

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
PUBLIC INTEREST LITIGATION NO.28 OF 2013

Shrikant Madhav Karve.).. Petitioner

Vs

1. The Secretary (Parivahan IV))
Ministry of Home Affairs,)
Government of India.)
2. The Transport Commissioner,)
Government of Maharashtra,)
3. Regional Transport Officer,)
4. Mr. Shrinivas Murthi,)
Inspector of Motor Vehicle, Pune.) .. Respondents

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Shri A.Y. Sakhare, Senior Advocate along with Shri Uday P. Warunjikar,
Advocate appointed as Amicus Curiae for the Petitioner.

Shri S.M. Karve, the Petitioner in person.

Shri S.K. Shinde, Special Government Pleader along with Ms. Sneha G.
Sanap for the Respondent Nos.1 to 3.

Mrs. Shehnaz (Sheroo) Vispy Bharucha (Daruwalla) for the Respondent
No.5.

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CORAM : A.S. OKA & V.L. ACHLIYA, JJ

DATE ON WHICH SUBMISSIONS WERE HEARD : 11TH SEPTEMBER 2015

DATE ON WHICH ORDER IS PRONOUNCED : 18TH FEBRUARY 2016

ORDER (PER A.S. OKA, J)

1. The Petitioner appearing in person has raised important issues concerning implementation of the provisions of the Motor Vehicles Act, 1988 (for short “the MV Act”) and the Rules framed thereunder. Shri A.Y. Sakhare, learned senior counsel and Shri Warunjikar, learned counsel who were appointed to espouse the cause of the Petitioner, while assisting the Court, have made detailed submissions. Certain submissions are also made by the Petitioner appearing in person. Shri S.K. Shinde, Special Government Pleader who represents the State has not taken adversarial stand and has assisted the Court. He has also made detailed submissions.

2. Under the MV Act, there are different categories of vehicles. In this Public Interest Litigation, the issues raised are mainly about the “transport vehicles” as defined under Sub-section (47) of Section 2 of the MV Act. The main issue raised in this Public Interest Litigation is as regards the manner in which the transport vehicles are checked for the purposes of issuing fitness certificates.

3. Under the provisions of MV Act and in particular Section 39 thereof, the registration of every motor vehicle is mandatory. Section 39 of the MV Act reads thus:

“39. Necessity for registration.-- No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner:

Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.”

(emphasis added)

4. As far as the certificate of fitness is concerned, relevant provision is Section 56 of the MV Act which is applicable to the transport vehicles defined under Sub-section (47) of Section 2 thereof.

Sub-section (47) of Section 2 of the MV Act reads thus:

“2(47) “transport vehicle” means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.”

5. Sub-section (14) of Section 2 defines “goods carriage” which reads thus:

“2(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.”

Sub-section (33) of Section 2 defines “private service vehicle” which reads thus:

“(33) “private service vehicle” means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes;”

A Public Service Vehicle is defined under Sub-section (35) of Section 2 of the MV Act which reads thus:

“2(35) public service vehicle” means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage.”

Sub-section (17) of Section 2 defines heavy passenger motor vehicle which includes private and public service vehicles having unladen weight of more than 12,000 Kg. Therefore, broadly, all goods vehicle and tourist buses will be covered by the definition of transport vehicle under Sub-section (47) of section 2.

6. Broadly speaking, in this Petition, we are concerned with the transport vehicles as defined under Sub-section (47) of Section 2 of the MV Act with emphasis on goods carriage and buses including the buses having sleeper facility (Sleeper coaches).

7. Section 56 of the MV Act which deals with certificates of fitness issued to transport vehicles reads thus:

“56. Certificate of fitness of transport vehicles.—(1) **Subject to the provisions of sections 59 and 60, a transport vehicle shall not be deemed to be validly registered for the purposes of section 39, unless it carries a certificate of fitness** in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority, or by an authorized testing station mentioned in sub-section (2), to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder:

Provided that where the prescribed authority or the “authorized testing station” refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal.

(2) The “authorized testing station” referred to in sub-section (1) means a vehicle service station or public or private garage which the State Government, having regard to the experience, training and ability of the operator of such station or garage and the testing equipment and the testing personnel therein, may specify in accordance with the rules made by the Central Government for regulation and control of such stations or garages.

(3) Subject to the provisions of sub-section (4), certificate of fitness shall remain effective for such period as may be prescribed by the Central Government having regard to the objects of this Act.

(4) The prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and the rules made thereunder; and on such cancellation the certificate of registration of the vehicle and any permit granted in respect of the vehicle under

Chapter V shall be deemed to be suspended until a new certificate of fitness has been obtained:

1[Provided that no such cancellation shall be made by the prescribed authority unless such prescribed authority holds such technical qualification as may be prescribed or where the prescribed authority does not hold such technical qualification on the basis of the report of an officer having such qualifications.

(5) A certificate of fitness issued under this Act shall, while it remains effective be valid throughout India.”

(emphasis added)

8. There are Rules made in exercise of Rule making power under the MV Act. The main grievance of the Petitioner appearing in person is that the provisions of the Central Motor Vehicles Rules, 1989 (for short “the Central Rules”) concerning issuance of certificate of fitness and especially the removal thereof are not being implemented properly and certificates of fitness are being issued casually or mechanically without conducting any mandatory tests which are laid down by the Central Rules. The contention of the Petitioner appearing in person based on several documents produced by him is that the failure of the officers of the Road Transport Department of the State Government to check the transport vehicles in accordance with the Central Rules at the time of issuing renewal of the fitness certificates is the main reason or cause for large number of road accidents involving passenger buses and goods vehicles in the State. His submission is that the neglect on the part of the officers of the Transport Department is the root cause of large number of road accidents in the State as a result of

which, there is a huge loss of human lives and many persons have become handicapped. The main contention of the Petitioner appearing in person is that the statistics shows that one officer is checking large number of vehicles such as 100 and more in a day which itself is sufficient to prove that the mandatory tests/checks are not being conducted before issuing fitness certificates. He is bold enough to make allegations of corruption against the officers. The second contention is that there is a complete lack of infrastructure in the Regional Transport Offices (for short "the RTOs") in the State which includes lack of adequate number of officers who are trained to test the vehicles, lack of availability of requisite scientific instruments and lack of elementary facilities such as the track for testing the brakes of vehicles. Moreover, it is pointed out that for several years, the law is not amended to take notice of modern techniques/equipments which can be made available for checking of vehicles. We must note here that the Petitioner appearing in person has repeatedly made allegations of lack of integrity on the part of the officers attached to the RTOs in the State. Though we have dealt with all other aspects canvassed by the Petitioner appearing in person, we are not dealing with the said allegations for want of any concrete material. However, we propose to issue certain directions to ensure that there is more transparency in the procedure followed for testing of the vehicles for issuing fitness certificates.

9. Before dealing with the submissions made from time to time, it will be necessary to advert to the material interim directions issued by this Court from time to time. In a detailed interim order dated 18th June 2013, this Court considered the provisions of the Central Rules and in particular Rule 62 thereof. This Court observed that it was virtually an admitted position that Rule 62 is not being implemented in the State. Rule 62 prescribes various tests/checks which are required to be made while granting and renewing the validity of the fitness certificates. Rule 62 reads thus:

“Certificate of fitness

62. Validity of certificate of fitness.—(1) A certificate of fitness in respect of a transport vehicle granted under section 56 shall be in Form 38 and such certificate when granted or renewed shall be valid for the period as indicated below:—

- | | | |
|-------|---|--|
| (a) | new transport vehicle | two years |
| (b) | renewal of certificate of fitness in respect of vehicles mentioned in {a) above | one year |
| [(c) | renewal of certificate of fitness in respect of vehicles covered under rule 82 of these rules | one year] |
| (d) | fresh registration of imported vehicles | same period as in the case of vehicles manufactured in India having regard to the date of manufacture: |

Provided that the renewal of a fitness certificate shall be made only after the [Inspecting Officer or authorised testing stations as referred to in sub-section (1) of section 56 of the Act] has carried the tests specified in the Table given below, namely:—

TABLE

Item	Check Fit-ment	Check make/type/rating, etc. as per original equipment recommendations	Check conditions	Check functioning	Test	Remarks
1	2	3	4	5	6	7
Spark plug/Suppressor cap/High Tension cable	Yes	Yes	Yes	No	No	
Head Lamp Beams	Yes	No	Yes	Yes	Check	Beam focus as per Annexure VII
Other Lights	Yes	No	Yes	Yes	No	Also ensure that unauthorized lights are not fitted
Reflectors	Yes	No	Yes	No	No	Ensure colour of reflectors and reflective tapes are as per rule 104

Bulbs	Yes	Yes	Yes	No	No	Ensure that head light bulbs wattage, especially halogen is not higher than those indicated in IS 1606 — 1993 and also ensure that halogen bulbs with P45t caps are not used in all vehicles
Rear View Mirror	Yes	No	Yes	No	No	—
Safety Glass	Yes	Yes	Yes	No	No	Laminated windscreen glass is used for vehicles manufactured from April, 1996 onwards
Horn	Yes	No	Yes	Yes	No	—
Silencer	Yes	No	Yes	Yes	No	Ensure no leakage
Dash board equipment	Yes	No	Yes	Yes	No	—
Windshield wiper	Yes	No	Yes	Yes	No	—
Exhaust emission	No	No	No	No	Yes	Pollution under Control Certificate
Braking system	Yes	No	Yes	Yes	Yes	As per rule 96(8)
Speedometer	Yes	No	Yes	Yes	No	As per rule 117
Steering gear	Yes	No	Yes	Yes	Check free play	Check free play as per rule 98 for vehicles with steering wheel.

