(2017) 01 KL CK 0022

In the High Court Of Kerala

Case No : W.A. Nos. 2511, 2512, 2513, 2515 of 2016 and W.A. Nos. 7, 49, 50 and 54 of 2017

Baiju P.K. APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 17-01-2017

Acts Referred:
Central Motor Vehicles Rules, 1989 — Rule 115
Motor Vehicles Act, 1988 — Section 110

Citation : (2017) AIR(Kerala) 100 : (2017) 2 ILRKerala 438 : (2017) 2 KerLJ 77 : (2017) 1 KLT 862

Hon'ble Judges : Mr. Mohan M. Shantanagoudar, CJ. and Mr. Anil K. Narendran, J.

Bench : Division Bench

Advocate : G. Prabhakaran, Advocate, for the Petitioner; P. Santhosh Kumar, Special Government Pleader, for the Respondent Nos. 1, 2 and 4; Sri. N. Nagaresh, Assistant Solicitor General, for the Respondent No. 3

Final Decision : Dismissed

Judgement

Anil K. Narendran, J.—These writ appeals arise out of the common judgment of the learned single Judge dated 08.12.2016 in W.P.(C)No.18028 of 2016 and connected cases.

2. The appellants in W.A.Nos.7, 49, 50 and 54 of 2017 (arising out of W.P.(C)Nos.26433, 20015, 25629 and 25646 of 2016 respectively) are the manufacturers/authorised dealers of commercial passenger/goods vehicles under different categories as specified under the Motor Vehicles Act, 1988 and the Central Motor Vehicles Rules, 1989. The appellants in W.A.Nos.2511, 2512, 2513 and 2515 of 2016 (arising out of W.P.(C)Nos.40105, 40248, 40119 and 40252 of 2016 respectively) are persons who purchased Heavy Passenger Motor Vehicle chassis fitted with diesel engines meeting the Mass Emission Standards ''Bharat Stage III'' (for brevity ''BS III'') for the purpose of stage carriage/contract carriage operations after body building. As per the sale certificate/tax invoice

produced along with the writ petitions, they purchased chassis fitted with diesel engine meeting ''BS III'' mass emission standards on 22.11.2016, 31.10.2016, 24.11.2016 and 31.10.2016 respectively.

3. By virtue of Ext.P1 notification, i.e., G.S.R.643(E) dated 19.8.2015, the Mass Emission Standards ''Bharat Stage IV'' (for brevity ''BS IV''), as contemplated under sub-rule (15) of Rule 115 of the Central Motor Vehicles Rules 1989, has been implemented in various districts, States and Union Territories, including State of Kerala, in respect of four wheeled vehicles manufactured on and after 1.4.2016, except the four wheeled transport vehicles plying on Inter-State Permits or National Permit or All India Tourist Permits, within the jurisdiction of the said districts, States and Union Territories.

4. According to the appellants, by Ext.P1 notification, ''BS IV'' standards have been implemented only for four-wheeled vehicles and have no application to vehicles having more than four wheels, i.e., six wheeled vehicles/chassis manufactured/ purchased by the appellants after 1.4.2016, which are fitted with diesel engine meeting only ''BS III'' emission standards.

5. On 22.3.2016, the 2nd respondent Transport Commissioner issued Ext.P2 circular specifying that the Mass Emission Standards ''BS IV'' shall be applicable in the State of Kerala in respect of four wheeled vehicles manufactured on and from 1.4.2016, except the four wheeled transport vehicles plying on Inter-State Permits or National Permits or All India Tourist Permits, within the jurisdiction of the State. Later, the 2nd respondent issued Ext.P3 communication dated 29.4.2016 to all Deputy Transport Commissioners, Regional Transport Officers, etc., stating that ''BS IV'' norms are applicable to vehicles manufactured on or after 1.4.2016 and having four or more than four wheels. Still later, the 2nd respondent issued Ext.P4 circular dated 23.5.2016, according sanction to register ''BS III'' vehicles manufactured by M/s.Daimler India Commercial Vehicles Pvt. Ltd. and M/s.VE Commercial Vehicles, for a period of three months from the date of the circular, on public interest, on condition that no further exemption will be granted at any event.

6. Challenging Ext.P3 communication of the 2nd respondent, one of the manufacturers (M/s. Autobahn Trucking) approached this Court in W.P.(C)No.18028 of 2016 and obtained an interim order dated 6.6.2016 staying the operation of Ext.P3. Thereafter, the 2nd respondent has clarified in Ext.P5 communication dated 17.6.2016 that ''BS IV'' specifications are applicable only for vehicles having four wheels.

