

(2012) 12 KL CK 0008

In the High Court Of Kerala

Case No : Writ Petition (C) No. 29975 of 2007

Siddique, P.K.A. and Others

APPELLANT

Vs

Regional Transport Authority, Kozhikode and Others

RESPONDENT

Date of Decision : 06-12-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 16, 2(47), 39, 46, 48(3)

Citation : (2013) 1 ILR (Ker) 829 : (2013) 2 KLJ 356

Hon'ble Judges : Manjula Chellur, C.J.;A.M. Shaffique, J

Bench : Division Bench

Advocate : Govind K. Bharathan, Smt. T.V. Neema, Sri I. Dinesh Menon, Sri K.C. Santhoshkumar, Smt. K.K. Chandralekha, Sri O.D. Sivadas, Sri C.P. Kunjhikannan, Sri S.K. Madhu and Sri George Poonthottam, for the Appellant; Girija Gopal, Government Pleader, Sri T.P.M. Ibrahim Khan and Sri Babu Joseph Kuruvathazha, for the Respondent

Judgement

Manjula Chellur, C.J.

W.P. (C) No. 29975 of 2007:

1. This Writ Petition is filed by a public spirited person as pro bono publico seeking the following reliefs:

(i) issue a writ of mandamus or any other appropriate writ, order or direction directing the 1st respondent not to grant/renew permit to old vehicles of more than 15 years old to run as educational institution buses;

(ii) issue a writ of mandamus or any other appropriate writ, order or direction directing the 1st respondent to cancel the permits already issued to old buses which are 15 years old to run as school buses;

(iii) issue a writ of mandamus or any other appropriate writ, order or direction directing the 3rd respondent to consider and pass orders on Ext. P-2 with sufficient opportunity of hearing the petitioner.

(iv) issue such other writ, order or directions as this Hon"ble Court deems fit to be granted in the circumstances of the case including cost of the petitioner.

The main allegation is against Regional Transport Authority, Kozhikode in granting permission to old and almost abandoned stage carriages to run as educational institution buses in the District of Kozhikode and other parts of the State. According to the petitioner, when various district authorities had taken a decision to limit the age of stage carnages as 15 years as per Exhibit P-1, the same came to be questioned before the Court and the decision taken by the Regional Transport Authority was upheld by the Court granting three months time to the owners to replace the old vehicles, which were 15 years old. According to the petitioner, the Regional Transport Authority has such power u/s 72(2) of the Motor Vehicles Act, 1988 restricting age of the vehicle depending upon the facts and circumstances.

2. Since there was a decision not to allow the stage carriages to be operated after 15 years age, the very same old buses being run as educational institution buses is much more dangerous than running as stage carriages, as those buses are used for carrying staff, faculty and especially the students of the institution. What is applicable to stage carriages must also apply to contract carriage or private buses or educational institution buses. According to him, fixing age limit if justifiable in such carriages it is also justifiable more so in educational institution buses.

3. Apart from the above grounds, he also raised another serious ground, pollution in environment on account of fumes and other gases left into the environment by these buses on account of their old age. According to the petitioner, as per the law declared by the Apex Court, it is the duty of every one to give pollution free environment, especially air, water and soil, which are necessary for existence of human life. Various Bills placed before the Rajya Sabha and Lok Sabha in this regard are brought on record. According to him, after coming into force of 1988 Act, various suggestions and representations were received from transport operators and members of public regarding operation of some of the vehicles. The important suggestions made by the Transport Development Council are also brought on record to substantiate the relevancy for fixing a particular age for the educational or other type of buses as indicated above. He also contends that old model passenger vehicles, which may be packed with passengers and run in competition with other vehicles on roads, emit pollutants violating exhaust emission standards, causing danger not only to the environment, but also to the passengers and school children, who travel in these vehicles. With these averments contending that it is the bounden duty of the owner of the vehicle to cause comfort and convenience by replacing the old vehicles by latest models, the petitioner has approached this Court. As a matter of fact, this Writ Petition is the earliest one in the series. Subsequent to filing of this Writ Petition and also during pendency of this Writ Petition, various authorities from different districts came to pass orders restricting age of contract

carriage (educational institution bus) as 15 years and denied renewal of fitness certificates or permits wherever the vehicles were 15 year old from the date of registration. Therefore, several other Writ Petitions are filed, which are referred to below.

W.P. (C) No. 3211 of 2012:

4. This Writ Petition is filed by the Principal of Salafi Senior English Medium School, Kannur. According to her, fitness certificate was valid so far as bus No. KL-13-B-4460 till 17-1-2012 and permit is valid till 10-3-2015. The order at Exhibit P-4 issued by Regional Transport Authority imposing a condition that vehicles which are 15 years of age cannot be permitted to be used on roads by the educational institutions is in violation of various provisions of the Motor Vehicles Act, apart from without any power or authority to pass such order. She referred to various provisions of the Motor Vehicles Act (hereinafter referred to as "the Act") and also the Motor Vehicles Rules (hereinafter referred to as "the Rules"). She relied upon several judgments of the Apex Court and also this Court.

5. A specific ground is taken that there is no study conducted by the Regional Transport Authority to conclude that a vehicle, which is of 15 years old cannot be put to operation on roads because of involvement of safety of the children, there is no proper application of mind before passing order at Exhibit P-4, hence, she seeks for quashing of Exhibit P-4 and further a direction to renew the fitness certificate for the above said vehicle.

W.P. (C) No. 3929 of 2012:

6. This Writ Petition is filed by the Parent-Teachers' Association represented by the President from Kannur district pertaining to a Government Engineering College pressing more or less similar grounds raised in W.P. (C) No. 3211 of 2012. As there was no proper transport facilities for the benefit of the student population of the College, the association of third respondent, for promoting good relationship among members of teaching staff, students and guardians of the students, entrusted certain responsibilities to the third respondent institution providing various amenities and apparently one of the amenities was conveyance of the students. Hence, three heavy passenger vehicles for carrying students from various parts of Kannur District and also from Kasaragod were arranged so as to enable the student population to reach the institution in time. A check report came to be issued as per Exhibit P-5 indicating the vehicle bearing No. KL-13-489, one of the educational institution buses was directed to be stopped from its operation, as the vehicle had crossed 15 years age from the date of effective registration certificate. Aggrieved by the same, the Writ Petition is filed raising various grounds legally and also bringing on record other grievances, i.e., the difficulties faced by the student population on account of stoppage of buses. The main contention is, the direction issued at Exhibit P-5 is without jurisdiction and even if there is jurisdiction, without application of mind and therefore absolutely unsustainable. They also contend that in the light of currency of the

permit and the fitness certificate, such an order at Exhibit P-5 was unwarranted. According to them, various provisions of the Act and also the Rules with reference to the fitness and permit are violated. Lastly, they contend, principles of natural justice is violated, as before stoppage of operation of the vehicle, no opportunity of being heard was afforded.

