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**(2006) 03 KL CK 0087**

**In the High Court Of Kerala**

**Case No :** Writ Petition (C) No's. 5418, 5453, 5559 and 5744 of 2006

E.S. Sukumaran and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

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**Date of Decision :** 08-03-2006

**Acts Referred:**

Central Motor Vehicles Rules, 1989 — Rule 118(1), 126, 126A, 126B, 127  
Motor Vehicles Act, 1988 — Section 110, 110(1), 111(2), 112(1), 112(2)

**Citation :** AIR 2006 Ker 250

**Hon'ble Judges :** Thottathil B. Radhakrishnan, J

**Bench :** Single Bench

**Advocate :** T.A. Shaji, Wilson Urmese, M.K. Chandra Mohandas, Abdul Azeez and T.V. Neema, for the Appellant; Anil Thomas, Spl. Govt. Pleader and Sudhi Vasudevan, ACGSC, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Thottathil B. Radhakrishnan, J.—These writ petitions are filed challenging GO(P) No. 5/2006/Tran. dt. 13-1-2006 issued by the Government of Kerala, in exercise of the powers conferred under Sub-rule (1) of Rule 118 of the Central Motor Vehicles Rules, 1989 (hereinafter referred to as "the Central Rules"), thereby notifying that all Tipper Lorries shall be fitted, by the operators of such vehicles, with a speed governor (speed controlling device) conforming to the standard AIS:018, as amended from time to time, in such a manner that the Speed Governor can be sealed with an official seal of the State Transport Authority or the Regional Transport Authority, in such a way that it cannot be removed or tampered with, without the seal being broken. For the purpose of the said notification, the Note contained therein states that Tipper Lorry" means any class of a Goods Vehicle (except three wheelers), of which the platform for carrying the goods can be raised or tilted hydraulically or through some other means for the purpose of unloading the goods. The said notification has come into force, at once, on its publication on 13-1-2006.

2. The Explanatory Note, which does not form part thereof, to the aforesaid notification, which is intended to indicate the general purport of the notification, states that Sub-rule (1) of Rule 118 of the Central Motor Vehicles Rules, 1989 empowers the State Government to notify in the Official Gazette such transport vehicles which shall be fitted with Speed Governors. It has come to the notice of the Government that accidents involving Tipper Lorries are on the increase in the State. It is learnt that this is due to over speeding of these vehicles for taking more trips. There have been demand from the public also for controlling the operation of "Tipper Lorries". Considering the need for improving safety on roads, Government have decided to insist fitment of Speed Governors on all Tipper Lorries. I refer to the said explanatory note, without forgetting its limitation as a tool to interpret the notification, having regard to the law on the point, relating to interpretation.

3. The contentions raised by the writ petitioners and urged at the time of arguments are as follows:

i. The exclusive authority to fix maximum speed for any motor vehicle under the proviso to Section 112 (1) of the Act is with the Central Government and the issuance of notification by the State Government is hence without authority.

ii. The Government had earlier issued GO (P) No. 20/2003/Tran. dated 16-4-2003 insisting on providing speed governors for all stage carriages and heavy transport vehicles, however that the Government rescinded the said notification as per GO (P) No. 29/2005/Tran. dated 15-10-2005 and therefore, there is no public interest involved in the matter of issuance of the impugned notification.

iii. The classification of Tipper Lorries as a class for the purpose of imposing the requirement to have speed governors, without extending such imposition on the other classes of motor vehicles, amounts to hostile discrimination.

iv. There is no material by way of statistics or otherwise to assume that the Tippers are the killers and that the reasons stated in the Explanatory Note are not based on any data and hence, the issuance of the impugned notification is a situation of unreasonable and arbitrary exercise of power.

v. Rules 126, 126A, 126B and 127 provide for ensuring that the manufacturer sells only vehicles which conform to the provisions of Rules made u/s 110 of the Act and therefore, any imposition on vehicles which are already on roads, after its quality has been certified in terms of Rule 127, is unreasonable and without authority.

vi. The product that is required to be fitted is not easily available in the open market.

