

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12843 OF 2016

Shivpujan Kumar S/o.
Gopikisan Singh & Anr. ...Petitioners

Versus

The State of Maharashtra & ...Respondents
Ors.

WITH

WRIT PETITION (st)NO.31669 OF 2015

Bhiwandi City Rickshaw-Taxi
Chalak Malak Sanghatana ...Petitioner

Versus

The State of Maharashtra & ...Respondents
Ors.

WITH

WRIT PETITION NO.12766 OF 2016

Mira Bhayandar Republican
Rickshaw Chalak Malak Union
(Registered) ...Petitioner

Versus

The State of Maharashtra & ...Respondents
Ors.

WRIT PETITION NO.11489 OF 2016

Bhiwandi City Rickshaw-Taxi
Chalak Malak Sanghatana
Through President Shri
Giris"(b)After going through ...Petitioner
the records and proceeding
Prakash Jhaveri

Versus

The State of Maharashtra & ...Respondents
Ors.

WRIT PETITION NO.11948 OF 2016

Bhiwandi City Rickshaw-Taxi
chalak Malak Sanghatana.

...Petitioner

Versus

The State of Maharashtra &
Ors.

...Respondents

....

Mr. S.K. Shinde i/b Mr. Yuvraj Patil for the
Petitioners in WPST/31669/2016

Mr. S.K. Shinde i/b Mr. Suresh M. Sabrad for the
Petitioner in WP/11489/2016 and WP/11948/2016.

Mr. Suhas Deokar for the Petitioner in
WP/12766/2016.

Mr. Vasant Kumar Bang for the Petitioner in
WP/12843/2016.

Mr. Manish Pabale, AGP for the Respondents-State
of Maharashtra in all the Petitions.

CORAM : A.S. OKA & SMT. ANUJA PRABHUDESSAI, JJ.

DATED: 28th FEBRUARY & 1st MARCH 2017.

ORAL JUDGMENT: (PER A.S.OKA,J.)

OVERVIEW

1 By the order dated 3rd February, 2017 passed in the Writ Petition (stamp) No.31669 of 2016, this Court directed that this group of Petitions shall be disposed of finally at the stage of admission. The learned AGP appearing for the State has relied upon the affidavit-in-reply of Purushottam Nikam, Deputy Transport Commissioner (Enf.1) filed in Writ Petition No.12766 of 2016 by stating that it is a common affidavit filed dealing with all the Petitions.

2 On 23rd October, 2015 (Home) Transport
Department of the State Government addressed a letter
to the Commissioner of Transport of the State
Government. The said communication records that there
are several Contract Carriage Permits under section 74
of the Motor Vehicles Act,1988 (for short "the said
Act") issued in respect of auto rikshaws, which have
lapsed for various reasons. A direction was issued to
the Commissioner of Transport to grant the lapsed
Contract Carriage Permits in respect of auto rikshaws
by adopting a lottery system. Condition No.3 in the
said communication was that an Applicant who applies
for Permit should have a knowledge of the local
language and should be aware of the topography of the
area for which Permit is sought. Accordingly, on 30th
December 2015, the Transport Commissioner published a
Public Notice inviting online applications for grant of
such Permits under Section 74 of the said Act. The
conditions of eligibility were incorporated in the said
Public Notice. The English translation of the condition
no.7 incorporated in the Public Notice reads thus:

"The Applicant should have knowledge of Marathi language and geographical knowledge of the local area as per Rule 24 of the Maharashtra Motor Vehicles Rules,1989"

(emphasis added)

A communication was issued on 20th February, 2016 by the Transport Commissioner to all the Regional Transport Offices laying down the manner in which knowledge of Marathi language of the candidates should be tested.

QUESTIONS INVOLVED

3 The first issue involved in this group of Petitions is whether the State Government has a statutory power to impose the aforesaid eligibility condition no. 7. The second issue which arises for consideration in Writ Petition No.12766 of 2016 is based on observations made in paragraph 2 of the order dated 17th November, 2016. The order records that number of complaints are very often received from the public regarding behaviour of auto rikshaw drivers. The Division Bench of this Court, therefore, observed that the scope of the said Petition will be expanded and the Court will go into the question of mechanism provided for dealing with the redress of the grievances

of the commuters. The Petitioners in the said Petition have not objected to this Court going into the said question.

