
(2007) 09 MP CK 0033
In the Madhya Pradesh High Court

Smt. Uma Devi Sharma

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 21-09-2007

Acts Referred:

Madhya Pradesh Motor Vehicles Rules, 1994 — Rule 158

Citation : AIR 2008 MP 110 : (2007) ILR (MP) 1397

Hon'ble Judges : S.C. Sinho, J;Deepak Verma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Deepak Verma, J.—In this batch of Writ Petitions, common question posed for adjudication is to the constitutional validity of Rule 158 of the M.P. Motor Vehicles Rules, 1994 (hereinafter referred to as "the Rules"). In addition to the prayer for striking down the aforesaid Rule being unconstitutional, the petitioners have also challenged the order dated 16-9-2005, issued by the Transport Commissioner, mentioning therein that In Tata Vehicles, the seating capacity in Ordinary and Deluxe stage carriage be fixed in accordance with Rule 158 of the aforesaid Rules, as also under Rule 128 of the Central Motor Vehicle Rules, 1989 (in short the Central Rules").

2. Certain material facts, which need to be adverted to, in the aforesaid petitions, are mentioned hereinabove. For the sake of convenience, we have taken the facts of aforesaid case as the leading petition:

(A) Petitioner herein had purchased a second hand bus bearing Registration No. GJ-19-T-4170 from Rohan Kumar, resident of Surat. The bus was originally registered on 16-8-2004 with ARTO Bardoli, Surat. The make of the bus is entered as Tata with seating capacity 29 + 1 in the Registration Certificate issued to Rohan Kumar. According to the petitioner the said bus used to ply on the route as per the permit issued in favour of the previous owner, having seating capacity of 29 + 1. The tax used to be recovered for the aforesaid seating capacity of 29

+ 1 only. After purchasing the said vehicle from its previous owner, the petitioner applied to the competent authority in the State of Gujarat for issuance of "No Objection Certificate", so as to enable her to ply the vehicle within the State of Madhya Pradesh. Thereafter, the petitioner applied to the respondent No. 3 herein, District Transport Officers, Shajapur for transfer of her name in the Registration Book.

(B) On the strength of the documents filed by the petitioner, respondent No. 3 recorded the name of the petitioner on 17-11-2005 and issued a Smart Card in this regard. However, in the certificate issued to the petitioner by respondent No. 3, the original seating capacity of 29 + 1 was changed to 38 + 2. It is averred by the petitioner that this change of seating capacity was done by the respondent No. 3 without her notice and knowledge. It is put forth that the same is contrary to the provisions of the Act and the Rules and hence, it is unconstitutional, illegal and liable to be struck down. The petitioner lodged her complaint with the respondent No. 3 with regard to the aforesaid change in the seating capacity. According to the petitioner, she was orally informed that this had become necessary on account of the Circular dated 16-9-2005, issued by the Transport Commissioner, which is also the subject-matter of challenge in this petition.

(C) It is further mentioned in the petition that Section 47 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"), provides for registration of a vehicle, which is carried out after full verification by the Registering Authority. In the present case, the vehicle was duly inspected; verified and only thereafter the original Registering Authority registered its seating capacity as 29 + 1. The said vehicle has come to the State of Madhya Pradesh with "No Objection Certificate" issued in that regard. According to the petitioner, Section 50 of the Act, contemplates transfer of the vehicle in the name of subsequent purchaser, but no other change in the particulars already existing in the registration book at the time of initial registration, can be made by respondents, more so, suo motu.

(D) Reference has also been made with regard to powers conferred on the Authority u/s 52 of the Act, but according to the petitioner no suo motu power can be exercised in this regard. According to the petitioner, Act of 1988 has been basically introduced with the object of providing better service, facilities to the travelling public in the fast moving age of competition as the latest model buses are provided by owners with best amenities and comforts and facilities for the travelling public. In fact by providing more comforts to the public generates less profit to the petitioner, but, the only surety is that by doing so petitioner and other such operators are not likely to be ousted from business.