Explanation.—"Inspecting Officer" means an Officer appointed by the State Government under section 213 of the Act.]

(2) The fee for the grant or renewal of a certificate of fitness shall be as specified in rule 81."

(emphasis added)

10. The said order also dealt with the issue of creation of additional posts. Paragraphs 10 and 11 of the said order dated 18th June 2013 read thus:

"10. Now, we will turn to the remedial measures. An attempt was made by the State Government by appointing a Committee of the Officers to look into the aspect of non-compliance with Rule 62 of the said Rules. The said Committee has submitted recommendations on 6th September, 2012. A copy of the same has been placed on record. Another step which is taken by the State Government is of creating additional posts. **We may note here that the State Government has taken a decision to create 300 additional posts of the Assistant Motor Vehicle Inspectors and 150 posts of Motor Vehicle Inspectors. It is stated that the Additional Posts will be filled in two phases. On the last date, the learned Government Pleader pointed out that in the first phase, appointment of 150 Assistant Motor Vehicle Inspectors and 75 Inspectors shall be made and rest of the appointments will be made in the second phase. The learned Government Pleader on the last occasion pointed out to us that on 5th June 2013, even the Finance Ministry has granted approval for creation of the aforesaid 450 posts which will be filled in two phases as stated above. He pointed out that a proposal**

in that behalf will be submitted before the Legislature in the monsoon Session.

11. Apart from the above interim directions which have been already issued, we direct the State Government to take immediate steps for making a reference to the Maharashtra State Public Service Commission (for short 'MPSC') for appointment of 150 Assistant Motor Vehicle Inspectors and 75 Inspectors. We direct the MPSC to take immediate steps considering grave urgency involved so that recommendations for appointments can be made by the MPSC to the State Government at the earliest. We direct the learned Government Pleader to communicate this order to the MPSC. We also direct the State Government to file compliance affidavit in that behalf within a period of six weeks from today. We direct that Court service notice of this petition shall be issued to the MPSC, returnable on 8th August,2013 when the petition will appear under the caption of hearing as to interim reliefs.”

(emphasis added)

11. After considering the Rule 62 of the Central Rules, this Court also considered Sub-Rule (8) of Rule 96 which lays down the manner in which the brakes of the vehicles should be tested. Paragraphs 14 and 15 of the said order dated 18th June 2013 read thus:

“14. It is obvious that for certifying the braking system, the officers certifying the fitness will have to take a test drive of the vehicle. Only after taking test drive of the vehicle and driving it for certain distance that he can certify that the braking system is in conformity with the Rules. Sub-rule (8) specifically provides that the tests shall be conducted on a dry level hard road in a good

condition. We must note here that in this petition not even an attempt has been made by the State Government to claim that compliance is being made with sub-rule (8) of Rule 96. On the contrary, in the aforesaid report dated 6th September, 2012 to which we have made a reference earlier, it is noted that in number of RTO offices, no space is available to test the braking system in terms of sub-rule (8) of Rule 96. Thus, the said report contains an admission that the test as contemplated by sub-rule (8) of Rule 96 is never conducted in some RTO offices. We may note here that requirement of the Rule is not of having adequate open space available in the RTO offices. The RTO officers can identify a dry level hard road in good condition in terms of sub-rule (8) of Rule 96 so that the tests can be performed on the said road.

15. **We, therefore, direct that the strict compliance of sub-rule (8) of Rule 96 in the context of the requirements incorporated in the table in sub-rule (1) of Rule 62 will have to be made.** Shocking state of affairs which is revealed from the report dated 6th September, 2012 is that in most of the RTO offices, the test as contemplated by sub-rule (8) of Rule 96 is not being conducted. Thus, it follows that the fitness certificates are being issued to transport vehicles without checking the braking system as required by the Rules.”

(emphasis added)

12. This Court also noted that substantial number of transport vehicles do not possess valid fitness certificates. This Court also dealt with the decision of the State Government to establish Automated Fitness Vehicles Tests Centres at some of the places. This Court appointed Automotive Research Association of India (for short “ARAI”) which is a Research institute of the Automotive Industry with the

Ministry of Heavy Industries & Public Enterprises, the Government of India to visit the RTOs in Pune, Mumbai, Nashik and Aurangabad with a view to ascertain whether the officers attached to the said offices are abiding by the Rule 62 of the Central Rules before issuing fitness certificates.

13. Further order dated 28th February 2014 makes a reference to the contents of the report submitted by ARAI which notes that the necessary infrastructure/equipments were not available in many of the RTOs. Paragraph 9 of the said order reads thus:

“9. In relation to the RTO Offices at Pune, Aurangabad, Thane, Latur, Jalna and Amravati, the State will have to ensure that the dry Asphalt Roads for conducting Brake Test having minimum length of 400 meters are available. The State will have to ensure that necessary equipment/machines for headlight beam evaluation are made available. We must note that we are not accepting the stand of the State that a road having length of only 400 meters is sufficient for conducting the tests.”

14. In the said order dated 28th February 2014, this Court also issued necessary directions of checking of all the buses having sleeper berths (sleeper coaches) as it was alleged by the Petitioner appearing in person that some of the sleeper coaches have become death traps for the passengers. In Paragraph 8 of the said order, this Court observed thus:

8.Therefore, the only option left before us is to stop the work of issuing fitness certificates in the RTO offices which are subject matter of the Reports. What is tried to be stated in the latest affidavit is that the State is trying to procure roads. Even going by the stand of the State Government, the requirement is of a dry Asphalt road having minimum length of 400 meters. The State wants the Court to believe that in large cities, no lands are available with the State to make such a basic facility available.”

15. Paragraph 9 of the order dated 10th March 2014 contains following directions.

“9. In view of the earlier order dated 28th February 2014, we direct that till compliance is made in terms of the said order, the work of checking of vehicles for issuing fitness certificates at the Regional Transport Offices at Pune, Nashik, Mumbai (West) and Latur shall be forthwith stopped. We, however, grant liberty to the State Government to move this Court early by pointing out that either compliance with the earlier order dated 28th February 2014 has been made or by producing certificate issued by the ARAI.”

16. Under the order dated 14th March 2014, after considering the report of ARAI, this Court permitted the State Government to resume the work of issuing fitness certificates at the RTOs at Mumbai Central, Pune, Nashik and Latur. On 10th June 2014, this Court passed a detailed interim order while issuing Rule. Paragraph 25 of the said order contains the interim directions which reads thus:

“(a) We direct the Regional Transport Offices (RTOs) in the State of Maharashtra to scrupulously follow the Rule 62 of the Central

Motor Vehicles Rules, 1989 while granting/renewing/validating fitness certificates to Transport Vehicles;