4. As part of the provisions enabling control of traffic, Section 112 (1) in Chapter VIII of the Motor Vehicles Act, 1988, ("the Act", for short), provides that no vehicle shall be driven or caused to be driven at a speed exceeding the maximum

speed or below the minimum speed fixed for the vehicle under the Act or by or under any other law for the time being in force. The proviso thereof insists that such maximum speed shall, in no case, exceed the maximum fixed for any motor vehicle or class or description of motor vehicles by the Central Government by notification in the Official Gazette. By Notification No. 425 (E) dated 9th June, 1989, the Central Government has fixed the speed limit in exercise of power conferred under Sub-section (1) of Section 112 of the Act. Sub-section (2) of Section 112 provides that the State Government or any authority, authorised in that behalf by the State Government may, if satisfied, inter alia, that it is necessary to restrict the speed of motor vehicles in the interest of the public safety or convenience, by notification in the Official Gazette, fix such maximum speed limits or minimum speed limits as it thinks fit for motor vehicles or any specified class or description of motor vehicles or for motor vehicles to which a trailer is attached, either generally or in a particular area. The speed limit that may be so fixed by the State Government in exercise of authority under Sub-section (2) of Section 112 is a limit as to speed fixed under the laws in force. Therefore, by virtue of Section 112(1), no person shall drive a motor vehicle in violation of the speed limits fixed by the State Government u/s 112(2) of the Act. In exercise of authority under Sub-section (2) of Section 111, the Government of Kerala issued SRO No. 196/96 whereby the Government have restricted the speed of certain motor vehicles in the interest of public safety and convenience. So much so, the contention on behalf of the petitioners, that by the impugned notification, the State Government encroaches upon the exclusive domain of the Central Government to regulate speed cannot be countenanced. The same is accordingly repelled.

5. It has been laid down in *M.C. Mehta Vs. Union of India (UOI) and Others*, that the provisions of the Motor Vehicles Act, 1988, in addition to the provisions in the existing laws, for example, the Police Act and the Code of Criminal Procedure, confer ample powers on the authorities to take the necessary steps to control and regulate road traffic and to suspend/ cancel the registration or permit of a motor vehicle if it poses a threat or hazard to public safety. It need hardly be added that the claim of any right by an individual or even a few persons cannot override and must be subordinate to the larger public interest and this is how all provisions conferring any individual right have to be construed. It has been further laid down therein as follows:

Chapter IV deals with the registration of motor vehicles, wherein Section 39 prescribes the necessity for registration. It says that unless the vehicle is registered in accordance with the provisions of the Act, it cannot be driven in any public place. The responsibility to ensure that such a vehicle is not driven is not merely on the person driving the vehicle but also on the owner of the vehicle. Section 45 permits refusal of registration or renewal of the certificate of registration, inter alia, on the ground that the vehicle is mechanically defective or fails to comply with the requirements of the Act or the rules made thereunder. It is obvious that the vehicle must be roadworthy in the sense that there is no

mechanical defect therein to permit it being used as a motor vehicle. The necessity of complying with all the requirements makes it clear that any requirement, which is specified under the Act or by the rules has to be fully complied with and such a requirement would include the requirement of a specified category of motor vehicles being fitted with speed governors or such other devices as may be prescribed by law. Section 53 permits suspension of registration by the registering authority or other prescribed authority if it has reason to believe that any motor vehicle is in such a condition that its use in a public place would constitute a danger to the public or that it fails to comply with the requirements of this Act or of the rules made thereunder. It is significant that this power to suspend the registration is available to the authority even if the condition of the motor vehicle is found to be such that its use in a public place would constitute a danger to the public, irrespective of whether that is a specific requirement of the Act or the rules. The conferment of this power is for the obvious reason that a motor vehicle which is considered to be unsafe or which poses a danger to the public in a public place, if driven, should not be permitted to ply at a public place since the paramount need is public safety. It is, therefore, clear that even if speed governors are not prescribed for a particular class of motor vehicles by any requirement of the Act or the rules made thereunder, it is permissible for the authority concerned to require the fitting of the speed governors in such motor vehicles for the purpose of ensuring that there is no danger to the public by the use of such a motor vehicle in a public place. The power u/s 53 to this extent is wider. Section 53 read with Section 45 leaves no doubt about the amplitude of power of the authorities concerned whose duty it is to control and regulate the traffic in public places. The basic test to be applied by them for exercise of this power is the need to ensure that there is no danger to the public by use of any motor vehicle in a public place.

(Emphasis supplied)

6. As noticed in M. C. Mehta's case AIR 1998 SC 186 (supra), it is indisputable that heavy and medium vehicles as well as light goods vehicles are in a class by themselves insofar as their potential to imperil public safety is concerned. There is, therefore, immediate need to take measures such as installation of speed-control devices and ensuring that such vehicles are driven by authorised persons. Such measures, designed to further public safety, would undoubtedly be covered by the aforementioned provisions.

7. That there is imminent need to have speed governors insisted upon is beyond challenge, in view of the fact that the judgment of this Court dt/- 24-9-2002 in O. P. No. 34446/2000 has become final and the Government had faced even proceedings in the form of Contempt of Court Case No. 1422/2003 and has obtained enlargement of time to implement the judgment by orders of the Apex Court on SLP (C) No. 4168/ 2004. The reasons stated in GO (P) No. 29/ 05 to rescind GO (P) No. 20/03/Tran are far from satisfactory, however the sustainability or otherwise of GO (P) No. 29/05 is not a subject-matter for

decision in these writ petitions. At any rate, the petitioners cannot make out a case relying on the said notification, which apparently has been issued for interest which are subservient to the interest of public safety, as noticed by the Apex Court in *M. C. Mehta's case* AIR 1998 SC 186 (supra). The contention on the basis of the rescinding of the earlier notification, imposing the requirement of speed governors, therefore does not stand.

