**AFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WPC No. 3191 of 2022**

Ghanshyam Das Rungta Foundation Through Secretary Dr. Sourabh Rungta S/o Mr. Santosh Rungta, Aged - 47 Years, R/o Rungta Bhawan, G.E. Road, Ganjpara, District - Durg, Chhattisgarh

--- **Petitioner(s)**

**versus**

**1 -** Union of India Through Secretary Ministry of Road Transport And Highways, Transport Bhawan, 1, Parliament Street, New Delhi,

**2 -** State of Chhattisgarh Through Secretary, Department of Transport, Mahanadi Bhawan, Atal Nagar, District - Raipur, Chhattisgarh

**3 -** Regional Transport Officer Tehsil And District - Raipur Chhattisgarh

**4 -** Regional Transport Officer Tehsil And District - Durg Chhattisgarh

--- **Respondent(s)**

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| For Petitioner(s) | : | Mr. Siddharth Shukla, Advocate. |
| For Respondent No. 1/ UoI | : | Mr. Tushar Dhar Diwan, Advocate. |
| For Respondents No. 2 to: 4/ State | | Mr. Prafull N Bharat, Advocate General alongwith Mr. Rahul Tamaskar, Government Advocate |

**WPC No. 3210 of 2022**

GDR Educational Society Through Secretary Mr. Sonal Rungta, S/o Mr. Santosh Rungta Aged About 48 Years, R/o Rungta Bhawan, G.E. Road, Ganjpara, District : Durg, Chhattisgarh

---**Petitioner(s)**

**Versus**

**1 -** Union of India Through Secretary, Ministry of Road Transport And Highways Transport Bhawan, 1, Parliament Street, New Delhi, District : New Delhi, Delhi

**2 -** State of Chhattisgarh Through Secretary, Department of Transport Mahanadi Bhawan, Atal Nagar, District : Raipur, Chhattisgarh

**3 -** Regional Transport Officer Tahsil And District Raipur, Chhattisgarh, District : Durg, Chhattisgarh

**4 -** Regional Transport Officer Tehsil And District Durg, Chhattisgarh

--- **Respondent(s)**

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| For Petitioner(s) | : | Mr. Siddharth Shukla, Advocate. |
| For Respondent No. 1/ UoI | : | Mr. Tushar Dhar Diwan, Advocate. |
| For Respondents No. 2 to: 4/ State | | Mr. Prafull N Bharat, Advocate General alongwith Mr. Rahul Tamaskar, Government Advocate |

**WPC No. 3369 of 2022**

Jan Pragati Education Society Through Secretary Mr. Harjeet Singh Hura, S/o Late Gulab Singh Hura, Aged - 55 Years, R/o JPES Office, 3rd Floor, Laxmi Plaza, Opposite Electricity Office, Budhapara, District - Raipur, Chhattisgarh

---**Petitioner(s)**

**Versus**

**1 -** Union of India Through Secretary Ministry of Road Transport And Highways Transport Bhawan, 1, Parliament Street, New Delhi.

**2 -** State of Chhattisgarh Through Secretary, Department of Transport, Mahanadi Bhawan, Atal Nagar, District - Raipur, Chhattisgarh

**3 -** Regional Transport Officer Tehsil And District - Raipur, Chhattisgarh

--- **Respondent(s)**

| | | |
|---|---|---|
| For Petitioner(s) | : | Mr. Siddharth Shukla, Advocate. |
| For Respondent No. 1/ UoI | : | Mr. Tushar Dhar Diwan, Advocate. |
| For Respondents No. 2 and 3/ State | : | Mr. Prafull N Bharat, Advocate General alongwith Mr. Rahul Tamaskar, Government Advocate |
| Date of Hearing | : | 10/03/2025 |
| Date of Order | : | 18 /03/2025 |

**Hon'ble Mr. Ramesh Sinha, Chief Justice**
**Hon'ble Mr. Ravindra Kumar Agrawal, Judge**
**Hon'ble Mr. Bibhu Datta Guru, Judge**

**C.A.V Order**

***Per* Ramesh Sinha, Chief Justice**

**1.** These petitions have been listed before this Bench in view of the order dated 17.02.2025 passed by a learned Division Bench of this High Court wherein a reference has been made to this Bench on the following question of law:

> *"Whether the State Government is competent in its rule-making authority including under Section 96(2)(xxxiii) of the Act of 1988 to lay down the conditions for grant of permit as stated in Section 76-B(16) of the Rules of 1994 and also in the light of the decision of the Supreme Court in Subhash Chandra (supra) followed in S.K.Bhatia (supra)?"*

**2.** In the above three petitions, the petitioners have questioned the constitutional validity of Rule 76-B(16) of the Chhattisgarh Motor Vehicles Rules, 1994 (for short, the Rules of 1994).

