

(2020) 01 GUJ CK 0049
In the Gujarat High Court

Case No : R/Letters Patent Appeal No. 787 Of 2014 In R/Special Civil Application No. 7682 Of 2013

Bhupendra M Patel

APPELLANT

Vs

State Of Gujarat & 2 Other(s)

RESPONDENT

Date of Decision : 07-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 21, 47, 48A, 51A
Central Motor Vehicles Rules, 1989 — Rule 47(1), 47(1)(g). 48, 55, 115, 115(3), 115(11), 115(14), 115(15)
Motor Vehicles Act — Section 41(1), 50, 110

Citation : (2020) 01 GUJ CK 0049

Hon'ble Judges : R.M.Chhaya, J;B.N. Karia, J

Bench : Division Bench

Advocate : Ramkrishna B Dave, Tirthraj Pandya

Final Decision : Dismissed

Judgement

R.M. Chhaya, J

1. By this appeal under Clause 15 of the Letters Patent, the appellant - original petitioner has challenged the judgment and order dated 7.2.2014 passed by the learned Single Judge of this Court in Special Civil Application no.7682 of 2013, whereby the learned Single Judge was pleased to dismiss the petition as being devoid of merit. The parties, as mentioned in the writ petition, are mentioned in this judgment and order as per their original status in the petition.

2. The petitioner, as a President of Automobile Association, Ahmedabad, has preferred the petition and has prayed as under in the writ petition:-

"(A) Your Lordships be pleased to admit and allow this petition;

(B) Your Lordships be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondent no.3 to take the note of transfer of the vehicle in the records of the

respondent no.3 and implement the Circular dated 5/4/2010 from the Ministry of Road Transport & Highways of the Government of India and set aside the instructions issued by the respondent no.2 by a circular dated 16/06/2010 for not transferring the vehicles manufactured after the date 01/04/2010;

(C) Your Lordships be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondent no.3 to accept the applications for transfer of the vehicles manufactured on or before 1/4/2010 and implement the Circular dated 5/4/2010 from the Ministry of Road Transport & Highways of the Government of India.

(D) pending admission, hearing and final disposal of this petition, Your Lordships be pleased to direct the respondent no.3 to accept the applications for transfer of vehicles manufactured on or before 1/4/2010 and to carry out due process for recording the transfer accordingly;

(E)"

3. The petitioner has thus prominently challenged the restrictions on transfer as contemplated in the Appendix to the circular dated

16.6.2010 issued by the respondent authorities.

4. Following noteworthy facts are necessary to be enumerated:-

4.1 That, the Government of India, Ministry of Road, Transport and Highways issued instructions to all States by a letter dated 5.4.2010 with regard to the registration of four wheeler vehicles with effect from 1.4.2010. By a notification no. GSR/84/E dated 9.2.2009, the Director (Road Transport), Ministry of Road, Transport and Highways notified the implementation of Bharat Stage-IV norms for four-wheeler vehicles in National Capital Region and ten other cities i.e. Delhi, Mumbai, Kolkata, Chennai, Ahmedabad, Bangalore, Hyderabad, Secunderabad, Kanpur, Pune, Surat and Agra with effect from 1.4.2010. By the said notification, such norms is made applicable on or after 1.4.2010. The said notification, inter-alia, provided that the vehicles with Bharat Stage-III compliant manufactured upto 31.3.2010 would be eligible for registration in the above-mentioned cities for some time after 1.4.2010 till the accumulated stock is exhausted. As the record indicates, the Regional Transport Authority implemented the said instructions by a Yadi dated 19.6.2010. The Appendix to the circular dated 16.6.2010 contains various instructions which were often raised in connection with the emission norms. The relevant remark therein reads as under:-

Sr. No.

Questions repeatedly asked in respect of emission

Remarks

2

Will the Stage-III norms for two and three wheelers and Stage-IV norms for four

wheelers be applicable to transfer of ownership of vehicles after 1st April, 2010 from other regions/other states to Ahmedabad City / Surat City?

