

(1990) 03 KL CK 0025
In the High Court Of Kerala
Case No : O.P. 3961/86-V

M.P. Easo

APPELLANT

Vs

The Regional Transport Officer, Alleppey and Others

RESPONDENT

Date of Decision : 13-03-1990

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 270, 302A
Constitution of India, 1950 — Article 19(1)
Motor Vehicles Act, 1939 — Section 65, 68(1)

Citation : AIR 1990 Ker 308

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : George Thomas, for the Appellant; Govt. Pleader in Sankara Menon, for the Respondent

Final Decision : Allowed

Judgement

1. Validity of Rule 302A of the Kerala Motor Vehicles Rules, 1961, hereinafter referred to as "the 1961 Rules, is the question that arises for consideration in these Original Petitions. When the Kerala Motor Vehicles Rules, 1989, hereinafter referred to as "the 1989 Rules", came into force petitioners amended the Original Petitions including a prayer to quash Rule 270 of the 1989 Rules.

2. Petitioners in O.P. Nos. 3961/86, 5624/86, 6509/86, 8798/86 and 103/87 are owners of Heay Contract carriages. The other Original Petitions are filed by owners of Hindustan Diesel Trukkers who are plying their vehicles as contract carriages. All vehicles involved in these proceedings were registered prior to 3-3-1986 on which day Rule 302A of the 1961 Rules was introduced. When the petitioners approached the Transport Authorities either for getting renewal of the permits or for getting fitness certificates to the vehicles, they were directed to increase the number of seats in the vehicles by virtue of Rule 302A of the 1961 Rules. Petitioners challenged the action of the respondents in insisting them to increase the seating capacity of the vehicles. According to them, the vehicles

which were registered prior to 3-3-1986 do not come within the mischief of that Rule. Provisions of the Motor Vehicles Act do not authorise the transport authorities to compel the owners of the vehicles to vary the seating capacity noted in the Registration Certificate of the vehicles. It is their further contention that the action on the part of the respondents amounts to interference with their fundamental right to carry on the business under Article 19(1)(g) of the Constitution. Petitioners further contend that Rule 302 A of the 1961 Rules gives unbridled power to the registering authorities to fix the number of seats in the contract carriages and consequently it violates the principles contained in Article 14 of the Constitution as well.

3. On behalf of the State detailed counter-affidavit have been filed. Main contentions raised therein are to the following effect. The 1961 Rules as it stood did not contain provisions authorising the State and its officers to insist on the number of seats to be fitted in contract carriages so as to accommodate the maximum passengers in proportion to the availability of floor space. Operators of contract carriages show a tendency for reducing the number of seats under the guise of passengers' convenience. This was resorted to for evading tax which is linked with the number of seats in the vehicles. In order to get over this manipulation attempted to by the owners of contract carriages Government thought it fit to introduce Rule 302A in the 1961 Rules. Provisions contained in that Rule are not violative of Article 14 of the Constitution. Nor do they interfere with the fundamental rights of the petitioners under Article 19(1)(g) of the Constitution. The fixation of number of seats according to floor space is reasonable and is in the interest of the public since it provides more accommodation and enables the State to realise more revenue. Since no guideline can be set up fixing the number of seats, it was provided that the seats are to be fixed proportionate to the floor space available for providing comfortable seats. Even though that rule cannot be given retrospective effect, and cannot affect the registration already granted to the vehicles, the rule can be enforced by the Regional Transport Authorities while issuing or renewing the temporary permits after taking into consideration all aspects like fitness of the vehicles etc. The Rule was introduced to put an end to the practice of evading vehicle tax by reducing the number of seats.

