Jamalpura. In other words, *Babu's case* can and must be construed as setting-forth the general rule governing inheritance amongst Kambojs of Malerkotla. *Abdul Rahim's case* (supra), on the other hand, confines itself to the rule governing inheritance amongst Muslim Kambojs of Jamalpura only and not generally the Mohammadans of Malerkotla. So considered, no conflict survives.

(9) Having regard therefore, to the judicial precedent provided by *Abdul Rahim's case* (supra) and the instances of such law having been applied amongst Muslim Kambojs of Jamalpura, as noticed and considered in the order of reference, there can be no escape from the conclusion that in the matter of succession, parties here are governed by Muslim Personal Law and, therefore the daughters of Shahzada are, each, entitled to 1/7th share while both their brothers would be entitled to 2/7 share each.

(10) In the result, the plaintiffs are hereby granted a decree for joint possession as prayed for by them. The suit of the plaintiffs is consequently decreed with costs throughout. The reference too stands answered accordingly.

J.S.T.

Before : Jawahar Lal Gupta, J.

MEHAL SINGH AND OTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 9063 *of* 1987.

30th May, 1991.

Constitution of India, 1950—*Art.* 226—*Motor Vehicles Act* (*IV of* 1939)—*Government permitting tractor-trolleys to ply as public carriers—Regulation of plying of tractor-trolleys—State Transport Commissioner restricting operation of tractor trolleys to within a radius of* 25 *km. from place of residence or business where such vehicles are registered—Such restriction is reasonable—Tractor-trolleys cannot be encouraged to ply as commercial vehicles—Cause of traffic hazards on public roads—Such policy decision of Government cannot be set aside by High Court under Art.* 226—*No violation of any provision of M.V. Act shown—Action cannot be dubbed as arbitrary or unfair.*

Held, that the impugned order where under permits to tractor-trolley combination may be issued within an area of operation of 25 kms. of radius irrespective of the region, or district, from the place of their residence or business, where the tractor-trolley is registered, is apparently prospective in nature. It was passed after consideration of the relevant facts by the State Transport Commissioner. As a matter of policy a decision has been taken to permit the vehicles to be used only in a specified area. No provision of the Motor Vehicles Act, 1939 or any Rules is shown to have been violated in the process.

(Paras 4 & 5)

Held further, that it is common knowledge that tractor-trolley is a slow moving vehicle. It impedes and retards the speed of other vehicles on the road. Restriction on the area of operation is bound to reduce their number on the main roads. If as a measure of policy the competent authority has decided to discourage their entry on the main roads and restricted the area of operation, its action cannot be dubbed as arbitrary and unfair. The limitations of the vehicle being well known, the competent authority could well decide that the work of transporting goods should be mainly left with the trucks and not with the owners of tractor-trolleys. Reasons of economy, unfair competition, speed of the vehicle, its road-worthiness and other considerations which have weighed with the authorities being relevant to the decision, its decision on a policy matter cannot be set aside by this Court in the purported exercise of its jurisdiction under Article 226 of the Constitution.

(Para 6)

Civil Writ Petition under Articles 226 *and* 227 *of the Constitution of India praying that* :

(a) *a writ in the nature of certiorari, quashing the impugned circular/order, dated 17th July,* 1985 (*Annexure P/1*), be *issued;*

(b) *a writ in the nature of* Mandamus *directing the respondents to issue the new permits for tractor-trolleys for the whole of Punjab or for a radius of at least* 150 *Kilometers be issued;*

(c) *any other appropriate writ, order of direction, which this Honourable Court may deem fit in the circumstances, be issued;*

(d) *the issuance of advance notices to the respondents be dispenesd with;*

(e) *that the filing of the certified copies of the Annexures be dispensed with;*

(*f*) *that the operation of the impugned order/circular, dated 17th July, 1985, be stayed;*

(*g*) *that the costs of the writ petition may kindly be awarded to the petitioners; and*

(*h*) *the record of the case may kindly be summoned.*

S. S. Brar, Advocate, *for the petitioners.*

Rajiv Raina, A.A.G.Pb., *for the Respondents.*

JUDGMENT

Jawahar Lal Gupta, J.

In this group of eight petitions viz. CWP No. 9063 of 1987, CWP No. 6476 of 1986, CWP No. 5209 of 1987, CWP No. 6033 of 1987, CWP No. 6477 of 1986 CWP No. 6056 of 1987, CWP No. 8298 of 1987 and CWP No. 8603 of 1987 the petitioners, who own tractor-trolleys, are aggrieved by the order of the State Transport Commissioner, by which they were permitted to operate within a radius of 25 Kms. only from the place of their residence or business, where the tractor-trolley is registered. The petitioners claim that the restriction on the area of operation is arbitrary and unreasonable. The State on the other hand contends that the policy decision was in consonance with the provisions of law and was just and fair.

(2) Facts as given in CWP No. 9063 of 1987 alone may be noticed. The eighteen petitioners claim to be the owners running tractor-trolleys. It is averred that the State Government in the year 1973 decided to permit the running of tractor-trolleys as public carriers in the State of Punjab. In pursuance to this policy, permits were issued to the petitioners for plying the tractor-trolleys under the 'Public Carrier Permit' throughout the State of Punjab. This, according to the petitioners, affected the truck-operators adversely. As a result an order was issued on February 28, 1983, by which it was made incumbent for the owners of tractor-trolleys to provide hydraulic breaks in the trolleys. Not satisfied with this impediment placed in the way of the petitioners, the truck operators continued to exercise pressure which culminated in the impugned order issued by the State Transport Commissioner, Punjab, whereby the area of operation for tractor-trolleys was restricted to a radius of 25 kms. A copy of this order has been placed on record as Annexure P-1. The petitioners claim to have

represented against the order, but having failed to achieve the desired results, they have challenged this order through the present petition.

