

(2001) 08 DEL CK 0256
In the Delhi High Court
Case No : CW No. 2678 of 2001

Nugas Technologies India Pvt. Ltd.

APPELLANT

Vs

Union of India and ors

RESPONDENT

Date of Decision : 29-08-2001

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 115, 115

Citation : (2002) 96 DLT 126 : (2002) 61 DRJ 393

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : A.S. Chandhiok, J.P. Singh, Sandip Puri, Jyoti Mendirata and Aparna Menon, for the Appellant; K.K. Sud, A.S.G., Navin Chawla, V.K. Rao and V.K. Shali, for the Respondent

Final Decision : Allowed

Judgement

Mukul Mudgal, J.—The petitioner is Nugas Technologies Pvt. Ltd. which retrofits the vehicles with CNG kits. The respondent No.1 is the Union of India. The respondent No.2 is the Indian Institute of Petroleum and respondent No.3 is the Govt. of NCT of Delhi, through its Secretary-cum-Commissioner, Transport Department. This writ petition challenges the Order dated 13.4.2001 which declared invalid the Approval Certificate and Approval dated 15.2.2001 issued by respondent No.3. The petitioner further seeks the quashing of letter dated 10.4.2001, issued by respondent No.2 at the behest of respondent No.1, clarifying that the type approval certificate of the petitioner are not valid for conversion of CNG Kits for in use diesel buses manufactured after 31st of March, 1996. The petitioner has submitted that the issues involved in the writ petition are similar to these involved in the judgment of this Court on 31st of July, 2001 in CW4228/01 entitled "M/s Shrimankar Gas Car Services and Anr. Vs the State of Delhi and Ors." and the petitioner's case is fully covered by the said decision.

2. The petitioner's case is that it possesses Certificate dated 1st of January, 2001 for retro fitment of CNG Kits. The relevant portion of the said Certificate

reads as follows:

"It is certified that based on the tests conducted on the tests conducted on the Ashok Leyland Bus (Model 2991) fitted with engine converted to CNG by M/s Nugas and Six Everest Kanto CNG cylinders of 65 litres WC, as per the "Vehicle Performance & Evaluation" Report No. EL 783.2000 of IIP, Dehradun and report numbers TE/2000/133TR/TTG/027 and TE/2000/133/CMVR, dt. 28.8.2k of VRDE, Ahmednagar, meets the requirements of compliance with rule 115(b) & 120(2) of the Motor Vehicle act, 1988, together with Central Motor Vehicle Rule (CMVR), 1989, and as modified from time to time (Amendment, February, 2000). The above Vehicle also meets the requirement of gradability for G.V.W. of 15244 kg and the safety standards as per NZS 5422 Part. II & III, 1987, CNG Fuel."

3. The petitioner's case is that Rule 115-B of the Central Motor Vehicles Act, 1989(hereinafter referred to as "the Act") provides that certificates issued by the specified authority are valid for 5 years and are renewable. Consequently the petitioner contends that the certificate issued to it on 1.1.2001 in the absence of any statutory restriction is valid till 31.12.2006. The petitioner's contention is that the further communications seeking to restrict the nature and ambit of the said certificate are invalid and the only relevant factor which is required to be considered is the Emission Norms of retrofitted vehicles which must conform to the norms of the year of manufacture of the vehicles as held by this Court on 31.7.2001 in the judgment of M/s Shrimankar Gas Car Services (Supra).

4. The controversy involved in this writ petition arises from the restrictions sought to be imposed on the petitioner-Company to retrofit the CNG Kit on the business manufactured after March, 1996. The learned Senior Counsel for the petitioner, Shri Amarjit Singh Chandhiok has contended that such restriction sought by Fax dated 10th of April, 2001 was procured by the respondent No.1 and has the effect of restricting the implementation of the Hon'ble Supreme Court's Order dated 26th March, 2001 requiring all the buses in Delhi to run on CNG after 30th Of September, 2001. The learned Senior Counsel for the petitioner has also submitted that its bona fides are evident from the fact that in complaints made by some of the bus operators who had deposited advances with it to convert their diesel buses manufactured after 1996 into CNG operating vehicles, it had deposited the FDRs for Rs. 4,12,57,500/- in this Court in respect of 3183 buses booked with the petitioner manufactured subsequent to 1996.

