

(1997) 11 AP CK 0071

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 9945 and 11543 of 1989

Thanthama and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-11-1997

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 85(3)
Constitution of India, 1950 — Article 19(1), 301, 302
Motor Vehicles Act, 1939 — Section 63(1), 63(7)
Motor Vehicles Act, 1988 — Section 2(43), 2(7), 66(7), 88(11)(iii), 88(9)

Citation : (1998) 1 ALD 209

Hon'ble Judges : Y. Bhaskar Rao, J;V. Rajagopala Reddy, J

Bench : Division Bench

Advocate : Mr. Vijayanandan Reddy, for the Appellant; Government Pleader for Transport, for the Respondent

Judgement

Y. Bhaskar Rao, J.—The writ petitions are filed to declare Rule 85(3) of the Central Motor Vehicles Rules, 1989 as unconstitutional and void and to direct the respondents not to enforce the said rule against the petitioners.

2. The petitioners hold All India Tourist bus permits issued u/s 63(7) of the Motor Vehicles Act, 1939 by the fourth respondent The Central Government allowed certain All India permits to be granted by each of the States in the Union of India. There is certain quota of All India Tourist permits to be granted by each State for the purpose of promoting free flow of passenger transport vehicles throughout the territory of India and the permit granted by one State is operative in other States without there being any requirement of counter-signature of those States. By virtue of the power provided under (sic Section 88(11)(iii) of Motor Vehicles Act, 1988 corresponding to) Section 63(1)(iii) of the Motor Vehicles Act, 1939, the Central Government framed the Central Motor Vehicles Rules, 1989. Rule 85 of the said Rules deals with additional conditions of tourist permits. Sub-rule (3) of Rule 85 envisages that the tourist vehicle shall either commence or end its journey in the Home State and shall not remain

outside the Home State for a period of two months, which is enhanced to three months by amendment. The permit holder shall see that the tourist vehicle must report to the authority, which issued the permit, on its return to Home State. Proviso to Rule 85(3) says that if the contracted journey ends outside tile Home State, the vehicle shall not be offered for hire within that Slate or from that State to any other State, except for the return journey to any point in the Home State.

3. The contentions of the petitioners are that the condition prescribed in the proviso is causing hardship to them as it is acting as hindrance for the vehicle being engaged for hire from one point to another point outside the Home State and the permit holders are forced to return to Home State for reporting to the authority as provided in the Rule, Further, once all India Permit is issued and required taxes are paid, the permit holder can travel throughout India and the restriction that he should definitely return to Home State without going to any other State after completion of onward journey is causing heavy loss to them as the vehicle has to travel empty to the Home State due to non-availability of tourists coming to Home State and that therefore the Rule 85(3) is in violation of Articles 19(1)(d) and (g) and 301 of the Constitution of India

4. The Government Pleader contended that the impugned rule is not illegal as it is meant to regulate all India tourist permits and provide facilities to all India tourists in their interest, that the time of three months prescribed to the all India tourist vehicle to return to Home State is sufficient since the vehicle can return to Home State within three months from any place in India and there is nothing wrong in directing the permit holder to report to the authority after returning to Home State directly without touring any other States by taking passengers from one State to another and that there are no merits in the writ petitions and they are liable to be dismissed.

5. Though Rule 85(3) of the Central Motor Vehicles Rules, 1989 has been challenged in the writ petitions, but during the course of arguments the petitioners confined their attack only to the constitutional validity of the proviso to sub-rule (3) of Rule 85 of the Central Motor Vehicles Rules, 1989. Thus, the question remains for consideration is whether proviso to sub-rule (3) of Rule 85 of the Central Motor Vehicles Rules, 1989 is constitutional or not.

6. To decide the above question, it is relevant to read Rule 85(3) of the Central Motor Vehicles Rules, 1989 (for short "the Rules") and it is as under :

"The tourist vehicle shall either commence its journey, or end its journey, circular or otherwise, in the home State, subject to the condition that the vehicle shall not remain outside the home State for a period of more than three months. The permit holder shall see that every return of the tourist vehicle to the home State is reported to the authority which issued the permit:

Provided that where the contracted journey ends outside the home State, the vehicle shall not be offered for hire within that State or from that State to any other State except for the return journey to any point in the home State.""

Additional conditions of tourist permit granted to a tourist vehicle are laid down in Rule 85 of the Rules. The additional conditions of tourist permit require the permit holder to prepare a trip list in triplicate of tourist passengers to be carried in the vehicle with full particulars, one such copy be carried in the vehicle and be produced when the authorities demand during the course of journey and the vehicle shall not be operated as stage carriage. The permit holder shall display in, the front top of the vehicle the names of the States in which the tourist permit is valid in English and Hindi languages. Sub-rule (3) of Rule 85 of the Rules envisages that the vehicle shall either commence or end its journey in the home State subject to the condition that the vehicle shall not remain outside the State for a period of more than three months. As soon the vehicle is returned to home State, it shall report to the authority which has issued the permit.

