

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2017

CORAM

THE HON'BLE MR.HULUVADI G.RAMESH, ACTING CHIEF JUSTICE
AND

THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.Nos.30349, 31797, 32694, 32696, 32698 of 2012;
4749, 2012 & 8455 of 2013

The Tamil Nadu Nursery, Primary,
Matriculation & Higher Secondary Schools Association,
Having its Head Office at
No.49, Old Post Office Street,
Korattur, Chennai-600 080
rep. by its General Secretary
K.R.Nandhakumar ... Petitioner in WP 30349/2012

Tamil Nadu Private School Association
rep by its president
R.Visalakshi, Coimbatore-20 ...Petitioner in WP 31797/2012

V. Chandrasekaran ...Petitioner in WP 32694/2012

Sri Vijay Vidyalaya Mat.Hr.Sec.School (Boys) Rep by its
Correspondent D.C. Elangovan,
Dharmapuri- 636 701 ...Petitionerin WP 32696/2012

Federation of Association of Private Schools in Tamil Nadu
(regd-108/2010)
Represented by its Secretary D.C. Elangovan,
Chennai 60078 ...Petitioner in WP 32697/2012

P.K. Periamuniusamy Gounder Educational Trust,
Represented by its Managing Trustee D.C. Elangovan,
Krishnagiri- 635001 ...Petitioner in WP 32698/2012

TamilNadu Nursery, Primary Matriculation and
High Secondary Schools
Managements Association Rep. by its
General Secretary C. Sundarraaj
Chennai- 600005 ...Petitioner in WP 4749/2013

Rajalakshmi Gengusamy Matriculation and
Higher Secondary School, Pethapampatti
Rep. BY its Corresspondent Dr.V. Genguswamy Naidu
... Petitioner in WP 2012/2013

TamilNadu Catholic Educational Association
Reg No. S6/1926-27
Rep. by its Secretary cum Treasurer Rev.Fr.S. Arulappan,
Chennai 60004
...Petitioner in WP 8455/2013

Vs.

- 1.The Government of Tamil Nadu,
rep. by its Principal Secretary to Government,
Home Department,
Fort St. George, Secretariat,
Chennai - 600 009.
- 2.The Transport Commissioner,
Office of the Transport Commissioner,
Govt. of Tamil Nadu,
Chepauk, Chennai - 600 005. .. Respondents in
WP 30349,31797/2012 &
4749,2012 & 8455/2013
- 3.The Government of TamilNadu,
Rep by the Principal Secretary,
Home prohibition & Excise Department,
Fort.St.George, Chennai-600 009. .. Respondent in WP
32694,32696 to 32698/12

Prayer in WP.No. 30349/12, 31797/12 & 4749/2013, 2012/2013 & 8455/2013:-of 2012 under Article 226 of the Constitution of India for issuance of a writ of declaration declaring the impugned Rules 4(2) to Rule 4(5), Rule 5, Rule 6(5), Rule 6(6), Rule 6(11), Rule 6(12), Rule 8, Rule 9, Rule 10 and Rule 11 of the Tamil Nadu Motor Vehicles (Regulation and Control of School Buses) Special Rules, 2012 as arbitrary, illegal and unconstitutional and ultra vires the provisions of the Motor Vehicles Act, 1988.

Prayer in WP 32694,32696 to 32697/2012 -Separate sheet

W.P. 32694/2012:- Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of declaring the Tamilnadu Motor Vehicles (Regulation and Control of School Buses) Special Rules, 2012 in so far as it relates to Rule 5 read with Rule 2(3) the qualification of an Attendant, Rule 6 framed regarding Construction and Maintenance of School buses, Rule 6(5) Foot Board, Rule6(12)(b) emergency exit, Rule 6(`16)

fitment of speed governor Rule 8(1) & (2) constitution and functions of special cell for issuance of fitness certificate , Rule 11(1) & (2)- Constitution and functions of district level inter-departmental committee, the powers to suspend / cancel fitness certificate and in so far as the petitioner is concerned as ultra vires the provisions of the Central Motor Vehicles Act , 1988 Central motor vehicles rules, 1989 and Tamilnadu motor vehicles rules 1989...

