

HIGH COURT OF CHHATTISGARH, BILASPUR**REVP No. 106 of 2019**

(Arising out of order dated 14/02/2019 passed by Division Bench in WA No. 753 of 2018)

- Sudhir Singh, aged about 39 years, S/o Shri Matabaksh Singh, by occupation Bus Operator, R/o Imlipara Bilaspur C.G.

-----Petitioner

VERSUS

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

-----Respondents

For Petitioner	:	Mr. Shailendra Bajpai, Advocate.
For Respondent No. 3	:	Ms. Sareen Khan, Advocate.
For Respondent-State	:	Mr. Gagan Tiwari, Deputy Government Adv.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per P.R. Ramachandra Menon, CJ.

24/02/2020

1. The genesis of this review petition is discernible from the position noted by us in our order dated 26-09-2019 which is reproduced below:

“... The learned counsel for the review petitioner submits that the Petitioner is constrained to move this Court by way of this review petition because of the observation made in paragraph 20 of the verdict dated 14.02.2019 passed by a Division Bench of this Court in Writ Appeal No. 753 of 2018. It is stated that the nature of the requirements under Rule 72(3) of the Chhattisgarh Motor Vehicles Rules, 1994 (for short, 'the Rules,1994') is mandatory and that this aspect has been declared by a learned Single Judge of this Court as per judgment dated 28.08.2018 passed in Writ Petition (C) No. 579 of 2018 and this verdict has been upheld by a Division Bench of this Court in WA No.753 of 2018. The learned counsel points out that because of the observation as contained in paragraph 20 of the said verdict the competent authority is granting permits without insisting compliance of the requirements in terms of the Rule 72(3) of the Rules, 1994 and hence the appeal.

The learned counsel appearing for the State/Respondents No.1 & 2 submits that the Government and the Governmental authorities are bound by the statutory prescription and that the matters will be dealt with accordingly. However, before finalising the matter, we find it appropriate to issue notice to the 3rd Respondent. ...”

2. The matter was considered further on 13-01-2020, on which day also, some observations were made in the following terms.

“... The scope of this review petition stands confined only to the question whether Rule 72(3) of the Chhattisgarh Motor Vehicles Rules, 1994 is mandatory or directory.

According to the review petitioner, it is mandatory as per the Division Bench of High Court of Madhya Pradesh in ***Shaildesh Vijayvargiya vs. State of M.P. (W.P. No. 7081/2014)*** and ***Nirbhay Singh vs. State of M.P. (W.P. No.4380/2014)*** and similar view is taken by a learned Single Judge of this Hon'ble Court in case of ***Alok Kumar Akhilesh vs. State of Chhattisgarh (WPC No. 579/2018)*** and ***Mohd. Baidul vs. State of Chhattisgarh and other (WPC No. 812/2018)***. The verdict passed by the Apex Court in ***Arvind Kumar vs. Nand Kishore and Others*** reported in ***AIR 1968 SC 1227*** is also sought be relied on in this regard.

According to the learned counsel for the 3rd Respondent, it is only 'directory', as made clear by the Madhya Pradesh High Court in ***M.P. State Road Transport Corporation, Gwalior vs. Ram Prasad Purohit and Other*** reported in ***2011(3) MPLJ 339*** and in ***Kishan vs. State of M.P. & Others***, reported in ***2008(I) MPRJ 87*** and also by the High Court Kerala in ***E.R. Narayanan vs. Regional Transport Authority***.

The learned counsel for the review Petitioner points out that the decision rendered by the other Courts are not applicable insofar as there is a difference in the Rules concerned; which is sought to be rebutted by the learned counsel for 3rd Respondent, stating that as far as Madhya Pradesh is concerned, the rules are exactly the same.

Shri Gagan Tiwari, the learned counsel representing the State seeks for time to work up the position and make appropriate submissions in this regard, including as to the various judgments referred to and relied on by the learned Single Judge while passing the verdict which was under challenge in the appeal. ...”

3. We have heard Mr. Shailendra Bajpai, learned counsel appearing for the review petitioner as well as Mr. Gagan Tiwari, Deputy Government Advocate

representing the State and Ms. Sareena Khan, learned counsel appearing for respondent No. 3.

4. The question mooted by the review petitioner is mainly with reference to the observation made by the learned single judge as well as those contained in paragraph 13 and 20 of the judgment passed by the Division Bench of this Court to the effect that the requirements under Rule 72(3) of the Chhattisgarh Motor Vehicles Rules, 1994 (for short "Rules, 1994") are only directory and not mandatory. According to the review petitioner, it is mandatory and that by virtue of the said observation, the permits are being granted by the authorities concerned in the State left and right, without satisfying the requirements under the statute.
5. Primary question to be considered is whether the issue projected before the Single Bench in the writ petition was with regard to the mandatory requirement of Rule 72(3) of the Rule, 1994 or not; the answer to which can only be in 'negative', as we find that no such reliefs were prayed for and no grounds were raised in this regard, in the writ petition. To have an easy understanding of the case, the prayers in the writ petition and the grounds raised in support of the prayers are reproduced below:

"RELIEFS SOUGHT :

(i) The Hon'ble Court may kindly be pleased to issue a writ of certiorari quashing the order dt.07.07.2018 (**Ann.P-9**) passed by the tribunal in Revision No. 44/2017.