(E) It is further mentioned that prescribing seating capacity on the basis of wheel base is against the convenience and safety of the travelling public. That apart, it is contrary to the object of the Act. It is not only unworkable, but is impracticable too. If the space and dimension mentioned in Rules 158 and 163 of the Rules, are strictly followed, the number of seats mentioned against the wheel base is not possible and the entire concept of Act to provide better facilities to the

travelling public stands frustrated.

(F) According to petitioner, the bus is fitted with 29 seats yet the respondents are charging tax for 38 seats, which is illegal, unwarranted and unconstitutional. As set forth, the seating capacity as prescribed under Rule 158 of the Rules, is unworkable. However, the petitioner is required to adhere to it, but the travelling public is likely to be put to great inconvenience, which would increase chances of accident. On account of aforesaid facts and features Rule 158 of the Rules, and the Circular issued by the respondent No. 2 are ultra vires the Constitution and the statutory provisions, consequently deserve to be quashed and set aside.

3. Respondents have submitted their reply in oppugnation. It has been contended by them that every citizen in this country is entitled to carry on business of transport for hire or reward, however, the same is sublet to reasonable restrictions as may be prescribed under law. The Act was passed by the Parliament with the intention to regulate the transport business and to grant license to vehicles. Section 111 of the Act, confers power on the State Government to frame and formulate Rules. Exercising the said power, State Government has framed the Rules as mentioned hereinabove and Rule 158 bestows power on the respondents to fix the maximum seating capacity for the stage carriages or contract carriages. They have referred to Chapter VII, of the Rules. According to them, Rule 154 stipulates that no person shall use and no person shall cause or allow to be used or to be in any public place, any motor vehicle which does not comply with the rule contained in this Chapter, or with any order made thereunder. According to them, Rule 158 makes provision for minimum and maximum seating space, backrest and gangway to be provided in public service vehicles.

4. As is patent, in accordance with the Rules framed by the State Government, actual physical verification of the bus of the petitioner was carried out and it was found that the floor area/space available in the vehicle is more than the seating arrangements fixed therein. The third respondent measured the seating arrangement and allotted 38 + 2 seating capacity to the vehicle, which was within the competence of the said respondent. The change of seating capacity was conducted after actual physical verification of the bus in presence of the petitioner. Thus, the petitioner cannot raise any legitimate grievance with regard to change of seating capacity on the ground that the same has been done suo motu or without her knowledge. They have also justified Issuance of letter/circular by Transport Commissioner mentioning therein on the ground that the same is absolutely in compliance with the provisions of Rule 154 of the Rules. In this case, manufacturer has given the wheel base as 4200 mm, which is equivalent to 166" (inches). Any vehicle having wheel base of 166" must have the seating arrangement in accordance with measurements specified under Sub-rule (1) of Rule 158 of the Rules. Thus, the seating capacity of 38 + 2 to the petitioner's vehicle has been done strictly in accordance with the said Rules. Under the garb of providing better comforts and facilities to the travelling public,

choice cannot be left to the operator to fix seats according to his own discretion. In any case, the bus operators are required to carry on business strictly in accordance with the statutory rules and the restrictions imposed therein. With the intention to evade payment of proper road tax, they cannot reduce the number of seats, more so, under the guise of providing better seating capacity and facilities to the travelling public. They have also contended that it is a matter of common knowledge that if more open space is left in the bus, the operator indulges in carrying travelling passengers keeping them standing, giving a complete go by to their basic comforts, and pay less road tax to the respondents. According to them, the chances of accidents increase as mostly bus operators carry passengers more than the authorised capacity.

5. It is further set forth that the question of loss to the operator is irrelevant in comparison to the loss of revenue to the State, which it suffers on account of showing less capacity in the bus, yet carrying more passengers and paying less tax. By doing so, more consumption of fuel is experienced which can otherwise be avoided and thereby is the national loss. As regards directions issued by the respondent No. 3, according to them, it has become necessary to ensure uniformity in the enforcement of the provisions of Rule 158 of the Rules. There is no question of the circular issued by respondent No. 2, being violative of Article 21 of the Constitution of India. Provisions contained in Rule 158 of the Rules, and directions given in the circular are not at variance with the fundamental rights enshrined under Articles 19 and 21 of the Constitution. In the light of the aforesaid, it has been strenuously contended by respondents that petition is devoid of merit and substance deserves to be dismissed.