Yes. (instructions issued vide earlier circulars referred to in the reference column be perused)

4.2 Record further indicates that the petitioner approached this Court by way of filing Special Civil Application no. 11098 of 2010 against the circular dated 16.6.2010, which came to be disposed of by this Court vide order dated 24.9.2010 directing the respondent no.2 herein to take decision on the application of the petitioner in accordance with law. Pursuant to the order passed by this Court, the petitioner made a representation dated 11.10.2010 to the respondent authorities, which came to be rejected by the respondent no.2 vide order dated 21.1.2011. It appears from the record that thereafter, the petitioner filed a writ petition being Special Civil Application no.4675 of 2011 challenging the action of the respondents of refusing to transfer four wheeler vehicles. The said writ petition was disposed of without going into merits vide order dated 23.1.2013 permitting the appellant-petitioner to move RTO, Ahmedabad and further directing the RTO, Ahmedabad to accept papers and consider the issue involved in the petition. It is a matter of record that based upon the order dated 23.1.2013 passed by this Court in Special Civil Application no.4675 of 2011, the petitioner filed a representation dated 18.2.2013 before the concerned authority, namely, Regional Transport Officer. The Regional Transport Officer, after considering the said representation, rejected the same vide order dated 16.3.2013. The petitioner challenged the said decision again by way of filing a writ petition being Special Civil Application no. 7682 of 2013 i.e. the present petition and also raised grievance against the authorities for not permitting the vehicles manufactured on or before 1.4.2010 and registered in other regions or States in the city area of Ahmedabad and Surat on the ground that the said vehicles do not comply with Bharat Stage- IV norms. The learned Single Judge, by the impugned judgment and order, dismissed the said petition and being aggrieved by the same, the present appeal is filed.

5. Heard Mr. R.B. Dave, learned advocate for the appellant and Mr. Tirthraj Pandya, learned Assistant Government Pleader for the respondent authorities.

6. Mr. R.B. Dave, learned advocate for the appellant has taken this Court through the impugned judgment and order and has contended as under:-

6.1 That, the circular dated 16.6.2010 only restricts those vehicles which are manufactured after 1.4.2010 complying with the Bharat Stage-III norms and such restriction cannot be made applicable for transfer of vehicle having Bharat Stage-III norms from any other region or cities to the city of Ahmedabad.

6.2 It was contended by Mr. Dave that the Central Government had expressly excluded such transfer of vehicles from the restriction imposed vide circular dated 16.6.2010.

6.3 It was further contended that the transfer of registration of vehicles are governed by different Rules and referring to Rules 48 and 55 of the Central Motor Vehicles Rules, 1989 (hereinafter referred to as "the Rules" for the sake of brevity), it was contended that the circular issued by the Central Government imposing restrictions to sell the vehicle not confirming by Bharat Stage-IV norms cannot be imposed on transfer of vehicles sold prior to notified date, but it only restricts fresh registration of vehicles and not the transfer of ownership. Mr. Dave contended that the registration of a vehicle and transfer of a vehicle are two different and distinct forms provided under the Motor Vehicles Act, 1988 and the Rules. It was therefore contended that the action of the respondent authorities in refusing registration of transfer of ownership is illegal and without authority.

6.4 Mr. Dave also contended that even as per the circular dated 16.6.2010, the four wheeler vehicles manufactured upto 31.3.2010 having Bharat Stage-III compliant would be eligible for registration in the cities mentioned in the notification and it was reiterated by Mr. Dave that such restrictions do not apply to transfer of such vehicles after 1.4.2010. Mr. Dave further contended that there is a distinction between registration of newly manufactured vehicle and registration of transfer of vehicle and the authorities could not have imposed restriction on the transfer of vehicle from other cities to the cities of Ahmedabad and Surat, otherwise, the Rules in question i.e. Rules 48 and 55 would become redundant. It was also contended that the impugned circular is against the spirit and intent of the legislation, which cannot be permitted. Mr Dave also relied upon the order dated 16.3.2013, whereby RTO, Ahmedabad refused to register a transfer of vehicle bearing registration no. GJ-1 HF-9449 on the ground that the vehicle does not comply with the prescribed emission standards of Bharat Stage-IV. Referring to Rule 115(3) of the Rules, it was contended that the criteria of Bharat Stage-IV applies to the vehicles manufactured on or after 1.4.2010 and not to those vehicles manufactured before the said date and it was therefore contended that the action of the respondent no.3 in not accepting the transfer of old vehicles manufactured prior to 1.4.2010 is bad in law.