W.P. (C) No. 13098 of 2012:

7. This Writ Petition is came to be filed by the Principal, Markaz English Medium Senior Secondary School, Karanthoor, Kozhikode. According to the petitioner, when renewal of permit was sought before the Joint Regional Transport Officer, the same came to be refused on the ground of age of the vehicle as 15 years age from the date of registration, therefore, Exhibit P-3 came to be challenged before the appellate authority concerned. Though the appellate authority set aside Exhibit P-3, no orders came to be passed regarding renewal of the permit, therefore, they approached this Court by filing this Writ Petition seeking writ of mandamus for implementation of Exhibit P-4 order issued by the State Transport Appellate Tribunal. So far as other grounds, apart from raising grievance of inconvenience to the students, they contend, in the absence of Government prescribing age limit to contract carriages including school buses, there was no reason to pass Exhibit P-3 and in spite of Exhibit P-4, there is no justification for not renewing their permit.

W.P. (C) No. 12967 of 2012:

8. This Writ Petition came to be filed by Chinmaya Mission Educational and Cultural Trust, Balabhavan, Kannur through the Secretary of the Chinmaya Institutions. According to the petitioner, they have more than 30 buses for the purpose of school used solely for transporting the staff and also students of various educational institutions run by them. According to them, the said buses have valid registration certificates of fitness and permits granted. A meeting was called for by the third respondent on 28-6-2011. The authority was to consider proposal for fixing age limit for educational institution buses. In the said meeting it was decided to fix age of the vehicle as 15 years from the date of registration and they also fixed time-limit for replacing the existing vehicles, which were 15 years old on or before 31-12-2011. A direction was given to the Secretary, Regional Transport Authority to take necessary action in this regard. The decision is at Exhibit P-1, which is challenged. According to the petitioner, restricting this condition of 15 years of age only to school buses and not for Kerala State Road Transport Corporation buses or private lines is arbitrary and according to them, the educational institution buses cover minimum distance unlike KSRTC buses and other private lines. Therefore, having regard to the maximum distance of 75 kms. in a day, there is no justification in restricting the age of vehicles used by the petitioner's institution as 15 years. According to them, there is nothing to do with the age of the vehicle. Irrespective of age of the vehicle, if fitness certificate is not given, the owners are not entitled to operate their buses, therefore, age should not be the criterion. According to them, this is an improper decision. They

also refer to representations submitted to the Chief Minister and other departments. Ultimately, they challenge the charge memo and other documents at Exhibits P-1, P-6 and P-7 as ultra vires.

W.P. (C) No. 13325 of 2012:

9. Petitioner in this case is the Principal of Bharathiya Vidya Bhavan School, Bhavan's Hill, Chevayur, Kozhikode. According to her, among various buses, one bus bearing No. KL-11-F-8305 though has valid permit till 5-5-2014, the fitness certificate expired on 24-6-2012. When renewal application came to be submitted, the respondents were not inclined to process the application on the ground that age of the vehicle is more than 15 years. Aggrieved by this, they have approached this Court bringing to the notice that Section 56 of the Act and Rule 105 of the Rules govern certificate of fitness and age of the motor vehicle cannot be a ground to deny renewal of fitness certificate. According to her, imposing such a condition is arbitrary and without back of any Statute or provision of the Statute. With these averments, she has sought for a writ of mandamus to consider Exhibit P-3 application for renewal opining denial of consideration is illegal and against the law.

W.P.(C) No. 12899 of 2012:

10. This Writ Petition is filed by the Principal of Kadambur Higher Secondary School, Kadambur, Kannur District. According to the petitioner, the school owns 35 buses and out of 35, 15 buses were in use for the last 15 years. Though permits are valid, when fitness certificates were sought to be renewed, as per Exhibit P-3 the second respondent refused to renew fitness certificates on the ground that the vehicles are 15 year old from the date of registration and hence, they are not entitled for renewal of the fitness certificates. According to petitioner, only the Central Government can impose such a condition by notification and in the absence of such notification, when other conditions or circulars in accordance with the statute are complied with, there is no justification why the authorities are refusing to renew fitness certificates. With these averments, the petitioner has sought for quashing of Exhibit P-3 and a declaration that respondents 1 and 2 are not having jurisdiction to decide age of the vehicles and further mandamus to issue renewal of fitness certificates covered under Exhibit P-1 application.

11. Inter alia State has filed a detailed counter-affidavit explaining the past litigation and also necessity to impose such condition of 15 years even in respect of contract carriages run as educational institution buses explaining the genesis of the matter and placing on record the duty of the authorities to safeguard the interest of the children, who travel in these buses and also the minimum duty others owe to the public in general. Apart from the counter-affidavit, they have also brought on record details of study conducted so far as stage carriages is concerned when 15 years age came to be imposed so far as stage carriages in the State of Kerala. This is relevant according to the learned Special Government

Pleader, as in most of the cases discarded stage carriages are used as contract carriages (educational institution buses). They brought on record earlier exemption given to obtain permits compulsorily so far as educational institution buses are concerned. They refer to specific directions given by the Central Government in response to the queries raised by the State Government how educational institution buses need to be registered or referred to in the registration certificates, and according to them, the last intimation was to register all educational institution buses as contract carriages (educational institution buses). According to them, the said action is in accordance with the circulars and there is no violation of any of the circulars or norms fixed from time to time. According to them, the main objective of the Act is to ensure public safety and convenience, therefore, in order to achieve the objectives of the Act, the Regional Transport Authorities are having jurisdiction to impose conditions requiring elimination of old vehicles, especially when used for transporting school children. This is also done in a phased manner not to cause any inconvenience to the student population. They substantiate their contention by placing reliance on sub-section (xiii) of Section 74(2) of the Act. According to them, any other condition, which may be prescribed as envisaged under sub-section (xiii) of Section 74(2) of the Act, safety of the children being paramount consideration. According to learned Government Pleader, the allegation of arbitrariness or ultra vires of provisions cannot be a ground to allow the petitions. She contends that when the decision to discard the stage carriage is upheld by various decisions of the Apex Court and also this Court, similar condition for other vehicles, contract carriage private bus was justified. Contract carriage private buses, which are used as educational institution buses is more so necessary having regard to the stakeholders, who are involved in day-to-day travel. According to them, it is not the distance covered by the vehicle, but it is the condition of the bus, which is relevant. As the old vehicles are not having many of the modern facilities, especially with reference to safety and protection measures, there is justification on the part of the Regional Transport Authority concerned to impose condition of 15 years and this is also to give a breathing time for the owners to acquire new vehicles to replace old discarded vehicles. As phased manner is adopted by the authorities, it cannot be called as arbitrary exercise of power. The very fact that in a meeting held such decision was taken would indicate owners of the buses were also consulted before coming out with the order of the present nature restricting 15 year old as the limit for contract carriage (educational institution bus).

12. At paragraph 6 of the counter-affidavit, they refer to the instructions given by the General Education Department to various educational institutions subsequent to the minutes of the meeting of the Minister for Transport on 30-5-2011. They also refer at paragraph 7 of the counter-affidavit that the directions at paragraph 6 were not sufficient to cover all the safety measures, hence further comprehensive circular came to be issued on 27-9-2011 indicating 14 directions to school authorities to be followed reference to the buses they use,

especially, the drivers, who are engaged to drive educational institution buses. According to them, the transport authorities, from time to time, depending upon the necessity and the situation, are giving such circulars keeping in mind only the paramount consideration being the safety of school or college going children, to use these buses. With these averments, they have sought for dismissal of the Writ Petitions filed by various educational institutions as also the Parent-Teachers' Association and seek further necessary directions, if occasion arises so far as Public Interest Litigation is concerned.

