

(1990) 10 RAJ CK 0007
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1919 of 1990

Ishar	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 08-10-1990

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 88, 88(2)
Constitution of India, 1950 — Article 14, 19(1)
Motor Vehicles Act, 1988 — Section 56, 59, 69, 77, 80

Citation : AIR 1992 Raj 40 : (1990) WLN 108

Hon'ble Judges : B.R. Arora, J;A.K. Mathur, J

Bench : Division Bench

Advocate : R.N. Munshi, B.L. Maheshwari, R.R. Vyas and R.K. Purohit, for the Appellant; V.D. Vyas, G.D. Chhangani and G.R. Gora and J.P. Joshi, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Mathur, J.—This writ petition and the writ petitions mentioned in the schedule appended to this order involve common questions of law as such they are disposed of by this common order.

2. For the convenient disposal of all these writ petitions, the facts of Ishar v. State of Rajasthan and others (D. B. Civil Writ Petition No. 1919 of 1990) are taken into consideration:

The petitioner holds a national permit for public carrier granted by the respondents. The petitioner was granted authorisation on the national permit under the Motor Vehicles (National Permit) Rules 1975 (referred to hereinafter as "the Rules of 1975"). By this authorisation the petitioner is entitled to operate as a public carrier throughout the territory of India or in such contiguous States as authorised in the permit. The period of validity of the authorisation shall not exceed one year at a time. The permit holder can operate for minimum four States including the home State. But the Rules of 1975 were superseded and the

new rules came to be incorporated known as the Central Motor Vehicles Rules, 1989 (hereinafter referred to as "the Rules of 1989"). According to the provisions of these rules, the age of the vehicle is prescribed as 9 years.

3. The principal submission of the learned counsel for the petitioners is that Rule 88, which prescribes the life span of a vehicle, is ultra vires of Article 14 of the Constitution of India as well as the provisions of the Motor Vehicles Act, 1988 (hereinafter called "the Act of 1988").

4. In order to appreciate the arguments of the learned counsel, it will be relevant to reproduce here Rule 88 of the Rules of 1989. Rule 88 reads as under:--

"88. Age of motor vehicle for the purpose of national permit-- (1) No national permit shall be granted in respect of a goods carriage which is more than nine years old at any point of time.

(2) A national permit shall be deemed to be invalid from the date the vehicle covered by the permit completes nine years from the date of its initial registration.

Explanation-- For the purpose of this rule, the period of nine years shall be computed from the date of initial registration of the goods carriage concerned."

These Rules have been framed by the Central Government under the purported exercise of its powers under Sections 12, 27, 64, Sub-section (14) of Section 88, Sections 110, 137, 164 and 208 read with Section 211 of the Act of 1988.

5. Mr. Munshi, learned counsel for the petitioner submitted that Rule 88 suffers from non-application of mind and it is arbitrary, unreasonable and not consistent with Sections 88, 56, 59, 81 and 72. Learned counsel submitted that there is no rationale behind fixing the age limit of the motor vehicle. Learned counsel further submitted that these Rules are beyond the scope of the Act. Learned counsel submitted that there is no notification issued u/s 59 of the Act of 1988. As such the Rules are beyond the scope of the Act. In this connection, learned counsel has specially invited our attention to Sub-sections (12) and (14) of Section 88 of the Act of 1988, which came into force with effect from 1st July, 1989. S. 88 reads as under:

"88. Validation of permits for the outside region in which granted-- (1) Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned ;

Provided that a goods carriage permit, granted by the Regional Transport Authority of any one region, for any area in any other region or regions within the same State shall be valid in that area without the counter-signature of the

Regional Transport Authority of the other region or of each of the other regions concerned:

Provided further that where both the starting point and the terminal point of a route are situate within the same State, but part of such route lies in any other State and the length of such part does not exceed sixteen kilometres, the permit shall be valid in the other State in respect of that part of the route which is in that other State notwithstanding that such permit has not been countersigned by the State Transport Authority or the Regional Transport Authority of that other State:

Provided also that-

(a) where a motor vehicle covered by a permit granted in one State is to be used for the purposes of defence in any other State, such vehicle shall display a certificate, in such form, and issued by such Authority, as the Central Government may, by notification in the Official Gazette, specify, to the effect that the vehicle shall be used for the period specified therein exclusively for the purposes of defence; and

(b) any such permit shall be valid in that other State notwithstanding that such permit has not been countersigned by the State Transport Authority or the Regional Transport Authority of that other State.