8. The definitions in Section 2 of the Act, the interpretation clause, set clear distinction between different types of motor vehicles dealt with in the Act. Goods carriage, medium goods carriage and heavy goods carriage are among those defined. For the purpose of it, the impugned notification provides that Tipper Lorry" means any class of goods vehicle (except three wheelers) of which the platform for carrying the goods can be raised or tilted hydraulically or through some other means for the purpose of unloading the goods. The identifying feature of such vehicles as a class is that the platform for carrying the goods can be raised or titled hydraulically, or otherwise, for unloading the goods. Assume that the platform meant for carrying the goods gets raised or titled with load of goods, while the vehicle is in motion, none would dispute that such a situation could result in damage to life and property. Assume, still further, that such incident occurs while the vehicle is moving at a relatively high speed, none would need any description to visualise the event. This obviously shows that the Tipper Lorries are a class by themselves.

9. The power of the Government to issue a notification under Rule 118(1) of the Central Rules includes the power to notify the requirement of speed governors for any particular class of vehicle. This is explicit even from a plain reading of Rule 118(1).

10. Section 110(1)(f) confers on the Central Government the power to make rules regulating the construction, equipment and maintenance of motor vehicles and trailers with respect to speed governors. Rule 118(1) of the Central Rules provides that on and from the commencement of the sub rule, such transport vehicles as may be notified by the State Government in the Official Gazette shall be fitted by the operator of such transport vehicle with a speed governor (speed controlling device) conforming to the standard AIS : 018 as amended from time to time in such manner as provided in the said rule. This means that the duty to fit a speed governor commences with the notification by the State Government as to such transport vehicles to which speed governors have to be fitted. This is not dependent upon the date of notification or the date of sale of the vehicle by the manufacturer. So much so, the argument that there cannot be any insistence on speed governors after the quality is certified by the manufacturer under Rule 127 in view of Rules 126, 126A and 126B of the Central Rules, does not hold good.

11. As noticed in *M. C. Mehta's case* AIR 1998 SC 186, even without a prescription as to speed governors for a particular class or motor vehicles, it is permissible for the concerned authority to require the fitting of speed governors

in such motor vehicles, for the purpose of ensuring that there is no danger to the public by the use of such a motor vehicle in a public place. The authority to do so is in-built in the extent of power u/s 53 of the Act read with Section 45. It has been so held by the Apex Court in M.C. Mehta's case. The paramount consideration in deciding as to whether speed governors have to be prescribed or not is the requirement to control and regulate traffic in public places and the basic test to be applied for exercise of this power is the need to ensure that there is no danger to the public by the use of any motor vehicle in a public place. Such consideration by the State Government as is required to decide as to whether a notification has to be issued u/s 118(1) of the Central Rules, does not call for any detailed examination of the relevant facts and factors, including the consideration of any statistical data to ascertain whether "Tippers are the killers". If the approach that is suggested on behalf of the petitioners is to be accepted, the Government will be without such administrative power as is required to even regulate the traffic. So much so, the contention that the impugned decision has been taken by the Government without reference to relevant materials does not stand. The same is accordingly rejected.

12. The statutory rule, namely Rule 118 (1) of the Central Rules itself prescribes that the speed governors shall conform to the standard AIS : 018, as amended from time to time. A Division Bench of this Court in *Trichur District Private Bus Operators' Association v. State of Kerala* ILR 2005 Ker 181, has taken note of the fact that the Indian Standard is adopted by the Bureau of Indian Standards, after the draft finalized by the appropriate committee had been approved by the Transport Engineering Division Council. The use of Standard Mark is governed by the provisions of the Bureau of Indian Standards Act, 1986 and the Rules and Regulations made thereunder. The Standard Mark on products covered by an Indian Standard conveys the assurance that they have been produced to comply with the requirements of that standard under a well defined system of inspection, testing and quality control which is devised and supervised by Bureau of Indian Standards and operated by the producer. Standard marked products are also continuously checked by Bureau of Indian Standard for conformity to that standard as a further safeguard. So much so, by issuing the impugned notification, the Government have only acted in consonance with the larger public interest. However, much remains to be done to give full effect to the judgment of this Court in O. P. No. 34446/2000 and CCC. 1422/2003.

In the result, the impugned notification does not call for any interference. The writ petitions are accordingly dismissed.