13. From the arguments of learned counsel appearing for the petitioners, other than the Public Interest Litigation, the main ground of challenge seems to be with regard to jurisdiction of the authority, who has either refused issuing fitness certificate or renewal of fitness certificate or renewal of permit on the ground of vehicle reaching 15 years age from the date of initial registration. The second ground is, the distance covered by these buses is much less than the distance covered by stage carriages, therefore, the State Government report available so far as the defects of stage carriages cannot be used as a ground for fixing the age of educational institution buses, as it would lead to unnecessarily putting an embargo on the transport facility created for the purpose of student population of schools and colleges. According to them, in many areas, especially Kannur and Kasaragod, public transport system is not enough which necessitated implementation of some arrangements like Parent-Teachers' Association or management of the school or college to create conveyance facility so as to redress the difficulties of the students, staff and faculty of their institutions. The maximum area covered in a day is not beyond 75 kms., therefore, age of the bus has no relevance to the fitness certificate. According to them, even if the vehicle is a new one, unless a fitness certificate is issued certifying the fitness condition of the vehicle, it cannot be run on the road. Therefore, there was no justification in denying renewal of fitness certificate.

14. While asserting the jurisdiction of the authorities concerned, they invited our attention to Section 59 of the Act to substantiate their contention that it is the Central Government who has authority to fix age of the vehicles, therefore, there is no justification in the orders issued by various Regional Transport Authorities. According to them, the relevant provisions are Sections 56 and 59 of the Act and Rule 105 of the Rules.

15. Learned Senior Counsel Sri George Poonthottom, appearing for the petitioner in WP(C) No. 12899 of 2012 brought to our notice Rule 88 of the Central Motor Vehicles Rules so far as national permit is concerned, wherein a reference is made to the age and facility of plying vehicles having national permit all over the country. He submitted this argument to substantiate his contention that if individual Regional Transport Authority introduces a particular age limit to the vehicles, which have national permit, there should be uniformity in the decision taken by the authorities concerned, provided they have authority to take such a decision.

16. Other counsel appearing for other petitioners submit, if an individual Regional Transport Authority is allowed to take decision of fixing age for educational institution buses, there will not be any uniformity even in a particular State, which would lead to unnecessary disparity between various educational institutions having their own transport facility. They refer to a decision reported in Mohammed v. R.T.O., Malappuram 1992 (2) KLT 781 and also an unreported decision of this Court in O.P. No. 14241 of 2003 dated 10-7-2003.

17. As against this, learned Special Government Pleader Smt. Girija Gopal took us through the details of the counter-affidavit in order to justify the stand taken by the State in the counter-affidavit filed on behalf of the State. According to her, if the genesis why such restrictions were imposed so far as stage carriages is taken into consideration, it would clearly explain and convince every one concerned that there is no arbitrary exercise of power on the part of the Regional Transport Authority. Sections 72, 74 and 16 provide imposition of conditions by RTA concerned and they are only to achieve the objectives of the Act, therefore, any safety measure taken up in aid of the main purpose or the aim of the Act by RTA cannot be argued as without jurisdiction and she places reliance on various decisions, Subhash Chandra and Others Vs. State of U.P. and Others, , Bharath Kumar, A. Vs. Karnatka State Transport Appellate Tribunal and another, , Ismeth Ummer v. Regional Transport Authority 2010 (4) KLT 597 (S.C.) and Raghavan v. R.T.O., Kollam 2001 (2) KLT 209.

18. In order to understand the real controversy placed before us, one has to understand first what exactly is definition which could take into its fold the educational institution buses. One has to refer to the definition 2(11) which describes educational institution buses. This includes omni bus, which is owned by a college, school or other educational institution used solely for the purpose of transporting students and staff of the educational institutions in connection with any of its activities. When it comes to the issuance of permit for these vehicles, there is no special provision so far as issuance of a permit to an educational institution vehicle. Section 72 deals with stage carriage, Section 74 deals with contract carriage and Section 76 deals with private service vehicle. In the absence of special provision under what circumstances a permit could be given, there was exchange of correspondence between the State Government and Central Government.

19. As already referred above, the counter-affidavit filed by the State really indicates the genesis for restricting an educational institution vehicle as a contract carriage. It is also pertinent to mention, previously as per Section 66(3) (h) of the Act, all educational institutions were exempted from obtaining permit. This led to some problem. However, the exemption ultimately came to be withdrawn in the year, 2000. In spite of it, many institutions did not obtain permit, though it was compulsory for them to obtain permit to operate their vehicles on road. As no separate provision was incorporated to deal with the permits, several letters were addressed to the Central Government. First reply is

dated 26-9-2002, wherein the Central Government informed that the educational institution vehicle can be categorised as contract carriage. As the Regional Transport Authorities concerned were issuing educational institution vehicle permits as private vehicles, the department was of the view that it cannot be called as contract carriage, therefore, they wrote a letter to the Central Government and the Central Government made its stand clear as per Exhibit R-2(a) dated 28-8-2006 directing the State Government to classify the educational institution buses as contract carriages. Consequent to the said direction, the Transport Commissioner issued a letter to various departments and in order to remove the doubt rather to have a clarity in the matter, a direction was given to register all these vehicles belonging to educational institutions as contract carriages within brackets stating educational institution buses. Therefore, all the educational institution buses came to be referred to as contract carriage (educational institution bus). In some of the Writ Petitions we have noticed that the permits were given as private service bus or educational institution bus. Whatever may be the nomenclature given in the permit, ultimately it would mean contract carriage (educational institution bus), which attracts provisions of Section 74 of the Act so far as issuance of a permit is concerned.

20. The next question that arises for our consideration is, in the light of various decisions referred to above, whether the Regional Transport Authority has power to issue a direction or deny renewal of fitness certificate or issue a direction restricting the age as 15 years for an educational institution vehicle or refusal to renew fitness certificate or permit on the ground of age of 15 years. As already stated above, a study report pertaining to stage carriage revealed beyond 15 years of age putting stage carriage to use on public road is nothing but putting the lives of passengers to danger, therefore, 15 years age came to be imposed as the age or life of a stage carriage and after that, such vehicles should not be used as stage carriages.

21. According to learned Special Government Pleader, it is referable to old Section 51(2) and the present Section 72 of the Act and according to learned counsel representing the institutions, Section 59 of the Act indicates clearly so far as jurisdiction of the authority in imposing such restriction. Learned counsel for the petitioners so also learned Special Government Pleader took us through the various provisions of the Act and also the Rules framed under the Central Motor Vehicles Rules so also the State Government. It is not in dispute that in order to have a registration certificate of a vehicle, there has to be a permit as contemplated under the Act. Depending upon the nature of the vehicle, a permit in strict compliance of the provisions of the Act and the Rules made thereunder has to be issued. It is also clear from Sections 56, 72(2) to 76 of the Act that in order to put a vehicle to use on the road apart from registration certificate, they should have fitness certificate and also permission to run the vehicle of a particular description on the roads.