7. In W.P.(C)No.18028 of 2016 and other writ petitions filed by the manufacturers, Ext.P3 communication dated 29.4.2016 of the 2nd respondent was under challenge, contending that by Ext.P1 notification ''BS IV'' standards have been implemented only for four-wheeled vehicles. In the writ petitions filed by those who purchased six wheeled vehicles/chassis manufactured after 1.4.2016, which are fitted with diesel engine meeting only ''BS III'' standards,

Ext.P1 notification is also under challenge, contending that implementation of ''BS IV'' standards to six wheeled transport vehicles intended for stage carriage/ contract carriage operations is unreasonable and violative of Articles 14 and 19(1)(g) of the Constitution of India. The writ petitioners have also sought for a writ of mandamus commanding the Registering Authorities to accept their applications for registration untrammelled by the conditions specified in Exts.P1 and P3.

8. The learned Single Judge, after considering the rival contentions, repelled the challenge made against Ext.P1 notification and held that the said notification applies to all ''M'' and ''N'' category vehicles. Accordingly, all the writ petitions were dismissed. Feeling aggrieved by the judgment of the learned Single Judge, the appellants/writ petitioners are before this Court in these writ appeals.

9. We heard the arguments of learned counsel for the appellants/writ petitioners, learned Senior Government Pleader appearing for the State and learned Assistant Solicitor General of India representing the Central Government.

10. Based on the arguments advanced by both the sides, we shall first deal with the question as to whether by Ext.P1 notification, the Mass Emission Standards ''BS IV'' have been implemented only for four-wheeled vehicles, which have no application to vehicles having more than four wheels, i.e., six wheeled vehicles manufactured after 1.4.2016, which are fitted with diesel engine meeting only ''BS III'' standards.

11. Clause (g) to sub-rule (1) of Section 110 of the Motor Vehicles Act, 1988 (for brevity ''the Act'') empowers the Central Government to make rules regulating the construction, equipment and maintenance of motor vehicles and trailers with respect to the emission of smoke, visible vapour, sparks, ashes, grit or oil. Rule 115 of the Central Motor Vehicles Rules, 1989 (for brevity ''the Rules'') deals with emission of smoke, vapour, etc. from motor vehicles. Sub-rule (1) of Rule 115, substituted with effect from 26.3.1993, vide G.S.R.338(E) dated 26.3.1993, provides that every motor vehicle other than motor cycles of engine capacity not exceeding 70 cc, manufactured prior to 1.3.1990, shall be maintained in such condition and shall be so driven so as to comply with the standards prescribed in the Rules.

12. Sub-rule (2) of Rule 115, substituted with effect from 10.2.2004, vide G.S.R.111(E) dated 10.2.2004, provides that on and after 1.10.2004, every motor vehicle operating on Petrol/CNG/LPG shall comply with the idling emission standards for Carbon Monoxide (CO) and Hydrocarbon (HC) given in the Table to clause (i) and that the smoke density for all dieseldriven vehicles shall be as given in the Table to clause (ii) of that sub-rule. Sub-rules (3) to (10) of Rule 115 prescribe ''Mass Emission Standards'' for different categories of petrol/diesel driven motor vehicles.

13. With effect from 1.4.2000, the Central Government notified the Mass Emission Standards ''Bharat Stage II'' (for brevity ''BS II'') and implemented in the National Capital Territory of Delhi, for motor cars with seating capacity of and

upto 6 persons (including driver) and Gross Vehicle Mass (GVM) not exceeding 2500kg and for four wheeler passenger vehicles with Gross Vehicle Weight (GVW) equal to or less than 3500kg and designed to carry more than 6 persons (including driver) or maximum mass of which exceeds 2500kg. by inserting sub-rule (11) to Rule 115. The ''BS II'' standards were made applicable for four wheeled vehicles (other than passenger vehicles) with GVW equal to or less than 3500kg. and vehicles with GVW exceeding 3500kg. in the National Capital Territory of Delhi, manufactured on or after six months from 24.4.2001, vide G.S.R.286 (E) dated 24.4.2001. As per the said notification, in respect of four wheeled transport vehicles which are plying on Inter-State Permits or National Permits or All India Tourist Permits within the National Capital Territory of Delhi; and in respect of any vehicles in other areas of the country, the Central Government may by notification in the Official Gazette notify the appointed day.

