952 " Rule 134#Motor Vehicles Act, 1939 " Section 48(3)#Motor Vehicles Act, 1988 " Section 217, 72, 72(2), 81(4)#Rajasthan High Court Ordinance, 1949 " Section 18#Rajasthan Motor Vehicles Rules, 1990 " Rule 5.10

Citation: AIR 1993 Raj 76 : (1992) 3 WLC 314 : (1992) 2 WLN 489

Hon'ble Judges: Y.R. Meena, J; Milap Chandra Jain, J

Bench: Division Bench

Advocate: K.L. Jasmatia, A.A.G and L.S. Udawat, for the Appellant; R.N. Munshi, R.R. Vyas, B.L. Maheshwari and R.K. Purohit, for the Respondent

Final Decision: Allowed

Judgement

Milap Chandra Jain, J.

The abovenoted special appeal and the special appeals mentioned in the enclosed schedule are against the

common order dated February 7, 1991 and subsequent orders passed on different dates in other writ petitions on the basis of this common order.

This common order is reported as Chand Mal Vs. State Transport Appellate Tribunal, Rajasthan and Another, By this order, the learned single

Judge has held that the pre-emptory conditions including model condition of vehicles which are contrary to the provisions of the Motor Vehicles

Act, 1988 (hereinafter called "the New Act") and Rajasthan Motor Vehicles Rules, 1990 (hereinafter called the "New Rules") shall stand

automatically set aside.

2. Relevant facts may be summarised thus. Certain petitioner-respondents were existing operators and they applied for the renewal of their non-

temporary stage carriage permits under which they were plying their vehicles. Other petitioner-respondents applied for non-temporary stage

carriage permit for the first time after coming into force of the New Act. Existing permits were renewed and new permits were granted by the

Regional Transport Authorities imposing pre-emptory condition for replacing their vehicles by vehicles of prescribed model on or before certain

date failing which the grant/renewal of permits will automatically stand cancelled. Their revisions were dismissed by the State Transport Appellate

Tribunal. Thereafter, the petitioner-respondents filed the writ petitions challenging the imposition of said pre-emptory condition regarding the

model. After hearing the learned counsel for the parties, the learned single Judge held that the resolution No. 1/91 dated January 3, 1991 issued by

the State Transport Authority, Jaipur regarding the model condition was not published as required under the proviso of Clause (x) of Sub-section

(2) of Section 72 of the New Act and as such said condition could not be imposed before the expiry of two years of its publication and

accordingly allowed all the writ petitions by his impugned orders.

3. The learned Additional Advocate General, appearing for the appellants, in all the special appeals contended as follows:

(i) Prior to coming into force of the New Rules, Rule 84A existed in the Rajasthan Motor Vehicles Rules, 1951 (hereinafter called the "Old Rules")

dealing with the model conditions. Similarly, prior to the resolution No. 1/91 dated January 3, 1991, quoted in extenso in the impugned common

order of the learned single Judge Chand Mal Vs. State Transport Appellate Tribunal, Rajasthan and Another, , similar resolutions were earlier

passed regarding model conditions. The Old Rules continued after the coming into force of the New Act under the saving provisions contained in

Sub-section (2) of Section 217 of the New Act till the New Rules came into force on July 16, 1990. The previous resolutions/ orders passed by

the State Transport Authority under Rule 84A of the Old Rules regarding model condition also continued to exist after the coming into force of the

New Rules by virtue of the saving provisions contained in Sub-rule (2) of Rule 12.38 of the New Rules till the said resolution No. 1/91 dated

January 3, 1991 was passed. Neither Rule 84A of the Old Rules nor Rule 5.10 of the New Rules required/requires the publication of any such

order/resolution of State Transport Authority. He relied upon M/s. Gurcharan Singh Baldev Singh Vs. Yashwant Singh and others,

(ii) The learned single Judge has seriously erred to hold that Clause (x) of Sub-section (2) of Section 72 of the New Act relates to model condition

also. This clause deals with the type of vehicle and body condition and not with the model condition. He relied upon Subhash Chandra and Others

