

THE HIGH COURT OF MADHYA PRADESH
MP. No.3423/2020
(Shreeram Sharma v. The State of M.P. and Anr.)

Gwalior, Dated : 23/02/2021

Shri Neerendra Sharma, counsel for the petitioner.

Shri Deepak Khot. Govt. Advocate for respondent/State.

This petition under Article 227 of Constitution of India has been filed against the order dated at 08.12.2020 passed by Shri Axay Kumar Dwivedi, STAT, Gwalior in Appeal No. 21/2020 whereby the appeal filed by the petitioner against the order dated 16.9.2020 has been dismissed and the application filed by the petitioner for renewal of permit in respect of bus No. M.P-33-E-0199 has been deferred on the ground that the said bus has completed its life of 15 years and, therefore, the petitioner should replace the bus as per the amendment in Rule 77 of (MP Motor Vehicles Rules, 1994).

It is submitted by the Counsel for the petitioner that the petitioner was granted permit for plying bus No. M.P-33-E-0199. The last renewal of the permit was having its validity from 25.4.2015 to 25.4.2020. After the validity came to an end, he filed an application for renewal which has been deferred by RTA by the impugned order dated 16.9.2020 which has been affirmed by STAT. It is submitted that the co-ordinate bench of this Court by order dated 30.8.2018 passed in case of **Waheed Khan v. Transport Department and Ors.** (W.P. No. 7703/2018) has held that the provision of sub-rule (1a)

of Rule 77 of MP Motor Vehicles Rules, 1994 (In short Rules 1994) would not apply to the stage carriage which were registered earlier and accordingly, petitioner is entitled for renewal of his permit and deferment of his application is contrary to such judgment.

This Court, by orders dated 5-1- 2021, 12-1-2021, 18-1-2021, 29-1-2021 and 15-2-2021 granted time to the State Counsel to verify as to whether any writ appeal against the order passed in the case of **Waheed Khan (Supra)** is under contemplation or not. It is submitted by the State Counsel that in spite of various letters sent by the Office of Additional Advocate General, no response has been received.

Under these circumstances, this Court is left with no other option, but to hear this case on merits.

It is the case of the petitioner that he was granted permit for the bus bearing registration no. M.P-33-E-0199 which was lastly renewed in the year 2015 and validity of renewed permit was upto 25.4.2020. It is further admitted by the Counsel for the petitioner that bus bearing registration No. M.P-33-E-0199 has attained its age of 15 years in the month of July 2020.

Now the only question for consideration is as to whether the case of the petitioner is covered by the amended provision of Rule 77 (1a) of Rules, 1994 or not.

By amendment dated 24th of September, 2010 in the Rules of

1994, sub-rule (1a) was inserted in Rule 77 of Rule of 1994 which reads as under:-

“3. In rule 77, Sub-rule (1), the following sub-rule shall be inserted, namely:-

(1 a) In order to ensure safe, secure and convenient transport services to the passengers, the permit granting authority while granting a stage carriage permit shall abide the following conditions, namely :-

(i) that no stage carriage permit shall be granted on interstate route to a vehicle which has completed 10 years from the manufacture year;

(ii)that no stage carriage permit shall be granted for ordinary route within the State to a vehicle which has completed 15 years from the year of manufacture;

(iii)that no stage carriage permit shall be granted for any route to the vehicle which has completed 20 years from the year of manufacture;

(iv)that for long distance route of 150 km or above in a single trip, the following category of vehicles with seating capacity shown against each shall be permitted to ply:

1	Deluxe/Air Conditioned bus	not less than 35+2 seats, excluding driver and conductor
2	Express bus	not less than 45+2 seats, excluding driver and conductor
3	Ordinary bus	not less than 50+2 seats, excluding driver and conductor

Rules 77 (1a) (ii) which provided that no stage carriage permit shall be granted for ordinary route within the State to a vehicle which has completed 15 years from the date of manufacture was omitted by amendment dated 28th of December, 2015. Further in

place of 20 years in Rule 77 (1a) (iv) was substituted by 15 years.

However, sub rule (1b) of Rule 77 of Rules of 1994 has also been added by amendment dated 28.12.2015 which reads as under:-

“The restriction imposed by sub-rule (1a), in so far as they relates to the stage carriage registered before coming into force of the said rules shall not apply”.