14. Later, by inserting sub-rule (12) to Rule 115, vide G.S.R.720(E) dated 10.9.2003, the Central Government notified and implemented the Mass Emission Standards ''BS II'' for twowheeler and three-wheeler vehicles manufactured on and from 1.4.2005. Still later, by inserting sub-rule (13) to Rule 115, vide G.S.R.927(E) dated 5.12.2003, the Central Government made applicable, in all the States and Union Territories, the provisions of sub-rule (11), in respect of four wheeled vehicles manufactured on and from 1.4.2005 with effect from 1.4.2005.

15. While notifying the Mass Emission Standards ''BS II'' under sub-rule (11) of Rule 115, the Central Government classified motor vehicles other than two-wheeler and threewheeler into four categories, namely, (A) Motor Cars with seating capacity of and upto 6 persons (including driver) and Gross Vehicle Mass (GVM) not exceeding 2500kg.; (B) Four-Wheeler Passenger Vehicles with GVW equal to or less than 3500kg. and designed to carry more than 6 persons (including driver) or maximum mass of which exceeds 2500kg.; (C) Four Wheeled Vehicles (other than passenger vehicles) with GVW equal to or less than 3500kg.; and (D) vehicles with GVW exceeding 3500kg.

16. With effect from 20.10.2004, the Central Government notified Mass Emission Standards ''BS III'' for four wheeled vehicles manufactured on and from 1.4.2005, and implemented in the National Capital Region and the cities of Mumbai, Kolkata, Chennai, Bangalore, Hyderabad including Secundrabad, Ahmedabad, Pune, Surat, Kanpur and Agra, by inserting sub-rule (14) to Rule 115, vide G.S.R.686(E) dated 20.10.2004. As per the said notification, in respect of four wheeled transport vehicles which are plying on Inter-State Permits or National Permits or All India Tourist Permits within the jurisdiction of those cities; and in respect of the vehicles in other areas of the country, the Central Government may by notification in the Official Gazette notify the appointed day. By inserting clause (G) to sub-rule (14), vide G.S.R.84(E) dated 9.2.2009, the Central Government made applicable the Mass Emission Standards ''BS III'' in all the States and the Union Territories for four-wheeler vehicles manufactured on

and from 1.4.2010.

17. While notifying Mass Emission Standards ''BS III'' under sub-rule (14) of Rule 115, the Central Government classified motor vehicles as motor cars and four-wheeler passenger/goods vehicles, as classified under sub-rule (11) of Rule 115, with a further classification, i.e., Category (E) diesel vehicles with GVW exceeding 3500kg. and fitted with advanced exhaust after treatment system including De-NOx catalyst and/or particulate trap, which shall conform certain additional standards.

18. The Central Government notified the Mass Emission Standards ''BS III'' for two-wheeler and three-wheeler vehicles manufactured on or after 1.4.2010, and Quadricycles manufactured on or after 1.4.2010, and implemented in the National Capital Region and the cities of Mumbai, Kolkata, Chennai, Bangalore, Hyderabad including Secundrabad, Ahmedabad, Pune, Surat, Kanpur, Agra, Sholapur and Lacknow, by inserting clause (F) to sub-rule (14) to Rule 115, vide G.S.R.84(E) dated 9.2.2009. Later, the Central Government made applicable the Mass Emission Standards ''BS III'' for fourwheeler vehicles in all the States and Union Territories, with effect from 1.4.2010, vide G.S.R.84(E) dated 9.2.2009, by inserting clause (F)(ii), which was later substituted by G.S.R.443 (E) dated 21.5.2010.

19. After nationwide implementation of Mass Emission Standards ''BS II'' and ''BS III'' with effect from 2005 and 2010 respectively, the Central Government notified the Mass Emission Standards ''BS IV'' for ''M'' and '' N'' Category vehicles, by inserting sub-rule (15) to Rule 115.

20. Clause (k) of Rule 2 of the Rules defines a motor vehicle falling under ''Category M'' as under;

"(k) ''Category M'' means a motor vehicle with at least four wheels used for carrying Passengers."

Clause (o) of Rule 2 of the Rules defines a motor vehicle falling under ''Category N'' as under;

"(o) ''Category N'' means a motor vehicle with at least four wheels used for carrying goods which may also carry persons in addition to the goods subject to the conditions specified in Para 3.2 of AIS 053-2005, as amended from time to time, till the corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 1986 (63 of 1986)."

