

(2022) 04 PAT CK 0069

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4217, 4223, 4296, 4310, 4734, 4981, 5470, 7926 Of 2021, 1133, 3179 Of 2022??

Bihar Truck Owner Association

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 25-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 19, 19(1), 19(1)(d), 19(2), 19(3), 19(4), 19(5), 19(6), 21, 32, 37, 246, 256, 257, 257(1), 301, 304, 304(b)
Bihar Motor Vehicles Rules, 1992 — Rule 73(7)(x)
Motor Vehicles Act, 1988 — Section 2, 2(13), 2(14), 2(16), 2(17), 2(21), 2(22), 2(23), 2(24), 2(25), 2(27), 2(28), 2(31), 2(33), 2(34), 2(35), 2(43), 2(44), 2(46), 2(47), 2(49), 58, 58(1), 68, 69, 77, 78, 79(2)(iii), 1110, 110(1), 111, 112(2), 113, 114, 115, 116, 138, 138(2)(i), 194
National Highways Act, 1956 — Section 4, 5
Control Of Highways (Land And Traffic) Act, 2002 — Section 35

Citation : (2022) 04 PAT CK 0069

Hon'ble Judges : Sanjay Karol, CJ;S. Kumar, J

Bench : Division Bench

Advocate : P.K. Shahi, Sujit Kumar Singh, Dr. Krishna Nandan Singh, Anshuman Singh, Devansh Shankar Singh, Abhijeet Gautam, Amarjeet, Lalit Kishore, Ajay Kumar Rastogi, Rohitabh Das, Prabhat Ranjan, Chandan Kumar, R.K. Sharma

Final Decision : Allowed

Judgement

1. The instant petitions, in terms of the directions issued by Hon'ble the Supreme Court, were heard on priority basis.

The following issues arise for consideration before this Court:-

(i) Whether the scope of Section 115 of the Motor Vehicles Act, 1988 allow regulations of/ restrictions on the movement of goods?

(ii) Is the impugned notification prohibiting the carriage of goods confined only to sand and stone chips on certain specified vehicles so arbitrary and unreasonable that it cannot be sustained?

(iii) What is the nature, ambit and scope of Article 301 of the Constitution of India? Whether the power enumerated under Section 115 of the Motor Vehicles Act, 1988 are wide enough to impose a complete ban on intra and inter-state traffic with vehicles having 14 wheels or above?

(iv) Whether the State possesses the legislative competence to restrict the use of National Highways?

(v) Whether the impugned notification qualifies the requirement of reasonable restriction under Article 19 of the Constitution of India?

(vi) Whether the State can in pursuance of public safety issue direction on an issue upon which the Central Government has already done so?

Prayer/Relief

2. The petitioner(s)/its members are all owners and operators of multi-wheeled vehicles ordinarily used to transport goods, both inter and intra-State of Bihar. All petitions filed before this Court were heard together, keeping in view the near-identical nature of reliefs sought and the challenge laid.

3. Petitioners in (i) CWJC Nos.4310 of 2021 titled as Bihar Truck Owner Association v. The State of Bihar & ors.;

(ii) 4217 of 2021 titled as Arvind Yadav & Ors. vs. The Union of India & Ors.; (iii) 4223 of 2021 titled as Bhagalpur District Truck Owner Association vs. The State of Bihar & Ors.; (iv) 4296 of 2021 titled as Ravish Kumar & Anr. v. The Union of India & Ors.; (v) 4734 of 2021 titled as Mukesh Kumar Madhukar & Ors. v. The Union of India & ors.; (vi) 4981 of 2021 titled as Ashutosh Kumar & Ors. V. The Union of India & Ors.; (vii) 7926 of 2021 titled as Raushan Kumar v. The State of Bihar & ors.; and (viii) 1133 of 2022 titled as JSP Projects Private Limited v. The Union of India & Ors. seek quashing of the impugned notification dated 16.12.2020 and consequential communication dated 17.12.2020. Also, they seek declaration with respect to the scope and power of Section 115 of the Motor Vehicles Act, 1988.

4. Petitioner in (ix) CWJC No.5470 of 2021 titled as Shambhu Singh & ors. V. The Union of India & Ors. also claiming similar relief, had filed a petition directly before Hon'ble the Supreme Court under Article 32 of the Constitution of India which stands transferred vide order dated 29.01.2021 passed in Writ Petition (Civil) No.99 of 2021 titled as Shambhu Singh & ors. V. The Union of India & ors.

5. Petitioner in (x) CWJC No.3179 of 2022 titled as All India Motor Transport Congress v. Union of India had earlier preferred a petition not only before Hon'ble the Supreme Court but also this Court by filing a writ petition being CWJC No.19225 of 2021 titled as All India Motor Transport Congress v. The Union of India & Ors. which stood disposed of vide order dated 14.11.2021, granting liberty to make representation. The same now stands decided by the Secretary, Transport Department, Government of Bihar vide order dated 01.02.2022.

Hence, a challenge is also laid to the said order.

6. The impugned Notification dated 16.12.2020 stands extracted hereinbelow:-

7. English Translated version reads as under:-

" Government of Bihar Transport Department

Notification

No.- 03/overloading (DALA Fixation) 01/2020 Tr. 8536 Patna dated 16-12-2020.

Overloaded vehicles operating in the State of Bihar are damaging important roads, bridges, infrastructure and also affecting the revenue. There is a need for better maintenance of Bridges and roads and effective control over the movement of overloaded vehicles. Therefore, in exercise of the powers conferred on the State Government in Section 115 of the Motor Vehicles Act, 1988 (as amended 2019).

1. The use of trucks having 14 wheels or more than 14 wheels for lifting and transportation of sand/stone chips is prohibited with immediate effect.

2. For carrying sand/stone chips in the light of loading capacity prescribed in the registration book of vehicles under the Motor Vehicle Act, maximum height of 3 feet above the subframe of cowl chassis in trucks of 6 wheels to 10 wheels and maximum height of 3.5 feet above the subframe of the cowl chassis in trucks of 12 wheels (including dumpers) are being fixed.

This notification shall be effective from the date of its publication in Bihar Gazette.

By the order of the Governor of Bihar

Sd/- (illegible)

16.12.2020

Secretary to Government"

8. Noticeably, the Secretary, Department of Transportation, Government of Bihar in furtherance of the Notification dated 16.12.2020, vide letter dated 17.12.2020 issued directions to all the District Magistrates to effect compliance with the restrictions imposed vide said Notification. Those being-(a) the Prohibition of vehicles fourteen wheeled and above on all roads within the State of Bihar to carry sand and stone chips; (b) that dimensions of six to ten and more wheeled vehicles used to carry "sand" and "stone chips" be restricted to three feet and three and half feet for those vehicles having twelve wheels. For ready reference, the letter is extracted hereinunder:-

9. The translated version of the document reads as under:

"Government of Bihar

Transport Department

File No. - 03/overloading (Dala Fixation) – 01/2020 T. 8565

From,

Sanjay Kumar Agrawal, IAS,

Secretary

Transport Deptt. Bihar, Patna.

To,

All District Officers,

Bihar.

Patna, dated- 17/12/2020

Subject :- Regarding the use of trucks having wheels less than 14 in number for effective control of the over loaded vehicles containing sand & chips and ensuring transportation of goods loading vehicles with the proper height of Dala according to the fixed loading capacity.

Sir,

Enclosing herewith the photocopy of relevant notification on the aforesaid subject, I am to inform you that the State Govt. has been making continuous efforts to control the transportation of overloaded goods vehicles for protecting the constructed roads of superior category and the bridges from being damaged. In view of the loading of sand & stone chips more than their loading capacity, by the heavy goods vehicles, the State Govt. is very serious to control the same.

2. In this context, exercising powers conferred to the State Govt. under Section 115 of Motor Vehicles Act 1988, the State Cabinet has taken following decision in its meeting dated 15.12.2020:-

A. The use of trucks having 14 wheels or more than it for loading and transportation of sand and chips has been banned.

B. Maximum height of 3 feet above the frame of cowl chassis of the trucks having 6 to 10 wheels as per the load capacity fixed in the registration book of the goods loading vehicles and maximum height of Dala 3.5 feet in the trucks having 12 wheels (with damper) has been permitted for loading for sand and chips.

Hence, It is requested to ensure the compliance of the following decision with regard to all the bridges and roads under your jurisdiction:-

A. The transportation of sand and chips shall not be done by the trucks having 14 or more wheels, in any circumstances.

B. The transportation of sand and chips shall be done on the dala having maximum height of 3 feet in the trucks having 6 to 10 wheels and the

transportation of sand and chips shall be done in the dala having maximum height of 3.5 feet in the trucks containing 12 wheels.

In case of violation, necessary action regarding effective steps under law and rule together with cancellation of permit and licence of driver shall be taken. At the same time, it shall be ensured in the meeting with the mining settlement holder that loading of sand and chips and its transportation from the loading place shall be done as per prescribed loading capacity and admissible specifications.