4. K.R.A. 2034 involved in O.P. 3961/86 was registered in 1984 with a seating capacity of 48. That vehicle is having a wheel base of 210 inches equal to 525 Cms. When the Regional Transport Authority was approached for renewing its permit, petitioner was directed by Ext. P3 order to increase its seating capacity from 48 to 50. The vehicle involved in O.P. 5624/86 is K.R.E. 1977 registered in 1977 with a seating capacity of 38. It is having a wheel base of 447 Cms. When the permit of that vehicle was sought to be renewed, the respondents directed petitioner by Ext. P5 order dated 24-7-1986 to increase its seating capacity to 45. K.B.E. 5670 registered in 1985 with a seating capacity of 37 is the vehicle involved in O.P. 6509/86. It has got a wheel base of 210 inches. In the case of that vehicle respondents directed to increase the seating capacity to 50. A 1983

model vehicle having 210 inches wheel base with Registration No. K.E.F. 3445 is the one involved in O.P. No. 8798/86. It was registered with a seating capacity of 43. When that vehicle was taken for renewal of permit, respondents directed the petitioner to increase its seating capacity to 50. The minimum seating capacity of the vehicles involved in the first, third and 4th cases mentioned above as per Rule 302 of the 1961 Rules is 45. While that of the vehicle involved in the 2nd case mentioned above is 40.

5. Petitioner in O.P. 3961/86 has filed CMP No. 1700/90 praying for accepting an additional affidavit. In the additional affidavit it is averred that the vehicles bearing Registration Nos. KRV -- 7707, KEY -- 465, KET -- 1883, KET -- 1463, KET -- 1464, KET -- 1851, KEY -- 9164 and KRV -- 6207 owned by the Kerala Tourism Development Corporation having a wheel base of 210 inches are fitted with 35 seats in all and that the transport authorities have issued permits without demanding increase in the number of seats. It is also averred that the Regional Transport Authority, Ernakulam, granted contract carriage permit to KDE -- 3084 having a wheel of 210 inches fitted with 34 seats. It is further stated that a vehicle belonging to A.T.E. with 32 seats only has also been granted contract carriage permit by the Regional Transport Authority, Ernakulam. According to the petitioner, the grant of permits to the above mentioned vehicles by the respective transport authorities will prove the arbitrary exercise of power under Rule 302A of the 1961 Rules. At this juncture, it is whorth-while to note that these averments made by the petitioner have not been denied or disputed by the respondents.

6. Contract carriages are intended for comfortable long distance travel. Number of seats in a given coach will depend on the type of seats fixed in it. If push back seats are provided for giving maximum comfort to the passengers, the number of seats that can be provided in a vehicle having 210 inches wheel base, will be around 35. If, instead of push back seats, super luxury seats are fitted the number of seats may come up to 43. If the vehicle is fitted with luxury seats only, then the number may reach 48. In a contract carriage which is meant for long distance travel sufficient leg space will have to be provided for passengers. Such vehicles may have to be fitted with water tank for providing drinking water to the passengers. Passengers hiring contract carriages may go in for vehicles which can provided more comfortable journey. Such vehicles are meant for catering the needs of such clientele.

7. The Ministry of Shipping and Transport, Government of India issued notification No. GSR 346(E) dated 19-5-76. It was one issued in exercise of the powers u/s 63(10)(i) of the Motor Vehicles Act, 1939. By that notification the Central Government fixed the specifications of tourist vehicles. The seating lay out as per that specification should be 2 and 3 on either side with a gang way of at least 355MM width at the centre, Each passenger should have an area of 457MM X 457MM minimum for the seat and an arm rest of 38MM width at least on one side. Seat back should be of full height, and the seats should be of

reclining type and preferably adjustable. Seats of this specification, if fixed, will be far lesser in number than the one insisted by the respondents in the cases mentioned above.