6.5 It was also contended by Mr. Dave that the Regional Transport Authority can refuse to register the transfer of a vehicle only when there is non-compliance with the Rules. It was alleged by Mr. Dave that while exercising the powers to register, Regional Transport Officer cannot rely upon previous order or opinion of the Commissioner of Transport, but has to independently apply his mind. It was contended by Mr. Dave that once the compliance is shown as required under Section 50 of the Act, the concerned authority cannot refuse to make appropriate entry of transfer of ownership. Mr. Dave therefore contended that the learned Single Judge has committed an error both in law and facts and has wrongly interpreted the circular dated 16.6.2010. It was therefore contended that the impugned judgment and order is bad in law and facts and the same deserves to be quashed and set aside by allowing the appeal. It was lastly contended by Mr. Dave that the circular in question dated 16.6.2010 is ex-facie and illegal and therefore, the appeal may be allowed.

7. Per contra, Mr. Tirthraj Pandya, learned Assistant Government Pleader for the respondent authorities has vehemently opposed the present appeal. Referring to Rule 115 of the Rules, it was contended by the learned Assistant Government Pleader that the same prescribes emission norms for every motor vehicle. It was contended that "Bharat Stage" as provided by the Central Government is originally adopted from European countries popularly known as "Euro norms". It was submitted that such norms have been revised from time to time and were made applicable to two wheelers, three wheelers and four wheelers which run on fuel both petrol and diesel.

Referring to the legislative intent and history of introduction of Rule 115(11) of the Rules, Mr. Pandya submitted that at that stage, Bharat Stage-II norms were made applicable to motor cars having seating capacity of not more than six passengers (excluding driver) and the gross weight of the vehicle not exceeding 250 kgs. Mr. Pandya further relied upon Rule 115(14) of the Rules and submitted that the said Rule came to be modified on 9.2.2009 and a new sub-rule (15) came to be inserted. Mr. Pandya further submitted that on 21.5.2010, certain modifications were made in sub-rules (14) and (15) of the Rule 115 of the Rules. Mr. Pandya referring to the judgment of the Hon'ble Apex Court in the case of M.C. Mehta Vs. Union of India & Ors., reported in (1998) 6 SCC 60, submitted that intention of the legislature is quite clear and the same was to achieve higher emission norms in National Capital Region and cities like Delhi, Mumbai, Kolkata, Chennai, Ahmedabad, Bangalore, Hyderabad, Secunderabad, Kanpur, Pune, Surat and Agra. It was submitted that the intention to introduce and revise such higher emission norms is to decrease the pollution level in these cities by permitting only those vehicles which have higher emission norms and those vehicles having lower emission norms may not enter in the cities of Ahmedabad and Surat permanently by way of registration or transfer or change of address as the same would adversely affect the action plan for reducing environmental pollution. It was further contended that keeping in mind the object of control of pollution and reducing pollution, the Commissioner of Transport, vide circular dated 6.9.2004, imposed restriction on registration or transfer of vehicles registered outside the cities of Ahmedabad and Surat which were not complying with the Bharat Stage-II emission norms. It was further contended that the circular in question dated 16.6.2010 is revision of the earlier circular dated 6.9.2004, whereby restriction of registration or transfer of two wheelers not complying with emission norms of Bharat Stage-

III and four wheeler vehicles not complying with the emission norms of Bharat Stage-IV was imposed which were registered outside the cities of Ahmedabad and Surat.

7.1 Mr. Pandya also referred to Section 41(1) of the Act, which provides for the registration to be made and also referred to Rule 47(1) of the Rules, which prescribes for application for registration of a motor vehicle. Mr. Pandya further contended that Rule 47(1)(g) of the Rules, inter-alia, provides that Form 22

