

(2009) 08 P&H CK 0229
In the Punjab And Haryana At Chandigarh

Kirpal Singh Sandhu

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 62
Motor Vehicles Act, 1988 — Section 56

Citation : AIR 2010 P&H 24

Hon'ble Judges : Tirath Singh Thakur, C.J.; Kanwaljit Singh Ahluwalia, J

Bench : Division Bench

Judgement

T.S. Thakur, C.J.—This petition has been filed in public interest. The grievance made by the petitioner who happens to be the President of All Tempo and Mini Truck Union in Punjab is that although Section 56 of the Motor Vehicles Act, 1988 read with Rules 62 and 63 of the Central Motor Vehicles Rules, 1989, envisages setting up of "authorised testing stations" for issue of certificates of fitness in the prescribed forms, the Government of Punjab have not taken any steps whatsoever to allow such authorised testing stations being set up. The result, according to the petitioner, is that all such vehicles as are required to be registered based on such fitness certificates have to necessarily approach the District Transport Officers concerned. Learned Counsel appearing for the petitioner argued that the inaction on the part of the State in the matter of setting up of Authorised Testing Stations is not only creating serious problems for the commercial transporters and vehicle owners but is breeding corruption within, the Department where such certificates are issued only for a price. The alternative system which the Motor Vehicles Act, 1988 and the Rules envisage, has not been allowed to come up because the same would according to learned Counsel break the hegemony of the Motor Vehicle Authorities and reduce their relevance to the trade. The State Government is according to the petitioner dragging its feet and deliberately preventing reforms in the system which will benefit not only the transporters as a community but also, streamline working of the Transport Department itself by sharing with "authorised testing stations" the

responsibility of certifying the fitness of vehicles which are being offered for registration in large numbers throughout the region. It will also according to the learned Counsel provide to the concerned, a more convenient and efficient mode of obtaining the fitness certificates which are at present entirely monopolized by the authorities under the Act who are not only hard pressed for time but are ill-equipped to carry out proper tests as required under the Act and the Rules. It was in that regard contended that the State Transport Department does not have the requisite infrastructure to carry out the tests that are essential before a vehicle can be certified to be fit as per the norms stipulated for that purpose. Reference was made by learned Counsel for the petitioner to Rule 63(3)(e) of the Central Motor Vehicles Rules, 1989 in support of his submission that "authorised testing stations" must possess the necessary infrastructure including equipment and apparatus for undertaking tests pertaining to (exhaust gas, engine tuning, engine analysis) smoke emission, brake system, head lights, wheel alignments, compressors, speedometers etc. The Motor Vehicles Department, it is urged, has been issuing fitness certificates without having the said infrastructure and the gadgetry available in the market for testing the relevant parameters. The result is that the fitness certificates issued by the Motor Vehicles Authorities do not actually satisfy the purpose for which the Rules and the Act make suitable provisions and prescribe different tests. This could according to learned Counsel be taken care of if "authorised testing stations" were allowed to come up to undertake the work on scientific and efficient lines without any inconvenience to the owners and the operators who go for testing of the vehicles. A fee in that regard can be stipulated by the State in exercise of the powers vested in it u/s 111 of the Act.

2. On behalf of the respondents, it was argued by Mr. Khosla that the State Government have in exercise of the powers vested in it u/s 111 of the Motor Vehicles Act, 1988 issued a recent notification dated 6.5.2009 amending the Punjab Motor Vehicle Rules, 1989 by adding Rule 170(c) to the same. He placed a copy of the said notification on record and contended on the authority of the same that the State Government may authorise a testing station for the purpose of testing headlight beams and brake system of a transport vehicle. The authorised testing station can then issue a certificate regarding the headlight beam and brake system after charging the fee which the Government has stipulated by another notification dated 14.07.2009. The fee for testing of headlight beam has been as per the said notification fixed at Rs. 25/- while the fee for testing of brake system has been stipulated at Rs. 50/- per heavy transport vehicle. For medium transport vehicles and light transport vehicles also, the fee has been similarly stipulated by the said notification. It was contended by Mr. Khosla that although the Government has by introducing Rule 170(c) limited the role of authorised testing stations to passing of only two parameters relevant for the issue of a certificate of fitness, yet it is a beginning in the right direction and that as the Stations would start functioning, testing of other parameters can also be delegated to them.

