

(2012) 05 GUJ CK 0031
In the Gujarat High Court
Case No : Writ Petition (PIL) No. 83 of 2012

Jagega Gujarat Sangharsh Samiti

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 07-05-2012

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Motor Vehicles Act, 1988 — Section 74, 75
Penal Code, 1860 (IPC) — Section 188

Citation : (2012) 2 GLH 470

Hon'ble Judges : Bhaskar Bhattacharya, Acting C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : K.G. Pandit for Petitioner 1, for the Appellant; P.K. Jani, Government Pleader with Mr. Rashesh Randani, AGP for Respondent 1 and None for Respondents 2 - 4, for the Respondent

Final Decision : Dismissed

Judgement

Mr. J.B. Pardiwala, J.—By way of this writ-petition under Article 226 of the Constitution of India, the writ-petitioner, a public charitable trust through its Managing Trustee, has prayed for the following reliefs :-

12. (A) admit this petition by issuing writ of mandamus, certiorari and/or any writ, order or direction upon Respondent No. 1 & 2 or its servant, agents etc. to permit the usage of the concerned areas situated at (a) Pushpakunj Swimming Pool, Eastern side, Maninagar, (b) Swastik Cross Road, C. G. Road, Cross Road connected with Municipal Market to Shilp Cross Road and (c) Law Garden - Samartheshwar Mahadev Cross Road to Gajjar Hall Cross Road, Eatery Market to N.C.C. Road, on any suitable terms and condition, which may be deemed fit, just and proper to this Hon'ble Court.

(B) Pending hearing and final disposal of this petition, Your Lordships be pleased to pass appropriate order of staying the implementation on operation of the impugned action of declaration of issuance of notification of declaration for "No

Parking Zone" declared by Respondent No. 1 and 2 for the purpose of utilizing the concerned areas situated at (a) Pushpakunj Swimming Pool, Maninagar, (b) Near Swastik Cross Road, C. G. Road and (c) Samartheshwar Cross Road, Near Law Garden etc. on any suitable terms and conditions, which may be deemed fit, just and proper to this Hon"ble Court. (B)(i) Alternatively, Your Lordships further be pleased to pass appropriate order restraining and/or implementing the disputed action of issuance of notification of "No Parking Zone" in the areas situated at (a) Pushpakunj Swimming Pool, Maninagar, (b) Near Swastik Cross Road, C.G. Road and (c) Samartheshwar Cross Road, Near Law Garden etc. for the public purpose, which has been implemented on and from 16.04.2012 on any suitable terms and conditions, which may be deemed fit, just and proper to this Hon"ble Court.

(C) Pending admission and final hearing of this petition, Your Lordships further be pleased to pass suitable interim relief as prayed herein above at para 9 upon Respondent No. 1 & 2 to submit its status report with regard to disputed Government notification of declaration of "No Parking Zone" in the vicinity of city of Ahmedabad in the areas of (a) Pushpakunj Swimming Pool, Maninagar, (b) Near Swastik Cross Road, C.G. Road and (c) Samartheshwar Cross Road, Near Law Garden etc. and after adjudicating the aforesaid status report submitted by Respondent No. 1 and 2 and/or its servant, agents etc. before this Hon"ble Court, suitable direction for the purpose of using all such areas by the people on any suitable terms and condition, which may be deemed fit, just and proper and in the special facts and circumstances of the case. (D) Such other and further relief or reliefs as may be deemed just and expedient in view of the facts and circumstances of the case may be granted.

Facts relevant for the purpose of deciding this petition may be summarised thus :--

(1) The writ-petitioner, a public charitable trust has brought to our notice a notification dated 7th April 2012 issued by the Police Commissioner of Ahmedabad city, whereby three roads in the city of Ahmedabad have been declared as "Vehicle-Free Zone" on every Sunday between 4:00 pm. and 11:00 pm. The three places covered under the notification are as under :(i) From Pushpkunj Snanagar to Jaldhara Vasant Vadi Road via Kids City in the East, (ii) The road from Swastik Cross Road, C.G. Road to Shilp Cross Road via Municipal Market. (iii) From the Cross Road of Samartheshwar Mahadev to N.C.C. Road via Gajjar Hall Cross Road and Fast Food Market.