which relates to road-worthiness has to be produced by the applicant. Mr. Pandya contended that Form 22 prescribes for emission norms. It was submitted that Section 50 of the Act provides for transfer of ownership, where the ownership of any motor vehicle registered under Chapter IV of the Act is transferred, which also inter-alia provides for submission of such documents and in such manner as prescribed by the Central Government to the registering authority without whose jurisdiction the transfer is to be effected. Mr. Pandya also submitted that the said procedure as prescribed under Section 50 of the Act also simultaneously provides for sending copy of the said report to the transferee. Relying upon the judgment of the Hon'ble Apex Court in the case of M.C. Mehta (supra), it was contended that the action of the respondent authorities in not permitting transfer of ownership of vehicles from the regions outside the cities of Ahmedabad and Surat is in consonance with the letter and spirit of the judgment of the Hon'ble Apex Court. It was also contended that reading of the circular dated 16.6.2010 put forward by the appellant is erroneous reading of the same and the said circular is issued and is based on previous instructions vide circulars dated 6.9.2004 and 4.5.2005, which prescribe for emission standards. Mr. Pandya submitted that the circular is clear and the same specifies that the vehicles which do not comply with the emission standards cannot be brought to the cities of Ahmedabad and Surat by way of transfer or change of address and applications for no due certificate to change name and address of the registration of vehicle in the cities of Ahmedabad and Surat are rightly rejected.

7.2 It was therefore contended that the contention raised by the appellant that no previous instructions were issued by the respondent authorities with regard to compliance of emission standards for transfer of vehicle from other city to the cities of Ahmedabad and Surat is contrary to the record. It was also submitted that the earlier circulars which provide for emission standards as applicable dated 6.9.2004 and 4.5.2005 are not challenged at all and therefore, the appellant is precluded from challenging the present circular dated 16.6.2010. It was also contended that the Hon'ble Apex Court in various decisions including the decision of the Hon'ble Apex Court in the case of M.C. Mehta (supra) has categorically observed that the notifications dealing with the public health issues, more particularly, when the health not only of the citizens at present but also of the future generation is involved, purposive interpretation is required to be given which could also be extended to interpret the restriction imposed by the authority not only on fresh registration of vehicle manufactured on or after 1.4.2010 but also on re-registration or re-sale of the vehicles being transferred from other regions to the cities of Ahmedabad and Surat, which do not meet with the emission norms of Bharat Stage-IV. On the aforesaid grounds, it was therefore contended that the appeal, being meritless, deserves to be dismissed.

8. No other or further contentions and/or submissions are made by the learned advocates appearing for the respective parties.

9. Upon considering the submissions made, it would be appropriate to note that

the circular dated 16.6.2010 is based on notifications dated 9.2.2009 as well as 5.4.2010 and 21.5.2010 issued by the Central Government in the Ministry of Road, Transport and Highways and so also the same were based on the letter dated 24.5.2010 issued by Dr. Bhurelal, Chairman, Environment, Pollution (Prevention & Control) Authority for the National Capital Region. Rule 115 of the Rules provides for emission of smoke, vapour, etc. from motor vehicles, which prescribes standard of emission in respect of different vehicles.

Rule 115(15) which came to be amended with effect from 1.4.2010 prescribes for Mass Emission Standards (Bharat Stage-IV) for M and N Category vehicles for the area of National Capital Region as well as cities mentioned therein, wherein Ahmedabad and Surat are included. The learned Single Judge has very succinctly and in detail, considered the provisions of Section 41 of the Act, which provides for registration of vehicles as well as the circular issued by the Central Government dated 5.4.2010 and the notification dated 9.2.2009 and has very rightly interpreted the same as under:-

"16. Before advertng to the merits of the case, certain facts may be noted. By a Circular dated 5th April, 2010 issued by the Director, Road Transport, Government of India, Ministry of Road Transport & Highways with reference to Notification dated 9th February, 2009, the implementation of Bharat Stage IV norms in mega cities with effect from 1st April, 2010 has been notified stating that the said norms would be applicable to all vehicles manufactured on or after 1st April 2010 and that Bharat Stage III vehicles manufactured upto March, 2010 would be eligible for registration in the said regions/cities for some time after 1st April, 2010 till the accumulated stock is exhausted. Since the concerned authority would have already obtained details of accumulated stock, such vehicles may be allowed to be registered even after 1st April 2010. By a communication/circular dated 24th May, 2010 of the Dr. Bhurelal, Chairman, Environment Pollution (Prevention & Control) Authority, the concerned authorities have been directed not to register, after 31st May, 2010, any vehicle which is non-compliant with the standards that have come into force with effect from 1st April, 2010 in the city under their jurisdiction. It is, therefore, evident that after 31st May, 2010, no vehicle which is non-compliant with the standards can be registered in the eight cities mentioned in the notification dated 9th February, 2009.