It may kindly be given top priority.

Yours faithfully

sd/- Illegible)

17/12/2020

Secretary

Transport Department

Bihar, Patna.”

(Emphasis supplied)

Motor Vehicles Act, 1988

10. The Motor Vehicles Act, 1988 (referred to as the MV Act) divided into XIV Chapters comprises of more than 217 Sections and one Schedule. The Act inter alia deals with innovation, research and development in the field of mechanically propelled vehicle(s); registration of vehicular movement; and generally transportation of goods.

11. Chapter I deals with the definitions. Chapter II deals with licensing of drivers of motor vehicles; Chapter III deals with licensing of conductors of stage carriages; Chapter IV deals with registration of motor vehicles; Chapter V deals with Control of Transport Vehicles; Chapter VI deals with special provisions relating to State Transport Undertakings; Chapter VII deals with construction, equipment and maintenance of motor vehicles; Chapter VIII deals with control of traffic; Chapter IX deals with motor vehicles temporarily leaving or visiting India; Chapter X deals with liability without fault in certain cases; Chapter XI deals with insurance of motor vehicles against third party risks; Chapter XII deals with the establishment of Claims Tribunals; Chapter XIII deals with the Offences, penalties and Procedure(s); and Chapter XIV deals with miscellaneous matters.

12. For the purposes of adjudication of the instant lis, we need to dialect on the provisions contained in Chapter-I, i.e. the definitions- Section 2; Chapter V- Control of Transport Vehicles, from Section 66 to 96; and Chapter VIII Control of Traffic, from Section 112 to 138.

13. As per Section 66, no owner of a "motor vehicle" shall either use or permit the use of the "vehicle" as a "transport vehicle" in any "public place", save under the conditions of a "permit" granted or countersigned by a "Regional" or "State Transport Authority" or any other prescribed authority.

14. Section 2(34) of the Motor Vehicles Act, 1988, defines "public place" to mean a road, street, way, or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at passengers are picked up or set down by a stage carriage.

15. Both "vehicle" and "motor vehicle" synonyms to each other stands defined under sub-section (28) of Section 2 as under:-

"(28) "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding [twenty-five cubic centimetres];"

16. "Transport Vehicle" is defined under sub-section (47) of Section 2 to read as under:-

"(47) "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;"

17. The definition clause (Section 2) defines different types of vehicles, i.e. "heavy goods vehicle" sub-section (16); "heavy passenger motor vehicle" sub-section (17); "light motor vehicle" sub-section (21); "maxicab" sub-section (22); "medium goods vehicle" sub-section(23); "medium passenger motor vehicle" sub-section (24); "motorcab" sub-section (25); "motor cycle" sub-section (27) "motor vehicle" or "vehicle" sub-section (28); "private service vehicle" sub-section (33); "public service vehicle" sub-section (35); "tourist vehicle" sub-section (43); "tractor" sub-section (44); "trailer" sub-section (46); "goods carriage" sub-section (14); "educational institution bus" sub-section (11).

18. "Permit" has been defined under sub-section (31) of Section 2 to read as under:-

"(31) "permit" means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorising the use of a motor vehicle as a transport vehicle;"

19. It is thus seen that for the use of the motor vehicle as a "transport vehicle", a "permit" is required to be issued by the State/Regional Transport Authority.

20. The "transport vehicle" is inclusive of a vehicle used as a "goods carriage", which, as defined under sub-section (14) of Section 2, reads as under:-

"(14) "goods carriage" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods;"

21. Now, what is "goods" is also defined under sub-section (13) of Section 2 and reads as under:-

"(13) "goods" includes live-stock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle;

22. The distinction between "goods carriage" [sub-section (14)] and "heavy goods vehicle" [sub-section (16)] is in terms of the gross weight of the vehicle. "Weight" is defined under sub-section (49) of Section 2 and reads as under:-

"(49) 'weight" means the total weight transmitted for the time being by the wheels of a vehicle to the surface on which the vehicle rests or moves."

23. We are dealing with cases where undisputedly permit(s) stand issued for carriage of goods for a vehicle, be it as a "goods carriage" or "heavy goods vehicle".

24. The Transport Authorities, be it the State or the Regional Transport Authority, are constituted under Section 68 of Chapter V of the Act.

25. Under Section 69, all applications are required to be submitted before the "Regional Transport Authority" of the region in which the vehicle is proposed to be plied. The section itself takes care of a circumstance where, such a vehicle is required to be plied in different regions both within and/or outside the State. Section 77 enables the owner of a vehicle for the "carriage of goods" for hire or reward in connection with a trade or business to submit an application furnishing certain particulars. Accounting for the factors stipulated under Section 78, grant of a "goods carriage", "permit" is issued subject to certain conditions specified therein.

26. Significantly, clause (iii) of sub-section (2) of Section 79 enables the "Regional Transport Authority" to specify the nature of "goods" which shall not be carried.

27. It is an admitted case of the parties that the owners of the vehicles, be it individual or members of the Association before us, are complying with all the provisions of the Act; Rules framed thereunder, or conditions of the permit issued in respect of each of the vehicles.

28. Significantly, and undisputedly, neither the "State" nor the "Regional Transport Authority" has restricted the movement of any "goods" of a "specified nature", to be carried anywhere either within or outside the country or within the State of Bihar.

29. In this backdrop, we now deal with the issue of restriction imposed by the State Government for carriage of certain goods, -(a) the Prohibition of vehicles fourteen wheeled and above on all roads within the State of Bihar to carry goods confined to sand and stone chips; (b) Restriction of carrying sand and stone chips up to a maximum height of three feet above the sub-frame of cowl chassis (Dala) in vehicles of six to ten wheels and three and half feet for vehicles with twelve wheels.

30. The State Government traces the source of such power under Section 115 of the Act which reads as under:-

"115. Power to restrict the use of vehicles.—The State Government or any authority authorised in this behalf by the State Government, if satisfied that it is necessary in the interest of public safety or convenience, or because of the nature of any road or bridge, may by notification in the Official Gazette, prohibit or restrict, subject to such exceptions and conditions as may be specified in notification, the driving of motor vehicles or of any specified class or description of motor vehicles or the use of trailers either generally in a specified area or on a specified road and when any such prohibition or restriction is imposed, shall cause appropriate traffic signs to be placed or erected under section 116 at suitable places:

Provided that where any prohibition or restriction under this section is to remain in force for not more than one month, notification thereof in the Official Gazette shall not be necessary, but such local publicity as the circumstances may permit, shall be given of such prohibition or restriction."

31. Significantly, Section 113 of the Act enables the State Government to prescribe the conditions for the issuance of permits for transport vehicles by the State or Regional Transport Authorities. It may also prohibit the use of such vehicle in any area or route. Section 113 reads as under:-

"113. Limits of weight and limitations on use.—(1) The State Government may prescribe the conditions for the issue of permits for [transport vehicles] by the State or Regional Transport Authorities and may prohibit or restrict the use of such vehicles in any area or route.

(2) Except as may be otherwise prescribed, no person shall drive or cause or allow to be driven in any public place any motor vehicle which is not fitted with pneumatic tyres.

(3) No person shall drive or cause or allow to be driven in any public place any motor vehicle or trailer—

(a) the unladen weight of which exceeds the unladen weight specified in the certificate of registration of the vehicle, or

(b) the laden weight of which exceeds the gross vehicle weight specified in the certificate of registration.

(4) Where the driver or person in charge of a motor vehicle or trailer driven in contravention of sub-section (2) or clause (a) of sub-section (3) is not the owner, a Court may presume that the offence was committed with the knowledge of or under the orders of the owner of the motor vehicle or trailer.”

32. However, in so far as the provisions of Chapter VIII (also containing Sections 113 and 115) are concerned, it does not in any way deal with prohibition, restriction, or regulation of any specified “goods” through a motor vehicle.

33. Section 115 enables the State Government upon its satisfaction and necessity arising out of public safety and convenience of plying of the vehicle on any road or bridge. The power to prohibit or restrict, subject to such exception and condition, is with regarding (a) driving of a motor vehicle; (b) of any specified class; or description; (c) use of trailer; (d) in any specified area or specified road.

34. We notice that Chapter VIII, which generally deals with the control of traffic, also enables the State Government to frame rules (Section 138) in the interest of road safety to regulate the activities. Rulemaking power is not specific to the subject of goods, though, under clause (i) to sub-section (2) of Section 138, the Government may frame rules generally for the prevention of danger, injury or annoyance to the public or any person, or of danger or injury to the property or of obstruction to traffic.

Binding Precedents

35. We now proceed to examine the various precedents laid down by Hon’ble the Supreme Court as well as observations made by Hon’ble High Courts as to the questions arising in this case.

36. The Hon’ble Apex Court in *State of Himachal Pradesh and another v. Umed Ram Sharma and others*, (1986) 2 SCC 68 (para-11), held that Article 21 read conjointly with Article 19(1) (d) gives right to move freely through the territory of India and, therefore, access to a road is access to life itself. Denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution.