**3.** The facts, in brief, as projected by the petitioners are that all the three petitioners are Educational Societies and have established their educational institutions at Durg and Raipur for Engineering, Pharmaceuticals and Science & Technology. They own buses for carrying their students studying in their colleges and schools. The State of Chhattisgarh, on 30.11.2015 introduced amendment in the Rules of 1994 invoking powers under Section 96 of the Motor Vehicles Act, 1988 (*for short, the Act of 1988*) whereby Rule 76-B has been inserted with head note 'conditions for school bus permit' and in condition No. 16 of the said rule, it is stated that 'no vehicle shall be more than 12 years old' which is sought to be challenged by the petitioners stating that the

conditions for school bus permit can be prescribed under Section 76 of the Act of 1988 and not under Section 74 of the said Act. The buses owned by the petitioners are covered under the category of 'private service vehicle' as defined in Section 2(33) of the Act of 1988 and Rule 76-B(16) of the Rules of 1994 exceeds the limit of rule making authority. Section 96 of the Act of 1988 do not give power to the State Government to prescribe life of a vehicle under Rule 76-B(16) of the Rules of 1994 and it runs contrary to the decision rendered by the Division Bench of this Court in the matter of ***Dr. Sandeep Jain & Others v. State of Chhattisgarh & Others,*** in WPC No. 2004/2017, decided on 26.07.2018 wherein it has been declared that Rule 70-A of the Rules of 1994 is ultra vires to the Act of 1988 wherein a similar life of the stage carriage vehicles was prescribed. Hence, Rule 76-B(16) of the Rules of 1994, deserves to be struck down as it is in violation of Section 41(7) and Section 59 of the Act of 1988.

**4.** The State/respondent has filed its return to the writ petitions stating that Rule 76-B(16) of the Rules of 1994 is constitutionally valid and cannot be said to be violative of any of the fundamental rights of the petitioners as has been guaranteed under Part III of the Constitution of India and further, since the petitioners are the Societies registered under the Societies Registration Act, they do not fall under the definition of 'citizen' under Article 11 of the Constitution. The freedom guaranteed under Article 19 of the Constitution can be enforced by a citizen and the petitioners not being citizen, cannot challenge the validity of the provisions of Rule 76-B(16) on the ground of violation of Article 19. The Rule in question has been framed in exercise of powers conferred under Section 96 of the Act of 1988 and it neither puts an end to the registration of the vehicle nor does it make the vehicle legally dead. It merely prohibits its usage to carry school children whose safety cannot

be compromised at any cost and as such, prayer has been made for dismissal of these petitions.

**5.** All these three petitions were filed in the month of July, 2022. These petitions were listed before the learned Division Bench on 25.07.2022, 02.11.2022, 12.01.2023, 22.02.2023, 08.05.2023, 03.07.2023, 13.07.2023, 21.07.2023, 04.08.2023, 23.08.2023, 20.09.2023, 03.10.2023, 28.03.2024, 04.04.2024, 10.04.2024, 18.04.2024, 24.04.2024, 03.05.2024, 02.07.2024, 26.07.2024, 28.08.2024. Vide order dated 28.11.2024, these petitions were reserved for orders and vide order dated 17.02.2025, the learned Division Bench has referred the matter to this Bench for consideration on the following question of law:

> *"Whether the State Government is competent in its rule-making authority including under Section 96(2)(xxxiii) of the Act of 1988 to lay down the conditions for grant of permit as stated in Section 76-B(16) of the Rules of 1994 and also in light of the decision of the Supreme Court in* ***Subhash Chandra*** *(supra) followed in* ***S.K.Bhatia*** *(supra)?"*

**6.** By the present petitions, the petitioners seek declaration of Rule 76-B(16) of the Rules of 1994 as unconstitutional and ultra vires as the said Rule is directly affecting the plying of the buses by the petitioners as the buses which the petitioners sought to ply are more than 12 years old and Rule 76-B(16) provides that no school bus shall be more than 12 years old. The argument of the petitioners is that it contravenes Section 41(7) of the Act of 1988 which provides that a certificate of registration shall be valid for a period of 15 years from the date of issue of such certificate and shall be renewable and in contravention of Section 59, the respondent No. 1 had fixed the age limit of the school buses. Section 96 of the Act of 1988 gives power to the State Government to make rules for various purposes.