(2) Notwithstanding anything contained in Sub-section (1), a permit or countersigned by a State Transport Authority shall be valid in the whole State or in such regions within the State as may be specified in the permit.

(3) A regional Transport Authority when countersigning the permit may attach to the permit any condition which it might have imposed if it had granted the permit and may likewise vary any condition attached to the permit by the authority by which the permit was granted.

(4) The provisions of this Chapter relating to the grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of countersignatures of permits:

Provided that it shall not be necessary to follow the procedure laid down in Section 80 for the grant of countersignatures of permits, where the permits granted in any one State are required to be countersigned by the State Transport Authority of another State or by the Regional Transport Authority concerned as a result of any agreement arrived at between the States after complying with the requirements of Sub-section (5).

(5) Every proposal to enter into an agreement between the States to fix the number of permits which is proposed to be granted or countersigned in respect of each route or area, shall be published by each of the State Governments concerned in the Official Gazette and in any one or more of the newspapers in regional language circulating in the area or route proposed to be covered by the

agreement together with a notice of the date before which representations in connection therewith may be submitted, and the date not being less than thirty days from the date of publication in the official Gazette, on which, and the authority by which, and the time and place at which the proposal and any representation received in connection therewith will be considered.

(6) Every agreement arrived at between the States shall, in so far as it relates to the grant of countersignature of permits, be published by each of the State Governments concerned in the Official Gazette and in any one or more of the newspapers in the regional language circulating in the area or route covered by the agreement and the State Transport Authority of the State and the Regional Transport Authority concerned shall give effect to it.

(7) Notwithstanding anything contained in Sub-section (1), a Regional Transport Authority of one region may issue a temporary permit u/s 87 to be valid in another region or State with the concurrence, given generally or for the particular occasion, of the Regional Transport Authority of that other region or of the State Transport Authority of that other State, as the case may be.

(8) Notwithstanding anything contained in Sub-section (1), but subject to any rules that may be made under this Act by the Central Government, the Regional Transport Authority of any one region or, as the case may be the State Transport Authority, may for the convenience of the public, grant a special permit in relation to a vehicle covered by a permit issued u/s 72 (including a reserve stage carriage) or u/s 74 or under Sub-section (9) of this section for carrying a passenger or passengers for hire or reward under a contract, express or implied, for the use of the vehicle as a whole without stopping to pick up or set down along the line of route passengers not included in the contract, and in every case where such special permit is granted, the Regional Transport Authority shall assign to the vehicle, for display thereon, a special distinguishing mark in the form and manner specified by the Central Government and such special permit shall be valid in any other region or State without the countersignature of the Regional Transport Authority of the other region or of the State Transport Authority of the other State, as the case may be.

(9) Notwithstanding anything contained in Sub-section (1) but subject to any rules that may be made by the Central Government under Sub-section (14) any State Transport Authority may, for the purpose of promoting tourism grant permits in respect of tourist vehicles valid for the whole of India, or in such contiguous States not being less than three in number including the State in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application and the provisions of Sections 73, 74, 80, 81, 82, 83, 84, 85, 86 and 89 shall, as far as may be, apply in relation to such permits.

(10) Without prejudice to the provisions of Section 74, the State Transport Authority shall, in considering an application for a permit under Sub-section (9),

have regard to the following matters, namely:--

(a) no such permit shall be issued-

(i) to an individual owner so as to exceed ten such valid permits in his own name,

(ii) to a company so as to exceed twenty such valid permits in its own name;

(b) the restriction under Clause (a) regarding the number of permits to be granted shall not apply to the Indian Tourism Development Corporation, State Tourism Development Corporations, State Tourism Departments or State Transport undertakings;

(c) in computing the number of permits for the purposes of Clause (a), the number of permits held by an applicant in the name of any other person and the permits held by any company of which such applicant is a director shall also be taken into account.