Vs. State of U.P. and Others, and Ishar Vs. State of Rajasthan and Others,

(iii) Chapter VII of the New Rules dealing with the construction, equipment and maintenance of the motor vehicles has no reference about model

or manufacturing date. Rule 7.26 of the New Rules specifically deals with the body construction and requires that the body of every public service

vehicle shall be soundly constructed to the satisfaction of the Regional Transport Authority and shall be securely fastened to the frame of the

vehicle. Rule 5.10 relating to the model condition appears in Chapter V dealing with the control of transport vehicles. Every type of vehicle

involves model. Type and model are not the same things. Section 58 of the New Act speaks of both i.e. make and model, showing that make and

model are two distinct matters. Model condition can be imposed while granting permit under second part of Sub-section (2) of Section 72 of the

New Act ""may grant the permit for a stage carriage of a specified description"" and description includes model as has been held in Subhash

Chandra and Others Vs. State of U.P. and Others, The last Clause (xxiv) of Sub-section (2) of Section 72 of the New Act provides that any other

condition which may be prescribed may be attached to the permit and under Rule 84A of the Old Rules and Rule 5.10 of the New Rules model

condition could/can be imposed.

4. In reply, it has been contended by the learned counsel for the petitioner-respondents as follows:

(i) All special appeals are not maintainable as the same have not been filed by an authorised person. The learned Additional Advocate General

who has filed the special appeals was neither authorised nor competent to file them. He could appear and argue a case but was not competent to

act by way of filing special appeals. Reliance was placed on Firm Mohanlal Ramchandra Vs. The Union of India (UOI), The State Transport

Authority who has passed the said resolution No. 1/91 dated January 3, 1992 regarding the model condition has not been impleaded as a party in

any special appeal and on this ground also special appeals are not maintainable.

(ii) Appellants are not aggrieved persons. On this ground also special appeals are not maintainable.

(iii) Renewal of a permit can be refused on any of the grounds specified in Sub-section (4) of Section 81 of the New Act and the model condition

is not one of the grounds enumerated therein. There is no provision in the New Act similar to Section 58(2) of the Old Act providing that an

application for renewal of a permit shall be treated as a fresh application for grant of permit and as such condition regarding model cannot be

imposed. Rules 2(2)(c), 88(1) and 92(2)(c) of the Central Motor Vehicles Rules, 1989 speak of age of vehicles.

(iv) No opportunity of hearing was given to the petitioners before imposing model condition while granting fresh permits/renewing the permits.

(v) It has been held by a Division Bench of this Court in its order dated September 16, 1989 given in Ghanshyam Sharma v. State of Rajasthan,

D.B. Civil Writ Petn. No. 2767/89 that Old Rules ceased to exist on coming into force of the New Act (with effect from July 1, 1989), the

previous orders/resolutions issued by the State Transport Authority regarding model conditions also ceased to exist, as such 10 such condition

could validly be imposed and this Court is bound with this decision. Reliance was placed on Mahadeolal Kanodia Vs. The Administrator-general of

West Bengal,

(vi) Section 48(3)(ix) of the Old Act and Section 72(2)(x) of the New Act deal/deals with the model condition and the resolutions; orders

passed/issued by the State Transport Authority regarding model condition could come into operation only on their publication and they had not

been published.

(vii) The Regional Transport Authority acts as a quasi judicial body while imposing conditions and cannot be directed to do so by a superior

authority.

5. The first question for consideration is whether the special appeals filed under the signatures of the then Additional Advocate General Shri J.P.

Joshi, Advocate are not maintainable. In all the special appeals, the Regional Transport Authority of a particular region is the appellant. In some of

the special appeals, State Transport Appellate Tribunal has also been impleaded as the one of the appellants. Reliance was placed by the learned

counsel for the petitioner on Firm Mohanlal Ramchandra Vs. The Union of India (UOI), . In this reported case, Shri Raj Narain. Assistant

Government Advocate filed the appeal for and on behalf of the Union of India. Admittedly, he was an advocate of the Government of Rajasthan

and not of the Union of India and as such the provisions of Order 3, Rule 4(6), C.P.C. (Rajasthan Amendment) were not held applicable. In the

instant case, it is not in dispute that Sim J.P. Joshi was then the Additional Advocate General of the Government of Rajasthan. He was