**7.** The petitioners harp upon the decision of a Division Bench of this High Court in ***Dr. Sandeep Jain*** *(supra),* wherein the constitutional validity of Rule 70-A of the Rules of 1994 was under challenge which stood struck down. The learned Division Bench itself has observed that the amendment in Rule 76-B of the Rules of 1994 incorporating condition No. 16 requiring that no school bus shall be more than 12 years old, was brought by the rule-making authority upon the decision of this Court in ***Subas Muduli v. State of Chhattisgarh*** {WPPIL No. 32/2015, decided on 13.06.2016} wherein the facts of that case was that kid aged about 4 years was crushed under the wheels of a bus which was supposed to take him to his school. The unfortunate father wrote a letter to the then Chief Justice of this Court not claiming any compensation or any relief personal to him, but only praying that the Court may take action to ensure that such unfortunate accidents are avoided in the future.

**8.** Section 96(2)(xxxiii) of the Act of 1988 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.*
>
> *(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:—*
>
> *xxx xxx xxx*
>
> *(xxxiii) any other matter which is to be or may be prescribed."*

**9.** Rule 76-B(16) of the Rules of 1994 reads as under:

> *"**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:-*
>
> *xxx xxx xxx*
>
> *16. No school bus shall be more than 12 years old.*"

**10.** In the matter of ***Subhash Chandra & Others v. State of U.P. & Others*** {(1980) 2 SCC 324}, the Apex Court has observed as under:

> *"4. Section 51(2)(x) authorises the impost of any condition, of course, having a nexus with the statutory purpose. It is undeniable that human safety is such purpose. The State's neglect in this area of policing public transport is deplorable but when it does act by prescribing a condition the court cannot be persuaded into little legalism and harmful negativism. The short question is whether the prescription that the bus shall be at least a seven-year old model one is relevant to the condition of the vehicle and its passenger's comparative safety and comfort on our chaotic highways. Obviously it is. The older the model, the less chances of the latest safety measures being built into the vehicle. Every new model incorporates new devices to reduce danger and promote comfort. Every new model assures its age to be young, fresh and strong, less likely to suffer sudden failures and breakages, less susceptible to wear and tear and mental fatigue leading to unexpected collapse. When we buy a car or any other machine why do we look for the latest model? Vintage vehicles are good for centenarian display of curios and cannot but be mobile menaces on our notoriously neglected highways. We have no hesitation to hold, from the point of view of the human rights of road users, that the condition regarding the model of the permitted bus is within jurisdiction, and not to prescribe such safety clauses is abdication of statutory duty."*

**11.** In ***S.K.Bhatia & Others v. State of U.P. & Others*** {AIR 1983 SC 988} after placing reliance on the judgment in ***Subhash Chandra*** (supra), it has been observed by the Apex Court, as under:

> **12.** *"The vires of Condition No. 18 is once again challenged in these writ petitions. The grounds of challenge, however, are most insubstantial. It was said that there was no such condition in the case of omnibuses and therefore, there was an infringement of Art. 14 of the Constitution. It is incorrect to say that there is no such condition in the case of omnibuses. In paragraph 5 of the counter-affidavit filed in a Writ Petition Nos. 18-21 of 1981,*

*it is stated that in the case of omnibuses, there is a condition that the vehicle should be replaced on the expiry of five years from the date of registration. Further omnibuses and mini buses constitute different classes and are not comparable. Another submission was that condition No. 18 is impossible of fulfillment since one of the manufacturers of chassis of mini buses (Telco) is no longer manufacturing such chassis. This is denied in the counter-affidavit and we presume there are other manufacturers in the country, who make or produce the required chassis. In any case, that is a situation which can be remedied by the transport authorities. The petitioners can always pursue the remedies given to them under the Motor Vehicles Act by way of appeal and revision. We fail to see any infringement of any constitutional right. Another submission was that the authority competent to impose the condition, was not the Regional Transport Authority, but the competent authority under sec 4 of the Utter Pradesh Motor Vehicles (Special Provisions) Act. We have already referred to Subhash Chander's case where it has been held that the source of a power for imposing condition No 18 is Sec. 51 (2) (x) of the Motor Vehicles Act. Under Sec. 51 (2) (x), the authority empowered to impose the condition is the Regional Transport Authority. Section 4 of the Uttar Pradesh Motor Vehicles (Special Provisions) Act deals with the authorisation of use of private mini buses as stage carriages within specified limits covered by an approved scheme and has nothing whatever to do with the imposition of conditions on mini buses playing as contract carriages. It was suggested that the real object of Condition No. 13 is not the safety of the passengers as thought in Subhash Chander's case, but to eliminate mini buses from the field. There is no basis at all for this submission. As we said, there is no substance in any one of these submissions advanced by the petitioners. All the writ petitions are, therefore, dismissed with costs.*