7. The proviso to sub-rule (3) of Rule 85 says that where contract of journey ends outside the home State, the vehicle shall not be offered for hire within that State or from that State to any other State except for the return journey to the home State.

8. It is also necessary to refer to some relevant provisions of the Motor Vehicles Act, 1988 (for short "(the Act)") and the Rules. Section 2(7) of the Act defines the "contract carriage" as under:

"Contract carriage means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum-

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another, and in either case, without stopping to pick up set down passengers not included in the contract anywhere during the journey, and includes-

(i) a maxi cab; and

(ii) a motor cab notwithstanding that separate fares are charged for its passengers."

Section 2(43) defines "tourist vehicle" as under :

"Tourist vehicle means a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf."

Section 88(9) of the Act of 1988 empowers any State Transport Authority to grant permits in respect of tourist vehicles valid for the whole of India or in such contiguous States not being less than three in number including the State in which the permit issued, but subject to any rules to be made by the Central

Government. This provision is equivalent to Section 63(7) of 1939 Act.

9. The purpose behind the regulation of all India tourist permit vehicles is to promote tourism at all India level. As stated supra, though sub-rule (3) of Rule 85 is assailed in the writ petitions, the arguments are confined to the extent that the proviso to Rule 85(3) is unconstitutional. What all the proviso says is that the tourist vehicle can engage tourist passengers on return journey to home State, but it must come towards and reach the home State within three months from the date of commencement of its journey. The intention of the rule-making authority is that the State, which has issued the all India tourist vehicle permit, shall have a check on the vehicle as to whether tax is paid and the vehicle is in fit condition to be used as all India tourist vehicle and also control and regulate all India tourism. Thus, the proviso imposes a condition and there is nothing wrong in prescribing such a condition. If the condition is not there, there is every possibility of the all India tourist vehicle being used as stage carriage in other States after it leaves the home State. Mere imposition of condition cannot be said to be illegal or unconstitutional.

10. It is to be noticed that taking the geographical features of India, the outer time limit of three months is prescribed for the All India Tourist vehicle to return to its home State from the date of commencement of its journey. For example, for a tourist vehicle engaged tourists from Andhra Pradesh to Kashmir it takes ten days time to reach Kashmir and the vehicle has to return to Andhra Pradesh within three months but not immediately after it reaches Kashmir. Before expiry of three months period, the vehicle can be engaged by tourists for travelling other States subject to condition that it reaches the home State within three months. Thus, the condition will be satisfied if the vehicle returns to home State within three months from the date of commencement of its journey. After leaving the home State, the vehicle can go to any number of States, but before the end of three months its return journey should be to the home State. The said condition is imposed to regulate all India tourism and for the welfare of the tourists and to have a check on the condition of the vehicle and payment of taxes. The condition imposed by the proviso to Rule 85(3) is valid and can be said to be a reasonable restriction. Therefore, the proviso to Rule 85(3) is not violative of Article 19(1)(g) of the Constitution. After returning to home State, the vehicle can be engaged again as all India tourist vehicle after payment of taxes and obtaining necessary permits. There is no restriction to the tourist vehicle to be engaged again to go to other States, the proviso to Rule 85(3) is not violative of Article 19(1)(d) of the Constitution as well. Thus, proviso to Rule 85(3) of the Rules is neither violative of Article 19(1)(g) nor Article 19(1)(d).

11. It is also contended that the proviso to Rule 85(3) is violative of Article 301 of the Constitution since it acts as a restriction to the free movement of trade, commerce and intercourse throughout India

12. To appreciate the above contention, it is relevant to refer to the provisions of Part XIII of the Constitution. Article 301 envisages that the trade, commerce and

intercourse throughout the territory of India shall be free subject to other provisions of this Part. Article 301 empowers the Parliament to impose restrictions on trade, commerce and intercourse by law between one State and another in the public interest. Thus, from the provisions of the Articles 301 and 302 of the Constitution, it is evident that the Parliament can impose restrictions on the freedom of trade, commerce and intercourse in public interest. We have already held that the condition imposed through the proviso to Rule 85(3) is to regulate all India tourist vehicle in the interest of tourists. The Central Motor Vehicle Rules are framed by virtue of the power conferred u/s 66(7) (sic Section 88(9)) of the Act. It is settled principle of law that the rules framed by virtue of statutory power conferred by the enactment form part and parcel of the Act. The Motor Vehicles Act, 1988 is enacted by the Parliament. The Parliament has imposed a condition requiring the all India tourist vehicles to return to home State before the end of three months from the date of commencement of its journey and report to the authority which issued the permit. When the restriction imposed by the Parliament is in consonance with Article 302 of the Constitution, which is an exception to Article 301, it cannot be said that the provision to Rule 85(3) of the Central Motor Vehicles Rules is violative of Article 301 of the Constitution. We, therefore, hold that the proviso to Rule 85(3) is not violative of Article 301 of the Constitution.

13. For the foregoing reasons, we hold that the proviso to Rule 85(3) of the Central Motor Vehicles Rules, 1989 is constitutionally valid. The writ petitions are therefore dismissed. No costs.