

**(1996) 07 GAU CK 0033**

**In the Gauhati High Court**

**Case No :** Civil Rule No's. 1013, 1014, 1124, 1125 1126, 1127, 1128, 1129, 1130, 1131, 1132 of 1990, 1807, 1809 and 1838 of 1993

C.R. Murugesan and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 19-07-1996

**Acts Referred:**

Central Motor Vehicles Rules, 1989 — Rule 84, 85, 86, 87, 88  
Constitution of India, 1950 — Article 154  
Motor Vehicles Act, 1988 — Section 200, 46, 69, 77, 79

**Citation :** (1997) 1 GLR 339

**Hon'ble Judges :** J.N. Sharma, J

**Bench :** Single Bench

**Advocate :** V. Subramanian, R.L. Yadav and K. Yadav, for the Appellant; K.P. Sarma, B.P. Katakya, K.P. Pathak, A. Hazarika and A. Sharma, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

J.N. Sarma, J.—All these applications has been filed alleging violation of Sections 46 and 88 of the Motor Vehicles Act, 1988 and the Rules 84 to 90 of the Central Motor Vehicles Rules, 1989.

2. It is alleged that the Petitioner has been penalised for alleged over load in respect of the Petitioners vehicle u/s 200 of the Motor Vehicles Act, 1988 and it is further submitted that this cannot be done and a direction is sought to adhere to the National Permits issued by the State Transport Authority of the different States/North Eastern Region in favour of the Petitioner's vehicles mentioned therein including the condition relating to pay load. These vehicles when they were plying in Andhra Pradesh and Tamil Nadu, were stopped and their load were checked and an order was passed to show cause as to why they should not be penalised for violating the load condition prevalent in those states.

3. I have heard Sri R.L. Yadav, Learned Advocate for the Union of India, Shri B.P. Katakya, Learned Govt. Advocate for the State of Tripura, Shri K.P. Pathak,

Learned Asstt. Advocate General for the State of Mizoram, Mrs. A. Hazarika, Govt. Advocate for the State of Assam, Mr. A. Sarma, Learned Govt. Advocate for the State of Meghalaya and Sri P. Khataniar Learned Govt. Advocate for the State of Nagaland.

4. On behalf of the Petitioners, two points are urged:

- i) Any National Permit by a State Government shall have to be followed and adhered to by all the States throughout the country.
- ii) The other States have no authority or power to impose any penalty on the basis of the Administrative Instruction issued by the particular State.

5. The Union of India filed a written instruction by the Director of Ministry of Surface Transport wherein it is stated that this matter relates to the implementation of the provisions of the Motor Vehicles Act and is the concern of the State Government. The Union of India has got nothing to do with it.

6. On behalf of the State of Assam, a written brief is filed wherein it is stated interalia as follows:

- i) That it is not a fact that the pay load is fixed by the State Transport Authority, Assam. The pay load is fixed by the Registering Authority on the strength of declaration of the manufacturer of the vehicle.
- ii) National Permit is not issued by the State of Assam. It is issued for encouraging long distance Inter-State road transport under point 16 of the 20 point economy programme and in accordance with the provisions of Section 88(12-14) of the Motor Vehicles Act, 1988 read with the provisions of Rule 86, 87, 88, 89 and 90 of the Central Motor Vehicle Rules, 1989 as amended upto 1993.
- iii) Such permit is issued to operate goods carrier - throughout the territory of India or in such contiguous states, not being less than four in number including the home state in accordance with the choice of the Applicant. The Petitioner is to exercise option to ply his vehicle in the states of his choice and accordingly, authorization is granted to ply his vehicle in the States of his choice after realizing amount of composite taxes levied by the concerned states including Andhra Pradesh & Tamil Nadu mentioned in these writ applications.
- iv) The permit issued to the Petitioner is valid in all those states subject to all local Rules or restrictions imposed by a State. The reason for detection/detention of the Petitioners' vehicle in Tamil Nadu and Andhra Pradesh for alleged over load may be because of the reasons of violation of local Rules or imposition of some restriction by them as provided under Rule 90(6) of the Central Motor Vehicle Rules, 1989 and the State of Assam has got nothing to do with it, The states can impose restrictions and that is a valid restriction.

7. Before we go further, let us have a look at the provisions regarding issue of National Permit u/s 88(12 to 14) of the Motor Vehicles Act, 1988:

88 (12). Notwithstanding anything contained in Sub-section (1) but subject to the rules that may be made by the Central Government under sub Section (14) the appropriate authority, may for the purpose of encouraging long distance inter-state road transport, grant in a state, national permits in respect of goods carriages and the provisions of Section 69, 77, 79, 80, 81, 83, 84, 85, 86 and 89 shall as far as may be apply to or in relation to the grant of national permit.

(13) the appropriate authority shall in considering an application for a national permit have regard to the following matters namely:

(a) No national permit shall be issued - (i) to an individual owner so as to exceed five national permits in its own name,

(ii) to a company so as to exceed ten valid national permits in its own name;

(b) the restriction under Clause (a) regarding the number of permits to be issued shall not apply to State Transport Undertakings;

(c) in computing the No. of permits for the purposes of Clause (a), the number of permits held by an Applicant in the name of any other person and the permits held by any company of which such Applicant is a director shall also be taken into account.

(14) (a) The Central Government may make rules for carrying out the provisions of this Section.