3. Section 56 of the Motor Vehicles Act, 1988, inter alia, provides that 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. The fitness certificate thus made essential can be issued by the prescribed authority or by an authorised testing station mentioned in Sub-section (2) of Section 56 of the Motor Vehicles Act, 1988. The certificate has to certify that the vehicle complies, for the time being, with all the requirements of the Act and the Rules made thereunder. The provision further stipulates that in case the Prescribed Authority or the authorised testing station refuses to issue such certificate of fitness, it shall supply the owner of the vehicle with its reasons in writing for such refusal. Sub-section (2) of Section 56 of the Act defines an "authorised testing station" referred to in Sub-section (1) as under:

56(2): The "authorised testing station" referred to in Sub-section (1) means a vehicle service station or public or private garage which the State Government, having regard to the experience, training and ability of the operator of such station or garage and the testing equipment and the testing personnel therein, may specify in accordance with the rules made by the Central Government for regulation and control of such stations or garages.

4. In terms of Section 56(3) of the Act, the certificate of fitness issued by the Prescribed Authority or by "authorised testing station" shall remain effective for such period as may be prescribed by the Central Government having regard to the objects of the Act. Section 56(4) provides that 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.

5. Rule 62 of the Central Motor Vehicles Rules, 1989 in turn prescribes the period for which a certificate of fitness can be granted or renewed and the period of validity of such a certificate. A reading of the said Rule shows that for new transport vehicles, the certificate of fitness shall be valid for two years whereas for other vehicles the validity is limited to one year only. Proviso to Rule 62(1) makes it manifest that the renewal of certificate shall be made only after the Inspecting Officer or authorised testing stations as referred to in Sub-section (1) carries out the tests specified in the Table given under the said Rules.

6. Rule 63 of the Rules deals with regulation and control of authorised testing station and inter alia provides that no operator of authorised testing station shall issue or renew a certificate of fitness to a transport vehicle u/s 56 without a letter of authority in Form 39 granted by the registering authority. In terms of Sub-rule (3) of Rule 63, a Registering Authority while considering an application for grant or renewal of a letter of authority is required to comply with the conditions stipulated in the said Rules.

7. A careful reading of Rule 63(3) of the Rules makes it manifest that an

"authorised testing station" can be "granted a letter of authority only in case it has the requisite man power with the minimum qualification prescribed by the said Rules, and a premises satisfying the requirements of Rule 63(3)(b) and in case it maintains in good condition the equipment and apparatus for undertaking tests pertaining to exhaust gas, engine tuning, engine analysis, smoke emission etc. The financial resources of the applicant and other requirements stipulated under the said provision have also to be verified by the Registering Authority while granting a letter of authority in prescribed format in favour of such a station. What is noteworthy is that "authorised testing stations" must have the requisite premises with a minimum of one acre of land and other requirements stipulated for the same such as reception room, sanitary block and space for erection of testing equipments and other apparatus etc.