17. Pursuant to the above notification/circular as well as letter of Dr. Bhurelal, Chairman, Environment Pollution (Prevention & Control) Authority, by the impugned circular, the Commissioner of Transport issued instructions for implementation of emission norms which have come into effect from 1st April, 2010. The appendix thereto contains various questions which were often raised in connection with the emission norms and remarks thereto which have been extensively reproduced in the earlier part of this judgment. Thus, from the facts as emerging from the record, it appears that a notification dated 9th February, 2009 came to be published in the Government Gazette notifying the

implementation of Bharat Stage-IV norms in mega cities with effect from 1st April, 2010. Pursuant thereto, the Director, Road Transport, Government of India, Ministry of Road Transport & Highways, issued a circular dated 5th April, 2010 stating that the norms prescribed by the above notification would be applicable to all vehicles manufactured on or after 1st April, 2010 and that the Bharat Stage III vehicles manufactured upto 31st March, 2010 would be eligible for registration in the said regions/cities for some time after 1st April, 2010 till the accumulated stock is exhausted. Since the concerned authority would have already obtained details of accumulated stock, such vehicles were allowed to be registered even after 1st April, 2010. Vide notification dated 21st May, 2010, the Ministry of Road Transport & Highways, in exercise of powers under section 110 of the Act, made the Central Motor Vehicles (Second Amendment) Rules, 2010, whereby certain amendments were made in the Central Motor Vehicles Rules, 1989 making the Mass Emission Standards (Bharat Stage III) applicable to the National Capital Region as well as the cities mentioned therein, including the cities of Ahmedabad and Surat, in respect of two and three wheelers vehicles manufactured on or after 1st April, 2010.

18. On a conjoint reading of the above notification as well as the circulars issued from time to time, the object behind introducing the higher norms, namely, Bharat Stage III and IV in the eight cities mentioned in the notification, appears to be to reduce the levels of pollution by restricting the number of vehicles which do not meet with the specified norms. However, with a view to mitigate the difficulties that might be faced by manufacturers who had already manufactured vehicles in accordance with the old norms prior to the new norms coming into force, the vehicles which had been manufactured prior to the coming into force of the new norms were permitted to be sold for a limited period. Therefore, the increase in the number of vehicles complying with the old norms would be limited to the extent of the existing stock of unsold vehicles, which stock would be exhausted within a short period. Therefore, the true intent behind the rule is to curb the number of vehicles not complying with the new norms to the extent of the unsold vehicles manufactured prior to 1st April, 2010. Thus, once the unsold vehicles manufactured prior to 1st April, 2010 are sold, the number of vehicles manufactured in accordance with the old norms would remain constant (or would reduce due to the old vehicles being rendered non-usable) and thereby there would be no increase in the level of pollution. However, the petitioner seeks to transfer vehicles, which do not meet with the new norms from outside the city of Ahmedabad to the city of Ahmedabad. If such course of action were to be permitted, the number of vehicles not meeting with the new norms would stand increase. By seeking transfer of vehicles from outside the city of Ahmedabad to the city of Ahmedabad, what the petitioner in effect and substance seeks is to circumvent the above restrictions by buying a vehicle which has already been registered outside the cities of Ahmedabad and Surat (which may have been purchased after 31st May, 2010) and which does not comply with the new norms, and transferring the same to city of Ahmedabad. Thus, what cannot be done

directly is sought to be done by taking this indirect route, the ultimate effect whereof will be that there will be an increase in the number of vehicles not complying with the norms, thereby frustrating very purpose behind the amendment.

19. xxx xxx xxx

20. Thus, any direction given for safeguarding the health of the people which is a right provided and protected by Article 21 of the Constitution would override the provisions of every statute including the Motor Vehicles Act. The right to have a pollution free environment is a right which is provided and protected under Article 21 of the Constitution. Thus, any direction given by the authorities concerned for safeguarding the health of the people would override even the statutory provisions. Thus, the submission that rule 115 of the rules does not contemplate a bar against transfer of vehicles and only prohibits registration of new vehicles not meeting with the new norms does not merit acceptance. Any act which makes the said rule redundant and is contrary to the spirit and intent of the legislation cannot be permitted. If the contentions of the petitioner were to be accepted, the consequence would be that though no new vehicle which does not meet with the standard norms would be registered in the cities of Ahmedabad and Surat, there would be an influx of such vehicles which are registered elsewhere and thereafter transferred to persons residing in these two cities, as a result whereof there would be an increase the number of vehicles which do not meet with the prescribed norms thereby defeating the very purpose of the rule."