- (b) **While ensuring compliance with the Rules 62 of the Central Rules, the Inspecting Officers or the concerned Officers shall also ensure that substantial compliance has been made with the provisions of the Rules 94 onwards of the Central Rules which are specified in paragraph nos.8 and 9 above;**
- (c) **We direct that the Officers of the RTOs shall ensure that the fitness certificates shall be issued or renewed or validated only to the such transport vehicles which comply with the aforesaid Central Rules;**
- (d) We direct the State Government to initiate appropriate action against the Officers of the RTOs who fail to abide by the provisions of the Central Rules;
- (e) We appoint the Automotive Research Association of India (ARAI) with a direction to ARAI to constitute teams which shall make surprise visits to all the RTOs in the State of Maharashtra where the work of issuing fitness certificates is undertaken. The visits of the team constituted by the ARAI shall be completed within a period of two months from the date on which this order is communicated by the office of the Government Pleader to ARAI. The necessary charges shall be paid by the State Government to the ARAI;
- (f) We make it clear that the teams constituted by the ARAI shall visit the RTOs without prior intimation to the said offices. The concerned RTOs shall allow the team of ARAI to inspect the facilities and the work of testing of vehicles for issuing fitness certificates on production of an authenticated copy of this order. The teams of the ARAI shall specially check whether facility of “a dry level hard road in good condition” contemplated by Sub-Rule 8 of Rule 96 having sufficient length for conduct of mandatory brake

tests is available. The ARAI shall also ascertain the availability of all the equipments and machines which are required to conduct all the tests/checks in accordance with the Rules referred in paragraph nos.8 and 9 above ;

- (g) The ARAI shall submit a report to this Court within a period of three months from the date on which an authenticated copy of this order is served to it;
- (h) The report shall be submitted to this Court through the office of the Government Pleader. The office of the Government Pleader shall provide copies thereof to the contesting parties;
- (i) We direct the State Government to conduct a special drive for a period of one month for identifying the transport vehicles which have not obtained fitness certificates after the date of expiry of earlier certificates, and to take a strict action against the owners or contractors who are running or who are plying such transport vehicles at public places. The use of such vehicles on public places shall be forthwith stopped;
- (j) The State Government shall expedite the appointments of 150 Assistant Motor Vehicle Inspectors and 75 Motor Vehicle Inspectors. The orders of appointment shall be issued within a period of three months from today;
- (k) We direct the MPSC to expedite the work of issuing recommendations for filling in the additional 150 posts of the Assistant Motor Vehicle Inspectors. The process shall be completed within a period of six months from today. The process of issuing appointment orders on the basis of the recommendations shall be completed by the State within a period of four months from the date of receipt of the recommendations;
- (l) We direct the Finance Ministry of the State to take final decision on the pending proposals for

creation of additional posts within a period of three months from today;

- (m) We direct that while exercising the power under Clause (b) of Sub-section (3) of Section 110 of the Motor Vehicles Act, 1988, the State shall give due regard to the public safety and the safety of the public at large;
- (n) We direct the State Government to ensure that apart from the adequate staff, all infrastructure including equipment and machines shall be provided to all RTOs in the State of Maharashtra;
- (o) The State Government shall forthwith start the process of interlinking all the offices of the Regional Transport throughout the State of Maharashtra so that the data base will be easily available to in all the offices of the RTOs;
- (p) The facility of issuing Learner's licences on the basis of online applications has been started in one offices in Mumbai. An endeavour shall be made to make such facility available in all the offices in the State in a phase wise manner;
- (q) This Court had stopped checking of vehicles for grant of fitness certificates in the offices at Pune, Latur, Nashik and Mumbai-Central by order dated 10th March 2014 as the said offices did not have necessary facilities. The said order was revoked by the Order dated 14th March 2014. Thus, in these four offices, fitness certificates were being issued to the transport vehicles without mandatory tests. Therefore, random check up of at least 500 transport vehicles of various categories to which fitness certificates were issued by these four offices within a period of six months prior to 10th March 2014 shall be undertaken by the said four offices. If it is found that any of such vehicles do not comply with the requirements of any of the relevant Central Rules, the action of cancellation of fitness certificates shall be taken in accordance with Sub-Section 4 of Section 56 of the said Act. This

direction shall be complied with within a period of three months from today and compliance report shall be submitted to this Court with all material details;

- (r) The Petitioner appearing in person has placed on record some material to show that the transport buses which met with accidents did not satisfy the requirements provided in the Maharashtra Motor Vehicles Rules, 1989 laying down the specifications for such buses. It is pointed out that in most of such buses, emergency exits have been completely blocked by providing additional seats. We must note here that in some of the earlier orders passed by this Court, a statement of the learned Government Pleader was recorded that The special checking of transport buses at the various entry points in the State of Maharashtra is being undertaken and an action shall taken against the erring owners or the contractors plying such transport buses which do not satisfy the specifications laid down in the Rules and which do not have easily accessible emergency exits. We direct that checking of transport buses shall be made not only at the entry points but also at other strategic points/places in the State. Such buses shall not be allowed to be plied in the State for carrying passengers unless and until the same fulfill the requirements of the State Rules;
- (s) We must make it clear that these directions are only interim directions and if necessary, further directions will be issued on the next date;
- (t) We grant liberty to the parties to apply for modification of the directions contained in this order;
- (u) For considering the report of the ARAI and other compliance reports as regards the compliance with the other directions, the Petition shall be listed on 26th September 2014 under the caption of "Directions".

(emphasis added)

17. The order dated 14th October 2014 makes a note of what was revealed during the special drive conducted for checking of private tourist buses and sleeper coaches. It was found that 1984 private buses were having deficiencies. Paragraph 4 of the said order reads thus:

“4. Considering the casual manner in which the passenger tourists buses having sleeper facility are being checked and considering the manner in which the buses having serious defects are allowed to ply, we direct the Transport Commissioner to issue directions to each Regional Transport Office in the State to ascertain the particulars of the private tourist buses having sleeper berth facility which have been granted registration certificates by the respective offices. The Transport Commissioner shall direct a phase wise checking of all the said transport buses. After checking the buses in a phase wise manner, an action will have to be taken in relation to those buses which do not satisfy the requisite norms and the provisions of relevant rules. The Transport Commissioner shall issue necessary directions to ensure that the tourist transport buses which pose a danger to the passengers should not be allowed to be plied till all the defects therein are cured.”

18. Under the said order, a direction was issued to ARAI to visit the RTOs to find out whether permanent or temporary facilities made available for testing the brakes strictly comply with the relevant Rules.

19. By an order dated 12th June 2015 passed on the administrative side, the Hon'ble Chief Justice assigned the present Public Interest Litigation to a Bench presided over by one of us (A.S.Oka, J). Thereafter, this PIL was taken up for hearing from time to time.

20. There are detailed submissions made by Shri A.Y.Sakhare, learned senior counsel appointed as Amicus Curiae and Shri Warunjikar, the learned counsel appointed as Amicus Curiae. There are written submissions placed on record including the written submissions filed by the Petitioner appearing in person. Shri Shinde, the learned Special Government Pleader also made detailed submissions and has filed a note.

21. As we are dealing with all the submissions in the discussion which will follow hereafter, we are not specifically reproducing the submissions in detail. In the order dated 10th June 2014, based on elaborate discussion, we had issued detailed interim directions. The question is what further directions are required to be issued considering the issues raised.

22. Broadly speaking, we are dealing with the following aspects in the judgment:

- (i) The nature of tests which are required to be carried out under the MV Act and the Central Rules and the manner in which the tests should be conducted for the purposes of issuing fitness certificates to transport vehicles;

- (ii) Provision of the proper infrastructure in the RTOs such as adequate space, man power, equipments, testing brakes, etc.;
- (iii) Modernization of all the RTOs by digitization of the entire record of all the vehicles registered in the State, interlinking of all the RTOs in the State , making available all India data of all the vehicles registered across the country;
- (iv) Possible changes in the MV Act and the Rules regarding testing of vehicles and providing for the stringent punishments and penalties.

23. We have already adverted to the relevant provisions of the MV Act. As provided in Sub-section (1) of Section 56 of the MV Act, no transport vehicles shall be deemed to be validly registered for the purposes of Section 39, unless it carries a certificate of fitness in such form and such particulars and information as may be prescribed by the Central Rules issued by the prescribed authority or by an authorized testing station to the effect that the vehicle complies for the time being with all the requirements of the MV Act and the Rules framed

thereunder. Such certificate of fitness issued under the MV Act is valid throughout India. As noted earlier, Section 39 provides that no person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with the provisions of the MV Act and the certificate of registration of the vehicle has not been suspended or cancelled. Thus, on conjoint reading of Section 39 and Sub-section (1) of Section 56 of the MV Act, in case of a transport vehicle, unless it carries a valid certificate of fitness in accordance with law, no person is entitled to drive a transport vehicle and the owner of the transport vehicle is not entitled to cause or permit the vehicle to be driven in any public place or any other place. Thus, in short, a transport vehicle which is registered under Section 39 can be driven or plied on road only if it possesses a valid fitness certificate. If it is not having a valid fitness certificate, it shall be deemed to be an unregistered motor vehicle. Thus, a transport vehicle which is duly registered under Section 39 of the MV Act is of no use unless it carries a certificate of fitness. By a deeming fiction provided in Sub-section (1) of Section 56, it becomes an unregistered motor vehicle. Thus, so much importance has been assigned under the MV Act to the fitness certificate.