5. The learned Counsel for the petitioner has further submitted that the petitioner's case is fully covered by the decision of this Court in M/s Shrimankar Gas Car Services (Supra). The only difference is that in the said judgment Section 115-B(ii) was involved and in the present case sub-section (iv) of Section 115 B are involved. He has further submitted that the said sub-section (ii) & (iv) of Section 115 B are in pari materia.

6. Mr. V.K. Shali, the learned counsel, appearing on behalf of respondent No.3 has relied on the Certificate impugned in the present case to contend that their

stand is based on a clarification issued by the respondent No.1 on 12th of April, 2001 given to one of the private operators. The respondent No.1 took a stand that the Certificate issued by the testing agency was valid in respect of diesel buses manufactured only prior to March, 1996 and that this certificate cannot be used by the petitioner to convert in use buses manufactured from April, 1996 and that this certificate cannot be used by the petitioner to convert in use buses manufactured from April, 1996 onwards. It has also been contended that the new Mass Emission Norms (Bharat Stage-I) applicable from April, 1996 are more stringent as notified by the Central Government with effect from 1st of April, 2000. In so far as the Certificate dated 9th of July, 2001 is concerned, a statement was made on 6th of August, 2001 by the learned counsel for respondent No.3 that as per the judgment passed by this Court in CW. 4228/01 in Shrimankar Gas Car Services (Supra) the petitioner would be at liberty to retrofit the vehicles in accordance with the Certificate dated 9th of July, 2001. The Certificate Research & Development Establishment (VRDE), Ahmednagar, one of the bodies specified under Rule 126 of the Act, clearly stated that the Certificate is valid up to 8th of July, 2006, i.e., 5 years from the date of issue of the said Certificate or till the validity of the above notification No. GSR 99(E) dated 9.2.2000/amendment therein, whichever is earlier and shall be got renewed before its expiry. The stand of the respondent No.2 is that the said Certificate which is valid for vehicles manufactured from April, 1996 up to March, 2000 only was obtained by testing a TATA vehicle and cannot be used to retrofit the vehicles of other manufacturers such as Ashok Leyland.

7. The relevant portion of the Certificate of 9th July, 2001 issued by VRDE, Ahmednagar which is one of the testing agencies specified in Rule 126 reads as follows:

"M/s NUGAS TECHNOLOGIES INDIA (P) LTD. NEW DELHI has submitted an in-use diesel TATA LP 1510/52 bus of 1996 make, with TELCO 697 D28 engine of 5,675 cc capacity after its conversion to operation on CNG with the CNG KIT bearing model No. NGT/NGV manufactured by M/s NGV MOTROI, ITALY for its type approval.

Based on the trials conducted on the above vehicle and on verification of documents, it is certified that this converted bus meets the requirements as per Ministry of Surface Transport notification no. GSR 99(E) dated 09.02.2000.

The above CNG conversion is permitted on in-use TATA LP 1510/52 BUSES manufactured from APRIL 1996 up to MARCH 2000 only.

This certificate is valid up to 08.07.2006 ie 5 years from the date of issue of this certificate or till the validity of the above notification No. GSR 99(E) dated 09.02.2000/amendment therein, whichever is earlier and shall be got renewed before its expiry.

The brief technical specification bearing No. NGT/697 of the above CNG kit and basic model of the bus, as submitted by M/s NUGAS TECHNOLOGIES INDIA (P)

LTD., NEW DELHI is enclosed at Appendix "A".

8. The petitioner's Counsel has contended that the make of the vehicle is wholly irrelevant to the issue and even though it was not required to secure any certificate post-1996 in view of the validity of its Certificate dated 1.1.2001 for a period of 5 years, it has nevertheless done so and consequently the restrictions sought to be imposed on the 9th of July, 2001 Certificate of the petitioner are clearly illegal without prejudice to the petitioner's plea that it was not required to secure such a certificate.

