



AFR

In chamber

Case :- WRIT - A No. - 7774 of 2020

Petitioner :- Preeti Dubey And 6 Others

Respondent :- Union Of India Through Its Secretary Of
Surface Road Transport

Counsel for Petitioner :- Siddharth Nandan, Ramesh Kumar
Shukla

Counsel for Respondent :- A.S.G.I., C.S.C.

Hon'ble Surya Prakash Kesarwani, J.

Hon'ble Dr. Yogendra Kumar Srivastava, J.

(Per : Dr. Yogendra Kumar Srivastava, J.)

1. Heard Sri Siddharth Nandan, learned counsel for the petitioners and Sri Amit Manohar, learned Additional Chief Standing Counsel for the State-respondents.

2. This writ petition has been filed praying for the following reliefs:

"I. A writ or direction in the nature of certiorari quashing the impugned order dated 14.02.2020 passed by Assistant Regional Transport Officer (Administration), Rampur i.e. Respondent No.4 (contained as Annexure No.03 to the writ petition).

II. A writ or direction in the nature of certiorari quashing the impugned order dated 14.02.2020 passed by the Additional Transport Commissioner (Revenue) Uttar Pradesh and order dated 21.01.2020 passed by Transport Commissioner, State of U.P. (contained as Annexure No.01 & 02 to the writ petition).

III. A writ or direction in the nature of mandamus directing the Respondent authorities not to interfere in the plying of the vehicles in question till such time the registration and fitness certificates are valid or notifications under Section 111 of the Act, 1988 are issued changing the norms."

3. In terms of the aforementioned prayers, the petitioners have sought to challenge the circular dated 21.01.2020 issued by the Transport Commissioner, U.P. whereunder directions have been issued for inspection of bus/sleeper coaches and to

cancel their certificate of fitness in case the vehicles are found to be not in conformity with the prescribed standards. Grievance is also against the subsequent circular dated 14.2.2020 issued by the Additional Transport Commissioner Uttar Pradesh containing a direction that the registration of buses be made only where the bus/sleeper coaches are in conformity with AIS 052, AIS 119, AIS 139 and AIS 153 standards and upon completion of the particulars specified under Form 22-B. The notices dated 14.02.2020 issued to the petitioners by the Assistant Regional Transport Officer, Gorakhpur directing them to ensure that their sleeper coaches are in conformity with the specifications under Rules 136-A and 139 of the Uttar Pradesh Motor Vehicles Rules, 1998¹, within a period of fifteen days and to submit their vehicles for inspection failing which the certificate of fitness issued to them would be cancelled, have also been challenged.

4. The challenge raised by the petitioners to the aforesaid circulars/notices, as noted by us in our earlier order dated 15.10.2020 is on the following grounds :-

(i) Section 111(2)(a) of the Central Motor Vehicles Act, 1988 (hereinafter referred to as 'the Central Act, 1988') provides the domain of the State-Government for making rules regulating the construction of motor vehicles. Therefore, the power to make rules in this regard has been conferred upon the State Government and not upon the Central Government. Under the circumstances, Rule 125-C(4) of the Central Motor Vehicle Rules 1989 and the AIS-119/ AIS-052 - 2016 Standards, shall not be applicable to the vehicles of the petitioners.

(ii) Since Rule 125-C of the Central Rules, 1989 as amended

1. the Rules, 1998

by G.S.R.905(E) dated 23.09.2016 is not applicable, therefore, impugned circular dated 14.02.2020 issued by the Additional Transport Commissioner (Revenue) Uttar Pradesh and the Circular dated 21.01.2020 issued by the Transport Commissioner and the consequential notices dated 14.02.2020 issued by the Assistant Transport Officer (Administration), Gorakhpur, are wholly without authority of law.

(iii) The rule making power under Section 111 of the Central Act, 1988 relating to the construction of vehicles has been specifically conferred upon the State Government. There is no provision under the Uttar Pradesh Motor Vehicle Rules, 1998 (hereinafter referred to as the 'the U.P. Rules, 1998'), which provides for implementation of AIS-119 (REV.1) : 2016 or AIS-052-2016. Therefore, in the absence of any provision in this regard in the U.P. Rules, 1998, the impugned notices dated 14.02.2020 requiring the petitioners to make changes in their vehicles as per standards AIS 119/ AIS 052 - 2016, is without authority of law. Thus, unless the State Government frames rule to incorporate or adopt AIS 119/ AIS 052 - 2016 by framing rules or inserting provisions in the U.P. Rules, 1998, the same cannot be imposed against the petitioners in the State of Uttar Pradesh.

(iv) As an alternative, it is submitted that in the event, the court finds that the circulars and notices are valid and the petitioners are required to comply with it, then some time may be granted to comply with it inasmuch as the period for compliance provided in the notice, was affected by COVID-19 Pandemic period and as such no step could be taken. Therefore, for compliance, some reasonable time may be granted.

5. Learned Additional Chief Standing Counsel appearing for the State respondents has controverted the contention raised by the petitioners by submitting that the buses/sleeper coaches are required to be in conformity with the standards prescribed under Rule 125-C of the Central Motor Vehicles Rules, 1989². He submits that under the Notification No. 895 (E) dated 20.09.2016 issued by the Central Government, which has been referred to in circular dated 14.2.2020 issued by the Transport Commissioner, it is provided that certain standards of AIS 052 are applicable from 01.01.2017 and certain other standards are applicable in the second phase from 01.01.2018 and that AIS 119 standards are applicable for sleeper buses from March, 2017. Further, AIS 139 standards are applicable from September, 2017 in respect of double decker bus in buses with more than 22 seats excluding driver and AIS 153 standards are applicable from 01.04.2019. He has also drawn attention of the Court to Rule 126 which provides that prototype of every motor vehicle is to be subjected to test and that in terms of Notification No. 368 (E) dated 13.04.2018, a self certificate of compliance by the bus body builder is to be submitted in Form 22-B. It was further submitted that Rule 125-C of the Central Rules, 1989 is fully applicable in respect of matters relating to bus body design and safety norms which is under the exclusive domain of the Central Government under Section 110 of the Motor Vehicles Act, 1988³ and is not covered under the rule making power of the State Government under Section 111 of the said Act.

6. Referring to the registration certificates, which copies have been annexed along with writ petition, it was submitted that all the vehicles in question are registered after the year

2. the Rules, 1989

3. the Act, 1988

2018, therefore compliance with the prescribed standards as referred in the circular dated 14.2.2020 is mandatory and accordingly the inspection notices as contained in annexure 3 to the writ petition have rightly been issued and the writ petition challenging the circulars and notices is liable to be dismissed.

7. In order to appreciate the rival contentions the relevant statutory provisions may be adverted to.

8. The law relating to motor vehicles is governed in terms of the Motor Vehicles Act, 1988. Chapter IV of the Act, 1988 deals with registration of motor vehicles. Section 39 provides for the necessity of registration and it mandates 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 places unless the vehicle is registered in accordance with the provisions under Chapter IV. Section 56 prescribes the requirement of a certificate of fitness and in terms thereof 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 to the effect that the vehicle complies for the time being with all the requirements under the Act and the rules made thereunder. Sub-section (4) of Section 56 provides that the certificate of fitness may be cancelled by the prescribed authority on being satisfied that the vehicle no longer complies with all the requirements of the Act and the rules made thereunder, and on such cancellation, the certificate of registration or permit granted in respect of the vehicle shall be deemed to be suspended.

9. For ease of reference, Sections 39 and 56 are extracted below :-

“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.

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 authorised 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:

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.”

10. The subject matter relating to construction, equipment and maintenance of motor vehicles is provided for under Chapter VII of the Central Motor Vehicles Act, 1988. Sections 110 and 111 which contain the rule making powers of the Central Government and the State Government, respectively, are as follows :-

“110. Power of Central Government to make rules–(1)
The Central Government may make rules regulating the construction, equipment and maintenance of motor vehicles and trailers with respect to all or any of the following matters, namely:--

- (a) the width, height, length and overhand of vehicles and of the loads carried;
- (b) the size, nature, maximum retail price and condition of tyres, including embossing thereon of date and year of manufacture, and the maximum load carrying capacity;
- (c) brakes and steering gear;
- (d) the use of safety glasses including prohibition of the use of tinted safety glasses;
- (e) signalling appliances, lamps and reflectors;
- (f) speed governors;
- (g) the emission of smoke, visible vapour, sparks, ashes, grit or oil;
- (h) the reduction of noise emitted by or caused by vehicles;
- (i) the embossment of chassis number and engine number and the date of manufacture;
- (j) safety belts, handle bars of motor cycles, auto-dippers

and other equipments essential for safety of drivers, passengers and other road user;

(k) standards of the components used in the vehicle as inbuilt safety devices;

(i) provision for transportation of goods of dangerous or hazardous nature to human life;

(m) standards for emission of air pollutants;

(n) installation of catalytic convertors in the class of vehicles to be prescribed;

(o) the placement of audio-visual or radio or tape recorder type of devices in public vehicles;

(p) warranty after sale of vehicle and norms therefor:

Provided that any rules relating to the matters dealing with the protection of environment, so far as may be, shall be made after consultation with the Ministry of the Government of India dealing with environment.

(2) Rules may be made under sub-section (1) governing the matters mentioned therein, including the manner of ensuring the compliance with such matters and the maintenance of motor vehicles in respect of such matters, either generally in respect of motor vehicles or trailers or in respect of motor vehicles or trailers of a particular class or in particular circumstances.

(3) Notwithstanding anything contained in this section,--

(a) the Central Government may exempt any class of motor vehicles from the provisions of this Chapter;

(b) a State Government may exempt any motor vehicle or any class or description of motor vehicles from the rules made under sub-section (1) subject to such conditions as may be prescribed by the Central Government.

111. Power of State Government to make rules - (1) A State Government may make rules regulating the construction, equipment and maintenance of motor vehicles and trailers with respect to all matters other than the matters specified in sub-section (1) of section 110.

(2) Without prejudice to the generality of the foregoing power, rules may be made under this section governing all or any of the following matters either generally in respect of motor vehicles or trailers or in respect of motor vehicles or trailers of a particular class or description or in particular circumstances, namely:--

(a) seating arrangements in public service vehicles and the protection of passengers against the weather;

- (b) prohibiting or restricting the use of audible signals at certain times or in certain places;
- (c) prohibiting the carrying of appliances likely to cause annoyance or danger;
- (d) the periodical testing and inspection of vehicles by prescribed authorities (and fees to be charged for such test);
- (e) the particulars other than registration marks to be exhibited by vehicles and the manner in which they shall be exhibited;
- (f) the use of trailers with motor vehicles; and
- (g) [xxx]"

11. In exercise of the rule making powers under the Act, 1988, the Central Motor Vehicles Rules, 1989 have been made and Chapter V thereof deals with construction, equipment and maintenance of motor vehicles.

12. Rule 125-C deals with body code. The aforesaid rule was inserted by G.S.R. 589 (E), dated 16.09.2005 by virtue of the Central Motor Vehicles (Fifth Amendment) Rules, 2005. Rule 125-C as inserted by the aforesaid amendment was as under:-

"125-C. Body building and approval:- (1) On a date to be notified, the testing and approval for body building of buses shall be in accordance with AIS:052:2001 as amended from time to time for vehicles mentioned therein, till the corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 1986 (63 of 1986).

(2) The testing and approval for the body building of school buses shall be in accordance with AIS:063:2005 as amended from time to time for vehicles mentioned therein, till the corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 1986 (63 of 1986)."

13. Sub-rule (1) of Rule 125-C was substituted by G.S.R. 287 (E) dated 22.04.2014 to read as under :-

"125-C. Body building and approval. - [(1) On and after

the 1st day of October, 2014, the testing and approval for body building of new models of buses with seating capacity of 13 or more passengers excluding driver shall be in accordance with AIS:052 (Revision 1)-2008, as amended from time to time, for vehicles mentioned therein, till the corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 1986 (63 of 1986)]

Provided that the provision of this rule shall be implemented in two phases. In first phase, the provisions of AIS 052 (Rev. 1)-2008, excluding the parameters and requirements given in Table-1 below, shall be applicable on and after 1st day of January, 2017. In second phase, the provisions of AIS-052 (Rev. 1)-2008, as amended from time to time, and the parameters and requirements given in (Table-1) below, shall be applicable on and after 1st day of January, 2018.

(Table -1)

(Additional Technical Provisions of AIS: 052(Rev-1))

Sr. No.	Nature of Test/ Parameters	Requirements of Specific Clauses of AIS-052 (Rev.1)
(1)	(2)	(3)
1.	Scope and Definitions (As applicable)	1.0
2.	Body Structure Strength	3.1
3.	Body Structure Stability	3.2
4.	Window Retention	3.6
5.	Window Frames	3.6.5.5
6.	Wind Screen Wiping System and Driver's field of Vision	3.10
7.	Test Methods (As applicable)	Chapter 6
8.	Vertical orientation	Annexure I,Table with

	for dipped beam - head lamp	title "Details about Safety Critical Components/ systems"
9.	Seat Anchorages	

Provided further that the operation of the airport passenger bus shall be restricted within the airport premises, for movement of passengers and such buses shall be provided with a marking “RESTRICTED USE: WITHIN AIRSIDE OPERATIONS ONLY” with a letter size of not less than 50mm in height on each side of the bus.”

14. The legislative history of the Rule 125-C indicates that the provision has undergone various changes from time to time. The aforementioned Rule as it presently stands, read as follows :-

“125C. Body building and approval. - (1) On and after the 1st day of October, 2014, the testing and approval for body building of new models of buses with seating capacity of 13 or more passengers excluding driver shall be in accordance with AIS:052 (Revision 1)-2008, as amended from time to time, for vehicles mentioned therein, till the corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 1986 (63 of 1986):

Provided that the provision of this rule shall be implemented in two phases:

In first phase, the provisions of AIS 052 (Rev. 1)-2008, excluding the parameters and requirements given in Table-1 below, shall be applicable on and after 1st day of January, 2017.

In second phase, the provisions of AIS-052 (Rev.1)-2008, as amended from time to time, and the parameters and requirements given in (Table-1) below, shall be applicable on and after 1st day of January, 2018.

(Table -1)
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6.	Wind Screen Wiping System and Driver's field of Vision	3.10
7.	Test Methods (As applicable)	Chapter 6
8.	Vertical orientation for dipped beam - head lamp	Annexure I, Table with title "Details about Safety Critical Components/systems"
9.	Seat Anchorages	

- (2) The testing and approval for the body building of school buses shall be in accordance with AIS:063:2005 as amended from time to time for vehicles mentioned therein, till the corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 1986 (63 of 1986).
- (3) All goods vehicles of Category N2 and of Category N3, either manufactured by a vehicle manufacturer or a body builder on drive away chassis vehicles shall, till the corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 1986 (63 of 1986) comply

with the provisions of AIS-093 (Rev. 1)-2015, as specified in Table I and Table II below, namely :-

Table I

Sr. No.	Test Parameters	Requirements of Specific Clauses of AIS-093
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		(Rev.1)
(1)	(2)	(3)
1.	Overall Dimensions	2.1.1
2.	External Projections for cabin	2.1.2
3.	Driver/Co-passenger Door	2.1.3
4.	Climb Facility	2.1.4
5.	Hand Holds	2.1.5
6.	Window on Cab Door	2.1.6
7.	Driver Seat/Co passenger seat	2.1.7
8.	Safety Belt Assemblies and Anchorages	2.1.8
9.	Sleeper Berth	2.1.9
10.	Mudguards/Spray suppression devices	2.1.10
11.	Driver Work Area	2.1.11
12.	Steering Wheel	2.1.12
13.	Placement of Instrument Panel	2.1.13
14.	Position of Controls	2.1.14
15.	Stowage Space	2.1.15
16.	First Aid Box	2.1.16
17.	Truck Cab Structural Strength	2.2.1
18.	Front Under run Protective Device (FUPD)	2.2.2

19.	Cab Mounting Arrangement and Strength Requirements	2.2.3
20.	Protection of the Occupants in the Event of a Lateral Collision	2.2.4
21.	Installation requirements for Lighting & Signaling devices (except for the vertical orientation of the dipped beam)	2.2.5
22.	Rear view mirror	2.2.6
23.	Driver's Work Area	2.2.7
24.	Door Locks & Hinges	2.2.8
25.	Window	2.2.9
26.	Wind Screen and Wind Screen Wiping System	2.2.11
27.	Fire extinguishers	2.2.12
28.	Cab and Body gap	3.2.2
29.	Stowage Space/Luggage Carrier	3.2.3
30.	Mudguards/ Spray Suppression Devices	3.2.4
31.	Protection of the Occupants of Goods-carrying Power-driven Vehicles against the Shifting of Loads	3.4.1
32.	Retro-Reflective Markings for Heavy and Long Vehicles	3.4.5
33.	Lateral Protective device	3.4.6
34.	Rear Under run Protective Device (RUPD)	3.4.7

35.	Internal Lighting	4.1.2
36.	Position of illumination devices	4.1.3
37.	Driver Cab lighting	4.2
38.	Electrical cables	4.3.1
39.	Fuse	4.3.2
40.	Terminals, Connectors and Elements	4.3.3
41.	Safety requirements	4.4
42.	Batteries	4.5
43.	Technical Provisions for Base Vehicles	5.3
44.	Manner of Display of Class Labels and Identification Marks	5.5

Table II

Sr. No.	Nature of Test/ Parameters	Requirements of Specific Clauses of AIS-093 (Rev.1)
(1)	(2)	(3)
1.	Categorization of Truck Load Bodies	3.1
2.	General Requirements	3.2
3.	Overall Dimensions	3.2.1
4.	Rope Hooks and other Provisions	3.2.5
5.	Working Stability	3.3.1
6.	Mounting of the Body or	3.3.2

	Load Platform of Commercial Vehicles	
7.	Body Construction requirements	3.3.3
8.	Securing the Load on the Load body	3.4.2
9.	External Projection	3.4.3
10.	Installation requirements for Lighting & Signaling devices (except for the vertical orientation of the dipped beam)	3.4.4
11.	External Lighting	4.1.1
12.	Type of Bulbs for lamp Assemblies	4.1.4
13.	Technical Provisions for Bodies	5.4
14.	Container Size Designations and Sizes Codes	6.4
15.	Recommendations for Slacking of Load	6.5
16.	Twist Locks	6.6
17.	Container securing arrangements	6.7
18.	Attaching Sub-frames and Bodies	6.8
19.	Tanker Mounting	6.9
20.	Stability Criteria	7.5

21.	Modification of the Vehicle Type and Extension of Approval	7.6
22.	Roll Over Stability/ Tilt Table Test Procedure	Annexure - 1
23.	Lateral Stability Calculation	Annexure - 2

The vehicles referred to in sub rule (3) shall, on and after the 1st day of October, 2018 comply with the provisions of the AIS specified in column (3) of the Table I of the said sub-rule, in respect of the test parameters specified in the corresponding column (2) of the said table; and on after the 1st day of October, 2019, comply with the provisions of the AIS specified in column (3) of Table II, in respect of the test parameters specified in the corresponding column (2), of the said table:

Provided that the manufacturers or the body builder of the vehicles referred to in sub-rule (3) shall, with effect from the 1st day of April, 2017, be fitted with an air conditioning system for the cabin.

(4) On and after expiry of six months from the date of commencement of the Central Motor Vehicles (14th Amendment) Rules, 2016, the testing and approval for body building of sleeper coaches shall be in accordance with AIS-119 (Rev.1):2016, as amended from time to time, for vehicles mentioned therein, till the corresponding Bureau of Indian Standards specifications are noticed under the Bureau of Indian Standards Act, 1986 (63 of 1986).

Provided that the vehicles, manufactured on and after the 1st January, 2018 shall be fitted with an air conditioning system for the cabin or with the truck cabin ventilation system in accordance with AIS-056 (Rev. 1): 2017, as amended from time to time, till the corresponding BIS specification are notified under the Bureau of Indian Standards Act, 2016 (11 of 2016):

Provided further that in regard to the vehicles which are sold in the form of drive away chassis, the manufacturer shall supply a type approved kit of forced ventilation items as defined in AIS-056 (Rev. 1):2017 to facilitate the body builder in installing the kit as specified within such standard.

(5) On and after the expiry of six months from the date of commencement of the Central Motor Vehicles (Third Amendment) Rules, 2017, the testing and approval for body building of double decked buses shall be in accordance with

AIS-139:2016, as amended from time to time, till the corresponding Bureau of Indian Standard specifications are notified under the Bureau of Indian Standards Act, 1986 (63 of 1986).”

15. The first proviso to sub-rule (1) which was substituted by G.S.R. 895 (E) dated 20.09.2016 with effect from the same date, provides for implementation of the rule in two phases. In the first phase, the provisions of AIS 052 (Rev.1)-2008 excluding the parameters and requirements specified in Table-1 thereof, were made applicable on and after 1st day of January, 2017. In the second phase, the provisions of AIS-052 (Rev.1)-2008, as amended from time to time, and the parameters and requirements given in Table-1, were made applicable on and after 1st day of January, 2018.

16. As per the amended rules, Rule 47 (1) (g) of the Rules, 1989 as inserted by G.S.R. 368 (E) dated 13.04.2018 (w.e.f. 13.04.2018) a self certification of the bus body built on a drive away chassis by the bus body builder to the provisions of the Code and practice for bus body design and approval AIS:052 as amended from time to time, is required to be submitted in the prescribed Form 22-B

17. The circular dated 21.1.2020 issued by the Transport Commissioner takes notice of the fact that certain buses/sleeper coaches which were plying in the State of Uttar Pradesh were not in conformity with the prescribed standards and accordingly referring to Rule 126 which provides that prototype of every motor vehicle is to be subjected to test and only thereupon the vehicles are registered and also the provisions under the Rules, 1989 with regard to the bus body being in conformity with the standards prescribed under AIS 119 and referring to Rule 167 of the Uttar Pradesh Motor

Vehicle Rules, 1998, directions have been issued for inspection of buses/sleeper coaches and in the event they being not in conformity with the prescribed standards to proceed for cancellation of the certificate of fitness issued to them.

18. The circular dated 14.02.2020 issued by the Additional Transport Commissioner contains reference to sub-rule (1) of Rule 125-C, as substituted by G.S.R. 287 (E) dated 22.04.2014, whereunder it is provided that on and after the 1st day of October, 2014, the testing and approval for body building of new models of buses with seating capacity of 13 or more passengers excluding driver shall be in accordance with AIS: 052 (Revision 1)-2008, as amended from time to time, for vehicles mentioned therein, till the corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 1986.

19. It also refers to G.S.R. 895 (E) dated 20.09.2016, by means of which the first proviso to sub-rule (1) has been substituted providing for the applicability of certain provisions of AIS 052 on and after 01.01.2017 and the applicability of the remaining provisions of AIS 052 in the second phase on and after 01.01.2018.

20. The circular further contains reference to Rule 126 of the Rules, 1989 which provides that prototype of every motor vehicle is to be subject to test, and also the requirement of a self certification of compliance of the bus body built on a drive away chassis by the bus body builder to the provisions of the Code and practice for bus body design and approval AIS:052, as amended from time to time, in the prescribed Form 22-B. Referring to the aforementioned provision, the

circular contains directions to the effect that only upon verification of conformity to the aforementioned standards under AIS 052, AIS 119, AIS 139 and AIS 153 by the sleeper buses and submission of the necessary self certification under Form 22-B, the registration of the buses/sleeper coaches be made.

21. A plain reading of the provisions contained under Sections 110 and 111 of the Act, 1988 which contain the rule making powers of the Central Government and the State Government would show that the powers of the Central Government and the State Government with regard to making rules regulating the construction, equipment and maintenance of motor vehicles and trailers as specified under Sections 110 and 111 are in respect of matters which are distinct. Rule 125-C which relates to the subject matter of testing and approval for body building of the buses clearly falls within the domain of the rule making power of the Central Government under Section 110 and not under the rule making power of the State Government under Section 111.

22. The rule making power of the Central Government under sub-section (1) of Section 110 of the Act, 1988 relates to matters relating to: (a) the width, height, length and overhand of vehicles and of the loads carried; (b) the size, nature, maximum retail price and condition of tyres, including embossing thereon of date and year of manufacture, and the maximum load carrying capacity (c) brakes and steering gear; (d) the use of safety glasses including prohibition of the use of tinted safety glasses; (e) signalling appliances, lamps and reflectors; (f) speed governors; (g) the emission of smoke, visible vapour, sparks, ashes, grit or oil; (h) the reduction of

noise emitted by or caused by vehicles; (i) the embossment of chassis number and engine number and the date of manufacture; (j) safety belts, handle bars of motor cycles, auto-dippers and other equipments essential for safety of drivers, passengers and other road user; (k) standards of the components used in the vehicle as inbuilt safety devices; (l) provision for transportation of goods of dangerous or hazardous nature to human life; (m) standards for emission of air pollutants; (n) installation of catalytic convertors in the class of vehicles to be prescribed; (o) the placement of audio-visual or radio or tape recorder type of devices in public vehicles; (p) warranty after sale of vehicle and norms therefor:

23. Sub-section (2) of Section 110 of the Act, 1988 provides that rules may be made under sub-section (1) governing the matters mentioned therein, including the manner of ensuring the compliance with such matters and the maintenance of motor vehicles in respect of such matters, either generally in respect of motor vehicles or trailers or in respect of motor vehicles or trailers of a particular class or in particular circumstances.

24. Section 111 provides for the rule making powers of the State Government and in terms of sub-section (1) thereof a State Government may make rules regulating the construction, equipment and maintenance of motor vehicles and trailers with respect to all matters other than the matters specified in sub-section (1) of section 110.

25. Sub-section (2) of Section 111 provides that without prejudice to the generality of the foregoing power, rules may be made under this section governing all or any of the

following matters either generally in respect of motor vehicles or trailers or in respect of motor vehicles or trailers of a particular class or description or in particular circumstances, namely: (a) seating arrangements in public service vehicles and the protection of passengers against the weather; (b) prohibiting or restricting the use of audible signals at certain times or in certain places; (c) prohibiting the carrying of appliances likely to cause annoyance or danger; (d) the periodical testing and inspection of vehicles by prescribed authorities and fees to be charged for such test; (e) the particulars other than registration marks to be exhibited by vehicles and the manner in which they shall be exhibited; and (f) the use of trailers with motor vehicles.

26. The aforementioned statutory provisions indicate that there is a separation of the rule making powers of the Central Government and the State Government, with the subject matters being delineated and demarcated and there being no overlapping in regard to the same. The legislative intendment with regard to the mutual exclusion of the rule making powers of the Central and the State Government being clear, the matters falling under Sections 110 and 111 must be construed in a manner so as to maintain the exclusivity, and, a construction which may lead to an overlapping must be eschewed.

27. Sub-section (1) of Section 111 makes it clear that the rule making power of the State Government is only in respect of matters other than matters specified in sub-section (1) of Section 110.

28. The subject matter relating to body building and specifications in respect thereof, safety provisions, standards

etc. having been provided under sub-section (1) of Section 110, which is within the domain of the rule making power of the Central Government, by virtue of the exclusion clause under sub-section (1) of Section 111, the said matter stands excluded from the rule making power of the State Government under Section 111.

29. Contention of learned counsel for the petitioner seeking to dispute the applicability of Rule 125-C and in particular sub-rule (4) thereof on the ground that the same is beyond the rule making power of the Central Government under Section 110, is thus untenable.

30. The subject matter of Rule 125-C which is in respect of the body building, testing and approval for body building of the buses, having been held to be within the domain of the rule making power of the Central Government under Section 110 (1), there can be no manner of doubt with regard to their applicability in terms of the provisions contained thereunder to all buses/sleeper coaches, including those which have been registered by the petitioners herein.

31. In terms of the provisions contained under sub-rule (1) of Rule 125-C on and after the 1st day of October, 2014, the testing and approval for body building of new models of buses with seating capacity of 13 or more passengers excluding driver has to be in accordance with AIS: 052 (Revision 1)-2008, as amended from time to time, for vehicles mentioned therein, till the corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 1986.

32. The provisions under sub-rule (1) of Rule 125-C are to be implemented in two phases as per the mandate of the first proviso thereof. In the first phase, the provisions of AIS 052

(Rev.1)-2008 excluding the parameters and requirements specified in Table-1 thereof, were made applicable on and after 1st day of January, 2017.

33. Rule 126, as substituted with effect from 26.03.1993, mandates that prototype of every motor vehicle is to be subject to test.

34. Further, sub-rule (1) of Rule 47 mandates that an application for registration of a motor vehicle to the registering authority shall be accompanied by certain specified documents including (self certification) in prescribed Form 22-B of compliance of the bus body built on a drive away chassis by the bus body builder to the provisions of the Code and practice for bus body design and approval AIS:052, as amended from time to time, which is provided for under clause (g) thereof.

35. It is therefore seen that the prescription of standards relating to testing and approval for body building of buses/sleeper coaches, as provided under Rule 125-C of the Rules, 1989 are applicable to all buses/sleeper coaches. These standards are also mandatory and an application for registration of a motor vehicle under Rule 47 (1) is to be mandatorily accompanied by a self certification of compliance of the bus body built on drive away chassis by the bus body builder to the provisions of the Code and practice for bus body design and approval AIS: 052 as amended from time to time.

36. The prescription of standards relating to testing and approval for body building as prescribed under Rule 125-C and the other provisions referred to above, relate to safety standards and are of a mandatory nature with no exception or

deviation in respect thereof being contemplated.

37. The circular dated 21.1.2020 issued by the Transport Commissioner U.P. and the subsequent circular dated 14.2.2020 issued by the Additional Transport Commissioner U.P. containing references to the aforementioned prescribed standards under the statutory rules which are mandatorily applicable to buses/sleeper coaches and the directions issued for inspection of the motor vehicles to ensure compliance thereof as a condition precedent for registration of the vehicles and further for cancellation of the certificate of fitness in cases of non-conformity with the prescribed standards, thus cannot be faulted with.

38. The notices dated 14.2.2020 issued to the petitioners by the Assistant Regional Transport Officer, Gorakhpur directing them to ensure conformity with the prescribed standards and specifications and to submit their vehicles for inspection failing which the certificate of fitness issued to them would be cancelled are of the consequential nature which have been issued for ensuring compliance of the standards which are of a mandatory nature, and therefore the validity of the notices cannot be questioned.

39. For all the aforestated reasons, the challenge raised by the petitioners to the circulars dated 21.1.2020 and 14.2.2020 and the notices also of the date 14.2.2020 cannot be sustained.

40. Considering the alternative submission made on behalf of the petitioners and the prayer made for grant of some time to comply with the circulars and response to the notice, the petitioners are directed to submit their response to the notices dated 14.2.2020 showing compliance of the directions

contained in the circulars dated 21.1.2020 and 14.2.2020 within a period of four weeks from date.

41. Subject to the aforesaid observations the writ petition is dismissed.

Order Date :- 24.02.2021
Pratima