(b) In particular, and without prejudice to me generality of me foregoing power, such rules may provide for all or any of the following matters namely;

(i) the authorization fee payable for the issue of a permit referred to in Sub-section (9) and (12),

(ii) the fixation of the laden weight of the motor vehicle;

iii) the distinguishing particulars or marks to be carried or exhibited in or on the motor vehicles;

iv) the colour or colours in which the motor vehicle is to be painted;

v) such other matters as the appropriate authority shall consider in granting a national permit.

8. In pursuance of it Rules were made and Rule 86 to 90 of the Central Motor Vehicles Rules, 1989 are quoted below:

Rule 86 : Application for National Permit. An application for the grant of a national permit shall be made in Form 48 to the authority referred to in Section 69.

87. Form contents and duration of authorization:

(1) An application for the grant of tin authorization for National permit shall be

made in Form 46 and shall be accompanied by a fee of Rupees Five Hundred per annum in the form of a bank draft.

(2) Every authorization shall be granted in form 47 subject to the payment of taxes or fees if any levied by the concerned states.

(3) The period of validity of an authorization shall not exceed one year at a time and shall expire on the 31st day of March of the year.

Rule 88. Age of Motor vehicle for the purpose of National permit:

(1) No national permit shall be granted in respect of a goods carriage which is more than nine years old at any point of time.

(2) A national permit shall be deemed to be invalid from the date the vehicle covered by the permit completes nine years from the date of its initial registration;

Rule 89 : Quarterly return to be filed by a National permit Holder:

A national permit holder shall file a quarterly return in Form 49 in respect of a motor vehicle covered by the national permit to the authority which granted the national permit.

Rule 90: Additional conditions for National permit : The national permit issued under Sub-section (12) of Section 88 shall be subject to the following additional conditions, namely:

(1) The vehicle plying under a national permit shall be painted in dry leaf brown colour with thirty centimeters broad white borders and the words "NATIONAL PERMIT" shall be inscribed on both sides of the vehicle in bold letters within a circle of sixty centimeters diameter:

Provided that the body of a tanker carrying dangerous or hazardous goods shall be painted in white colour with a dry leaf brown ribbon of 5 cm width around in the middle at the exterior and that the driver's cabin in Orange Colour.

(2) A board with the inscription "National permit" valid in the States (s) of ..." with blue letters on white background shall be carried in front of such vehicle.

(3) No such vehicle shall carry on goods without a bill of lading in Form 50.

(4) The vehicle shall have a minimum of two drivers and shall be provided with a seat across its full width behind the driver's seat providing facility for the spare driver to stretch himself and sleep.

(5) The vehicle shall at all times carry the following documents and shall be produced on demand by an officer empowered to demand documents by or under the Act, namely:

(i) Certificate of fitness.

(ii) Certificate of Insurance.

(iii) Certificate of Registration.

(iv) Certificate.

(v) National Permit,

(vi) Taxation Certificate.

(vii) Authorization.

(6) The vehicle shall be subject to all local Rules or restrictions imposed by a State Government.

(7) The vehicle shall not pick up or set down goods between two points situated in the same State....

9. Rule 90(6) provides that vehicle shall be subject to all local Rules or restriction imposed by the State Government.

10. The whole bone of contention of the Petitioners in the these writ applications are that in the State of Andhra Pradesh and Tamil Nadu no Rule has been framed and as such no restriction can be imposed by an executive instruction. The Learned Counsel for the Petitioner failed to note that the Rule speaks of restrictions and provisions of that nature. So, a vehicle may be subject to local rules or restrictions. It cannot be accepted as correct that restriction cannot be imposed by executive instruction. For the over load of the vehicles detected by the State of Tamil Nadu and Andhra Pradesh, the authority wanted to take action u/s 200 of the Motor Vehicle Act. Section 200 of the M.V. Act provides for composition of certain offences.

11. It is settled law that executive power is co-extensive with the legislative power of the State and the State can always issue executive instruction in consonance with the Rule. The executive power always could be exercised to fill in the gaps but the executive instruction cannot and should not supplant the law but would only supplement the law. Under Article 154 of the Constitution, it includes acts necessary for the carrying on or supervision of the general administration of the State, including both a decision as to action and carrying out of the decision. The only prohibition is that the executive cannot, however, go against the provisions of the Constitution or of any law. The authority may exercise their power by issuing administrative rules, order instruction so long as the legislature does not make any law on mat subject. Even though the legislature has the power to make a law relating to a subject, the executive action by the appropriate Govt. is not rendered invalid merely because there is no legislative sanction to support such action, if it is otherwise reasonable and for the benefit of the society.

12. The power of this Court to judicially review the executive action is limited the courts will have the competence to enquire into the validity of any Act clone in

the exercise of that power on the ground it ultra vires, malafides or abuse of power. If the executive instruction, rules or orders are not absurd or unreasonable and are merely regulatory in nature for the benefit of the people, the court cannot quash them in exercise of the power of judicial review.

13. The meaning of the word restriction is limitation imposed respecting the use which the property may be put. The word restriction accounts limitation imposed upon so as to restrict its application or limit its scope. The restriction is a method/manner to safeguard provided this is not inconsistent or unreasonable in connection with the matters mentioned therein.

14. The restriction put by the State Govt. is regulatory in nature inasmuch there may be necessity to impose this restriction because of the fact that road condition may be such as to put a restriction on the load to be earned by the vehicle. So, it is in the interest of the community in general that this restriction has been put and that cannot be deemed to unreasonable, absurd or shocking the conscience.

15. A bare perusal of Rule 96 will show that the State Government has been given the power to impose restrictions and as indicated above, it is not necessary t that this should be done only by promulgating the rules.

16. In that view of the matter, there is no merit in these writ applications and the same are dismissed. I leave the parties to bear their own costs.