

(2018) 11 BOM CK 0007
In the Bombay High Court
Case No : Writ Petition No. 9605 Of 2018

Geekom Logistech Pvt. Ltd.	Vs	APPELLANT
State Of Maharashtra And Ors		RESPONDENT

Date of Decision : 02-11-2018

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 48, 56, 56(1), 56(2), 56(4)
Motor Vehicles Rules, 1989 — Rule 45, 45(1), 45(2), 45(3), 45(7), 45(6), 45(9), 62, 62(2)

Citation : (2018) 11 BOM CK 0007

Hon'ble Judges : B.R.Gavai, J; M.S.Karnik, J

Bench : Division Bench

Advocate : C.G.Gavnekar, Gautam Hiranandani, (i)?Suhas S.Deokar, Kavita N. Solunke

Final Decision : Allowed

Judgement

M.S.Karnik, J.

1. Rule. Rule is made returnable forthwith. Heard by consent.

2. By this Petition filed under Article 226 of the Constitution of India, the Petitioner has prayed for direction to the Respondent No.2 "Transport

Commissioners Office, Government of Maharashtra State and the Respondent No.3 "Regional Transport Officer, Pune to issue temporary

authorisation for removal of 49 motor vehicles as per Rule 45 (7) & (9) of Maharashtra Motor Vehicles Rules, 1989 (hereinafter 'Rules' for short) in

respect of which the certificate of fitness has been cancelled. The Petitioner has further prayed for appropriate directions to Respondents No. 2 & 3

to remove objection in respect of 49 transport vehicles from the computerised online system and to accept the dues towards taxes and consequently

issue No Objection Certificate as prescribed under Section 48 of the Motor Vehicles Act, 1988 (hereinafter referred to as the said Act for short).

The facts of the Petition in a nutshell are as under :

3. The Petitioner, a Company registered under the Companies Act, 1956 is primarily doing the business of transport of goods to various parts of India.

The Petitioner owns a fleet of transport vehicles out of which 172 are registered in Maharashtra State and rest are registered in Karnataka and

Tamilnadu. According to the Petitioner all transport vehicles have national permit. These vehicles were purchased by the Petitioner after obtaining

loan from Banks and the vehicles are hypothecated with the Banks.

4. A Public Interest Litigation No. 28 of 2013 came to be filed by a Public Interest Litigant bringing to the notice of this Court the lackadaisical attitude

of Respondent No.3 in issuing fitness certificate to the transport vehicles. Suffice it to observe that this Court while disposing of PIL by the judgment

and order dated 18/02/2016 issued various directions to the Respondents to effectively comply with the provisions of the Motor Vehicles Act and the

Rules framed thereunder while issuing fitness certificate to transport vehicles.

5. The Petitioner in the month of July 2017 applied to Respondent No.3 for issuance of the fitness certificate for 63 vehicles. Respondent No.3 issued

the fitness certificate for all 63 vehicles. Upon issuance of the said certificate, since vehicles are covered under national permit to transport goods, the

vehicles were deployed in different parts of India to transport goods.

6. In the meantime, PIL No. 28 of 2013 was listed for compliance of the directions issued by this Court. This Court was not satisfied with the manner

in which the fitness certificates were being issued and accordingly, further directions came to be issued. The fact about the fitness certificates being

issued by inspecting authority in respect of 63 transport vehicles owned by the Petitioner within a short span of 4 days was brought to the notice of this

Court in the said PIL. On 17/11/2017, the PIL was to be listed for directions. According to the Petitioner, the Respondents hurriedly, in a face saving

effort, immediately issued show cause notice on 13/11/2017 as to why 63 fitness certificates should not be cancelled. Even before the period

prescribed in the show cause notice was over, by the order dated 15/11/2017, the fitness certificate issued to all 63 transport vehicles were cancelled

by Respondent No.3 without examining /inspecting vehicles and without giving

any hearing to the Petitioner.

7. Learned Counsel pointed out that though there is an Appeal provided against the order cancelling the fitness certificate, the Petitioner chose not to

challenge the said order as they are confident that all 63 vehicles comply with all the requirements of the Act of 1988 and the rules made thereunder.

Learned Counsel for the Petitioner on instructions of the Petitioner pointed out that they are willing to submit their vehicles for necessary inspection

and tests as may be required for issuance / renewal of the fitness certificate.

8. Learned Counsel for the Petitioner pointed out that out of the 63 vehicles in respect of which the fitness certificate is cancelled, 15 vehicles were at

Pune and rest of the vehicles are at Hyderabad, Bangalore, Bhiwandi, Cochin, Krishnagiri etc. The Petitioner submits that after the order dated

15/11/2017 cancelling the fitness certificate was passed, all 63 vehicles came to a standstill and business of the Petitioner is crippled. He further

makes a grievance that 48 vehicles are at a standstill outside Maharashtra whereas one vehicle is in Bhiwandi. The Petitioner as a result of this is

suffering a huge monetary loss. Thereafter in respect of 15 vehicles which are at Pune, this Court by order dated 27/04/2018 in Writ Petition No. 4743

of 2018 directed the Respondents to consider the grant of fitness expeditiously.