21. With effect from 1.4.2010, the Central Government notified the Mass Emission Standards ''BS IV'' for ''M'' and ''N'' Category vehicles, by inserting sub-rule (15) to Rule 115, vide G.S.R.84(E) dated 9.2.2009. As per clause (a) to sub-rule (15) of Rule 115, the Central Government implemented the Mass Emission Standards ''BS IV'' in the National Capital Region and the cities of Mumbai, Kolkata, Chennai, Bangalore, Hyderabad including Secunderabad, Ahmedabad, Pune, Surat, Kanpur and Agra for four wheeled vehicles manufactured on or after

1.4.2010, except the four wheeled transport vehicles plying on Inter-State Permits or National Permits or All India Tourist Permits within the jurisdiction of those cities. Thereafter, by inserting provisos to clause (a) to sub-rule (15), vide G.S.R.443 (E) dated 21.5.2010, G.S.R.504(E) dated 16.7.2014, G.S.R.555 (E) dated 14.7.2015 and G.S.R.643(E) dated 19.8.2015 the Central Government made applicable the Mass Emission Standards ''BS IV'' in other cities/States/ Union Territories, with effect from 21.5.2010, 1.10.2014, 14.7.2015 and 19.8.2015 respectively. As per clause (aa) to sub-rule (15), inserted vide G.S.R.643(E) dated 19.8.2015, the Mass Emission Standards ''BS IV'' shall come into force all over the country in respect of four wheeled vehicles manufactured on or after 1.4.2017.

22. Clauses (a) and (aa) of sub-rule (15) of Rule 115 read thus;

"15. Mass Emission Standards (Bharat Stage IV) for M and N Category vehicles:

(a) the Mass Emission Standards for Bharat Stage IV shall come into force in the National Capital Region and the cities of Mumbai, Kolkata, Chennai, Bangalore, Hyderabad including Secunderabad, Ahmedabad, Pune, Surat, Kanpur and Agra in respect of four-wheeled vehicles manufactured on or after the 1st April, 2010, except the four-wheeled transport vehicles plying on Inter-State permits or National permits or All India Tourist permits within the jurisdiction of these cities:

Provided that the Mass Emission Standards (Bharat Stage IV) shall be applicable in the cities of Sholapur and Lucknow in respect of four wheeler vehicles manufactured on or after 1st June, 2010 except the four wheeler transport vehicles plying on Inter State Permits or National Permits or All India Tourist Permits, within the jurisdiction of the said cities.

Provided further that the Mass Emission Standards (Bharat Stage IV) shall be applicable in the cities of Puducherry, Mathura, Vapi, Jamnagar, Ankaleshwar, Hissar, Bharatpur, Daman, Diu, Silvasa, Unnao, Rae Bareilly, Aligarh, Karnal, Valsad, Yamuna Nagar, Kurukshetra, Nizamabad, Medak and Mehboobnagar in respect of four wheeled vehicles manufactured on or after the 1st October, 2014 except the four wheeled transport vehicles plying on Inter-State Permits or National Permit or All India Tourist Permits, within the jurisdiction of the said cities.

Provided also that the Mass Emission Standards (Bharat State IV) shall be applicable in the cities of Vrindavan, Kosi Kalan, Hindaun city, Dholpur, Ahmednagar, Mahabaleshwar, Lonwala, Palgarh, Dahanu, Talasari, Boisar, Panchagani, Mahad, Nagothana, Indapura, Vizag, Kochi, Trivandrum, Kavaratti, Nagar, Dig, Nadbai, Bhiwani, Jind, Mahendragarh, Hansi, Charki Dadri, Narnaul, Kiruli and Fatehpur Sikri in respect of four wheeler vehicles manufactured on or after the 15th July, 2015 except the four wheeler transport vehicles plying on Inter-State Permits or National Permits or All India Tourist Permits, within the jurisdiction of the said cities.