Explanation.-- For the purposes of this sub-section and Sub-section (13), "company" means a body corporate, and includes a firm or other association of individuals, and "director" in relation to a firm, means a partner in the firm.

(11) The following shall be conditions of every permit granted under Sub-section (9), namely:--

(i) every motor vehicle in respect of which such permit is granted shall conform to such description, requirement regarding the seating capacity, standards of comforts, amenities and other matters, as the Central Government may specify in this behalf;

(ii) every such motor vehicle shall be driven by a person having such qualifications and satisfying such conditions as may be specified by the Central Government; and

(iii) such other conditions as may be prescribed by the Central Government.

(12) Notwithstanding anything contained in Sub-section (1), but subject to the rules that may be made by the Central Government under Sub-section (14), the appropriate authority may, for the purpose of encouraging long distance inter-State Road Transport, grant in a State, national permits in respect of goods carriages and the provisions of Sections 69, 77, 81, 82, 83, 84, 85, 86 and 89 shall, as far may be apply to or in relation to the grant of national permits.

(13) The appropriate authority shall, in considering an application for a national permit, have regard to the following matters, namely:--

(a) no national permit shall be issued-

(i) to an individual owner so as to exceed five national permits in its own name;

(ii) to a company so as to exceed ten valid national permits in its own name;

(b) the restriction under Clause (a) regarding the number of permits to be issued shall not apply to the State Transport undertakings

(c) in computing the number of permits for the purposes of Clause (a) the number of permits held by an applicant in the name of any other person and the permits held by any company of which such applicant is a director shall also be taken into account.

(14) (a) The Central Government may make rules for carrying out the provisions of this section. (b) In particular, and without prejudice to the generality or the foregoing power, such rules may provide for all or any of the following matters, namely :--

(i) the authorisation fee payable for the issue of a permit referred to in Sub-sections (9) and (12).

(ii) the fixation of the weight the motor vehicle;

(iii) the distinguishing particulars or marks to be carried or exhibited in or on the motor vehicle;

(iv) the colour or colours in which the motor vehicles is to be painted;

(v) such other matters as the appropriate authority shall consider in granting a national permit.

Explanation. - - In this section,--

(a) "appropriate authority", in relation to a national permit means the authority which is authorised under this Act to grant a goods carriage permit;

(b) "authorisation fee" means the annual fee, not exceeding one thousand rupees, which may be charged by the appropriate authority of a State to enable a motor vehicle, covered by the permit referred to in Sub-sections (9) and (12) to be used in other States subject to the payment of taxes or fees, if any, levied by the States concerned;

(c) "national permit" means a permit granted by the appropriate authority to goods carriages to operate throughout the territory of India or in such contiguous States, not being less than four in number, including the State in which the permit is issued as may be specified in such permit in accordance with the those indicated in the application."

6. The first proviso to Sub-section (1) of Section 88 provides that a goods carriage permit granted by the Regional Transport Authority of any one region or for any area in any other region or regions within the same State shall be valid in that area without the counter-signature of the Regional Transport Authority of the other region or of each of the other regions concerned. Sub-section (12) lays down that notwithstanding anything contained in Sub-section (1) but, subject to the rules that may be made by the Central Government under Sub-section (14) the appropriate authority may, for the purpose of encouraging long distance inter-

State Road Transport, grant in a State, national permits in respect of goods carriages and the provisions of Sections 69, 77, 80, 81, 82, 83, 84, 85, 86 and 89 shall, as far as may be, apply to or in relation to the grant of national permits. Sub-section (14) of Section 88 further lays down that the Central Government may make rules for carrying out the provisions of this section. In the purported exercise of this power and in order to give effect to other provisions of the Act, the Central Government framed the Rules of 1989.