**13.** The aforesaid two decisions of the Apex Court has been followed by the

Allahabad High Court in ***Radhe Shyam Sharma v. Regional Transport Authority, Kathgoda, Nainital*** {AIR 1991 All 158}.

**14.** From perusal of the judgment rendered by a Division Bench of this High Court in ***Dr. Sandeep Jain*** (*supra*), it appears that the judgment passed by the Apex Court in ***S.K.Bhatia*** (supra) ***and Subhash Chandra*** (supra) has neither been taken into consideration were not brought to the notice of the learned Division Bench wherein also similar issue was involved.

**15.** Article 141 of the Constitution of India states that a law declared by Supreme Court is binding on all the Courts within the territory of India. The object of following binding precedents is to ensure broad consistency and uniformity in deciding questions of law.

**16.** A Constitution Bench of the Madhya Pradesh High Court, in ***Jabalpur Bus Operators Association v. State of M.P.*** {2002 SCC OnLine MP 631} observed as under:

> *"6. Article 141 of the Constitution of India envisages that-*
>
> *"The law declared by the Supreme Court shall be binding on all Courts within the territory of India."*
>
> *Therefore, all Courts in India are bound to follow the decision of the Apex Court, exception being doctrine of 'per incuriam' and 'sub-silentio'. This article empowers the Apex Court to declare the law which becomes the law of the land which is essential for a proper administration of justice with the expectation that like cases should be decided alike. Every Court is bound to follow any case decided by a Court above it in the hierarchy and Court is bound by precedents. A case is regarded as a precedent when it furnishes rules which may be applied in settling the rights of the parties. The doctrine "Stare-dedsis", commonly called "The doctrine of precedent" means adherence to decide cases on settled principles and not to disturb matters which have*

*been established by judicial decisions. The precedent should serve as a rule for future guidance in deciding analogous cases (Words and Phrases, Permanent Edition Vol. 33 P, 372-373). It cannot be doubted that in the development of law, promotion of consistency and certainty in decisions on all the law is maintained and inconsistency avoided. However, perusal of various decisions demonstrates that the Apex Court and High Courts have been called upon to consider the question of binding precedents from time to time. Indisputable question is that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. There seems no dispute to the proposition that decision of Larger Bench of the Apex Court is binding on Smaller Bench of the same Court and the High Courts. The difficulty arises in case of conflict between the two decisions by Benches consisting of same number of Judges, whether to follow the earlier or later and in absence of the Apex Court decision, similar difficulty may arise with regard to the High Court decisions. The normal rule is that in the absence of any decision of the Apex Court, subordinate Courts are bound to follow the decisions of High Court to which they are subordinate, and where conflict is between the judgments of a Single Bench and Division Bench, Division Bench decision will have to be followed and where there is conflict between Division Bench and Larger Bench, the decision of Larger Bench has to be followed. But where the conflict is between two decisions pronounced by Benches consisting of same number of Judges, difficulty arises which decision is to be followed when after careful examinations of the decisions, conclusion is that both of them directly apply to the case before the Court. High Courts have expressed different views, we have found, some taking the line that the Court will be at liberty to follow that decision which seems to it more correct irrespective of the fact it is earlier or later in*

*point of time while others hold that the earlier decision should be followed."*

**17.** The Apex Court, in ***Dental Council of India v. Dr. Hedgewar Smruti Rugna Seva Mandal, Hingoli & Others,*** {(2017) 13 SCC 115}, observed as under:

*"23. The High Court has to realize the nature of the lis or the controversy. It is quite different. It is not a construction which is built at the risk of a plaintiff or the defendant which can be demolished or redeemed by grant of compensation. It is a situation where the order has the potentiality to play with the career and life of young. One may say, "… life is a foreign language; all mis-pronounce it", but it has to be borne in mind that artificial or contrived accident is not the goal of life.*

