

IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

ON THE 10th OF JULY, 2023

WRIT PETITION No. 8685 of 2023

BETWEEN:-

**SURBHI AGARWAL S/O SHRI RAJEEV
KUMAR AGARWAL, AGED ABOUT 50
YEARS, R/O 61 GOSAINPURA THANA
KOTWALI JHANSI (UTTAR PRADESH)**

.....PETITIONER

(BY SHRI R.D. SHARMA AND SHRI HIMANSHU SHARMA- ADVOCATES)

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH ITS PRINCIPAL
SECRETARY, TRANSPORT
DEPARTMENT, VALLABH BHAWAN,
BHOPAL (MADHYA PRADESH)**
- 2. THE STATE TRANSPORT AUTHORITY
HURAWALI GWALIOR (MADHYA
PRADESH)**
- 3. THE SECRETARY STATE TRANSPORT
AUTHORITY HURAWALI GWALIOR
(MADHYA PRADESH)**

.....RESPONDENTS

***(BY SHRI M.S. JADON- GOVERNMENT ADVOCATE FOR
RESPONDENT/STATE.)***

AND

WRIT PETITION No. 14171 of 2023

BETWEEN:-

**MITTHU LAL AGRAWAL S/O MOHAN LAL
AGRAWAL, AGED 73 YEARS, R/O- C/O
PANKAJ TRAVELS PENDRA DISTT.
BILASPUR (CHHATTISGARH)**

.....PETITIONER

(BY SHRI R.D. SHARMA AND SHRI HIMANSHU SHARMA- ADVOCATES)

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH ITS PRINCIPAL
SECRETARY, TRANSPORT
DEPARTMENT, VALLABH BHAWAN
BHOPAL (MADHYA PRADESH)**
- 2. THE SECRETARY STATE TRANSPORT
AUTHORITY HURAWALI HILL
GWALIOR (MADHYA PRADESH)**

.....RESPONDENTS

***(BY SHRI SHIR M.S. JADON- GOVERNMENT ADVOCATE FOR
RESPONDENT/STATE.)***

***(BY SHRI SANTOSH AGRAWAL- ADVOCATE FOR
RESPONDENT/INTERVENER)***

*These petitions coming on for admission this day, the court passed
the following:*

ORDER

Regard being had to the similitude of the controversy, both the petitions were heard analogously and decided by the common order. For factual convenience, facts, as narrated in W.P. 8685 of 2022 are taken into consideration.

2. The present petition is preferred by the petitioner against the order dated 08.02.2023(Annexure P/1) passed by Secretary, State Transport Authority, Madhya Pradesh (Respondent No.3 herein) whereby Secretary refused to countersign on renewal of permit over the inter-State Route Jhansi to Khurai.

3. Precisely stated facts of the case are that petitioner is doing transport business on the basis of Stage Carriage Permits. The route in question Jhansi to Khurai via Lalitpur is an inter-State route and finds place at Serial No.183 of Schedule "A" of the Reciprocal Transport Agreement dated 21.11.2006, arrived at between State of Uttar Pradesh and State of Madhya Pradesh (vide Annexure P/2).

4. Petitioner is a holder of permanent permit covered by vehicle No. UP93-T-9436 and he sought permit for one return trip daily w.e.f. 13.01.2022 to 12.01.2027 subject to countersignature by the State Transport Authority, Madhya Pradesh. The issuance of the said permit was made from the concerned transport authority at U.P. with a recommendation letter to the Secretary of State Transport Authority, M.P. for countersignature as per terms of reciprocal transport agreements as contemplated under Section 88 (5) and (6) of Motor Vehicle Act 1988 (herein after referred as Act 1988).

5. Petitioner made an application for countersignature over the permit before respondent No.3 with requisite documents on 31.01.2023 and also deposited the required application fee. After hearing of the aforesaid application on 31.01.2023, impugned order dated 08.02.2023 was passed whereby the application for countersignature has been rejected by the

respondent no.3 on the basis that the manufacturing year of the vehicle of petitioner is of year 2011 and by relying on the notification dated 24.11.2010, 28.12.2015 and 27.12.2022 issued by the State of Madhya Pradesh, purportedly under Rule 77 (1-a) (i) of the Madhya Pradesh Motor Vehicle Rules, 1994 (herein after referred as Rules 1994) since the vehicle was older than 10 years, therefore, cannot operate/ply on the said permit within the territory of State of M.P.. Pertinently, it is submitted that permit issued by State Transport Authority, U.P. where no such 10 year old model condition exists and therefore, it is the grievance of the petitioner that respondents cannot fix the age limit of vehicle as per the Reciprocal Agreement (hereinafter referred as R.A.).

6. It is the submission of counsel for the petitioner that vide gazette notification dated 21.11.2006, Reciprocal Agreement between State of M.P. and State of U.P. came into being and duly signed by the authorities wherein Clause 4 (8) (13) (19) and Clause 6 contemplate that as per Reciprocal Agreement, Stage Carriage Vehicle is given benefit of single point taxation system and said facility of single point taxation would be applicable for both the States.