37. In *Mohd. Faruk v. State of M.P.*, (1969) 1 SCC 853, the Court observed as under:-

“8. The power to issue Bye-laws indisputably includes the power to cancel or withdraw the Bye-laws, but the validity of the exercise of the power to issue and to cancel or withdraw the Bye-laws must be adjudged in the light of its impact upon the fundamental rights of persons affected thereby. When the validity of a law placing restriction upon the exercise of fundamental rights in Article 19(1) is challenged, the onus of proving to the satisfaction of the Court that the restriction is reasonable lies upon the State. A law requiring that an act which is inherently dangerous, noxious or injurious to public interest, health or safety or is likely to prove a nuisance to the community, shall be done under a permit or

licence of an executive authority, it is not per se unreasonable and no person may claim a licence or permit to do that act as of right. Where the law providing for grant of a licence or a permit confers a discretion upon an administrative authority regulated by rules or principles expressed or implied, and exercisable in consonance with rules of natural justice, it will be presumed to impose a reasonable restriction. Where, however, power is entrusted to an administrative agency to grant or withhold a permit or licence in its uncontrolled discretion, the law ex facie infringes the fundamental right under Article 19(1). Imposition of restriction on the exercise of a fundamental right may be in the form of control or prohibition, but when the exercise of a fundamental right is prohibited, the burden of proving that a total ban on the exercise of the right alone may ensure the maintenance of the general public interest lies heavily upon the State.

(Emphasis supplied)

38. However, as held by the Hon'ble Supreme Court in *State of Tamil Nadu v. P. Krishnamurthy*, (2006) 4 SCC 517, it was reaffirmed that, while there is a presumption of constitutional validity of subordinate legislation and the one laying challenge to it has to show it to be otherwise.

39. In *Ram Krishna Dalmia v. Justice S.R. Tendolkar and Ors.*, (1959) SCR 279, Hon'ble the Supreme Court observed that a law may be deemed as constitutional even though it relates to single individual if on account of special circumstances or reasons applicable solely on such person that individual is treated as a class by himself.

40. The Hon'ble Supreme Court in *Gulf Goans Hotels Co. Ltd. v. Union of India*, (2014) 10 SCC 673, held as under:-

"15. The question 'what is "law"?' has perplexed many a jurisprude; yet, the search for the elusive definition continues. It may be unwise to posit an answer to the question; rather, one may proceed by examining the points of consensus in jurisprudential theories. What appears to be common to all these theories is the notion that law must possess a certain form; contain a clear mandate/explicit command which may be prescriptive, permissive or penal and the law must also seek to achieve a clearly identifiable purpose. While the form itself or absence thereof will not be determinative and its impact has to be considered as a lending or supporting force, the disclosure of a clear mandate and purpose is indispensable.

16. It may, therefore, be understood that a government policy may acquire the "force of 'law'" if it conforms to a certain form possessed by other laws in force and encapsulates a mandate and discloses a specific purpose. It is from the aforesaid prescription that the guidelines relied upon by the Union of India in this case, will have to be examined to determine whether the same satisfies the minimum elements of law..."

(Emphasis supplied)

41. The Hon'ble Supreme Court in Govt. of A.P. v. T. Anjeneyulu, (2005) 9 SCC 312, held that:-

"9. ... There are some definite and defined areas earmarked for the functionaries of the State. Merely because the objectives in the ultimate may be for the good of a society, that will not permit overstepping the limitations prescribed by law and defined areas of government functioning..."

42. In Union of India v. Dinesh Engg. Corpn. (2001) 8 SCC 491, Hon'ble the Supreme Court observed that

"...There is no doubt that this Court has held in more than one case that where the decision of the authority is in regard to a policy matter, this Court will not ordinarily interfere since these policy matters are taken based on expert knowledge of the persons concerned and courts are normally not equipped to question the correctness of a policy decision. But then this does not mean that the courts have to abdicate their right to scrutinize whether the policy in question is formulated keeping in mind all the relevant facts and the said policy can be held to be beyond the pale of discrimination or unreasonableness, bearing in mind the material on record."

43. The Hon'ble Supreme Court in State of Rajasthan v. Sevanivatra Karamchari Hitkari Samiti, (1995) 2 SCC 117 (Para-24) held that the wisdom in a policy decision of the Government, as such, is not justiciable unless the policy decision is wholly capricious, arbitrary and whimsical, thereby offending the rule of law as enshrined in Article 14 of the Constitution or if such a decision offends any statutory provision or the Constitution itself. It is only in these cases where the Court enters into the uncharted ocean of public policy.

44. In Shweta Kapoor v. Govt. of NCT of Delhi & ors. 2016 SCC Online Del 155, the Hon'ble Supreme Court held that:-

"13. The views on the efficacy of such government policy may differ, however, the question is whether the policy decision warrants interference by this Court in exercise of power of judicial review. The law is well settled that on matters affecting policy this Court will not interfere unless the policy is unconstitutional or contrary to statutory provisions or arbitrary or irrational or in abuse of power, since the policy decisions are taken based on expert knowledge and the Courts are normally not equipped to question the correctness of the same. The scope of judicial enquiry is therefore confined to the question whether the decision taken by the Government is against any statutory provision or it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution of India."

45. In Parisons Agrotech (P) Ltd. v. Union of India, (2015) 9 SCC 657, Hon'ble the Supreme Court while considering number of judgments on writ jurisdiction observed with profit that judicial review is a power weapon to restrain unconstitutional exercise of power by the legislature and the executive. The

expanding horizon of judicial review has taken in its fold the concept of social and economic justice. The check on such power is judicial interference, but the check on court's own power is self imposed discipline and judicial restraint. Referring to *State of Orissa v. Gopinath Dash*, (1989) Supp. (2) SCC 364, the Court observed that judicial enquiry of administrative action is confined to the question whether decision taken by the Government is against any statutory provision or it violates the fundamental rights of citizens or is opposed to provisions to the constitution.

46. Similar view was taken in *Manohar Lal Sharma v. Union of India & Anr.* (2013) 6 SCC 616 (Para 13).

47. The Hon'ble Supreme Court in *Centre for Public Interest Litigation v. Union of India & Ors.*, (2016) 6 SCC 408 held that judicial review of a policy decision is not warranted if the said decision is not found to be arbitrary, based on irrelevant consideration, mala fide or against statutory provision, if the decision is outcome of deliberation of experts.

48. The Hon'ble Apex Court in *Om Kumar v. Union of India*, (2001) 2 SCC 386, while expounding on the proportionality doctrine, held as under:-

"28. By "proportionality", we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least-restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority "maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve". The legislature and the administrative authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the court. That is what is meant by proportionality."

"30. On account of a Chapter on Fundamental Rights in Part III of our Constitution right from 1950, Indian Courts did not suffer from the disability similar to the one experienced by English Courts for declaring as unconstitutional legislation on the principle of proportionality or reading them in a manner consistent with the charter of rights. Ever since 1950, the principle of "proportionality" has indeed been applied vigorously to legislative (and administrative) action in India. While dealing with the validity of legislation infringing fundamental freedoms enumerated in Article 19(1) of the Constitution of India — such as freedom of speech and expression, freedom to assemble peaceably, freedom to form associations and unions, freedom to move freely throughout the territory of India, freedom to reside and settle in any part of India, — this Court has occasion to consider whether the restrictions imposed by legislation were disproportionate to the situation and were not the least

restrictive of the choices. The burden of proof to show that the restriction was reasonable lay on the State. "Reasonable restrictions" under Articles 19(2) to (6) could be imposed on these freedoms only by legislation and courts had occasion throughout to consider the proportionality of the restrictions. In numerous judgments of this Court, the extent to which "reasonable restrictions" could be imposed was considered. In *Chintamanrao v. State of M.P.* [AIR 1951 SC 118 : 1950 SCR 759] Mahajan, J. (as he then was) observed that "reasonable restrictions" which the State could impose on the fundamental rights "should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public". "Reasonable" implied intelligent care and deliberations, that is, the choice of a course which reason dictated. Legislation which arbitrarily or excessively invaded the right could not be said to contain the quality of reasonableness unless it struck a proper balance between the rights guaranteed and the control permissible under Articles 19(2) to (6). Otherwise, it must be held to be wanting in that quality. Patanjali Sastri, C.J. in *State of Madras v. V.G. Row* [AIR 1952 SC 196: 1952 SCR 597: 1952 Cri LJ 966], observed that the Court must keep in mind the "nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time". This principle of proportionality vis-à-vis legislation was referred to by Jeevan Reddy, J. in *State of A.P. v. McDowell & Co.* [(1996) 3 SCC 709] recently. This level of scrutiny has been a common feature in the High Court and the Supreme Court in the last fifty years. Decided cases run into thousands."

49. The Constitution Bench of the Hon'ble Supreme Court in *K S Puttaswamy v. Union of India*, (2019) 1 SCC 1, propounded the four pronged proportionality test. The four prongs are- (i) a measure stipulated to restrict a right must have legitimate goal; (ii) means must exist to further that goal; (iii) there must not be an effective alternative to the purpose of such restriction; and (iv) that it must not have a disproportionate impact on the right holder.