W.P. Nos. 32696 to 32698/2012: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of declaration declaring Tamilnadu Motor Vehicles (Regulation and Control of School Buses) Special Rules, 2012 as ultravires the provisions of Motor Vehicles Act 1988 and the Rules framed thereunder apart from being ultravires Art. 14 of the Constitution of India, in so far as Rule 3(2)(iv), Rule 4(5,) Rule 5(1) & (2), Rule 6(6) & (16), Rule 7(2) proviso, Rule 8(2) (iii) and Rule 11(1) of the said Rules.

For Petitioners : for Mr. M. Baskar
M/s.K.J.Parthasarathy
in W.P.No.30349/2012
M/s.C.R.Prasanan
in W.P.No.31797/2012
Mr.V.T. Gopalan, for senior
Advocate
M/s.Radha Gopalan
in W.P.No.32694/2012
M/s.J.Srinivasa Mohan
in W.P.Nos.32696 to
32698/2012
M/s.V.Balaji
in W.P.No.4749/2013
M/s.N.Umapathi
in W.P.No.2012/2013
Dr.Fr.A.Xavier Arulraj
Senior Counsel
for M/s.A.Arul Mary
in W.P.No.8455/2013

For Respondents in all : Mr.R.Muthukumaraswamy
the Writ Petitions Advocate General
assisted by
Mr.M.K.Subramanian
Government Pleader

COMMON ORDER

(Order of the Court was made by the Acting Chief Justice)

These writ petitions are filed by the petitioner schools seeking for a declaration to declare Rules 4(2) to 4(5), 5, 6 (5), 6(6), 6(11), 6(12), 8, 9, 10 and 11 of the Tamil Nadu Motor Vehicles (Regulation and Control of School Buses) Special Rules, 2012 issued in G.O.Ms.No.727, Home (Tr.VII) Department, dated 30.09.2012 as arbitrary, illegal, unconstitutional and ultra vires the provisions of the Motor Vehicles Act, 1988.

2. Brief facts which led to the framing of Special Rules by the State/Committee and the challenge made by the petitioners are as follows:-

(i) On 26.7.2012, news article appeared in the news papers about the death of a six year old girl, who was Class II student in Zion Matriculation Higher Secondary School, Indira Nagar, Chennai, who was crushed under the wheels of the school bus, which was taking her back home after she slipped through a hole on the floor of the vehicle. By the order dated 26.7.2012, the First Bench had taken suo motu notice and issued notice to the school authorities, Regional Transport Commissioner and the Officers, who certified the road worthiness of the said bus to appear in person on 27.7.2012. On 27.7.2012, the First Bench of this Court in its order in suo motu W.P.No.20272 of 2012 observed that a permanent solution has to be found to save the lives of the school going children who travel by buses owned by the schools and other educational institutions and the rules framed by the Government of Tamil Nadu do not provide any provisions with regard to maintenance, fitness and the conditions for plying the school buses carrying children.

(ii) The First Bench also observed that there may not be any difficulty for the Government to immediately frame rules incorporating the effective measures to be taken by the transport operators for the purpose of use of vehicles meant for carrying schools children. The Government, taking into consideration the observations made by the First Bench in the suo motu writ petition and after considering the responses from the schools and also in exercise of the powers conferred by

clause (xxxiii) of sub-section (2) of Section 96, Section 111, and clause (1) of sub-section (2) of Section 138 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988), framed Tamil Nadu Motor Vehicles (Regulation and Control of School Buses) Special Rules, 2012 with vide publication.

(iii) Challenging certain provisions of the Special Rules, 2012, the petitioners have come forward to file these writ petitions.

