
(2013) 02 AHC CK 0078

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 9950 of 2013

Sunrise Public School and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

Citation : (2013) 6 ADJ 308 : (2013) 4 ALJ 58 : (2013) 98 ALR 26 : (2013) 3 AWC 3034

Hon'ble Judges : Sunil Ambwani, J; Bharat Bhushan, J

Bench : Division Bench

Advocate : S.N. Jaiswal, for the Appellant;

Final Decision : Dismissed

Judgement

1. We have heard Shri S.N. Jaiswal, learned counsel appearing for the petitioner. Learned Standing Counsel appears for the State respondents. The petitioners are running school buses. By this writ petition the petitioners have prayed for directions in the nature of mandamus directing the respondents to issue permit and fitness certificate to the petitioners' vehicles fixing the age of vehicles upto 20 years old model. They have also prayed for directions to the respondents to permit them to ply their buses up to the age of 20 years.

2. The petitioners have relied upon some orders passed by this Court in Writ Petition No. 2106 of 2008 decided on 3.12.2008 and in Writ A. No. 44868 of 2012 (Omwati Saraswati Junior High School, Jahangirabad and others) decided on 7.12.2012, by which the Court had followed the judgment in Civil Misc. Writ Petition No. 46190 of 2003 (sic) (Ram Prakash and another v. State of UP and others), wherein it was held that the Secretary, Regional Transport Authority shall issue permit to the petitioner after verifying the fact, that the petitioner has a vehicle which is road worthy and fit in condition. A further direction was given that he will ensure that the vehicle owned by the petitioner is of the model which is within the period of 20 years.

3. Learned Standing Counsel informs the Court that the order in Omwati Saraswati Junior High School, Jahangirabad and others (supra) was passed in absence of benefit of a judgment passed by the Division Bench of this Court, which has distinguished Ram Prakash's case (sic) and had upheld the authority of State Transport Authority to fix the age of vehicles to ply on road.

4. The relevant portion of the judgment in Mahraj Uddin and Others Vs. State of U.P. and Others, incidentally argued by same counsel, who is appearing in the present case, is quoted as below:--

.....Obviously, the decision under challenge in (sic) Ram Prakash's case (supra) was a decision of STA prior to 15/10/2003, and the judgments relied by the petitioners counsel were on the basis of the judgment of the Division Bench in Writ Petition 46190/2003 which has no relevance with regard to the subsequent decision of STA taken on 23/2/2010. If the age of the vehicle can be prescribed by the STA under the provisions of the Act, 1988, which has been answered as Yes by the Division Benches of this Court as noticed above, there is no lack of jurisdiction in the STA in fixing the age of vehicle by its resolution dated 23/2/2010. Thus, the Division Bench judgment of this Court dated 10/5/2007 passed in Writ Petition No. 22378/2007 relying on the earlier Division Bench judgment of this Court in the case of (sic) Ram Prakash (supra) is no longer applicable in view of the subsequent decision and resolution of the STA taken 23/2/2010.

We are also of the view that treating the order of the STA to be set aside for buses/mini buses and implementing the said decision with regard to auto rickshaw/tempo shall not be appropriate. We, however are constrained to observe that the Tribunal has passed the order heavily relying on the Division Bench judgment of this Court in Writ Petition No. 46190/2003 decided on 05/10/2003, in (sic) Ram Prakash (supra) which directions were relevant at the time when there was no other decision of STA. When the STA has taken a subsequent decision giving appropriate reason, the judgment of the Division Bench of this Court in Writ Petition No. 46190/2003 decided on 05/10/2003, in (sic) Ram Prakash (supra) cannot be read too far, nor the said judgment in anyway fetters the power of the STA to fix the age of the vehicles or put any model condition in the permit. It is to be noted that in this writ petition there is no challenge to the decision of S.T.A. dated 23/2/2010, thus the reliance on the said order by the counsel for the petitioners cannot be said to be misplaced. However, as observed above, the judgment of the STA dated 23/2/2010, as circulated by circular dated 05/3/2010, having been set aside, it shall not be appropriate to rely on the same. In the circular dated 05/3/2010, the age of the vehicles as existed prior to 23/2/2010, has been mentioned in the tabular form which is part of the rejoinder affidavit as Annexure-1.

In view of the foregoing discussions and conclusions, we dispose of this writ petition with the following directions:

1. The S.T.A. is fully justified to put model condition regarding age of vehicles (including three wheeler).
2. The decision of the STA dated 23/2/2010, which is the basis for putting model condition in the petitioners permit that vehicles are to be changed after 5 years, having been set aside, the period of 5 years in the model condition in the permits of the petitioners shall stand substituted by the period of 7 years which was prevalent prior to 23/2/2010.
3. The model condition in the petitioners vehicles (which are three wheelers) shall be read to the effect that the petitioners have to change their vehicles after 7 years, failing which their permits shall be treated to be automatically cancelled.
4. That the above directions shall continue till the STA takes any other decision fixing any other age of vehicles (three wheelers) in accordance with law.

The prayer of the petitioners that a direction be issued to the respondent No. 2, Regional Transport Officer, Meerut to permit the petitioners to ply their three wheelers up to the age of 20 years, cannot be granted and is refused.

5. It is submitted by learned Standing Counsel, that in Mahraj Uddin's case all the aspects relating to the powers of the State Transport Authority fixing the age of the vehicles including State carriage, school buses, taxis and three wheelers was considered and while upholding the power of STA to fix the age of the vehicles and to put model condition in the permit, the decision of the STA dated 23.2.2010 was upheld. He submits that in the present case the vehicles are plying as school buses and for which there is no exemption. The school buses carrying children should strictly ensure to safety standard. He submits that the petitioners' vehicles are about more than 15 years' old and in view of the decision of the STA, no further permit shall be granted to such vehicles. Any relaxation will be hazardous to the safety of the children, who will be travelling in the school buses.

6. We are of the view, that the order dated 7.12.2012 in Omwati Sarswati Junior High School's case was passed without the benefit of the Division Bench judgment in Mahraj Uddin and Others Vs. State of U.P. and Others, We further find that no new ground has been taken nor there is any justification to allow the old vehicles to ply on the road. The decision of STA in this regard should not be lightly interfered.

7. The writ petition is dismissed. The Chief Standing Counsel will forward a copy of this order to the State Transport Commissioner for strict compliance of the judgment of this Court in Mahraj Uddin and Others Vs. State of U.P. and Others, .