50. The Hon'ble Supreme Court in *Akshay N. Patel v. Reserve Bank of India & Anr.*, 2021 SCC OnLine 1180 has held that

"... However, the substance of the enquiry behind each of the limitations under these Articles is similar to a proportionality analysis. In essence, the rights' limitation is considered justified if it pursues a legitimate aim, has a rational nexus to the objective and there is a balance between the limitation of the right and the public interest which the rights-limitation aims to achieve. This analysis has been considered similar to a proportionality inquiry, with the "necessity" prong being considered missing."

51. In *Godawat Paan Masala IP Ltd. v. Union of India*, (2004) 7 SCC 68, the Hon'ble Supreme Court observed that when licences have already been granted under a particular statutory provision, there must be a statutory scheme for cancellation and suspension of licence. The power in the State Authority to

suddenly bring out the result of cancellation or suspension of licence without procedure safeguard would certainly be arbitrary and liable to hit by Article 14.

52. In *Tata Cellular v. Union of India*, (1994) 6 SCC 651, the Hon'ble Supreme Court recorded at considerable length what is irrational, in the following terms:-

"By "irrationality" I mean what can now be succinctly referred to as "Wednesbury unreasonableness".

(*Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.* [(1948) 1 KB 223 : (1947) 2 All ER 680]) It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at.' "

(1) It is open to the court to review the decision-maker's evaluation of the facts. The court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way, cannot be upheld..."

"(2) A decision would be regarded as unreasonable if it is impartial and unequal in its operation as between different classes. On this basis in *R. v. Barnet London Borough Council, ex p Johnson* [(1989) 88 LGR 73] the condition imposed by a local authority prohibiting participation by those affiliated with political parties at events to be held in the authority's parks was struck down."

"83. A modern comprehensive statement about judicial review by Lord Denning is very apposite; it is perhaps worthwhile noting that he stresses the supervisory nature of the jurisdiction:

"Parliament often entrusts the decision of a matter to a specified person or body, without providing for any appeal. It may be a judicial decision, or a quasi-judicial decision, or an administrative decision. Sometimes Parliament says its decision is to be final. At other times it says nothing about it. In all these cases the courts will not themselves take the place of the body to whom Parliament has entrusted the decision. The courts will not themselves embark on a rehearing of the matter. See *Healey v. Minister of Health* [(1955) 1 QB 221 : (1954) 3 All ER 449 : (1954) 3 WLR 815] . But nevertheless, the courts will, if called upon, act in a supervisory capacity. They will see that the decision-making body acts fairly. See *H.K. (an infant), Re* [(1967) 2 QB 617, 630 : (1967) 1 All ER 226 : (1967) 2 WLR 692] , and *R. v. Gaming Board for Great Britain, ex p Benaim and Khaida* [(1970) 2 QB 417 : (1970) 2 All ER 528 : (1970) 2 WLR 1009] . The courts will ensure that the body acts in accordance with the law. If a question arises on the interpretation of words, the courts will decide it by declaring what is the correct interpretation. See *Punton v. Ministry of Pensions and National Insurance* [(1963) 1 WLR 186 : (1963) 1 All ER 275] . And if the decision-making body has gone wrong in its interpretation they can set its order aside. See *Ashbridge Investments Ltd. v. Minister of Housing and Local Government* [(1965) 1 WLR

1320 : (1965) 3 All ER 371]. (I know of some expressions to the contrary but they are not correct). If the decision-making body is influenced by considerations which ought not to influence it; or fails to take into account matters which it ought to take into account, the court will interfere. See *Padfield v. Minister of Agriculture, Fisheries and Food* [1968 AC 997 : (1968) 1 All ER 694] . If the decision-making body comes to its decision on no evidence or comes to an unreasonable finding — so unreasonable that a reasonable person would not have come to it — then again the courts will interfere. See *Associated Provincial Picture Houses Ltd. v. Wednesbury Corp.* [(1948) 1 KB 223 : (1947) 2 All ER 680] If the decision-making body goes outside its powers or misconstrues the extent of its powers, then, too the courts can interfere. See *Anisminic Ltd. v. Foreign Compensation Commission* [(1969) 2 AC 147 : (1969) 1 All ER 208 : (1969) 2 WLR 163] . And, of course, if the body acts in bad faith or for an ulterior object, which is not authorised by law, its decision will be set aside. See *Sydney Municipal Council v. Campbell* [1925 AC 338 : 1924 All ER Rep 930] . In exercising these powers, the courts will take into account any reasons which the body may give for its decisions. If it gives no reasons — in a case when it may reasonably be expected to do so, the courts may infer that it has no good reason for reaching its conclusion, and act accordingly. See *Padfield case* (as AC pp. 1007, 1061) [1968 AC 997 : (1968) 1 All ER 694] ."

53. In order to strike down a delegated legislation as arbitrary it has to be established that there is manifest arbitrariness. The expression "arbitrarily" means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone. [*Sharma Transport v. State of A.P.*, (2002) 2 SCC 188]

54. Article 14 is not meant to perpetuate illegality or fraud. It has a positive concept. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or Court in a negative manner. (*Fuljit Kaur v. State of Punjab and others*, (2010) 11 SCC 455).

55. In *Shayra Bano v. Union of India*, (2017) 9 SCC 1, the Apex Court held: "

"87. The thread of reasonableness runs through the entire fundamental rights Chapter. What is manifestly arbitrary is obviously unreasonable and being contrary to the rule of law, would violate Article 14. Further, there is an apparent contradiction in the three Judges' Bench decision in *State of A.P. v. McDowell and Co.*, (1996) 3 SCC 709, when it is said that a constitutional challenge can succeed on the ground that a law is "disproportionate, excessive or unreasonable", yet such challenge would fail on the very ground of the law being "unreasonable, unnecessary or unwarranted". The arbitrariness doctrine when applied to legislation obviously would not involve the latter challenge but would only involve a law being disproportionate, excessive or otherwise being manifestly unreasonable. All the aforesaid grounds, therefore, do not seek to differentiate between State action in its various forms, all of which are

interdicted if they fall foul of the fundamental rights guaranteed to persons and citizens in Part III of the Constitution.”

Our Opinion

56. Thus the law clearly sets out how a challenge as to violation of Articles 14 and 19 has to be dealt with. The Courts’ power of judicial review of a delegated legislation; policy decision; reasonableness of Government action; principles and facets of arbitrariness, including manifest arbitrariness; the four pronged proportionality test already stand discussed.

57. In our considered view, the impugned notification and the consequential communication do not meet the standard of reasonable nexus to the object sought to be achieved and reasonable classification based on intelligible differentia imposed by Article 14.

58. The ban solely based on the type of goods being carried in vehicles with fourteen wheels or above or restricted to a carriage up to a certain height in certain specified vehicles cannot be stated to meet the nexus of protection of roadways and purported loss of revenue caused, due to damage to bridges etc..

59. There is no material placed on record, save and except, communications by NHAI vide Letter No.2195 dated 29.11.2019 (Annexure-H to the supplementary counter affidavit dated 04.08.2021 filed on behalf of Respondents 3 to 5) with regard to stopping of movement of traffic on Rajendra Setu, Rail cum Road Bridge over river Ganga between Hathida and Barauni in the duration of maintenance to ensure structural integrity to bear heavy load; Letter dated 25.02.2020 issued by General Manager, East Central Railways, Hajipur (Annexure-I to the supplementary counter affidavit dated 04.08.2021 filed on behalf of Respondents 3 to 5) regarding overstress on J.P. Setu as a result of plying of heavy vehicles; and letter dated 12.05.2020 issued by Dy. Chief Engineer Bridge Line, East Central Railways, Hajipur (Annexure-J to the supplementary counter affidavit dated 04.08.2021 filed on behalf of Respondents 3 to 5) as regards to overloading of vehicles on J.P. Bridge over river Ganges.

60. In light of the above, suitable action being the said notification is taken to prevent such vehicles from plying on those bridges as has been mentioned in the order rejecting the representation filed by the petitioner in CWJC No.3179 of 2022, namely All India Motor Transport Congress, by the Secretary, Transport Department, Government of Bihar, Patna (Page 113-115).

61. The record does not reflect any cogent material that may form the basis of issuing such a notification spread all over the State and that too on all the Highways. The restriction of the petitioners' right in totality cannot be based entirely on three communications unsubstantiated by any scientific study or data.

62. The State did not furnish any material to substantiate claims of overloading. Neither did they place any scientific study that justified the total restriction on carrying goods such as sand and stone chips, and not others of equal weight,

within the State of Bihar by specified vehicles. Is there any empirical data showing that sand and stone chips alone damage the road? None whatsoever.