(2) As per this Notification, no vehicles will be permitted on every Sunday between 4:00 pm. and 11:00 pm. and only the pedestrians will be entitled to use the roads covered under the said Notification.

(3) It is the case of the petitioner that this Notification is going to cause immense hardship to the general public at large as Sunday is one day in a week when the whole family would like to go out for a drive and enjoy the Sunday evening.

According to the petitioner, the Notification has been issued without application of mind and without taking the general public in confidence in this regard.

(4) It is the case of the petitioner that this restriction which has been imposed by way of this Notification directly curtails the right of citizens to move freely, and thereby, violating the fundamental right. It is also the case of the petitioner that this decision appears to be blind imitation of modes and methods adopted by foreign countries to check vehicular traffic problems. Such ideas would work in foreign countries but it is unreasonable to impose such restriction in a country like India, and more particularly, in a city like Ahmedabad. The petitioner has posed the following questions for our consideration in this petition in the nature of a Public Interest Litigation :-

- (i) Where to park the vehicles before entering into "No Parking Zone"?
- (ii) What about the businessmen of C.G. Road, who have more customers on the holidays?
- (iii) What do the people do, who reside there if they want to go outside ?
- (iv) If any patient is to be taken to the hospital then private vehicle would be allowed ?
- (v) If the idea of issuing such a notification is successful, then in that case the Authorities may be motivated to implement the said idea in other areas of the city too and thereby creating more hardships for the people?
- (vi) On this road, there are halls, temples and markets, then what about the aged, sick and disabled persons ?
- (vii) The decision of declaring particular area as a "No Parking Zone" or "Vehicle Free Zone" is no doubt to take care of the problems of traffic congestion but what about the traffic congestion which will take place in the areas surrounding the area covered under the Notification?

2. When this matter was taken-up for hearing, Mr. K.G. Pandit, learned Counsel appearing for the petitioner brought to our notice that an advance copy of the petition has been served upon the learned Government Pleader Mr. P.K. Jani. Accordingly, we called upon Mr. P.K. Jani to explain as to exactly what is the decision and how the decision has been taken. Mr. Jani, learned Government Pleader made available the file containing the Notification in question and other relevant papers. Bare perusal of the Notification would suggest that the Notification has been issued by the Police Commissioner of Ahmedabad city in exercise of powers vested in him u/s 33(1)(b) of the Bombay Police Act and the Notification has been issued in public interest keeping in mind the burning problem of vehicular traffic in the city of Ahmedabad and also the safety of the pedestrians, more particularly, on Sunday when thousands of people flock on the streets with their children. We deem fit to reproduce the true translation of the Notification, which is as under :-

Order No. G/UPK/Traffic/344/ 2012 dated 07.04.2012 of the Police Commissioner, Ahmedabad city. I, S.K. Saikiya, Police Commissioner, Ahmedabad city, in exercise of powers conferred upon me u/s 33(1)(b) of the Bombay Police Act, pass order to control the traffic within the limits of the roads in Ahmedabad as the problem of traffic is increasing day-by-day and due to which, there are obstacles in the movements of the public at large. Often accidents take place on the roads connecting to the public places at the evening hours, especially on Sundays. Therefore, for regulating smooth flow of vehicles of the general public at large, I declare the following highly congested roads referred to above as "Vehicle Free" on every Sunday :--

(1) From Pushpkunj Snanagar to Jaldhara Vasant Vadi Road via Kids City in the East.

(2) The road from Swastik Cross Road, C.G. Road to Shilp Cross Road: via Municipal Market.