24. We have already quoted Rule 62 of the Central Rules. It provides that a renewal of fitness certificate shall be made only after the Inspecting Officer has carried the tests specified in the table which is a part of the said Rule 62. It contemplates checking condition of spark plugs, head lamp beams, other lights, reflectors, bulbs, rear view mirror, safety glass, horn, silencer, dash board equipment, windshield wiper, exhaust emission, braking system, speedometer and steering gear. It also provides for checking the functioning of all the aforesaid items except the reflectors, bulbs, rear view mirror, safety glasses and exhaust emission. The Rule 62 contemplates checking of head lamp beams in terms of Annexure VII to the Central Rules. In the case of each item in the table except spark plugs, rear view mirror, horn, Dash Board equipment and windshield wiper, the table provides for the method of checking. In the remark column in the table forming a part of Rule 62, the manner in which the checking of condition should be conducted is also laid down. For example, while checking lights, the officer has to ensure that unauthorized lights are not fitted. While checking the bulbs, the officer has to ensure that the head light bulbs wattage (especially halogen) is not higher than the prescribed norms. Even the reflectors have to be checked and ensured that the same are in conformity with Rule 104. Even the speedometer is required to be checked in terms of the Rule 117. The Exhaust Emission is to be checked on basis of "Pollution under control" certificate. What is

important is the test of braking system as provided in Sub-Rule (8) of Rule 96.

25. The provisions of Rule 62 of the Central Rules will have to be read with other provisions of the Central Rules and in particular Chapter V thereof. The material provisions of Chapter V for the purposes of testing a vehicle for issuing fitness certificates are as under:

- (a) Rule 93 dealing with overall dimension of the motor vehicle;
- (b) Rule 95 dealing with size and ply rating of tyres;
- (c) Rule 96 and Rule 96-A dealing with brakes and brakes for construction equipment vehicle;
- (d) Rule 97 dealing with brakes for trailers;
- (e) Rule 98-A dealing with steering gears for construction equipment vehicles;
- (f) Rule 100 dealing with safety glass;
- (g) Rule 101 dealing with windscreen wiper;
- (h) Rule 102 dealing with a signalling devices, direction indicators and stop lights and Rule 103 dealing with position of indicators;
- (i) Rule 104 dealing with fitment of reflectors and size thereof;
- (j) Rule 104-A dealing with fitment of reflectors on construction equipment vehicles;
- (k) Rule 109 dealing with parking lights;

- (1) Rules 112, 113 and 114 dealing with the exhaust gases, location of exhaust pipes and exhaust pipes of public service vehicles;

Rule 96 which deals with brakes is relevant for our consideration. It reads thus:-

“96. Brakes.—[(1) Every motor vehicle, other than a motor cycle, three-wheeled invalid carriage, trailer or a road roller shall be equipped with two independent and efficient braking systems, namely, the parking brake and foot operated service brake:

Provided that a motor cycle and three-wheeled invalid carriage shall be equipped with the independent and efficient braking systems, either both hand operated or one foot operated and the other hand operated.]

(2) The braking system shall be of strength capable of stopping the vehicle within the distance specified in sub-rule (8) and of holding it at rest in all conditions and all such brakes at all time be properly connected and maintained in efficient condition.

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(3) In every motor vehicle [other than agricultural tractors,] the brakes operated by one of the means of operation shall act directly upon the wheel and not through the transmission gear.

[(4) Every motor vehicle manufactured on and after the 1 st day of April, 2006 shall have a braking system whose performance shall conform to the following Indian Standard, namely:—

(i) for two-wheelers and three-wheelers IS:14664:1999, as amended from time to time.

(ii) all motor vehicles, other than two-wheelers, three-wheelers, trailers, semi-trailers equipment vehicles, agricultural tractors and power tillers, IS:11852 (Part-1): 2001, 11852 (Part 2): 2001, 11852 (Part 3): 2001, 11852 (Part-4): 2001, 11852 (Part 5):

2001, 11852 (Part 6): 2001, 11852 (Part-7): 2001, 11852 (Part 8): 2001, as amended from time to time:

Provided that the requirements of automatic wear adjustment specified in para 4.2.1.1.1a of IS:11852 (Part 2), except for those vehicles fitted with Anti-Lock Braking System, shall come into force from the 1st day of April, 2007:

Provided further that IS:11852:2003 (Part 9) shall be applicable for vehicles manufactured on and after the 1st day of October, 2006 fitted with Anti-Lock Braking System.]

(5) Except in the case of a motor cycle, the braking system or one of the braking systems of a motor vehicle shall be so constructed and maintained that it can be so set as effectively to prevent at least one of the wheels from revolving when the vehicle is left unattended.

(6) The braking system or part thereof which functions in the aforesaid manner shall be known as parking brake and where such a parking brake is designed to be operated by hand, it shall be known as hand-brake.

(7)(a) In the case of motor vehicles, other than three-wheelers of gross vehicle weight not exceeding 1000 kgs. and motor cycles, the service brake shall be acting on all the wheels of the vehicle.

(b) In case of three-wheelers of gross vehicle weight not exceeding 1000 kgs. if the foot operated brake does not act on all the wheels, the following conditions shall be fulfilled, namely:-

(i) the foot operated brake shall act on the two wheels which are on the same axle, and

(ii) in addition to the parking brake, there shall be an independent brake acting on the other wheel of the vehicle with an independent hand-operated control.

(c) In the case of motor cycles, the braking system operated with the foot or left hand shall act at least on

the rear wheel and the brake operated by right hand at least on the front wheel.

(d) In the case of agricultural tractors, the braking system shall act as on both the rear wheels, either directly or through the transmission gear.]

(8) The service braking system in the case of vehicle other than three-wheelers and motor cycles, and the braking system operated by one of the means of operation other than the parking brake in the case of three-wheelers and motor cycles shall be capable to bring the vehicles to halt within the distance specified in the following Table when tested in accordance to the condition prescribed correspondingly in the Table. The test shall be conducted on a dry level hard road in good condition. During the test the accelerator control shall be fully released and in the case of vehicles with manual gear shifting control, the top gear and the clutch shall be engaged.

Table.

Sr. No.	Types of vehicle	Load	Test speed (The speed at which the brake should be applied) (Kmph)	Type of brake	Stopping distance (m)
1.	All vehicles other than motor cycles, three-wheelers and agricultural tractors	Laden to the registered GVW or	30	Foot operated service	13
	“	Unladen or	30	“	13
	“	Laden or	40	“	21

		Unladen	40	“	21
2.	Motor Cycles	Unladen	30	Foot or hand operated	21
3.	Three-wheelers including three-wheeler tractors for trailers	Unladen	30	Foot operated (brakes operating on at least two wheels)	13
4.	Agricultural tractors	Laden to test mass	25	Foot operated service	10
5.	All other than of engine capacity not exceeding 500 cc, motor cycles and agricultural tractors	Laden to the registered GVW	30	-do-	12.7
		or Unladen	40	-do-	15.0
			30	-do-	9.3
			40	-do-	12.0

For the purpose of this test for vehicles other than motor cycles the "unladen" means the vehicle is without any load and shall carry only the driver and another person for specific purpose of supervising the test, and the instruments, if any. In the case of motor cycles, the "unladen" means that vehicle will carry only the single rider and the measuring instrument, if any.]

[(9) The following category of vehicles shall be fitted with Anti-Lock Braking System conforming to IS:11852:2003 (Part 9):—

(i) N2 and N3 category of vehicles other than tractor-trailer combination manufactured on and after the 1st day of October, 2006 meant for carrying hazardous goods and liquid petroleum gas;

(ii) N3 category vehicles manufactured on and after the 1st day of October 2007, which are double decked transport vehicles;

(iii) N3 category vehicles manufactured on and after the 1st day of October 2007, that are used as tractor-trailer combinations.

(iv) M3 category of buses that ply on All India Tourist permit, manufactured on and after the 1st day of October, 2007.]”