Thus, according to the amended rules, the amended rule (1a) of Rule 77 of Rules of 1994 would not be applicable to the stage carriage which was registered before coming into force of the amended Rules w.e.f. 28.12.2015. Undoubtedly, the bus bearing registration no. M.P-33-E-0199 was registered much prior to coming into force of amended Rule (1a) of Rule 77 of Rules of 1994.

Under these circumstances, in the light of provisions of Rule 77 (1b) of Rules of 1994, it is clear that the outer limit of 15 years is not applicable to the bus bearing registration number M.P-33-E-0199.

At this stage, it is submitted by the State Counsel that STAT while considering the provisions of Section 72 of Motor Vehicles Act, has considered the condition imposed in renewed Permit of the bus bearing registration no. M.P-33-E-0199 in which it was provided that the petitioner shall not operate the bus older than 10 years. As this condition of renewed Permit was never challenged, therefore the petitioner is now bound by the said condition and now he cannot go back to plead that the conditions on which the last renewal was

granted is not binding on him.

Section 72 of Motor Vehicles Act does not authorize the Regional Transport Authority to amend Rules. If the Rules are silent on any aspect, then the Regional Transport Authority by incorporating some condition can grant or review permit. But by no stretch of imagination, it can be said that Section 72 of Motor Vehicles Act confers unfettered right on Regional Transport Authority to amend Rules itself. When Rule 77 (1b) of Rules of 1994 itself provides that amended provision of Rule 77 (1a) of Rules of 1994 would not be applicable to the stage carriage which was registered much prior to coming into force of said Rule, then Regional Transport Authority was at fault in deferring the application filed by the petitioner for renewal of permit of bus bearing registration No.M.P-33-E-0199.

Thus from 28th December 2015 onwards, the legal situation is that any stage carriage which was registered prior to coming into force of amendment Rules shall be out of the purview of the amended rule (1a) of Rule 77 of Rules of 1994. Unfortunately, the STAT, has not only lost sight of the fact that the clause (2) of sub-rule (1a) of Rule 77 of Rules of 1994 was already omitted by amendment dated 28th December 2015 in MP Motor Vehicles Rules 1994 and Rule 77 (1b) of Rules of 1994 has granted exemption to stage carriage which were registered earlier, but shockingly refused to rely upon the

judgments, passed by this Court only on the ground that they are not reported. It is not the case of STAT that the unreported judgments relied upon by the petitioner were in fact never passed or they were forged copies. How the Subordinate Tribunal can refuse to rely upon unreported judgments of the High-Court is beyond imagination.

The Supreme court in the case of **East India Commercial Company Ltd., Calcutta and Anr. v. The Collector of Customs** reported in **AIR 1962 SC 1893** has held that order passed by the High Court is binding on all subordinate Courts and on all Tribunals functioning within the same State. It has been held as under:-

“29.....This raises the question whether an administrative tribunal can ignore the law declared by the highest court in the State & initiate proceedings in direct violation of the law so declared. Under Art. 215, every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Under Art.226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government, within its territorial jurisdiction. Under Art. 227 it has jurisdiction over all courts and tribunals throughout the territories in relation to which it exercise jurisdiction. It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on

a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working: otherwise, there would be confusion in the administration of law and respect for law would irretrievably suffer. We, therefore, hold that the law declared by the highest court in the State is binding on authorities or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so the notice issued by the authority signifying the launching of proceedings contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction”.

It appears that the STAT has given complete go bye to the judicial discipline in making distinction in unreported judgment and the reported judgment of the High Court. Accordingly, it is held that observation made by the STAT in paragraph 16 of its order dated 8.12.2020 passed in appeal number 21/2020 is contrary to law.

Considering the legal as well as factual position of this case, this Court is of the considered opinion that neither the order dated 8th December 2020 passed by STAT in Appeal No. 21/2020 nor the order dated 16th September 2020 passed by Regional Transport Authority, Chambal Division, Morena with stand the judicial scrutiny, accordingly they are hereby quashed.

Regional Transport authority is directed to decide the application for grant of permit for plying bus bearing M.P-33-E-0199 within a period of 15 days.

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The petition is **allowed with cost of Rs. 20,000/-** to be paid by the respondents to the petitioner within a period of one month from today. The receipt of payment of cost be deposited by the respondents in the office of Principal registrar of this court within a period of 45 days from today.

(G.S. Ahluwalia)
Judge

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