PRAYERS IN PETITIONS

4 In the Writ Petition No.31669 of 2016, the challenge is to the aforesaid communication dated 20th February, 2016 issued by the Transport Commissioner laying down the manner in which the knowledge of Marathi language of the Applicants should be tested. In the Writ Petition No.12766 of 2016, the challenge is to the same communication. In the Writ Petition No.12843 of 2016, an exception is taken to the same communication dated 20th February, 2016 as well as the communication dated 24th February, 2016 which is annexed at Exhibit 'F' to the Petition. It is again a communication sent by the Transport Commissioner to various Regional Transport Officers laying down the manner in which knowledge of the Marathi language of the Applicants will be tested. In the Writ Petition No.11489 of 2016, the challenge is confined to the communication dated 20th February, 2016. Lastly, in Writ Petition No.11948 of 2016 the challenge is again to the same communication dated 20th February, 2016.

SUBMISSIONS

5 The learned counsel Mr. Shinde representing some of the Petitioners has invited our attention to the provision of the said Act and in particular various definitions and sections 73 and 74. He has also invited our attention to the Maharashtra Motor Vehicles Rules, 1989 (for short "The Maharashtra Rules"). Inviting our attention to the sections 73 and 74 of the said Act, he has submitted that neither section 73 nor section 74 lay down any qualifications or conditions of eligibility for making an application for grant of a Contract Carriage Permit. He pointed out sub section 2 of section 74 of the said Act which confers power on the Regional Transport Authority to impose any one or more conditions which are provided in clauses (i) to (xiii) thereof. He has submitted that sub-section 2 of section 74 does not confer any power on the Regional Transport Authority of imposing a condition in the Contract Carriage Permit of the Permit holder having adequate knowledge of local language and adequate knowledge of topography of the area in respect of which Permit is sought. He submitted that at highest, the State Government could have exercised the Rule making

power. Clause (xiii) of sub section 2 of section 74 confers power on the Regional Transport Authority to impose additional conditions as may be prescribed by Rules. He urged that no such Rule making power has been exercised by the State Government. He has relied upon a decision of the Apex Court in the case of ***Pancham Chand & Ors. vs. State of Himachal Pradesh and Others***¹ He has submitted that as held by the Apex Court, all Government orders must comply with requirements of a statute. He has submitted that in the facts of the case, the Apex Court held that Hon'ble Chief Minister cannot act in derogation of the statutory provisions. He has submitted that at highest the State Government is entitled to lay down a policy which admittedly has not been done in this case. He urged that the action of adding the impugned condition of eligibility is completely illegal.

6 The learned AGP relied upon Rule 24 of the Maharashtra Rules. Inviting our attention to the affidavit-in-reply of Mr. Purushottam Nikam, he has submitted that Rule 24 lays down the procedure for issuing a badge which is required to be worn by a

1 (2008) 7 SCC 117

person driving a motor cab. He urged that the knowledge of the Marathi language is a condition precedent for holding the badge. He has submitted that there is nothing wrong with the condition imposed by the State Government in as much as a driver of a motor cab should be able to communicate with the citizens in the Marathi language and read and understand the road sign boards in Marathi language. It is pointed out in the affidavit that in the absence of working knowledge of Marathi, a driver may not be able to understand the instructions given by the commuters thereby resulting in more inconvenience to commuters. If a driver lacks basic knowledge of Marathi language, the commuters would be put to inconvenience. He has invited our attention to the prima facie view expressed by the Division Bench of this Court in the order dated 17th November, 2016 in Writ Petition No.12766 of 2016 wherein it is observed that prima facie, the condition is not unreasonable. He has submitted that no interference is called for with the decision of the State Government of imposing the aforesaid condition.

PRIMA FACIE VIEW EXPRESSED IN THE EARLIER ORDER

7 Before we proceed to deal with the provisions

of the said Act as well as the Maharashtra Rules, we must note here that in paragraph No.2 of the order dated 17th November, 2016 in the Writ Petition No.12766 of 2016 the Division Bench of this Court has observed thus :-

"Prima facie, in our view, the said condition is not unreasonable because a driver of public vehicle is expected to know the regional language, so that he can understand the direction given by the commuters. Number of complaints have been received from public regarding behaviour of rickshaw drivers. We therefore propose to expand the scope of this Writ Petition and would like the Transport Commissioner to inform us as to what steps they have taken for redressal of grievances of the commuters."

