

S.K. Bhatia & Others vs State Of U.P. & Others on 12 August, 1983

Equivalent citations: 1983 AIR 988, 1983 SCR (3) 595, AIR 1983 SUPREME COURT 988, 1983 4 SCC 194, 1983 UJ (SC) 827, 1983 CRI APP R (SC) 363

Author: O. Chinnappa Reddy

Bench: O. Chinnappa Reddy, D.A. Desai

PETITIONER:
S.K. BHATIA & OTHERS

Vs.

RESPONDENT:
STATE OF U.P. & OTHERS.

DATE OF JUDGMENT 12/08/1983

BENCH:
REDDY, O. CHINNAPPA (J)
BENCH:
REDDY, O. CHINNAPPA (J)
DESAI, D.A.

CITATION:
1983 AIR 988 1983 SCR (3) 595
1983 SCC (4) 194 1983 SCALE (2) 95

ACT:

Motor Vehicles Act, 1939-condition fn a permit as to age of mini buses-whether infringes Article 14 of the Constitution.

U. P. Motor Vehicles (Special Provisions) Act 1976' section 4-scope of.

HEADNOTE:

A condition that 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 is attached to every permit for plying a mini bus. The petitioners contended (i) that this condition amounted to an infringement of Article 14 of the Constitution in that no such condition was attached in the case of omnibuses and (ii) that the authority competent to

impose the condition was the authority constituted under the U. P. Act and not the Regional Transport Authority.

Dismissing the petitions.

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HELD: It is not correct to say that a condition similar to the one attached to permits issued in the case of mini buses was not attached to the permits issued in the case of omnibuses. In their case too, there is a condition that the vehicle should be replaced on the expiry of five years from the date of registration. Secondly, omnibuses and mini buses constitute different classes and are not comparable. [598 D]

The source of power for imposing condition 18 is section 51(2) (x) of the Motor Vehicles Act under which the authority empowered to impose the condition is the Regional Transport Authority. Section 4 of the U. P. Motor Vehicles (Special Provisions) Act, 1976 has nothing whatever to do with the imposition of conditions on mini buses plying as contract carriages. That Act deals with authorization of and use of private mini buses as stage carriage within specified limits covered by an approved scheme. [598 G]

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition Nos. 1124,4908, 9069-70,18-21, 4817,9445-48 of 1981, 1336, 2117-20, 6808 and 7219 of 1982, 2928 of 1980,1698/80 and 663 of 1981.

(Under Article 32 of the Constitution of India) S. Markandey, Mrs. C. Markandey, U.S. Prasad, R.K. Jain, R.B. Mehrotra, Ravi Prakash Gupta and K.K Gupta for the Petitioners.

Kapil Sibal and Mrs. Shobha Dixit for the Respondents. The Judgment of the Court was delivered by 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 :o the petitioners for plying contract carriages known as 'mini' buses is in question. 'Mini bus' is defined by sec. 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 sec. 51 (2) of the Motor Vehicles Act. But, in Subhash Chandra And ors v. State of U.P. and ors.(1) this Court held that the

condition was within the limits of the power conferred by sec. 51 (2) tracing its source to Item (X) of sec. 51 (2). The Court observed:

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 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 moral 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 good 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".

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"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 sec. 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 sec. 38. This argument was not accepted by the court, who observed.

"The unreported ruling in Civil Writ No. 7317 of 1975 interprets s. 38 of the Act and the non- issuance of the fitness certificate because the model was not recent enough. May be 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".

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 Art. 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 a Writ Petition Nos. 18-21 of 1981, it is stated that in the 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 fulfillment 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 sec 4 of the Uttar Pradesh Motor Vehicles (Special Provisions) Act. We have already referred to Subhash Chander's case where it has been held that the source of a power for imposing condition No 18 is sec. 51 (2) (x) of the Motor Vehicles Act. Under sec. 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 playing as contract carriages. It was suggested that the real object of Condition No. 13 is not the safety of the passengers as thought in Subhash Chander's case, 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.

P.B.R.

Petitions dismissed.