8. The Central Government has issued the Central Motor Vehicles Rules, 1989 under the Motor Vehicles Act, 1988. Rule 128 of those Rules deals with Tourist Vehicles other than motor cabs. As per clause (10) of Rule 128, seating capacity of a tourist vehicle should not exceed 35 passengers excluding driver and attainer. Tourist vehicle has been defined in Section 2(43) of the Motor Vehicles Act, 1988, as a contract carriage constructed or adopted and equipped and maintained in accordance with such specification as may be prescribed. A contract carriage as per Rule 302A of the 1961 Rules and Rule 270 of the 1989 Rules should have a seating capacity proportionate to the floor space available for providing comfortable seats to the satisfaction of the registering authority. Satisfaction of the registering authority will depend on his personal notion regarding comfort. Opinion of the registering authority regarding the comfort will vary from that of another. Learned Government Pleader appearing in the case would contend that an arbitrary power is not given to the Registering authority to fix the seating capacity and that he should exercise his discretion in compliance with the specifications laid down in Rules 300 and 301 of the 1961 Rules or Rules 267 and 268 of the 1989 Rules. Rule 300 of 1961 Rules is the same as Rule 267 of 1989 Rules. Rule 301 of 1961 rules is same as Rule 268 of the 1989 Rules. Rule 300 of the 1961 Rules relates to the seating capacity of stage carriage. It inter alia provides that each passenger is to be provided with a reasonable comfortable seating space. Reasonably comfortable seating space in a stage carriage cannot be the basis for fixing the number of comfortable seats in a contract carriage. Rule 301 of the 1961 Rules gives formula for fixing the maximum passenger capacity in a vehicle. The formula is:

$$R-(u+c) \quad N = \text{-----} \quad [60]$$

In this formula N -- number of passengers, R = registered laden weight, u -- unladen weight and c = weight of crew at the rate of 55 Kgs. per head. As per this formula, the maximum passenger capacity in a vehicle similar to the one involved in O.P. 5339/ 86 comes to 105. It is not reasonable to presume that the maximum passenger capacity as per this formula can have any connection whatsoever with the number of seats to be provided in a contract carriage.

9. Contract carriages with which this court is concerned in these petitions were registered long prior to 3-3-1986 and were issued with permits earlier, When renewal of the permits were sought for or fitness certificates to the vehicles were requested for by the owners, the authorities of the transport department directed those vehicles to be adapted to conform to the Rule which came into force on 3-3-1986. If those vehicles are also to comply with that provision, they will have to be rebuilt. For increasing the seating capacity the entire frame work of the body will have to be remade. In paragraph-6 of the counter affidavit filed in O.P. 4700/86 it is averred:

"It is submitted that even though Rule 302A cannot be given retrospective effect and cannot affect the registration already granted to a vehicle, the rule can be enforced by the R.T.As while issuing renewing the temporary permits after taking into consideration all aspects like fitness of the vehicle etc."

The stand that the Rule cannot have a retrospective effect in the sense that it cannot affect the vehicles already registered is the correct one. But the view that when the vehicles are brought for renewing permits or for getting the fitness certificates, the provision can be enforced is unsustainable. In this view, the directions, given by the respondents to increase the number of seats in the vehicles which were registered prior to 3-3-1986 is illegal.

10. Hindustan Diesel Trukkers are vehicles with 13.225 H.P. capacity. They were registered u/s 24 of the Motor Vehicles Act, 1939, with a seating capacity of 7 in all. This means that the vehicle has a capacity to carry six passengers excluding driver. Those vehicles were given permits to ply as contract carriages. When those vehicles were checked by officers of the Transport Department, they were found carrying more passengers than six, noted in the registration certificates. So, they were directed to increase the seating capacity of the vehicles and produce the registration certificate to change the endorsement regarding the seating capacity and the amount of tax. The officers traced the source of their power in resorting to that course of action to Rule 302A of the 1961 Rules. No step contemplated by law for varying the terms of the permit granted to owners was taken by the authorities. Respondents have not attempted to support their action under any provision of the Motor Vehicles Act or the Rules except Rule 302A of the 1961 Rules. These vehicles were registered after noting the maximum seating capacity. Medium sized motor cabs of not more than 16HP capacity should be allowed to carry only five passengers in addition to driver as per Rule 322 of 1961 Rules. Thus, when the maximum seating, capacity of these truckers has already been fixed in accordance with the provisions of the Motor Vehicles Act and the Rules, the respondents are not competent to direct the owners to enhance the seating capacity. The action taken by the officers in directing the owners to enhance the number of seats is contrary to law. If the authorities find that the vehicles are used to carry more passengers than the number fixed in the Registration certificate, they should take appropriate action for such contravention. It is not open to them to insist on increasing the seating capacity. (Vide judgment in Writ Appeal, No. 362/1986).