8 What is overruled by the Division Bench of this Court in the first part of paragraph No.2 is only a prima facie view expressed by the Bench at the time of admission hearing of the Petition. It is not a concluded finding which binds this Court while hearing

the Petitions finally. Nevertheless the second part of the direction issued under clause 2 is a direction dealing with the scope of the Petition which will have to be implemented by issuing various directions to the State Government.

CONSIDERATION OF SUBMISSIONS

9 At this stage, it will be necessary to consider the relevant statutory provisions. A Contract Carriage is defined in sub-section 7 of section 2 of the said Act. It means a motor vehicle which carries passengers for hire or reward and is engaged under a contract, express or implied. As provided in sub-section 7 OF SECTION 2, a contract carriage includes a motor cab. Motor cab is defined in sub section 25 of section 2 of the said Act which reads thus :-

"25. "motorcab" means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward;"

Motor Vehicle is defined under sub section 28 of section 2, which reads thus:-

"28. motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for

use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding 4[twenty-five cubic centimetres]; 1[twenty-five cubic centimetres];"

10 The question whether an auto rikshaw comes within the meaning of motor cab defined under sub section 25 of section 2 of the said Act is no more *res integra*. A Division Bench of this Court in the case of ***Sunmitra Auto Rickshaw Sahakari Sangh vs Director Of Transport And Others***² considered the definition of motor cab in sub section 15 of section 2 of the Motor Vehicles Act, 1939, which was repealed under the said Act. Paragraph Nos.2 and 3 of the said decision show that the definition of motor cab under the repealed Act was similar to the definition of the motor cab under the said Act. The Division Bench clearly held that an auto rickshaw falls within the definition of motor cab.

2 AIR 1967 Bom 402

11 Now coming to the provisions OF the said Act
dealing with Contract Carriage Permits, sections 73 and
74 are material, which read thus :

"73. Application for contract carriage Permit.—An application for a Permit in respect of a contract carriage (in this Chapter referred to as a contract carriage Permit) shall contain the following particulars, namely:—

- (a) the type and seating capacity of the vehicle;
- (b) the area for which the Permit is required;
- (c) any other particulars which may be prescribed.

74. Grant of contract carriage Permit.—

(1) Subject to the provisions of subsection (3), a Regional Transport Authority may, on an application made to it under section 73, grant a contract carriage Permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a Permit: Provided that no such Permit shall be granted in respect of any area not specified in the application.

(2) The Regional Transport Authority, if it decides to grant a contract carriage Permit, may, subject to any rules that may be made under this Act, attach to the Permit any one or more of the following conditions, namely:—

- (i) that the vehicles shall be used only in a specified area or on a specified route or routes;
- (ii) that except in accordance with specified conditions, no contract of hiring, other than an extension or modification of a subsisting contract, may

- be entered into outside the specified area;
- (iii) the maximum number of passengers and the maximum weight of luggage that may be carried on the vehicles, either generally or on specified occasions or at specified times and seasons;
- (iv) the conditions subject to which goods may be carried in any contract carriage in addition to, or to the exclusion of, passengers;
- (v) that, in the case of motorcabs, specified fares or rates of fares shall be charged and a copy of the fare table shall be exhibited on the vehicle;
- (vi) that, in the case of vehicles other than motorcabs, specified rates of hiring not exceeding specified maximum shall be charged;
- (vii) that in the case of motorcabs, a specified weight of passengers' luggage shall be carried free of charge, and that the charge, if any, for any luggage in excess thereof shall be at a specified rate;
- (viii) that, in the case of motorcabs, a taximeter shall be fitted and maintained in proper working order, if prescribed;
- (ix) that the Regional Transport Authority may, after giving notice of not less than one month,—

- (a) vary the conditions of the Permit;
- (b) attach to the Permit further conditions;

- (x) that the conditions of Permit shall not be departed from save with the approval of the Regional Transport Authority;
- (xi) that specified standards of comfort and cleanliness shall be maintained in the vehicles;
- (xii) that, except in the circumstances of exceptional nature, the plying of the vehicle or carrying of the passengers

shall not be refused;
(xiii) **any other conditions which may be prescribed.**

(3) (a) The State Government shall, if so directed by the Central Government, having regard to the number of vehicles, road conditions and other relevant matters, by notification in the Official Gazette, direct a State Transport Authority and a Regional Transport Authority to limit the number of contract carriages generally or of any specified type, as may be fixed and specified in the notification, operating on city routes in towns with a population of not less than five lakhs.