(Emphasis added)

26. Sub-Rule (8) of Rule 96 of the Central Rules provides for the manner in which the vehicles should be tested for brakes. The table which is a part of Sub-Rule (8) of Rule 96 lays down the load, test speed, stopping distance for particular types of transport vehicles. Sub-Rule (8) provides that the test should be conducted on a dry level hard road in good condition. Stringent conditions have been provided in Rule 96-A for brakes of construction equipment vehicles. Rule 96-B lays down high speed braking requirements. Rules 96-C, 96-D and 97 deal with requirement of brakes in specific category of vehicles such as tractors, power tillers and trailers. Thus, there are very detailed provisions made for testing of brakes in in the Central Rules and especially Sub-Rule (8) of Rule 96 of the Central Rules. If Rule 62 is read with the aforesaid Rules in Chapter V, it can be certainly said that an elaborate checking and testing of various equipments in the transport vehicles is required to be made before a certificate of fitness and especially renewal thereof is granted under Section 56 of the MV Act. The Sub-Rule (1) of Rule 62 which provides that a renewal of a fitness certificate shall be made only after the Inspecting Officer has

carried out the tests specified in the Table given in Rule 62 which, as stated above, provides for checking of the condition and functioning of various equipments and testing of various equipments as provided in various Rules as indicated by the remark column in the Table. Section 213 of the MV Act provides for appointment of an Inspecting Officer. Unless tests as provided in Rule 62 read with the relevant provisions of Chapter V are conducted by an Inspecting Officer, renewal of certificate of fitness cannot be issued. The certificate of fitness as provided in form 38 contains a certification that the particular vehicle complies with the provisions of MV Act and the Rules made thereunder.

27. The fitness of transport vehicles has a direct co-relation with the aspect of road safety. For example, if a transport vehicle does not have proper reflectors as provided in Rule 104 of the Central Rules, the same can be a cause of accident in the night. A rear view mirror is also required for safe driving. Testing of head lamp beams is also mandatory as the head lamp beams which are not in conformity with the said Rules may have blinding effect on a driver of a vehicle coming from the opposite side. The same is the case if bulbs especially the Halogen bulbs are used which are of higher wattage than what is prescribed. In monsoon, the absence of properly working windshield wipers can be very dangerous. Testing of brakes strictly in terms of Sub-Rule 8 of Rule 96 and the other relevant Rules is very crucial. If

the brakes of a vehicle are not conforming with the requirements of the Rules, plying such a transport vehicle on road may be potentially very dangerous. It is true that the allegation of the Petitioner appearing in person that the failure to check the transport vehicles properly while renewing fitness certificates is the only cause of road accidents involving transport vehicles may not have been strictly established. But it cannot be disputed that if the transport vehicles are not checked by implementing the relevant Rules in its true letter and spirit, there is every possibility that driving of such transport vehicles on road may lead to major accidents. Therefore, the compliance with the provisions of Rule 62 of the Central Rules read with Rules 96 to 115 (in so far as the same are applicable) in its true letter and spirit before issuing renewal of the fitness certificates is very crucial and it is the obligation of the State Government to ensure that all the transport vehicles are properly tested and checked as provided in Rule 62 and other relevant Rules. No certificate of fitness can be issued without the Inspecting Officer or authorised service station as specified under Sub-section (1) of Section 56 of the MV Act carrying out the tests/checks prescribed in the table in the Rule 62 read with other relevant Rules. Proviso to Sub-Rule (1) of Rule 62 clearly provides that no renewal of a fitness certificate can be issued without Inspecting Officer carrying out tests specified by the Rules. In view of Section 56 of the MV Act, a transport vehicle shall be deemed to be unregistered, if it does not possess a

certificate of fitness. Unless a vehicle is registered, it cannot be driven in any public place in view of Section 39. Under Section 192, using or driving a vehicle in contravention of Section 39 is an offence. Section 192 of the MV Act reads thus:

“1[192. Using vehicle without registration.—

(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of section 39 shall be punishable for the first offence with a fine which may extend to five thousand rupees but shall not be less than two thousand rupees for a second or subsequent offence with imprisonment which may extend to one year or with fine which may extend to ten thousand rupees but shall not be less than five thousand rupees or with both:

Provided that the Court may, for reasons to be recorded, impose a lesser punishment.

(2) Nothing in this section shall apply to the use of a motor vehicle in an emergency for the conveyance of persons suffering from sickness or injuries or for the transport of food or materials to relieve distress or of medical supplies for a like purpose:

Provided that the person using the vehicle reports about the same to the Regional Transport Authority within seven days from the date of such use.

(3) The Court to which an appeal lies from any conviction in respect of an offence of the nature specified in sub-section (1), may set aside or vary any order made by the Court below, notwithstanding that no appeal lies against the conviction in connection with which such order was made.”

(Emphasis added)

Therefore, in substance, using or driving a transport vehicle which does not have a certificate of fitness is an offence under Section 192. The reason is that such a transport vehicle shall be deemed to be an unregistered vehicle. In the case of *Jantia Hill Truck Owners Assn. v. Shailang Area Coal Dealer & Truck Owner Assn*¹, the Apex Court dealt with the issue of the nature of the provisions in the MV Act regarding unladen and laden weight of a motor vehicle. The Apex Court in Paragraph 23 held thus:

“23. The provisions of the Act mandate that the unladen weight and laden weight must be determined. Indisputably, weighing devices had to be provided for the said purpose. It is true that for the said purpose rules may have to be framed. It is, however, a well-settled principle of law that even in a case where the statute provides for certain things to be done, subject to rules, any action taken without framing the rules would not render any (*sic* that) action invalid. If a statute is workable even without framing of the rules, the same has to be given effect to. The law itself except in certain situations does not envisage vacuum. **Non-compliance with the provisions relating to “laden weight” and “unladen weight” being penal in nature must be held to be imperative in character.”**

(emphasis added)

The use of a transport vehicle without a certificate of fitness will attract a penalty as provided in Section 192. Hence, the provisions regarding certificate of fitness are imperative or mandatory in character. As stated earlier, the Proviso to Sub-Rule (1) of Rule 62 clearly provides that no such renewal of a fitness certificate can be issued without Inspecting

¹ (2009) 8 SCC 492

Officer carrying out checks specified by the Rules. The said proviso to Sub-Rule (1) of Rule 62 is mandatory and, therefore, no vehicle shall be issued a renewal of fitness certificate without complying with the Rule 62 and other relevant Rules in its true and letter and spirit. Hence, checking of vehicles as provided in Rule 62 and the other connected Rules is mandatory before issuing renewal of fitness certificate.

28. The checking of transport vehicles in accordance with Sub-Rule (1) of Rule 62 is required to be done by the Inspecting Officers or Authorized Testing Stations as provided under Sub-section (1) of Section 56 of the MV Act. Under Sub-section (2) of Section 56 of the MV Act, a private garage or service station can be given status of authorized service stations by the State Government. However, it is not the case of the State Government that they intend to create such authorized testing stations and hence, we need not issue any directions in that behalf.

29. As far as the inspecting Officers are concerned, the same are required to be appointed by the State Government under Section 213 of the MV Act. Section 213 of the MV Act reads thus:

“213. Appointment of motor vehicles officers.—

(1) The State Government may, for the purpose of carrying into effect the provisions of the Act, establish a

Motor Vehicles Department and appoint as officers thereof such persons as it thinks fit.

(2) Every such officer shall be deemed to be a public servant within the meaning of the Indian Penal Code, 1860 (45 of 1860).

(3) The State Government may make rules to regulate the discharge by officers of the Motor Vehicles Department of their functions and in particular and without prejudice to the generality of the foregoing power to prescribe the uniform to be worn by them, the authorities to which they shall be subordinate, the duties to be performed by them, the powers (including the powers exercisable by police officers under this Act) to be exercised by them, and the conditions governing the exercise of such powers.

(4) The Central Government may, having regard to the objects of the Act, by notification in the Official Gazette prescribe the minimum qualifications which the said officers or any class thereof shall possess for being appointed as such.

(5) In addition to the powers that may be conferred on any officer of the Motor Vehicles Department under sub-section (3), such officer as may be empowered by the State Government in this behalf shall also have the power to,—

(a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act and the rules made thereunder are being observed;

(b) with such assistance, if any, as he thinks fit, enter, inspect and search any premises which is in the occupation of a person who, he has reason to believe, has committed an offence under this Act or in which a motor vehicle in respect of which such offence has been committed is kept: Provided that,—

(i) any such search without a warrant shall be made only by an officer of the rank of a gazetted officer;

- (ii) where the offence is punishable with fine only the search shall not be made after sunset and before sunrise;
- (iii) where the search is made without a warrant, the gazetted officer concerned shall record in writing the grounds for not obtaining a warrant and report to his immediate superior that such search has been made;
- (c) examine any person and require the production of any register or other document maintained in pursuance of this Act, and take on the spot or otherwise statements of any person which he may consider necessary for carrying out the purposes of this Act;
- (d) seize or take copies of any registers or documents or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed;
- (e) launch prosecutions in respect of any offence under this Act and to take a bond for ensuring the attendance of the offender before any Court;
- (f) exercise such other powers as may be prescribed; Provided that no person shall be compelled under this sub-section to answer any question or make any statement tending to incriminate himself.