22. Chapter IV of the Act deals with registration of motor vehicles. Section 39 of the Act emphasises necessity for registration and unless registration of the vehicle is made either temporary or permanent, no one can make use of the vehicle on the roads. Section 56 of the Act deals with issuance of fitness certificate. So far as issuance of fitness certificate, various provisions are made under sub-rules (1) to (5) of Section 56 of the Act with several provisos. They deal with circumstances under which a fitness certificate is required and how it should be given, what particulars to be mentioned and when it should be refused or withdrawn. The authority which is authorised to issue fitness certificate is also an authority to cancel fitness certificate at any time after putting the reasoning in writing and affording an opportunity of hearing. Section 56 of the Act reads as under:

Section 56. Certificate of fitness of transport vehicle.-(1) Subject to the provisions of Section 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 in 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 or 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 qualifications.)

(5) A certificate fitness issued under this Act shall, while it remains effective, be valid throughout India.

23. Section 59 of the Act deals with power to fix the age limit of motor vehicle by notification in the official gazette restricting the age or life of a motor vehicle. It also refers to authority of the Central Government to decide different age for different types of vehicles and also the mandatory display such restriction by a notification on the notice board. Chapter V of the Act refers to control of transport vehicles, which deals with the necessity for permits and also various permits and cancellation of permits for reasons to be recorded in writing by the authorities concerned. Section 66 of the Act deals with general provision, necessity of permits and various conditions to be taken note while issuing a permit. It refers to the duties of the owner also to take a permit before using the vehicle. Section 67 of the Act refers to power of State Government to control road transport as such, which includes hike in the fare, road tax etc. Section 68 of the Act deals with constitution of various State Transport authorities and the powers that could be exercised by various authorities.

24. Section 69 of the Act provides general provisions as to application for permits. Section 70 of the Act indicates what should be mentioned in the application for a stage carriage permit. Section 71 of the Act indicates procedure by Regional Transport Authority to consider the application for stage carriage. Section 72 of the Act deals with issuance or grant of stage carriage permits. Section 72 contains sub-sections (1) and (2). So far as Section 72(2) is concerned, it refers to various conditions that could be indicated in the permit. The transport authority can include all the conditions or one condition while issuing stage carriage permit. It also has power to vary the conditions of permit, withdraw any of the conditions of the permit and attach or modification of conditions to the permit, which is already issued. Section 72 of the Act reads as under:

Section 72. Grant of stage carriage permits.-(1) Subject to the provisions of Section 71, a Regional Transport Authority may, on an application made to it u/s 70, grant a stage carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit: Provided that no such permit shall be granted in respect of any route or area not specified in the application.

(2) The Regional Transport Authority, if it decides to grant a stage carriage permit, may grant the permit for a stage carriage of a specified description and may, subject to any Rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:

(i) that the vehicle shall be used only in a specified area, or on a specified route or routes;

(ii) that the operation of the stage carriage shall be commenced with effect from a specified date;

(iii) the minimum and maximum number of daily trips to be provided in relation to any route or area generally or on specified days and occasions;

(iv) that copies of the time table of the stage carriage approved by the Regional Transport Authority shall be exhibited on the vehicles and at specified stands and halts on the route or within the area;

(v) that the stage carriage shall be operated within such margins of deviation from the approved time-table as the Regional Transport Authority may from time to time specify;

(vi) that within municipal limits and such other areas and places as may be prescribed, passengers or goods shall not be taken up or set down except at specified points;

(vii) the maximum number of passengers and the maximum weight of luggage that may be carried on the stage carriage, either generally or on specified occasions or at specified times and seasons;

(viii) the weight and nature of passengers luggage that shall be carried free of charge, the total weight of luggage that may be carried in relation to each passenger, and the arrangements that shall be made for the carriage of luggage without causing inconvenience to passengers;

(ix) the rate of charge that may be levied for passengers luggage in excess of the free allowance;

(x) that vehicles of a specified type fitted with body conforming to approved specifications shall be used:

Provided that the attachment of this condition to a permit shall not prevent the continued use, for a period of two years from the date of publication of the approved specifications, of any vehicle operating on that date;

(xi) that specified standards of comfort and cleanliness shall be maintained in the vehicles;

(xii) the conditions subject to which goods may be carried in the stage carriage in addition to or to the exclusion of passengers;

(xiii) that fares shall be charged in accordance with the approved fare table; (xiv) that a copy of, or extract from, the fare table approved by the Regional Transport Authority and particulars of any special fares or rates of fares so approved for particular occasions shall be exhibited on the stage carriage and at specified stands and halts;

(xv) that tickets bearing specified particulars shall be issued to passengers and shall show the fares actually charged and that records of tickets issued shall be kept in a specified manner;

(xvi) that mails shall be carried on the vehicle subject to such conditions

(including conditions as to the time in which mails are to be carried and the charges which may be levied) as may be specified;

(xvii) the vehicles to be kept as reserve by the holder of the permit to maintain the operation and to provide for special occasions;

(xviii) the conditions subject to which vehicle may be used as a contract carriage;

(xix) that specified arrangements shall be made for the housing, maintenance and repair of vehicle;

(xx) that any specified bus station or shelter maintained by Government or a local authority shall be used and that any specified rent or fee shall be paid for such use;

(xxi) that the conditions of the permit shall not be departed from, save with the approval of the Regional Transport Authority;

(xxii) that the Regional Transport Authority may, after giving notice of not less than one month,--

(a) vary the conditions of the permit;

(b) attach to the permit further conditions:

Provided that the conditions specified in pursuance of clause (i) shall not be varied so as to alter the distance covered by the original route by more than 24 kilometers, and any variation within such limits shall be made only after the Regional Transport Authority is satisfied that such variation will serve the convenience of the public and that it is not expedient to grant a separate permit in respect of the original route as so varied or any part thereof;

(xxiii) that the holder or a permit shall furnish to the Regional Transport Authority such periodical returns, statistics and other information as the State Government may from time to time prescribe;

(xxiv) any other conditions which may be prescribed.

25. Having regard to the specific direction by the Central Government to treat the educational institution buses as contract carriage (educational institution bus), the provision that is applicable to the facts of the present case is Section 74 which deals with grant of contract carriage permit. So far as application for contract carriage permit, it is Section 73 of the Act. In order to understand the difference in the provisions of the Act, so far as stage carriage permit and contract carriage permit, it is necessary to reproduce what exactly Section 74 of the Act deals with and under what circumstances conditions could be imposed and what should be the conditions that could be imposed. Section 74 of the Act reads as under:

Section 74. Grant of contract carriage permit- (1) Subject to the provisions of sub-section (3), a Regional Transport Authority may, on an application made to it

u/s 73, grant a contract carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such permit:

Provided that no such permit shall be granted in respect of any area not specified in the application.