(b) Where the number of contract carriages are fixed under clause (a), the Regional Transport Authority shall, in considering an application for the grant of Permit in respect of any such contract carriage, have regard to the following matters, namely:—

- (i) financial stability of the applicant;
- (ii) satisfactory performance as a contract carriage operator including payment of tax if the applicant is or has been an operator of contract carriages; and
- (iii) such other matters as may be prescribed by the State Government:
Provided that, other conditions being equal, preference shall be given to applications for Permits from—
 - (i) the India Tourism Development Corporation;
 - (ii) State Tourism Development Corporations;
 - (iii) State Tourism Departments;
 - (iv) State Transport Undertakings;
 - (v) co-operative societies registered or deemed to have been registered under any enactment for the time being in force;
 - (vi) ex-servicemen."

(emphasis added)

12 Sub Section 1 of Section 66 of Chapter V of the said Act makes such Permit mandatory and makes it a condition precedent for the use by the owner of a motor vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying passengers or goods. Section 73 which is quoted above deals with applications for Permit in respect of Contract Carriage. Neither section 73 nor section 74 lay down qualifications of a person who can apply for grant of Contract Carriage Permit. Sub-section 1 of section 74 confers powers on the Regional Transport Authority to issue Permits to anyone. Sub-section (2) of section 74 empowers the Regional Transport Authority to impose any of the conditions which are specified in clauses (i) to (xiii). None of the said clauses provide for imposing a condition on the Applicant of having the knowledge of the local language or the knowledge of local topography. Clause (xiii) of sub section 2 of section 74 provides that the concerned Regional Transport Authority may impose any other condition which may be prescribed. The term "prescribed" is defined under sub-section 32 of section 2. The term prescribed means prescribed by Rules made

under the said Act. It is not disputed before us that the State Government has not exercised the Rule making power under clause (xiii) of sub-section 2 of section 74 by providing for imposing a condition of the Applicant having a knowledge of Marathi language and the knowledge of topography of the local area while issuing the permit. We may note here that the Regional Transport Authority, under sub section 2 of section 74, can impose conditions as provided in any of the sub-clauses while issuing permit. Under section 74, there is no power to impose a condition of eligibility to apply for grant of permit.

13 In the earlier part of the Judgment, we have made a reference to the affidavit of Mr.P.D.Nikam to which a copy of the advertisement dated 30th December 2015 inviting applications for grant of auto rickshaw permits has been annexed. In the affidavit, the specific stand of the State Government is that the condition No.7 of eligibility quoted above has been incorporated by taking recourse to Rule 24 of the Maharashtra Rules. Rule 24 reads thus:

"24. Badges of drivers of public service

vehicles- 1(1) A metal badge shall be issued to every person who has been granted an authorisation to drive a public service vehicle **except motor cab**, subject to the condition that he satisfies the authority about his topographical knowledge of the area of operation and working knowledge of Marathi and any one of the languages commonly spoken there. The badge shall be in the form illustrated in the Second Schedule of these rules. The metal badge shall be circular in shape and shall contain the name of the headquarter of the authority which has granted the authorization, the category of the motor vehicle and an identification number, inscribed thereon.

(2) The driver of a public service vehicle shall display on the left side of the chest the requisite metal badge issued under sub-rule (1). No driver shall hold more than one badge of the same type ;

Provided that, the driver of a luxury cab and a tourist cab shall display badges

bearing the letters "LCD" and "TCD".
Respectively."

(emphasis added)

14 As pointed out earlier, an auto rickshaw is included in the definition of "motor cab" defined under sub-section 25 of section 2 of the said Act. "Motor cabs" have been specifically excluded from the applicability of Rule 24. Hence, Rule 24 will not apply to auto rikshaws. As Rule 24 has no application whatsoever to auto rikshaws, the eligibility condition no.7 based on Rule 24 could not have been incorporated as a qualification for a person applying for the grant of a Contract Carriage Permits under section 74 of the said Act for auto rickshaws. As pointed out earlier, even such a condition could not have been imposed even while granting permit as the Rule making power has not been exercised under clause (xiii) of sub-section 2 of Section 74.