7. Leaned counsel appearing for petitioner Shri R.D. Sharma and Shri Himanshu Sharma vehemently argued that as per the Reciprocal Agreement of the year 2006, vehicles of both the States would apply for permit (as per the fixed number of permits agreed in R.A. and countersignature as per the agreement) and State of M.P. cannot rescind from the promise of grant of counter signature, once it signed the R.A. which does not contain condition of 10 years old vehicle as tried to be

projected by the respondents.

8. Learned counsel for petitioner also referred the Clause 10 of Reciprocal Agreement to bring home the fact that as per R.A., set of rules would be issued in respect of fitness and other related certificates. According to him, once this Clause has been inserted, it means the fitness of the vehicle would be governed by the R.A. rather than by any other statute/rules. He relied upon the judgement of Apex Court in the case of *Ashwani Kumar Vs. Regional Transport Authority, Bikaner 1999 SC 3888 and Division Bench of Allahabad High court in the bunch of petitions in which Avinash Kumar Jain and others Vs. State of U.P. and others Writ Tax 2267/2009 is the lead case and Division Bench of High Court of Chattisgarh at Bilaspur in bunch of petitions in which petition No. WP (C) 2004/2017 Dr. Sandeep Jain and others Vs. State of Chhattisgarh and others, is the lead case 2018 SCC Online CHH 699 and Co-ordinate Bench of This Court in the case W.P. 15086/2014 M/s Banmali Gupta Bus Sevice Vs. State of M.P, 2016 SCC Online MP 1532..* According to him Reciprocal Agreement is sacrosanct and cannot be interfered with.

9. Shri Himanshu Sharma, counsel for the petitioner raised the point regarding Section 59 of the Act, 1988 and submits that power to fix the age limit of vehicle lie with the Central Government, therefore any rules made by the State Government cannot be made so as to cause hindrance to the petitioner to right to pursue occupation. He relied upon the judgment of Hon'ble Apex Court in the case of *Regional Transport Authority Vs. Shaju etc. 2022 SCC Online SC 209.*

10. *Per contra*, learned counsel for the respondents opposed the prayer. According to Shri M.S. Jadon, appearing for respondents, it is true that Reciprocal Agreement was executed between the two States in 2006, but thereafter in Madhya Pradesh Motor Vehicles Rules, 1994 certain amendments were made and as per amendment caused in Rule 77 (1a) (i) wherein additional conditions in respect of certain permits can be imposed by the State Government is elaborated and exercising the said power, age of Stage Carriage Permit operating on inter-State route, is fixed as 10 years from the year of manufacturing meaning thereby no State Carriage permit shall be granted on inter-State routes to a vehicle which has completed 10 years from the manufacturing date. "Grant of Permit" includes countersignature also over the permit because as per Section 88 (1) (4) of Act, 1988 wherein it has been provided that grant of permit includes countersignatures of permits also.

11. It is further submitted that when this Rule, as referred above, was inserted in the statute book, then validity of the said Rule was challenged by the aggrieved parties by of writ petitions and said controversy was put to rest by Division Bench of this Court in the case of ***Shaheed Khan and others Vs. State of Madhya Pradesh and others, 2013 4 MPLJ 439*** wherein the import of Section 59 of the Act, 1988 *vis a vis amendments* caused in Rules 64, 67, 77, 103, 116 and 204 and insertion of new Rule 116-A in Rules, 1994 by notification dated 24.11.2010, was also considered. All provisions were found intra-vires and valid.

12. Therefore, according to counsel for the respondents, this controversy is no longer *res integra* that Rule 77 (1a) (i) is valid and does

not transgress Section 59. He referred different paras as surfaced in the said judgement to bring home the analogy that amendment in the rules where the age of Stage Carriage permits vehicle has been prescribed is still applicable. Therefore, authority rightly passed the impugned order.

13. It is further submitted that form of grant/renewal/countersignature of permits are one and the same thing and therefore no distinction can be carved out between grant of permit and countersignature of permit, as per rules 72 of Rules 1994. It is further countered that so far as judgement as relied by petitioner **Ashwani Kumar (supra)** is concerned, it is in respect of Section 88 (5) and (6) of Act, 1988 mainly in respect of **number of permits/routes** and it is not a case of permits or routes *per se*. Counsel for respondent/State is still ready to entertain the number of vehicles as per R.A. and routes as prescribed in the said agreement. It is only the question of vehicles subject to fitness/age as per Rule 77 (1a) (i) of Rules, 1994.

14. Counsel for the intervener Shri Santosh Agrawal also raised the dispute and submitted that as per Section 23 of Indian Contract Act any illegal condition cannot exist in an agreement. Any illegal condition which is forbidden by law, cannot be applied.