Provided also that, without prejudice to the provisions contained in the above provisos, the Mass Emission Standards, Bharat Stage IV, shall be applicable to the States of Jammu and Kashmir (except districts of Leh and Kargil), Punjab, Haryana, Himachal Pradesh, Uttarakhand and district of Hanumangarh and Sri Ganganagar in the State of Rajasthan and district of Saharanpur, Muzaffarnagar, Bijnaur, Jyotiba Phule Nagar, rampur, Moradabad, Aligarh, Badaun, Bareilly, Mathura, Mahamayanagar, Etah, Agra, Firozabad, Etawah, Mainpuri, Pilibhit, Shamli, Sambhal, Farrukabad, Kannauj, Auriya and Kasganj in the State of Uttar Pradesh in respect of four wheeled vehicles manufactured on or after the 1st October, 2015, except the four wheeled transport vehicles plying on Inter-State Permits or National Permits or All India Tourist Permits, within the jurisdiction of said district and States: Provided also that, without prejudice to the provisions contained in the above provisos, the Mass Emission Standards, Bharat Stage IV, shall be applicable in the States of Goa, Kerala, Karnataka, Telangana, Odisha and the Union territories of Daman and Diu, Dadra and Nagar Haveli and Andaman and Nicobar Islands, districts of Mumbai, Thane and Pune in the State of Maharashtra and districts of Surat, Valsad, Dangs and Tapi in the State of Gujarat, in respect of four-wheeled vehicles manufactured on or after the 1st April, 2016, except the four-wheeled transport vehicles plying on Inter-State Permits or National Permits or All India Tourist Permits, within the jurisdiction of the said district and States;

Explanation.- For the purposes of sub-rules (14) and (15), the "National Capital Region" shall have the same meaning as assigned to it in clause (f) of Section 2 of the National Capital Region Planning Board Act, 1985 (2 of 1985).

(aa) without prejudice to the provisions contained in the provisos to clause (a), the Mass Emission Standards for Bharat Stage IV shall come into force all over the country in respect of four wheeled vehicles manufactured on or after the 1st April, 2017.

23. As per the third proviso to clause (a) to sub-rule (15) of Rule 115, the Central Government implemented the Mass Emission Standards ''BS IV'' in various cities including Kochi and Thiruvananthapuram, in respect of four-wheeler vehicles manufactured on or after 15.7.2015 except the four-wheeler transport vehicles plying on Inter-State Permits or National Permits or All India Tourist Permits, within the jurisdiction of the said cities.

24. Later, by inserting the fifth proviso to clause (a) to sub-rule (15) of Rule 115, the Central Government implemented the Mass Emission Standards ''BS IV'' in various States and Union Territories including the State of Kerala, in respect of fourwheeler vehicles manufactured on or after 1.4.2016 except the four wheeled transport vehicles plying on Inter-State Permits or National Permits or All India Tourist Permits, within the jurisdiction of the said States/Union Territories. Clause (aa) to sub-rule (15) of Rule 115 provides that, without prejudice to the provisions contained in the provisos to clause (a), the Mass Emission Standards ''BS IV'' shall come into force all over the country in respect of four wheeled

vehicles manufactured on or after 1.4.2017.

25. Vide G.S.R.643(E) dated 19.8.2015, sub-clauses (iv) to (vi) are inserted to clause (G) of sub-rule (14) of Rule 115, after sub-clause (iii), which read thus;

(iv) the provisions of this sub-rule in respect of four wheeler vehicles manufactured on and from the 1st October, 2015 shall not apply to the States of Jammu and Kashmir (except Districts of Leh and Kargil), Punjab, Haryana, Himachal Pradesh, Uttarakhand, and districts of Hanumangarh and Sri Ganganagar in the State of Rajasthan and in the districts of Saharanpur, Muzaffarnagar, Bijnaur, Jyotiba Phule Nagar, Rampur, Muradabad, Aligarh, Badaun, Bareilly, Mathura, Mahamayanagar, Etah, Agra, Firozabad, Etawah, Mainpuri, Pilibhit, Shamli, Sambhal, Farrukabad, Kannauj, Auriya and Kasganj in the State of Uttar Pradesh;

(v) the provisions of this sub-rule in respect of fourwheeled vehicles manufactured on and from 1st April, 2016 shall not apply to the States of Goa, Kerala, Karnataka, Telangana, Odisha and the Union territories of Daman and Diu, Dadra and Nagar Haveli and Andaman and Nicobar Islands, districts of Mumbai, Thane and Pune in the State of Maharashtra and districts of Surat, Valsad, Dangs and Tapi in the State of Gujarat;

(vi) the provisions of this sub-rule in respect of fourwheeled vehicles manufactured on and from 1st April, 2017 shall not be applicable.