63. Therefore, the impugned notification appears to be, though prompted, without any application of mind or proper appreciation and application of the MV Act in enforcing the provision, checking the alleged malpractices of overloading the vehicle(s) of such goods. This vitiates both the decision and the decision-making process as any conclusive cogent material did not support it.

64. The ground of arbitrariness as held by Hon'ble the Apex Court is not a separate ground within Indian Law. It is subsumed by Article 14. One must satisfy non-arbitrariness for any law to pass muster.

65. In the present case, the State takes a loosely formed ground of public safety while exercising a power situate under Chapter VIII of the MV Act termed as 'Control of Traffic' and justification provided is of damage to roadways and bridges upon three letters furnished by the NHAI and Railways. However, it does not satisfy how a total or restricted ban can be held to be good in fact or law.

66. On Article 19, it is argued that the selective restriction on the type of good and the near-complete ban derogates the right to freedom of trade and profession stipulated therein. Further, arguments have been made to submit that the impugned notification falls short of the standard envisaged by the proportionality test as laid down by Hon'ble the Supreme Court, principles whereof we have already discussed. [Om Kumar (supra); K S Puttaswamy (supra); Akshay N. Patel(supra)]

67. In the considered view of this Court, the four prongs are not satisfied. The legitimate goal indicated by the words of the notification, "It is necessary to maintain bridges and roads properly and control the transportation of overloaded vehicles effectively," was to prevent overloading. Here only we take note of Section 58 of the MV Act, which is titled as special provisions regarding transport vehicles, explicitly empowering the Central Government to specify by notification the maximum weight both gross and axle. Connectedly, an effective alternative does exist, i.e. the imposition of penalty under Section 194 of the MV Act and regulation of weight according to a notification dated 16.07.2018 issued by the Ministry of Road Transport And Highways, Government of India, under Section 58(1) of the said Act which lays down maximum safe axle weight [https://morth.nic.in/sites/default/files/circulars_document/Advisory_regarding_revision_of_safe_axle_1.pdf].

68. The goal of preventing overloading could have been met by effectively implementing existing policies and laws, thereby failing to meet the third prong, which may be termed the necessity analysis. This analysis casts a shadow of doubt on the ban's 'complete' nature, which is discussed later.

69. The final test is conducting a balancing exercise, and in the present case, the same has been foregone to a disproportionate disadvantage to the truck owners

and users.

70. The very Chapter VIII under which Section 115 was invoked gives the State Authorities different kinds of power to effectively implement policies and protect their roads. Section 112 (2) gives the State Government the authority to restrict motor vehicle speed in the interest of public safety, considering the nature of the road or bridge. Section 113 empowers the State Government to prescribe conditions for the issue of permits by the State/ Regional Transport Authorities for transport vehicles and to restrict the use of such vehicles on any area or route etc. Section 114 empowers the Motor Vehicle Department or any other person authorized by the State Government to weigh a vehicle within specific parameters as prescribed. The State Government has the power of regulating traffic restricting entry of certain vehicles at a particular place. But did the State do so? No. Why not so? No explanation is forthcoming.

71. All this was not done.

72. Rule making power is not confined to the subject of goods, though under clause (i) to sub-section (2) of Section 138 of MV Act, the Government may frame rules generally for the prevention of danger, injury or annoyance to the public or any person, or of danger or injury to the property or of obstruction to traffic. We notice that Chapter VIII, which generally deals with traffic control, also enables the State Government to frame rules (Section 138) in the interest of road safety to regulate certain activities. Significantly, Section 113 of the Act allows the State Government to prescribe the conditions for issuing permits for transport vehicles by the State or Regional Transport Authorities. It may also prohibit the use of such vehicles in any area or route.

73. However, in so far as the provisions of Chapter VIII are concerned, it does not in any manner deal with prohibition, restriction, or regulation of any specified goods through a motor vehicle.

74. Elaborating further, Section 115 enables the State Government upon its satisfaction and necessity arising out of interest of public safety and convenience of plying of the vehicle on any road or bridge. The power to prohibit or restrict, subject to such exception and conditions, is regarding-

(a) driving of a motor vehicle; (b) of any specified class; (c) description; (d) use of trailer; (e) in any specified area or specified road. The power to restrict and prohibit, in our considered view, is specific only to a motor vehicle, be it of whatever description, but not goods carried by such vehicle. That power rests only with the State Government/Regional Transport Authority issuing the permit for carriage of goods. The Transport Authority, a creation of the Statute, is an authority independent of the State. Hence, in our considered view, the impugned action is totally contrary to the law and is not sustainable in law.

75. Section 110 (1) gives the power to the Central Government to make rules regulating the construction, equipment and maintenance of motor vehicles.

Section 110 reads as the power of the Central Government to make Rules under Chapter VII "construction, equipment and maintenance of motor vehicles". Clause (a) thereof reads "the width, height, length and overhand of vehicles and of the loads carried". Section 111 gives the power to the State Government to make rules in matters other than what is specified in Section 110(1). This amply clarifies that the physical particulars of the vehicle are to be made under rules notified by the Central Government.

76. The fourteen or more wheeler trucks whose cowl chassis has been restricted by the impugned notification (only for sand and stone chips) usurps power from the Centre. The State Government cannot restrict material particulars of a vehicle, neither under this Chapter nor under Chapter VIII. The rule making power in the Act enables both the Centre and the State to do so under each chapter and such power must be exercised in that context.

77. The control of weight on roads is regulated by the Central Government which has, as mentioned, issued a notification in 2018 in this regard. The attempt of the State to regulate weight goes against the division of power set out in the Act. Various provisions, in particular Sections 110 and 111, lend themselves to such division of power. Section 58, under which control of weight notification has been issued, also empowers the Central Government to notify heavier weights for particular localities and types of vehicles.

78. The object of the enabling legislation, i.e. the MV Act, already stands elucidated by us. The primary focus of this Act was to consolidate and amend laws relating to motor vehicles as well as to keep the parent legislation in line with technological advancement and the changes brought on thereby. An overall reading of the Act shows clearly this intent of the legislature. In the considered view of this Court, regulation of goods, that too vide a generally worded power, was not the intent. Such an understanding is also borne out from the Chapter VIII in which Section 115 is housed and the provision's wording.

79. The heading of Chapter VIII is "Control of Traffic". As Hon'ble the Supreme Court has noted, relying on Maxwell on Interpretation of Statute (10th Edition) "The Headings prefixed to sections or set of sections in some modern statutes are regarded as preambles to those sections. They cannot control the plain words of the Statute but they may explain ambiguous words." If there is any doubt in the interpretation of the words in the section, the heading certainly helps us to resolve that doubt. [Bhinka v. Charan Singh, 1959 Supp (2) SCR 798]

80. Control of Traffic as a term cannot be stated to be lending itself to banning of particular kind/size of vehicle carrying only specified goods, when the intent is not as displayed in the heading and is instead prevention of overloading. The words of the Section are themselves clear regarding the power to restrict plying of vehicles in specified areas or roads. Even so, if the generality of the wording is conceded to, the heading of the Chapter circumscribes the area of exercise of the power vested in said section.

81. Further, the scheme of the Act rests certain powers with either the Centre or the State. As previously noted, it is under Section 58 that the maximum weight (gross vehicle weight and axle) can be prescribed by the Central Government by notification. The power it does have is to levy fines under Section 194 and ensure that overloading does not damage its roads. The prohibitive restrictions imposed by the impugned notification, particularly reference to restriction on sand and stone chips, are conclusively against the Act's nature, object, and scheme.

82. Submission on behalf of the respondents that the power under Section 115 of the MV Act is wide in its amplitude and empowers the State Government to impose any prohibition and restriction on vehicular movement in the interest of public safety, based on three letters written by the authorities of NHAI and East Central Railway, Hajipur is, in our considered view, fallacious. The record does not reflect any positive steps taken to strengthen the existing measures, nor does it show any investigation or study to link the damage to the roads, particularly to sand and stone chips.

83. Expounding on the doctrine of proportionality, while referring to other judgments, Hon'ble the Supreme Court stated in *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637:

"60. The doctrine of proportionality is not foreign to the Indian Constitution, considering the use of the word "reasonable" under Article 19 of the Constitution. In a catena of judgments, this Court has held that "reasonable restrictions" are indispensable for the realisation of freedoms enshrined under Article 19, as they are what ensure that enjoyment of rights is not arbitrary or excessive, so as to affect public interest. This Court, while sitting in a Constitution Bench in one of its earliest judgments in *Chintaman Rao v. State of M.P.* [*Chintaman Rao v. State of M.P.*, AIR 1951 SC 118] interpreted limitations on personal liberty, and the balancing thereof, as follows : (AIR p. 119, para 7)

"7. The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality."

(emphasis supplied)

This Court in *State of Madras v. V.G. Row* [*State of Madras v. V.G. Row*, AIR 1952 SC 196 : 1952 Cri LJ 966] , while laying down the test of reasonableness, held that : (AIR p. 200, para 15)

"15. ... It is important in this context to bear in mind that the test of

reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

(Emphasis supplied)

84. In *Ram Sahai Varma v. State of Madhya Pradesh*, 1989 SCC OnLine MP 77, Hon'ble High Court Madhya Pradesh held as under:-

"7. .. There can be no mechanical exercise of power in respect of traffic restriction relying merely on recommendations of a non-statutory body when indeed, in the minutes is not reflected the fact that in the interest of general public such restrictions were required for "safety or convenience" of the public generally.