(6) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall, so far as may be apply to any search or seizure under this section as they apply to any search or seizure under the authority of any warrant issued under section 94 of the Code.”

30. Sub-section (4) of Section 213 of the MV Act confers powers on the Central Government to make Rules prescribing minimum qualifications which the officers or any class of officers appointed under Section 213 thereof should possess. Though the Petition has been

extensively argued, the attention of the Court has not been invited to any such Rules. In any event, it is very essential for the State Government to ensure that the Inspecting Officers who are entrusted with the work of testing the vehicles for the purposes of renewal of certificates are properly trained. Unless they are given proper training, they may not be able to effectively discharge their duties of carrying out the tests in its true, letter and spirit as provided in Rule 62 and other relevant Rules of the Central Rules. We, therefore, propose to direct the State Government to conduct regular training courses for the Inspecting Officers. There are some reports of the Committees/Officers of the State which stipulate normal time to carry out tests as contemplated by Rule 62 of the Central Rules read with other relevant Rules. The State Government will have to lay down guidelines which will bind the Inspecting Officers and will provide for elaborate procedure for testing of transport and other vehicles which is a condition precedent for issuing an order of renewal of fitness certificate. The guidelines should provide of maintaining a check list in case of each vehicle. It must be provided that the check lists signed by the Inspecting Officers should be maintained for certain period. Only if this is done that the process of conducting tests will be streamlined.

31. As far as the testing of head lamp beams is concerned, the Annexure VII to the Rules is relevant. Under the order dated 28th

February 2014, this Court directed that specific machines are provided for conducting the checking of head lamp beams. The affidavits on record disclose that now such machines have been provided in each RTO. The State shall ensure that the said machines are maintained properly and kept in working condition.

32. The other crucial issue is about the test of braking system which is required to be conducted in terms of Rule 96 which is quoted above. Sub-Rule (1) of Rule 96 provides that every motor vehicle except a motor cycle, three-wheeled invalid carriage, trailer or a road roller shall be equipped with two independent and efficient braking systems. The first one is a parking brake and the other is a foot operated service brake. What is material is Sub-Rule (2) of Rule 96 which is a mandatory provision which lays down that the braking system shall be of strength capable of stopping the vehicle within the distances specified in Sub-rule (8) and of holding it at rest in all conditions. The distances are laid down in the table which is a part of Sub-Rule (8). The speed at which the brakes should be applied is also a part of the table. Sub-Rule (8) of Rule 96 provides that the said test shall be conducted on a dry level hard road in good condition. Sub-Rule (8) is very specific that in the case of vehicles with manual gear shifting control, the top gear and the clutch shall be engaged while conducting the tests. Considering the nature of the tests required to be

conducted, the Inspecting Officer will have to either drive the transport vehicle himself or sit next to the driver. Otherwise, he would never know whether top gear was engaged.

33. There is some controversy as to what should be the length of dry level hard road in good condition for conducting tests. Firstly, the stretch of road for testing brakes must be provided to each RTO which is either a part of the office premises or in the close vicinity of the offices. Needless to state that a public road should not be provided for testing of brakes. Due to traffic on the road, the tests cannot be able to be conducted efficiently or properly. The affidavit on record shows that a dry level hard road in good condition is not available in every office or in the vicinity of every offices. In case of some of the offices, the tracks are far away from the offices. Some RTOs are using public roads as testing tracks. Therefore, a direction will have to be issued to the State Government to provide tracks for testing of brakes as contemplated by Sub-rule (8) of Rule 96 of the Central Rules. There was some controversy regarding the length of tracks which should be made available for testing of brakes. On this issue, opinion of ARAI was taken. The report submitted by ARAI discloses that minimum length of track should be 150 meters. As provided in the Rules, the track should be dry levelled hard road in good condition. We propose to direct the State Government to ensure that every RTO should have a dedicated

tracks of dry levelled hard road in good condition. To avoid any controversy, we propose to direct that the length of track should be atleast 250 metres. We make it clear that the track should not be a part of any public road and the track should be made available in the close vicinity of the RTOs. There are circulars on record dealing with the minimum time prescribed for testing of every category of vehicles. According to us, no such hard and fast rule can be laid down.

34. The other issue is that number of transport vehicles which can be tested on a day for issuing fitness certificates. Though the Rules regarding tests/checks will have to be strictly followed, the State Government will have to ensure that the conducting of test of vehicles is not delayed. Therefore, based on the data of the existing transport vehicles and projection of transport vehicles which will be brought on road in at least 20 years in future, the State Government will have to undertake exercise of determining as to how many Inspecting Officers are required. Considering the data of the vehicles in the State as of today, a provision will have to be made for appointing adequate number of Inspecting Officers and providing adequate infrastructural facilities so that a large number of vehicles are tested without any delay thereby avoiding possible loss to any party.

35. As far as the aspect of creating posts is concerned, there are earlier orders issued directing the State Government to appoint 300 Assistant Inspectors of the motor vehicles and 150 Inspectors of motor vehicles. Out of 300 posts of Assistant Inspectors of motor vehicles, 150 posts have been filled in. Out of the earlier vacancies of 215 posts, 177 have been filled in and 38 posts are vacant. It is, therefore, necessary for the State to immediately send a requisition to the Maharashtra Public Service Commission (for short "MPSC") to undertake recruitment process for filling in total 188 posts. Out of 150 posts of Inspector of motor vehicles to be filled in, 99 Inspectors have been appointed. The posts of the Inspector of the motor vehicles are promotional posts. We, therefore, propose to direct the State Government to fill in the balance vacant posts by issuing necessary directions to the Departmental Promotion Committee (D.P.C)

36. The learned Special Government Pleader during the course of submissions pointed out that the office of the Transport Commissioner has submitted a proposal to appoint 1000 Technical Assistants who will be able to assist the Inspectors of motor vehicle in the process of certifying fitness of vehicles. Out of 1000 posts, only 300 posts have been sanctioned by the High Power Committee of the State Government. There was no reason for the State not to accept the recommendation of the Transport Commissioner. This recommendation

ought to have been accepted considering the fact that number of vehicles registered in the State is rapidly increasing. It is pointed out that a permission has been granted to fill in only 150 posts of Assistant Inspectors. As of today, the Recruitment Rules for the posts of Technical Assistants have not been finalized.

37. We have already held that failure to properly conduct the tests for certifying fitness of vehicles will seriously affect the road safety as well as safety of passengers. The State Government will have to create all 1000 posts of Technical Assistants. We, therefore, propose to issue directions to the State Government to ensure that the Recruitment Rules are framed within a time bound schedule and process of appointment through MPSC is expected.

38. Another issue raised by the Petitioners appearing in person is as regards the certificate of fitness given to passenger transport buses and in particular sleeper coaches. Chapter VII of the Maharashtra Motor Vehicles Rules, 1989 (for short "the State Rules") deals with the construction, equipment and maintenance of motor vehicles. Rule 169 onwards of the State Rules deal with the public service vehicles. The State Rules give specifications of gangways (Rule 172), Head Room (Section 174), Driver's seat (Rule 175), Width of doors (Rule 176), Steps (Rule 178), Grab Rail (Rule 177), Body Dimensions, Guard Rail

and Life Guards (Rule 180) and Internal lighting (Rule 182). There are provisions concerning Compulsory electric lighting (Rule 184), Electric wires (Rule 187), Fire Extinguishers (Rule 188) and Maintenance of First Aid Box (Rule 192). Rule 198 provides that some of the Rules in Chapter VII are also applicable to private service vehicles registered in the name of educational institutions which are recognized by the Government.

39. The Petitioner appearing in person made some grievance and in our opinion rightly about the conditions of the sleeper coaches/ buses having sleeping births which are being plied on the road. He has produced on record several photographs of the sleeper coach buses and the print out of the snapshots of sitting arrangement as well as arrangement of berths which are shown on the websites of the private transport operators which are plying the sleeper coach buses in the State. Our attention is invited to Rule 183A of the State Rules, which reads thus:

“183A. Special provisions for Sleeper Coach.-

(1) Subject to Rule 93 read with mutatis application of the provisions of Rule 128(2), (3), (4), (5), (6), (9)(i), (12) and (13) of the Central Motor Vehicles Rules, 1989, the special provisions for Sleeper Coach shall be as under:-

(2) **Powers to grant relaxation.**--The State government or the Transport Commissioner, as the case may be, may grant relaxation to the vehicles registered as Sleeper Coach or Sleeper Bus from one or any of the above conditions giving reasons in writing.