3. The State Government has filed the counter-affidavit stating that the special rules are framed based on the provisions of the Motor Vehicles Act, 1988, Central Motor Vehicles Rules, 1989 and the Tamil Nadu Motor Vehicle Rules, 1989 and the guidelines of the Hon'ble Supreme Court and also the directions of this High Court. Before confirming the said special rules, the Government had issued a draft notification relating to the proposal in G.O.Ms.No.643, dt. 31.8.2012 inviting objections from persons likely to be affected. The Government received representations from the public making certain objections and suggestions to the draft rules. The Government have decided to overrule the objections/suggestions except the suggestions relating to the foot board and driver's cabin which were received in stipulated time. The Government has confirmed the draft on special rules in G.O.Ms.No.727, dt. 30.9.2012 and the same was published in the Gazette and came into force with effect from 1.10.2012.

4. Originally these matters were listed before the Larger Bench. In the order dated 31.03.2016, the Larger Bench observed as under:-

"Learned counsel for parties point out that there is actually no difference of opinion on which a reference could be made before a Bench of three Hon'ble Judges and thus, the validity should be decided by a Division Bench. To us, it appears to be the correct position.

2. Learned counsel for the petitioners do agree that in view of the safety of school children involved and the experience gained over the last four years of its working, this is not really an adversarial litigation. They, however, express some difficulties experienced in implementation and thus, submit that those difficulties can be attended to, there would be no reason to challenge the provisions.

3.It has, thus, been requested to the learned counsel for the petitioners to collectively submit the major problem in its implementation, which they perceive and the solution thereof, so that the same can be put to the respondents / State Government.

4.List before the First Bench on 20.04.2016."

5. Pursuant to the order of the Larger Bench dated 31.3.2016, the matter was listed before the First Bench. On 20.4.2016, the petitioners have filed their suggestions/objections. On 15.11.2016, when the matter was taken up for hearing, the learned counsel for the petitioners stated that only two Rules viz., Rule 5(2) and 8(2)(iii) require some re-examination by the respondents. Accordingly, this Court, considering the restricted relief sought, called upon the State Government to have a re-look into this issue and take necessary action. The order dated 15.11.2016, reads as under:-

"We have heard the learned counsel for the parties.

2. We are of the view that there are only two Rules which require some re-examination by the respondents.

3. Before we proceed to those two Rules, we may clarify the apprehension in respect of Rule 4 (2) requiring the driver to have a minimum driving experience of at least 5 years. The words "'same category vehicles'" are being misread, in that they would imply that the drivers should have been driving only a School bus, as learned Advocate General clarifies, the restriction to the category of vehicle - bus.

4. Rule 5(2) provides for an attendant to be not less than 21 years of age and not more than 50 years of age. Apart from that he should be medically fit to get down from the School bus at each stopping point to facilitate the embarkation of School children.

5. We do believe that the restriction of an upper age limit of 50 years is really not required, as it should be the retiring age, especially in the context of the second part of that Rule, which required medical fitness.

6. In Rule 8(2), Clause (iii) provides for the School bus to be inspected by Special Cell once in three months, though the norms are three years for all other buses. On our query, learned Advocate General states that running time of a School bus definitely much less than other buses. We are thus of the view that there can be a consistent norm in this as what is required is that the bus should be mechanically or otherwise in order.

7. Limited to the aforesaid two aspects, we call upon the State Government to have a re-look into this issue and take necessary action. No other challenge is pressed before us. List on 20.12.2016."

6. It appears that the writ petitioners who are owning the school buses have been directed by the Committee to adhere to certain principles of rules, so as to avoid reoccurrence of any such untoward incidents in future.

7. As far as Rule 5(2) of the Special Rules is concerned, the learned counsel for the petitioners submit that restricting the age of the attendant to 50 years is not acceptable and it contradicts the retiring age. We do not find any merit in the above said submission of the petitioners. In case of emergency situation, the attendant should have physical ability to lift and carry small children through the emergency Exit to the ground from outside the bus. We hold that the Committee after thorough examination and also in the light of the decisions of the Apex Court has correctly framed Rule 5(2).

8. Rule 8(2)(iii) stipulates that every school shall produce their school buses before the Special Cell once in three months from the date of issue or renewal of fitness certificate and shall obtain road worthiness certificate. Considering the difficulties expressed by the schools, we are of the view that three months period specified needs to be altered. The learned Advocate General during the course of arguments did not seriously object the same. Thus, the period specified under Rule 8(2)(iii) as "once in three months" needs to be modified as "once in six months". Accordingly, we direct the State to make necessary amendments in the said rule.

