

S. K. Bhatia and Others

Vs

State of U. P. and Others

Smt. Padma Sapra and Others

Vs

State of U. P. and Others

Mahendra Pratap Singh Hasija and Others

Vs

State of U. P. and Others

writ petitions nos. 1698 & 2928 of 1980; 1124, 4908, 9069-70, 18-21, 4817, 9445-48, 663 & 1813 of 1981 and 1336, 2117-20, 6808, 7219, 8334-37 and 4618 of 1982

(D. A. Desai, O. Channappa Reddy JJ)

12.08.1983

JUDGMENT

CHINNAPPA REDDY, J. –

In these writ petitions, the vires of Condition No. 18 attached to the permits issued by the respective Regional Transport Authorities of the State of Uttar Pradesh to the petitioners for plying contract carriages known as 'mini' buses is in question. 'Mini bus' is defined by Section 2(d) of the U.P. Motor Vehicles (Special Provisions) Act, 1976, as meaning "an omnibus which is constructed or adapted to carry not more than 35 persons excluding the driver". Section 51(2) of the Motor Vehicles Act enables the Regional Transport Authority granting a contract carriage permit to attach in the permit any one or more of the conditions enumerated in that provision. Item (x) of Section 51(2) reads "any other condition which may be prescribed". Condition No. 18 is a condition which is prescribed and attached in every permit for plying a mini bus. The condition in its original form stood thus : "The motor vehicle covered by the permit shall not be more than four years old counted from the date of registration to any time during the validity of the permit." The period of four years originally stipulated was increased to "seven" on September 28, 1978 and again raised to "nine" on December 21, 1981. The vires of the condition was questioned earlier by some owners of mini buses on the ground that it was ultra vires the power under Section 51(2) of the Motor Vehicles Act. But, in *Subhash Chandra v. State of U.P.* [(1980) 2 SCR 1024 : (1980) 2 SCC 324 : AIR 1980 SC 800], this Court held that the condition was within the limits of the power conferred by Section 51(2) tracing its source to Item (x) of Section 51(2). The Court observed (SCC pp. 325, 326, paras 3, 4, 5) :

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.

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 State's 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 passengers' 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 goods 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.

.... We are clear that a later model is a better safeguard and, more relevantly to the point, the year of the make and the particulars of the model are part of the description.

An argument appears to have been advanced that Section 38 of the Motor Vehicles Act obliged every transport vehicle, which expression included contract carriages like mini buses, to carry a certificate of fitness and therefore, Condition No. 18 was superfluous and derogated from the requirement of Section 38. This argument was not accepted by the Court, who observed (SCC p. 326, para 6) :

The unreported ruling in Civil Writ No. 7317 of 1975 interprets Section 38 of the Act and the non-issuance of the fitness certificate because the model was not recent enough, Maybe, the vehicle, regardless of the year of its make, may be fit and the refusal to certify fitness merely because it is old may not always be right. But we see no conflict between a vehicle being fit to ride and the condition, as an additional requirement and safety factor, in the shape of the year of the model. This is an extra measure, a further insurance against machine failure and cannot contradict the 'fitness' provision.

2. The vires of Condition No. 18 is once again challenged in these writ petitions. The grounds of challenge, however, are most insubstantial. It was said that there was no such condition in the case of omnibuses and therefore, there was an infringement of Article 14 of the Constitution. It is incorrect to say that there is no such condition in the case of omnibuses. In paragraph 5 of the counter-affidavit filed in Writ Petitions Nos. 18-21 of 1981, it is stated that in case of omnibuses, there is a condition that the vehicle should be replaced on the expiry of five years from the date of registration. Further omnibuses and mini buses constitute different classes and are not comparable. Another submission was that Condition No. 18 is impossible of fulfilment since one of the manufacturers of chassis of mini buses (Telco) is no longer manufacturing such chassis. This is denied in the counter-affidavit and we presume there are other manufacturers in the country, who make or produce the required chassis. In any case, that is a situation which can be remedied by the

transport authorities. The petitioners can always pursue the remedies given to them under the Motor Vehicles Act by way of appeal and revision. We fail to see any infringement of any constitutional right. Another submission was that the authority competent to impose the condition, was not the Regional Transport Authority, but the competent authority under Section 4 of the Uttar Pradesh Motor Vehicles (Special Provisions) Act. We have already referred to Subhash Chandra case [(1980) 2 SCR 1024 : (1980) 2 SCC 324 : AIR 1980 SC 800] where it has been held that the source of power for imposing Condition No. 18 is Section 51(2)(x) of the Motor Vehicles Act. Under Section 51(2)(x), the authority empowered to impose the condition is the Regional Transport Authority. Section 4 of the Uttar Pradesh Motor Vehicles (Special Provisions) Act deals with the authorisation of use of private mini buses as stage carriages within specified limits covered by an approved scheme and has nothing whatever to do with the imposition of conditions on mini buses plying as contract carriages. It was suggested that the real object of Condition No. 18 is not the safety of the passengers as thought in Subhash Chandra case [(1980) 2 SCR 1024 : (1980) 2 SCC 324 : AIR 1980 SC 800], but to eliminate mini buses from the field. There is no basis at all for this submission. As we said, there is no substance in any one of these submissions advanced by the petitioners. All the writ petitions are, therefore, dismissed with costs.

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