(2) The Regional Transport Authority, if it decides to grant a contract carriage permit, may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:

(i) that the vehicles shall be(sic) used only in a specified area or on a specified route or routes;

(ii) that except in accordance with specified conditions, no contract of hiring, other than an extension or modification of a subsisting contract may be entered into outside the specified area;

(iii) the maximum number of passengers and the maximum weight of luggage that may be carried on the vehicles, either generally or on specified occasions or at specified times and seasons;

(iv) the conditions subject to which goods may be carried in any contract carriage in addition to, or to the exclusion of, passengers;

(v) that, in the case of motor cabs, specified fares or rates of fares shall be charged and a copy of the fare table shall be exhibited on the vehicle;

(vi) that, in the case of vehicles other than motor cabs, specified rates of hiring not exceeding specified maximum shall be charged;

(vii) that in the case of motor cabs, a specified weight of passengers luggage shall be carried free of charge, and that the charge, if any, for any luggage in excess thereof shall be at a specified rate;

(viii) that, in the case of motor cabs, a taximeter shall be fitted and maintained in proper working order, if prescribed;

(ix) that the Regional Transport Authority may, after giving notice of not less than one month,--

(a) vary the conditions of the permit;

(b) attach to the permit further conditions;

(x) that the conditions of permit shall not be departed from save with the approval of the Regional Transport Authority;

(xi) that specified standards of comfort and cleanliness shall be maintained in the vehicle;

(xii) that, except in the circumstances of exceptional nature, the plying of the vehicle or carrying of the passengers shall not be refused;

(xiii) any other conditions which may be prescribed.

(3) (a) The State Government shall, if so directed by the Central Government having regard to the number of vehicles, road conditions and other relevant matters, by notification in the Official Gazette, direct a State Transport Authority and the Regional Transport Authority to limit the number of contract carriages generally or of any specified type as may be fixed and specified in the notification, operating on city routes in towns with a population of not less than five lakhs.

(b) Where the number of contract carriage are fixed under clause (a), the Regional Transport Authority shall, in considering an application for the grant of permit in respect of any such contract carriage, have regard to the following matters, namely:

(i) financial stability of the applicant;

(ii) satisfactory performance as a contract carriage operator including payment of tax if the applicant is or has been an operator of contract carriages; and

(iii) such other matters as may be prescribed by the State Government:

Provided that, other condition being equal, preference shall be given to applications for permits from--

(i) the India Tourism Development Corporation;

(ii) State Tourism Development Corporation;

(iii) State Tourism Departments;

(iv) State Transport Undertaking;

(v) Co-operative societies registered or deemed to have been registered under any enactment for the time being in force;

(vi) ex-servicemen.

26. Before we have comparison between Sections 72 and 74 of the Act, it is necessary to refer to the decisions relied upon by both the counsel. Unreported decision of this Court in O. P. No. 14241 of 2003 was relied in order to show how 15 years of age restriction so far as age of stage carriage came to be imposed. This does not refer to any comparative study of Sections 72 and 74 of the Act. This matter came to be disposed of indicating in general what was the duty of the State towards the safety and the authority of the Regional Transport Authorities to issue directions or impose conditions restricting the age of the vehicles.

27. So far as unreported case (*supra*), it refers to exercise of power by Regional Transport Authority u/s 72(2) of the Act. This judgment indicates that Regional Transport Officer cannot impose any condition other than the conditions referred

to u/s 72(2) of the Act. By placing reliance on these judgments and referring to the difference in the words used in Sections 72(2) and 74(2), learned counsel for the petitioners contend that obviously the words "specified stage carriage of a specified description" is relevant in Section 74(2) of the Act. According to learned counsel for the petitioners, all the judgments referred to by learned Special Government Pleader relate only to the permits with reference to stage carriage except one case, i.e., Subhash Chandra's case (supra), which refers to contract carriage. In all the judgments, because of a specific provision or specific word used in the Section, Their Lordships came to a conclusion that the authorities, who issue age restriction were exercising their power well within the provisions of Statute, therefore, restricting age of the stage carriage as 15 years was justified. According to the petitioners, in the absence of any specific provision fortifying the authorities concerned with the power to restrict the age of a vehicle or any particular power, which includes such restriction on the age of the vehicle, the authorities cannot issue any order, circular or direction restricting the use of a contract carriage and the 15 years from the date of initial restriction and further such restriction can be imposed by Central Government alone as envisaged u/s 59 of the Act.

28. Learned Special Government Pleader contends, though the word carried on a specified description, sub-section (2) (ix), especially, sub-sections (2)(ix)(a) and (2)(ix)(b), which authorise Regional Transport Authority to vary or attach conditions of permits, include restriction of age of a stage carriage. According to her, sub-section 13 of Section 74(2) of the Act gives general powers to the Regional Transport Authority to impose any other condition, which may be prescribed. Further, to achieve the main object of the Motor Vehicles Act, i.e., not only regulating the operations of motor vehicles in the State, but also safety of the stake holders being the paramount consideration of the authorities, who exercise powers by virtue of their position indicated in the above provisions, could issue circulars and orders imposing age restriction so far as contract carriage is concerned. Therefore, according to her, Section 59 of the Act is a general power as indicated in the judgment referred to by her and Section 74 being a special provision for issuance of permits to contract carriages, Section 74 of the Act couches the authorities with the power to issue such restriction.

29. We have gone through Rule 88 of the Central Motor Vehicles Rules. Rule 88 refers to national permit. As already stated above, Section 59 read with Section 88 of the Act would indicate that only the Central Government has power to restrict the age of vehicles and not the State Government, therefore, petitioners rely upon Rule 88 also. Rule 105 of the Kerala Motor Vehicles Rules refers to authority who has to issue certificate of fitness, form of application for grant of renewal and various procedural aspects. Section 95 of the Act empowers the State Government to make Rules pertaining to stage carriages and also contract carriages. By virtue of Section 95, the State Government has formulated the State Motor Vehicles Rules and Rule 105 of the Rules refers to that. None of the Rules specifically deal with exercise of power to restrict age of any particular

nature of vehicle by any of the State authorities. Therefore, again we have to refer to the main Statute, i.e., the Motor Vehicles Act so as to understand the authority to be exercised by the State Government or its functionaries constituted under the Act.

30. The first judgment so far as the age question is Subhash Chandra's case (supra). As a matter of fact, this is a Special Leave Petition. This came to be disposed of, wherein Their Lordships in particular referred to their intention to observe certain things while dismissing the SLP at paragraph 2 of the judgment, which reads as under:

2. After due fulfilment of the obligation for oral hearing, we have considered the impact of two earlier decisions cited by Shri Kacker supposedly striking a note contrary to the judgment under attack but feel free-why, bound-to dismiss the petition for special leave not merely because the High Court is right but because justice to the travelling public-a lost cause on our mad roads- conscientizes us to that course.

Other relevant paragraphs of the above judgment are 3 and 4, which read as under:

3. Tersely put, the petitioner is the grantee of permits to ply mini-buses as contract carriages and in the grant a condition has been fastened that the vehicle shall not be more than seven years old. Condition No. 18, relating to Mini-buses Contract Carriage Permits, and the source of power. Section 51 (2)(x) read thus:

That the vehicle covered by the permit shall be not more than four years old counted from the date of registration at any time during the validity of the permit.

51(2) The Regional Transport Authority, if it decides to grant a contract carriage permit, may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely-

(x) any other conditions which may be prescribed.