8. A conspectus of provisions of Section 56 of the Motor Vehicles Act, 1988 and the Central Motor Vehicles Rules, 1989 referred to above would show that the Registering Authority has no option but to authorise testing stations in the prescribed form in case they satisfy the parameters stipulated in terms of Rule 63 (supra). Neither the Act nor the Rules empower the State Government to restrict the role of an authorised testing station once a letter of authority has been issued in its favour upon satisfaction of the parameters stipulated under the said Rules. We, therefore, find it difficult to appreciate how the State Government have regulated or controlled the role of "authorised testing stations" by incorporating Rule 170(c) of the Punjab Motor Vehicle Rules for testing of headlight beams and brake system only. Mr. Khosla was unable to justify any such regulation or restriction being placed upon the function and role of "authorised testing station", once such testing station is granted a letter of authority under Rules 62 and 63 of the Central Motor Vehicles Rules, 19,89. Even otherwise, we find it wholly unnecessary otherwise, if we may say so, anomalous to authorise testing stations who satisfy the statutory requirements stipulated for setting up of such a station, to conduct testing of headlight beams and brake system only. Once the Registering Authority examines the claim made by the authorised testing stations and comes to the conclusion that the same satisfies all the requirements stipulated under Rule 63(3)(e) of the Rules and once a letter of authority is issued in favour of such a station in the prescribed format as required under Rule 63(1), the State Government will have no role to play in the discharge of functions of such a station except that it can stipulate the fee that can be charged by such a testing station from those seeking certificates of fitness from it. This does not, however, mean that the "authorised testing stations" cannot be supervised by the Registering Authority which power is clearly vested in Registering Authority under Rule 67 of the Central Motor Vehicles Rules, 1989 which reads as under:

67. Supervision of authorised testing stations: The registering authority or any officer of the Motor Vehicles Department of the State Government duly authorised in this behalf by the registering authority may, at any time, conduct test checks at the premises of the authorised testing station with a view to

ensure that the vehicles are properly tested by the authorised testing station.

9. Similarly, in terms of Rule 68, the Registering Authority or the Regional Transport Authority can call for information from an authorised testing station while under Rule 69 of the said Rules, the Registering Authority can suspend or cancel the letter of authority or forfeit the security deposit made by it in case the testing station fails to maintain the equipment, machinery and apparatus referred to in sub Clause (e) of Sub-rule (3) of Rule 63 in good condition or fails to comply with other requirements laid down in Sub-rule (3) of Rule 63 or fails to observe correct standards of testing before granting or renewing certificates of fitness. An appeal is also envisaged against any such order of the Registering Authority and so is the procedure for such an appeal prescribed. Suffice it to say that the Motor Vehicles Act and the Rules framed thereunder provide a complete Code by itself for setting up of "authorised testing stations" which leave no choice with the State Government except to permit such stations upon verification and fulfillment of the requirements stipulated under Rule 63(3) of the said Rules.

10. We may while parting add that the dichotomy which the State Government have tried to create by introducing Rule 170(c) in the Punjab Motor Vehicles Rules, 1989 will instead of helping the transport operators create complications and subject them to more inconvenience and harassment. We say so because while the "Authorised Testing Stations" can test headlight beams and brake system of the vehicles, under Rule 170(c) read with Rules 62 and 63 of the Rules, for the purposes of other tests, the transport operators shall have to necessarily approach the Inspecting Officer or the prescribed authority for grant of a certificate of fitness. Any such procedure would in our view unnecessarily complicate the matters and prove counter-productive without helping in any manner either the motor vehicle establishments in the State of Punjab or the transport operators.

11. In the totality of the above circumstances, therefore, we have no hesitation in holding that the State Government has been remiss in applying the provisions of Section 56 of the Motor Vehicles Act, 1988 read with Rules 62 and 63 of the Central Motor Vehicles Rules, 1989 insofar as setting up of Authorised Testing Stations is concerned. In our opinion the competent authority under Rule 63 of the Rules, which happens to be the Registering Authority concerned, shall have to entertain the applications from those proposing to operate as Authorised Testing Stations, verify the availability of the necessary infrastructure stipulated for that purpose and upon satisfaction of the said requirement, grant a letter of authority in Form 39 in their favour. Once such a letter of authority is issued by the Competent Authority, testing stations shall be competent to issue fitness-certificates in terms of Section 56 of the Act read with Rules 62 and 63 of the Rules., It goes without saying that in case any application filed before the Competent Authority is not attended to or arbitrarily rejected by such authority, the aggrieved party shall be free to seek redress in appropriate form against any

such refusal. With the above observations, this writ petition is allowed but only to the extent indicated above leaving the parties to their own costs.