

(1991) 04 DEL CK 0098

In the Delhi High Court

Sh. Subash Gulati and Others

APPELLANT

Vs

The Lt. Governor and Others

RESPONDENT

Date of Decision : 16-04-1991

Acts Referred:

Citation : (1991) 2 ACC 41

Hon'ble Judges : S.B. Wad, J; Mohd. Shamim, J

Bench : Division Bench

Judgement

S.B. Wad, J.—The petitioners are goods carriers and hold the national permit under the Motor Vehicles Act, 1988. In this writ petition they have sought a declaration that Rule 88 of Central Motor Vehicles Rules, 1988 is violative of Articles 14 and 19 of the Constitution as they are arbitrary and unreasonable. A similar writ petition, viz. V.K. Nagpal v. Union of India CWP. 916/90 is already dismissed by this Court in limine by speaking order.

2. However, the petitioners in the present case referred to CWP. 1020/90 in which the notice was issued by this Court and was pending. In the writ petition he has also referred to the similar writ petitions pending in Allahabad and Punjab and Haryana High Courts, Since number of such writ petitions were filed in this Court it was decided to list these petitions for final disposal. It may be noted that since the passing of the earlier order both the Allahabad High Court and the Punjab and Haryana High Court have dismissed similar petitions holding that the said Rule 88 is intra vires and not being hit by Articles 14 & 19 of the Constitution.

3. The said Rule 88 of the Central Motor Vehicles Rules, 1989, reads:

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.

4. The Motor Vehicles Act was substantially amended in 1988. Thereafter the new rules were framed as the Central Motor Vehicle Rules, 1989 to take the place of earlier rules, viz. Motor Vehicles (National Permit) Rules, 1975. The present Rule 88 is similar to Rule 6 of the 1975 Rules with a difference that in the said rules the life of the vehicle for grant of national permit was limited to four years, instead of nine years in the present rules. The petitioners hold the permit under the earlier Act and the Rules. In CW. 1020/90 pending in this Court, earlier the validity of Rule 6 of the 1975 rules was challenged, but after the amendment, Rule 88 of 1989 was substituted for the purposes of challenge.

5. It is submitted on behalf of the petitioners that prescribing nine years condition for granting the national permit or for the expiry of the national permit on completion of nine years by the vehicle was arbitrary. It is arbitrary because it does not take into consideration the actual condition of the vehicle in each Case nor does it take into consideration the high price of the vehicles and heavy Installments in the hire-purchase as also the cost of maintenance. It is then submitted that once the vehicle has secured the fitness certificate, as required by law, any condition imposing the age of the vehicle was arbitrary and undue harassment to the goods carriers. The further submission is that the restriction of nine years is unreasonable restriction as it has no nexus with the fitness of the vehicle and threatens to stop the right to any on trade and business guaranteed by Article 19(1)(g) of the Constitution. The petitioners also submit that the rule making authority has no power to fix the age of the vehicle under the rule making power. The said Rule 88, the submission goes, is framed u/s 88(12) read with Section 88(14) of the Motor Vehicles Act, 1988. Neither of these sections specifically empower the Central Government to frame rules, fixing the age of the vehicle. It is pointed out that Section 59 of the Act alone empowers the Central Government to fix the age of the vehicle having regard to the public safety, convenience and objects of the Act by notification in the official gazette. The said Rule 88, having no legislative support, is, Therefore, bad in law. Similar submissions were raised before the Allahabad High Court in C(M)W.P. No. 3822/90 which was heard by the Allahabad High Court along with the other petitions. All these petitions were dismissed by the Allahabad High Court by an elaborate and well reasoned judgment pronounced on November 12, 1990. The Punjab and Haryana High Court had also dismissed similar petition, viz. CWP. 8984/88 by its judgment on 30.11.90. We are in respectful agreement with the said decisions of the Allahabad and Punjab & Haryana High Court.

6. It may be noted that Rule 6 of the National Permit Rules, 1975, had prescribed that the motor vehicle more than four years old shall not qualify for the national permit. At the time of amendment the Central Government had thoroughly gone

into the various aspects of the matter and had considered the reports of the Committees which had gone into the entire gamut of road transport in India. The Committee reports are:

1. Road Safety Committee of the Government of India.
2. National Transport Policy Committee.
3. Final report on Vehicle Fleet Modernisation; &
4. Report of the Working Group on the Review of Motor Vehicles Act, 1939.