6. To appreciate the question of law that has been projected before us, it is necessary to reproduce Rule 158 of the Rules, which reads as under:

158. Seating Room: (1) The minimum and maximum seating space, backrest and gang-way to be provided in public service vehicles, other than motor cabs or maxi-cab deployed as Ordinary or Express services shall be as follows:

Ordinary	Express	-----		Mini	Maxi-	Mini-	Maxi-	
mum	mum	mum	mum	(1)	(2)	(3)	(4)	(5)
-----								I.
Distance of Seats back to back-		(a) When seats are placed across the 66 cm 70 cm 66 cm 74 cm vehicle and facing in the same direction. (b) When seats are placed across the 127 cm 130 cm Not permissible vehicle but facing each other.						
(c) When seats are placed along with 137 cm 140 cm Not permissible length of the vehicle and facing each other.		II. Size of the seats. 38 cm 40 cm 38 cm 40 cm Sq. Sq. Sq. Sq.						
III. Height of the back of the seat		40 cm 40 cm 40 cm 60 cm above seat level.						
IV. Type of seat and Seat cushion.		Rubberized coir or Foam or Rubber Polymanance foam foam cushion of cushion with minimum 5 cm upholstery of						

PVC thickness with leather cloth. upholstery of leather, the remix or like material. V. Gangway. 30 cm 30 cm 30 cm 35 cm.

Provided that in any or all express services or in express service plying as night services, seats of size minimum 40 cms. square instead of 38 cms square placed at a minimum back to back distance of 74 cms, instead of 66 cms. with square of back above seat level minimum 60 cms. instead of 40 cms. shall be provided.

(2) The specifications for Tourist Vehicles as provided under rule 126 of the Central Rules, shall apply to the Deluxe buses.

(3) Notwithstanding anything contained in Sub-rule (1) or (2), the seating capacity of a stage carriage of all makes and models, having following wheel base, shall not be less than the minimum capacity indicated against them:

Wheel Base Minimum capacity of seats excluding seats of driver and conductor
----- 1. 166" 46 2. 205" 50 3. 210" 55.

(4) The restriction imposed by Sub-rule (3) in so far as they relate to the stage carriages registered before the coming into force of these rules, shall not be operative for a period of four months from the date of commencement of these rules.

7. In the light of the rival contentions as mentioned hereinabove and the Rule reproduced above, we find that the following questions arise for consideration:

(i) Whether such a procedure is workable;

(ii) Whether it is against the liberty of general public, as provided under the Constitution;

(iii) Whether the Rule 158 of the Rules, runs contrary to Section 52 of the Act, and,

(iv) Vehicle having been registered once by the concerned RTO, after scrutinizing the papers and fixing seating capacity, if other RTO would be Justified to change the seating capacity.

8. Shri H.C. Kohli, learned Counsel for the petitioners, assisted by Shri Ashish Rawat, Shri Subodh Pandey and Shri Brajesh Dubey, submitted that in these batch matters, following three types of petitions have been filed by the operators:

(a) Where notices with regard to change has been given subsequent to the Circular dated 16-9-2005, Issued by the Transport Commissioner, respondent No. 2 herein;

(b) Where the concerned RTO's have suo motu changed the seating capacity; and,

(c) Where the vehicles are registered in other States, but after sale they have

been brought to this State, then original seating capacity has been changed.

9. Learned Counsel for the respondents contended that in all the aforesaid three types of petitions referred to above, a common return that has been filed by them would meet all the grounds. Shri Kumaresh Pathak, learned Dy. Advocate General appearing for respondents, submitted that neither the Rule nor the Circular violates Articles 14, 19 and 21 of the Constitution of India, nor do they transgress any of the provisions of the Act.

10. Before dealing with the questions posed before us, it is apposite to embark upon some of the relevant provisions of the Act. Section 39 of the Act requires that every motor vehicle to be driven in public place or in any other place is to be duly registered with the concerning Registering Authority, so as to make it road worthy. Section 44 deals with the powers of the Registering Authority to order production of vehicle at the time of registration. Section 48 deals with the powers to grant "No Objection Certificate", If the vehicle is removed from one State where it was originally registered to another State, for the purposes of its plying. Section 50 refers to transfer of ownership of motor vehicle. Section 52 stipulates with regard to alteration in motor vehicle, which puts a barrier on the owner of the motor vehicle to alter the particulars contained in the Certificate of Registration, which may be at variance with the those originally specified by the manufacturer. u/s 56, certificate of fitness is to be issued with regard to transport vehicles. It contemplates that 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 framed thereunder.