Government Pleader within the meaning of Section 2(7), C.P.C. Under Order 3, Rule 4(6), C.P.C., he was not required to present any document

empowering him to act. It has been held in *K.J. Antony v. State of Kerala* 1975 Ker LT 678, that it is not possible to make inference that An. 165

of the Constitution does not contemplate appointment of a second person as Additional Advocate General or Associate Advocate General as

such, Merely because the singular is used in Article 165 it may not be positively held in view of Section 13 of the General Clauses Act that any

second person could not be appointed as Additional Advocate General. Article 167 of the Constitution of India has made applicable the

provisions of General Clauses Act for interpreting the provisions of the Constitution of India. Article 165(2), Constitution of India states that ii

shall be the duty of the Advocate General to perform such other duties of a legal character, as may from time to time referred or assigned to him by

the Governor and to discharge the functions conferred on him by any other law for the time being in force. The Rajasthan Law and Judicial

Department Manual contains executive instructions issued by the Government of Rajasthan from time to time under Article 162 of the Constitution

of India in respect of Government litigation. Rule 7 of this Manual contains the duties of the Advocate General. It includes the duty to represent the

Government in the High Court in appeals against the judgment of any Judge of the Court exercising jurisdiction on the original side.

6. These special appeals have been filed u/s 18, Rajasthan High Court Ordinance, 1949 and Rule 134 of the Rules for High Court of Judicature

for Rajasthan. It may be presumed u/s 114, Evidence Act that Shri J.P. Joshi, the then Additional Advocate General, Rajasthan, was duly

authorised to file these special appeals. During his arguments, Shri L.S. Udawat, Additional Advocate General, submitted that by orders

No.F.1(367) Law (C-5)/91 dated 9-5-91 (in Writ Petition No. 4633/90 --Chandmal v. S.T.A.T. and 9 other cases), No.F.1(822) Law/C-5/91

dated 18-7-91 (in Writ Petition No. 1842/91-- Abdul Wahid v. State and 16 other cases), No.F.1(1096) L/C-5/91 dated 1-8-91 (in Writ

Petition No. 1533/ 91 -- Vipin Kumar v. State and 73 other writ petitions), No.F.1(108 8) L/C-5/91 dated 1-8-91 (in Writ Petition No.

2183/91 -- Kamal Chand v. State and No. 2184/91 -- Gani Mohd. v. State), No.F.1(190) Law/C-5/91 dated 3-1-92 (in Writ Petitions Nos.

6001/91, 6002/91 and 6192/91), No.F.1(175) Law/C-5/92 dated 26-3-92 (in Writ Petition No. 1032/92), No. F.1(170) Law, C-5/92/JDR

dated 20-3-92 (in Writ Petitions Nos. 733/92, 734/92, 178/92 and 2947/90), No.F.1(212) Law/C-5/92/JDR dated 7-4-92 (in Writ Petition No.

494/91), instructions were issued by the Government to the Additional Advocate General, Jodhpur for filing these special appeals and accordingly

they were filed.

7. It has been observed in the famous case of A.R. Antulay Vs. R.S. Nayak and Another, as follows :--

..... Lord Buckmaster in (1917) AC 170: AIR 1917 PC 142, stated :-- .

All rules of Court are nothing but provisions intended to secure proper administration of justice. It is, therefore, essential that they should be made

to serve and be subordinate to that purpose.

This Court in The State of Gujarat Vs. Ramprakash P. Puri and Others, reiterated the position by saying:--

Procedure is the hand maid and not the mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it,

like all rules of procedure, this rule demands a construction which promote this cause.

In Subhash Chandra and Others Vs. State of U.P. and Others, it has been observed that more lexical legalism cannot sterilise the sensible

humanism and the State's neglect in the area of policing public transport is deplorable but when it does act by prescribing a condition a Court

cannot be persuaded into little legalism and harmful negativism. In view of these facts, circumstances and authoritative observations, the special

appeals cannot be said to be not maintainable and thrown away on the aforesaid technical ground.

8. There is also no substance in the contention of the learned counsel for the petitioner-respondents that the special appeals filed by the Regional

Transport "Authorities are not maintainable as they were not aggrieved with the impugned orders. The very facts that they have filed special

appeals, they are seriously pursuing them and have engaged learned Additional Advocate General to show that they were and are aggrieved

persons. Section 18, Rajasthan High Court Ordinance does not say that a special appeal may be filed by an aggrieved person only. The Regional

Transport Authorities would naturally be aggrieved with the impugned orders as the model condition imposed by them while granting permits or

renewing them stood cancelled. They did so in the interest of travelling public and for public safety.

