
Prince Tours and Travels and Others Vs State of Maharashtra and Others

Writ Petition No. 548 of 2010

Court: Bombay High Court (Nagpur Bench)

Date of Decision: June 15, 2010

Acts Referred:

Motor Vehicles Act, 1988 – Section 39, 40, 41, 43, 66

Citation: (2011) 3 BomCR 324

Hon'ble Judges: Chaudhari A.B., J; Bobde S.A., J

Bench: Division Bench

Advocate: Anand Parchure, for the Appellant; B.H. Dangre, A.G.P., for the Respondent

Final Decision: Dismissed

Judgement

Bobde S.A., J.

Heard. Rule. Rule returnable forthwith. Heard finally by consent of learned Counsel for the rival parties.

2. By this writ petition, the Petitioners are challenging the circular dated 30.5.2009, issued by the Transport Commissioner, directing that no

vehicle shall be registered without permit in the State.

3. The Petitioners, who are transport operators and have already purchased omnibuses, have approached this Court for setting aside the aforesaid

circular on the ground that registration is primary duty of the authorities under the Motor Vehicles Act, 1988, which cannot be made conditional

upon holding of permit.

4. Word "permit" is governed by the provisions under Chapter V of the Motor Vehicles Act and it includes permits of broad category such as the

use of vehicle as a transport vehicle vide Section 66, stage carriage permits vide Section 72, private service vehicle permit vide Section 76, goods

carriage permit vide Section 77 and temporary permits for special purposes i.e. for conveyance of passengers on special occasions such as to and

from fair and religious gatherings or seasonal business etc. We, therefore, find in the first instance that the circular which directs that no vehicle shall

be registered without permit is grossly vague and its intention cannot be discovered.

5. The learned Additional Government Pleader for Respondents, however, submitted that the Commissioner of Transport has by the impugned

circular insisted for permit before registration because a large number of buses are being used without a "State permit". What is, however,

important to see is whether the Respondents have any authority in them to refuse registration without insisting for State permit.

6. Section 39 of the Motor Vehicles Act, 1988 reads thus.

39. Necessity for registration. - No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be

driven in any public place or in any other place unless the vehicle is registered in accordance with this chapter and the certificate of registration of

the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner:

Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the

Central Government.

7. Sections 40 and 41 of the Motor Vehicles Act provide for registration and Section 43 provides for temporary registration of the vehicle. It

appears from a joint reading of the aforesaid sections that registration of vehicle is the primary duty of a owner of the vehicle and therefore, the law

imposes a corresponding duty on the authorities to grant such registration in accordance with the conditions stipulated by the Motor Vehicles Act.

We do not find any provision which permits the imposition of a condition to the effect that owner of the vehicle must have obtained any permit

before he applies for registration of the vehicle. It follows therefore that the Transport Commissioner is not entitled to impose any special condition

such as the requirement of obtaining a permit before registration of vehicle. It is well settled that sub-ordinate legislation, rules, regulations, circulars

can supplement the statutory provisions and the courts would also uphold the same. But the circular dated 30.5.2009 clearly supplants the

provisions of Motor Vehicles Act as discussed above. The Courts would not uphold such an attempt through Circular to supplant the express

provisions of Central Law. We may, however, make it-clear that in appropriate cases, temporary registration of the vehicle can be granted. We

find that in order to overcome practical difficulties, which may arise, the law provides for the temporary registration. However, registration per se is

something that cannot be denied on the condition upon obtaining of permit by vehicle owner. The registration of vehicle qua a person is must in

order to fix its responsibility for several purposes. Permits are intended for use for special purposes enumerated in the Motor Vehicles Act. In a

given case, the owner of the vehicle may intend to use his vehicle for special purpose such as transport etc., for which case, he must obtain permit.

It is equally possible that a vehicle may be stopped from being used for the special purpose. Throughout, however, registration of the vehicle is a

must and there is no alternative to it.

8. In the circumstances, we strike down the impugned circular dated 30.5.2009 and direct the Commissioner of Transport to consider applications

for registration of new vehicles in accordance with law.

Rule is made absolute in the above terms.