9. It is the contention of the Petitioner that as they are incurring a huge loss, a decision was taken to sell some of the transport vehicles. By letter

dated 30/07/2018, the Petitioner requested Respondent No.3 to remove objection in respect of the vehicles which are outside the State of Maharashtra

and accept the vehicles tax and issue temporary fitness certificate and NOC. Insofar as 15 vehicles which are situated at Pune are concerned, they

have been issued with fitness certificate.

10. Learned Counsel for the Petitioner submits that the Respondent No.3 is empowered under the said Act and SubRule (7) & (9) of Rule 45 of the

Rules of 1989 to issue temporary authorization for removal of the motor vehicle when the certificate of fitness has been cancelled. In the submission

of the learned Counsel, temporary authorization can be granted subject to such condition which the Respondent No.3 may impose so as to enable the

Petitioner to ply the vehicle for subjecting the same for fitness tests in accordance with the provisions of the Act and Rules.

11. Learned AGP Ms.Kavita Solunke appearing on behalf of the Respondents No.1

to 3 opposes the Petition. She invited our attention to the affidavit in reply dated 25/09/2018 filed on behalf of Respondents. It is the stand of the Respondents that for valid reasons, the fitness certificate issued in respect of the vehicles came to be cancelled. According to the Respondents, the Petitioner has a remedy of filing Appeal against the order of cancellation of the fitness certificates. It is further pointed out that in respect of vehicles which are stationed in Pune, Respondent No.3 upon inspection has granted permission for renewal of certificate of fitness. It is the stand of the Respondents that as per amendment in Rule 62 of the Central Motor Vehicles Rules, 1989 vide Government Notification dated 28/11/2016, the Petitioner can renew the Certificate of Fitness in other State where he has kept the alleged vehicles. According to the Respondents, it is therefore not necessary to bring the vehicles back to Pune for renewal the fitness certificate.

12. Learned AGP submitted that there is no question of 8/21 granting temporary authorization by the Respondent No.3 for removal of motor vehicle when the certificate of fitness has been cancelled since vehicles are stationed outside the State of Maharashtra. In her submission as vehicles are not under the jurisdiction of Respondent No.3 and as they are stationed in different States, the question of issuing temporary authorization does not arise.

According to the learned AGP the remedy available to the Petitioner as per Central Government Notification dated 28/11/2016 is to obtain Form No.

38 (A) under Rule 62(2) of the Central Motor Vehicles Rules, 1989 from the office of other state RTO where the vehicles are stationary and submit

the report to the original registering authority. In her submission, even if the Petitioner wants the temporary authorization under Sub-Rule (7) & (9) of

Rule 45, the petitioner should get inspected the alleged vehicles by local RTO offices of that region or state and after making such report, the said

authority should send the report to the original registering authority for issuance of temporary authorization. Learned AGP invited our attention to the

letter dated 07/09/2018 by which all these facts are brought to the notice of the Petitioner.

13. Heard learned Counsel for the parties. At the outset we record that it is the specific stand of the learned Counsel for the Petitioner that he does

not intend to challenge the cancellation of the fitness certificate earlier granted.

In fact he is willing to submit his vehicles for such inspection and tests in accordance with the provisions of the said Act and Rules framed thereunder. The only request of the Petitioner is that since the vehicles are registered in the State of Maharashtra, the Petitioner may be granted temporary authorisation to bring the vehicles in the jurisdiction of Respondent No.3 so as to enable the Petitioner to renew the fitness certificate under Rule 45 of the Maharashtra Motor Vehicles Rules, 1989.

14. The Respondents in effect want the Petitioner to approach local RTO office within whose jurisdiction the vehicles are at a standstill for issuance of renewal of fitness certificate under Rule 62(2) of Central Motor Vehicles Rule and submit form No. 38(A) in the office of Respondent No.3.

15. To appreciate the controversy, it would be material to refer to some of the relevant provisions of the The Motor Vehicles Act, 1988 and the The Maharashtra Motor Vehicles Rules, 1989.

16. The certificate of fitness of transport vehicles is granted in terms of Section 56 of the Motor Vehicles Act, 1988. Sub-Section 1 of Section 56 of the said Act reads thus :

(1) Subject to the provisions of sections 59 and 60, a 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, issued by the prescribed authority, or by an authorized testing station mentioned in sub-Section (2), to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder: Provided that where the prescribed authority or the authorized testing station refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal.