(3) From the Cross Road of Samartheshwar Mahadev to N.C.C. Road via Gajjar Hall Cross Road and Fast Food Market. The aforesaid roads shall be closed for all types of vehicles from 4.00 p.m. to 11.00 p.m. on every Sunday. Only pedestrians may use these roads. The details of day and time for alternative arrangements for the roads declared as Vehicle-Free which are mentioned above are as under :--

(1) As the road from Pushpkunj Snanagar to Jaldhara Vasant Vadi Road via Kids City in the East being free from vehicles, the riders of vehicles may drive their vehicles from Apsara Cross Road to Siddhi Vinayak Hospital, Dedki Garden via Idgah Three Roads via Tulsi Complex Cross Roads, by turning to left side from Rambaug, Ras Shree Sweet Mart Cross Roads via L.G. Hospital, by turning to left side from L.G.Chowky Corner via Bhalakiya Three Road.

(2) As the road from Swastik Cross Roads, C.G. Road to Shilp Cross Roads via Municipal Market being free from vehicles, the vehicles coming from Stadium Five Roads may come to Girish Cold Drink Cross Roads by turning left side towards Navrangpura Bus Stand or right side towards Commerce Six Roads by using parallel roads to C.G. Road by both the sides. Similarly, one may go towards Swastik Cross Roads from Girish Cold Drink Cross Roads.

(3) From the Cross Roads of Samartheshwar Mahadev to N.C.C. Road via Gajjar Hall Cross Roads and Fast Food Market being free from vehicles, the vehicles coming from Mithakhali Six Roads may come to Law Garden Circle from Samartheshwar Mahadev Cross Roads (Nal Circle) at left side towards N.C.C. Circle or by turning towards right side Body Line Cross Roads via Shaheed Veer Kinariwala Road or via C.G. Road. Similarly, one may go to Nal Circle from Law Garden Circle. The vehicles on Government duty and ambulances are exempted from the ban imposed by this Notification. The person making breach of the order of this Notification shall be held liable to be punished u/s 188 of IPC, and Section 131 of the Bombay Police Act. This Notification shall be implemented

with effect from 15.4.2012.

3. The learned Government Pleader Mr. Jani submitted that as a matter of fact, the decision has been taken in public interest and not to cause any public inconvenience. According to Mr. Jani, it is a policy decision taken by the Authorities concerned after due deliberations and more particularly after taking into consideration the burning issue of vehicular traffic problems within the city of Ahmedabad, thereby putting life of citizens in peril. Mr. Jani further submitted that due care has been taken to see that vehicles like ambulances, etc. are exempted from the applicability of this Notification so that in cases of emergency an ailing person may not lend up in difficulty. Mr. Jani brought to our notice that on every Sunday during evening hours almost 10,000 people gather near Law Garden, which is adjacent to; C.G. Road. Mr. Jani also brought to our notice that on every Sunday around 30,000 people gather at Kankaria Lake and Sunday being holiday, people are on the streets with their children for the purpose of entertainment. Over a period of time, the Authorities have experienced acute difficulties in regulating vehicular traffic, more particularly, on Sunday in the areas which are covered by this Notification. Mr. Jani submitted that people of the City must welcome this decision in true spirit because this decision has been taken in good faith and for their safety and not to cause inconvenience to the people at large. Initially, people may feel that the decision is arbitrary or unreasonable or not possible to be implemented, but over a period of time, people will realize that not only at the three places which are covered under the Notification, but at many other places in the city of Ahmedabad such restrictions will have to be imposed over a period of time. Mr. Jani further submitted that Article 21 deals with right to life. Public-safety falls within the ambit of Article 21 as right to life includes safe life. According to Mr. Jani, it is, therefore, the bounden duty of the Government, the police force and the transport Authority, all of which are clothed with ample powers under different enactments like Bombay Police Act, Motor Vehicles Act, to control and regulate traffic in an appropriate manner so that no vehicle being used in a public place causes any danger to the public in any form. According to Mr. Jani, this duty has been reminded to the Government Authorities by this very High Court in a judgment rendered by a Division Bench in the case of *Suo Motu Vs. State of Gujarat and Others*, . Ordinarily, Court would allow litigation in public interest if it is found :--

(i) That the impugned action is violative of any of the rights enshrined in Part III of the Constitution of India and relief is sought for its enforcement;

(ii) That the action complained of is palpably illegal or mala fide and affects the group of persons who are not in a position to protect their own interest on account of poverty, incapacity or ignorance;

(iii) That the person or a group of persons were approaching the Court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provision of the Constitutional law;

