

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos. **45020 of 2016, 4944, 4962, 4979, 4994, 5342, 5346, 5348, 5597, 5603, 5905, 15878, 16588 and 16724 of 2017,**

Date : 6.12.2019

WP 45020 of 16

Between:

Baddam Sanjeeva Reddy
S/o Baddam Pochi Reddy R/o 1089 Sathyanarayana colony
Nagaram Village Keesara Mandal RR Dist TG

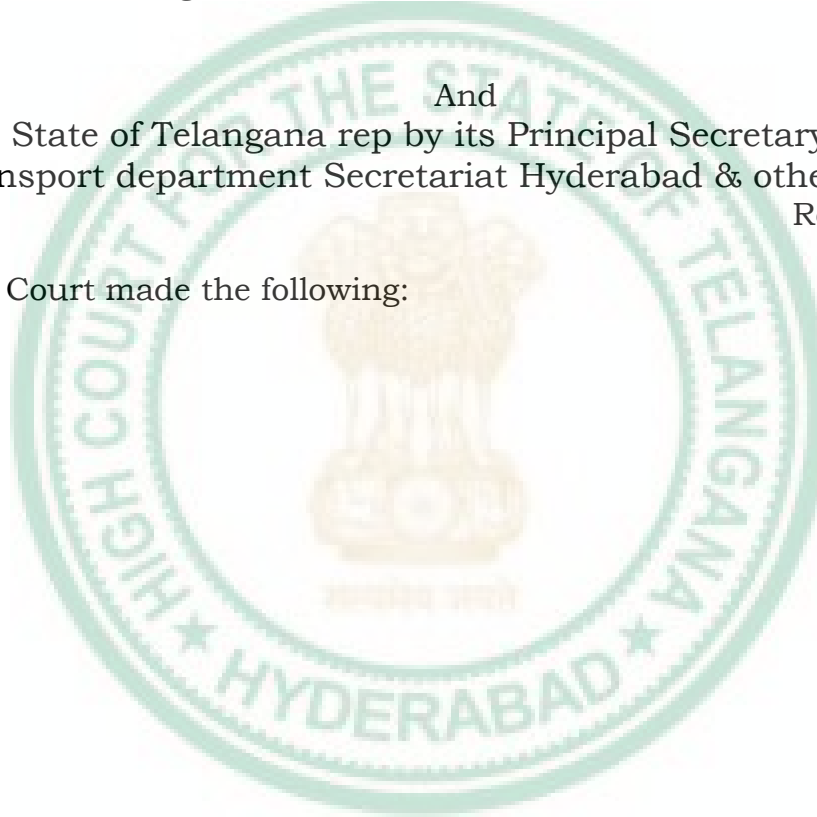
Petitioner

And

The State of Telangana rep by its Principal Secretary
Transport department Secretariat Hyderabad & others

Respondents

The Court made the following:



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of 2017**

COMMON ORDER:

Heard learned counsel for petitioners Sri Pasham Krishna Reddy, Sri Guntha Sri Samba Moorthy, Sri P. Radhive Reddy and M.Janardhan Rao for respective petitioners and learned Government Pleader for Transport for respondents.

2. In these writ petitions, petitioners purchased four wheeler truck, engine and chassis of Ashok Leyland make, except one vehicle in W.P. No. 3348 of 2019, after 1.4.2016. All these vehicles were Bharat stage III compliant. On purchase, the vehicle owners fixed drilling machines and compressors and when the vehicles were presented for registration, temporary registration was granted directing the petitioners to obtain All India permit/National permit for the purpose of registration of vehicles. The said restriction was imposed having regard to the fact that with effect from 1.4.2010 Bharat Stage IV norms came into force in Hyderabad, Secunderabad; 1.10.2014 in Nizamabad, Medak and Mahabubnagar and from 1.4.2016 in the remaining parts of the Telangana and registration of vehicles without Bharat Stage IV complaint was prohibited. However, since in certain parts of the country vehicles complying Bharat Stage III norms were allowed to ply, exception was carved out to permit registration of vehicles complying with Bharat Stage III norms, provided the vehicles obtained All India Permit/National Permit.

3. On 29.3.2016 the Transport Commissioner of Telangana State issued circular memo No. 1370/R/2016 bringing it to the notice of

the Joint Commissioner, Secretary, Road Transport Authority and all the Deputy Transport Commissioners/Regional Transport Officers to GSR No.643 (E) Dated 19.8.2015 notified by the Ministry of Road Transport and Highways, New Delhi. By the said notification, Rule 115 of the Central Motor Vehicles Rules, 1989 were amended. Petitioners challenge the said notification in these writ petitions and contend that by referring to the said circular memo, respondents are not undertaking permanent registration of their vehicles, causing hardship and suffering to them.

4. According to learned counsel for petitioners, there was no ban on manufacturing of Bharat Stage III compliant vehicles, therefore, petitioners have bonafidely purchased the vehicles and having permitted manufacturing and sale of the vehicles, respondents cannot refuse to register the vehicles and same would be amounting to arbitrary exercise of power, affecting the right of the persons to use vehicles owned by them and by preventing registration, respondents are effectively depriving the petitioners from utilizing the vehicles. According to learned counsel, petitioners have borrowed money from the financial institutions to purchase the vehicles and unless vehicles are allowed to operate, they would suffer heavy liability in the form of repayments, which they cannot make unless vehicles are put to use. He would submit that after purchase of the engines and chassis, drilling machines and compressors were fixed; that vehicle with drilling machine and compressor can go to anywhere in the country to undertake the work of drilling of bore wells. Along with the drilling machine and compressor, the vehicle also carries equipment such as pipes, spares etc for the purpose digging of bore wells and erecting bore pumps, therefore, it cannot be said that such vehicles cannot be registered. He would submit that unless permanent registration is granted, petitioners cannot obtain the All India Permit and

therefore, the condition imposed in the temporary registration certificate is unenforceable and on that ground petitioners cannot be penalized.