"9. ... Power envisaged under those provisions is to be exercised judiciously and reasonably. Minimum and reasonable restrictions matching the avowed objective can only stand the constitutional cavil of Art. 19(1)(d) guaranteeing freedom of movement to citizens..."

(Emphasis supplied)

85. In *Zakir Hussain Yusufali v. State of Maharashtra*, 2000 SCC OnLine Bom 542, the Hon'ble High Court of Bombay while adjudicating upon a notification issued under Section 115 of the Motor Vehicles Act opined as under:-

"19. ... The only requirement under section 115 of the Act is whether there is a requisite material or circumstances exist before the Competent Authority to reach the necessary satisfaction in order to issue prohibitory order in the interest of public safety or convenience..."

86. The Hon'ble High Court of Karnataka in *Smt. Kathiza & Ors. v. The District Magistrate & Ors.*, 1997 SCC OnLine Kar 598 has held that a notification under Section 115 is not meant to hold the field permanently, but the decision needs to be reviewed periodically. We see it fit to reproduce what the learned coordinate Bench had stated:-

"14. One argument advanced by the Learned Counsel for the appellants/Writ Petitioner is that the Notification issued under Section 115 of the Act is not meant to hold the field permanently but that the decision needs to be reviewed periodically. We agree with this submission. The proviso to Section 115 itself gives an indication in this regard. It contemplates that any prohibition or restriction under Section 115 could be meant to remain in force even for a period less than one month in which event, notice in the official gazette would not be necessary but only local publicity would suffice. Even without the aid of the said

proviso, it could be seen that the paramount considerations leading to issuance of the Notifications under Section 115 of the Act, namely the interest of public safety, convenience, nature of road or a bridge are not such as to remain permanently in the same condition as they stood on the date the concerned authority issued notification. The nature of the road on which plying of vehicles is prohibited or restricted could be improved by repairs. A weak bridge could be repaired or replaced by a new bridge. Convenience of the members of the public may necessitate more number of vehicles being required to be permitted in the area concerned. Thus, by the very nature of considerations that weighed in issuing the Notifications under Section 115, the authority concerned needs to review the position from time to time. The moment the concerned road or bridge is repaired, prohibition/restriction earlier imposed needs to be withdrawn. Even on the aspect of convenience, some of the considerations that weighed with the authority in issuing the notification under Section 115 may change in course of time... Several situations that may warrant review of the decision taken earlier and taking a fresh decision under Section 115 of the Act may arise and, it is absolutely necessary for the District Magistrate to have such periodical review, and, on such, review, to either withdraw prohibition/restriction or to modify the prohibition/restriction earlier imposed, would be necessary. We, therefore, hold that periodical review is inherent in the scheme under Section 115 of the Act."

87. The Hon'ble Supreme Court in *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 observed that the expression "interest of general public" is a wide expression which covers within its broad sweep all kinds of interest of the general public, including interest of the sovereignty and integrity of India, security of India and friendly relation of India with foreign States.

88. The Hon'ble Supreme Court in *State of Gujarat v. Mirzapur Moti Quarashi Kassab Jamat and others*, (2005) 8 SCC 534, in para 75, held in reference to the word 'restriction' as under:-

"75. Three propositions are well settled: (i) "restriction" includes cases of "prohibition"; (ii) the standard for judging reasonability of restriction or restriction amounting to prohibition remains the same, excepting that a total prohibition must also satisfy the test that a lesser alternative would be inadequate; and (iii) whether a restriction in effect amounts to a total prohibition is a question of fact which shall have to be determined with regard to the facts and circumstances of each case, the ambit of the right and the effect of the restriction upon the exercise of that right. Reference may be made to *M.B. Cotton Assn. Ltd. v. Union of India* [AIR 1954 SC 634], *Krishna Kumar v. Municipal Committee of Bhatapara* [Petrn. No. 660 of 1954 decided on 21-2-1957 by the Constitution Bench subsequently reported at (2005) 8 SCC 612.] (see *Compilation of Supreme Court Judgments, 1957 Jan-May*, p. 33, available in *Supreme Court Judges' Library*), *Narendra Kumar v. Union of India* [(1960) 2 SCR 375 : AIR 1960 SC 430], *State of Maharashtra v. Himmatbhai Narbheram*, *Sushila Saw Mill v. State of Orissa* [(1995) 5 SCC 615] , *Pratap Pharma (P) Ltd.*

v. Union of India [(1997) 5 SCC 87] and Dharam Dutt v. Union of India [(2004) 1 SCC 712] .”

89. Further in the same case, precedent was discussed where it was held that the Court while striking a balance between rights of individuals and the rights of citizenry as a whole the financial loss caused to individual becomes insignificant if it serves the larger public interest.

90. Hon’ble the Apex Court in Narendra Kumar v. Union of India, (1960) 2 SCR 375, held that the word “restriction” in Articles 19(5) and 19(6) of the Constitution includes cases of “prohibition” also; that where a restriction reaches the stage of total restraint of rights special care has to be taken by the Court to see that the test of reasonableness is satisfied by considering the question in the background of the facts and circumstances under which the order was made, taking into account the nature of the evil that was sought to be remedied by such law, the harm caused to individual citizens by the proposed remedy, the beneficial effect reasonably expected to result to the general public, and whether the restraint caused by the law was more than what was necessary in the interests of the general public.

91. In Mithilesh Garg v. Union of India, (1992) 1 SCC 168, Hon’ble the Supreme Court observed as under:-

“9. Article 19(1)(g) of the Constitution of India guarantees to all citizens the right to practice any profession, or to carry on any occupation, trade or business subject to reasonable restrictions imposed by the State under Article 19(6) of the Constitution of India. A Constitution Bench of this Court in Saghir Ahmad v. State of U.P. [(1955) 1 SCR 707 : AIR 1954 SC 728] held that the fundamental right under Article 19(1)(g) entitles any member of the public to carry on the business of transporting passengers with the aid of vehicles. Mukherjea, J. speaking for the Court observed as under: (SCR p. 708)

“Within the limits imposed by State regulations any member of the public can ply motor vehicles on a public road. To that extent he can also carry on the business of transporting passengers with the aid of vehicles. It is to this carrying on of the trade or business that the guarantee in Article 19(1)(g) is attracted and a citizen can legitimately complain if any legislation takes away or curtails that right any more than is permissible under clause (6) of that article.”

92. The Hon’ble Supreme Court in Laxmi Khandsari v. State of U.P., (1981) 2 SCC 600, observed that when imposing restrictions on fundamental rights the State must adopt an objective standard amounting to social control by restricting the rights of citizens where necessities of situation demand. Such restriction must be in public interest, striking a balance between deprivation of right and the danger/evil sought to be avoided. A doctrinaire approach should not be adopted and the real purpose should be sub-served.

93. The Hon’ble Supreme Court in N.K. Bajpai v. Union of India & Anr, (2012) 4

SCC 652, held that

"16. No person can be divested of his fundamental rights. They are incapable of being taken away or abridged. All that the State can do, by exercise of its legislative power, is to regulate these rights by imposition of reasonable restrictions on them. Upon an analysis of the law, the following tests emerge:

(a) The restriction can be imposed only by or under the authority of law. It cannot be imposed by exercise of executive power without any law to back it up.

(b) Each restriction must be reasonable.

(c) A restriction must be related to the purpose mentioned in Article 19(2)."

"19. It is necessary to be clear about the meaning of the word "fundamental" as used in the expression "fundamental in the governance of the State" to describe the directive principles which have not been made legally enforceable. Thus, the word "fundamental" has been used in two different senses under our Constitution of India. The essential character of the fundamental rights is secured by limiting the legislative power and by providing that any transgression of the limitation would render the offending law pro tanto void. The word "fundamental" in Article 37 of the Constitution also means basic or essential, but it is used in the normative sense of setting, before the State, goals which it should try to achieve. As already noticed, the significance of the fundamental principles stated in the directive principles have attained greater significance through judicial pronouncements.

20. As difficult as it is to anticipate the right to any freedom or liberty without any reasonable restriction, equally difficult is it to imagine the existence of a right not coupled with a duty. The duty may be a direct or indirect consequence of a fair assertion of the right. Although Part III of the Constitution of India confers rights, still the duties and restrictions are inherent thereunder. These rights are basic in nature and are recognised and guaranteed as natural rights, inherent in the status of a citizen of a free country, but are not absolute in nature and uncontrolled in operation. Each one of these rights is to be controlled, curtailed and regulated, to a certain extent, by laws made by Parliament or the State Legislature. In spite of there being a general presumption in favour of the constitutionality of a legislation under challenge in case of allegations of violation of the right to freedom guaranteed by clause (1) of Article 19 of the Constitution, on a prima facie case of such violation being made out, the onus shifts upon the State to show that the legislation comes within the permissible restrictions set out in clauses (2) to (6) of Article 19 and that the particular restriction is reasonable. It is for the State to place appropriate material justifying the restriction and its reasonability on record."