(iv) That such person or group of persons is not a busy body of meddlesome inter-loper and have not approached with mala fide intention of vindicating their personal vengeance or grievance;

(v) That the process of public interest litigation was not being abused by politicians or other busy bodies for political or unrelated objective. Every default on the part of the State or Public Authority being not justiciable in such litigation;

(vi) That the litigation initiated in public interest was such that if not remedied or prevented would weaken the faith of the common man in the institution of the judiciary and the democratic set up of the country;

(vii) That the State action was being tried to be covered under the carpet and intended to be thrown out on technicalities;

(viii) Public interest litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfaction that the information laid before the Court was of such a nature which required examination;

(ix) That the person approaching the Court has come with clean hands, clean heart and clean objectives; That before taking any action in public interest the Court must be satisfied that its forum was not being misused by any unscrupulous litigant, politicians, busy body or persons or groups with mala fide objective of either for vindication of their personal grievance or by resorting to black-mailing or considerations extraneous to public interest.

4. Having heard learned Counsel for the respective parties and having perused the materials on record, we are of the view that the following questions fall for our consideration in this petition :--

(1) From which provision of law the Police Commissioner of the City derives powers to issue notification of the present nature declaring few places in the city of Ahmedabad as "Vehicle-Free Zone" ?

(2) Whether the law has contemplated any procedure to be followed before passing such a notification and whether the people at large needs to be taken in confidence or consulted?

(3) Whether the decision or the Notification in question is in any way in conflict with the provisions of the Motor Vehicles Act, 1988?

(4) Whether the decision can be termed to have been taken in larger public interest and whether the Court should interfere with such administrative decision or policy of the Authorities ?

(5) Whether the decision or the idea of the Authorities concerned to declare a particular area in the city of Ahmedabad as a "Vehicle-Free Zone" on every Sunday between 4:00 p.m. and 11:00 p.m. can be said to be a reasonable idea worth experimenting ?

5. So far as the first question posed for our consideration is concerned, we find that Section 33 of the Bombay Police Act is the answer. Section 33 of the Bombay Police Act gives power to the Commissioner of Police, Ahmedabad city, to make rules or regulations for traffic for preservation of order in public places, etc. Section 33(1)(b) reads as follows :-

33(1) The Commissioner, with respect to all or any of the following matters specified in this sub-Section... may make, alter or rescind rules or orders not inconsistent with this Act,...(a).....(b) regulating traffic of all kinds in streets and public places, and the use of streets and public places by persons riding, driving, cycling, walking or leading or accompanying cattle, so as to prevent danger, obstruction or inconvenience to the public.

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6. Section 33(1)(b) definitely states "regulating traffic of all kinds in streets and public places". In our opinion that will include regulating such type of traffic and it can be easily construed that a particular area on a particular day can be declared as a "Vehicle-Free Zone" for the convenience of the pedestrians taking into consideration the acute and the burning problem of traffic. "Regulating traffic of all kinds in streets and public places" is the power conferred upon the Commissioner and the very same sub-Section also gives power to the Commissioner to regulate as regards the use of streets and public places, etc. Hence, restricting vehicular movements on a particular street at a particular time on a given day will come under the regulation of all traffic in streets and public places as envisaged by Section 33(1)(b).

7. The second question for our consideration is as to whether Section 33(6) of the Bombay Police Act and any rule that has been made by the Commissioner ought to have followed the procedure set-up in that sub-Section and published in the "Official Gazette" or affixed copies as contemplated in that sub-Section. Sub-Section 33(6) reads as follows :-

(6) The power of making, altering or rescinding rules under this Section shall be subject to the condition of the rules being made, altered or rescinded after previous publication, and every rule made or alteration or rescission of a rule made under this Section shall be published in the "Official Gazette" and in the locality affected thereby by affixing copies thereof in conspicuous places near to the buildings, structure, work or place, as the case may be, to which the same specially relates or by proclaiming the same by the beating of drum or by advertising the same in such local newspapers in English or in the local language, as the Authority making, altering or rescinding the rule may deem fit or by any two or more of these means or by any other means it may think suitable :--

Provided that any such rules may be made, altered or rescinded without previous publication if the Commissioner, the District Magistrate, or as the case may be, the District Superintendent, as the case may be, is satisfied that circumstances exist which renders it necessary that such rules or alterations therein or

rescission thereof should be brought into force at once.