7. The Road Safety Committee has given the statistics of the road accidents and the deaths due to road accidents. In the year 1981 itself there were 1,53,400 road accidents in which 26,500 people died and 1,13,000 were injured. Before the present amendment was made the various associations of Transporters and the representatives of the Government departments were consulted. The conclusion after the consultation was that the national permits for goods carriages are designed for operation involving long distance interstate transport covering the whole country and in any case not less than four States and vehicles conducting such long journeys face problems of frequent breakdowns. The restriction on the age of the vehicle was found necessary not only for the safety of the passengers and pedestrians but for maintaining smooth goods movement in the country. Movement of goods through road transport is higher than the movement of goods through railway transport Para 212 of the Road Safety Committee Report summarises the poor state of affairs in regard to the condition of the vehicles and the supervision for the transport authorities through the fitness certificate. The said para 212 reads:

The operators in our country do not bestow adequate attention to preventive maintenance. The vehicle which is a complex mechanism being an assemblage of several thousand components and assemblies would need periodic checking and need replacement of worn-out parts and components. Unfortunately, the operators being guided by cost considerations only do not undertake preventive maintenance and when the replacement of any parts becomes absolutely inevitable, they take recourse to the fitment of spurious or sub-standard parts. When this is done in respect of critical items like Brake and Brake Parts, Clutch & Clutch parts, Connecting Road Bolts etc. the vehicle is rendered highly accident prone. The transport authorities also do not undertake proper checking of the vehicles and the issue of fitness certificate has become merely a ritual as the vehicles are not subjected to thorough checking for detecting deficiencies which would cause accidents. Adequate repair and maintenance workshops also do not exist.

8. Thus, considered from every aspect of the matter the imposition of nine years of age for national transport cannot be said to be arbitrary. As a matter of fact, the period is extended from four years to nine years in the present amended rules after consultation with the representatives of the transporters. To expect,

as the petitioners do, that the age should be fixed according to the condition of each vehicle itself is most unreasonable and arbitrary. A general rule is in fact framed so as to obviate day-to-day inspection and supervision of the vehicles and to get over the fitness certificates which are issued more as a "ritual". The restriction of nine years rule is a reasonable restriction in public interest. No transporter has a right to ply dangerous vehicles on the road endangering safety of the passengers and the pedestrians. The national policy of the movement of goods on roads cannot be hampered by the imaginary grievance of the transporters of restriction of their right to carry on trade and business.

9. Another factor which has now assumed importance is fuel economy. The nation is required to waste considerable foreign exchange in import of petrol and petrol products. A Well maintained vehicle of a comparatively younger age is bound to give more satisfactory fuel consumption and contribute to the fuel economy for the nation. We, Therefore, hold that Rule 88 neither violates Article 14 nor Articles 19 of the Constitution.

10. Similar view has been taken by the Supreme Court in Subhash Chandra and Others Vs. State of U.P. and Others, where the question was whether prescription of seven years age for mini buses was arbitrary or unreasonable. While rejecting the contention of the transporters the Supreme Court held, "The State's neglect in the area of policing public transport is deplorable, but when it does act by prescribing a condition the Court cannot be persuaded into little legalism and harmful negativism.... We have no hesitation to hold from the point of view of human rights of road users that the condition regarding the model of the permitted bus is within the jurisdiction and not to prescribe such safety Clauses is abdication of statutory duty."

11. This takes us to the question as to whether Rule 88 is illegal and ultra virus and lacks legislative support. As the Supreme Court has held in Subash Chandra. ensuring safety on road is a statutory duty under the Act. This power is enunciated in Section 59 of the Act. The Central Government can prescribe the age by a Notification in the official gazette. It is futile legalism which is frowned upon by the Supreme Court, to say that the Central Government can issue Notification u/s 59 prescribing the age of the vehicle but cannot frame rules for the same purpose. As a matter of law if a statute permits the Central Government to issue an executive order prescribing the age of the vehicle it would be illogical to deny the exercise of the same power through the rules. The publication in the official gazette, which serves as a general notice, is equally applicable to rules, as to an administrative order, u/s 59. In fact, the citizens have a better protection in case of statutory rules because the rules are required to be laid before the Parliament and are required to be approved by the Parliament similar to the principal statutes under which the rules are framed. Once it is held that it is the statutory duty of the government to make provision for road safety and that the rule is neither arbitrary nor unreasonable, it cannot be faulted on the ground of lack of legislative support. Section 88(14)(96)(v)

empowers the government to frame rules providing for such other matters as the appropriate authority shall consider in granting the national permit.

12. For the reason stated above the writ petition is dismissed with costs. Counsel fee Rs. 2,000/- as one set.