15. Heard the counsel for the parties at length and perused the documents appended thereto.

16. In this case, the petitioners of different petitions raise the point regarding sanctity of R.A.. According to the petitioners, once R.A. has been signed then vehicle registered in the State of U.P. and seeking

countersignature of State Transport Authority of M.P. is having legitimate right to get the permit countersignature even if the vehicle in question exceeds 10 years of age.

17. Before adverting to the statutory provisions, as contained in the Act, 1988 and Rule of 1994, it would be apt to revisit Section 23 of the Indian Contract Act 1972 which reads as under:-

***23. What consideration and objects are lawful, and what not.—
The consideration or object of an agreement is lawful, unless—***

" it is forbidden by law; 1 or

is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or

involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

18. Section 59 of the Act, 1988 gives power to the Central Government to fix the age limit of motor vehicle. In 2010, State of M.P. incorporated series of amendments by way of Amendment Act of 2010 in which amendments in Rules 64, 67, 77, 103, 116 and 204 were carried out. By notification dated 24.11.2010 Rule 77 (1a) (i) was amended in following manner:-

77. Additional conditions in respect of certain permits.- (1)

In addition to the conditions prescribed in sub-section (2) of Section 72, the Regional Transport Authority or State

Transport Authority granting a stage carriage permit may attach any of the following conditions, namely:-

(i) that the permit holder, shall not use the stage carriage in a public place for the purpose of carrying or intending to carry passengers unless it carries in addition to the driver, a conductor who holds an effective conductor's licence issued under Chapter III of the Act.

(ii) that there shall be exhibited on the vehicle adequate particulars indicating to the public the place to which and the route by which the vehicle is proceeding.

(iii) that the service shall be regularly operated on the specified route in accordance with the approved time table except-

(a) when prevented by accident, unmotorability of the route, or any unavoidable cause; and

(b) when otherwise authorised in writing by the Regional Transport Authority.

[(1a) 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)

(iii)

(iv)

19. Constitutional, validity of Rule 77 (1-a) (i) was challenged before the Division Bench of this Court and in the case of **Shaheed Khan (supra)** and discussion as surfaced in the said case covers import of Section 59 *vis a vis* powers of State Government to frame such rules

prescribing the age limit for Stage Carriage permits and thereafter held the said rule to be *intra vires*. The said judgement as pronounced in **Shaheed Khan (supra)** attained finality. Therefore, Rule 77 (1a) (i) very much exists in the statute book.

20. Once the said rule finds place in the statute book i.e. Rules of 1994, then it has to be adhered to and no agreement can be executed which is otherwise forbidden by law as per Section 23 of the Indian Contract Act. In fact, it is opposed to **Public Policy** also because if the argument of the petitioner is accepted, then any permit holder of Stage Carriage vehicle registered in Madhya Pradesh can ply his vehicle only up to 10 years of its age whereas registered owner and permit holder operating in State of U.P. can get permit over a vehicle exceeding 10 years of age and can operate in State of Madhya Pradesh on the strength of R.A. and countersignatures signed by the authorities. This would constitute discrimination also because it would not provide level playing field to the operators of Madhya Pradesh. Besides that the purpose behind prescription of age limit over a Stage Carriage Permit appears to be pollution control and to provide proper facility/convenience as well as safety to the public at large moving over the road. It would be ridiculous to conclude that vehicles of M.P. are barred to provide safety and convenience but vehicles of other States are allowed to operate incessantly just on the basis of R.A. Same dehors the Principle of Public Policy. (See: **Ram Bharose Sharma Vs. State of M.P., 2021 (4) MPLJ 90**)

21. Even otherwise, when statute prescribes 10 years of age limit and

the R.A. stipulates respect for respective rules then if a State Carriage vehicle of M.P. more than 10 years old is not given permit to operate on inter-State route, then automatically vehicle of other States would also be restricted and that is the exact “Reciprocity”. If the arguments of petitioner are accepted then it would be amounting to create a situation where registered owners of State of M.P. can transfer their registration later to State of U.P. after completion of 10 years of age of vehicle and then start operating and coming back to Madhya Pradesh. Even possibility cannot be ruled out that some transporters of Madhya Pradesh start registering their vehicles in U.P. to gain such benefits. What cannot be achieved directly, cannot be allowed to achieve indirectly.

22. Judgments relied upon by the counsel for petitioners move in different factual and legal realm. Therefore, those judgments are of no assistance to the cause of petitioners.

23. In the given facts and circumstances of the case, when statute stares at the authorities where the vehicles exceeding 10 years of age cannot ply as Stage Carriage vehicle over inter-State route, then no illegality and arbitrariness has been caused by the authorities while refusing to countersign the permit and passing the impugned order dated 08.02.2023.

24. Resultatly, both petitions *sans* merits and are hereby **dismissed**.

25. Before parting, this Court records its appreciation for the assistance given by the learned counsel for the parties.

(ANAND PATHAK)
JUDGE