94. The Hon'ble Supreme Court in *Bennett Coleman & Co & Ors. v. Union of India & Ors.*, (1972) 2 SCC 788, observed that the law which lays excessive and prohibitive burden will not be saved by Article 19(2) of the Constitution of India.

95. The contention that restriction so imposed by the impugned notification qualifies the test of Article 14 does not find favour as already noted. The fundamental right guaranteed under Article 19(1) (g) of the Constitution of India is subject to reasonable restriction in the interest of the public, and the Section under which the impugned notification was issued also contains the term 'safety of the public'. In light of the above decisions by Hon'ble the Apex Court, no solid basis is exhibited from the record for the classification made as to restrict the movement only of sand and stone chips. A complete ban in the present case cannot be saved as a reasonable restriction as it infringes directly and almost entirely on freedom of trade and profession enshrined under Article 19. It is also noted that the non-restriction of transportation of sand and stone chips via vehicles with less than 14 wheels is not a ground to state that such right has not been infringed as the size and scale of transportation so carried out greatly impacts the economies of the particular work being undertaken.

96. In the considered opinion of this Court, the total ban cast by the impugned notification affects not only the State Highways but also National Highways, which the State does not have the power to regulate. Sections 4 and 5 of the National Highways Act, 1956 (referred to as the Highways Act) clearly stipulate the control of the Central Government, and it is only via a notification that the power to develop and maintain a National Highway contained within its borders can be assigned to a State. Presently, no such notification has been issued to justify authorization enabling the State to issue the impugned notification.

97. In *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*, (1985) 1 SCC 641, the Hon'ble Supreme Court held that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary.

98. As held by the Hon'ble Supreme Court in *State of Tamil Nadu v. P. Krishnamurthy*, (2006) 4 SCC 517, it was reaffirmed that, while there is a presumption of constitutional validity of subordinate legislation and the one laying challenge to it has to show it to be otherwise. A subordinate legislation can be challenged under any of the following grounds:

(a) Lack of legislative competence to make the subordinate legislation; (b) Violation of fundamental rights guaranteed under the Constitution of India; (c) Violation of any provision of the Constitution of India; (d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act; (e) Repugnancy to the laws of the land, that is, any

enactment; (f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).

99. The Hon'ble Supreme Court in *Employees' Welfare Association v. Union of India & Anr.*, (1989) 4 SCC 187, held that an arbitrary exercise of power can be set aside, as violative of Article irrespective of its nature of subordinate legislation or otherwise. It is so either because the authority has acted in excess of its power, in a limited sense or that its action may have resulted in abuse of power, i.e. being in bad faith or for an inadmissible purpose.

100. Expounding on the relationship between the parent legislation and the delegated legislation, Hon'ble the Apex Court observed the following in *St. Johns Teachers Training Institute v. Regional Director, NCTE*, (2003) 3 SCC 321 :

"10. ...The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details.... The regulations made under power conferred by the statute are supporting legislation and have the force and effect, if validly made, as an Act passed by the competent legislature. (See *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi* [(1975) 1 SCC 421 : 1975 SCC (L&S) 101 : AIR 1975 SC 1331] "

101. Legislative competence is determined by the Constitution which enumerates three Lists clearly determining the areas in which legislature of the Centre and the States are to operate. Under List III, where both are considered legislatively competent, a set of rules, conditions all actions. In the present case, the conflict as presented is between Entry 23, List I; Entry 13 List II and Entry 35 of List III.

102. Entry 23, List I reads "Highways declared by or under law made by Parliament to be national highways." And Entry 42 of List I reads as "Inter-State trade and commerce".

103. Entry 13, List II reads "Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles."

104. Entry 35 of List III reads as "Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied."

105. In view of this Court, the distinction is clear. National Highways are a kind of roadway, specifically listed separately. The term 'National' has been placed to suggest the connectedness of the entire country through them. Entry 13, List II particularly says other means of communication not specified in List I. Therefore,

with National Highways, particularly listed in List I, the State lacks legislative competence to regulate the flow of traffic on such Highways.

106. Further as per Entry 35 List III empowers and enables the Central Government, by virtue of the MV Act to deal with "mechanically propelled vehicles" and as per Article 246 of the Constitution of India, it is the legislation enacted by the Parliament which is to prevail over the legislation enacted by the State.

107. The total ban cast by the impugned notification affects the State Highways and National Highways. And, as already noticed, 'National Highways' are meant for the entire country. Article 257 of the Constitution clarifies that any exercise of power by the State must be done so, in a way not to impede the executive power of the Union. And further, Clause 2 refers to directions to the State as to the construction and maintenance of means of communication declared to be of National Importance.

108. The Hon'ble Supreme Court in *State of Karnataka v. Union of India*, (1977) 4 SCC 608, observed that:-

"Indeed, a glance through Chapter 11 in part XI shows that, apart from articles 256 and 257 (1), it deals only with some special matters, such as maintenance of national highways, water ways, and railways, constructions to be undertaken for objects of national or military importance,..."

109. The above paragraph shows the control of the Centre over National Highways as also them being considered objects of National importance.

110. In *Godawat Paan Masala IP Ltd. v. Union of India*, (2004) 7 SCC 68, the Hon'ble Supreme Court observed that it is an accepted cannon of construction that a statute must be read as a whole and one provision of the Act should be construed with reference to other provisions of the same Act so as to make a consistent, harmonious enactment of the whole statute. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed, but to the scheme of the entire statute.

111. It has been held by the Hon'ble Supreme Court in *Madhubhai Amathalal Gandhi v. Union of India*, AIR 1961 SC 21 that "if an Act is a self-contained one and the notification issued thereunder only restates the provisions of the Act, the validity of the notification cannot obviously be questioned as the validity of its contents were accepted. But if the Act confers a power on the State in general terms and the notification issued thereunder infringes one or other of the fundamental rights, the validity of the Act cannot equally obviously prevent an attack on the notification. In the former case the notification only reflects the provisions of a valid Act and in the latter it is the notification and not the Act that infringes the fundamental rights."

112. The impugned notification is also in contravention of Section 35 of the Control of Highways (Land and Traffic) Act, 2002 (Referred to as the Traffic Act).

The object of the Traffic Act is to give the Central Government power to prevent or remove encroachments on land under the National Highways or restrict access to them from the adjacent land, or to regulate traffic movement of any category of vehicles or animal on National Highways. Section 35 deals with the power to restrict the use of vehicles. It empowers the Highway Administration to issue prohibitions or restrict the use of National Highways. Reading of the object and reasons clause, as the said section clarifies, that the power to restrict vehicles on National Highways rests solely with the Central Government. Therefore, the impugned notification steps on the power resting with another agency.

113. The State did have the power under Section 115 to restrict the use of certain vehicles in the interest of public safety, keeping in mind the nature of road or bridge, which was not done. The basis of the ban, put forward by the State, were letters issued by the Railways and the NHAI as instances of damage referred to in the counter affidavit filed by the competent authority on Rajendra Setu as well as other roads. A complete ban as already discussed, on certain specified goods, cannot be sustained. All cessation of use of motor vehicles with 14 wheels or above for the particular purpose of carrying sand and stone chips only does not satisfy the test of reasonableness or reasonable classification.

114. The respondent's reliance on *Virendra Singh v. State of Himachal Pradesh*, 2018 SCC OnLine HP 2983, giving an expansive interpretation of the power under Section 115, cannot be applied to the present set of facts as the object of the notification in the present case is entirely different. The regulation sought is of a particular kind of good that cannot be permitted and cannot be termed reasonable.

115. The duty of the State is to govern. Governance includes the implementation of the statutes in existence. Failure of the Government to have the provisions of a statute implemented amounts to failure in governance. This failure in governance by a Government cannot be permitted to be condoned by incorporating such amendments, resulting in condoning mis-governance.

116. The power to issue the notification is also traced to Rule 73(7) (x) of the Bihar Motor Vehicles Rules, 1992, prescribing form in N P. Pu.C. whereby, purportedly the authority can regulate the nature of the goods to be carried as goods carriage. It is true that the person desirous of obtaining a national permit is required to disclose the nature of goods to be carried as a goods carriage. Equally it can be said that the Regional Transport Authority can prescribe or restrict the goods to be carried as a goods carriage. But then as already discussed, such power has to be exercised only by the authorized competent authority, to whom the application is submitted, and not the State Government in exercise of its power under Section 115 of the MV Act.

117. Can a delegated exercise of power, which does violence with the Preamble and aims & objects of the Principal Act, be permitted to remain in force? In our considered view, no. It is destructive of the aim and object of the Parent Statute;

it defeats its laudable object; it defies the constitutional provisions; it is demonstratively and excessively contradictory and mutually destructive, similar to the one which the Apex Court found in *K.R. Lakshmanan (Dr.) v. State of Tamil Nadu*, (1996) 2 SCC 226.