26. Sub-clause (v) to clause (G) of sub-rule (14) of Rule 115 provides that, the provisions of sub-rule (14) in respect of four-wheeled vehicles manufactured on and from 1.4.2016 shall have no application to the States specified therein including the State of Kerala. Sub-clause (vi) to clause (G) provides further that, the provisions of sub-rule (14) shall have no application in respect of four-wheeled vehicles manufactured on and from 1.4.2017. It is pertinent to note that, as per sub-clause (iii) to clause (G), inserted vide G.S.R.555(E) dated 14.7.2015, the provisions of sub-rule (14) in respect of four-wheeled vehicles manufactured on and from 15.7.2015 shall have no application to the cities specified therein, including Kochi and Thiruvananthapuram.

27. By inserting sub-rule (16) to Rule 115, vide G.S.R.431 (E) dated 4.7.2014, the Central Government notified the Mass Emission Standards ''BS IV'' for two-wheelers manufactured on and after 1.4.2016 for new types of vehicle models and from 1.4.2017 for existing types of vehicle models. Thereafter, by inserting sub-rule (17) to Rule 115, vide G.S.R.487(E) dated 12.6.2015, the Central Government notified the Mass Emission Standards ''BS IV'' for new vehicle models of three-wheelers manufactured on and after 1.4.2016 and for existing vehicle models of three-wheelers manufactured on or after 1.4.2017.

28. The provisions under clause (b) to sub-rule (15) of Rule 115 specify the mass emission standards for four-wheeler vehicles under different categories, in order to meet ''BS IV'' specifications, by categorising such vehicles on the basis of fuel,

Gross Vehicle Weight (GVW), etc. Sub-clauses (15) and (16) to clause (b) specify that, vehicles falling under ''Category M1'' and ''Category M2'' with less than 3500Kg. GVW and ''Category N1'' (fitted with Gasoline/LPG/CNG/ Compression Ignition Engines) and vehicles above 3500Kg. GVW (fitted with all types of engines) shall be equipped with On-Board Diagnostic (OBD)/On- Board Diagnostic-II (OBD-II) systems for emission control as specified in Tables I to IV. The said provisions also specify various norms namely, limit values for Type Approval (TA), Conformity of Production (COP), deterioration factor, etc. for vehicles above 3500Kg. GVW, and also an option to vehicle manufacturers for evaluation of deterioration factor for ''Category N1'', ''Category N2'', ''Category N3'' with GVW equal to or less than 16000Kg., ''Category N3'' with GVW above 16000Kg., ''Category M2'', ''Category M3'' with GVW equal to or less than 7500Kg. and ''Category N3'' with GVW above 7500Kg. as specified in MoSRTH/ CMVR/TAP-115/116.

29. The provisions under Rule 115 of the Rules, which we have already referred to in detail, would show that while notifying the mass emission standards, motor vehicles are generally classified into two-wheelers, three-wheelers and four-wheelers, wherever such categorisation is warranted. Though such motor vehicles are categorised further on the basis of fuel, GVW, etc., nowhere motor vehicles having more than four wheels have been specifically categorised. On the other hand, the mass emission standards notified under sub-rule (15) of Rule 115 of the Rules include the emission standards for vehicles having more than four wheels, including such vehicles with higher GVW.

30. Admittedly, Rules 2(k) and 2(o) of the Rules, classify ''Category N'' and ''Category M'' vehicles as motor vehicles with at least four wheels used for specified purpose. The vehicles coming under the said categories include vehicles having more than four wheels. Further, the mass emission standards, deterioration factor, etc. notified under sub-rule (15) of Rule 115 include such standards for vehicles having more than four wheels including such vehicles with higher Gross Vehicle Weight (GVW) namely, ''N1'' Category of motor vehicles used for carriage of goods having a GVW not exceeding 3.5 tonnes; ''N2'' Category used for carriage of goods having a GVW exceeding 3.5 tonnes, but not exceeding 12 tonnes; ''N3'' Category used for carriage of goods having a GVW exceeding 12 tonnes; etc. Therefore, once the Mass Emission Standards ''BS IV'' is implemented in the State by inserting the fifth proviso to clause (a) to sub-rule (15) of Rule 115, in respect of four-wheeler vehicles manufactured on or after 1.4.2016, except the four wheeled transport vehicles plying on Inter-State Permits or National Permits or All India Tourist Permits within the State, vehicles having more than four wheels would also come within the purview of the said provisions. Similarly, in view of the provisions under clause (aa) to sub-rule (15) of Rule 115, the Mass Emission Standards ''BS IV'' shall come into force all over the country in respect of four wheeled vehicles manufactured on or after 1.4.2017, which admittedly include vehicles having more than four wheels.

