

(2006) 08 JH CK 0095
In the Jharkhand High Court
Case No : CWJC No. 3726 of 1999 (R)

Shekhar Bhushan Nag

APPELLANT

Vs

State of Bihar (Now Jharkhand) and Others

RESPONDENT

Date of Decision : 07-08-2006

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 115, 115(7), 52, 52(1), 52(2)
Motor Vehicles Act, 1988 — Section 39, 56, 56(1), 56(2), 56(4)

Citation : AIR 2007 Jhar 18 : (2006) 4 JCR 430

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : S.L. Agrawal, for the Appellant; Saibal Mitra, JC to GA, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.

1 In the instant writ application the prayer of the petitioners is for a direction to the respondents to permit the petitioner to grant fitness certificate for the vehicle to whom renewal of certificate of registration is granted under Rule 52 of the Central Motor Vehicle Rules, 1989 and also for a direction to the respondents to allow him to issue pollution certificate to the motor vehicle.

2. The facts in short are that the petitioner has been granted letter of Authority being No. 2/90 for establishing an authorized testing station under Rule 63(1) and (5) of the Central Motor Vehicle Rules, 1989 to run his testing station at Jamshedpur. Accordingly, the petitioner established and running an authorized testing station at Jamshedpur.

3. According to the petitioner in view of Section 56 of the Motor Vehicle Act, 1988, a certificate of fitness is required for a transport vehicle for plying it on the road and the certificate of fitness can be issued by the prescribed authority or by an authorized testing station.

4. The grievance of the petitioner is that though, after grant of licence under Rule 63(1) and (5) of the Central Motor Vehicles Rules, 1989, the petitioner has established an authorized testing station as provided u/s 56(2) of the Motor Vehicle Act, 1988 but due to arbitrary action of the respondents, he is not being allowed to issue certificate of fitness for the renewal of a certificate of registration for a Motor Vehicle as envisaged under Rule 52 of the Central Motor Vehicle Rules, 1989 as well as the pollution certificate under Rule 115 of the aforesaid Rule.

Section 56 of the Motor Vehicle Act, 1988, which speaks about the grant or issue of fitness certificates for a Motor Vehicle, reads as under:

56. Certificate of fitness of transport vehicles.-(1) Subject to the provisions of Sections 59 and 60, 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, issued by the prescribed authority, or by an authorized testing station mentioned in Sub-section (2), to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder;

Provided that where the prescribed authority or the authorized testing station refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal.

(2) The "authorized testing station" referred to 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.

(3) Subject to the provisions of Sub-section (4), a certificate of fitness shall remain effective for such period as may be prescribed by the Central Government having regard to the objects of this Act.

(4) 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 and on such cancellation the certificate of registration of the vehicle and any permit granted in respect of the vehicle under Chapter V shall be deemed to be suspended until a new certificate of fitness has been obtained.

[Provided that no such cancellation shall be made by the prescribed authority unless such prescribed authority holds such technical qualification as may be prescribed or where the prescribed authority does not hold such technical qualification on the basis of the report of an officer having such qualification.]

(5) A certificate of fitness issued under this Act shall, while it remains effective

be valid throughout India.

5. On a plain reading of the above quoted provisions, i.e. Section 56 of Motor Vehicles Act, 1988 it appears that it provides that unless the transport vehicles carries a certificate of fitness issued by the prescribed authority or by an authorized testing station mentioned in Sub-section (2), shall not be deemed to be validly registered for the purpose of Section 39 of the Act and such certificate of fitness can be granted by the prescribed authority or by an authorized testing station. The meaning of authorized testing station has been envisaged in Sub-section (2) of the Section 56 of the Act.

6. The petitioner says that pursuant to Section 56 of the Motor Vehicle Act, the petitioner is issuing certificate of fitness to the transport vehicle and on the basis of that certificate of fitness issued by the petitioner the certificate of registration is being issued by the transport department but that is being done only with respect to the new vehicles or for fresh certificate or registration but not regarding the renewal of certificate of registration.

7. The grievance of the petitioner is that so far as the matter relating to renewal of certificate of registration of a Motor Vehicle is concerned, the petitioner is not being allowed to issue certificate of fitness for such vehicles which apply for renewal of certificate of registration therefore, this action of the respondents is in violation of Rule 52 of the Central Motor Vehicle Rules, 1989.