15 We may also note here that in the affidavit of Shri Nikam it is sought to be contended that the said condition has been imposed for the benefit of the members of the public who use auto rickshaws. The

question is whether such a condition could have been imposed in accordance with law. The Contract Carriage Permits must be issued in accordance with the said Act and the Rules framed thereunder. According to us, this issue is squarely covered by the decision of the Apex Court in the case of **Pancham Chand & Others**. Paragraph 18 of the said decision reads thus:

"18 The Act is a self-contained code. All the authorities mentioned therein are statutory authorities. They are bound by the provisions of the Act. They must act within the four corners thereof. The State, although, has a general control but such control must be exercised strictly in terms of Article 162 of the Constitution of India. Having regard to the nature and the manner of the control specified therein, it may law down a policy. Statutory authorities are bound to act in terms thereof, but per se the same does not authorise any Minister including the Chief Minister to act in derogation of the statutory provisions. The Constitution of India does not envisage functioning of the Government through the Chief Minister alone. It speaks of a Council of Ministers. The duties or functions of the Council of Ministers are ordinarily governed by the provisions contained in the Rules of

Business framed under Article 166 of the Constitution of India. **All governmental orders must comply with the requirements of a statute as also the constitutional provisions. Our Constitution envisages a rule of law and not rule of men. It recognises that however high one may be, he is under law and the Constitution. All the constitutional functionaries must, therefore, function within the constitutional limits."**

(emphasis added)

Even paragraph 19 of the said decision is material which reads thus:

"19 Apart from the fact that nothing has been placed on record to show that the Chief Minister in his capacity even as a member of the Cabinet was authorised to deal with the matter of transport in his official capacity, he had even otherwise absolutely no business to interfere with the functioning of the Regional Transport Authority. **The Regional Transport Authority being a statutory body is bound to act strictly in terms of the provisions thereof. It cannot act in derogation of the powers conferred upon it. While acting as a statutory authority it must act having regard to the procedures laid down in the Act. It cannot bypass or ignore the same."**

(emphasis added)

CONCLUSION

16 Unless there is a specific provision under the said Act or under the Rules framed in exercise of power under the said Act empowering the State Government to prescribe such qualifications for the applicants who want to apply for Contract Carriage Permits in respect of auto rickshaws, the State Government could not have lawfully imposed the impugned condition. The State Government is under a mandate to act within four corners of the said Act and the Rules framed thereunder. Nothing prevented the State Government from exercising the Rule making power, if it is otherwise permissible in law, for empowering the Transport Department to impose such condition as a condition precedent for grant of permit. Only by giving an excuse of public interest, the State Government cannot circumvent the provisions of the said Act and the Rules framed thereunder. The State Government cannot apply Rule 24 as it is not applicable to motor cabs.

17 In the circumstances, the challenge by the petitioners to the impugned condition will have to upheld only on the ground that the State Government had no power either under the said Act or the Maharashtra

Rules to impose such a condition.

DIRECTIONS PROPOSED TO BE ISSUED

18 In Writ Petition No. 12766 of 2016, a Division Bench of this Court has observed that there are large number of complaints by the commuters as regards the conduct of the drivers of the motor cabs and in particular auto rickshaws. Rule 21 of the Maharashtra Rules lays down the Rules of conduct and duties of drivers of motor cabs. Rule 21 of the Maharashtra Rules reads thus:

“(21) Rules for conduct and duties of drivers of motor cabs.

(1) The drivers of the first two motor cabs on any stand shall always stay near their cabs which shall be ready for immediate hiring by any person.

(2) All drivers shall move their cabs up as vacancies occur in the stand.

(3) Every cab shall be kept with front wheels straight at a distance of not less than thirty centimeters from the cab immediately in front of it and where the stand is by the side of a kerb,

parallel to and not more than thirty centimeter from the kerb.

(4) No driver shall allow his cab to remain on the stand if it is disabled unless the disablement is of a temporary nature which can be immediately remedied and is so remedied.