10. Right to clean environment is a right guaranteed under Article 21 of the Constitution of India and the emission standards and norms as prescribed and provided by the Central Government and adopted by the Central Government is a sine qua non to the maintain standards as laid down by the Hon'ble Apex Court in catena of decisions. It would be appropriate to refer to the judgment of the Hon'ble Apex Court in the case of Shantistar Builders Vs. Narayan Khimalal Totame, reported in (1990) 1 SCC 520, wherein the Hon'ble Apex Court has observed thus:-

"9. Basic needs of man have traditionally been accepted to be three-food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect - physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well- built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud- built fire- proof

accommodation."

11. It would also be appropriate to refer to the judgment of the Hon'ble Apex Court in the case of M.C. Mehta (supra), wherein it has been observed as under:-

"1. In view of this continuing inaction of the authorities it has become necessary for the Court to examine the matter with a view to finding out the ways and means which are feasible and can be adopted immediately for the purpose of deciding the real scope/parameters within which the exercise has to be performed by the Court. Treating it as a legal issue it is necessary to examine the impact of the pleas right under Article 21 of the Constitution and the enforcement thereof, if necessary, by compelling performance of its obligation of the executive. One of the facets of this problem may also be the parameters to be satisfied in formulation of any policy so that the policy must be environment - friendly and be consistent with the principle of sustainable development."

12. In the case of M.C. Mehta Vs. Union of India & Ors., reported in (2004) 12 SCC 118, the Hon'ble Apex Court observed as under:-

"45. The natural sources of air, water and soil cannot be utilized if the utilization results in irreversible damage to environments.

There has been accelerated degradation of environment primarily on account of lack of effective enforcement of environmental laws and non-compliance of the statutory norms. This Court has repeatedly said that the right to live is a fundamental right under Article 21 of the Constitution and it includes the right to of enjoyment of pollution- free water and air for full enjoyment of life. (See Subhash Kumar v. State of Bihar [AIR 1991 SC 420].

46. Further, by 42nd Constitutional Amendment, Article 48-A was inserted in the Constitution in Part IV stipulating that the State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. Article 51A, inter alia, provides that it shall be the duty of every citizen of India to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creatures. Article 47 which provides that it shall be the duty of the State to raise the level of nutrition and the standard of living and to improve public health is also relevant in this connection. The most vital necessities, namely, air, water and soil, having regard to right of life under Article 21 cannot be permitted to be misused and polluted so as to reduce the quality of life of others. Having regard to the right of the community at large it is permissible to encourage the participation of Amicus Curiae, the appointment of experts and the appointments of monitory committees. The approach of the Court has to be liberal towards ensuring social justice and protection of human rights. In M.C. Mehta v. Union of India [(1987) 4 SCC 463], this Court held that life, public health and ecology has priority over unemployment and loss of revenue. The definition of 'sustainable development' which Brundtland gave more than 3 decades back still holds good. The phrase

covers the development that meets the needs of the present without compromising the ability of the future generation to meet their own needs. In *Narmada Bachao Andolan v. Union of India & Ors.* [(2000) 10 SCC 664], this Court observed that sustainable development means the type or extent of development that can take place and which can be sustained by nature/ecology with or without mitigation. In these matters, the required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a "reasonable person's " test. [See *Chairman Barton : The Status of the Precautionary Principle in Australia : (Vol. 22) (1998) (Harv. Envtt. Law Review, p. 509 at p.549-A)* as in *AP Pollution Control Board vs. Prof. M.V. Nayuder (Retd) & Ors.* [(1999) 2 SCC 718]."

13. In the case of *State of M.P. Vs. Kedia Leather & Liquor Ltd. & Ors.*, reported in (2003) 7 SCC 389, the Hon'ble Apex Court observed as under:-

"10. The two statutes relate to prevention and control of pollution and also provides for penal consequences in case of breach of statutory provisions. Environmental, ecological air and water pollution amount to violation of right to life assured by Article 21 of the Constitution of India, 1950 (in short 'the Constitution'). Hygienic environment is an integral facet of healthy life. Right to live with human dignity becomes illusory in the absence of humane and healthy environment."