8. For ready reference Rule 52 of the Central Motor Vehicle Rules, 1989 is quoted herein below:

52. Renewal of certificate of registration.-(1) An application by or on behalf of the owner of a motor vehicle, other than a transport vehicle, for the renewal of a certificate of registration, shall be made to the registering authority in whose jurisdiction the vehicle is, in Form 25 not more than sixty days before the date of its expiry accompanied by the appropriate fee as specified in Rule 81.

(2) On receipt of an application under Sub-rule (1), the registering authority shall refer the vehicle to the authority referred to in Sub-section (1) of Section 56 and after obtaining a certificate of fitness for a period of five years.

(3) A motor vehicle other than a transport vehicle shall not be deemed to be validly registered for the purposes of Section 39, after the expiry of the period of validity entered in the certificate of registration and no such vehicle shall be used in any public place until its certificate of registration is renewed under Sub-rule (2).

9. The submission of Mr. Agrawal is that in Sub-rule (2) of Rule 52 referred to above, envisages that after receipt of an application for renewal of certificate of registration under Sub-rule (1) the registering authority has to refer the vehicle to the authority referred u/s 56(1) of the Motor Vehicle Act, for obtaining certificate of fitness and, thereafter, on obtaining the certificate of fitness from that authority the certificate of registration is issued. Mr. Agaewal submits that

the word "that authority" used in Sub-rule (2) of Rule 52 denotes the authority mentioned in Section 56(1) of the Act that is the prescribed authority or an authorized testing station. Meaning thereby that the certificate of fitness for renewal of certificate of registration of a vehicle can be issued by an authorized testing station also.

10. The submission of Mr. Agarwal appears to be attractive but in fact has got no substance in view of the language used in Rule 52 of the aforesaid Central Motor Vehicle Rules, 1989.

Sub-rule (2) of Rule 52 specifically says that on receipt of application under Sub-rule (1) the registering authority shall refer the vehicle to the "authority" (emphasis in mine) referred to in Sub-section (1) of Section 56 and after obtaining the certificate of fitness from "that authority" (emphasis in mine) can renew the certificate of registration. The word "that authority" used in Sub-rule (2) denotes the authority mentioned in Section 56(1), i.e. the prescribed authority of the Motor Vehicle Act to which the vehicle is referred for grant of certificate of fitness.

11. The petitioner, who is only an authorized testing station. He can neither be said to the prescribed authority mentioned in Section 56(1) of the Act nor to be "that authority" mentioned in Sub-rule (2) of Rule 52 of the Central Motor Vehicle Rules, 1989. According to Section 56 of the Motor Vehicle Act, 1988 for grant of a fresh certificate of registration to a transport vehicle the certificate of fitness can be granted by the prescribed authority or by an authorized testing station but in case of renewal of certificate of registration as envisaged under Rule 52 of the Central Motor Vehicle Rules, 1989, the renewal of certificate of registration can be granted on the basis of the certificate of fitness issued by the prescribed authority mentioned in Section 56(1) of the Motor Vehicle Act and not on the basis of the certificate of fitness issued by an authorized testing station.

12. In this view of the matter, I hold that the petitioner is rightly not being allowed to issue certificate of fitness for those vehicles which are applying for renewal of the certificate of registration.

13. So far as the prayer of the petitioner for allowing him to issue the pollution under control certificate is concerned, I find that such certificate of pollution under control is issued under Rule 115(7) by an agency authorized for that purpose by the State Government and, therefore, if the petitioner has been authorized for that purpose by the State Government then there is no doubt that the petitioner would be entitled to issue such pollution under control certificate.

14. The learned Counsel appearing for the respondent/State also submits that in case the petitioner is authorized by the State Government to issue pollution under control certificate then the respondents have no objections in allowing such a prayer.

15. In view of the above discussions and findings, this writ application is

dismissed. The prayer of the petitioner for allowing him to issue certificate of fitness to those Motor Vehicles applying for renewal of the registration certificate is rejected. However, it is made clear that if the petitioner has the authority of the State Government as required under Rule 115(7) of the Central Motor Vehicle Rules to issue pollution under control certificate then the respondent shall not restrain the petitioner in issuing such certificate.

With this observation and direction, this writ petition is dismissed.

In the facts and circumstances of the case, there shall be no order as to costs.