11. u/s 58 of the Act, the Central Government may, having regard to the number, nature and size of the tyres attached to the wheels of a transport vehicle (other than a motor cab), and its make and model and other relevant considerations, shall make entry in the record of registration and shall also enter in the certificate of registration of the vehicle following particulars namely:

- (a) the unladen weight of the vehicle;
- (b) the number, nature and size of the tyres attached to each wheel;
- (c) the gross vehicle weight of the vehicle and the registered axle weights pertaining to the several axles thereof; and,
- (d) if the vehicle is used or adopted to be used for the carriage of passengers solely or in addition to goods, the number of passengers for whom accommodation is provided.

Thereafter, the owner of the vehicle shall have the same particulars exhibited in the prescribed manner on the vehicle. As mentioned hereinabove, these are

some of the sections, which are material and necessary to be considered by us for adjudicating the petition.

12. Learned Counsel for the petitioners contended that bare reading of the aforesaid provisions of the Act would make the following things clear as crystal:

(i) u/s 52, alteration in the vehicle can be only at the instance of the owner and it cannot be at the dictate of the Registering Authority.

(ii) Section 56 contemplates grant of certificate of fitness of transport vehicles, but it also clearly establishes that once a certificate has been issued there cannot be any change in the same either suo motu, or unilaterally.

It has been contended by the learned Counsel for the petitioners that no doubt it is true that State Government has been conferred with the powers to make Rules u/s 111 of the Act, and Clause (a) thereof stipulates seating arrangements in public service vehicles and the protection of the passengers against weather, but validity of Rule 158 of the Rules, requires scrutiny.

13. Presently to the question No. (i), with regard to workability of the seating capacity. It has been contended that only after actual physical verification of the vehicle, seating capacity was fixed as 29 + 1. Thus, higher capacity would not be workable as passengers would not be available, and even if passengers are available then seating would be highly congested, which will make it difficult for them to board or alight from the vehicle. According to them, even the gangway would be congested which would not allow two passengers to cross each other to reach their respective seats. The seating capacity by the registering authority was so fixed so as to avoid accidents on road, which could not have been changed unilaterally by other registering authority, where the vehicle was taken for change in the name of registration. In any case, change having been done behind the back of the petitioner violates the principles of natural justice.

14. It is seen from the return filed by respondents that the seating capacity was re-arranged keeping in view the size and length of the vehicle as also the wheel base. Not even one instance has been put forth before us, whereby on account of change in seating capacity either public has been put to inconvenience or on account of it vehicle had met with an accident. The principles of natural justice were also followed inasmuch as the said change was recorded in the registration book by the Registering Authority only after vehicle was inspected in presence of the petitioner. There is no rejoinder in this regard by the petitioner controverting the averment made by respondents in their return. Thus, we are of the considered opinion that seating capacity does not, in any manner, whatsoever, put any hindrance or hurdle in effective plying of the vehicle. Nor the change in capacity is likely to cause accident. It is also worth mentioning that none of the petitioners has supplied any data, that even though there is no sufficient load to be carried on the routes as per permits, yet they are required to pay more taxes with fewer loads. In the absence of any required data, the stand is unsustainable.

15. Thus, in the considered opinion of this Court, the seating capacity as has been entered into by the Registering Authority does not make the vehicle unworkable or prone to accidents. In view of this, question No. (i) is answered against the petitioner.

16. The second facet that is required to be seen is whether the impugned rule in any way affects the livelihood of the petitioners, thereby attracting violation of Article 21 of the Constitution of India. We have already referred to the Rule in question and have expressed the opinion that seating capacity as has been entered into by the Registering Authority does not make the vehicle unworkable. We fail to understand how by increasing the seating capacity of the stage carriage or contract carriage, the right of livelihood of the petitioner is jeopardized. On the contrary, by increasing the seating capacity, it does not deprive the petitioners of the means of their livelihood. The submission that there would be deprivation of livelihood of the petitioners as contended by the learned Counsel for the petitioners, in our considered opinion, is totally without substance. We may further state that by increasing maximum seating capacity, the petitioners are not put to any monetary loss and further there is no deprivation of means of livelihood.