8. It is clear from the sub-Section that such type of procedure is contemplated only when any rule is framed by virtue of Section 33, but in this case, an order was passed by the Commissioner "in the interest of the public" and Section 33 of the Bombay Police Act visualizes passing of order and also making of rules. In respect of passing of Notification of the present nature, we do not think that the procedure set-up u/s 33(6) needs to be followed.

9. So far as the third question is concerned, it is with regard to as to whether the Notification in question is in any way in conflict with the provisions of the Motor Vehicles Act. Section 74 of the MV Act reads as follows :-

74. 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 interests 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 the notification, the driving of motor vehicle or of any specified class 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 u/s 75 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.

10. A bare perusal of Section 74 of the M. V. Act would suggest that it cannot be construed as limiting the power given to the Commissioner u/s 33 of the Bombay Police Act. Section 74 of the Act is only enabling provision and it does not give any right to the permit holder to use the vehicle as he likes. Section 33 of the Bombay Police Act cannot be construed as coming in conflict with Section 74 of the Act since the power given to the Commissioner is only for "regulating the traffic of all kinds" in the public interest and the Notification impugned clearly states that the same has been done "in the public interest" taking into consideration the exigencies, the circumstances and the accidents that have arisen in the city of Ahmedabad in the recent days. Such a power utilized by the Commissioner of Police is only "in the public interest" falling under the category of "regulating traffic of all kinds in streets and public places" and that cannot be, in any way, construed as conflicting with the enabling provision under the M. V. Act i.e. Section 74. The power exercised by the Commissioner, on the facts and circumstances of the present case, cannot be said to be unreasonable.

11. The Division Bench of this High Court to which one of us (J.B. Pardiwala, J.) was a party, had an occasion to consider the meaning of the word "regulation" as contained in Section 33 of the Bombay Police Act in connection with restrictions imposed by the Commissioner of Police in so far as use and supply of hookah bar

in the restaurants and public places is concerned. In *Titanic Restaurant through Dharmendrabhai Dashrathbhai Patel v. Dy. Police Commissioner and others*, reported in 2012(1) GLH 146, the issue was as to whether the Police Commissioner of the city of Ahmedabad was justified in imposing complete ban on hookah at eating house and restaurants in exercise of his powers u/s 33 of the Bombay Police Act. While upholding the decision of the Commissioner of Police in imposing restrictions in the form of a complete ban on hookah at eating house and restaurants in exercise of powers u/s 33 of the Bombay Police Act, the Division Bench in its judgment has explained the meaning of the word "regulation" as under :-

MEANING OF THE WORD "REGULATION"

We would also like to deal with one another contention which assumes importance in the peculiar facts of the present case. It was contended during the course of argument on behalf of the petitioners that the license which is being issued by the Police Commissioner of the city of Ahmedabad or as the case may be, is in exercise of powers u/s 33 of the Bombay Police Act. We have quoted in the earlier part of our judgment Section 33 of the Bombay Police Act, more particularly, the relevant provisions, so we need not repeat the same. However, the contention is that Chapter IV of the Bombay Police Act, 1951 provides for police regulations. In fact, Chapter IV of the Act is with regard to police regulations. Section 33 empowers the Authority concerned to make rules or regulations of traffic and for preservation of order in public place, etc. The contention of the Counsel for the petitioners is that the powers u/s 33 are merely regulatory and there is no specific power to impose a complete ban or prohibition of a particular activity, like in the instant case, a hookah or providing with a hookah at a eating house/restaurant registered under Sections 33(xa). To understand the true meaning and import of the word "regulate" we may refer to a Division Bench judgment of Andhra Pradesh High Court in the case of *D.K.V. Prasada Rao and Others Vs. Government of Andhra Pradesh*, , where the Division Bench of the Andhra Pradesh High Court interpreted the word "regulation" while considering the matter under A.P. Cinemas (Regulation) Act and the rules framed thereunder. This is how the word "regulation" has been understood and explained.