9. The second question for consideration is whether the Rajasthan Motor Vehicles Rules, 1951 (Old Rules) stood repealed on coming into force

of the Motor Vehicles Act, 1988 (New Act). Great stress has been led on the order given in Ghanshyam Sharma v. estate of Rajasthan D.B. Civil

Writ Petition No. 2767/89, by a Division Bench of this Court on 16-3-89/18-8-89. It would be best to quote it herein extenso. It runs as under:--

Shri R.R. Vyas for the petitioner.

Counsel for the. petitioner submits that Rule 84A is inconsistent with Section 72(x) Proviso of the Motor Vehicles Act, 1988 and so the said Rule

is not in force. This question can be agitated before the Single Bench and there is no question of seeking it to be declared null and void as the said

Rule ceases to be in force after coming into force of Motor Vehicles Act, 1988.

In view of the above position let the matter be placed before the Single Bench.

The submissions of the learned counsel for the petitioner-respondents have been that this Division Bench is bound to follow this decision and if it

disagrees with it, the matter has to be referred to the larger Bench as laid down in Mahadeolal Kanodia Vs. The Administrator-general of West

Bengal,

10. There is no great force in the above submissions of the learned counsel for the petitioner-respondents. It is clear from the above quoted order

that the attention of the learned Judges of the Bench who passed the above quoted order was not invited towards the provisions of either Section

217(2)(a), Motor Vehicles Act, 1988 or towards Section 24, General Clauses Act (Central Act No. X of 1897). It was also not argued before

the Division Bench that Rule 84-A, Motor Vehicles Rules, 1951 had ceased to be in force after coming into force of the Motor Vehicles Act,

1988. As a matter of fact, the submission of the learned counsel for the petitioner before that Bench was that the Rule 84-A, Motor Vehicles

Rules, 1951 was inconsistent with Section 72(2)(x), Motor Vehicles Act, 1988 and as such it was not in force. The Bench observed that this

question can be agitated before the Single Bench. There was no question of agitation before the Single Bench that Rule 84-A of the old Rules was

inconsistent with the provisions of Section 72(2)(x) of the New Act when the Division Bench itself had held that the Old Rules ceased to be in

force after coming into force of the New Act. It may also be mentioned here that there was no prayer for declaration in the said Writ Petition No.

2767/89 that the Rajasthan Motor Vehicles Rules, 1951 ceased to be in force on coming into force of the Motor Vehicles Act, 1988. Section

217(2)(a) of the New Act runs as under:--

(2) Notwithstanding the repeal by Sub-section (1) of the repealed enactments,--

(a) any notification, rule, regulation, order or notice issued, or any appointment or declaration made, or exemption granted, or any confiscation

made, or any penalty or fine imposed, any forfeiture cancellation or any other thing done, or any other action taken under the repealed enactments,

and in force immediately before such commencement shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been

issued, made, granted, done or taken under the corresponding provisions of this Act.

11. Section 24, General Clauses Act (Central Act No. X of 1897) runs as under :--

24. Continuation of orders, etc., issued under enactments repealed and re-enacted.--

Where any Central Act or Regulation is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it

is otherwise expressly provided, any appointment, notification, order, scheme, rule, form or by law, made or issued under the repealed Act or

Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued

under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule form or bye-law made or

issued under the provisions so re-enacted and when any Central Act or Regulation, which, by a notification u/s 5 or 5A of the Scheduled Districts

Act, 1874, or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from and re-extended to such

area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part

within the meaning of this Section.

It is clear from these provisions that the Rajasthan Motor Vehicles Rules, 1951 did not cease to be in force on coming into force of the Motor

Vehicles Act, 1988. Reference of The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc., and Neel alias Niranjana

Majumdar Vs. The State of West Bengal, may be made here.

12. It has been observed in Mamleshwar Prasad and Another Vs. Kanhaiya Lal (Dead) through L. Rs., as follows:--

Certainty of the law, consistency of rulings and comity of courts all flowering from the same principle, converge to the conclusion that a decision

once rendered must later bind like cases. We do not intend to detract from the rule that, in exceptional instances, where by obvious inadvertence or

oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may not

have the sway of binding precedents. It should be a glaring case, an obtrusive omission. No such situation presents itself here and we do not

embark on the principle of judgment per incuriam.