17. We would be failing in our duty if we do not note a submission advanced by learned Counsel for the petitioners. We have taken note of the said submission as the learned Counsel for the petitioners endeavoured and laboured hard to drive home the said point. They referred to Article 39(a) to buttress the stand that adequate means of livelihood is affected. It is settled in law that no legislation or delegated legislation can be declared invalid solely on the ground that Directive Principles of State Policy have not been followed or there has been violation of the same unless the requirement under the said Article which is meant for good governance, establishment of a welfare state, Social and economic revolution and such other aspects read in consonance with the fundamental rights are really infringed and further some facet of fundamental rights are played foul with. Discrimination solely on the ground of sex, as regards pay despite similar work is impermissible being irrational but one cannot be oblivious of the fact that it is also a part of the fundamental rights. But once no facet of fundamental right is abridged, the challenge exclusively on the ground of non-following the provisions contained in Chapter IV of the Constitution would make a statutory provision or a rule ultra vires is devoid of merit. A piece of legislation may meet the requirement of Directive Principles of State Policy from many aspects and that may sustain the validity of the same, but, the converse is totally unacceptable. We may only add that the submission has been noted only to be dealt with, and rejected.

18. Now, coming to the third question. It Is to be seen that Section 52 of the Act, deals with alteration in motor vehicle, it reads as under:

(1) No owner of a motor vehicle shall so alter the vehicle that the particulars contained in the certificate of registration are at variance with those originally

specified by the manufacturer;

xxx xxx xxx

Reading of the aforesaid provisions further makes it absolutely clear that it deals with the right of the owner of a motor vehicle to alter the vehicle in any manner whatsoever, but the originality of the vehicle as specified by the manufacturer would not be changed. In our considered opinion, the said provision not being applicable to the facts of the case, cannot render any assistance to the petitioners.

19. Now to the last question; whether after necessary endorsements having been made by the original Registering Authority, in the registration book and other relevant papers, changes can be made by other Registering Authority or not?

20. Section 111 of the Act, confers power on the State Government for framing statutory rules. This power is also to be exercised with regard to seating arrangements in public service vehicles and the protection of passengers against weather. Exercising this power, the State Government has framed the Rules. Rule 158 of the Rules, which deals with "seating room", has already been reproduced hereinabove. Sub-rule (3) of the said Rule, stipulates that where wheel base is 166", the seating capacity has to be 46. If the wheel base is 205", seating capacity has to be 50: and, if the wheel base is 210", seating capacity has to be 55. Sub-rule (1) thereof provides for minimum and maximum seating space, backrest and gangway in the public service vehicles. All this has been worked out only after actual physical verification of the vehicles, so as to see that the travelling public is not put to any inconvenience and at the same time, by carrying less passengers State is not put to any financial loss.

21. Rules 159 and 160 of the Rules, deal with headroom and with regard to standing passengers to be taken in the said vehicles. In fact Chapter VII of the Rules, deals with construction, equipment and maintenance of motor vehicles. These provisions have been made keeping in view the comfort of the travelling public as also the revenue likely to be generated on account of plying of the stage carriages or contract carriages, within the State.

22. At this juncture, we may profitably refer to the decision reported in *State of Mysore and Another Vs. K.G. Jagannath*, wherein a similar question had cropped up for consideration before the Apex Court. In the aforesaid matter, the Supreme Court was considering the constitutional validity of Rule 216 of Mysore Motor Vehicle Rules, 1963, which deals with fixing of minimum number of seats to be provided in a bus. After elaborate consideration of the matter, the Apex Court held that the aforesaid Rule is intra vires and is not violative of Article 19(1) (g), of the Constitution. The Apex Court, in paras 9 and 10, expressed the view as under:

