

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 753 of 2018**

Sudhir Singh S/o Shri Matabux Singh Aged About 38 Years R/o Imlipara, Bilaspur,
District Bilaspur, Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh Through Principal Secretary, Transport Department,
Government of Chhattisgarh, Mahanadi Bhawan, New Raipur, Chhattisgarh.
2. The Regional Transport Authority Bilaspur, Chhattisgarh.
3. Mohd. Shahnawaz S/o Mohd. Ismile, Bus Operator, R/o Behind Telephone
Exchange Road, Gali No.4, Imlipara, Bilaspur, Chhattisgarh.

---- Respondents

For Appellant	: Shri Shailendra Kumar Bajpai and Shri Subodh Pandey, Advocates.
For Respondent/State	: Shri Vikram Sharma, Panel Lawyer.
For Respondent No.3	: Shri Brijesh Kumar Dubey, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**14/02/2019****Per Ajay Kumar Tripathi, Chief Justice**

1. Heard counsel for the parties.
2. Appellant is aggrieved by the order dated 11.09.2018 passed by the learned Single Judge in Writ Petition (C) No.2191 of 2018. The writ application was allowed and the order dated 07.07.2018 passed by State Transport Appellate Tribunal was set aside.
3. The present Appellant who was also a Respondent in the writ petition has been the objector in relation to grant of a stage carriage permit by the Regional

Transport Authority, Bilaspur for a vehicle No.CG-10 G-1155 on a Sariya to Bilaspur via Sarangarh, Sarsiwa Bhatgaon, Shivrinarayan, Duldula and Masturi route.

4. An application was filed online on 31.08.2016 for grant of a stage carriage permit under Section 72 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'MV Act, 1988'). The application was considered by the Regional Transport Authority, Bilaspur on 15.12.2016 and an order granting the said permit was passed on 09.03.2017. Appellant/objector decided to assail the such decision of the Regional Transport Authority by approaching the State Transport Appellate Tribunal by filing a revision application, who in turn set aside the order of the Regional Transport Authority vide order dated 07.07.2018 and that led to filing of the writ application by private Respondent No.3.

5. Much arguments had been made before the learned Single Judge on the question whether provisions of Rule 72(3) of the Chhattisgarh Motor Vehicles Rules, 1994 (hereinafter referred to as the 'CGMV Rules, 1994') was directory or mandatory in nature as also whether the Regional Transport Authority had committed violation of law by entertaining the application and grant thereof, when the private Respondent was said to be not the owner and in possession of the vehicle on the date of the application.

6. All along, the argument made on behalf of the Appellant before the every forum was that since the vehicle No.CG-10 G-1155 had been leased out by the private Respondent, therefore, he ceased to be the owner of the vehicle and as also not in possession on the date of application. Argument is made that private Respondent could not have made himself eligible for consideration as there was non-compliance of Rule 72 especially sub-rule (3)(b) of the MV Rules, 1994.

7. Argument was sought to be built up by learned counsel representing the Appellant that in terms of the definition provided in sub-section (30) of Section 2 of

the MV Act, 1988 to the word 'owner', it is evident that the private Respondent ceased to be an owner within the meaning of the definition. Section 2(30) of the MV Act, 1988 reads as under:-

“2. Definitions- In this Act, unless the context otherwise requires.-

x	x	x	x
x	x	x	x

(30) “owner” means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement.”

8. Before embarking upon the legal aspect of the matter, at least the factual details must be recorded at one place. The online application was filed by the private Respondent on 31.08.2016. A physical copy of the application was filed on 13.10.2016 and the application was considered by the Regional Transport Authority on 15.12.2016 where objections too were heard and the final order granting permit was passed on 09.03.2017.

9. In the meanwhile, it also be recorded that the lease of the vehicle stood cancelled on 01.10.2016, and therefore, even as an alternative argument, when the application was made, there was no lease subsisting.

10. The Court is tempted to reproduce Rule 72 of the CGMV Rules, 1994 because much have been argued on behalf of the Appellant as to the requirement of the rule and the law. Rule 72 of the CGMV Rules, 1994 reads as under:-

“72. Forms of application for permits. - (1) Every application for grant or renewal of a permit in respect of any transport vehicle shall be in one of the following forms that is

to say-

- (a) in respect of a stage carriage or reserve stage carriage permit in Form M.P.M.VR.-42 (SCPA);
- (b) in respect of a contract carriage in Form M.P.M.V.R.-43 (CCPA);
- (c) in respect of a goods carriage in Form M.P.M.V.R.-44 (GCPA)
- (d) in respect of a temporary permit in Form M.P.M.V.R.-45 (TPA);
- (e) in respect of a private service vehicle permit in Form M.P.M.V.R.-46 (PSVPA) and
- (f) in respect of a special permit in Form M.P.M.V.R.-47 (SPA).

(2) The application shall be addressed to the State Transport Authority or the Regional Transport Authority as the case may be and shall be accompanied by the fee specified in Rule 145.