Reference of A.R. Antulay Vs. R.S. Nayak and Another, may also be made here. We have no hesitation to hold that the above quoted order was

given by the Division Bench per incuriam and we are not bound with it. We also hold that the Rajasthan Motor Vehicles Rules, 1951 did not cease

to be in force on the coming into force of the Motor Vehicles Act, 1988. These rules stood repealed only on coming into force of the Rajasthan

Motor Vehicles Rules, 1990 with effect from July 16, 1990.

13. Rule 12.38 of the New Rules runs as under:--

12.38. Repeals and Savings.-- On commencement of these rules, the Rajasthan Motor Vehicles Rules, 1951. The Rajasthan licencing Agent

engaged in the business of collecting, forwarding and distributing Goods carried by Public Carrier Rules, 1977, Rajasthan State Road Transport

Services (Development) Rules, 1965, Rajasthan State Road Transport Corporation, Motor Vehicle Third Party Liability Insurance Funds Rules,

1967, The Rajasthan Motor Accidents Claims Tribunal Rules, 1964, in force in any part of the State immediately before the commencement of

these rules shall stand repealed.

(2) Notwithstanding the repeal by Sub-section (1) of the Repealed Rules, any notification, regulation, order or notice issued or any appointment of

declaration made or exemption granted or any penalty or fine imposed, any forfeiture, cancellation or any other thing done or any other action

taken under the Repealed rules and in force immediately before such commencement shall so far as it is not inconsistent with the provisions of the

Motor Vehicles Act, 1988. Central Motor Vehicles Rules, 1989 and under these rules be deemed to have been issued made, granted done or

taken under the corresponding provisions of these rules.

Sub-rule (2) of the above quoted rule has saved the notifications/orders and resolutions issued under Rule 84-A, Rajasthan Motor Vehicles Rules,

1951 and which have reference in the resolution No. 1/91 dated January 3, 1991 of the State Transport Authority, Jaipur (quoted in extenso in the

impugned order of the learned single Judge Chand Mal Vs. State Transport Appellate Tribunal, Rajasthan and Another, The old resolution passed

under Rule 84A, Rajasthan Motor Vehicles Rules, 1951 continued in force till the said date i.e. January 3, 1991.

14. The next question for consideration is whether Clause (x) of Sub-section (2) of Section 72 of the Motor Vehicles Act, 1988 and Clause (ix) of

Sub-section (3) of Section 48 of the Motor Vehicles Act, 1939 were attracted while imposing model condition at the time of grant/renewal of

permit for the stage carriage. Clause (ix) of Section 48(3) of the Old Act and Clause (x) of Section 72(2) of the New Act are in pari materia.

Reliance has been placed on Masi Ullah Vs. State Tribunal Appellate and Another, and Bhagirathi Mohanty v. State AIR 1972 Ori 205 , by the

learned counsel for the petitioner-respondents in support of their contentions that these clauses were attracted. The learned Additional Advocate

General placed reliance on Subhash Chandra and Others Vs. State of U.P. and Others, and Sheelchand and Co. Vs. State Transport Appellate

Authority and Another, Clause (x) of Sub-section (2) of Section 72 of the New Act runs as under:--

(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 the date.

This clause speaks of types and body specifications of vehicles. The question is whether the model condition is included either in the type or in the

body specification of a vehicle. Section 10(2)(j) of the New Act speaks of specified description, Section 41(4) requires that the certification of

registration shall also specify the type of motor vehicle, Section 58 speaks of make and model. The Central Government has been empowered u/s

59 to fix the age limit of a motor vehicle from the date of its manufacture having regard to the public safety, convenience and object of the Act.

State Register of Motor Vehicles maintained u/s 63 contains particulars regarding the year of manufacture, class and type of vehicles. Applications

under Sections 70 73 and 76 for permits in respect of stage carriage, contract carriage and private service carriage require to mention the type and

sitting capacity of vehicles, Application for certificate of fitness is to be in the Form R.S.4.6 of the New Rules requiring to mention manufacturer's

model and type of vehicle. Form R.S.4.8 relating to the Inspection Report required before issuing fitness certificate mentions make and model of

the vehicle and type of body. Similarly, notice is given in Form R.S. 4.10 mentioning model and make of vehicle. Rule 7.26 deals with the body

construction. Rule 5.10 dealing with model condition appears in Chapter V relating to control of transport vehicles and Chapter VIII deals with

construction, equipment and maintenance of motor vehicles. Similarly, Form 23 relating to the Certificate of Fitness Form No. 42 relating to

application for registration under Central Motor Vehicles Rules, 1969 speak of maker's name, type of body, month and year of manufacture,

maker's classification and many other matters relating to vehicle. Chapter V of these Rules deals with construction, equipment and maintenance of

vehicles. All these provisions of the Act and Rules leave no manner of doubt that model condition is neither included in the type nor in the body

specifications of a vehicle. As such it cannot be said that the model condition can be imposed u/s 72(2)(x) of the New Act or could be imposed

u/s 48(3)(ix) of the Old Act.