7. Mr. Munshi, learned counsel submitted that since the Central Government has framed the Rules under Sub-section (14) to give effect to this section and under Sub-section (1) of Section 88 the appropriate authority while granting permit has to give effect to these Rules as well as due regard to Sections 69, 77, 80, 81, 82, 83, 84, 85, 86 and 89 but there is no reference to Section 59 by which the Central Government can prescribe the age of vehicle. Learned counsel submitted that still an age has been prescribed under Rule 88. As such it is beyond the scope of this section.

8. The argument of the learned counsel is absolutely misconceived. Sub-section (12) of Section 88 lays down that the appropriate authority while granting national permit in order to encourage the long distance travel and they shall keep in view the rule framed by the Central Government under Sub-section (14) as well as given due regard to the provisions of Sections 69, 77, 80, 81, 82, 83, 84, 85, 86 and 89 at the time of granting the national permit. That means that it is the only requirement that the appropriate authority shall keep in view the rules framed under Sub-section (14) by the Central Government and give due regard to the aforesaid provisions. The appropriate authority in relation to national permits means the authority which is authorised under this Act to grant goods carriage permits. The national permit has been defined to mean a permit granted by an appropriate authority to goods carriage to operate throughout the territory of India or such contiguous State not being less than four in number. Therefore, it is the appropriate authority, which means Regional Transport Authority under the Act shall grant the national permit keeping in view the Rules framed by the Central Government and having regard to the provisions of Sections 69, 77, 80, 81, 82, 83, 84, 85, 86 and 89. It does not mean that since Section 59 is not mentioned in Sub-section (12), therefore, the Central Government cannot frame the rules fixing the age limit of the vehicle under the Rules framed under Sub-section (14) of Section 88. It does not circumscribe the power of the Central Government for framing the Rules under Sub-section (14) of Section 88. Sub-section (14) as quoted above clearly says that the Central Government may make the Rules for carrying out the provisions of this section. It will be wholly erroneous to read that the power of the Central Government is circumscribed with reference to the sections mentioned in Sub-section (12) of Section 88. Thus, the argument of the learned counsel that since Section 59 whereunder the age limit of the motor vehicle can be prescribed by the Government has not been mentioned in Sub-section (12), therefore, the Central Government cannot prescribe the life span under the Rules, is wholly misconceived. As a matter of

fact, the omission to mention Section 59 in Sub-section (12) of Section 88 is deliberate one as the appropriate authority has been left with no option but to comply with the Rules framed by the Central Government under Sub-section (14) of Section 88. Section 77 deals with the application for goods carriage permit. Section 78 deals with the consideration of application for goods carriage permit. Section 79 deals with the grant of goods carriage permit. Sub-section (2) of Section 79 says that if the Regional Transport Authority decides to grant a goods carriage permit then it may be so subject to any rules that may be made under this Act and attach to the permit any one or more conditions mentioned in Sub-section (2). That means while granting the permit the conditions which have been laid down by the Rules framed under the Act will be binding. Under Sub-section (14) of Section 88, the Central Government has framed the rules and thereunder they have prescribed the age limit and that is to be a part of the conditions of permit. The Regional Transport Authority while granting the permit as mentioned in Sub-section (12) of Section 88 shall also keep in view the Rules framed by the Central Govt. and the provisions of Sections 69, 77, 80, 81, 82, 83, 84, 85, 86 and 89. As mentioned above, Section 69 deals with the general provision as to applications for permits and Section 77 deals with the application for goods carriage permit. Section 79 says about grant of goods carriage permit. Section 80 deals with the procedure in applying for and granting permits. Section 81 deals with the duration and renewal of permits. Section 82 permits the transfer of permit. Section 83 permits replacement of vehicles. Section 83 further lays down that any holder of a permit can with the permission of the authority by which the permit was granted replace the vehicle covered by the permit by any other vehicle of the same nature. Section 84 talks of the general conditions attaching to all permits. Section 84 reads as under:--

"84. General conditions attaching to all permits. The following shall be conditions of every permit.