*24. There is no reason to invite a disaster by way of an interim order. A Judge has to constantly remind himself about the precedents in the field and not to be swayed away by his own convictions. In this context, the oft-quoted passage from Felix Frankfurter[13] would be apt to remember:-*

> *"For the highest exercise of judicial duty is to subordinate one's personal pulls and one's private views to the law of which we are all guardians ? those impersonal convictions that make a society a civilized community, and not the victims of personal rule."*

*25. That leads us to say something about following the precedents. The purpose is to have consistency. A three-Judge Bench in State of Andhra Pradesh and others v. A.P. Jaiswal {(2001) 1 SCC 748} observed: (SCC p. 761, para 24)*

> *"24. Consistency is the cornerstone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve*

> *consistency in judicial pronouncements, the courts have evolved the rule of precedents, principle of stare decisis, etc. These rules and principle are based on public policy…."*

*26. In Arasmeta Captive Power Company Private Limited and another v. Lafarge India Private Limited {(2013) 15 SCC 414}, dealing with the matter that related to the field of arbitration, the Court emphatically observed that it is an "endeavour to clear the maze, so that certainty remains "A Definite" and finality is "Final"". (SCC p. 419, para 2)*

*27. In this regard, we may travel a decade and a half back. In Chandra Prakash and others v. State of U.P. {(2002) 4 SCC 234}, it has been held: (SCC p. 245, para 22)*

> *"22. … The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court."*

*28. In the instant case, the precedents are clear and luculent. It does not allow any space for any kind of equivocation. In Priya Gupta {(2012) 7 SCC 433}, the Court had requested the High Courts to ensure strict adherence to the prescribed time schedule, process of selection and role of merit and except in very exceptional cases, to decline interim orders. The Court had added the words "humility at our command". The "grammar of humility in law" in the hierarchical system basically means to abide by the precedents unless distinguishable but not to ignore them and pass orders because of an individual notion or perception. Adjudication in accordance with precedents is cultivation of humility. As long as a precedent is binding under the constitutional scheme, it*

*has to be respected by all. It has been said by Simone Weil {Simone Weil (1909-1943), Gravity and Grace, 1947}:*

> *"In the intellectual order, the virtue of humility is nothing more nor less than the power of attention".*

**18.** In ***Dr. Shah Faesal & Others v. Union of India & Another*** {(2020) 4 SCC 1}, a Constitution Bench of the Apex Court observed as under:

> *"17. This Court's jurisprudence has shown that usually the Courts do not overrule the established precedents unless there is a social, constitutional or economic change mandating such a development. The numbers themselves speak of restraint and the value this Court attaches to the doctrine of precedent. This Court regards the use of precedent as indispensable bedrock upon which this Court renders justice. The use of such precedents, to some extent, creates certainty upon which individuals can rely and conduct their affairs. It also creates a basis for the development of the rule of law. As the Chief Justice of the Supreme Court of the United States, John Roberts observed during his Senate confirmation hearing, "It is a jolt to the legal system when you overrule a precedent. Precedent plays an important role in promoting stability and even handedness." {Congressional Record – Senate, Vol. 156, Pt. 7, 10018 (7-6-2010)}*
>
> *18. Doctrine of precedents and stare decisis are the core values of our legal system. They form the tools which further the goal of certainty, stability and continuity in our legal system. Arguably, judges owe a duty to the concept of certainty of law, therefore they often justify their holdings by relying upon the established tenets of law.*
>
> *19. When a decision is rendered by this Court, it acquires a reliance interest and the society organizes itself based on the present legal order. When substantial judicial time and resources are spent on references, the same should*

*not be made in a casual or cavalier manner. It is only when a proposition is contradicted by a subsequent judgment of the same Bench, or it is shown that the proposition laid down has become unworkable or contrary to a well established principle, that a reference will be made to a larger Bench. In this context, a five Judge Bench of this Court in Chandra Prakash v. State of U.P. {(2002) 4 SCC 234}, after considering series of earlier ruling reiterated that: (SCC p. 245, para 22)*

> *"22. … The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court."*
>
> *xxx xxx xxx*

*28. The rule of per incuriam has been developed as an exception to the doctrine of judicial precedent. Literally, it means a judgment passed in ignorance of a relevant statute or any other binding authority [see Young v. Bristol Aeroplane Co. Ltd., {1944 KB 718 (CA)}. The aforesaid rule is well elucidated in Halsbury's Laws of England in the following manner {3rd Edn. Vol. 22, Para 1687, pp. 799-800}:*