14. It would also be appropriate to refer to the judgment of the Hon'ble Apex Court in the case of *N.D. Jayal & Anr. Vs. Union of India & Ors.* reported in (2004) 9 SCC 362, wherein it has been observed as under:-

"22. Before advertng to other issues, certain aspects pertaining to the preservation of ecology and development have to be noticed. In *Vellore Citizens Welfare Forum v. Union of India*, [1996] 5 SCC 647, and in *M C Mehta v. Union of India*, [2002] 4 SCC 356, it was observed that the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of 'sustainable development.' This is a development strategy that caters the needs of the present without negotiating the ability of upcoming generations to satisfy their needs. The strict observance of sustainable development will put us on a path that ensures development while protecting the environment, a path that works for all peoples and for all generations. It is a guarantee to the present and a bequeath to the future. All environmental related developmental activities should benefit more people while maintaining the environmental balance. This could be ensured only by the strict adherence of sustainable development without which life of coming generations will be in jeopardy.

23. In a catena of cases we have reiterated that right to clean environment is a guaranteed fundamental right. May be in different context, the right to development is also declared as a component of Article 21 in cases like *Samata v. State of Andhra Pradesh*, [1997] 8 SCC 191, and in *Madhu Kishore v. State of*

Bihar, [1996] 5 SCC 125.

24. The right to development cannot be treated as a mere right to economic betterment or cannot be limited to as a misnomer to simple construction activities. The right to development encompasses much more than economic well being, and includes within its definition the guarantee of fundamental human rights. The 'development' is not related only to the growth of GNP. In the classic work - 'Development As Freedom' the Nobel prize winner Amartya Sen pointed out that 'the issue of development cannot be separated from the conceptual framework of human right'. This idea is also part of the UN Declaration on the Right to Development. The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples' well being and realization of their full potential. It is an integral part of human right. Of course, construction of a dam or a mega project is definitely an attempt to achieve the goal of wholesome development. Such works could very well be treated as integral component for development.

25. Therefore, the adherence of sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand right to development is also one. Here the right to 'sustainable development' cannot be singled out.

Therefore, the concept of 'sustainable development' is to be treated an integral part of 'life' under Article 21. The weighty concepts like inter-generational equity State of Himachal Pradesh v. Ganesh Wood Products, [1995] 6 SCC 363, public trust doctrine M C Mehta v. Kamal Nath, [1997] 1 SCC 388 and precautionary principle (Vellore Citizens), which we declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development.

15. We are in total agreement with the reasonings given by the learned Single Judge. The respondent authority has correctly interpreted the circular dated 16.6.2010 and as correctly held by the learned Single Judge, the reasons given by the authority while rejecting the representation/application filed by the petitioner for registration of transfer of vehicles purchased by him are just and proper. The interpretation put forward by the learned Single Judge is in consonance with the provisions of the Act and the intention of the legislature, more particularly, in providing emission standards which are required to be amended from time to time and to protect the environment of big cities, where vehicular pollution is higher in degree. The contention raised by the petitioner that the circular dated 16.6.2010 does not prescribe for any such standard is contrary to the record as the previous circulars do provide for the emission standards as it stood on the said dates and considering the amendment of Rule 115(15), the insistence of the authorities for meeting with the emission norms as provided under the provisions of the Act and the Rules even in case of transfer is proper and legal. The attempt on the part of the petitioner is to do a thing which

is not directly permissible under the law by an indirect method. If such re-registration under the garb of transfer are permitted in the cities, where particular emission norms are prescribed would make it impossible to maintain the emission standards and norms otherwise prescribed for a particular cities like Ahmedabad and Surat. Therefore, the decision taken by the authority is in accordance with law and under the provisions of the Act and the Rules and in total consonance with the circulars issued by the Central Government as well as the State Government authorities. We are in total agreement with the learned Single Judge and no contrary view needs to be taken in the case on hand and the learned Single Judge has correctly come to the conclusion that it was permissible for the Regional Transport Officer to rely upon the material on record and the earlier order passed by the Commissioner of Transport. The learned Single Judge has also correctly come to the conclusion that under such circumstances, it cannot be said that there was no independent application of mind by the Regional Transport Officer while passing the order impugned in the petition.

16. No case for interference is made out and the appeal, being merit-less, deserves to be dismissed and is hereby dismissed. However, there shall be no order as to costs.