"Four years" have been relaxed to seven years since September 23, 1978, the beneficiaries being the busowners and the potential victims being the unknown casualties who have no "poor lobby" power. The State must remember that it has responsibilities not merely to mini-bus owners, but also to avoid the daily tragedies on the Indian highways under the lethal wheels of these whirling carriages. Section 51(2) of the Motor Vehicles Act, 1939, is geared to public safety not private profit and casts a solemn duty not to be deterred by any pressure except the pressure of social justice to Indian lives moving in buses, walking on roads or even standing on margins. If the top killer-road accident-is to be awarded death sentence. Section 51 and like provisions must receive severe enforcement. In this spirit- although backtracking from 4 year old models to 7 year old models-the State imposed Condition 18. This was challenged artfully but unsuccessfully before the High Court and is attacked before us as ultra vires Section 51(2) of the Act. We will examine briefly the submission to

reach the conclusion that mere lexical legalism cannot sterilise the sensible humanism writ large on Section 51(2) (x). If Indian life is not ultra vires Indian law every condition to save life and limb is intra vires such salvatory provision. This perspective of social justice simplifies the problem and upholds the High Court.

4. Section 51(2)(x) authorises the impost of any condition, of course, having a nexus with the statutory purpose. It is undeniable that human safety is one such purpose. The States neglect in this 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. The short question is whether the prescription that the bus shall be at least a seven year old model one is relevant to the condition of the vehicle and its passenger's comparative safety and comfort on our chaotic highways. Obviously it is. The older the model, the less the chances of the latest safety measures being built into the vehicle. Every new model incorporates new devices to reduce danger and promote comfort. Every new model assures its age to be young, fresh and strong, less likely to suffer sudden failures and breakages, less susceptible to wear and tear and mental fatigue leading to unexpected collapse. When we buy a car or any other machine why do we look for the latest model? Vintage vehicles are good for centenarian display of curios and cannot but be mobile menaces on our notoriously neglected highways. We have no hesitation to hold, from the point of view of the human rights of road users, that the condition regarding the model of the permitted bus is within jurisdiction, and not to prescribe such safety clauses is abdication of statutory duty.

31. Paragraph 5 of the above judgment refers to Section 48(3) of the Act, where the words "specified description" was referred to. Paragraph 6 refers to purpose of issuance of a fitness certificate irrespective of the age of the vehicle or age of the vehicle has no relevance to the fitness certificate. The State Government concerned imposed condition No. 18 in the permit restricting not to use the vehicle beyond seven years age, which was enhanced from 4 to 7 years and it became subject-matter of litigation. Section 51(2) of the Act is similar to Section 74 of the present Act. Condition No. 18 restricting the age of the vehicle was held to be correct, as the said condition was issued by the State and according to Their Lordships, State is empowered to prescribe such condition by virtue of powers authorising the authorities to impose any condition as long as it indicates the statutory purpose. In that context, Their Lordships referred to the importance of new technicality in the motor vehicles and benefits of discarding old vehicles, especially in the light of safety of the passengers.

32. Bharath Kumar's case (supra) again refers to Sections 59 and 72 of the Motor Vehicles Act, 1988. The question that arose before Their Lordships was, whether the provisions of Sections 59 and 72 operate on the same lines or they operate in different fields. In that context, Their Lordships referred to various provisions of the Act and also referred to the judgment in Subash Chandra's

case (supra). Paragraph 6 refers to various provisions, including the definition of "public service vehicle". While referring to Sections 56, 59 and 72, Their Lordships proceeded to hold that the purpose of granting registration while granting registration, one has to definitely look at the safety and convenience of the passengers, who travel in such vehicles apart from road worthiness depending upon the nature of the permit that is to be granted by the authority concerned. Section 56 of the Act deals with fitness certificate and Section 59 deals with imposition of age restriction on vehicles by the Central Government. Having regard to the purpose for which fitness certificate is given, Their Lordships opined that issuance of a fitness certificate has nothing to do with the age of a vehicle as held in the case of Subash Chandra's case (supra). Therefore, Sections 59 and 72 operate in different fields, though both could be traceable ultimately to the object of the Act, i.e., safety of the passengers. At paragraph 7 reference was made to Subash Chandra's case (supra) and paragraph 9 refers to the facts of the case that was presented before the Division Bench apart from the difference between Subash Chandra's case (supra). Paragraphs 5, 6, 7 and 9 of the judgment, which are relevant, which read as under:

5. On the first question, it is submitted that under the Motor Vehicles Act, 1939 (hereinafter referred to as the "1939 Act") there was no provision similar to Section 59 of the Act and u/s 24(4) of the 1939 Act the power to fix the period for validity of Certificate was mentioned and it would be a period of 15 years from the date of issue of Certificate and the same could also be renewed. However, u/s 59 of the Act, it is the Central Government which has been empowered to fix the age limits for different classes of vehicles. It is urged that the learned Single Judge did not take into consideration that a Certificate of Registration issued u/s 46 of the Act would be effective throughout India and the same is not required to be registered in any other State. u/s 56 of the Act, a transport vehicle which is covered by the Fitness Certificate is deemed to be validly registered. u/s 59 thereof, Central Government is empowered to prescribe the Rules as to the effectiveness of such Certificate and u/s 59, the Authorities under the Act are empowered to cancel the Certificate of Fitness if it does not comply with the provisions of the Act or the Rules framed thereunder. u/s 59 of the Act, the Central Government has framed Rule 62 which specifies the validity of the Fitness Certificate in respect of new vehicles for 2 years; in respect of vehicles which complete 10 years from the date of registration for one year and the renewal of a Fitness Certificate for another 6 months after completion of 10 years from the date of original registration. It is submitted that from the above provisions, it is the Central Government that is empowered to prescribe the age of various vehicles and therefore the transport authorities constituted under the Act cannot act in conflict with Section 59 of the Act. The Decisions rendered prior to the Act coming into force cannot be applied at all as under the earlier Motor Vehicles Act provisions akin to Section 59 of the Act were not available. No reliance on the Decision in Subhash Chandra's case can be placed at all inasmuch as in the said Decision the Supreme Court was concerned with a case

arising from Uttar Pradesh where a Rule had been framed by that State as to the age of the vehicle in relation to omni-bus and the vires of the said Rule had been questioned and the said Rule was held to be within the competence of the State Government.

6. The basic contention advanced on behalf of the Appellant is that the Authorities acting under the Act cannot impose a condition as to the age of a vehicle which is covered by a permit. Under the Scheme of the Act, requirement in regard to registration of a motor vehicle is covered by Chapter IV of the Act; while Chapter V deals with the control of transport vehicles. A "Transport Vehicle" is defined u/s 2(47) as a public service vehicle, a goods carriage an educational institution bus or a private service vehicle. Public service vehicle means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxi-cab, a motor cab, contract carriage and stage carriage. A goods carriage means a motor vehicle construed or adapted for use solely for the carriage of goods. An educational institution bus is an omni-bus which is owned by such institution and used for the purpose of transporting students or staff of such institution. A "Private service vehicle" means a motor vehicle which is construed or adapted to carry more than six persons excluding the driver for the purpose of carrying persons for, or in connection with trade or business otherwise than for hire or reward. A "motor vehicle" gives a very wide definition of any vehicle which is mechanically propelled vehicle adapted for use upon roads, i.e., every kind of motor vehicle is covered. Therefore, while Chapter IV relates to control of motor vehicles by registration and condition thereto, Chapter V relates only to transport vehicles. Under the Act at Chapter IV, Section 59 occurs which empowers the Central Government to fix the age limit of a motor vehicle. That has relevance only in regard to issue of Certificate of Fitness and Section 56 which provides for Certificate of Fitness is subject to Section 59 of the Act. Section 72 of the Act empowers the R.T.A to grant permit for a stage carriage of a "specified description", subject to certain conditions which may be prescribed under the Rules. While granting registration what is primarily to be looked at is the road worthiness or fitness of the vehicle so as not to affect public safety and convenience. However, while granting permits for a transport vehicle the Authority may also take into consideration the safety and convenience of passengers who travel in such vehicle apart from road worthiness and depending upon the nature of the permit that is granted by the Authority concerned, a condition in this regard could be imposed by the said Authority. Thus, the provisions of Section 59 and Section 72 operate in two different fields and the Authorities acting under both the provisions can impose conditions relevant thereto including as to date of manufacture of the same.