(5) No driver shall allow his cab when it is not engaged to remain at any place other than a stand appointed for the purpose nor shall be loiter for the purpose of its being hired in any public place.

(6) No driver shall prevent or attempt to prevent the first cab on the stand from being hired.

(7) No driver whose cab has been engaged for some future time shall keep his cab on a stand unless he is willing to accept an intermediate engagement that may be offered.

(8) A driver of a motor cab shall in the absence of reasonable cause to the contrary proceed to the destination named by the hirer by the shortest and quickest route.

(9) No driver of a motor cab shall make use of

his cab in connection with or for the furtherance of prostitution;

(10) No driver of a motor cab shall carry a cleaner or other attendant unless Permitted specifically to do so by the Regional Transport Authority on such conditions as may be specified by it.

(11) No driver of a motor cab shall terminate the hiring thereof before he has been discharged by the hirer.

(12) No driver of a motor cab shall demand or exact any fare in excess of that to which he is legally entitled.

(13) No driver of a motor cab shall shout in order to attract a passenger.

(14) A driver of a motor cab shall at all times exercise all reasonable care and diligence to maintain his vehicle in a fit and proper condition and shall not knowingly drive the vehicle when it or any brake, tyre or lamp thereof is in a defective condition likely to endanger any passenger or other person or when there is not sufficient fuel in the tank of the

vehicle to enable him to reach the next fuel filling station on the route.

(15) No driver of a motor cab shall solicit a customer except in a civil and quiet manner; nor shall he in any way interfere with any person boarding or preparing to board another vehicle.

(16) A driver of a motor cab shall not smoke while on duty.

(17) A driver of a motor cab shall behave in a civil and orderly manner to passengers and others.

(18) A driver of a motor cab or a Permit holder when himself drives the motor cab, shall wear clean khaki shirt or bush shirt and khaki trousers. A driver of motor cab or Permit holder when himself driving a motor cab shall display a laminated identity card as illustrated in the Second Schedule to these rules, on the right side of the chest, issued by the licensing authority on payment of rupees fifty:

Provided that when drivers of such vehicles are or are likely to be called upon to perform duties in an emergency or to receive the

training, the Government may, by general of special order, exempt such drivers from the operation of this sub-rule for such period as may be specified in the order.]

[(18-A) If the identity card is lost or destroyed, a duplicate identity card shall be issued by the licensing authority by which it was issued on an application made in form D.I.D of the First Schedule to these rules accompanied by a fee of twenty-five rupees. In case the original identity card is later found, upon the return to the issuing authority of the duplicate Identity card, the driver of the motor cab or a Permit holder, as the case may be shall be entitled to a refund of twenty-five rupees. In case of suspension or revocation of driving licence by an authority or by any Court or ceases to be valid due to efflux of time, the driver or the Permit holder, as the case may be shall, within seven days of such suspension or revocation, surrender the Identity Card held by him to the authority by whom the same were suspended.]

(19) A driver of motor cab shall maintain the vehicle in a clean and sanitary condition.

(20) No driver of a motor cab shall allow any person to be carried in any motor cab in excess of the seating capacity specified in the certificate of registration of the vehicle.

(21) A driver of a motor cab shall not hold more than one laminated identity card issued by the licencing authority.

(22) If at any time the authorization of a driver's driving licence entitling him to drive a motor cab is suspended or revoked by an authority or by any Court or ceased to be valid by the efflux of time, the driver shall within seven days surrender the badge to the authority by which it was issued.

(23) No driver of a motor cab shall cause or allow to enter into or to be placed or carried in the vehicle, any person whom he knows or has reason to believe to be suffering from any infectious or contagious disease, or the corpse of any person whom he knows or has reason to believe to have been suffering from any such

disease.

(24) Notwithstanding the provisions of sub-rule (23), the driver may upon application in writing by a registered medical practitioner allow a person suffering from an infectious or contagious disease to be carried in a motor cab, provided that no other person save a person or persons in attendance on the person so suffering shall be carried in the vehicle at the same time.