17. It would also be relevant to refer to Sub-Section 4 of Section 56 which is the provision of cancellation of certificate of fitness. Sub-Section 4 of Section 56 reads thus :

(4) The prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and the rules made thereunder; and on such cancellation the certificate of

registration of the vehicle and any permit granted in respect of the vehicle under Chapter V shall be deemed to be suspended until a new certificate of fitness has been obtained.â??

18. Rule 45 of the Maharashtra Motor Vehicles Rules, 1989 provides for issue and renewal of certificate of fitness. Subâ?Rules 1, 2 & 3 of Rule 45

read thus :

â??(1) Certificate of fitness shall be issued or renewed by the officer of the Motor Vehicles Department not below the rank of an Inspector of Motor

Vehicles or an authorised testing station, specified by State Government under subsection(2) of Section 56 of the Act.

(2) An application for issue or renewal of certificate of fitness shall be made in Form C.F.A. of the First Schedule to these rules to the Officer or the

authorised testing station in whose jurisdiction the vehicle is normally kept.

(3) The officer of the Motor Vehicles Department or the authorised testing station by whom the certificate of fitness was last renewed may endorse

thereon the date, time and place appointed for the next inspection of the vehicle and the owner shall cause the vehicle to be produced accordingly

before the concerned authority or any authorised testing station located in the jurisdiction of the officer endorsing the certificate, as specified by the

State Government.â??

19. It would also be relevant to refer to Subâ?Rule 6 of Rule 45 which reads thus :

â??(6) If, owing to mechanical breakâ?down or other cause, a motor vehicle, after the expiry date of the certificate, remains outside the area in

which the officer of the Motor Vehicles Department by whom the certificate is to be renewed has jurisdiction, the officer of the Motor Vehicles

Department may, without prejudice to any penalty to which the owner or driver may have become liable, and if the vehicle in his opinion fit for use,

make an endorsement in Form C.F. of the First Schedule subject to such condition as he may specify and authorise its continued use for such time as

may reasonably be necessary for the vehicle to return to the area of said officer and the vehicle may be driven to such area in accordance with such

endorsement but shall not be used after return without renewal :

Provided that, no authorised testing station situated outside the area of jurisdiction in which the owner should have obtained the certificate of fitness,

shall issue such authorisation to any vehicle under this sub-rule.

20. We may also make a reference to Sub-Rules 7, 8, 9 & 10 of Section 45 which read thus :

(7) If a vehicle is damaged at any time so as to be unfit for ordinary use and may in the opinion of any Inspector of Motor Vehicles, be safely driven

at a reduced speed to a place of repairs, and if such Inspector is satisfied that it is necessary that the vehicle should be so driven, he may endorse in

Form C.F. of the First Schedule and specify the time, speed and other conditions if any, subject to which the vehicle may be driven to a specified

destination for the purposes of repairs.

(8) When a certificate of fitness has been issued by a prescribed authority then the Inspector of Motor Vehicles shall be the authority for the purposes

of cancellation of the certificate under sub-section (4) of Section 56 :

Provided that, the certificate of fitness issued by the authorised testing station shall not be cancelled under this sub-rule by an officer below the rank

of Assistant Regional Transport Officer :

Provided further that, the above proviso shall not apply to the vehicles involved in an accident.

(9) The authority mentioned in sub-rule (8) of this rule, cancelling the certificate of fitness shall give the owner or other person in charge of the

vehicle, a notice in Form C.F.C. of the First Schedule to these rules, and shall along with a report of his action forward the certificate of fitness,

certificate of registration and permit, if any, to the registering authority under whose direction and control he may be :

Provided that, if the certificate of fitness issued by the authorised testing station is to be cancelled, an officer not below the rank of Assistant Regional

Transport Officer shall send a copy of this notice to the authorised testing station by whom the certificate of fitness was issued.

After the authority has cancelled the certificate of fitness, such authority after making an endorsement of fitness, such authority after making an

endorsement in Form C.F.X. of the First Schedule to these rules, specify the time and the conditions subject to which the vehicle may be driven to a

specified destination for the purpose of repair.

(10) Nothing in sub-rule (8) shall debar the owner or the person in charge of the vehicle, the certificate of fitness of which has been cancelled from

applying at any time for the restoration of the certificate of fitness if the vehicle has been repaired in such a manner that the provisions of the Act and

the rules made thereunder are complied with. If such a vehicle is inspected and passed within fourteen days of the date of cancellation of the

certificate of fitness but before the date of expiry specified in such certificate, no restoration fee shall be charged. If, however, the vehicle is brought

for inspection at any later time, fresh certificate of fitness shall be required:

Provided that notwithstanding anything contained in this rule, the renewal fee in such a case shall be in addition to the usual fee as prescribed by the

Central Government chargeable for inspection.â??