(a) that the vehicle to which the permit relates carries valid certificate of fitness issued u/s 56 and is at all times so maintained as to comply with the requirements of this Act and the rules made thereunder;

(b) that the vehicle to which the permit relates is not driven at a speed exceeding the speed permitted under this Act;

(c) that any prohibition or restriction imposed and any fares or freight fixed by notification made u/s 67 are observed in connection with the vehicle to which the permit relates;

(d) that the vehicle to which the permit relates is not driven in contravention of the provisions of Section 5 or Section 113;

(e) that the provisions of this Act limiting the hours of work of drivers are observed in connection with any vehicle or vehicles to which the permit relates; and

(f) that the provisions of Chapter X, XI and XII so far as they apply to the holder of the permit are observed;

(g) that the name and address of the operator shall be painted or otherwise firmly affixed to every vehicle to which the permit relates on the exterior of the body of that vehicle on both sides thereof in a colour or colours vividly contrasting to the colour of the vehicle centered as high as practicable below the window line in bold letters."

9. One of the valid conditions mentioned in the above section is that the permit should have valid certificate of fitness issued u/s 56. Section 39 says that 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. Therefore, it is the general conditions of the permit that the vehicle should be duly registered and certified to be a fit vehicle. Section 84 further lays down that other conditions mentioned in the Act and the Rules shall also form part of the conditions of the permit. Section 85 lays down the general form of permits and Section 86 deals with cancellation and suspension of permits. Section 89 provides appeals.

10. A composite reading of all these provisions shows that a national permit should have a certificate of fitness and it should comply with the provisions of the Act and the Rules framed thereunder. Under Sub-section (14) of Section 88, the Central Government framed the Rules and prescribed Rule 88, which lays down the age limit of a motor vehicle. Thus, a reading of these provisions would reveal that Rule 88 as has been framed under the purported exercise of power under Sub-section (14) of Section 88 is not beyond the scope of the Act. It was within the competence of the Central Government to frame the Rules in the purported exercise of power under Sub-section (14) of Section 88 and to provide general conditions of the national permit, and Rule 88 provides for a life span of motor vehicle. That will be part of the conditions of the permit and such condition is validly made and it is not beyond the scope of the Act.

11. Mr. Murishi, learned counsel for the petitioner submitted that u/s 50 the Central Government can lay down the age limit of each motor vehicle. But no age limit has been prescribed by the Central Government by issuing a notification in the official Gazette. Learned counsel submitted that since the notification has not been issued by the Central Government specifying the life of a motor vehicle then in that case these Rules cannot lay down a life span for the motor vehicle. Section 59 reads as under ;--

"59. Power to fix the age limit of motor vehicles.-

(1) The Central Government may, having regard to the public safety, convenience and object of this Act, by notification in the official Gazette, specify the life of a motor vehicle reckoned from the date of its manufacture, after the expiry of which the motor vehicle shall not be deemed to comply with the requirements of this Act and the rules made thereunder.

Provided that the Central Government may specify different ages for different classes or different types of motor vehicles.

(2) Notwithstanding anything contained in Sub-section (1), the Central Government may, having regard to the purpose of a motor vehicle, such as, display or use for the purposes of a demonstration in any exhibition, use for the purposes of technical research or taking part in a vintage car rally, by notification in the official Gazette, exempt, by a general or special order, subject to such conditions as may be specified in such notification, any class or type of motor vehicle from the operation of Sub-section (1) for the purpose to be stated in the notification.

(3) Notwithstanding anything contained in Section 56, no prescribed authority or authorized testing station shall grant a certificate of fitness to a motor vehicle in contravention of the provisions of any notification issued under Sub-section (1)."