11. Right to ply a contract carriage is a fundamental right. Petitioners were granted permits for plying their vehicles as contract carriages. On the expiry of the term they applied for renewal. In the case of some vehicles they were taken to the authorities for getting fitness certificate. In the case of yet another set of vehicles the authorities noted that more number of passengers than allowed by the permit were taken in as passengers. In all the above mentioned cases owners of the vehicles were directed to increase the seating capacity relying on Rule 302A of the 1961 Rules. Petitioners contend that the rule has imposed an

un-reasonable restriction on their fundamental right to carry on business under Article 19(1)(g) of the Constitution. When the validity of a rule which places restriction on the exercise of fundamental right under Article 19(1)(g) of the Constitution is challenged, the onus of proving to the satisfaction of court that the restriction is reasonable lies upon the State. Vide *Municipal Corporation of the City of Ahmedabad and Others Vs. Jan Mohammed Usmanbhai and Another*, . In the instant case, the registering authority is given unbridled power to fix the number of comfortable seats in a contract carriage. Sufficient materials have been placed before court showing that different authorities arrived at conclusions which are at variance from one another. Where power is entrusted with an administrative authority to grant or withhold permit in its uncontrolled discretion, the Rule *ex facie* infringes the fundamental right under Article 19(1)(g) of the Constitution. The Rule should satisfy the test of reasonableness and public interest. If it is wanting in the quality of reasonableness or is lacking the element of public interest it is to be struck down as invalid. The Government had attempted to sustain the provision on the ground that more number of seats in contract carriages will be beneficial to the travelling public and that it will augment the revenue of the State. As is well known a contract carriage is not to cater the needs of the travelling public. Contract carriages are not to ply between two fixed termini or to cater for needs of the travelling public on the route. Contract carriages are meant for long distance travel, on contract. The parties who hire the vehicle on contract may require more comforts than are available in a stage carriage. If the needs of such parties are to be catered, contract carriages cannot be directed to be fixed with seats as in the case of stage carriages. Therefore, I do not find any substance in the contention that contract carriages are also to be provided with maximum number of seats.

12. u/s 68(1) of the 1939 Act the State Government may make rules for the purpose of carrying out the provisions of the Act. In exercise of that power, State Government can make rules for determination of the number of passengers a stage carriage or contract carriage can be adapted to carry. Rule 322 framed by the State provides the number of passengers to be carried. The number is geared to the horse power of the motor vehicle. Power is given to restrict the number of passengers to a lesser number as per the proviso to the rule. Even that rule does not empower the authority to increase the number. The State has no case that the action taken by its officers is traceable to any provision other than Rule 302A of 1961 Rules.

13. As per the provisions of the Motor Vehicles Act and the Rules framed thereunder, transport authorities are entitled to vary the conditions of permit including the condition regarding the maximum number of passengers that might be carried. One of the conditions seen attached to the contract carriage permit is "the vehicle covered by the permit shall not be overloaded at any time". The respondents have no case that they resorted to any action for varying conditions of permit granted to truckers. Action has been taken for increasing the number of seats when the officers noticed over-loading in the vehicles. The fact that

more number of persons were taken in the vehicles or that there is possibility of such over-loading in future cannot in any way justify the action taken by the officers to increase the number of seats. By so increasing the number of seats, the state cannot augment the collection of revenue.

14. The Rule providing for maximum number of seats in contract carriages cannot be sustained on the sole ground that it is intended to secure more revenue indirectly. If the State so want they should do it directly by increasing the rate of tax. The indirect method resorted to by promulgating Rule 302A of the 1961 Rules for increasing the revenue of the State cannot be sustained.

15. The result, therefore, is the original petitions are allowed, action taken by the respondents under Rule 302A of the 1961 Rules are quashed. Rule 270 of the 1989 Rules is struck down as arbitrary and against the fundamental rights of the citizens under Article 19(1)(g) of the Constitution. Respondents are directed to dispose of applications filed by petitioners for the renewal of permits or for the issue of fitness certificates to their vehicles de hors the provisions contained in the above Rules.

Issue photo copy of the judgment to the parties on usual terms.