The heart of the title is the word "Regulation". The prominence thus ascribed is to the word was "Regulation". But it lacks legislative definition of its own. Therefore, it is profitable to find what meaning has been ascribed to it either under the dictionaries or analogous statutes or Judge made law to understand its scope and reach and whether it would comprehend within its ambit the power to make rules to regulate maximum rates of admission. The term "Regulate" is defined in Oxford Dictionary, am follows :--

to control, to govern, to protect by rules or regulations, to subject to guidance or restrictions, to adopt to circumstances or surroundings.

In *Corpus Juris Secundum*, Volume 76, p. 610, the meaning of the word

"regulate" is stated thus :-

The word "regulate" is derived from the latin word "rego and regula". It is a word of broad import having a broad meaning and is very comprehensive in scope.

(Emphasis supplied.)

In *Municipal Corporation of the City of Toronto v. Virgo*, (1896) AC 88 at 93 (House of Lords (Privy Council-Ed.)), Lord Davey. while considering the word "Regulation" has held that :-

There is a marked distinction to be drawn between the prohibition or prevention of trade and the regulation or governance of it and indeed.....a power to regulate and to govern seems to imply the continued existence of that which is to be regulated or governed. (Empasis supplied.)

Sri C. Herman Prechette in "The American Constitution" III Edition, at page 186, gives the meaning of the word "Regulation" as the breadth of regulatory power which the Congress may exercise within its recognised scope of Authority has seldom successfully questioned. Efforts to read restrictive interpretations into the word "regulate" have almost uniformly failed. Regulations, the Court has said, means not only "protection and promotion" but also "restriction and even prohibition".

In *Cook v. Marshall Country*, (1904) 196 US 261 at 272 Mr. Justice Brown of the Supreme Court of America while considering the power of Congress to regulate inter State Commerce, observed that;-

but so long as they are adopted in good faith, with an eye single to the public welfare, they are as much entitled to the recognition of the general Government as if they were uniformly adopted by all the States.

(Emphasis supplied.)

In this context, it is appropriate to refer to a decision of their Lordships of the Supreme Court in *Indu Bhushan Bose Vs. Rama Sundari Debi and Another*, at p. 231, where the scope of the word "regulation" was considered, it was held :-

The Dictionary meaning of the word "regulation" in Shorter Oxford Dictionary is "the act of regulating" and the word "regulate" is given the meaning "to control, govern, or direct by rule or regulation ". This entry thus, gives the power to Parliament to pass legislation for the purpose of directing or controlling all house accommodation in cantonment areas. Clearly, this power to direct or control will include within it all aspects as to who is to make the constructions under that conditions the constructions can be altered, who is to occupy the accommodation and for how long, on what terms is to be occupied, when and under what circumstances the occupant is to cease to occupy it, and the manner in which the accommodation is to be utilised. All these are ingredients of regulation of house accommodation and we see no reason to hold that this word "regulation" has not

been used in this wide sense in this entirety.

It would, therefore, be reasonable to deduce that the word "regulation" is a word of broad import having wide meaning comprehending all facets not only specifically enumerated in the Act but also embrace within its fold the powers incidental to the regulation envisaged in good faith with an eye single to the public welfare. Court has to recognise this power of the Government in public interest.

In *Corpus Juris Secundum*, Vol. 76, at page 612, it is stated : "The power to regulate carries with it full power over the thing subject to regulation, and in the absence of restrictive words the power must be regarded as "plenary over the entire subject."..... It has been held to contemplate or imply the continued existence of the subject matter to be regulated. The power to regulate includes the power to restrain, and indicate restriction in some respects and the term "regulate" embraces the idea of fixing limitations and restrictions, and contemplates the power of restriction or restraint." "The word necessarily denotes some degrees of restraint of acts usually done in connection with the thing to be regulated."..... "The power to regulate may include the power to licence or to refuse a licence, or to require a bond from an applicant therefor, or to require the taking out of a licence and it may include the power to tax or to exempt from taxation but not the right to impose a tax for revenue."