(25) Where a person suffering from an infectious or contagious disease, or the corpse of any such person has been carried in a motor cab, the driver of the vehicle shall report the fact of such carriage to the medical officer-incharge of the nearest Municipal Zilla Parishad, Panchayat Samiti or Government dispensary and to the owner of the vehicle and neither the owner nor the driver shall cause or allow any person, to use the vehicle until the driver and the vehicle have been disinfected in such manner as the said medical officer may specify and a certificate to this effect has been obtained from the said

medical officer.

(26) No person shall drive any motor cab unless in every two months, it is disinfected with D.D.T or any other liquid insecticide, approved for the purpose by the Surgeon-General with the Government of Maharashtra.

(27) The owner of a motor cab shall maintain and on demand by an officer of the Motor Vehicles Department of and above the rank of Assistant Inspector of Motor Vehicles or a Police Officer, produce for inspection a current register showing the dates on which the motor cab was disinfected from time to time, and shall also satisfy him that a mechanical spray which shall be used for the purpose of such disinfection is in working order.

(28) A driver of a motor cab shall, on demand by any Police Officer in uniform or an Officer not below the rank of an Assistant Inspector of Motor Vehicles, produce his driving licence for inspection.

(29) The driver of a motor cab shall at the conclusion of every journey make reasonable

search in the vehicle for anything left by any passenger and shall take into his custody anything so found and shall as soon as may be convenient hand over the same to the Officer-in-charge of the nearest Police Station.

(30) The driver of a motor cab, shall not, without the approval of its owner Permit any other person to drive the vehicle.

(31) A driver of a motor cab shall, whenever the vehicle approaches an unguarded level crossing, cause it to be stopped and, after ensuring that no train is approaching in either direction, proceed to cross it."

19 While filing an affidavit in reply, the State Government was very much conscious of the issue involved as regards implementation of the provisions of Rule 21 and the grievances of the commuters. Paragraphs 21 and 22 of the said affidavit reads thus:

"21 I say and submit that a proposal to set up 24 X 7 call centre to give necessary information to citizens, register complaints etc is under

consideration by the Government.

22 I say and submit that online application is being proposed for Grievance management which would also cover complaints against Auto/Taxi refusals/fare/misconduct etc. There is also a proposal for creation of a web based application for all services which are not covered under Vahan/Sarathi software and require citizens to make multiple visits to the department. A mobile app to access all these services is also proposed to enable anytime anywhere access to department services."

20 Thus, the affidavit makes it clear that there is no proper grievance redress mechanism provided for the benefit of the members of public. Setting up 24 X 7 call centres may not be sufficient at all. By way of illustration, if a passenger who occupies a seat in an auto rickshaw or motor cab finds that the driver of the motor cab is not behaving in a civil and orderly manner with him or her, there is no machinery which can immediately protect the passenger. Clause 8 of Rule 21

mandates that a driver of a motor cab in absence of reasonable cause to the contrary must proceed to the destination named by the hirer by a shortest and quickest route. If a passenger notices that the driver is not following said Rule and on the passenger objecting to it behaves with him in a rude manner, the passenger becomes helpless. In such cases, no purpose will be served by the passenger making a complaint after the journey is over. There are instances where though the auto rickshaw or motor cab is not engaged by any passenger, the driver refuse to render services to the passenger.

21 Therefore, while setting up the grievance redress mechanism by providing 24 X 7 call centre, the State Government will have to also make arrangement to enable the passengers to lodge complaints about the breach of Rule 21 or any other misbehaviour of auto ricksha/motor cab drivers by sending SMS or whats app message or e-mail while the passenger is travelling by an auto rickshaw or a motor cab. A mobile application can be developed which can be downloaded on cellphone through which a complaint can be lodged. Ideally a mechanism

should be made available under which the local police get immediate information about the complaint of a passenger in distress so that the local police can immediately intervene and help the passenger. Considering the availability of modern devices of communication, the State Government can evolve a grievance redress mechanism which will ensure that the passenger can lodge a complaint which will be immediately attended not only by the office of the Regional Transport Officer but also by the police by rendering timely and immediate help to passenger.

22 The matter does not end by providing speedy and timely help to the passenger. If any breach of Rule 21 is noticed, the same must result in taking stringent action against the Permit holder and driver of the motor cab. An action of cancellation of Permit as well as cancellation of identity card of the driver of the motor cab which is required as per clause 18 of Rule 21 must follow. We, therefore, propose to issue directions to the State Government to set up grievance redress mechanism in the light of what we have held above. Today, a chart is tendered by the learned AGP

giving figures of the complaints received from the citizens along with certain documents. We find that except for recovering fine or compounding charges, hardly any action has been taken against the erring Permit holders or drivers.