12. Section 59 has a very wide purpose. The power has been conferred on the Central Government for keeping in view the public safety, convenience and object of this Act that it can specify the life of the motor vehicle reckoned from the date of its manufacture. It further provides that the Central Government may prescribe different ages for different classes or different types of motor vehicles. It is an admitted position that no notification u/s 59 has been issued. It may also be relevant to mention here that there is no reference of Section 59 in Sub-section (12) of Section 88 and at the same time there is no prohibition contained in Sub-section (14) of Section 88 that the Central Government cannot frame the Rules prescribing the age limit for the goods carriage vehicles. As mentioned above, under Sub-section (14) of Section 88, a power has been conferred on the Central Government to frame the Rules and in the purported exercise of that power for national goods permits, the Central Government has prescribed the age limit under R. 88. Therefore, the non-issuance of separate notification u/s 59 would not prevent the Government from framing the Rules for public carrier. It may be relevant to mention here that the age limit has been only prescribed for national public carrier and not for stage carriage or other kinds of vehicles. As mentioned above, while granting the national permit a general condition as contained in Section 84 has to be attached to all permits and one of the conditions is that it will comply with the requirements of the Act and the Rules framed thereunder and Rule 88 prescribes the age limit of the vehicle for a national permit. The life span of the vehicle has been prescribed is 9 years. Therefore, this condition has to be complied with for availing the national permit for goods carriage.

13. Learned counsel has also submitted that these Rules are inconsistent with Sections 88, 86, 59, 81 and 72. As already, mentioned above, Section 88 deals with validation of permits for use on side region in which granted and Sub-section (12) ordains that while granting the national permits, the appropriate authority shall have regard to the provisions of Sections 69, 77, 80, 81, 82, 83, 84, 85, 86 and 89 and the Rules framed under Sub-section (14). The Rules

framed under Sub-section (14) of Section 88 is not contrary to Section 88. Likewise, Section 56, which deals with the Certificate of Fitness and Section 59 deals with the age limit. The Rules are not inconsistent with both these sections. Section 72 deals with grant of a stage carriage permit with which we are not concerned.

14. Section 81 deals with duration and renewal of the permits. Section 81 reads as under:--

"81. Duration and renewal of permits.--(1) A permit other than a temporary permit issued u/s 87 or a special permit issued under Sub-section (8) of Section 88 shall be effective without renewal for a period of five years:

Provided that where the permit is countersigned under Sub-section (1) of Section 88, such counter signature shall remain effective without renewal for such period so as to synchronise with the validity of the primary permit.

(2) A permit may be renewed on an application made not less than fifteen days before the date of its expiry.

(3) Notwithstanding anything contained in Sub-section (2), the Regional Transport Authority or the State Transport Authority, as the case may be, may entertain an application for the renewal of a permit after the last date specified in that sub-section if it is satisfied that the applicant was prevented by good and sufficient cause from making an application within the time specified.

(4) The Regional Transport Authority or the State Transport Authority, as the case may be, may reject an application for the renewal of a permit on one or more of the following grounds namely:--

(a) the financial conditions of the applicant as evidenced by insolvency, or decrees for payment of debts remaining unsatisfied for a period of thirty days, prior to the date of consideration of the application; (b) the applicant had been punished twice or more for any of the following offences within twelve months reckoned from fifteen days prior to the date of consideration of the application; committed as a result of the operation of a stage carriage service by the applicant, namely:--

(i) plying any vehicle-

(1) without payment of tax due on such vehicle;

(2) without payment of tax during the grace period allowed for payment of such tax and then stop the plying of such vehicle;

(3) on any unauthorised route;

(ii) making unauthorised trips :

Provided that in computing the number of punishments for the purpose of Clause (b), any punishments stayed by the order of an appellate authority shall not be

taken into account:

Provided further that no application under this sub-section shall be rejected unless an opportunity of being heard is given to the applicant.

(5) Where a permit has been renewed under this section after the expiry of the period thereof, such renewal shall have effect from the date of such expiry irrespective of whether or not a temporary permit has been granted under Clause (d) of Section 87, and where a temporary permit has been granted, the fee paid in respect of such temporary permit shall be refunded."