Thus, it could be seen that the power to regulate would also include the power to restrain and embrace the idea of fixing limitations and restrictions on the acts usually done in connection with the right to trade or business under a license."

12. Judicial notice can be taken of the fact that cities like Ahmedabad, Surat, Vadodara and Rajkot in Gujarat are flooded with motor vehicles of all categories. With the easy availability of finance to purchase motor vehicles there is growing tendency in the public at large to avail such facilities, which have brought tremendous increase in motor vehicles of different makes and kinds in the urban areas. There was a time when a student had difficulty to even have the facility of a bicycle to reach school or college. Today, the students have taken fancy for motor vehicles and especially the two-wheelers and even the parents unhesitatingly buy vehicles for their children even when they have not become eligible to hold licence under the Motor Vehicles Act. This has resulted in an acute problem of traffic. We are sorry to say that the city of Ahmedabad has yet to inculcate that culture of traffic discipline. Unlike city of Mumbai where signals are not breached, people in this city do not hesitate to break the signals as if life is going to come to a standstill. This has resulted in number of accidents and the victims are innocent pedestrians. Today, a situation has cropped-up when pedestrians, be it an aged person or a young person or children, have to be very carefully walking on the roads because any time at any place any vehicle can knock them off.

13. Unfortunately, due to lack of resources and technological intervention to

monitor parking, enforcement has become weak in most of the cities in India. There is a limit to which a traffic police can make people abide by the rules. It is inevitable that people, especially car/bike owners need to comply with the traffic rules and comply with the parking regulations. The Road Safety Guidelines framed by the various Road Transport Authorities containing provisions for providing awareness on traffic and parking rules has a lot of shortcomings which directly affects road use behaviour causing violations and accidental deaths. The challenge lies to effectively enforce the current rules and regulations to enforce traffic rules through better monitoring of parking.

14. It appears that taking this into consideration, the Division Bench of this High Court in *Suo Motu v. State of Gujarat* (supra), took up this issue very seriously and thought fit to issue many directions in this regard. We deem fit to quote few paragraphs of the judgment relevant for our purpose : "...It may further be noted here that the public safety is one of the important aspects of the fundamental right as provided in Chapter III of the Constitution of India. Article 21 deals with right to life. Public safety falls within the ambit of Article 21 as right to life includes safe life. Thus anything which endangers or impairs, due to conduct of anybody, either in violation or in derogation of laws, the quality of life and living of the people as envisaged under Article 21, it is the duty of the concerned Authority to prevent such violation or breach of law. It is, therefore, the bounden duty of the Government, the Police Force and the Transport Authority, all of which are clothed with ample powers by M. V. Act to control and regulate the traffic in an appropriate manner so that no vehicle being used in a public place causes any danger to the public in any form. When this duty is over-looked by these agencies, the Court can certainly intervene and issue appropriate directions requiring them to enforce the provisions of the M. V. Act and also: direct them to protect the fundamental right of the public at large. The Court can also interfere if there is a clear violation of constitutional or statutory provisions or non-compliance by the State of its constitutional or statutory duties. Since this Court has found that there is public danger and public wrong caused by the omission of the State or Public Authorities to efficiently discharge their duties, it has treated these proceedings in the nature of public interest litigation."

15. In paragraph 4.4, the Bench proceeded to issue the directions, which are as under :-

4.1. All encroachments which are on public streets or which are on highways should be removed immediately. Due care should be taken to see that the encroachments which are made near corners of the roads or near the traffic junctions or traffic circles should be removed as soon as possible so as to see that such area of the road is made available for use of vehicular traffic and not for encroachers."

4.2 Necessary direction for ensuring parking of vehicles in a particular manner should also be given to the police Authorities. It should be seen that vehicles are parked absolutely away from the centre of the road so that more portion of the

road is available for vehicular traffic. Any person parking a vehicle in an irregular manner, which is near the centre of the road or parked in an irregular and careless manner which obstructs the vehicular traffic, should be strictly dealt with in accordance with law. For the aforesaid purpose also, the police inspector of the concerned area should be made responsible.

