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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 3404 of 2017**

1. Sheikh Amruddin, S/o Sheikh Sahabuddin, aged about years, By occupation Bus Operator, resident C/o Mukhtyar Hussain, Khamardih, Housing Board, Flat No.412, Block No.18, Raipur, District Raipur (C.G.)
2. Abdul Safiq, S/o Abdul Hakim, aged about 53 years, By Occupation – Bus Operator, R/o Near Sahara Battery, Moudhapara, Raipur (C.G.)

---- Petitioners**Versus**

1. The State of Chhattisgarh, Through the Principal Secretary, Government of Chhattisgarh, Transport Department, Secretariat, Mahanadi Bhawan, New Raipur (C.G.)
2. The Transport Commissioner, Transport Department, Indrawati Bhawan, New Raipur, District Raipur (C.G.)
3. The Regional Transport Authority, Raipur, District Raipur (C.G.)
4. The Regional Transport Officer/Taxation Authority/Registration Authority, Raipur (C.G.)

---- Respondents

For Petitioners	:	Shri Brajesh Kumar, Advocate.
For Respondents/State	:	Shri Prafull N. Bharat, Additional Advocate General.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Hon'ble Shri Justice Prashant Kumar Mishra****Order on Board****Per Ajay Kumar Tripathi, Chief Justice****14.08.2018**

1. Heard counsel for the Petitioner and learned Additional Advocate General for the State.
2. Petitioner is challenging the notification dated 31.12.2013 as well as notice dated 20.03.2017 in the present writ application. The amendment which has been incorporated under Rule 158 of the Chhattisgarh Motor Vehicle Rules,

1994 (for short 'the Rules') with regard to the sitting capacity as well as the specifications relating to the construction of seats depending upon the wheel-base, is being assailed to be *ultra vires*.

3. The submissions of the counsel for the Petitioner is that the notification dated 31.12.2013 indicates that the amendment has been notified under the purported exercise of power under Section 65 of the Motor Vehicle Act, 1988 (for short 'the Act'). Provision of Section 65 of the Act was placed before us to show that the requisite amendment to the Rules cannot be made by the State Government under Section 65. The object and the power which has been vested in Section 65 of the Act is to carry out the provisions of Chapter 4 and specially those specified in Section 64. Since the sitting capacity is not talked about in the said provision, therefore, the notification became vulnerable and is required to be struck-down.
4. Learned Additional Advocate General representing the State of Chhattisgarh takes the stand that merely because the wrong section has been quoted in the notification, the notification cannot be struck-down to be *ultra vires*. There seems to be some kind of omission. The necessary power has been vested in the State Government especially in Section 96 of the Act. Attention of this Court has been specially drawn to sub-Rule (xiv) and (xv) of Section 96 sub-section (2) of the Act. The relevant provision reads as under:

“(2) Without prejudice to the generality of the foregoing power, rules under this section may be made with respect to all or any of the following matters, namely-

xxx

xxx

xxx

(xiv) the construction and fittings of, and the equipment to be carried by, stage and contract carriages, whether generally or in specified areas;

(xv) the determination of the number of passengers a stage or contract carriage is adapted to carry and the number which may be carried;”

5. The above-quoted provision under Section 96 sub-section (2) of the Act clearly indicate that the statute vests authority to State Government to make rules in relation to sub-rule (xiv) and (xv) and reading of the notification dated 31.12.2013 surely indicates that this power has been exercised within the framework of the above-quoted statutes.
6. The alternative arguments which had been made at the Bar on behalf of the Petitioner is that since some of the vehicles were already manufactured and were in operation prior to the said amendment, therefore, those vehicles cannot be compelled to be brought within the domain of the amendment because the amendment would be required to be read prospectively.
7. On such a submission, this Court can only observe that a Stage Carriage or a commercial vehicle carrying passengers and would like to ply will have to fall in line with the law as it is in force since there is an object i.e. to provide amenities and comfort to the passengers depending upon the wheel base of a vehicle. Therefore, modifications and notifications which have been made by the State Government keeping the above object in mind cannot be said to be irrational which can form the basis for setting aside the notification and make it inapplicable to older vehicles.
8. In totality, therefore, we are not satisfied that the said notification falls foul of any of the touch-stone under which it can be declared to be *ultra vires*.
9. The writ application therefore is dismissed being devoid of merit.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Prashant Kumar Mishra)
Judge