7. The Supreme Court in Subhash Chandra's case has made certain general observations in the matter of prescribing such conditions. The Supreme Court notices that the imposition of a condition would assure a comparative safety and older the model less the chances of such safety and every new model would

incorporate new devices to reduce danger and provide comfort and a new model assures of less failures and breakages and less susceptible to wear and tear adding to the fatigue of the traveling public. Therefore, in considering whether a particular vehicle of a "specified description" alone should be used could be taken note of by the Authorities concerned in granting the permit.

8. * * *

9. In this view, when the Act itself empowers the Authority concerned to prescribe the model of the vehicle or the year of the make as covered by description of the vehicle, it cannot be said that the Authority was acting ultra vires the provision of the Act or the Rules in imposing such condition. Indeed, neither the Decision in Subhash Chandra's case was brought to the notice of this Court in the earlier Decision nor the effect of Section 72(2) of the Act adverted to. In that view of the matter the Decision in Writ Petition No. 11831 of 1991 and other Decisions following the same are not in order. Therefore, we overrule those two Decisions and agree with the conclusion of the learned Single Judge.

33. It is pertinent to mention that Bharath Kumar's case (supra) was dealing with stage carriage and restriction of age of a stage carriage. Raghavan's case (supra) again pertains to stage carriage. Learned Special Government Pleader relies on this judgment to substantiate her stand that Section 59 of the Act is only a general provision and it operates in a different field than Section 72, therefore, Section 59 of the Act cannot be read into Section 74 of the Act while considering the permits for contract carriage. The relevant paragraphs in this judgment are paragraphs 6, 9 and 13, which read as under:

6. S. 59 of the Act reads thus:

59. Power to fix the age limit of motor vehicle.-(1) The Central Government may, having regard to the public safety convenience and objects of this Act, by notification in the Official Gazette, specify the life of a motor vehicle reckoned from the date of its manufacture, after the expiry of which the motor vehicle shall not be deemed to comply with the requirements of this Act and the rules made thereunder:

Provided that the Central Government may specify different ages for different classes or different types of motor vehicles.

(2) Notwithstanding anything contained in sub-s. (1), the Central Government may, having regard to the purpose of motor vehicle, such as, display or use for the purposes of a demonstration in any exhibition, use for the purposes of technical research or taking part in a vintage car rally, by notification in the Official Gazette exempt, by a general or special order, subject to such conditions as may be specified in such notification, any class or type of motor vehicle from the operation of sub-s.(1) for the purpose to be stated in the notification.

(3) Notwithstanding anything contained in S. 56, no prescribed authority or authorised testing station shall grant a certificate of fitness to a motor vehicle in

contravention of the provisions of any notification issued under sub-s.(1).

It may be noticed that S. 59 which appears under Chapter IV of the Act, bearing the title "Registration of Motor Vehicles", deals generally with all the motor vehicles. Once a motor vehicle completes the period of life as notified by the Central Government, then "the motor vehicle shall not be deemed to comply with the requirements of this Act and the rules made thereunder". Further, as can be seen from sub-s.(3), there is a total prohibition in the matter of grant of certificate of fitness in respect of vehicles notified under the Section. In short, a notification under S. 59 of the Act terminates the life of a motor vehicle and declares its death. In the instant cases, the R.T.A. concerned was not obviously acting under S. 59 because here the restriction is only a limited one, to the extent of using a vehicle aged more than 15 years as a stage carriage. In other words, the life of the stage carriage as a motor vehicle is not terminated by such a restriction. Thus, it can be seen that the purpose of S. 59 is entirely different from what is put forward by the learned counsel for the petitioners.

* * *

9. It is significant to note that S. 72 of the Act appears in Chapter V. bearing the title "Control of Transport Vehicles". It is the contention of the learned Senior Government Pleader Sri K. Sasikumar that the expression "stage carriage of a specified description" appearing in S.72(2) of the Act empowers the R.T.A. to impose a restriction regarding the model of the vehicle. Such restriction is only a regulatory measure. The licensing authority, i.e., the R.T.A. is well within its jurisdiction to impose such regulatory measures in order to safeguard public interest. The interest of the travelling public has to be given paramount consideration while granting permits to stage carriages. The learned Government Pleader also relied on the decision of the Apex Court in *Subhash Chandra and Others Vs. State of U.P. and Others*, and the decisions reported in *Regional Transport Authority, Jodhpur Vs. Sita Ram*, and *Bharath Kumar, A. Vs. Karnatka State Transport Appellate Tribunal and another*, .

* * *

13. Then the question is whether the expression "specified description" would take in the model of the vehicle with reference to its age. Expressions like type, class, description etc., though profusely used, are not defined under the Act or Rules. R. 48 of the Central Motor Vehicles Rules provides for the certificate of registration in Form 23. It can be seen from Form 23 that the initial requirement in the certificate of registration is for "Brief Description of Vehicle" (e.g., Fiat/Ambassador/Maruti car, Tata/Ashok Leyland Goods Vehicle, Trailer, Motor Cycle with/without gear. Motor Cycle with side car etc.). After the address of the dealer and the registered owner, space is provided for the "Detailed Description", which contains as many as 22 items. Item No. 4 is "Month and Year of Manufacture". This is a definite indication as discernible from the Rules that the description takes in the model of the vehicle with reference to its age. It is not necessary to

refer to the Lexicon meaning of the expression "specified description" for understanding the purpose of the Act. In other words, employing a purposive interpretation of the expression, it has to be held that "specified description" as appearing in S. 72(2) of the Act indicates also the model of the vehicle with reference to its age. That is why in the Form, application for permits in respect of stage carriage/reserve stage carriage as contemplated under R. 143 of the Kerala Motor Vehicles Rules, 1989, the requirement under item No. 7 is "Type of Vehicle", also meaning thereby, the model of the vehicle with reference to its age.

34. *Ismeth Ummer v. Regional Transport Authority* 2010 (4) KLT 597 (S.C.) also refers to Section 72 of the Act in the case of grant of permit for stage carriage. While considering Sections 59 and 72 of the Act, Their Lordships referred to the words used "specified description" under sub-section (2) of Section 72, which has a wide meaning, which could include fixing of age. This judgment was relied upon by learned Special Government Pleader in order to contend that irrespective of Section 59, u/s 72 alone the authorities are empowered to fix age of the vehicles.