23 As the Petitioners which are the unions representing Permit holders of motor cabs have sought equitable relief, we propose to direct the Petitioners in each Petitions to file affidavits for placing on record the steps which the Petitioners propose to take ensuring that the Permit holders/ the auto rickshaw drivers strictly comply with the requirements of law and in particular, the said Act and the Maharashtra Rules framed thereunder

24 Hence, we pass the following order :

**ORDER IN WRIT PETITION NOS.12843 of 2016, 11489
of 2016, 11948 of 2016 AND St.31669 of 2016**

(I) We hold that the condition no.7 in clause I of the Advertisement of 30th December 2015 (a copy of which is annexed as Annexure-1 to the affidavit-in-reply of Shri P.D.Nikam) of requiring the applicants to satisfy the requirements of Rule 24 of the Maharashtra Rules is

completely illegal as Rule 24 is not applicable to motor cabs. The said condition No.7 is not supported by the said Act or the Maharashtra Rules;

(II) No applicant who has applied for the Permit on the basis of the aforesaid advertisement shall be held as disqualified on the ground that he has not complied with the requirements set out in condition No.7 of clause I of the said advertisement;

(III) To that extent, the impugned circular/communication dated 20th February 2016 will be inoperative as the said circular has been issued in furtherance of the aforesaid condition No.7 which is held to be illegal;

(IV) Writ Petition Nos.12843 of 2016, 11489 of 2016, 11948 of 2016 and Writ Petition St.31669 of 2016 are disposed of on above terms;

ORDER IN WRIT PETITION No.12766 OF 2016

In the light of the observations made in clause 2 of the order dated 17th November 2016, we issue Rule. Learned AGP waives service for the respondents. The prayer (b) is disposed of in terms of the above direction issued in companion matters. By way of interim relief, we issue the following directions:

(i) We direct the State Government to create a grievance redress mechanism for the benefit of the passengers traveling by motor cabs for enabling the passengers to lodge complaints regarding breach of the Rule 21 of the Maharashtra Rules and any other breach or regarding the commission of any offence by the holder of the Permit or the driver of the motor cab;

(ii) Necessary facilities as observed in this Judgment shall be made a part of the grievances redress mechanism. The mechanism shall be in place within a period of two months from today;

(iii) The record of the complaints received from the passengers by all permissible modes provided in the grievance redress mechanism shall be maintained by the appropriate department of the State Government. Action taken reports on the complaints shall be uploaded on the website of the Transport Department or a dedicated website to enable the complainants to know the action taken on the basis of their complaints;

(iv) As observed in the Judgment, necessary arrangements shall be made to ensure that the police take immediate action on receipt of any complaint made by the passenger travelling by a motor cab who is in

distress. The police shall render immediate help to such passengers on receiving complaints. The mechanism shall provide for taking immediate stringent action against the Permit holder and the driver. Adequate publicity shall be given to the availability of such grievance redress mechanism. Adequate publicity shall be given to the availability of grievance redress mechanism in all leading newspapers, on T.V.Channels, Radio Channels, websites, websites of the State Government etc:

(v) Compliance affidavit shall be filed by the State Government with the aforesaid directions on or before 3rd May 2017;

DIRECTION IN ALL THE PETITIONS IN THE GROUP

(a) We direct the Petitioners in each petition to file an affidavit within the same time for placing on record the steps which they propose to take for ensuring that their members and/or their drivers strictly comply with the requirement of law and in particular the said Act and the Maharashtra Rules framed thereunder;

(b) It will be open for the Petitioners to create their own grievance redress mechanism for entertaining complaints of the passengers travelling by the motor

cabs;

(c) Place the petitions on 4th May 2017 under the caption of `Directions';

(d) The Registrar (Judicial-I) shall place these Petitions before the Hon'ble the Chief Justice on the administrative side for seeking a direction that these petitions shall be listed for reporting compliance before the same Bench or before the Bench of which one of us is a party.

(ANUJA PRABHUDESSAI, J.)

(A.S. OKA, J.)