31. It is pertinent to note that when the Central Government notified and implemented the Mass Emission Standards ''BS III'' in the National Capital Region for four wheeled vehicles manufactured on and from 1.4.2005, the Bharat Petroleum Corporation Limited issued a tender notice dated 30.7.2007 inviting tenders for transportation of Liquified Petroleum Gas (LPG) cylinders within the National Capital Region from its bottling plant at Piyala in Bahadurgarh to its Badarpur depot and from there to the godowns of its LPG distributors within Delhi. Clauses 9.3(a) and 9.3(b) of the Special Terms of Contract of the notice inviting tenders prescribed that the trucks offered for Delhi should comply with ''BS III'' Emission norms if manufactured on or after 1.4.2005 and the age of the truck should not be more than 12 years from the month of floating of the notice inviting tenders. Writ Petition No.2882/2007 was filed before the High Court of Delhi challenging the eligibility criteria of the trucks to be offered by the bidders. The said Writ Petition ended in dismissal by the judgment dated 10.5.2007 holding, inter alia, that the writ petitioner had not been able to make out a case for interference in the exercise of writ jurisdiction. The writ petitioner on 27.7.2007 filed another Writ Petition praying, inter alia, for an order to permit the Companies/Firms owned by him and his brothers to participate in the price bids; for directions to the Bharat Petroleum Corporation Limited not to exclude the Companies/Firms owned by him and his brothers from the price bids on the wrong assumption and interpretation of Clause 9.3(b) of the Standard Terms and Conditions of the notice inviting tenders. The High Court by the judgment dated 29.10.2007 held that the writ petitioner is entitled to participate in the tender process offering four wheeled vehicles manufactured on or after 1.4.2005 which are ''BS II'' compliant and having national permits/inter-state permits. The verdict of the High Court was under challenge before the Apex Court in Civil Appeal No.6392/2009. While allowing the said Civil Appeal, the Apex Court observed in its decision reported in Bharat Petroleum Corporation Ltd. v. Sunil Bansal (2009 (10) SCC 446) that the notifications were issued by the Central Government in pursuance of the directions of the Apex Court to achieve the object of reducing pollution in the National Capital Region. As per the clear interpretation of the notification in issue (G.S.R.686(E) dated 20.10.2004) only those vehicles will ply in the National Capital Region which were manufactured on or after 1.4.2005 and are complying with ''BS III'' norms. The vehicles manufactured prior to 1.4.2005 and complying with ''BS I'' and BS II'' norms but are not more than 15 years old can also ply. This notification was issued to reduce vehicular pollution in a phased manner. By one stroke, the legislature could not have prohibited all the vehicles plying in the city which did not have ''BS III'' compliance, as that would have created total chaos. Therefore, it was introduced in a phased manner, as has been done in the notification dated 20.10.2004. In the said decision, the Apex Court has also held that the rationale behind the aforesaid notification is to phase out the older vehicles automatically in due course and newer vehicles would necessarily have to comply with ''BS III'' norms in order to increase the emission norms thereby curbing air pollution as per the directions issued by the Apex Court in M.C. Mehta v. Union of India (1998

(6) SCC 63). Therefore the Apex Court allowed the Civil Appeal thereby setting aside the judgment of the High Court holding that the High Court has misread and misconstrued the notification in question, i.e., G.S.R.686(E)dated 20.10.2004, while allowing the Writ Petition.

32. In Bharat Petroleum Corporation''s case (supra), the Apex Court was dealing with ''goods vehicles'' intended for transportation of LPG cylinders, which are admittedly vehicles having more than four wheels and in the said judgment, the Apex Court upheld the condition insisted by the Bharat Petroleum Corporation in its tender notice dated 30.3.2007 that the trucks offered for Delhi for transportation of LPG cylinders should comply with ''BS III'' emission norms specified in G.S.R.686(E) dated 20.10.2004, if manufactured on or after 1.4.2005.

33. For the aforesaid reasons, we find absolutely no grounds to interfere with the conclusion of the learned Single Judge that the Mass Emission Standards ''BS IV'' implemented by the Central Government vide Ext.P1 amendment applies to all ''M'' and ''N'' Category vehicles. In that view of the matter, the Mass Emission Standards ''BS IV'' have application even to vehicles/chassis having more than four wheels, falling under the aforesaid categories, which are manufactured/ purchased by the appellants after 1.4.2016. In view of the prohibition contained in Ext.P1 notification issued as early as on 19.8.2015, such vehicles which do not confirm ''BS IV'' standards are not fit for registration in the State of Kerala where the Central Government have implemented the Mass Emission Standards ''BS IV'' with effect from 1.4.2016. Therefore, the contention of the appellants as to non-applicability of the Mass Emission Standards ''BS IV'' to vehicles having more than four wheels can only be repelled as devoid of merit and we do so.