4.3. Similarly, it shall be ensured by the concerned police Inspector that there is no parking within reasonable distance from the junctions of public-streets, where relatively traffic is heavy. It should be seen that vehicles are not parked within a particular distance from traffic junctions and traffic circles, and boards indicating such restrictions of parking should be properly displayed.

4.4. It is directed that the public bodies, which are responsible for giving sanction to building plans, should not dispense with the provisions with regard to providing parking place in residential and commercial complexes.

4.5. It shall also be ensured by the Police Officers in charge of Highway Patrolling that vehicles which are not "Motor vehicles", such as bullock carts, camel carts, cycles etc., which are moving on the Highways are having: reflectors so that at night such vehicles are noticed by drivers of other vehicles. They shall also see that the provisions with regard to the Act and rules made thereunder with regard to parking lights and reflectors are strictly enforced. They shall continuously monitor and ensure that the vehicles have proper reflectors and/or parking lights.

4.6. It shall also be ensured that any vehicles parked at night on highways keep their parking lights on. Strict action should be taken in accordance with law if vehicles are found to have been parked on highways at night without parking lights on.

4.7. The State shall direct the concerned Authorities, including the police Authorities, to see that the provisions of Sec. 129 of the Act, with regard to wearing of head gears [helmets] are strictly enforced. It may not be possible for the State to implement the said provision immediately, as the said provision is not being strictly enforced at present. It is therefore directed that due publicity shall be given by the State to the provisions of Section 129 of the Act that while driving two wheelers, both, the driver as well as the pillion rider should wear head gear. After due publicity, with effect from 1st June 2005, the Government Authorities shall become strict with regard to enforcement of the said provisions. Necessary directions in this behalf shall also be given to the police force so that they may also ensure that the drivers and pillion riders of two wheelers comply with the said requirement of wearing head-gears.

16. To take care of all these problems if the Authority concerned has thought fit to issue notification in public interest declaring three areas in the city of Ahmedabad as "Vehicle-Free Zone" for few hours on every Sunday, then in that case, it cannot be said that the Authority has acted arbitrarily and contrary to the convenience of the general public at large. Over a period of time, parking has become a major concern when it is not available to accommodate the ever

increasing traffic problem, keeping in mind that parking spaces are public place. Parking is one of the essential components of development plan of various cities in India. As per the statistics available, the total number of cars produced in India touched 15 million in 2010 while the road based traffic volume is set to increase to 12456 passengers - kilometers in 2030. However, the ever increasing demand for automobiles is not correlated by a corresponding increase in road infrastructure. This has the effect of increased strain on roads leading to traffic jams and accidents. The State being the custodian of public place is faced with the challenging task of providing facilities to people, while making sure that the same is not wasted away or misused. It is at this juncture that the State has to intervene in balancing the interest of the automobile population and the need to effectively utilize public place for the public good.

17. We are of the view that reasonableness of restriction is to be determined in an objective manner and from the standpoint of interests of the general public and not from the standpoint of the interests of persons upon whom the restrictions have been imposed or upon abstract consideration. A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly. As held by the Supreme Court in the case of *Union of India (UOI) and Another Vs. International Trading Co. and Another*, , in determining whether there is any unfairness involved; the nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing condition at the relevant time, enter into judicial verdict.

18. We are of the view that the Court must not usurp the discretion of the public Authority, which is empowered to take the decisions under law and the Court is excepted to apply the objective standard which leaves to the deciding Authority the full range of choice which the Legislature is presumed to have intended. Even in a case where the decision is left entirely with the discretion of the deciding Authority without any such legal bounds and if the decision is taken fairly and objectively, the Court will not interfere on the ground of some difficulty or inconvenience which may be experienced by the people at large.

19. In the overall view of the matter, we have no hesitation in coming to the conclusion that no interference is warranted in the present case. We are convinced that the Notification has been issued bonafide and for the convenience of the general public at large and in larger public interest. For the reasons recorded above, we do not find any merit in this petition and the same deserves to be rejected. The petition is accordingly rejected. However, on the facts and in the circumstances of the case, there shall be no order as to costs.