(A) **Age of the Sleeper Coach.**- A permit of a Sleeper Coach shall be deemed to be invalid from the date on which the motor vehicle covered by the permit completes twelve years from the date of its initial registration:

Provided that, the motor vehicle to be replaced shall not be more than five (5) years old on the date of such replacement.

(B) **Sleeper/Berth arrangements.**-

- (a) The sleeper berth should be provided along with the vehicle with two tire system only. Each berth of length not less than 1750 mm and width not less than 760 mm and not more than 900 mm. The thickness of each berth shall not be less than 75 mm.
- (b) The width of the Gangway shall not be less than 450 millimeters.
- (c) The width of the structure partition shall not be less than 25 mm, between the two berth.
- (d) The lower berth shall be fixed at a minimum height of 150 mm from the flooring of the vehicle.
- (e) The clear head room for the sitting passenger at lower berth shall not be less than 800 mm.
- (f) The clear head room for upper berth shall not be less than 650 mm except at the side curves of the roof.
- (g) The upper berth shall be either fixed type with supports fixed rigidly by means of bolting or welding or pivot mounted at the partition and suspended by two bright steel chains mounted on hinges on berths. These chains shall be fixed rigidly by means of bolting or welding to the roof structural members. The chain shall be located to ensure that the sum total of the overhead

position shall not exceed the centre to center distance of chains measured along the axis of the berths.

- (h) Suitable arrangements shall be made for the upper berth passengers to enable them to go up or come down from the upper berth.
 - (i) An assist handle shall be provided for comfortable occupation of the upper berth at a convenient height.
 - (j) No seat/berth shall be permitted to be fitted in the gangway except a seat for coach attendant/manager at suitable place.
 - (k) Each berth shall be provided with fabric covering, which shall be capable of being kept in a clean and sanitary condition.
 - (l) One pillow and two neat linen shall be provided to each passenger. (one for wrapping and another for spreading).
 - (m) Safety guards covered with soft material on either side of the upper berths shall be provided.
- (C) **Other particulars.--**
- (i) **Headroom.--**The internal height of the vehicle shall not be less than 1850 mm.
 - (ii) **Body Mounting.--** (a) In case of rigid chassis the body of such public service vehicle shall be mounted on the chassis with high tensile, steel bolts with diameter of not less than 16 mm. No holes shall be drilled in the chassis side members (Longitudinal) except where such drilling is technically approved by the chassis manufacturers. Rubberised packing or mounting of adequate thickness shall be used between the body structure and the chassis frame.

- (iii) **Flooring.**- Flooring material of such public service vehicle shall be sound proof, anti-skid and washable. The floor shall be safe for the passengers and be covered with rubber or synthetic mattings or carpets. All joints shall be dust proof by suitable packing material.
- (iv) **Roof.**-- Roof of ceiling of such public service vehicle shall be provided with soft material or equivalent materials like A.B.S. plastics to prevent impact.
- (v) **Light.**- Individual reading light at convenient location for each berth shall be provided in addition to normal lighting arrangement..
- (vi) **Painting and finishing.**-- Such public service vehicle shall be painted in "Nitro Cellulose" or "Synthetic Enamel" or other suitable paints of any permissible colour scheme.
- (vii) **Air-condition unit mounting.**-- Every such public service vehicle shall be equipped with Air-conditioning unit of adequate.

Powers to grant relaxation.- The State Government or the Transport Commissioner, as the case may be, may grant relaxation to the vehicles registered as Sleeper Coach or Sleeper Bus from one or any of the above conditions giving reasons in writing cooling capacity. The air-condition engine compartment shall be provided with sound insulating materials so as to damper the engine noise to suitable dB level; and with vibrating mounting so as to minimize vibratory factors in the saloon compartment.

(viii) **Windows.**--

- (a) The windows shall be provided with double sliding type slider running smoothly in channels without rattle and with all safety or laminated safety glasses confirming to the standards laid down by the Bureau of Indian Standards. Windows shall be provided with

sliding curtains.

- (b) In case where the fixed glasses are provided, minimum one hatch should be provided on roof top at suitable place for air circulation.
- (c) Sliding windows shall be provided to the driver partition immediately behind the driver.
- (D) **Miscellaneous.**-- (a) No hat racks shall be permitted in such public service vehicle.
- (b) Such public service vehicle shall have weveller suspension or pneumatic suspension.
- (c) Reflective tape of canary yellow colour of 50 mm. Width shall be provided at rear and front side at skirt level of/on bumper.
- (d) Such public service vehicle shall have an attendant/manager to take care of the passengers in addition to the driver/drivers or conductor].”

40. The State Government has made Rules regarding the location of the sleeper berths, length and the width of the sleeper berths as well as thickness thereof. The minimum width of gangways is also prescribed. The minimum height of the lower berth as well as clear head room for the sitting passengers at lower berth is also prescribed. Detailed provisions regarding head room for upper birth have been made. The specifications of the body mounting, flooring, air-condition unit mounting, windows etc. have been incorporated in Rule 183-A. It is true that under Sub-rule (1) of Rule 183A, the State Government or the Transport Commissioner, as the case may be, has been empowered to grant relaxation to the vehicles registered as sleeper coach or sleeper

bus from one or any the above requirements incorporated in Rule 183A. Such relaxation can be granted without giving reasons. It cannot be exercised in a manner which will compromise on the safety of passengers. The power can be exercised only in exceptional cases. Under the interim orders of this Court, the RTOs conducted special drives of checking sleeper coach buses when it was found that large number of sleeper coaches were deficient and were not complying with the requirements of Rule 183-A. There is an issue raised regarding sleeper coach buses registered in another State plying in the State. The said issue is being dealt with separately. The Petitioner appearing in person is absolutely right in submitting that the Rule 183-A has to be strictly implemented. We, therefore, propose to issue necessary directions in this behalf. The RTOs in the State are aware of the names and addresses of the Organizations/Companies which run sleeper coach buses in the State as most of them have facilities of booking of seats/berths on their respective websites. The State Government will have to ensure that all the sleeper coach buses registered in the State are checked to ensure compliance with the Rule 183A of the State Rules.

41. It will be ideal if video cameras are installed for recording of checking of each transport vehicle for the purpose of granting renewal of fitness certificate. Even the testing of brakes of the vehicles

should be videographed. This will bring in lot of transparency and the officers will become more accountable. This will rule out the possible allegations of corruption against the officers. A provision can be made for saving the footage of video recordings for a limited duration. In our view, for bringing a transparency and to avoid all allegations of illegality and of corruption on the part of the officers, such a measure will go in the long way. We propose to direct the State Government to take appropriate action on this aspect within the time fixed by this Court.

42. Another issue which arises is as regards the transport vehicles and especially the transport buses including the buses having sleeping berth facility which are registered outside the State. Under Section 192 of the MV Act, driving a motor vehicle or causing or allowing a motor vehicle to be used without registration under Section 39 of the MV Act is an offence. We have already dealt with Section 56 of the MV Act which provides that a transport vehicle shall not be deemed to be validly registered for the purposes of Section 39 of the MV Act unless it carries a certificate of fitness. If a transport vehicle registered outside the State is not possessing such a fitness certificate, the said vehicle shall be deemed to be unregistered and, therefore, penal provision of Section 192 will be attracted. Therefore, against the drivers or owners of all transport Vehicles including the buses as

aforesaid which do not possess a certificate of fitness, penal action under Section 192 of the said Act should be taken. We have quoted Section 192 of the MV Act. In fact, the punishment provided therein should be more stringent so as to make it really deterrent. The offender committing first offence cannot be let off by paying nominal amount by way of fine.

43. There is no centralized data available of each vehicle registered in the State. Therefore, a centralized data containing full information about each vehicles registered in the State should be made available which should be subject to real time updation. The data should provide all particulars of vehicles such as registration number, engine number and chassis number. All information regarding the name of the owner, insurance details, address of the owner and insurer should be also made available. Even all information regarding fitness certificates and renewal thereof and various permits should be made available. Similarly, all particulars regarding driving licenses including learning licenses issued in the State should be made available. Facility of interlinking will have to be provided to all RTOs in the State. The data of the entire State as aforesaid should be made available on a dedicated website. Either there should be a real time updation or updation of the data shall be made at the end of every working day.