> *"1687. … the court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of a coordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords.*

*29. In this context of the precedential value of a judgment rendered per incuriam, the opinion of Venkatachaliah, J. in*

*the seven judge Bench decision of A.R. Antulay v. R.S. Nayak, {(1988) 2 SCC 602} assumes great relevance: (SCC p. 716, para 183)*

> *"183. But the point is that the circumstance that a decision is reached per incuriam, merely serves to denude the decision of its precedent value. Such a decision would not be binding as a judicial precedent. A co-ordinate Bench can disagree with it and decline to follow it. A larger Bench can overrule such decision. When a previous decision is so overruled it does not happen — nor has the overruling Bench any jurisdiction so to do — that the finality of the operative order, inter partes, in the previous decision is overturned. In this context the word 'decision' means only the reason for the previous order and not the operative order in the previous decision, binding inter partes. …Can such a decision be characterised as one reached per incuriam? Indeed, Ranganath Misra, J. says this on the point: (para 105)*
>
> > *"Overruling when made by a larger Bench of an earlier decision of a smaller one is intended to take away the precedent value of the decision without effecting the binding effect of the decision in the particular case. Antulay, therefore, is not entitled to take advantage of the matter being before a larger Bench."*

*30. The counsel arguing against the reference have asserted that the rule of per incuriam is limited in its application and is contextual in nature. They further contend that there needs to be specific contrary observations which were laid without considering the relevant decisions on the point, in which case alone the principle of per incuriam applies.*

*31. Therefore, the pertinent question before us is regarding the application of the rule of per incuriam. This Court while deciding the Pranay Sethi case referred to an*

*earlier decision rendered by a two judge Bench in Sundeep Kumar Bafna v. State of Maharashtra, {(2014) 16 SCC 623}, wherein this Court emphasized upon the relevance and the applicability of the aforesaid rule: (Sundeep Kumar Bafna case, SCC p. 642, para 19)*

> *"19. It cannot be overemphasized that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta.*

*32. The view that the subsequent decision shall be declared per incuriam only if there exists a conflict in the ratio decidendi of the pertinent judgments was also taken by a five-Judge Bench decision of this Court in Punjab Land Development and Reclamation Corpn. Ltd. v. Labour Court (1990) 3 SCC 682 (SCC pp. 706-07, para 43):*

> *"43. As regards the judgments of the Supreme Court allegedly rendered in ignorance of a relevant constitutional provision or other statutory provisions on the subjects covered by them, it is true that the Supreme Court may not be said to "declare the law" on those subjects if the relevant provisions were not really present to its mind. But in this case Sections 25G and 25H were not directly attracted and even if they could be said to have been attracted in laying*

> *down the major premise, they were to be interpreted consistently with the subject or context. The problem of judgment per incuriam when actually arises, should present no difficulty as this Court can lay down the law afresh, if two or more of its earlier judgments cannot stand together.*

**19.** The judgment passed by the Hon'ble Apex Court in the matter of ***S.K.Bhatia*** (supra) and ***Subhash Chandra*** (supra) was not brought to the notice of the co-ordinate Division Bench of this Court while considering the case of ***Dr. Sandeep Jain*** (*supra*), and further while exercising powers conferred under Section 96 of the Act of 1988, the State Government has framed Rule 76-B(16) of the Rules of 1994 which cannot be said to be beyond the statutory competence of the State Government in view of the aforesaid two judgments of the Hon'ble Supreme Court in ***S.K.Bhatia*** (supra) and ***Subhash Chandra*** (supra). The judgment passed by the co-ordinate Division Bench of this Court in ***Dr. Sandeep Jain*** (*supra*), was on different footing as in the said case, the Central Motor Vehicle Rules was amended by the State Government which the State Government could not do, and as such, it was declared ultra vires under Section 59 of the Act of 1988. In ***Dr. Sandeep Jain*** (supra), Rule 70-A was added to the Rules of 1994 whereas, the present case relates to Rule 76-B(16) which deals with a particular type of vehicle.

**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)(xxxiii) 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 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.

**21.** Let these matters be listed before the Bench having the roster.

| | | |
|---|---|---|
| Sd/- | Sd/- | Sd/- |
| (Bibhu Datta Guru) | (Ravindra Kumar Agrawal) | (Ramesh Sinha) |
| **JUDGE** | **JUDGE** | **CHIEF JUSTICE** |

Amit