15. Learned counsel submitted that as per Rule 88 the life span of a motor vehicle has to be 9 years from the date of its manufacture. But the duration of the permit u/s 81 is for a period of five years and the learned counsel submitted that the renewal has to be of the like duration i.e. for a period of five years. Learned counsel submitted that the permit shall be valid for 10 years after renewal then as per Sub-rule (2) of Rule 88, the permit will become invalid from the date the vehicle covered by the permit completes 9 years from the date of its initial registration. As per Sub-rule (2) of Rule 88, the national permit shall be deemed to be invalid from the date the vehicle covered by the permit completes nine year from the date of its initial registration. Learned counsel submitted that it will amount to violation of the right of the permit holder to avail the permit for a full period of 10 years. Learned counsel submitted that by virtue of Sub-rule (2) of Rule 88 effect will be automatic cancellation of the permit.

16. Mr. Vyas, learned counsel has also joined on this issue and submitted that u/s 86, which deals with cancellation and suspension of permits, it has been categorically laid down that cancellation or suspension could only be on the conditions mentioned in the Act and not in any other situation. Learned counsel submitted that by virtue of this provision the effect will be that though Section 86 does not provide for cancellation of a valid permit on the basis of age as provided in Sub-rule (2) of Rule 88, but it will put an embargo on availing the full duration of the permit.

17. It is true that u/s 81 the duration of the permit is for a period of 5 years. It is also true that from a reading of Section 81, it appears that the duration of the permit has to be 5 years and likewise the duration of renewal also has to be five years. That is right that if a permit is renewed for another period of 5 years then such permit shall be valid u/s 81 up to the period of 10 years. But that permit cannot be availed for its full duration under Sub-rule (2) of Rule 88. The argument of the learned counsel is very attractive but a deep examination of the provisions would show that it cannot stand the test of reason. The answer is simple. If the incumbent wants to avail the permit for a full tenure, he will have to employ a vehicle which has not spent the life span of 9 years. Section 83 lays down that the incumbent can replace the vehicle by another vehicle of the same nature. Now, in case the petitioner wants to avail the full tenure of permit then in that case he can get the vehicle replaced by another vehicle which is not nine

years old. If Sub-rule (2) of Rule 88, Sections 86 and 83 are read harmoniously then it comes to this that, the permit holder can avail the full tenure of the permit by replacing the vehicle which is not 9 years old. Thus, this argument of the learned counsel has no legs to stand.

18. In this view of the matter, Rule 88 is not beyond the provisions of the Act nor it is unreasonable nor has it been framed by non-application of mind.

19. Now, coming to the questions as to whether Rule 88 is arbitrary and violative of Article 14 of the Constitution of India or not. Rule 88 is not something new. Under the Motor Vehicles Act, 1939, the Motor Vehicle (National Permit) Rules, 1975 were framed and Rule 6 of the Rules of 1975 prescribed the age of the vehicle. Rule 6 of Rules of 1975 read as under :--

"6. Age of motor vehicle for the purposes of a national permit,-- (1) National Permit shall not be granted or renewed in respect of motor vehicles which is more than 9 years old at any point of operation.

(2) When a vehicle covered by a national permit is proposed to be replaced by another vehicle, the later vehicle shall not be more than 9 years old on the date of such replacement.

(3) National Permit shall be deemed to be invalid from the date the vehicle attains the age of 9 years unless the vehicle is replaced in terms of Sub-rule (2) above.

Explanation.-- The period of 9 years as referred to in this rule shall be computed from the date of initial registration of the motor vehicle concerned."