44. Our attention is also invited to the Road Transport And Safety Bill, 2015 prepared by the Central Government. The Bill seeks to introduce some fundamental changes including a provision for Unified Vehicle Registration System and Unified Driving Licensing System. Chapter III thereof provides for National Unified Information System. It provides for developing and maintaining a national unified information system. It provides for establishing a National Authority for development and maintenance of a National Unified Information System for collection and storage of data of driving licenses, registration of motor vehicles, insurance policies, certificate of fitness and pollution under control certificates, permits, accidents involving motor vehicles, etc. In our view, the Central Government need not wait till the new Act comes into force. A national data grid containing all the information about all motor vehicles registered throughout India can be created.

45. Lastly, we must deal with the allegations of the Petitioner appearing in person against various officers of the transport department about the manner in which they are conducting the fitness tests. There are allegations made against the officers about the breach of the orders of this Court and allegations of involvement in corruption. Though we cannot issue a writ directing action against a particular officer, the

Authorities of the State cannot ignore the said allegations altogether. The appropriate authorities shall look into specific allegations made by the Petitioner in the Civil Applications and/or Contempt Petitions against the officers. If any substance is found in the allegations, appropriate action shall be initiated against the erring officers. Policy of zero tolerance should be adopted while dealing with the dereliction of duty concerning issue of renewal of fitness certificates. This allegations made by the Petitioner appearing in person against the officers will have a popular support based on experiences of common man. Suffice it to say that the officers of the RTOs perform a very crucial and responsible job. Any dereliction of duty on their part or any neglect on their part has a direct nexus to the issue road safety. This is in the context of ever increasing road accidents in our country. There were many cases in the recent past when the transport buses having sleeping facilities were gutted by fire. As the buses were death traps, there was a loss of human lives. If the buses would have been checked to ascertain whether the same were complying with requirements of Rule 183-A of the State Rules, the mishaps could have been avoided. Renewal of fitness certificate to a bus having sleeper birth facility should not be granted unless it complies with the requirements of Rule 183-A and other State Rules.

46. We must make it clear that the interim directions which are in force today will continue to operate as final directions subject to modifications made by the directions issued under this Judgment and Order.

47. The Central Government will have to consider of making amendment to the Central Rules relating to checking the transport vehicles for issuing fitness certificates with a view to ensure that modern technology/equipment is used.

48. Though the Petitioner appearing in person may have taken extreme stand while filing some of the affidavits or in some other proceedings, he has raised very important issues and as a result of the interim orders passed by this Court from time to time, the State Government was forced to several steps. Therefore, in addition to the costs already made payable to the Petitioner, we propose to direct the State Government to pay additional costs of Rs.50,000/- to the Petitioner appearing in person. Before we close the judgment, we must record appreciation of the assistance rendered by Shri A.Y. Sakhare, learned senior counsel, Shri Uday Warunjikar, Advocate appointed as Amicus Curiae and Shri Sandeep Shinde, the learned Special Government Pleader.

49. Hence, we pass the following order:

ORDER :

- (a) We direct all the Regional Transport Offices in the State to scrupulously follow the provisions of Rule 62 of the Central Rules and other connected Rules specified in Paragraph 25 above while testing transport vehicles for the purposes of grant of fitness certificate and for renewal of fitness certificate. While checking the public service vehicles and especially buses having sleeper berths, compliance with the provisions in Chapter VII of the State Rules and in particular Rule 183-A of the State Rules will have to be made;
- (b) Against the drivers or owners of all transport Vehicles which do not possess a certificate of fitness, penal action under Section 192 of the MV Act shall be taken;
- (c) Special drive of checking fitness certificates of all transport vehicles in the State shall be conducted regularly and preferably for a period of 15 days

twice a year;

- (d) The power to relax the requirements of Rule 183-A of the State Rules shall not be exercised in a routine manner. The exercise of the power shall be made only by passing a written order containing reasons. While granting relaxation, no compromise should be made on safety of passengers;
- (e) The Central Government shall consider of amending Section 192 of the MV Act providing for stringent penalty which will be deterrent. Appropriate decision shall be taken within a period of three months from today;
- (f) We direct the State Government to make available a track as provided in Central Rules having the length of minimum 250 meters for each RTO. The tracks shall be provided in the close vicinity of the existing offices;
- (g) We make it clear that no public road shall be used as a track after expiry of period of six months from

today and the State Government shall provide tracks as directed above to each RTO within a period of six months from today;

- (h) The State Government shall consider of fixing adequate number of video cameras for recording the conduct of all the tests carried out in relation to the transport vehicles for grant of fitness certificates and for renewal thereof including the brake tests. Arrangement shall be made for saving the video footage of testing of each and every vehicle. The same should be saved by uploading on a computer. Appropriate decision shall be taken within a period of three months from today;

- (i) The State Government shall hold regular training sessions for Inspecting Officers and Technical Assistants on the aspect of checking of transport vehicles for issuing fitness certificates;

- (j) We direct the State Government to take disciplinary action against those Inspecting Officers who fail and neglect to carry out all the tests which are required to be carried out in accordance with the Rule 62 of

the Central Rules and other connected Rules;

- (k) We direct the State Government to send a requisition to the Maharashtra Public Service Commission to undertake recruitment of 188 posts of Assistant Inspectors of motor vehicles. The entire procedure shall be completed within a period of one year from today;
- (l) The State Government shall ensure that the posts of Assistant Inspectors which become vacant due to superannuation or promotion or for any other reason are immediately filled in;
- (m) We direct the State Government to ensure that all the vacant posts of Inspector of motor vehicles shall be filled in as expeditiously as possible and in any event within a period of six months from today;
- (n) We direct that any vacancy arising due to superannuation and/or promotion and/or for any other reason in the post of Inspector shall be filled in by the State Government within a period of six

months from the date on which the vacancy arises;

- (o) We direct the State Government to frame Recruitment Rules of Technical Assistants within a period of six months from today;
- (p) We direct the State Government to ensure that the total 1000 posts of Technical Assistants are created (inclusive of 300 already sanctioned) within period of six months from today;
- (q) The recruitment process for filling in all the 1000 posts shall be completed within a period of 18 months from today;
- (r) The State Government shall ascertain the number of Technical Posts required for checking of transport vehicles for issuing fitness certificates considering the present and future requirement for atleast 20 years. This exercise shall be completed within a period of six months from today;
- (s) The State Government shall frame exhaustive

guidelines for checking of transport vehicles for issuing certificates of fitness. The guidelines shall provide for a check-list to be signed by the Inspecting Officers which shall be preserved for a specified period. The Guidelines shall be framed within a period of three months from today;

(t) We direct the State Government to ensure that the data of each vehicle registered and each driving license issued by the Regional Transport Offices in the State shall be digitized. All Regional Transport Offices in the State shall be interlinked to enable all the offices to access the data of other offices;

(u) The centralized data of all the Motor Vehicles registered in the State as well as all driving licenses granted in the State shall be made available on a dedicated website. The data shall contain the information as specified in paragraph 43 above. Either there shall be a provision for real time updation or that the data shall be updated at the end of every working day ;

- (v) For the time being, the data of each motor vehicle registered with effect from 1st April 2016 and each driving license issued on or after the said date, shall be uploaded on a dedicated website. The State Government shall file an affidavit setting out the outer limit within which the entire data of all the offices will be computerized and updated central data will be made available on the dedicated website;
- (w) Similarly, the Central Government shall consider of creating a national data grid on which the data of all the vehicles registered throughout country shall be made available. The Central Government shall take appropriate decision in that behalf within a period of three months from today;
- (x) The State Government shall consider of setting up an Automated Testing Centers at various district places on par with the Automated Testing Center proposed to be made operational at Nashik. Appropriate decision shall be taken by the State Government within a period of two months from

today;

(y) The State Government shall ensure that all vacant posts of clerical staff in the Regional Transport Offices are filled in within period of one year from today;

(z) Considering the fact that the technology is advancing very fast by leaps and bounds, the Central Government may consider of modifying the Central Rules by providing for conducting of various tests for issuing fitness certificates by use of modern scientific methods/equipment. Appropriate decision shall be taken within a period of six months from today;

(aa) We direct the State Government to pay costs quantified of Rs.50,000/- to the Petitioner appearing in person within a period of two months from today;

(bb) All pending applications stand disposed of in terms of this Judgment and Order;

(cc) For reporting compliance, the Petition shall be listed on 7th June 2016 under the caption of "Directions".

(VL. ACHLIYA, J)

(A.S. OKA, J)