34. Another contention raised by the learned counsel for the appellants is that the State Government have ample power to exempt any motor vehicle or any class or description of motor vehicles from the rules made by the Central Government in exercise of its rule making power under sub-section (1) of Section 110 of the Act and as such, it is open to the State Government to issue appropriate orders granting exemption from the application of the Mass Emission Standards ''BS IV'' for the new vehicles brought for registration, for the time being. We find absolutely no merits in the said contention made on behalf of the appellants. Chapter VII of the Act deals with construction, equipment and maintenance of motor vehicles. Sub-section (1) of Section 110 provides that, the Central Government may make rules relating to construction, equipment and maintenance of motor vehicles and trailers with respect to all or any of the matters enumerated in clauses (a) to (p) of the said sub-section. It was in exercise of that power that the Central Government have issued various notifications notifying the mass emission standards for motor vehicles. As per G.S.R.84(E) dated 9.2.2009 and the subsequent notifications issued by the Central Government, it is for the Central Government to notify the appointed day for application of the Mass Emission Standards ''BS IV" in various parts of the

country. On such notifications being issued by the Central Government notifying the appointed day, ''BS IV'' Emission Standards are implemented in the respective States/Union Territories/cities/districts concerned with effect from the appointed day and the vehicles manufactured on or after the appointed day can be registered by the jurisdictional registering authority only if such vehicles meet ''BS IV'' emission standards.

35. Under clause (b) to sub-section (3) of Section 110 of the Act, the State Government may exempt any motor vehicle or any class or description of motor vehicles from the rules made under sub-section (1), subject to such condition as may be prescribed by the Central Government. The aforesaid provision makes it explicitly clear that the State Government can exercise the power of exemption as provided under the said clause only subject to the conditions as may be prescribed by the Central Government for granting such exemption. Since the Central Government has not conferred any such power to the State Governments in the matter of implementation of the Mass Emission Standards prescribed under sub-rule (15) of Rule 115, the State Government have absolutely no authority to grant exemption to any vehicle or class of vehicles manufactured on or after 1.4.2016 from the provisions of the Mass Emission Standards ''BS IV''. In that view of the matter, neither Ext.P4 circular dated 23.5.2016 issued by the 2nd respondent according sanction for registration of ''BS III'' compliant vehicles by granting exemption for a period of three months on public interest nor Ext.P5 communication dated 17.6.2016 excluding vehicles having more than four wheels from the application of ''BS IV'' specification have any legal sanctity and as such, the appellants are not entitled to claim any benefit under the aforesaid circular/communication.

36. Before the learned Single Judge, a statement has been filed by the Assistant Solicitor General of India in W.P.(C). No.34055 of 2015, pointing out that the Mass Emission Standards ''BS IV'' are being implemented place by place in the country after ensuring from the Ministry of Petroleum and Natural Gas that the fuel conforming to such standards are available in the respective places. Therefore, the specific stand taken by the Central Government was that the infrastructure for implementing ''BS IV'' standards are available in the State. As noticed by the learned Single Judge, the statement made by the 2nd respondent in Ext.P5 communication that the re-fueling stations in the State of Kerala do not have any facility for providing fuel conforming to ''BS IV'' standards is not based on any relevant materials. Apart from relying on the statement so made by the 2nd respondent in a vacuum, the appellants have not produced any material before the learned Single Judge to substantiate the said statement. During the course of arguments in these Writ Appeals, the learned counsel for the appellants have not challenged the finding of the learned Single Judge regarding the availability of infrastructure in the State for implementing ''BS IV'' standards, by relying on any relevant materials. It was after considering the rival contentions with reference to the materials on record, that the learned Single Judge repelled the contention of the appellants with reference to the fundamental rights

guaranteed under Article 19(1)(g) of the Constitution of India. The reasoning of the learned Single Judge in this regard is perfectly legal, which warrants no interference in these appeals.

37. In the result, we find absolutely no grounds to interfere with the judgment of the learned Single Judge in dismissing the Writ Petitions. The Writ Appeals fail and the same are accordingly dismissed.