20. In this rule also a period of 9 years has been prescribed for a vehicle. But the difference was that the period of 9 years has to be construed from the point of operation. Sub-rule (3) provided that the permit shall be invalid from the date the vehicle attains the age of 9 years unless the vehicle is replaced in terms of Sub-rule (2). But now in place of this Rule 88 provides the life span of the vehicle as 9 years and explanation to this Sub-rule (2) of Rule 88 of Rules of 1988, the period of 9 years has to be computed from the date of initial registration of the goods carriage concerned. That shows that the period of 9 years is to be construed from the date of initial registration. Section 39 says that no person shall drive any motor vehicle unless it carries a Certificate of Registration. Section 41 lays down as to how the registration has to be made. Section 56 makes it necessary that the Certificate of Fitness is a must for every transport vehicle. Now, the question is as to what is initial registration. Section 39 appears under Chapter IV. It deals with the registration of motor vehicles. Section 39 as mentioned above makes it incumbent that no person shall drive any motor vehicle without being registered in accordance with this Chapter. Section 41 deals with as to how the registration is to be made. Rule 47 of the Rules of 1988 lays down that an application for registration of a motor vehicle shall be made in Form 20. Rule 47 says that the application shall be made in Form 20 before the

registering authority within a period of two days from the date of taking delivery of such vehicle excluding the period of journey and it should be accompanied by certain documents/papers mentioned in items (a) to (i) of Sub-rule (1) of Rule 47. That shows that the moment the delivery of the vehicle is taken out from the dealer within two days the owner has to get his vehicle registered. The period of journey has only been excluded. That means that the initial registration shall mean here the date when the vehicle is registered after taking the delivery of the vehicle by the owner. That should be taken to be the starting point. A bare reading of these provisions show that there is no arbitrariness. Nine year span was in existence since 1975. Mr. Munshi tried to challenge the validity of Rule 6 of the Rules of 1975, but it is too belated at this distance of time.

21. Learned counsel next submitted that there is no rationale and no guidelines have been pointed out that as to how the period of 9 years has been laid down.

22. Mr. Joshi, learned counsel for the respondents submitted that the period of 9 years has been arrived at after study by the body of technical experts. But we regret to say that no such report has been made available to us. The period of 9 years as prescribed under Sub-rule (2) of Rule 88 appears to be reasonable one. It is a matter of common experience that the goods vehicles which run across the country with heavy loads cannot stand a long life on account of wear and tear. Therefore, a reasonable period of 9 years span of life for such vehicle is not a small period. Normal experience shows that with a span of 9 years such vehicle outlives its utility because of heavy burden it carries across the country. The 9 years life span for vehicle holding national permit is reasonable and fair. The age limit appears to be reasonable to us if the unlimited life is left then such vehicle is bound to create a hazard to the public safety. The goods traffic in the country has increased in manifold and has become a life line. If no age limit is fixed and every kind of vehicle is allowed to ply on the national high way then it will create a great hazard to the public safety as well as national safety. It is also likely to cause a pollution hazard because of it's noxious pollutant. It may be relevant to mention here that the period of 9 years is not something new. It was in existence previously under the Rules of 1975 and even prior to this period was still shorter. This amendment is significant and it is for the public safety and such age limit fixed under Sub-rule (2) of Rule 88 cannot be said to be arbitrary and violative of Article 14 of the Constitution of India nor it is unreasonably restricted on the trade.

23. Mr. Maheshwari, learned counsel for the petitioner has made a reference to Section 9 appearing in Chapter II and Section 38 appearing in Chapter III under the headings Licensing of Drivers of Motor Vehicles and Licensing of Conductors of Stage Carriages respectively. But these references have no relevance in view of the discussion made above.

24. Mr. Munshi, learned counsel for the petitioner submitted that the Motor Vehicles Act, 1988 has come into force on 1-7-1989 and it is prospective in its operation and if the life of a vehicle is to be construed for a period of 9 years it

should be construed from the date of the Act and the Rules came into force. But we regret to say that this argument cannot be of any avail to the learned counsel for the simple reason that these provisions are for the welfare of the society at large and the operation of these provisions will not render their permit invalid provided they employ a vehicle which is not 9 years old from the date of initial registration. Therefore, nothing turns on this argument also. However, on account of pendency of this matter under litigation we deem it just and proper to grant two months time to the petitioners to replace the vehicle in case it has attained the age of 9 years from its initial registration.

25. In the result we don't find any merit in this writ petition and the writ petitions mentioned in the schedule appended to this order and we dismiss them.

26. The parties are left to bear their own costs.