118. The "rule of law" means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule, it is unpredictable, and such a decision is the antithesis of a decision taken in accordance with the rule of law. The "rule of law" as emerges from the spirit of Article 14 is that if an action is found to be arbitrary and, therefore, unreasonable, it would negate the equal protection of the law and would be struck down.

119. The notification traverses the State boundaries and severely impacts inter-state trade, which is guaranteed to be free under Article 301. Further, such right under Article 301 is not absolute in nature and the State does possess the power to impose restrictions under Article 304.

120. The word 'intercourse' used under Article 301 of the Constitution of India has to be read in light of its purpose. Trade and commerce within the territory of India, therefore, will include intercourse. The ability to restrict as under Article 304(b) has to be read as 'trade, commerce and intercourse' as opposed to 'or' to affect the framers' intention properly. Article 304 empowers a State legislature to impose restrictions on trade, commerce, and intercourse among states. Article 304(b), applicable to the present case, as stipulated in the proviso, when exercised, must have been the sanction of the President of India.

121. The impugned notification, per contra, has been issued by the Secretary, Department of Transport, Government of Bihar. According to the proviso thereof, such restrictions imposed must receive the sanction of the Hon'ble President of India. The use of power vested in the State under Section 115 of the MV Act cannot, by way of its nature of the statute, confer wholesome power to restrict which otherwise the Central Government stands empowered. Therefore, this restriction cannot be held good.

122. Submission of the learned counsel for the respondents that the imposition of restriction under Section 115 includes restrictions or regulations of goods being transported on vehicles meant explicitly for such transportation as defined under Sections 2(14), 2(16) and 2(23) only merits rejection in view of our earlier discussion.

123. Submission that a close examination of three Lists mentioned in Seventh Schedule of the Constitution makes it clear that control and regulation of carriage goods in specific vehicles falls within the domain of the State cannot be upheld because as already above noted, the regulation of goods is not a subject matter regulated under Section 115 of the MV Act.

124. The submission that the restriction imposed by the State does not create a class within a class and is within the confines of the Articles 19(5) and (6) of the Constitution of India as, Section 115 states "specified class or description" is equally unsustainable. Article 14 prohibits the making of a class within a class. It is apparent from the facts of the present case that restriction is only imposed on vehicles with 14 wheels or above and that is too carrying sand and stone chips and not any other class of goods. As also noted this classification does not stand on solid ground; therefore, this submission has to be answered negatively.

125. The respondents' reliance on Zakir Hussain Yusufali (supra), does not sway this Court for a multiplicity of reasons- (a) the facts situation was different on many important counts and (b) that in the considered opinion of this Court the requirement of abiding of the principles of natural justice are implicit within any exercise of law, particularly when such exercise impacts fundamental rights of a person. The restrictions placed in this case were only on three roads as opposed to Statewide ban in the present case. The authorities when issuing said restrictions were acting upon complain received from the public totaling 44 in number. In the instant case, NHAI as well as the Railways in their correspondence have raised concern over overloading and not with respect to plying of certain vehicles.

126. The issues arising for consideration under this lis are answered hereinunder:-

(i) Whether the scope of Section 115 of the Motor Vehicles Act, 1988 allow regulations of/ restrictions on the movement of goods?

127. Section 115 of the Motor Vehicles Act is a generally worded power under Chapter VIII of the Act, not dealing with good. The exercise of such power rests on the satisfaction and necessity of the competent authority accounting for public safety and convenience to issue directions for the movement of vehicles, with restriction and/or the prohibition on a specified area or road.

ii) Is the impugned notification prohibiting the carriage of goods confined only to sand and stone chips on certain specified vehicles so arbitrary and unreasonable that it cannot be sustained?

128. For any action to be arbitrary or unreasonable, the basic test is that no person of reasonable prudence could arrive at such a decision on the application of mind. In the instant case, the restriction imposed by the impugned notification is based on flimsy grounds of three letters, contents thereof unsubstantiated, being sent by the authorities of the National Highways Authority of India and the Railways, without any independent scientific study undertaken corroborating the contents thereof. In restricting fundamental rights, which by definition would need to be reasonable, the State must take all care to ensure that such restriction is backed by cogent material. The particular restriction of transport of sand and stone chips without adequately highlighting the causal link; restricting the rights severely under Article 19 of the Constitution of India cannot be,

therefore, deemed to be an action done with prudence. The impugned notification issued under this power entirely prohibited the movement of a vehicle of a particular description carrying particular goods. The intention of Section 115 does not support such a restriction. A notification issued under this Section is subject to periodic revision meant for a specified area or road.

(iii) What is the nature, ambit and scope of Article 301 of the Constitution of India? Whether the power enumerated under Section 115 of the Motor Vehicles Act, 1988 are wide enough to impose a complete ban on intra and inter-state traffic with vehicles having 14 wheels or above?

129. Article 301 of the Constitution of India guarantees free trade, commerce and intercourse, both within the State and throughout the country. The impugned notification goes against the spirit of this Article. Reasonable restrictions are permitted, as this right is not absolute in nature. Article 304 of the Constitution of India itself deals with the situations where such restrictions may be imposed. Article 304(a) deals with goods produced within a State vis-a-vis those imported from outside the State, and 304(b) deals with the reasonable restriction imposed in the public interest. The power envisaged under Section 115 is statutory, whereas Article 301 is a constitutional guarantee. Restrictions imposed under the former are subject to the limits cast by the latter constitutional. Hence it cannot be that Section 115 overpowers Article 301.

130. The power of Section 115 of the MV Act cannot be stated to be wider than Article 301 of the Constitution of India and cannot facilitate a ban on interstate traffic.

(iv) Whether the State possesses the legislative competence to restrict the use of National Highways?

131. The Union Government legislatively controls national Highways. Entry 23, List I deal with the demarcation of National Highways. The State, in exercise of its power, limited by territorial jurisdiction, cannot affect what falls under the Entries of the Union List. Even when acting in the interest of public safety and convenience, the Government lacks legislative competence in restricting movement on roads. The restriction imposed by the Government of Bihar, in effect, transcends the boundary affecting the movement of goods, interstate, even when vehicles may be merely passing through the State of Bihar.

(v) Whether the impugned notification qualifies the requirement of reasonable restriction under Article 19 of the Constitution of India?

132. As held by Hon'ble the Supreme Court of India, a restriction imposed on fundamental rights must be reasonable and non-arbitrary. It must also be proportional to the goals sought to be achieved by imposing such restrictions. The impugned notification fails to satisfy the four prongs of the proportionality test. There were alternate means to achieve the goal, the necessity analysis was not satisfied by cogent material. Therefore, the impugned notification is not

saved by reasonable permissible restrictions under Article 19.

(vi) Whether the State can in pursuance of public safety issue direction on an issue upon which the Central Government has already done so?

133. In its power under Section 58 of the Motor Vehicles Act, the Central Government had issued directions with respect to the particulars of weight to be borne by axle and otherwise. Also, it is the Central Government that, under Section 110, makes rules for the height, weight etc., of vehicles. In issuing the impugned notification, the state Government overstepped its power under Section 115. The issue of public safety is most certainly of great importance for which undoubtedly the State has to take action, but without transgressing the division of power envisaged under the Constitution of India and the enabling legislation, i.e. the Motor Vehicles Act, 1988.

134. The issues are answered accordingly.

135. In view of the foregoing discussion, we quash the impugned notification dated 16.12.2020 issued by the Secretary to the Government, Transport Department, Government of Bihar and all consequential action, including communication dated 17.12.2020 issued by the Secretary, Transport Department, Government of Bihar.

136. Further, considering the importance of the issue highlighted as well as the prime concern of public safety, we deem it appropriate to issue the following directions:-

137. The Director General of Police, Bihar and Secretary, Transport Department, Government of Bihar, shall ensure proper implementation of the provisions of the Chapter VIII of the Motor Vehicles Act, 1988, and more specifically-

(a) post sufficient number of traffic personnel fully equipped to check the compliance of speed limits as stipulated under Section 112 and the corresponding rules framed with regard thereto;

(b) keeping in mind the condition of the bridges and other roads which may require such regulation, directions may be issued to the State or the Regional Transport Authority with regard to laden weight that may be allowed on them;

(c) to ensure that mechanism to weigh bridges (Section 114) in accordance with the prescribed limit may be available at regular intervals so as to ensure that overloaded vehicles do not cause damage, both physical or monetary;

(d) prescribed weight per vehicle class type be made visible on road signs on the J.P. Setu, Rajendra Setu and anywhere else the authorities may deem fit.

138. All the writ petitions are allowed.

139. Interlocutory Applications, if any, shall also stand disposed of.

140. We appreciate the assistance rendered by all the learned counsel for the

parties, particularly Ms. Shreshti Singh, a young advocate.