21. We find that SubâRule 1 of Rule 45 provides for issuance of certificate of fitness by the officer of the Motor Vehicles Department not below the

rank of an Inspector of Motor Vehicles or an authorised testing station, specified by State Government under SubâSection (2) of Section 56 of the

Act. An application for issuance or renewal of certificate of fitness has to be made in Form C.F.A. of the First Schedule of Rules 1988 to the Officer

in whose jurisdiction the vehicle is normally kept.

22. Even in respect of a mechanical breakâdown or other cause, a motor vehicle, after the expiry date of the certificate, remains outside the area in

which the officer of the Motor Vehicles Department by whom the certificate is to be renewed has jurisdiction, the officer of the Motor Vehicles

Department subject to such condition as he may specify, authorise its continued use for such time as may reasonably be necessary for the vehicle to

return to the area of said officer and the vehicle may be driven to such area in accordance with such endorsement.

23. Even in respect of vehicle which is damaged at any time so as to be unfit for ordinary use, subject to such condition as the Inspector may specify

as to the time, speed and other conditions, the vehicle can be driven to a specified destination for the purposes of repairs.

24. The authority for the purpose of cancellation of fitness certificate which is issued under Section 4 of Section 56 is the Inspector of Motor Vehicles

who is the authority prescribed by SubâRule 8 of Rule 45 for the purposes of cancellation.

25. SubâRule 9 of Rule 45 is a provision which provides that when the authority has cancelled the certificate of fitness, such authority after making an

endorsement of fitness, specify the time and condition subject to which the vehicle may be driven to a specified destination for the purpose of repair.

In fact SubRule 10 of Rule 45 contemplates nothing in subrule (8) shall debar the owner or the person in charge of the vehicle, the certificate of

fitness of which has been cancelled, from applying at any time for the restoration of the certificate of fitness if the vehicle has been repaired in such a

manner that the provisions of the Act and the rules made thereunder are complied with.

26. It would also be material to make a reference to Chapter IV of the Maharashtra Motor Vehicles Rules, 1989 which provides for registration of the motor vehicles. Rule 42 provides for Registering Authority. In the Pune region, for the Districts of Pune and Solapur the Regional Transport Office, Pune is the Registering Authority.

27. In the present case, the certificates of fitness which were already granted to these 49 transport vehicles came to be cancelled by the Respondent

No.3. At the relevant time, the vehicles had fitness certificates and also had national permits. Upon the cancellation of the fitness certificates, these 49 vehicles came to a standstill in the States outside Maharashtra.

28. Reading of the provisions of Rule 45 of the said Rules of 1989 makes it clear that Respondent No.3 is very well empowered to issue temporary

authorisation for removal of motor vehicles when the certificate of fitness has been cancelled. Refusal on the part of the Respondent No.3 to issue

temporary authorisation on the ground that there exists some provision in the Central Act for getting the temporary authorisation from the other States

RTOs where vehicles are stationary is completely unsustainable.

29. In our opinion, when there exists a specific provision under the Maharashtra Motor Vehicles Rules, 1989 to issue temporary authorisation for

removal of motor vehicle when the certificate of fitness has been cancelled and if the Petitioner makes a request for issuance of such temporary

authorisation in view of SubRule (7) & (9) of (10) of Rule 45, the request has to be considered and temporary authorization ought to be granted

subject to such conditions that may be imposed by the Respondent No.3 for the vehicle to return to the area of the said officer for issue/renewal of the

certificate of fitness.

30. The Respondent No.3 is not justified in refusing to exercise the power vested

in him merely because there exists a provision for issuance of temporary authorisation in the Central Act which Petitioner can avail of. There is nothing to indicate that the Central Act bars the exercise of power under the Rules of 1989 from issuing temporary authorisation under the Rules in respect of a transport vehicle of which the fitness certificate is cancelled by the office of the Motor Vehicles Department by whom the certificate is to be renewed has jurisdiction. The Petition therefore deserves to be allowed. Hence, the following order.

O R D E R

- (i) The Petition is allowed in terms of prayer clause (a).
- (ii) Respondent No.3 is directed to issue the temporary authorisation within a period of 2 weeks from today subject to such conditions and restrictions as may be reasonable and necessary for the 49 transport vehicles which are subject matter of the present Petition to return to the area where the Respondent No.3 has jurisdiction so as to enable the Petitioner to process their applications for issuance of fitness certificates in accordance with law.
- (iii) Needless to mention that the issuance of temporary authorisation would be subject to the Petitioner complying with the conditions and restrictions imposed by Respondent No.3 while granting such authorisation.
- (iv) All other contentions are kept open.
- (v) Rule is partly made absolute with no order as to costs.