15. It has been held in Subhash Chandra and Others Vs. State of U.P. and Others, , that the condition regarding the model could be imposed

under the last clause of Sub-section (2) of Section 51 of the old Act dealing with the grant of stage carriage permits. Clause (xxiv) of Sub-section

(2) of Section 72 of the New Act is in the same terms. It runs as under:--

(xxiv) other conditions which may be prescribed."" The Hon"ble Supreme Court further held that the words ""specified conditions"" appearing in

Section 48(3) of the Old Act (in pari materia to Section 72(2) of the New Act) includes the model condition and accordingly did not approve the

decision given in Masi Ullah v. State Tribunal Appellate AIR 1967 AH 128 . In Subhash Chandra and Others Vs. State of U.P. and Others, the

petitioner was a grantee of permit to ply mini-buses as contract carriage, in the grant a condition was fastened u/s 51 (2)(x) of the Old Act that the

Vehicles would not be 7 years" old, this was unsuccessfully challenged in the Allahabad High Court and it was also attacked before the Hon"ble

Supreme Court on the ground that this condition was ultra vires of Section 51(2) of the Old Act. Reliance was placed by the petitioner on Masi

Ullah Vs. State Tribunal Appellate and Another, and another similar decision of the same High Court. The Hon"ble Supreme Court dismissed the

SLP holding that such a condition could be imposed u/s 51(2)(x) of the Old Act ("any other condition which may be prescribed"). It further held

that the decision given in Masi Ullah v. State Tribunal Appellate AIR 1967 SC 128 holding that the words ""specified description"" appearing in

Section 48(3) of the Old Act did not include model condition, is not correct. It is thus clear that in Subhash Chandra and Others Vs. State of U.P.

and Others, , it has been held that--

(i) model condition could be imposed under the last Clause (x) of Sub-section (2) of Section 51 of the old Act i.e. any other conditions which may

be prescribed; and

(ii) the words ""specified description"" appearing in Section 48(3) of the old Act includes model condition.

As already observed above, Rule 84A existed in the Old Rules and Rule 5.10 exists in the New Rules regarding model condition. The words

specified description"" also appear in the main body of Sub-section (2) of Section 72 of the New Act. In Bhagirathi Mohanty Vs. State of Orissa

and Others, it was not the subject matter of dispute that model condition could not be imposed u/s 48(3)(ix) of the Old Act. In other words, it was

assumed that Clause (ix) of Sub-section (3) of Section 48 of the Old Act was applicable. In it, a resolution was passed for the replacement of 10

years' old running vehicle as by new vehicles while the permits/renewals had already been granted. As such the subsequent resolution was held to

be ultra vires of Section 48(3)(ix) of the Old Act.

16. It has been observed in Sheelchand and Co. Vs. State Transport Appellate Authority and Another, as follows at page 9 :--

But the Regional Transport Authority's power to make the grant of a permit for the service of a stage carriage conditional on the vehicle to be

used being a particular year of manufacture flows not from any of the clauses of Sub-section (3) of Section 48 enumerating the conditions that may

be attached but from the substantive provision of Sub-section (3) itself. That sub-section says that the Regional Transport Authority may grant a

permit for the service of stage carriages of a specified description. 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 of manufacture 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 counsel for the petitioner 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 vehicle or with vehicles which are not road-worthy. 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.

17. The learned single Judge has held that the condition regarding the model could be imposed after two years of the publication of the said

resolution No. 1/91 dated January 3, 1991 passed by the State Transport Authority as required under the proviso to Sub-clause (x) of Sub-

section (2) of Section 72 of the New Act. In view of the aforesaid discussion, it is clear that Clause (x) of Sub-section (2) of Section 72 of the

New Act is not attracted for imposing model-condition. It can be imposed either under the opening provisions of Sub-section (2) of Section 72 or

under clause (xxii) of Sub-section (2) of Section 72 of the New Act read with Rule 5.10 of the New Rules. Both these provisions do not require

prior publication of a resolution imposing model condition.