9. Before parting, we would like to take note of the plea of the learned counsel for the petitioners that as far as Government buses are concerned, two-third of the seats are occupied by the school going children during peak hours and the State Government has not imposed any restriction to their own buses and there are no safety measures available in the

Government buses for the children and seek necessary direction to the State Government and the same amounts to hostile discrimination. In this regard, we direct the State Government to look into this issue and if possible issue necessary guidelines in the light of the submissions made by the learned counsel for the petitioners and take care of the safety of the children travelling even in Government buses.

10. The writ petitions are disposed of in terms aforesaid. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

bbr/sasi

To:

- 1.The Principal Secretary to Government,
Home Department,
Fort St. George, Secretariat,
Chennai - 600 009.
- 2.The Principal Secretary to Government,
Office of the Transport Commissioner,
Government of Tamil Nadu,
Chepauk, Chennai- 600 005.
- 3.The Transport Commissioner,
Office of the Transport Commissioner,
Government of Tamil Nadu,
Chepauk, Chennai- 600 005.

+1cc to Mr.K.J. Parthasarathy, Advocate Sr. 16703

+1cc to Mr.C.R. Prasannan, Advocate Sr. 16681

+1cc to M/S. S.Radha Gopalan, Advocate Sr. 16969

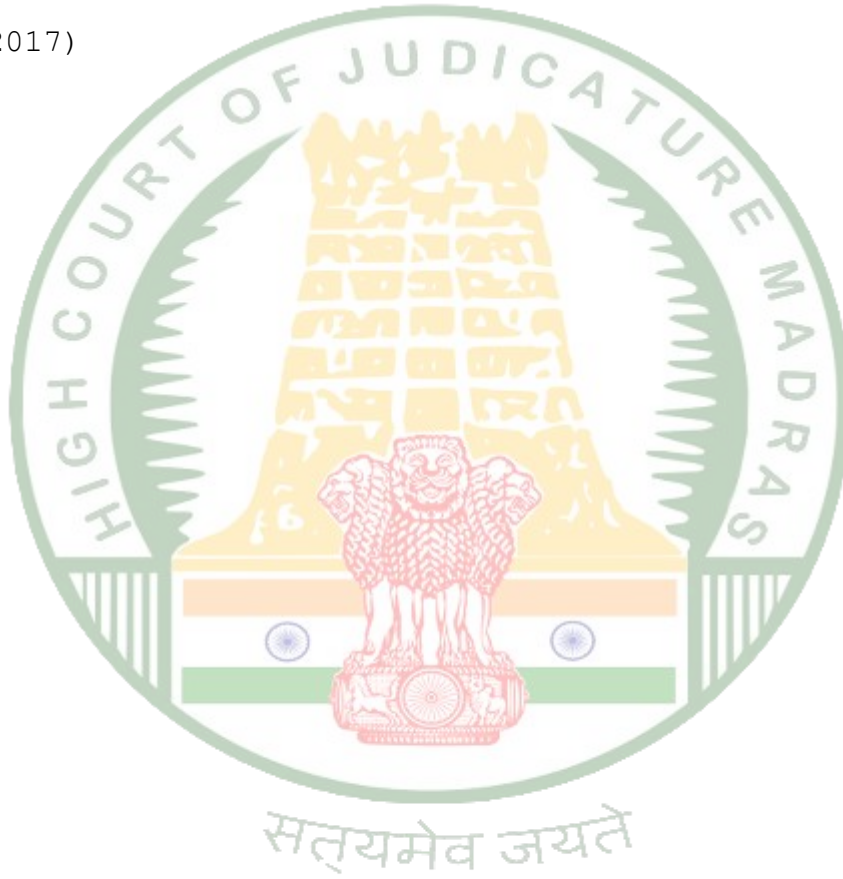
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+1cc to Mr.A. Arul Mary, Advocate Sr. 17175

+1cc to the Government Pleader Sr. 16838

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VR(04/04/2017)



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