

(1992) 03 MP CK 0011

Madhya Pradesh High Court

Case No: M.P. No. 654 of 1992

Ikram Ahmad Gulabkhan

APPELLANT

Vs

Regional Transport Authority

RESPONDENT

Date of Decision: March 4, 1992

Acts Referred:

- Motor Vehicles Act, 1988 - Section 72(2)

Citation: (1992) 1 MPJR 435 : (1992) 37 MPLJ 593 : (1992) MPLJ 593

Hon'ble Judges: S.K. Seth, J; S.K. Chawla, J

Bench: Division Bench

Advocate: A.G. Dhande, for the Appellant; No appearance, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.K. Chawla, J.

The petitioner, who is a bus operator, challenges the validity of model condition attached to his regular stage carriage permit.

The petitioner, along with some other applicants, was granted regular stage carriage permit over route Tikamgarh-Nowgaon via Dhajarai, Baldeogarh, Khargapur, Palera, Kasoli, which is 91 km in length, vide order dated 19-4-1991 by R.T.A., Sagar (Annexure "A"). The R.T.A. in the said order imposed model condition that the permit holder shall operate the route by 1990 or a later model. It is this condition relating to model of the vehicle which is challenged in this writ petition. It is also averred that the petitioner has no alternative remedy since the Presiding Officer of S.T.A.T. has retired and the post is still lying vacant.

The main contention raised on behalf of the petitioner is that he has 1980 model bus by which he intends to operate the permit in question. The said bus is covered by fitness certificate. As such, imposition of model condition is illegal and not

supported by any statutory provision. It is further contended that imposition of model condition is by executive instructions, which cannot override statutory provision.

We find absolutely no merit in the contentions raised. It is too late in the day to contend that imposition of model condition is dehors any statutory provision. As back as in the year 1964, this Court while interpreting the words "stage carriage of a specified description" occurring in the main provision of sub-section (3) of Section 48 of the Motor Vehicles Act, 1939 had observed that the words "stage carriage of a specified description" were wide enough to give to the Regional Transport Authority power to attach to a permit a model condition, namely, that the service shall be run with a stage carriage of a particular year of manufacture. See Sheelchand and Co. Vs. State Transport Appellate Authority and Another. The above provision of Section 48(3) has been replaced by exactly similar provision of Section 72(2) of the Motor Vehicles Act, 1988. There is therefore no change in law and hence if imposition of model condition could be traced to statutory power under the old Act, as it could, it is traceable to statutory power even under the present Act.

The vires of the legal provision giving power to impose model condition came to be examined by the Apex Court of this country. It was held in Subhash Chandra and Others Vs. State of U.P. and Others, that the provision giving power to impose model condition has nexus with statutory purpose i.e. human safety. The following observations of their Lordships in the said decision are pertinent:

"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."

There is also no force in the further contention that because the vehicle of the petitioner by which he is operating the permit is covered by fitness certificate, imposition of model condition is unwarranted. The Supreme Court's decision in Subhash Chandra's case (supra) provides a complete answer to this contention. Their Lordships had observed :

"But we see no conflict between a vehicle being fit to ride and the condition, as an additional requirement and safety factor, in the shape of the year of the model. This is an extra measure, a further insurance against machine failure and cannot contradict the "fitness provision."

We find from the statement made in concluding paragraph of the impugned order (Annexure "A") that the petitioner had offered to ply such model of vehicle as might be fixed by the R.T.A. There is reason to suspect that the petitioner has purposely not filed copy of his application for grant of permit in question, in which the applicant has to describe the kind of vehicle he will operate if permit is granted. Any way, we have no reason to doubt the correctness of the aforesaid statement made by the R.T.A. in the impugned order. Having made that kind of offer and having

received the benefit in the shape of grant of regular stage carriage permit, it appears to us that it is now not open to the petitioner to turn round and make challenge to validity of model condition. The grant of regular stage carriage permit with model condition in this case was a package to the petitioner. The petitioner cannot justly be allowed to accept the permit part and challenge the part relating to model condition.

For the aforesaid reasons, in our opinion, there is absolutely no ground justifying any kind of interference with the impugned order in exercise of our powers under Articles 226/227 of the Constitution of India. The writ petition is summarily dismissed. LA. No. 1569/92 is rejected.