18. There is also no force in the contention of the learned counsel for the petitioner-respondents that the Regional Transport Authority acts as a

quasi-judicial body while imposing such a condition at the time of granting permit and as such a higher authority i.e. the State Transport Authority,

could not direct him to impose such a condition. Under the first clause of Sub-section (2) of Section 72 of the New Act (if decides to grant a stage

carriage permit), the Regional Transport Authority acts a quasi-judicial authority. After this decision, the grant of permit is his executive function.

The attachment of model condition with it comes under his executive duties. It has been observed in Sree Gajanana Motor Transport Co. Ltd. Vs.

The State of Karnataka and Others, as follows:--

In other words, the Regional Transport Authority has to act merely mechanically after considering matters on which it has to form an opinion and

take a decision quasi-judicially. We think that there is no scope for argument that there is any interference here with the quasi-judicial functions of

the Regional Transport Authority. The annexation of a condition like this is a part of the purely executive duties of the Regional Transport

Authority.

19. It is correct that there is no provision in the New Act similar to Section 58(2) of the Old Act providing that an application for renewal of a

permit shall be treated as a fresh application for grant of permit. This omission in the New Act is of no material consequence in view of other

provisions of the New Act and New Rules. Section 81 of the New Act deals with renewal of permits. Its Sub-section (2) provides that a permit

may be renewed on an application (in form R.S.20 of New Rules) made not less than 15 days before the date of its expiry. Rule 5.10 of the New

Rules clearly provides that a model condition may be attached at the time of renewal of a permit. In these cases, validity of Rule 84-A of the old

Rules and Rule 5.10 of the New Rules has not admittedly been challenged. Attaching a condition with a permit at the time of its renewal is not

refusal of renewal within the meaning of Sub-section (4) of Section 81 of the New Act. It has been held in Ram Chandra Palai and Others Vs. The

State of Orissa and Others, , that renewal is not a matter of right. It has been observed in V.C.K. Bus Service Ltd. Vs. The Regional Transport

Authority, Coimbatore, that grant of renewal is not a matter of course and it is open to the authorities to impose fresh condition at the time of

renewal. Thus there is no force in the contention of the learned counsel for the petitioner-respondents that at the time of renewal of permit no

condition regarding " model can be imposed.

20. It is not necessary to give an opportunity of hearing to an applicant before imposing model condition while granting fresh permit or renewing the

permit already granted. Neither Rule 84A of the old Rules nor Rule 5.10 of the New Rules required/ require that an opportunity of hearing should

be given. As already observed above, model condition is imposed in the interest of travelling public and also for public safety. Resolution No. 1/91

dated January 3, 1991 (quoted inextenso in Chand Mal Vs. State Transport Appellate Tribunal, Rajasthan and Another, of the State Transport

Authority requires a specific model condition for particular type of vehicles and for particular category of routes. The Regional Transport Authority

has no power to change the model condition. It is not the case of any petitioner-respondent that model condition was not imposed while granting

permit/renewal to any other applicant. As such there was no necessity to give an opportunity of hearing to the petitioner-respondents before

imposing model condition while granting permits renewing them. It has been observed in Union of India (UOI) Vs. Col. J.N. Sinha and Another, as

follows :--

Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in A.K.

Kraipak and Others Vs. Union of India (UOI) and Others, ""the aim of rules of natural justice is to secure justice or to put in negatively to prevent

miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but

supplement it."" It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because

it must be presumed that the legislature and the statutory authorities intend to act in accordance with the principles of natural justice. But, if on the

other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules of principles of natural

justice then the Courts cannot ignore the mandate of the legislature or the statutory authority and read into the concern provision the principles of

natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not

depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred

and the effect of the exercise of that power.

In view of the aforesaid discussions, it is very difficult to endorse the views of the learned single Judge. All the Special Appeals deserve to be

allowed.

21. Consequently, all the Special Appeals are allowed. The common order of the learned single Judge dated February 7, 1991 and subsequent

orders based on this order are set aside. The parties will bear their own costs in all the special appeals.