5. In response, learned Government Pleader would submit that the exception carved out in Rule 115 (15) is applicable only to Motor Transport vehicles having All India permit and such exception is not available to any other vehicle and therefore all other vehicles have to comply with Bharat stage IV norms to get permanent registration to permit them to operate the vehicles. He would submit that Section 2 (47) defines '**transport carriage**'. As per this definition, it is clear that after fixing the drilling machines and compressors, petitioners' vehicles do not answer the description of 'transport vehicle'. As per Section 88 (14) read with explanation 'C', All India Permit can be granted only to transport vehicles. Having regard to the statutory requirement and the pollution norms, the condition was validly imposed. He would submit that in fact, petitioners were informed that if they remove the drilling machines and compressors and presented for registration, the vehicles would be registered but as long as drilling machines and compressors are fixed to the chassis, the vehicles cannot be registered. He would submit that since, such vehicles cannot obtain National permit, the question of granting permanent registration even on condition of subsequently obtaining National permit would not arise and therefore the condition imposed in the temporary registration certificate is in tune with the requirements of law and no fault can be pointed out to respondents.

6. All vehicles cannot be granted National permit. As per explanation 'C' appended to Section 88, 'National Permit' means a permit granted by the appropriate authority to 'goods carriages' to operate throughout the territory of India or in such contiguous States, not being less than four in number, including the State in which the

permit is issued as may be specified in such permit. Thus, National permit is available to the 'goods carriages' only.

7. To understand what is meant to be a 'Transport vehicle' it is necessary to look into the definition of '**goods**' and '**goods carriage**' and '**Transport vehicle**'. Section 2 (13) of the Motor Vehicles Act, 1988 defines 'goods', Section 2 (14) defines '**goods carriage**' and Section 2 (47) defines '**transport vehicle**'. They read as under:

(13) "**goods**" includes live-stock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle;

(14) "**goods carriage**" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods;

(47) "**transport vehicle**" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.

8. On cumulative reading of definitions in Section 2 (13), (14) and (47) read with Section 88 (14) and explanation 'C' appended to the said provision, it is apparent that a 'goods carriage' is a transport vehicle which carries goods only can be granted 'National Permit'. Thus, the contention of learned Government Pleader, merits acceptance. In view of definition clauses in Section 2, read with the explanation of what is meant by National permit in Section 88, the chassis fitted with drilling machine and compressor, do not answer the description of 'goods carriage vehicle' and therefore, petitioners cannot obtain National Permit. Registration of Bharat Stage III complaint vehicles having National Permit is an exception to normal Rule and shall receive strict construction. Government of India has formulated scheme to improve standard of motor vehicles to reduce emission of pollutants and

accordingly amended Motor Vehicle Rules from time to time. Presently, Stage IV norms are in force. The exception carved out to allow Bharat Stage III compliant vehicles to register and ply was that Bharat Stage IV norms were not made applicable all over India till 1.4.2017 and therefore as vehicles with Bharat Stage III norms could be manufactured and operated in some parts of the country, this exception was introduced. Such exception cannot be misused under the guise of operating the vehicles with All India Permit and seek to operate vehicles as 'goods carriage' vehicles with All India Permit, though their character is changed and cannot be called as 'goods carriage' vehicles. Since their vehicles are not Bharat Stage IV compliant, their vehicles cannot be granted permanent registration and allowed to ply on the roads.

9. Emission from motor vehicles is one of the major contributor to pollution causing health hazards and environmental degradation. Supreme Court has issued series of directions to reduce pollution from motor vehicles. Compliance of emission norms is in large public interest and individual rights are subservient to larger public interest flowing out of Right to Life guaranteed by Article 21 of the Constitution of India.

10. Further more, it is seen from the prayer sought in the writ petitions, petitioners challenge the circular dated 29.3.2016. Vide this circular, no new decision is taken on the issue of registration of petitioners' vehicles. It only brings to the notice of various authorities of the departments amendments carried out by the Central Government to Rule 115 of Central Motor Vehicle Rules, 1989. The amendment is not challenged. Thus, said circular do not give them cause of action to institute these writ petitions.

11. At this stage, learned counsel for petitioners fairly submits that petitioners are willing to present the vehicles for permanent

registration by removing the drilling machines and compressors. In response, learned Government Pleader also fairly submits that registration authorities shall process the request for granting permanent registration, if the vehicles are presented in such manner.

12. Having regard to said submissions, writ petitions are disposed of, granting liberty to the petitioners to present the respective vehicles which are subject matter of these writ petitions for registration after removing the drilling machines and compressors. If the vehicles are presented in such manner, subject to compliance of all other requirements for granting permanent registration, the Registering Authority shall process and if the vehicles are fulfilling the requirements of such registration, to grant such registration. It is made clear that after registration, petitioners cannot refix the drilling machines and compressors. It is also made clear that if any vehicle is purchased prior to 1.4.2016, such vehicle can be registered subject to compliance of all other requirements and without imposing any restriction as Bharat Stage IV norms which came into force only from 1.4.2016. Miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 06-12-2019
TVK

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