9. The validity of the rule at present has to be considered not merely from the point of view of the effect it has on a particular individual like the respondent. It

has to be looked at from the point of view of the generality of the motor vehicles operators as well as the public. We have shown above that the vehicles with the minimum capacity available in this country can carry 35 passengers and if, as is alleged by the respondent, the average number of passengers in buses over this route is only 25, the proper thing to do in due course is to reduce the number of vehicles plying on this route. Otherwise, it would mean unnecessary waste of valuable transport space and facility. Buses so released could be-used elsewhere to much greater advantage to the travelling public. There are many areas and many routes crying for transport facilities and they would be better served. We are unable to place any weight on the basis of an argument which affects one or two individuals, where by insisting upon this provision of a minimum seating capacity the larger public interest will be served. If it causes some inconvenience to a few individuals like the respondent they have got to face the situation. It appears from the additional affidavit filed by the petitioner (respondent herein) that he has got four buses running between Dodda-Ballapur and Tunkur. If it is found that the average number of passengers is only 25, the proper thing to do would be for him to cut down his buses on this route from four to three. In that case there can be no question of his suffering any losses or his being affected in any way in the matter of his carrying on his business.

10. Though it is not in evidence it may be presumed that the cost of operation of a bus whether it is provided with 30 or 40 seats may not be very much different and there will be the additional facility available to the public if the bus has more seats. Moreover, as traffic grows, as it has a tendency to grow everywhere, the public will be better served. We are unable to accept the contention that the Rule providing for minimum number of seats is, intended to secure more revenue indirectly. The State can do it directly by increasing the rate of tax. It is really a rule intended for the benefit of the travelling public. We see no reason not to accept the statement made on behalf of the State that the passenger traffic on every route in the State has increased by leaps and bounds, that generally it was found that the stage carriage operators were carrying passengers in excess of the seating capacity specified in the Registration Certificate and the permit to the serious inconvenience and discomfort of the travelling public in addition to causing loss of revenue to the State, and it was with a view to eliminate the above evils that the impugned Rule has been framed.

23. In fact, in the light of the aforesaid Judgment of the Supreme Court, the issue that has been projected in this batch of petitions has been put to rest, and nothing more is required to be done. The relevant Rule 216(2), of the Mysore Motor Vehicle Rules, has been reproduced in the aforesaid decision of the Supreme Court, which is almost identical to Rule 158 of the Rules of this State. This would go to show that the factual and legal scenario of the two cases being identical, this batch of petitions has no merits and substance. Quite apart from the above, we have also done a threadbare analysis and our considered opinion is that the Rule subserves the collective interest, for the general travelling public are benefitted and the individual motor vehicle operator Is not affected as has

been urged with vehemence.

24. During the course of hearing, respondents have also filed Inspection Report of vehicle bearing registration No. MP-20-E6573, having wheel base of 166". The said inspection was done by Transport Inspector Mr. P.K. Hardenia, on 6-8-2007. Copy of the said Inspection Report together with the chart attached therewith was supplied to the learned Counsel for the petitioner.

25. The said Report shows that on actual physical verification of the vehicle, it was found that after leaving the seats earmarked for driver and conductor, it had in all 46 seats. It has also been mentioned that size of the seats, distance between the two, and the size of the gangway were perfectly in consonance with Rule 158 of the Rules. We have critically gone through the said chart. The total width is 235 cms and the length fixed for seating the passengers is 625 cms, apart from a cabin of 85 cms for driver and conductor etc. From the said chart, it is crystal clear that it has 46 seats for passengers with gangway of 50 cms between the two seats. The said seating arrangements is in two rows: two seats and three seats in one row. In the middle, there is a gangway. This Report along with the Court has been severely attacked by learned Counsel for the petitioners, on the ground that looking to the width of the vehicle, is not possible to have as many as 46 seats for the passengers.

26. On a perusal of rule 158 of the Rules, it is noticeable that it also prescribes the size of the seats, which can be between 38 cms to 40 cms. There is nothing on record, to show that the said seating arrangement, which was found actually in the vehicles, was not having the seats of the sizes as prescribed under the Rules. Thus, the aforesaid stand of the petitioners is also without any substance.

27. In the light of the aforesaid discussion we are of the considered opinion that there is no merit or substance in the writ petitions, and accordingly they are hereby dismissed, but with no order as to costs. Copy of the order be retained in each case.