

(2021) 03 MP CK 0154

In the Madhya Pradesh High Court

Case No : Writ Petition No. 7228 Of 2021

Shishupal Singh Raghuwanshi

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 25-03-2021

Acts Referred:

Madhya Pradesh Motor Vehicle Rule 1994 — Rule 77, 77(1a), 77(1a)(iii), 77(1b)
Motor Vehicles Act, 1988 — Section 72

Citation : (2021) 03 MP CK 0154

Hon'ble Judges : Vishal Mishra, J

Bench : Single Bench

Advocate : Man Singh Jadon, R.P. Singh

Final Decision : Disposed Of

Judgement

Vishal Mishra, J

(1) The present petition is being filed by the petitioner seeking following reliefs:

"1. याचिकाकर्ता द्वारा प्रस्तुत याचिका स्वीकार करते हुए याचिकाकर्ता के अस्थाई अनुज्ञा पत्र क्रमांक 184/2021 मार्ग- अशोकनगर से आरोन बैधता 31.03.2021 तक की अवधि के अनुज्ञापत्र पर आच्छादित वाहन क्रमांक एम.पी.08/पी 0195 मॉडल 2006 बैठक क्षमता 24+2 पर 15 वर्ष से पुराने मॉडल की वाहन संचालन नहीं किये जाने सम्बन्धी मॉडल कंडीशन की शर्त क्र0 1 को विलोपित किया जाकर 2006 मॉडल की आच्छादित वाहन को जनहित में संचालन की यथावत अनुमति दी जावे।

2. याचिकाकर्ता की वाहन क्रमांक एम.पी.08/पी 0195 मॉडल 2006 बैठक क्षमता 24+2 के संचालन के संबंध में नवीन संशोधित नियम 24.11.2010 एवं 28.12.2015 के प्रावधान तथा 15 वर्ष की माडल कंडीशन सम्बन्धी शर्त बाधक नहीं होने सम्बन्धी आदेश पारित किये जावें।

3. याचिकाकर्ता को याचिका का व्यय व अभिभाषक शुल्क प्रत्यर्थीगण से दिलाया जावें अन्य माफिक रिटयाचिकाकर्ता के पक्ष में तथा प्रत्यक्षीगण के विरुद्ध माननीय न्यायालय जो उचित समझे जारी की जावें।"

(2) Learned counsel for the petitioner submits that the petitioner is the registered owner of the vehicle bearing Registration No.M.P.08/P 0195 of 2006

model having seating capacity 24+2 and plying the vehicle, permit has been granted by the competent authority for the route Ashok Nagar to Aron and said permit is valid up to 31.03.2021 and in view of the notification dated 28.12.2015 the amended provisions of Rule 77 which was came into force by notification dated 24.11.2010 will not apply to the vehicle which is registered prior to coming into force of the notification.

(3) It is argued that the aforesaid controversy was considered by this Court in the case of Waheed Khan Vs. Transport Department and others (W.P.No.7703/2018), wherein it was held as under:

"30.8.2018

Shri Sunil Jain, learned Sr. counsel along with Shri K. Jain, counsel for the petitioner.

Shri Vibhor Khandelwal, GA for the respondent/State.

The petitioner has filed the present writ petition being aggrieved by the order dated 13/02/2018 passed by the Addl.RTO, Dhar, by which temporary stage carriage permit of the petitioner for the vehicle bearing registration no. UP-41-T-1173 has been cancelled on the ground that the vehicle has crossed the age of 15 years from the year of manufacture.

Learned Authority has exercised the powers conferred under Rule 77(1-a)(iii) of the M.P. Motor Vehicles Rules, 1994 (in short " the Rules, 1994 "),

which is reproduced below :

" Rule 77, Sub-rule (1-a) In order to ensure safe, secure and convenient transport services to the passengers, the permit granting authority while granting a stage carriage permit shall abide by the following conditions namely :-

(i) that no stage carriage permit shall be granted on interstate route to a vehicle which has completed 10 years from the manufacture year;

(ii) [xxx]

(iii) that no stage carriage permit shall be granted for any route of the vehicle which has completed (15 years) from theyear of manufacture

(iv) that for long distance route of (more than 75 kms) in a single trip, the following category of vehicles with seating capacity shown against each shall be permitted to ply:-

1 Deluxe / Air

not less than 35+2 seats*[including] conditioned Bus driver and conductor

2 Express Bus

not less than 45+2 seats, *[including] driver and conductor

3 Ordinary Bus

not less than 50+2 seats, *[including] driver and conductor

(1-b) the restriction imposed by sub-rule (1-a), in so far as they relates to the stage carriage registered before coming into force of the said rules shall not apply."

Shri Sunil Jain, learned Sr. counsel has pointed out that sub-clause (1-b) has been inserted in the M.P. Motor Vehicles Rules, 1994 w.e.f. 28/12/2015, according to which, the provision of sub-rule (1), as it relates to the stage carriage registered before the coming into force of said sub-rule, shall not apply. Learned Authority, before passing of the order under sub-rule (1-a)(iii) of the Rules, did not examine the provision of sub-rule (1-b), by which, provision of sub-rule (1-a) of the Rules, has been excluded for the vehicle registered before coming into force of the said rule. Sub-rule (1-a) came into statute w.e.f. 24/11/2010 and the vehicle bearing registration 3 no. UP-41-T-1173 manufactured in the year 2002 and registered on 22/03/2002. Admittedly, the provision of sub-rule (1-a) of the Rules, would not apply to the petitioner, hence the impugned order is hereby set aside.

Present petition stands allowed accordingly."

(4) The aforesaid order was further considered in the case of M.P.No.3423/2020 (Shreeram Sharma Vs. the State of M.P. and another) and the Court has held as under:

"Section 72 of Motor Vehicles Act does not authorize the Regional Transport Authority to amend Rules. If the Rules are silent on any aspect, then the Regional Transport Authority by incorporating some condition can grant or review permit. But by no stretch of imagination, it can be said that Section 72 of Motor Vehicles Act confers unfettered right on Regional Transport Authority to amend Rules itself. When Rule 77 (1b) of Rules of 1994 itself provides that amended provision of Rule 77 (1a) of Rules of 1994 would not be applicable to the stage carriage which was registered much prior to coming into force of said Rule, then Regional Transport Authority was at fault in deferring the application filed by the petitioner for renewal of permit of bus bearing registration No.M.P-33-E-0199."

(5) It is submitted that once the controversy has already been settled by this Court and it is held that the policy will not be applicable in case of the vehicles which are registered prior to implementation of the policy. In such circumstances, the imposition of a condition is apparently bad in law and against the dictum passed by this Court in the aforesaid cases.

(6) Per contra counsel for the respondent/State could not dispute the fact that this Court has already considered the aforesaid issue in the case of Waheed Khan (supra) and Shreeram Sharma (supra) and submit that the petition be disposed of in terms of the aforesaid orders.

(7) Heard the learned counsel for the parties and perused the record.

(8) The aforesaid aspect was already considered by this Court in the case of Waheed Khan (supra) and Shreeram Sharma (supra) and the Court has categorically held that the notification has no application to the vehicle registered prior to coming into force of the notification dated 24.11.2010. There is already consideration made by this Court to the aforesaid aspect in the case of Waheed Khan (supra).

(9) Accordingly, the order dated 30.8.2018 passed in the case of Waheed Khan (supra) shall apply mutatis mutandis to the case of the petitioner also.

(10) Accordingly, the petition filed by the petitioner is disposed of. E-copy/ Certified copy as per rules/directions.