35. The intention of the authorities in question seems to be mainly with reference to safety of the users of the vehicles of educational institution. They came out with the proposal of conducting a meeting and after discussion one of the Regional Transport Authorities even proceeded further and came out with the condition that contract carriage described as educational institution vehicle cannot be allowed to operate, if the age of the stage carriage is more than 15 years from the date of initial registration. There is no serious dispute so far as the purpose for which the authority has brought this condition into operation. The main attack seems to be with regard to jurisdiction or power to issue such restriction. As a matter of fact, the Government of Kerala had indicated in the counter-affidavit, from the beginning how care was taken to see how permits should be issued to educational institution vehicles. The correspondence itself right from 2002 onwards indicates such exercise on the part of the transport authorities in the State. The Minister for Transport came out with five conditions to be followed in all educational institution vehicles in a meeting held on 30-5-2011, which read as under:

- (i) A teacher in the School be entrusted with the duty of supervision of mode of conveyance of students.
- (ii) Vehicle's stops be minimized in a residential area.
- (iii) Traffic awareness be imparted to students through Road Safety Clubs.
- (iv) Timing of higher and lower classes in a School be adjusted to minimize the traffic rush.
- (v) Entry of two wheelers by the students be strictly prohibited in School campus.

36. The above conditions indicate that the paramount criterion was safety of the student population, who use these vehicles. The Directorate of Education, not

being satisfied with the above conditions, came out with the following conditions:

(i) A traffic register be maintained in each school where, the details of students travel in the vehicle, vehicle details, the drivers details are to be entered and copy of the same may be handed over to the nearest police station if it is necessary.

(ii) A nodal teacher be entrusted with the day to day conveyance of students. An executive member of the PTA will assist the teacher. The Head Teacher will review the work done by nodal teacher.

(iii) A monitoring committee from among the parents will periodically report to the Head Teacher and PTA executive committee.

(iv) The Head Teacher should initiate to give awareness classes to drivers with the help of police and Transport Departments.

(v) The conveyance by the students be discussed in each meeting of Head Teacher and be reported to District authorities for further action if needed.

(vi) District level meeting of Police, Transport, Education Department be conducted and problems relating to conveyance of students to schools be sorted out and find solutions.

(vii) To decrease the rate of travelling by students to farther schools, awareness be created by schools regarding the admission of students in nearby schools as far as possible.

(viii) To start traffic club in schools with the help of police and Transport authorities.

(ix) The activities of the clubs be monitored by the Headmaster, Assistant Educational Officer, District Educational Officer and Deputy Director of Education.

(x) Continued awareness programme on road safety be conducted in Schools.

(xi) The help of Students Police Cadet be used in this area.

(xii) The speed of vehicles which travel by the side of water shed area be limited.

(xiii) The usable period of each vehicle be checked by the concerned authority.

(xiv) The efficiency of the vehicle be periodically checked by the concerned authorities.

37. The above conditions clearly indicate, the intention was to bring discipline in the work culture of the drivers and create safety awareness so also motor vehicle and other related issue awareness in the minds of children apart from other stakeholders, staff, management faculty and the guardians of the student population; with these safety measure in their mind, according to the State, restriction of the present nature came to be imposed, as there is reasonable thinking that stage carriage, which is discarded for road use practically and

functionally cannot be put to use on road as a contract carriage, where safety of the children has to be prime concern. So far as the object it is laudable as paramount consideration is the welfare measure apart from awareness. Whether such welfare measure was exercised in accordance with the power vested with the authorities under the provisions of the Act has to be seen. This has to be seen from the very provisions, which deal with the procedure imposing such restriction or conditions, which could take into its fold restriction of age also.

38. So far as the judgment in Subhash Chandra's case (supra) as already stated above, Section 51 as per Motor Vehicles Act of 1939 was the subject-matter. There the State imposed condition No. 18 therefore having regard to the words used "any other conditions which may be prescribed" the Apex Court said that this is very much within the jurisdiction of the State to impose such condition and therefore the restriction with regard to the age pertaining to contract carriage also was held to be valid. Apparently, u/s 74 of 1988 Act similar sentence is used at sub-section (xiii) which means "any other conditions which may be prescribed". The authority who has to prescribe such condition as held in Subhash Chandra's case (supra) was State which has the power to form rules as contemplated under the Motor Vehicles Act. In the present case State has not prescribed any conditions i.e., restriction with regard to the age of the contract carriage (educational institution vehicles).

39. Then coming to the argument of learned Government Pleader that under sub-section (ix) (a) and (b) would take into its fold the restriction now imposed by the transport authorities. Section 74 deals with "grant of contract carriage permit" and such permit could be granted as per sub-section (2) subject to one or more of the conditions referred. From Section 74 (2) (i) to (ix) several restrictions and conditions are envisaged. Sub-section (ix) says only after giving notice of not less than one month the conditions of the permit can be varied or add additional conditions. Entire reading of sub-section 74(i) along with sub-section (ix) would only indicate if there is any variance of the conditions of the permit with reference to Section 74 (2) (i) to (ix) or additional conditions to be attached to the conditions already indicated in the permit, one month notice has to be given before such exercise is undertaken. The entire section would indicate addition of conditions or variation of conditions would refer only to conditions u/s 74 (2) (i) to (viii) and not otherwise. In that view of the matter, the argument of the learned Special Government Pleader that the conditions of the present nature restricting the age of the vehicle will also fall within sub-section (ix) of Section 74 (2) cannot be accepted.

40. Then coming to the other decisions as discussed above, all pertain to stage carriages. We have already mentioned the difference between the words used in Sections 72 and 74. Section 72 (2) clearly indicates the Regional Transport Authority is empowered to grant a permit for a stage carriage of a specified description. Specified description has taken into its fold even the age of the vehicle as indicated in the judgment of the Apex Court so also this High Court

and other High Courts relied upon by the learned Government Pleader. Having regard to the fact that in the present case neither the vehicle could be called as stage carriage nor the conditions imposed would attract provisions of Section 74 (2) (ix) or 74 (2) (iii), we have to hold that the conditions now imposed restricting the user of the vehicle owned by educational institutions as 15 years is outside the purview of the jurisdiction vested with the transport authorities as such conditions could be prescribed only by the State and transport authority can vary or add conditions only with reference to Section 74 (2) (i) to (viii). In that view of the matter, we are of the opinion, the notification issued by various transport authorities pertaining to different districts restricting the user of the vehicle by the educational institutions beyond 15 years deserves to be quashed. However, we make it clear that the State is empowered to prescribe any conditions in pursuance of powers vested with it as understood from Section 74 (2) (xiii). It is also the duty of the State to impose such conditions having regard to the care and caution already it has taken so far as the vehicles used by educational institutions with reference to the persons who man these vehicles as indicated in the counter-affidavit tiled by the State.

With the above observations, the writ petitions are disposed of. So far as the Public Interest Litigation, i.e. W.P.(C) No. 29975 of 2007, we direct the State Government to consider the matter in the light of the observations made and lay down necessary terms and conditions in accordance with the procedure in the light of the observations made above.