9. In my view the issue in the present case is fully covered by the decision of this Court in *Shrimankar Gas Car Services (Supra)*. The relevant portion of the said judgment reads as follows:

"The said rule 115 B essentially requires that the vehicle retrofitted with a CNG kit ought to conform to the emission norms corresponding to the year of the manufacture of the vehicle to which it is being retrofitted. For example if a certificate is held by a retrofitter for retro fitment for a period, say from 1998 to 2003, then a vehicle manufactured in 2000 retrofitted with a CNG kit by such certified retrofitter after refitment, shall have to conform to the emission norms of 2000 and not 1998, the date of the grant of certificate valid for 5 year to the retrofitter. The dispute, however, only centres around the denial of the permission to the petitioner to retrofit the vehicles manufactured between 1.6.99 and 31.3.2000. This is done on the understanding of the above Rule 115 B by respondents 1 & 2 which is sought to be understood through some correspondence between Delhi Administration and the MOST. Some of the correspondence indeed invites clarifications from MOST and the understanding of the Rule by Delhi Administration is based upon such clarifications which have the effect of conveying an impression that the petitioner having got a test conducted by a testing agency specified under Rule 126 i.e., VRDE is not competent to retrofit vehicles manufactured between 1.6.99 and 31.3.2000. Certain later clarifications to this effect from VRDE are also sought to be relied upon.

I am of the view that clarifications given by Government Departments and even of the Central Government cannot be of any avail when statutory rules have been enacted and hold the field. It is the Rule 115 B which has to be given full effect to subserve the intent behind the said Rule which is to improved the environment. In addition one has to be guided by any judgment/order of the Hon'ble Supreme Court having a bearing upon the said Rule 115 B. None of the parties have shown me any order of the Hon'ble Supreme Court having any direct bearing on the issue involved in this writ petition. It is also necessary to bear in mind the spirit behind the directions of the Hon'ble Supreme Court particularly those relating to complete switch-over to CNG mode by 30th of September, 2001 by auto-rickshaws and buses. This court as well as other authorities must strive to give full effect to the directions given by the Hon'ble Supreme Court so that the switchover to the CNG mode takes place in Delhi smoothly and expeditiously by conforming to the statutory norms."

The facts in the present case and that of Shrimankar Gas Car Services (Supra) are similar except for the difference that the retro fitment in the Shrimankar Gas Car (Supra) was for auto-rickshaws and in the present case it is for diesel buses. Even sub-rule (ii) and sub-rule (iv) of Section 115-B are in pari materia and consequently so long as the petitioner holds a valid certificate issued by one of the testing agencies specified under Rule 126 of the Motor Vehicles Rules during the period in which it retrofits CNG Kits and so long as the retrofitted vehicles meet the Mass Emission Norms of the year of the manufacture of the vehicle, the retro fitment by the petitioner cannot be put under any restrictions save those arising from the Motor Vehicles Act and the regulations framed there under. Furthermore there is one more factor to be considered in this case. The petitioner has in fact secured a Certificate dated 9th of July, 2001 which even permits the retro fitment of vehicles manufactured from April, 1996 to March, 2000 after which diesel buses have not been permitted to be registered in Delhi. Any apprehensions of the respondents would thus obviously be met by such a Certificate and the restrictions sought to be put on the ambit of such a Certificate to only TATA vehicles on the plea that the Certificate was secured by testing on a TATA vehicle cannot be countenanced in law as the relevance of the Certificate is qua the capacity of the vehicle retrofitted and not its manufacturer. Consequently applying the above judgment in Shrimankar Gas Car Services (Supra), the writ petition is allowed and the letters dated 13.4.2001 & 10.4.2001 (Annexs. P-10 & P-7 at Pages 43-44; 36-37 of the petition), issued by respondent No.3 & respondent No.2 respectively are quashed as being ultra virus of Rule 115B. The respondents 1,2 & 3 are further directed not to prevent the retro fitment of vehicles by the petitioner so long as Rule 115 B is complied with and the petitioner holds a valid and current certificate issued by any specified authority.

In view of the above, the petition accordingly stands allowed with no orders as to costs.