(3) The application for stage carriage permit or reserved stage carriage permit as required under sub-section (1) of Section 70 shall be accompanied by the following documents, namely :

- (a) an authentic route map alongwith certified distance between various stages and certificate regarding motorability of the route from the departments which have control over such road;
- (b) certificate from Registering Authority containing make, model and seating capacity of the vehicles owned by the applicant at the time of making the application;
- (c) details of the stage carriage and reserved stage carriage permits already held by the applicant;
- (d) no dues certificate issued by the Regional Transport Officer concerned;
- (e) declaration duly certified by an officer of the Madhya Pradesh State Road Transport Corporation authorised

by the Managing Director about the portion and distance of the route covered by any nationalization scheme; and

(f) any other information as may be required by the Transport Authority.”

11. Sub-rule (3) of Rule 72 talks about the requirements which need to be accompanied with the application. Rule 72(3)(b) talks of certificate from Registering Authority containing make, model and seating capacity of the vehicles owned by the applicant at the time of making the application. The word used in the rule is 'owned' and not 'possession' because during the course of argument made by the counsel for the Appellant, the word 'ownership' and 'possession' have been used interchangeably as if both mean one and the same thing.

12. Argument was sought to be made that since on the date of application, the vehicle in question was on lease, therefore, Respondent No.3 was not the owner of the vehicle. Factually this position subsequently is not established to be true. However, even if for the sake of argument, the argument is tested on the touchstone of law, then in our opinion, Section 2(30) of the MV Act, 1988 is an inclusive definition and by no interpretation merely because a vehicle has been given out on lease, the ownership passes into the lessee, as if the title itself had passed by virtue of the lease.

13. The broad and inclusive definition as to who all would be an 'owner' provided under the MV Act, 1988 has to be understood in the context and the object of giving such a wide or inclusive definition. Even if you don't get sucked into the argument whether Rule 72(3) is directory or mandatory, which anyway we hold it to be directory, keeping in mind the judicial precedents which have been taken note of by the learned Single Judge, the entire argument of the objector i.e. the Appellant was fallacious through and through. We hold that even if for the sake of

argument, the vehicle was on lease on the date of the application, Respondent No.3 did not cease to be the owner of the vehicle, and therefore, there was neither any misdeclaration or failure on the part of the private Respondent to be treated to be eligible for grant of stage carriage permit.

14. We must understand the distinction between 'ownership' and 'possession'. The two words are not interchangeable. However much counsel for the Appellant would like to do so, despite going through the provisions of Rule 72 especially sub-rule (3) of the CGMV Rules, 1994 as well as the Statutory Form 42, in which, such application for grant of permits is required to be made. We have not found anywhere at all that possession of the vehicle was mandatory and an owner in absence of possession of the vehicle on the date of application becomes ineligible to apply for stage carriage permit.

15. The details of the vehicle like the model and the seating capacity owned by the applicant besides other details that is required to be furnished in the statutory application was provided. Possession is not integral to such application.

16. The argument therefore made by the Appellant before the State Transport Appellate Tribunal and entertained as well that in terms of sub-section (30) of Section 2 of the MV Act, 1988, the private Respondent ceased to be the owner was an erroneous view to take in allowing the revision application.

17. An alternative argument was sought to be built that some kind of a fraud was sought to be played by some kind of coercion or bargaining was done with one Smt. Shitla Gupta to surrender her permanent permit to claim the timing which was available in the said permit is also not required to be entertained for the reasons assigned by the learned Single Judge in paragraph-26 of the impugned order, which reads as under:-

“26. In absence of specific objection by Annexure R/2 as noticed hereinabove, the STAT is absolutely unjustified in

entertaining and granting the revision filed by respondent No.3. Learned STAT has also interfered with the order of the Regional Transport Authority on the ground that by revoking the permit of Smt. Shitla Gupta, the application of the petitioner was granted. It is not apparent from the record that Smt. Shitla Gupta is aggrieved against the order of the Regional Transport Authority. In absence of challenge by Smt. Shitla Gupta in the revision preferred by respondent No.3, order of the Regional Transport Authority could not have interfered with by the STAT on that ground.”

18. To provide further clarity, the Court also notices that Smt. Shitla Gupta surrendered her permit on 15.12.2016 on the date of the argument made on the application filed by private Respondent No.3. such surrender cannot questioned by the Appellant.

19. Keeping the above factual aspects of the matter, the view taken by the learned Single Judge based on several judicial precedents on such question including the Hon'ble Apex Court, we opine that the order of the State Transport Appellate Tribunal being illegal had to be interfered with and the learned Single Judge committed no error by setting aside the same and allowing the writ application.

20. The view taken by the learned Single Judge with regard to the nature of Rule 72(3) of the CGMV Rules, 1994 not to be mandatory is the correct view and even otherwise in the given facts, none of the arguments made on behalf of the Appellant are sustainable, on any of the grounds so urged.

21. The appeal therefore fails and is dismissed accordingly.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE