IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 11377 of 2025 a/w CWP Nos. 20070, 20934, 20936 & 20937 of 2025, CWP Nos. 1680, 1697, 1819, 2704, 2950, 2982, 5716, 5998, 6015, 7769, 11604, 11930, 12225, 16349, 16446 and 17386 of 2026

Reserved on: 27.10.2026

Date of Decision: 31.10.2026

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1. CWP No.11377 of 2025

Shivalik Institute of Nursing through its President
Shri Khushi Ram Thakur .....Petitioner

Vs.

State of Himachal Pradesh and another .....Respondents

2. CWP No. 20070 of 2025

Rising Field Public High School, Banoi .....Petitioner

Vs.

State of Himachal Pradesh and another .....Respondents

3. CWP No. 20934 of 2025

Shiva Educational Society .....Petitioner

Vs.

State of Himachal Pradesh and another .....Respondents

4. CWP No. 20936 of 2025

Shiva Educational Society .....Petitioner

Vs.

State of Himachal Pradesh and another .....Respondents

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5. CWP No. 20937 of 2025

Shiva Educational Society .....Petitioner

Vs.

State of Himachal Pradesh and another .....Respondents

6. CWP No. 1680 of 2026

Vijay Memorial Senior Secondary School .....Petitioner

Vs.

State of Himachal Pradesh and another .....Respondents

7. CWP No. 1697 of 2026

Sh. Dharampal Soni Memorial Dp.A.V. Convent Senior Secondary School

.....Petitioner

Vs.

State of Himachal Pradesh and another .....Respondents

8. CWP No. 1819 of 2026

Katiani Education Society .....Petitioner

Vs.

State of Himachal Pradesh and another .....Respondents

9. CWP No. 2704 of 2026

Swami Vivekanand Educational Society .....Petitioner

Vs.

State of Himachal Pradesh and another .....Respondents

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10. CWP No. 2950 of 2026

Noorpur Public School .....Petitioner

Vs.

State of Himachal Pradesh and another .....Respondents

11. CWP No. 2982 of 2026

Shashank Shiksha Society .....Petitioner

Vs.

State of Himachal Pradesh and another .....Respondents

12. CWP No. 5716 of 2026

Sarav Hitkari Vidya Niketan .....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

13. CWP No. 5998 of 2026

Swami Shri Rajeshwara Nand Bharti Nursing Training Institute
.....Petitioner

Vs.

State of Himachal Pradesh and others .....Respondents

14. CWP No. 6015 of 2026

Shishu Model Public School .....Petitioner

Vs.

State of Himachal Pradesh and another .....Respondents

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15. CWP No.7769 of 2026

Adarsh Bhartiya Public School Society .....Petitioner

Vs.

State of Himachal Pradesh and another .....Respondents

16. CWP No. 11604 of 2026

Alpine Public School Education Society .....Petitioner

Vs.

State of Himachal Pradesh and another .....Respondents

17. CWP No. 11930 of 2026

Come Mensa Educational Society (Regd.) .....Petitioner

Vs.

State of Himachal Pradesh and another .....Respondents

18. CWP No. 12225 of 2026

Galaxy International Education & Research Foundation .....Petitioner.

Vs.

State of Himachal Pradesh and another .....Respondents

19. CWP No. 16349 of 2026

Rose Public School .....Petitioner

Vs.

State of Himachal Pradesh and another .....Respondents

20. CWP No. 16446 of 2026

Dhan Gurudev Educational Trust .....Petitioner.

Vs.

State of Himachal Pradesh and another .....Respondents

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21. CWP No. 17386 of 2026

Arean Public High School .....Petitioner.

Vs.

State of Himachal Pradesh and others .....Respondents

Coram:
The Hon'ble Mr. Justice Ajay Mohan Goel, Judge

The Hon'ble Mr. Justice Yogesh Jaswal, Judge

Whether approved for reporting?[1] Yes.

For the petitioner(s): M/s Nitin Thakur, Mohit Thakur, K.B. Khajuria, Vijender Katoch, Gaurav Thakur (vice Dr. Rajesh Kumar Parmar), Ajay Sharma, Shubham Singh Guleria and Vishal Thakur, Advocates, for the petitioners, in the respective petitions.

For the respondents: Mr. Anup Rattan, Advocate General, with M/s Ramakant Sharma & Sushant Keprate, Additional Advocates General and Mr. Rajat Chauhan, Assistant Advocate General.

Ajay Mohan Goel, Judge:

As common issues of facts and law are involved in these petitions and as all the matters were heard together, therefore, they are being disposed of vide a common judgment.

2. The petitioners before this Court are Schools and Educational Institutions, who are aggrieved by Cause (xi) of Rule 73-A(1)A,

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1 Whether the reporters of the local papers may be allowed to see the Judgment?

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which was inserted in the Himachal Pradesh Motor Vehicles Rules, 1999 (hereinafter referred to as 'the 1999 Rules'), vide Notification dated 12th October, 2018.

3. We are quoting the reliefs prayed by the petitioner in CWP No. 11377 of 2025, which, on the request of the parties, was treated as the lead case, for the purpose of pleadings etc. The reliefs prayed for by the petitioner in CWP No. 11377 of 2025 and the relief(s) prayed for in the other writ petitions are almost same and similar.

> *"**CWP No. 11377 of 2025***
>
> *"I. Issue a mandamus directing the respondents not to apply Rule 73A(1)A (xi) of the Himachal Pradesh Motor Vehicles Rules 1999 as amended in the year 2018 to the bus of the petitioner; or/and*
>
> *II. Issue a writ of certiorari quashing and setting aside Rule 73A(1)A(xi) 2 of the Himachal Pradesh Motor Vehicles Rules 1999 as amended in the year 2018; and/or*
>
> *III. Issue a mandamus directing the respondents to produce record s to running of buses in Government Educational/Institutes is concerned; or/and*
>
> *IV. Any further or other order that this Hon'ble Court deems fit and appropriate may kindly*

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be passed in the facts and circumstances narrated hereinabove in the interest of justice."

4. The petitioners are aggrieved by Cause (xi) of Rule 73-A(1)A of the 1999 Rules, in terms whereof, vehicles providing transportation facilities to "Schools, will not be more than 15 years old". Vide notification dated 12th of October, 2018, Rule 73-A was inserted in the Himachal Pradesh Motor Vehicles Rules, 1999 and this Rule provides for conditions that may be inscribed in the permit relating to buses/vehicles owned or attached with School/Educational Institutions.

5. The grievance of the petitioners is that as the impugned Clause prohibits the use of a vehicle for transportation facilities to Schools, after it is more than 15 years old, said Clause is bad in law, as the condition of 15 years has been imposed without any rationale, ignoring the factum of the vehicle in question actually being worthy of use for transportation or not, and further ignoring the economic viability of Institutions like the petitioners, who are not in a position to replace the vehicles being used for transportation facilities more than 15 years old. Petitioners have also challenged the legislative competence of the State to carry out the said amendment in the Rule.

6. As per the petitioners, they are having private service vehicle permits for the vehicles run by them and the said vehicles were

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only being used to pick up and drop the students and staff, and the distance being covered by the vehicles was very very minimal per day.

7. According to the petitioners, by virtue of the impugned amendment, the petitioners were being denied the right to use their vehicles for the purpose of the transportation of students and staff after 15 years as from the date of the purchase of the vehicle, despite the fact that the life of a vehicle, kept in a good condition, is more than 20 to 25 years. It is also the case of the petitioners that the State Government cannot create a class between those vehicles which are being plied by the State or private operators for transporting passengers and those which are being plied by the petitioners, because it is not as if students do not travel to Schools and Educational Institutions in Government vehicles or other private vehicles or for that matter in vehicles like cars, jeeps etc., which are more than 15 years old.

8. It is also the contention of some of the petitioners that because they are not, *per se*, "Schools", but are other educational institutions like Nursing Institutions or Pharmacy Institutions, therefore, they are not covered under the ambit of Clause (xi) of the amended Rule, yet the Clause is being wrongly applied to them, denying them the renewal of the permit under the provisions of the Motor Vehicles Act, on the ground that their vehicle(s) was/were more than 15 years old.

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9. It is also the case of the petitioners that their vehicles are in a road-worthy condition and plying them is not risky for the students at all, and all these aspects of the matter have been ignored by the respondents while arbitrarily including clause (xi) in Rule 73-A, which clause has no rationale and is just a colorable exercise of power.

10. Arguments were addressed by learned counsel for the petitioners in this regard and, in brief, we shall be referring to the arguments addressed by the learned counsel appearing for the petitioners before us in the present cases.

11. Mr. Nitin Thakur, learned counsel appearing for some of the petitioners submitted that as Nursing Institutions were not Schools and the word used in Clause (xi) was "Schools", therefore, denial of the renewal of permit to Nursing Institutions or for that matter, other Institutions like Pharmacy Institutions, which were not “Schools” on the pretext of Clause (xi) was bad in law. He argued that even otherwise, Clause (xi) of Rule 73-A of the 1999 Rules was unconstitutional, as the same was framed by the State beyond its Rule-making power, as in terms of Section 59 of the Motor Vehicles Act, it was only the Union of India, which can fix the life of a vehicle. He further submitted that the age of a vehicle is not demonstrative of the condition of the vehicle and whether or not a vehicle is roadworthy, should be the bench mark for permitting a vehicle to be used to transport students. He submitted that there are Officers in the Transport

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Department, whose duty it is to certify whether a particular vehicle is roadworthy or not and, therefore also, the imposition of the condition that a vehicle cannot be used for transporting students, if it is more than 15 years old, without ascertaining its roadworthiness, is completely arbitrary and hit by Article 14 of the Constitution of India.

12. Mr. Vijender Katoch, learned counsel appearing for some of the petitioners, in addition, argued that the buses of the petitioner-Institutions are not normal transport buses/vehicles and they are used for very few kilometers every day and this extremely important aspect of the matter has been ignored by the Department while incorporating the impugned Clause in the Rule. He argued that the business difficulties of petitioners have been totally ignored by the State while adding Clause (xi) in Rule 73-A in the 1999 Rules and State has also not appreciated that ultimately the burden of purchasing new vehicles shall be shifted to students only.

13. Mr. Shubham Singh Guleria and Mr. Vishal Thakur, learned counsel appearing for some of the petitioners in the connected petitions, in addition, submitted that Rule 73-A, as also Clause (xi) thereof, were *ultra vires* to the Constitution of India, as the said Rule was framed by the State beyond its legislative competence. Learned counsel took the Court through the provisions of Section 59 and Section 96 of the Motor Vehicles Act and submitted that it was not within the

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domain of the State Government to have framed the Rule in question, because the provisions of the Motor Vehicles Act do not confer any express power upon the State Government to frame a Rule fixing the maximum age of a vehicle to be used for transporting children to Schools etc. Learned counsel relied upon the judgment of the Hon'ble Supreme Court in ***Naresh Chandra Agrawal Vs. Institute of Chartered Accountants of India and others, 2024 SCC (13) 241*** in support of their contention. Learned counsel also argued that after 15 years, the petitioners would not be in a position to put their vehicle to any use and this important aspect of the matter has also been ignored by the State.

14. Mr. Shubham Singh Guleria, learned counsel further argued that in terms of Section 59 of the Motor Vehicles Act, the Central Government may, having regard to the public safety, convenience and objects of the Act, by notification in the Official Gazette, specify the life of a motor vehicle reckoned from the date of its manufacture, after the expiry of which, the motor vehicle shall not be deemed to comply with the requirements of the Act and the Rules made thereunder, provided the Central Government may specify different ages for different classes or different types of motor vehicles. He submitted that the Legislature itself has dealt specifically with the legal consequences flowing from the age of a motor vehicle and has vested the corresponding power in the

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Central Government and consequently, the general and residuary Rule-making power available to the State Government under Section 96(2)(xxxiii) of Chapter-V of the Motor Vehicles Act cannot be construed as an unrestricted power to create an independent and absolute age based disability having substantially the same effect, particularly when such disability operates notwithstanding the vehicle's continuing compliance with the statutory regime of fitness and permits. Learned counsel further argued that in the present case, the impugned Rule does not merely prescribe a safety or operational requirement, but creates a substantive disability by declaring a vehicle incapable of being used as an Educational Institution Bus/Vehicle, providing transportation facilities for School, solely upon completion of fifteen years, notwithstanding the existence of the Statutory mechanisms governing its fitness and permit. He further argued that the impugned Rule creates an anomalous situation vis-à-vis the Statutory provisions of the Motor Vehicles Act and, therefore also, the impugned Rules was bad in law.

15. Other learned counsel for the petitioners adopted the arguments addressed by the abovementioned learned counsel for the petitioners.

16. On the other hand, the learned Advocate General submitted that the writ petitions were completely misconceived and it was incorrect on the part of the petitioners to urge that the Rule framed

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by the State by amendment was beyond its legislative competence. By referring to Section 96 of the Motor Vehicles Act, learned Advocate General submitted that the State was having power to frame and amend the Rules and, therefore, the Rule under challenge was not beyond the legislative competence of the State Government. Learned Advocate General argued that the age of a vehicle to be used for transporting students to Schools and Educational Institutions has been fixed, taking into consideration the fact that the State of Himachal Pradesh is a hilly area primarily and 15 years is a good period for a vehicle to be permitted to be used for transporting children to the School(s**).** Learned Advocate General submitted that Clause (xi) of Rule 73-A of the 1999 Rules only prohibited the use of a vehicle more than 15 years old for the purpose of transportation of students to Schools. It nowhere prohibited the use of a vehicle for other purposes, for which such a vehicle can be used in terms of the provisions of the Motor Vehicles Act. Learned Advocate General argued that the business concerns of the petitioners were not superior to the paramount safety of the students and the 15 years' period, as is mentioned in Clause (xi), is to ensure that fit vehicles are used to ferry children to the Schools and Educational Institutions. Learned Advocate General further submitted that as Rule 73-A deals with Schools and Educational Institutions, it was incorrect on the part of the petitioners to state that Clause (xi) of Rule 73-A was not applicable

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to Educational Institutions. He submitted that as the intent was to permit use of roadworthy vehicles for the purpose of transporting children, the Clause in question cannot be read myopically by ignoring that Rule 73-A deals with Schools and Educational Institutions and the word "School" in Clause (xi) has to be read as inclusive of all Educational Institutions, be it Nursing Institution or Pharmacy, because at the end of the day, all these Institutions are Schools imparting education of one or the other kind. Learned Advocate General further submitted that simply because the students were travelling in other transport vehicles or private stage carriage vehicles or in the vehicles of their parents which were more than 15 years old, same did not bar the State from framing Rule 73-A, because the minimum that the State can do to safeguard the interests of the students, is to fix the period of use of a vehicle which is an identified vehicle for the purpose of transporting children to Schools and Educational Institutions. Learned Advocate General also argued that the provisions of Section 59 and Section 96 of the Motor Vehicles Act were being misread and misinterpreted by the petitioners to the effect that the State was not having the legislative competence to frame the Rule in issue.

17. Learned Advocate General submitted that insertion of Rule 73-A in the 1999 Rules was necessitated on account of the tragic School Bus accident that occurred on 09.04.2018 near Nurpur, District

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Kangra, H.P., in which, 27 persons including 23 School -children lost their lives. He submitted that in order to strengthen the regulatory framework governing School-transport safety, the State Government constituted a High Level Committee under the Chairmanship of the Chief Secretary, Government of Himachal Pradesh, by way of issuance of a Notification dated 10.04.2018 for examining and recommending measures relating to transportation safety of School-children. The matter underwent an extensive consultative and legislative process. Draft school transport safety guidelines were uploaded on the official website of the Government and concerned Department on 17.04.2018 and suggestions/comments were invited from all the stakeholders including the general public. The suggestions/comments received were examined by the Internal Sub-Committee constituted under the Chairmanship of Additional Commissioner, Transport. In the course of the examination of suggestions/comments, it was observed that some of the objectors had suggested that fixing the life of School Vehicles up to 9 years or 10 to 15 years would be prudent. After due deliberations on 05.05.2018, the Committee recommended incorporation of various safety measures including restriction on the life-span of a School-Vehicle up to 15 years. The matter was reconsidered at Government level and it was decided to provide Statutory-backing to the School Transport Safety Guidelines by inserting Rule 73-A in the Himachal Pradesh Motor Vehicles Rules, 1999,

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including restriction on the life-span of School Vehicle up to 15 years and restriction on the use of a school vehicle up to 15 years as from the date of its manufacture. He submitted that the above all demonstrates that the amendment was not incorporated in the Rules as a knee-jerk reaction, but due process was followed and suggestions from all the stakeholders were invited and the received comments were duly considered also before carrying out the necessary amendments. Learned Additional Advocate General made available for the consideration of the learned counsel for the petitioners as well as the Court the notifications etc., which were referred by him hereinabove and the process, as was submitted before us by the learned Advocate General, which ultimately culminated into the insertion of Rule 73-A in the 1999 Rules, was not disputed before us on behalf of the petitioners.

18. Learned Advocate General further submitted that the amendment prescribes that vehicles providing transportation facilities for students of educational institutions shall not be more than 15 years old and the amendment forms part of a comprehensive State Road Safety Policy issued by the State in furtherance of the binding directions of the Hon'ble Supreme Court of India's appointed Committee on Road Safety, aimed at preventing accidents, ensuring mechanical soundness of vehicles and protecting vulnerable road users, especially School- children/students of Educational Institutions from unsafe vehicles. Learned Advocate General

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submitted that Section 2(11) of the Motor Vehicles Act defines "Educational Institution Bus" to mean an omnibus owned by a College, School or other Educational Institution and used solely for the purpose of transporting its students or staff. He submitted that Rule 73-A applies uniformly to all such vehicles, whether self-operated or attached through contract, in order to maintain consistent safety standards for the benefit of the students. He submitted that the age restriction of 15 years is a preventive measure designed to avoid safety risks before they manifest. Learned Advocate General submitted that the fixation of a uniform maximum operational age of 15 years for Educational Institution vehicles in terms of the Rule under challenge was based on objective safety considerations and not on arbitrary differentiation. He submitted that older vehicles, even if maintained, are more prone to structural fatigue, material degradation, outdated safety technology and sudden mechanical failure risks, which cannot be detected through periodic fitness inspections. Learned Advocate General, by referring to the reply of the State, submitted that the vehicles used for transporting students are a distinct category under the Motor Vehicles Act and have always been subject to more stringent norms than any other vehicles, in light of the heightened duty of care which the State owes to young citizens. Learned Advocate General also submitted that as per Government Notification dated 07.02.2024, all Government vehicles which have either been declared condemned or have completed 15 years

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of operational life, whichever is earlier, are required to be sold through e-auction and mandatorily scrapped and, therefore, the allegation that the Government continues to operate its own vehicles beyond 15 years, is baseless. He also submitted that the applicability of Clause (xi) of Rule 73A(1)A. is not dependent on whether a party operates a full-fledged School or just an Educational Institution; it applies uniformly to all vehicles owned by or attached to Educational Institutions for transporting students, including Colleges, Training Centres and Vocational Institutes. He submitted that as the vehicles of the petitioners were registered and operated by Schools and Educational institutions for the transport of students, they fall within the ambit of Clause (xi) of the said Rule. He further submitted that the reasonable nexus with the object to be achieved by limiting the number of years of operation of such vehicles to 15 years was the safety of the students transported in such vehicles and the age limit was based on empirical safety data, expert recommendations, and the directions of the Hon'ble Supreme Court–appointed Committee on Road Safety.

19. Learned Advocate General referred to Notification dated 30th November, 2015, issued by the Government of Chhattisgarh and by referring to the same, he submitted that in terms of said Notification, Rule 76-B was added by the Chhattisgarh State in the existing Chhattisgarh Motor Vehicles Rules, 1994 and in terms of Rule 76-B Clause (16), it was

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prescribed that one of the conditions for School Bus Permit was to be that 'no vehicle shall be more than 12 years old'. Relevant portion of the said Rule is being quoted hereinbelow for ready reference:-

> *"…. …. …. ….. …. ….. …. …. ….*
> ***76-B Conditions for school bus permit**.- Subject to the provision of sub-section (2) of Section 74, the following conditions shall be attached to every school bus Permit, namely:-*
> *(1) Each bus shall be painted in yellow colour and "School Bus" shall be written in front and rear of the vehicle under sub-rule (5) of rule 114 of Chhattisgarh Motor Vehicle Rules, 1994. The name, address and telephone/mobile number of the School shall be written on a 09 inch broad strip on outer side of the school bus on both the sides.*
> *(2) The buses shall have a horizontal grill fitted on the windows.*
> *(3) Each school bus shall have first aid kit and fire extinguisher.*
> *….. …. …. …. ….. …..*
> *(16) No vehicle shall be more than 12 years old."*

Learned Advocate General also referred to the judgment of the Hon'ble Three-Judge Bench of the Chhattisgarh High Court in ***Ghanshyam Das Rungta Foundation Vs. Union of India WPC No. 3191 of 2022 and other connected matters*** and submitted that same and similar issue was raised before the Hon'ble Full Bench of the Chhattisgarh High Court with regard to the legislative competence of the Chhattisgarh State to frame a Rule of the kind that has been framed by the State herein and the same was

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answered by way of a Reference by the Hon'ble Three-Judge Bench of the Hon'ble Chhattisgarh High Court as under:-

> *"20. The amendment which is sought to be challenged in these petitions, has been brought in exercise of the powers conferred by Section 96 of the Act of 1988. Section 96 is in respect of the power of the State Government to make rules for the purpose Chapter-V which is with relation to control of transport vehicles. The petitioners, which are educational societies, run various schools and colleges and they use buses for transporting the students/children. It is important that the condition of the buses must be such so that it may not cause any kind of threat to the students/children while they are being plied on the roads. The State Government, in its wisdom has thought it appropriate not to allow such buses to be used as school bus which are more than 12 years old. If the State Government is concerned with the safety of the students/children, it cannot be said that it has caused any infringement of any of the rights of any Individual. There is nothing in Section 96(2) (xxxili) of the Act of 1988 which bars the State Government from laying down the conditions as has been laid in Rule 76-B(16) of the Rules of 1994. The question referred by the learned Division Bench already stands answered in view of the ratio laid down by the Apex Court in S. K. Bhatia (supra) and Subhash*

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Chandra (supra). As such, we are of the considered opinion that the reference made to this Bench by the learned Division Bench deserves to be answered in affirmative. It is answered accordingly."

20. Learned Advocate General also referred to the Uttar Pradesh Motor Vehicles Rules, 1998, as amended from time to time and by referring to Chapter IX-A thereof, which deals with Special Provisions for School Vehicles, he submitted that in terms of Rule 222-D, the age limit of School Vehicle/Educational Institution Bus shall not be more than 15 years old as from the date of initial registration.

21. Learned Advocate General also referred to the Haryana Motor Vehicles Rules, 1993, and by referring to Rule 67A, he submitted that by invoking the provisions of Section 96(2)(xxxiii), the age of buses plying as educational institution vehicles has been restricted to a maximum of 15 years.

22. He submitted that the above demonstrates that the action of the State is neither arbitrary nor discriminatory, nor beyond the legislative competence of the State and as a reasonable and rationale decision has been taken by the State, akin to the one taken by other States also in the larger safety of the students, the present petitions, being devoid of any merit, are liable to be dismissed.

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23. We have heard learned counsel for the parties and have also carefully gone through the pleadings and documents appended with the petitions.

24. We would like to refer to some of the statutory provisions of the Motor Vehicles Act at this stage.

25. Section 2(11) of the Motor Vehicles Act defines “educational institution bus” as under:-

> *“(11) “educational institution bus” means an omnibus, which is owned by a college, school or other educational institution and used solely for the purpose of transporting students or staff of the educational institution in connection with any of its activities;*

26. Section 2(24) of the Motor Vehicles Act defines “medium passenger motor vehicle” as under”:-

> *“(24) “medium passenger motor vehicle” means any public service vehicle or private service vehicle, or educational institution bus other than a motor cycle, adapted vehicle, light motor vehicle or heavy passenger motor vehicle;”*

27. Section 2(31) of the Motor Vehicles Act defines “permit” as under:-

> *“(31) “permit” means a permit issued by a State or Regional Transport Authority or an authority*

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prescribed in this behalf under this Act authorizing the use of a motor vehicle as a transport vehicle;"

28. Section 2(33) of the said Act defines "private service vehicle" as under:-

"(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;"

29. Section 59 of the Motor Vehicles Act, which deals with the power to fix the age limit of a motor vehicle, provides as under:-

*"**59. Power to fix the age limit of motor vehicle**.—(1) The Central Government may, having regard to the public safety, convenience and objects of this Act, by notification in the Official Gazette, specify the life of a motor vehicle reckoned from the date of its manufacture, after the expiry of which the motor vehicle shall not be deemed to comply with the requirements of this Act and the rules made thereunder:*

Provided that the Central Government may specify different ages for different classes or different types of motor vehicles.

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(2) Notwithstanding anything contained in sub-section (1), the Central Government may, having regard to the purpose of a motor vehicle, such as, display or use for the purposes of a demonstration in any exhibition, use for the purposes of technical research or taking part in a vintage car rally, by notification in the Official Gazette, exempt, by a general or special order, subject to such conditions as may be specified in such notification, any class or type of motor vehicle from the operation of sub-section (1) for the purpose to be stated in the notification.

(3) Notwithstanding anything contained in section 56, no prescribed authority or authorised testing station shall grant a certificate of fitness to a motor vehicle in contravention of the provisions of any notification issued under sub-section (1).

(4) The Central Government may, having regard to the public safety, convenience, protection of the environment and the objects of this Act, make rules prescribing the manner of recycling of motor vehicles and parts thereof which have exceeded their life."

30. Section 76 of the Motor Vehicles Act deals with application for private service vehicle permit and the same provides as under:-

*"**76. Application for private service vehicle permit**.—(1) A Regional Transport Authority may, on*

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an application made to it, grant a private service vehicle permit in accordance with the application or with such modification as it deems fit or refuse to grant such permit: Provided that no such permit shall be granted in respect of any area or route not specified in the application.

(2) An application for a permit to use a motor vehicle as a private service vehicle shall contain the following particulars, namely:—

(a) type and seating capacity of the vehicle;
(b) the area or the route or routes to which the application relates;
(c) the manner in which it is claimed that the purpose of carrying persons otherwise than for hire or reward or in connection with the trade or business carried on by the applicant will be served by the vehicle; and
(d) any other particulars which may be prescribed.

(3) The Regional Transport Authority if it decides to grant the permit may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:—

(i) that the vehicle be used only in a specified area or on a specified route or routes;
(ii) the maximum number of persons and the maximum weight of luggage that may be carried;
(iii) that the Regional Transport Authority may, after giving notice of not less than one month—
(a) vary the conditions of the permit;
(b) attach to the permit further conditions;
(iv) that the conditions of permit shall not be departed from, save with the approval of the Regional Transport Authority;

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(v) that specified standards of comforts and cleanliness shall be maintained in the vehicle;
(vi) that the holder of the permit shall furnish to the Regional Transport Authority such periodical returns, statistics and other information as the State Government may, from time to time, specify; and
(vii) such other conditions as may be prescribed."

31. Section 96(1) of the Motor Vehicles Act reads as under:-

*"**96. Power of State Government to make rules for the purposes of this Chapter**.—(1) A State Government may make rules for the purpose of carrying into effect the provisions of this Chapter."*

32. Section 96(2)(xxxiii) of the Motor Vehicles Act reads as under:-

"96(2)(xxxiii) any other matter which is to be or may be prescribed."

33. Section 2(11) of the Motor Vehicles Act defines an "educational institution bus" as an omnibus, which is owned by a college, school or other educational institution and used solely for the purpose of transporting students or staff of the educational institution in connection with any of its activities. Section 2(24) thereof defines "medium passenger motor vehicle" as any public service vehicle or private service vehicle or educational institution bus other than a motorcycle, adapted vehicle, light motor vehicle or heavy passenger

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motor vehicle. Section 2(31) of the Act defines “permit” as a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under the Motor Vehicles Act authorizing the use of a motor vehicle as a transport vehicle. Section 59, *inter alia,* provides that the Central Government may, having regard to the public safety, convenience and objects of this Act, by notification in the Official Gazette, specify the life of a motor vehicle, reckoned from the date of its manufacture, after the expiry of which the motor vehicle shall not be deemed to comply with the requirements of the Motor Vehicles Act and rules made thereunder. Section 76 of the Motor Vehicles Act provides that a Regional Transport Authority may, on an application made to it, grant a private service vehicle permit in accordance with the application or with such modification as it deems fit or refuse to grant such permit.

34. Sub-section (3) of Section 76 of the Act provides that the Regional Transport Authority, if it decides to grant the permit may, subject to any rules that may be made, attach to the permit any one or more of the conditions specified therein and Clause (vii) thereof states, "such other conditions as may be prescribed."

35. Section 96 of the Act confers upon the State Government the power to make rules for the purpose of carrying into effect the provisions of Chapter-V of the Act, of which, Section 76 is a part and Section 96(2)(xxxiii) confers upon the State Government,

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without prejudice to the generality of the Rule-making power, as is prescribed under Section 96, to make Rules “with respect to any other matter which is to be or may be prescribed”.

36. We will start by quoting the order passed by the Division Bench of this Court in CWP No. 73 of 2018 on 10.04.2018, which reads as under:-

> *“With anguish, grief and pain, we treat a news report published in vernacular newspapers "Indian Express"; "The Tribune"; "The Times of India"; "Punjab Kesari"; "Amar Ujala etc. as Public Interest Litigation, which reports the factum of unfortunate death of 27 passengers including 23 children in an accident involving a School bus, which took place at around 3:30 p.m. on 9th April, 2018 in Nurpur region of District Kangra.*
>
> *As per news report, a 42 seater School bus carrying school children after school hours fell into a 700 feet deep gorge resulting into unfortunate death of 27 passengers. 23 young children of age less than 12 years lost their lives on account of this unfortunate accident. The bus involved is stated to be a School bus of Wazir Ram Singh Pathania Memorial Public School. Few of the young lives lost in fact had just started going to the School since last few weeks. Newspaper report also suggests that a judicial inquiry into the accident has already been ordered by the Hon'ble Chief Minister of the State.*

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The magnitude of the young lives lost has indeed shocked us. In recent past only, young lives were lost when a Van carrying School children met with an accident in the suburbs of Shimla town itself.

This Court takes judicial notice of the fact that in recent past, number of private educational institutions have literally mushroomed in the State. One finds private educational institutions in every nook and corner of the State. We wonder whether there is any mechanism in place to supervise the management of these institutions as far as it relates to the transportation of children from their houses to such Schools and back. Obvious, such Schools are not catering to the students residing in immediate vicinity of the School. Therefore, but obvious, students come to the School by various transportation modes. One of such modes is School buses which are run and operated by the private Schools themselves. What is the mechanism in place to supervise the operation of such School buses with respective District Administration or Local Administrations? If none, then why and if there is such a mechanism in place, then how is the supervision being carried our by the Administration. We call upon the State to submit its response.

Coming to the present unfortunate accident, what was the age of the School bus and

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what was the mechanical) condition of the same has to be ascertained. Who was engaged tis drive the same and what was his age and medical fitness has the ascertained. What steps stood taken by the School management to ensure the road worthiness of the bus has to be ascertained. What steps were taken by the School management to ascertain medical fitness of the driver engaged to ply the bus has to be ascertained. How many children were being plied in the bus has to be ascertained.

Accordingly, Mr. Shrawan Dogra, learned Senior with Mr. Anup Rattan, Advocate (anuprattan22@gmail.com Mob. 94180958901), who is present in Court, is appointed as Araieus Curiae to assist the Court. Registry is directed to supply paper-book, complete in all respects, to learned counsel for the parties.

Learned Advocate General states that administration has already taken appropriate action. In fact, Hon'ble the Chief Minister has visited the spot and is in touch with the family members of the deceased and the injured children.

Mr. Rajesh Sharma, learned Assistant Solicitor General of India states that Sh. J.P. Nadda, Union Health Minister has also visited the spot and all possible assistance shall be provided to the injured for medical treatment.

Notice. Mr. Adarsh Sharma, learned Additional Advocate General waives notice on

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behalf of respondents No. 1 to 6 and Mr. V.B. Verma, Advocate, waives the same on behalf of respondent No. 7. Separate notice be issued to respondent No. 8, returnable for 17th April, 2018. Service upon respondent No. 8 be effected through respondent No. 6.

List on 17th April, 2018, by which date, respective respondents shall file their response(s) to the issues mentioned above."

37. This is the incident, which was referred to by the learned Advocate General in the course of his arguments, which led to the initiation of the process by the Government, which culminated into the insertion of Rule 73-A in the 1999 Rules by way of amendment. Relevant portion of Rule 73-A, which was inserted by way of amendment in the 1999 Rules, reads as under:-

"73-A. Conditions that may be inscribed in the permit relating to Buses/vehicles owned or attached with School/Educational Institutions.

A Regional Transport Authority may inscribe in the permit belonging to the School buses/vehicles owned or attached with a School/Educational Institution, the following conditions in addition to those as specified in sub-section (2) of section 72,73,74,76 as the case may be namely:-

(1) Transport related school safety Conditions:

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Currently, following categories of vehicles are being used to provide transport facilities for school children in the state:-

(a) Buses, self operated by schools;

(b) Buses of private contract carriage/Himachal Road Transport Corporation taken on lease basis by schools; and (c) Motor cab/Maxi Cab vehicle used to provide transportation facilities to school children.

The general and class-wise guidelines for the above three categories of vehicles and whenever the school management operates, contracts and uses any bus, they shall strictly adhere to these conditions:-

A General conditions applicable to all categories

i) The buses self-operated by the school and buses arranged on the basis of whole-time contract shall be painted in dark yellow colour and the name of the school shall be written clearly on both sides so that it can be easily identified. "School Bus" shall be written in the size of 400mm x 300mm on the back and front of the vehicle. If it is a leased bus/vehicle, then "On School Duty shall be clearly written on it. There should be a first aid box and drinking water in the school bus/vehicle.

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ii) *Details of the driver (name, photo, license number and telephone number) shall be displayed inside the bus and the name of the school or name of the owner of the bus, Child Helpline No. 1098, important emergency numbers (Police, Hospital) and vehicle registration number will be displayed in fluorescent colours at prominent places outside the bus. This information should be clearly visible to all passengers of the bus and people so that the school management/police or other officers can be informed when required.*

iii) *If the age of the students is less than 12 years then the number of students in the vehicle/bus will not exceed 1½ times the prescribed capacity of the vehicle. Student over 12 years of age will be considered as a person.*

iv) *School bus/vehicle seats should be in line with standards for students safety.*

v) *There should be sufficient lighting in the school bus/vehicle and there should be no curtain and any type of film on glasses, so that the inside activities will be clearly visible from the outside. Apart from this, the bus/vehicle will not have any kind of music device.*

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vi) *Under any circumstances, no unauthorized person shall be allowed to sit in the bus/vehicle, nor will it be allowed to place any objectionable materials like gas cylinders, kerosene, acids, liquor etc.*

vii) *School bus/vehicle must be stationary during boarding and deboarding of the children.*

viii) *In bus/vehicle, passenger and vehicle should have valid insurance under provisions contained in the Motor Vehicles Act, 1988.*

ix) *The School bus/vehicle shall be repaired/inspected at regular and fized intervals and it will be mandatory to get a fitness certificate under the provisions of the Motor Vehicles Act, 1988.*

x) *Route and stoppage of each school bus/vehicle will be required to be approved by Regional Transport Authority or School Management and it will be necessary to give information in this regard to the Transport Department and local administration.*

xi) *Vehicles providing transportation facilities to schools will not be more than 15 years old.*

xii) *It shall be mandatory to install Global Positioning System (GPS) in each school bus/vehicle. The school management and vehicle owner must ensure that this system is functioning smoothly at all tirnes and its*

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record is regularly checked and available, if required.

xiii) *The driver of the school bus/vehicle should have a valid driving license.*

xiv) *The driver's age should not be more than 60 years.*

xv) *The physical fitness of the bus/vehicle driver, including eye examination, should be done every year and the school management will provide the health card to the driver. School management will also ensure that the driver has been issued a fitness certificate by the competent authority according to safety standards under the Motor Vehicles Act, 1988.*

xvi) *Any school management, if found violating the provisions of the Motor Vehicles Act, 1988 or the rules made there under and the directions issued by the State Government or Hon'ble Court, will be punished as per the rules.*

xvii) *While driving, the use of mobile phone by the school bus/vehicle driver will be strictly prohibited.*

xviii) *School Management/Vehicle Owner will ensure fitting of tamper-proof Speed Governors in buses/vehicles with maximum speed limit of 40 KM per hour.*

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xix) For the convenience of divyangs/students, necessary and appropriate provisions will be mandatory in vehicles/buses as per the rules.

xx) *It will be ensured that school bus should have two ISI standard fire extinguishers of 5 Kg capacity installed in the bus, of which one should be placed in the driver's cabin and the other should be placed near the emergency exit gate. Drivers, conductor and female guard/attendant should be trained to operate firefighting equipment. School management will also ensure regular inspection of them so that they are in working condition at all times. Apart from this, it will be mandatory to have a fire extinguisher in the motor/maxi Cab and it will be kept in working condition at all times*."

38. In terms of Cause (xi) of the said Rule, vehicles providing transportation facilities to schools will not be more than 15 years old. As per the petitioners, the framing of Rule 73-A *per se* is *ultra vires*, as it is beyond the legislative scope of the State Government and further, as per the petitioners, Clause (xi) thereof is also bad in law, as the fixation of 15 years, as the period for which a vehicle can be used for providing transportation facilities to Schools is arbitrary and it further does violence to the provisions of Section 59 of the Motor Vehicles Act.

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39. Section 59 of the Motor Vehicles Act, 1988 provides for the power to fix the age limit of motor vehicle. Sub-section (1) of Section 59 provides that the Central Government may, having regard to the public safety, convenience and objects of the Act, by notification in the Official Gazette, specify the life of motor vehicle reckoned from the date of its manufacture, after the expiry of which, the motor vehicle shall not be deemed to comply with the requirements of the Act and the Rules made thereunder. Proviso thereto says that the Central Government may specify different ages for different classes or different types of motor vehicles.

40. As per the petitioners, in the light of this statutory provision, the State Government was not having any power to fix the age of a vehicle transporting students to the School as 15 years in terms of the impugned Rule.

41. In our considered view, there is a fallacy in the argument of the petitioners.

42. Section 59 of the Motor Vehicles Act, confers upon the Central Government the right to specify "**life of a motor vehicle reckoned from the date of its manufacture, after the expiry of which the motor vehicle shall not be deemed to comply with the requirements of the Motor Vehicles Act and the Rules made thereunder**".

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43. On the other hand, impugned Clause (xi) of Rule 73A (1)(A) of the HP Motor Vehicles Rules, 1999 has provides that a vehicle providing transportation facilities to School will not be more than 15 years old. Unlike Section 59, which specifies the life of a motor vehicle, this Clause of the Rule does not specify the life of the motor vehicle, but it only specifies as to for what period, obviously as from the date of its manufacture, a vehicle providing transportation facility to School can be used.

44. Upon the fixation of the life of a motor vehicle by the Central Government under Section 59 of the Act, after the expiry of said period, such a motor vehicle cannot be used because in terms of Sub-section (1) of Section 59, after the expiry of the specified life of a motor vehicle under Section 59, the motor vehicle shall not be deemed to comply with the requirements of the Act and the Rules made thereunder.

45. On the other hand, Clause (xi) of the Rule in issue does not create any such embargo and a vehicle which otherwise was providing transportation facility to Schools can be used for any other purpose, provided there is still time in the life of such a motor vehicle fixed by the Central Government under Section 59 of the Act.

46. Therefore, we are of the considered view that the State Government has not usurped upon the powers of the Central

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Government, as stand conferred upon the Central Government under Section 59 of the Motor Vehicles Act. The powers of the Central Government are sacrosanct and remain untouched, unfettered and unaltered, because, the impugned Clause does not transgress Section 59 of the Motor Vehicles Act by specifying the life of a motor vehicle providing transportation facility to School.

47. Coming to Section 96 of the Motor Vehicles Act, Section 96 is part of Chapter-V of the Motor Vehicles Act, which chapter deals with the control of transport vehicles.

48. Chapter-V of the Motor Vehicles Act, *inter alia*, provides for the necessity for permits, power of the State Government to control road transport, general provisions as to application for permits etc.

49. The petitioners have been granted the permits to ply their vehicles under Section 76 of the Act.

50. Section 96 of the Motor Vehicles Act, 1988 thereof provides for the power of the State Government to make Rules for the purposes of Chapter-V of the Motor Vehicles Act. This section reads as under:-

> ***"96. Power of State Government to make rules for the purposes of this Chapter. - (1) A State Government may make rules for the purpose of carrying into effect the provisions of this Chapter.***

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(2) Without prejudice to the generality of the foregoing power, rules under this section may be made with respect to all or any of the following matters, namely:

(i) the period of appointment and the terms of appointment of and the conduct of business by Regional and State Transport Authorities and the reports to be furnished by them;

(ii) the conduct of business by any such authority in the absence of any member (including the Chairman) thereof and the nature of business which, the circumstances under which and the manner in which, business could be so conducted;

(iii) the conduct and hearing of appeals that may be preferred under this Chapter, the fees to be paid in respect of such appeals and the refund of such fees;

(iv) the forms to be used for the purposes of this Chapter, including the forms of permits;

(v) the issue of copies of permits in place of permits lost, destroyed or mutilated;

(vi) the documents, plates and marks to be carried by transport vehicles, the manner in which they are to be carried and the languages in which any such documents are to be expressed;

(vii) the fees to be paid in respect of applications for permits, duplicate permits and plates;

(viii) the exemption of prescribed persons or prescribed classes of persons from payment of all or any or any portion of the fees payable under this Chapter;

(ix) the custody, production and cancellation on revocation or expiration of permits, and the return of permits which have been cancelled;

(x) the conditions subject to which, and the extent to which, a permit granted in another State shall be valid in the State without countersignature;

(xi) the conditions subject to which, and the extent to which, a permit granted in one region shall be valid in another region within the State without countersignature.

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(xii) the conditions to be attached to permits for the purpose of giving effect to any agreement such as is referred to in clause (iii) of sub-section (1) of section 67;

(xiii) the authorities to whom, the time within which and the manner in which appeals may be made;

(xiv) the construction and fittings of, and the equipment to be carried by, stage and contract carriages, whether generally or in specified areas;

(xv) the determination of the number of passengers a stage or contract carriage is adapted to carry and the number which may be carried;

(xvi) the conditions subject to which goods may be carried on stage and contract carriages partly or wholly in lieu of passengers;

(xvii) the safe custody and disposal of property left in a stage or contract carriage;

(xviii) regulating the painting or marking of transport vehicles and the display of advertising matter thereon, and in particular prohibiting the painting or marking of transport vehicles in such colour or manner as to induce any person to believe that the vehicle is used for the transport of mails;

(xix) the conveyance in stage or contract carriages of corpses or persons suffering from any infectious or contagious disease or goods likely to cause discomfort or injury to passengers and the inspection and disinfection of such carriages, if used for such purposes;

(xx) the provision of taxi meters on motorcabs requiring approval or standard types of taxi meters to be used and examining testing and sealing taxi meters;

(xxi) prohibiting the picking up or setting down of passengers by stage or contract carriages at specified places or in specified areas or at places other than duly notified stands or halting places and requiring the driver of a stage carriage to stop and remain stationary for a reasonable time when so

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required by a passenger desiring to board or alight from the vehicle at a notified halting place;

(xxii) the requirements which shall be complied with in the construction or use of any duly notified stand or halting place, including the provision of adequate equipment and facilities for the convenience of all users thereof; the fees, if any, which may be charged for the use of such facilities, the records which shall be maintained at such stands or places, the staff to be employed thereat, and the duties and conduct of such staff, and generally for maintaining such stands and places in a serviceable and clean condition;

(xxiii) the regulation of motorcab ranks;

(xxiv) requiring the owners of transport vehicles to notify any change of address or to report the failure of or damage to any vehicle used for the conveyance of passengers for hire or reward;

(xxv) authorizing specified persons to enter at all reasonable times and inspect all premises used by permit holders for the purposes of their business;

(xxvi) requiring the person in charge of a stage carriage to carry any person tendering the legal or customary fare;

(xxvii) the conditions under which and the types of containers or vehicles in which animals or birds may be carried and the seasons during which animals or birds may or may not be carried;

(xxviii) the licensing of and the regulation of the conduct of agents or canvassers who engage in the sale of tickets for travel by public service vehicles or otherwise solicit customers for such vehicles;

(xxix) the licensing of agents engaged in the business of collecting for forwarding and distributing goods carried by goods carriages;

(xxx) the inspection of transport vehicles and their contents and of the permits relating to them;

(xxxi) the carriage of persons other than the driver in goods carriages;

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> *(xxxii) the records to be maintained and the returns to be furnished by the owners of transport vehicles; and*
> *[(xxxiia) framing of schemes under sub-section (3) of section 67;*
> *(xxxiib) the promotion of effective competition, passenger convenience and safety, competitive fares and prevention of overcrowding;]*
> *(xxiii) any other matter which is to be or may be prescribed."*

51. A perusal of Section 96 demonstrates that it, *inter alia*, provides that a State Government may make Rules for the purpose of carrying into effect the provisions of Chapter-V of the Motor Vehicles Act. Sub-section (2) thereof provides that, without prejudice to the generality of the foregoing power, Rules under Section 96 may be made with respect to all or any of the matters which are mentioned under Sub-rule(2).

52. The above demonstrates that the rule-making power of the State Government is not confined to the matters which are mentioned under sub-rule (2) of Section 96 and the rule-making power conferred upon the State qua the matters which are mentioned under Sub-section (2) of Section 96 is without prejudice to the generality of the power conferred upon the State Government under sub-section (1) of Section 96.

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53. Section 96 (2) (xxxiii) further confers rule making power upon the State qua any matter which is to be or may be prescribed.

54. In light of the fact that the permits have been granted to the petitioners to ply the vehicles being used by them for providing transportation facilities to Schools, the petitioners cannot be permitted to state that the State Government does not have the power to make the rules for the purpose of carrying into effect the provisions of Chapter-V of the Motor Vehicles Act, as Section 76 is a part of Chapter-V of the Act and the State Government has the power to make rules for the purpose of carrying into effect the provisions of Chapter-V of the Motor Vehicles Act, which obviously includes its right to frame rules for the purpose of carrying into effect the provisions of Section 76 of the Act.

55. The contention of the learned counsel for the petitioners that because Section 96 does not confer any express power upon the State Government to fix the age of a vehicle which can be used for transportation facilities to schools, therefore the State Government cannot fix any age in this regard, according to us, cannot be accepted. The purpose of the rules is to supplement what is not there in the main statute. The main statute provides for the mode and manner of granting a permit for plying a private service vehicle, and

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Section 96 of the Act confers upon the State Government the power to make rules for the purpose of carrying into effect the provisions of Section 76, which obviously also includes the power to frame rules as to for how many years old vehicle can be used for providing transportation facilities to School.

56. We again state at this point that this power exercised by the State under Section 96(1) and (2) of the Motor Vehicles Act cannot be confused with Section 59 of the Motor Vehicles Act, because the power which is conferred upon the Central Government under Section 59 of the Motor Vehicles Act is a totally different power, as the said Section, i.e., Section 59, confers upon the Central Government the power to specify the life of a motor vehicle.

57. In other words, whether the life of a motor vehicle reckoned from the date of its manufacture, after which such a motor vehicle shall not be deemed to comply with the requirements of the Motor Vehicles Act and the rules made thereunder, should be 1 year, 5 years, 10 years, 15 years, 20 years, 30 years or 40 years is the domain of the Central Government. The State Government has no right to tinker or supplant the same by framing a rule contrary thereto.

58. The present Rule framed by the State Government restricting the use of vehicle for providing transportation facility to school as up to 15 years from the date of its manufacture has to play

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and run within the confines of Section 59 of the Motor Vehicles Act and if the life of any such vehicle which is being used for providing transportation facility to Schools has been fixed as 10 years by the Central Government, then, in the garb of this rule, none can use such a vehicle for 15 years for providing transportation to School. Similarly, if the life of a vehicle has been fixed by the Central Government as 20 years or 25 years or 30 years, then, though such a vehicle can be used for providing transportation facilities to school in terms of the rule in issue only for 15 years as from the date of its manufacture, but, thereafter such a vehicle can be put to use by the owner thereof for any other purpose. This is the difference and distinction between what is provided for under Section 59 of the Motor Vehicles Act, with regard to the power of the Central Government to specify the life of the motor vehicle *vis-a-vis* the rule framed by the State Government in the present case, in terms whereof, vehicle providing transportation facility to School will not be more than 15 years.

59. Hon'ble Supreme Court of India in State of ***T.N and another versus P. Krishnamurthy and others, (2006) 4 SCC 517***, has been pleased to hold in para-15 thereof the following with regard to the constitutionality or validity of subordinate legislation:-

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“The contention that the act of premature termination referred to in section 4A(3) is an executive act and not a legislative act, finds support from the decision in State of Haryana vs. Ram Kishan & Ors. [1988 (3) SCC 416] wherein this Court considered the scope of section 4-A, as it originally stood prior to the substitution thereof by Act No. 37 of 1986. Section 4-A, considered in that case, read as under :-

"4-A(1). Where the Central Government, after consultation with the State Government, is of opinion that it is expedient in the interest of regulation of mines and mineral development so to do, it may request the State Government to make a premature termination of a mining lease in respect of any mineral, other than minor mineral, and, on receipt of such request, the State Government shall make an order making a premature termination of such mining lease and granting a fresh mining lease in favour of such government company or corporation owned or controlled by government as it may think fit.

(2) Where the State Government, after consultation with the Central Government, is of opinion that it is expedient in the interest of regulation of mines and mineral development so to do, it may, by an order, make premature termination of a mining lease in respect of any minor mineral and grant a fresh lease

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> *in respect of such mineral in favour of such government company or corporation owned or controlled by government as it may think fit."*

60. Subsequently, Hon'ble Supreme Court of India in ***Naresh Chandra Aggarwal versus Institute of Chartered Accountants of India and others (2024) 13 SCC 241***, i.e., the judgment which was relied upon by the learned counsel for the petitioners also, has *inter alia* held as under qua the legal principles that have to be taken into consideration in adjudicating cases where subordinate legislations are challenged on the ground of being ultra vires the parent Act:-

> *"From reference to the precedents discussed above and taking an overall view of the instant matter, we proceed to distil and summarise the following legal principles that may be relevant in adjudicating cases where subordinate legislation are challenged on the ground of being "ultra vires" the parent Act."*

61. In our considered view, in the light of the observations which have been made by us hereinabove, it cannot be said that the rule which is under challenge, is ultra vires to the parent Act. Rule 73-A has been added by way of amendment to the already existing Himachal Pradesh Motor Vehicles Rules, 1999 and, therefore,

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it cannot be said that the State herein has no inherent power of its own to make Rules. In fact, the Motor Vehicles Rules stand framed by the State Government in exercise of powers conferred upon it under Section 96 read with Section 212 of the Motor Vehicles Act as far back as in the year 1999.

62. Hon'ble Supreme Court has been pleased to hold in the judgments referred by us that if a Rule is challenged as being ultra vires on the ground that it exceeds the power conferred by the parent Act, then, the Court must firstly determine and consider the source of power which is relatable to the rule and secondly, it must determine the meaning of the subordinate legislation itself and finally, it must decide whether the subordinate legislation is consistent with and within the scope of the power delegated.

63. In our considered view, the source of power relatable to the framing of Rule squarely flows from Section 96 of the Motor Vehicles Act and the factum of the State having the power to frame the rule cannot be doubted for the reason that the Rule has been framed with regard to a permit granted under Section 76 of the Motor Vehicles Act, which is a part of Chapter-V of the Motor Vehicles Act and Section 96 of the Motor Vehicles Act confers power upon the State Government to make rules for the purpose of carrying into effect the provisions of Chapter-96.

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64. Herein the meaning of the subordinate legislation is that in terms thereof, i.e., in terms of Rule 73-A, conditions have been spelled out which may be inscribed in the permit relating to buses/vehicles owned or attached with schools/educational institutions, including Clause (xi), in terms whereof, vehicles providing transportation facilities to Schools will not be more than 15 years. This rule is consistent with and within the scope of the power delegated to the State under Section 96 of the Motor Vehicles Act, because, in terms of the provisions of Section 96, the State Government has the competency to frame the rules for the purpose of carrying into effect the provisions of Chapter-V of the Motor Vehicles Act, which chapter, as observed hereinabove, also contains Section 76, which confers the power upon the Regional Transport Authority to issue private service vehicle permits.

65. Therefore, in light of the above discussions, in our considered view, the delegated rule-making power which has been exercised by the State is not only well within its domain and the same is also not ultra vires on the ground that it exceeds the power conferred by the parent Act or that it is inconsistent with the provisions of the parent Act in any manner.

66. As per the Chhattisgarh Motor Vehicles Rules, 1994, one of the conditions for school bus permit is that such a vehicle should

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not be more than 12 years old. Under the Uttar Pradesh Motor Vehicles Rules, the age of School Vehicle, i.e., the Educational Institution Bus, shall not be more than 15 years old from the date of initial registration and under the Haryana Motor Vehicles Rules, 1993, the age of buses plying as Educational Institutional Buses is to be not more than 15 years.

67. A perusal of the Rules of the said States further demonstrates that said condition has been added in the permits by the State by formulating the Rules in exercise of the powers conferred upon the State under Section 96(2)(xxxiii) of the Motor Vehicles Act, 1988.

68. The exercise of power by the respondent-State Government under Section 96(2)(xxxiii) of the Motor Vehicles Act, in terms whereof, Rule 73-A has been added in the Himachal Pradesh Motor Vehicles Rules, 1999, cannot also be said to be an exercise undertaken by the State to frame a Rule beyond its legislative competence. In fact, as was also argued by the learned Advocate General in terms of the Hon'ble Three-Judge Bench judgment of the Hon'ble High Court of Chhattisgarh, wherein the High Court of Chhattisgarh was dealing in Reference with the issue of the State Government not allowing buses more than 12 years old to be used for transporting students and children, the Hon'ble Three-Judge Bench held that there is nothing in Section 96(2)(xxxiii) of the Motor Vehicles

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Act, 1988, which bars the State Government from laying down the conditions as were laid down in the Rules by the State of Chhattisgarh.

69. The contention of the learned counsel for the parties that the financial viability etc. of the petitioners has not been taken into consideration while framing the Rule, in our considered view, does not render the Rule bad in law, for the reason that the issue of the safety of School-going children cannot be measured in monetary terms and according to us, the safety of the students is paramount. There is no merit in the contention raised by some of the learned counsel that the vehicles of the petitioners will be rendered useless after 15 years, because the Rule in issue does not in any manner prohibit the use of the vehicle after 15 years, provided it is duly registered with the Registering Authority and can be plied for any other purpose in terms of the provisions of the Motor Vehicles Act and Rules framed thereunder. According to us, it cannot be said that the period of 15 years, which has been prescribed as the age of a vehicle to be used for the transportation of students to school is arbitrary. As is evident from the Rules of the other States which have been quoted by us hereinabove, whereas the State of Chhattisgarh has fixed the age at 12 years, the States of Uttar Pradesh and Haryana have fixed the age of the vehicle at 15 years.

70. We are also of the considered view that simply because the travelling of students is not confined to educational

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institution buses and they also travel by other means including private stage carriage buses or Government stage carriage buses etc., which may be more than 15 years old, that does not make the condition imposed in the Rule that an educational institution bus should not be more than 15 years old, bad in law.

71. Restricting the age of a vehicle to 15 years as per Clause (xi) is a preventive measure to avoid safety risks before they actually indeed manifest. Older vehicles, even if maintained, are more prone to structural fatigue, material degradation, outdated safety technology, and sudden mechanical failure risks, which cannot be detected through periodic fitness inspections. According to us, the petitioners should be happy that the State of Himachal Pradesh has fixed the age of the vehicle at 15 years, because in light of the fact that the State of Himachal largely comprises of hilly areas and some States like the State of Chhattisgarh have deemed it proper that the age of such like vehicles should only be 12 years, nothing prevented the State Government from restricting the age of vehicle to less than 15 years for the purpose of transportation of students to Schools.

72. The contention of the petitioners that so long as a vehicle is roadworthy, it should be permitted to be plied for transportation of students to Schools cannot be acceded to, for the reason that roadworthiness of a vehicle cannot be the sole criteria while

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taking a call as to what should be the maximum age of a vehicle permitted to be used for transporting students to the Schools.

73. The life of the young generation is far more precious than the monetary considerations of the petitioners. One fatal incident on account of an aged vehicle can ruin and shatter the lives of families forever. Said loss cannot be compensated in any terms whatsoever. Prohibitive steps to minimize the occurrence of such incidents cannot be equated with economics, as the petitioners are praying this Court to do. Any prudent step which the State Government takes to ensure the safety of students, unless and until it is so arbitrary that it shocks the judicial conscience of the Court, requires to be protected and upheld by the Court.

74. In terms of Rule 73-A, the Rule recognizes the following categories of vehicles, which are being used to provide transport facilities for school children in the State:-

> "*(a) Buses self-operated by schools;*
>
> *(b) Buses of private contract carriage/HRTC taken on lease basis by the schools; and*
>
> *(c Motor cab, maxi cab, vehicle used to provide transportation facilities to school children."*

75. Rule 73-A(1)A prescribes general conditions applicable to all categories and Clause (i) thereof provides that the

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buses self-operated by the Schools and buses arranged on the basis of whole-time contract shall be painted in dark yellow colour and the name of the School shall be written clearly on both sides so that it can be easily identified. "School Bus" shall be written in the size of 400 mm x 300 mm on the back and front of the vehicle. If it is a leased bus/vehicle, then "On School Duty" shall be clearly written on it. There should be a first-aid box and drinking water in the School bus/vehicle. Clause (iii) thereof provides that if the age of students is less than 12 years, then the number of students in the vehicle/bus will not exceed one and a half times the prescribed capacity of the vehicle. Student over 12 years of age will be considered as a person. Clause (x) thereof provides that route and stoppage of each School bus/vehicle will be required to be approved by the Regional Transport Authority or School Management, and it will be necessary to give information in this regard to the Transport Department and Local Administration. Clause (xi) thereof, which in fact is the bone of contention in the present petition, provides that vehicles providing transportation facilities to Schools will not be more than 15 years old.

76. The Heading of Rule 73-A is "Conditions that may be inscribed in the permit relating to buses/vehicles owned or attached with School/Educational Institutions".

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77. Rule 73-A further provides that a Regional Transport Authority may inscribe in the permit belonging to the school bus/vehicle owned or attached with School/Educational Institution conditions prescribed thereinafter, in addition to those as specified in Sub-section (2) of Section 72, 73, 74, 76, as the case may be.

78. 'Educational Institution' has been defined in Black's Law Dictionary, Sixth Edition as under:-

> *"Educational institution. A school, seminary, college, university, or other educational establishment, not necessarily a chartered institution. As used in a zoning ordinance, the term may include not only buildings, but also all grounds necessary for the accomplishment of the full scope of educational instruction, including those things essential to mental, moral, and physical develop ment. Commissioners of District of Columbia v. Sharnon & Luchs Const. Co., 57 App. D.C. 67, 17 F.2d 219, 220."*

79. Similarly, 'School' has been defined in Black's Law Dictionary, Sixth Edition as under:-

> *"School. An institution or place for instruction or education."*

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80. Now, whereas in Rule 73-A, the words "School" and "Educational Institutions" have been used, but when it comes to Rule 73-A(1) which deals with transport-related school safety conditions and which also prescribes for general conditions applicable to all categories which are mentioned in Rule 73-A(1)A, the Rule mentions School only. However, if we read Rule 73-A harmoniously, the only conclusion which can be drawn is that reference to the word "School" in Rule 73-A(1) and Clauses thereof is not restricted to “Schools” so as to construe them as Educational Institutions imparting education up to 10th or 10+2 level only, but intent is to include all Educational Institutions, such as Nursing Institutions, Pharmacy Institutions, or for that matter, any other Institution, be it Engineering Institution or Medical Institutions etc. We say so for the reason that under Rule 73-A(1)A, the general conditions applicable to the categories of buses which are used to provide transport facilities for school children in the State, as are to be prescribed in the permit, include that buses self-operated by the School and buses arranged on the basis of whole-time contract shall be painted in dark yellow colour and the name of the school shall be written clearly on both sides, so that it can be easily identified. It is in continuation of Clause (i) and other Clauses thereof that clause (xi) is also there, which provides that vehicles providing transportation facilities to Schools will not be more than 15 years old. According to us, any Institution, be it a

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School, as it is commonly understood or any other Educational Institution, which is bound by the conditions, as is prescribed in Rule 73-A(1)A, is also bound by Cause (xi) thereof. In other words, an Institution which has to comply with conditions which are prescribed in Clauses (i) to (x) and Clauses (xii) to (xx) to the general conditions applicable to all categories, cannot claim immunity to Clause (xi) of the Rule. It was not disputed in the course of arguments, on behalf of the petitioners that they have to comply with Clauses (i) to (x) and (xii) to (xx) also, which Clauses independently have not been assailed by them in these writ petitions, save and except the challenge to Rule 73-A *per se*, on the ground that it was beyond the legislative competence of the State to frame the said Rule. Therefore, the contention raised by learned counsel for the parties that the impugned Rule is applicable only to Schools which are ordinarily imparting education up to 10th Class or 10+2 class and not to other Educational Institutions, is negated by holding that whichever Institution is bound by Causes (i) to (x) and Clauses (xii) to (xx) of Rule 73-A(1)A is also bound by Clause (xi) of the said Rules.

81. Accordingly, in light of the above discussions, as we do not find that Notification dated 12th October, 2018, in terms whereof, Rule 73-A was inserted in the Himachal Pradesh Motor Vehicle Rules, 1999 or that Rule 73-A was made by the State by exercising power beyond its

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legislative competence; or Clause (xi) of Rule 73-A(1)A is either arbitrary or offends the provisions of Section 59 or Section 96 of the Motor Vehicles Act, 1988, the present petitions, being devoid of any merit, are dismissed. We further hold that the said Clause is applicable to all Educational Institutions, to which the general conditions, which are mentioned in Rule 73-A(1)A are applicable; and the Rule/Clause cannot be read in a restrictive manner so as to construe that the word “School” includes Institutions which impart education up to 10th or 10+2 level classes only. Interim orders stand vacated forthwith. Pending miscellaneous application, if any, also stand disposed of. No order as to costs.

(Ajay Mohan Goel)
Judge

(Yogesh Jaswal)
Judge

October 31, 2026
(bhupender)

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