(3) In the written statement filed on behalf of the respondents, it has been *inter alia* averred that permits were initially issued to streamline the illegal operation of the tractor-trolley by the owners. It has been averred that a tractor-trolley is basically an agricultural equipment. The transportation of goods on hire and reward is basically the job of transport vehicles i.e. the trucks which are issued Public Carrier Permits/National Permits without any restriction. The tractor-trolleys permit holders are stated to have started an unhealthy competition with trucks which resulted in obstructing the smooth transportation of goods from one place to another. The restriction has been placed to discourage unhealthy competition between the tractor-trolleys owners and truck-operators so that the tractors are better utilised for local agricultural needs. It has also been averred that the order to reduce the operational area was issued after hearing the tractor-trolley operators and the truck-operators union in a meeting held on March 19, 1985. The provisions of law and public interest were kept in view while examining the matter and a policy decision to regulate the operational area was taken to avoid the unhealthy competition between the owners of tractor-trolleys and the truck-operators.

(4) I have heared Mr. S. S. Brar and other learned counsel. It has been contended by him that the condition of a permit issued to them cannot be varied. *Vide* orders dated May 21, 1981, the area of operation had been restricted to region, but by the impugned order the area of operation had been restricted to only a radius of 25 Kms. This, according to the learned counsel, was wholly arbitrary and violative of Article 14 of the Constitution of India. Mr. Rajiv Raina, on the other hand, has pointed out that the tractor-trolley was to be used solely for agricultural purposes and was exempted from the payment of road tax. However, in the year 1970 it was noticed that the tractor-trolleys were being illegally used for the carriage of passengers, marriage parties and general goods on hire and reward. Thereupon the Government decided to issue public carrier permits to the owners. He has particularly drawn my attention to the written statement filed on 6th April, 1986, wherein it has been *inter alia* averred that the tractor-trolley is primarily for agricultural operations in fileds and it cannot be encouraged to ply as a commercial vehicle as it posed a great traffic hazard on public roads. The drivers, it is averred, are not trained. The trolleys are not fitted with lights etc. As a result accidents

occurred resulting in loss of life and property. On this basis, the policy decision to restrict the operation of tractor-trolleys is stated to have been taken.

The impugned order reads as under :—

> "The matter has been examined in the light of provisions of M.V. Act and Rules framed thereunder and it has been decided that permits to tractor-trolley combination may be issued with area of operation of 25 Kms of radius irrespective of the region, or district from the place of their residence or business, where the tractor-trolley is registered subject to the condition that sufficient hydraulic braking-system is provided to trollies and all other conditions as imposed by the S.T.A. on these vehicles from time to time are fulfilled.
>
> You are, therefore, directed to take further necessary action in the matter keeping above in view."

(5) This order is apparently prospective in nature. It was passed after consideration of the relevant facts by the State Transport Commissioner. As a matter of policy a decision has been taken to permit the vehicles to be used only in a specified area. No provision of the Motor Vehicles Act, 1939 or any Rules is shown to have been violated in the process. Consequently, the only question that arises for consideration is as to whether or not the order is arbitrary.

(6) According to the writ petitioners, there is no rationale behind the impugned order. According to the respondents, the order had to be passed keeping in view the fact that the tractor-trolley is basically an agricultural implement and merit to be used in and around the fields and not on the highways for transportation of goods. Further the inadequacy of the tractor-trolley combination for transportation of goods, the lack of training on the part of the drivers, the slow speed resulting in congestion on main roads were the factors which have led the authority to adopt the impugned measure. These factors to my mind are neither irrelevant nor extraneous to the determination of the question in issue. It is common knowledge that tractor-trolley is a slow moving vehicle. It impedes and retards the speed of other vehicles on the road. Restriction on the area of operation is bound to reduce their number on the main roads. If as a measure of policy the competent authority has decided to discourage their entry on the main roads and

restricted the area of operation, its action cannot be dubbed as arbitrary and unfair. The limitations of the vehicle being well known, the competent authority could well decide that the work of transporting goods should be mainly left with the trucks and not with the owners of tractor-trolleys. Reasons of economy, unfair competition, speed of the vehicle, its roadworthiness and other considerations which have weighed with the authorities being relevant to the decision, its decision on a policy matter cannot be set aside by this Court in the purported exercise of its jurisdiction under Article 226 of the Constitution.

(7) I thus find no merit in these petitions, which are hereby dismissed. The State shall also be entitled to its costs, which are assessed at Rs. 1,000 per case.

R.N.R.

Before : Jawahar Lal Gupta, J.

S. JASWANT SINGH TEJ,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 4760 of 1982.

5th June, 1991

Constitution of India, 1950—*Art.* 226—*State Government granting premature increment to non-gazetted employees who did not participate in the strike on February* 8, 1978—*Petitioner denied benefits on the plea that department in which he worked was declared 'A' Class and it was proposed to confer Gazetted status to his post of Superintendent in the office of Director Animal Husbandry—On the facts found that Government treating petitioner as non-gazetted employee—Benefit of premature increment cannot be denied to him.*

Held, that whatever be the position of the post of Superintendent today or on any future date, it was a non-gazetted post on the crucial date viz. February 8, 1978. The petitioner was a non-gazetted employee on that date. There is no order on the record declaring the post and the petitioner to be gazetted with effect from February 8, 1978. The premature increment was to be given to the non-gazetted employees, who did not participate in the strike on February 8, 1978. The circular of the Government is absolutely