(ii) Any other relief which this Hon'ble Court may deem fit in the circumstances of the case, may also be granted to the petitioner.

GROUND'S URGED :

9.1 That the impugned order passed by the learned tribunal is illegal, unjust, improper and against the provisions of motor Vehicles Act and the rules made there under.

9.2 That the finding given by the learned tribunal while passing the impugned order is bad in law.

9.3 That the learned tribunal has only looked the date of online application whereas physically application was submitted on dt. 13.10.2016 alongwith the all relevant documents and that date the vehicle was spare, thus, the impugned order which based on the date of online application is improper and unjust.

9.4 That, the impugned order is against the law laid down by the Hon'ble Apex Court in the case of **(1994) 6 Supreme Court Cases 71, (Esskey Roadways (Firm) Vs. Anandhakrishan bus service**, the date of considering the application the relevant date and date of filing the application is not relevant date, therefore, in view of this judgment the order of the learned tribunal is liable to be set-aside.

9.5 That, the order impugned is also against the law laid down by the Hon'ble Apex Court in **AIR 1992 SC Page 443**, thereby Hon'ble Apex Court has pleased to law laid down that the permit granting authority should have adopted the liberal policy while granting the permit.

9.6 that, there is no illegality of the permit granting order dt. 09.03.2017, because the respondent No.2 has passed the order after considers the all legal aspect, thus, the impugned order passed by the learned tribunal is improper.

9.7 That, because of the impugned order the petitioner vehicle is still stand which is regularly operating in the interest of the travelling public causing the petitioner as well as the travelling public at large is suffering huge loss daily,

9.8 That, in the column No. 17, 18 & 19 the learned tribunal has given the findings that the timings granted to the petitioner is same with the timing of the permit of Sheetla Gupta, whereas this finding is against the provisions of Section 80 of the Motor Vehicle Act because same timing permit can be apply and also can be grant. There is no bar under the motor vehicle act the same timing permit cannot be grant however, when the Smt. Sheetla Gupta has no objection then third party cannot be challenge the permit on such type of ground, therefore, finding given the learned tribunal is patently illegal.

9.9 That, it is also submitted on the basis of the complaint/ objection permit cannot be refuse, therefore, the finding given by the learned tribunal in this regard is also object of the Motor vehicle Act.

9.10 That, the impugned order is against the Article 14, 19(1)(g) & 21 of the Constitution of India.

Any other grounds if necessary will be raised at the time of hearing of the petition."

It is quite evident from above, that the State was never called upon to answer the question whether Rule 72(3) of the Rules, 1994 was mandatory or directory.

6. It is true that some observations have been made by the learned Single Judge in this regard, with reference to the various rulings. The Division Bench has also made observations in paragraph 13 and 20 of the judgment as above. The main aspect to be considered is whether this declaration was necessary for adjudication of this case?
7. As a matter of fact, the case put up before the learned Single Judge with respect to the non-satisfaction of the requirements under Rule 72(3) of the Rules, 1994, was that, when the matter was considered and permit was granted to the private respondent therein, the said private respondent was not the 'owner' of the vehicle [in view of the expression used "Owner" under Rule 72(3)(b)] since the vehicle was actually leased out to somebody else.
8. The subject matter was considered with regard to the 'date of application' and also 'date of consideration' of the matter. As on the date of consideration of the matter, the leased vehicle had already been surrendered to the private respondent and it was held that the proceedings pursued by the authority was perfectly in order. More so since, the crucial date to be considered was held as the 'date of consideration' of the application and not the date of application. The law declared by the Apex Court in the matter of **Esskay Roadways v. Anandhakrishan Bus Service** reported in **(1994) 6 SCC 71** was also relied on. The scope of the judgment passed by the learned Single Judge was considered by the Division Bench, when it was affirmed as not assailable under any circumstances, with reference to the nature of the dispute raised.
9. It was observed by the Division Bench that the meaning of the term "Owner" was to be read and understood with reference to the meaning of the term as

given in Section 2(30) of the Motor Vehicles Act, 1988, which is an inclusive definition and it takes in a person who is in possession of the vehicle as well. For this reason also, interference was declined and the writ appeal came to be dismissed, though some observation/ declaration has been made in paragraphs 13 and 20 of the judgment, as to the question whether the provision under Rule 72(3) of the Rules, 1994, is 'mandatory or directory.'

10. We are of the view, that, to have had an effective adjudication of the issue specifically raised in the writ petition, answer of the question “*whether Rule 72(3) of the Rules, 1994 is mandatory or directory*” was not required to be answered by the learned Single Judge and as such, the observation made to the said extent by the Division Bench, when the appeal was finalized is also not necessary. The said question is left open.

11. With the above observation, the review petition stands disposed of.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge