

(1984) 11 MP CK 0037
In the Madhya Pradesh High Court

J.P. Sanghi and Another

APPELLANT

Vs

The State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 28-11-1984

Acts Referred:

MANOEURSES, FIELD FIRING AND ARTILLERY PRACTICE ACT, 1938 — Section 2

Citation : (1985) 2 ACC 194 : (1985) ILR (MP) 67

Hon'ble Judges : G.L. Oza, Acting C.J.;B.M. Lal, J

Bench : Division Bench

Judgement

G.L. Oza, Ag. C.J.

1. The Order of the Court was delivered by Oza, Ag. C.J. This is a petition filed by the petitioner who is an advocate of this Court. By this petition he has challenged the speed breakers which are erected in the town of Jabalpur and also on national highways passing through the territories of Madhya Pradesh.

2. According to the petitioner, the State and the Municipal Corporation, Jabalpur, are enjoined with the duty of maintaining roads in the town and also to maintain the national highways and the state highways running within the territorial limits of Madhya Pradesh. It is alleged by the petitioner that the respondents have been constructing road-humps and speed-breakers to check the speed of vehicles passing on these roads and it is alleged that although the road-humps and speed-breakers have been constructed but the respondents have not taken care either to put proper and adequate road signals to alert the vehicle drivers nor have they cared to construct these road humps and speed breakers under any specification of design or size. It is alleged that in the town of Jabalpur itself a number of speed breakers have been constructed and in some cases they are so high that even at very ordinary speed of the vehicle they endanger the vehicles, their silencers, petrol tank and chambers hit the humps of the roads and sometimes cause serious damage. According to the petitioner, the purpose behind the construction of these road humps and speed breakers appears to be to check speed of the vehicles in order to secure safety but in fact the manner in

which these speed breakers and road humps have been constructed without any signal really endanger the security of the persons travelling in the vehicles. The petitioner has also alleged that the Central Government, vide letter No. PL/50(8)/72 dated 4th June, 1976 addressed to the Secretaries of the State Public Works Departments, have given guidelines as to under what circumstances the speed breakers should be constructed and it is alleged that under these instructions it was desired that wherever speed limit is to be fixed for some specific reasons, it should be ensured through speed limit signs and their strict and rigorous enforcement. Alternatively, it was recommended that rumble strips and flashing signals may be considered to alert the drivers through audible/visual stimuli. It is further alleged in the petition that in order to evade the duty of controlling the traffic and the speed limit, the respondents are penalising the road users by erecting such hindrances on the roads which result in serious hazards and accidents and the petitioner has quoted an incident and the petitioner has quoted where the petitioner himself fell a victim to an accident which was caused due to a very high speed breaker on the road going to the medical college without putting any signals and signs. At the time of hearing, it was contended on behalf of the petitioner that there is no lawful authority with the respondents to create such obstacles on the roads. The law only contemplates putting up of signals whenever speed limit is fixed and therefore such road humps and speed breakers could not be justified. The relief sought in the petition was removal of all the speed breakers from the town of Jabalpur and also on all national highways in the territory of Madhya Pradesh. It is also sought that a direction be issued so that appropriate road signals be put on the roads to caution the drivers whenever such road humps or speed breakers are erected and also for a direction that the roads be properly maintained.

3. In the return filed by respondent no. 1 it was stated that these roads humps and speed breakers have been erected to avoid road accidents in the city and to control the speed of the vehicles. It is contended that human life is more precious and in order to avoid serious road accidents at the risk of little inconvenience to the vehicle drivers these road humps have been constructed. It is alleged that these have been constructed on the recommendation of a Traffic Committee of the district level. Along with the return a chart has also been filed showing the number of accidents in the town and a map has been produced to show 41 speed breakers on the National Highway No. 7. As regards the letter of the Central Government it is stated that it only gives some guidelines in respect of construction of speed breakers but as the local conditions are known to the District Magistrate, the District Magistrate issued instructions u/s 74 of the Motor Vehicle Act and most of the speed breakers have been put up near the public institutions, such as schools, hospitals, colleges, district courts and sharp turnings. It is denied in the return that these speed breakers themselves endanger human life.

4. Learned Counsel appearing for respondent no. 2 drew our attention to paragraph 386 of Halsbury's Laws of England where the question relating to road

humps has been considered. He also referred to the provisions of the Highways Act and various provisions of the Motor Vehicles Act. It was contended that it is, no doubt, true that neither under the Highways Act nor under the Motor Vehicles Act any provision has been made for construction of road humps but it was contended that the Motor Vehicles Act only refers to the road signals with reference to road humps and it was contended that it is on the basis of this that road humps have been constructed with an idea to control the speed wherever it was thought desirable. It was, however, contended that u/s 91 of the Motor Vehicles Act it is open to the State Government to make regulations for providing the prevention of danger or injury but it is unfortunate that the State Government has not framed any rules u/s 91 under which the road humps or speed breakers could be justified.

5. It is, therefore, plain that so far as the construction of speed breakers or road humps is concerned, there is no provision in any law which permits such construction nor any rules have been framed either under the Highways Act by the Central Government or u/s 91 of the Motor Vehicles Act. What is provided in the Motor Vehicles Act, Schedules, is the fixation of speed limit in certain cases and the road signals have been provided which should be put up on the roads wherever the speed is intended to be controlled.

6. It is apparent that the Highways Act and the Motor Vehicles Act have been borrowed from the Acts as they were in England and the learned Counsel for the respondents, therefore, rightly referred to the discussion on the subject in Volume 40 Halsbury's Laws of England, paragraph 386, which reads:

386. Road humps. A highway authority may construct road humps in a highway maintainable at the public expense for which it is the highway authority if the highway is subject to a statutory speed limit for Motor Vehicles of 30 mph or less or the road humps are specially authorised by the Secretary of State, and may remove any road bumps so constructed by it. The Secretary of State may construct road humps in a highway maintainable at the public expense for which he is not the highway authority if the highway is subject to such a speed limit or the humps are specially authorised by him, and may maintain and remove any humps so constructed by him.

Before constructing a road hump the highway authority or the Secretary of State, as the case may be must consult with (i) the Chief Officer of police for the area in which the highway is situated; (2) where the highway is outside Greater London, the district council in whose district the highway is situated; (3) where there is a local bus route on the highway, the operator or operators; (4) in all cases, one or more organisations representing highway users or representing persons otherwise likely to be affected by the road hump unless it appears that there are no such organisations; and must also publish in one or more newspapers circulating in the area and place at appropriate points on the highway a notice of the proposal to construct the hump. The authority or the Secretary of State must consider any objections duly made, and may cause a local inquiry to be held. In

addition, before constructing a road hump, a London borough council or the Common Council of the City of London must obtain the consent of the Greater London Council and the Secretary of State must obtain the consent of the local highway authority and, in the case of a highway in Greater London for which the Greater London Council is not the highway authority, the consent of that council. The Secretary of State and the local highway authority may enter into an agreement for the carrying out by that authority of any road hump works which the Secretary of State has power to carry out. Where a road hump has been constructed under his powers, his consent is required before the local highway authority or any other person having power to maintain the highway may remove or otherwise interfere with the hump, and that authority or person may reimburse the Secretary of State the whole or part of his expenses in relation to the hump.

A road hump may not be constructed in a special road, a truck road or a principal road and may only be constructed in a highway which is adequately lit throughout the hours of darkness and where in each road affording access for vehicular traffic to the hump (or, in a series of road humps, the first to be met by such traffic) there is within 30 metres a horizontal bend or road junction forcing traffic to change direction by not less than 70 degrees, a traffic sign prohibiting entry or the end of a carriage way at the closed end of a cul-de-sac, or within 60 metres a white stop line at a major road. A road hump may not be constructed or maintained within a prescribed distance of a pedestrian crossing, a level crossing, a bus stop sign or a low structure over the carriage way, or where it would form part of a series of road humps extending over more than a kilometre. Appropriate road signs must be erected giving warning of the presence of a road hump or series of road humps, and the approach to the humps themselves must be marked on the carriage way with distinctive white triangles.

A road hump conforming to requirements is not to be treated as constituting an obstruction to the highway, but as part of it. provided that the highway is for the time being subject to a statutory speed limit of 30 mph or less or the hump is specially authorised by the Secretary of State, and that the road hump was constructed under the powers referred to above or was constructed at a time when the highway was not maintainable at the public expense.

It appears from these observations that some regulations have been made and it is under those regulations that road humps are constructed as there is a reference to Highways (Road Humps) Regulations, 1983, but it is clear that so far as the legal position in this State is concerned there are no such regulations. The instructions of the Central Government on which reliance has been placed by both the parties also clearly indicate that there is no law justifying construction of such speed breakers or road humps but they are only executive instructions, the purpose probably being to control speed as and when it is thought desirable.

7. The chapter dealing with the subject is Chapter VI of the Motor Vehicles Act and Section 71 provides for fixing of the limits of speed and this section provides

for the manner in which the maximum speed could be fixed. Section 71 reads:

71. Limits of speed;

(1) No person shall drive a motor vehicle or cause or allow a motor vehicle to be driven in any public place at a speed exceeding the maximum speed fixed for the vehicle by or under this Act or by or under any law for the time being in force;

Provided that such maximum speed shall in no case exceed the maximum fixed for the vehicle in the Eighth Schedule.

(2) The State Government or any authority authorised in this behalf by the State Government may, if satisfied that it is necessary to restrict the speed of motor vehicles in the interests of public safety or convenience or because of the nature of any road or bridge, by notification in the Official Gazette, and by causing appropriate traffic signs to be placed or erected u/s 75 at suitable places, fix such maximum speed limits as it thinks fit for motor vehicles or any specified class of motor vehicles or for motor vehicles to which a trailer is attached, either generally or in a particular area or on a particular road or roads:

Provided that where any 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.

(3) Nothing in this section shall apply to any vehicle registered u/s 39 while it is being used in the execution of military manoeuvres within the area and during the period specified in the notification under Sub-section (1) of Section 2 of the Manoeuvres, Field Firing and Artillery Practice Act, 1938 (5 of 1938).

Section 75 provides for the traffic signs to be erected and Section 77 provides for the notification of main roads and putting of appropriate traffic signs referred to in Part A of the Ninth Schedule. Section 78 provides for the obedience to the traffic signs by all the drivers of the vehicles. In this chapter, Section 91 confers jurisdiction on the State Government to frame rules for carrying into effect the provisions of this chapter. Section 91 reads:

91. Power to make rules:

(1) The State Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for:

(a) the nature of the mechanical or electrical signalling devices which may be used or motor vehicles;

(b) the removal and the safe custody of vehicles including their loads which have broken down or which have been left standing or have been abandoned on roads;

(c) the installation and use of weighing devices;

- (cc) the maintenance and management of godowns for the storage of goods removed from overloaded vehicles and the fees, if any, to be charged for the use of such godowns;
- (d) the exemption from all or any of the provisions of this Chapter of Fire Brigade Vehicles, ambulances and other special clauses of vehicle, subject to such conditions as may be prescribed;
- (e) the maintenance and management of parking places and stands and the fees, if any, which may be charged for their use;
- (f) prohibiting the driving down hill of a motor vehicle with the gear disengaged either generally or in a specified place;
- (g) prohibiting the taking hold of or mounting of a motor vehicle in motion;
- (h) prohibiting the use of footpaths or pavements by motor vehicles;
- (i) generally, the prevention of danger, injury, or annoyance to the public or any person, or of danger or injury, to property or of obstruction to traffic; and
- (j) any other matter which is to be or may be prescribed.

It was, therefore, contended that if the State Government felt that it was necessary for the purposes of speed control and averting road accidents under some special circumstances it could have framed rules u/s 91(2)(i) for construction of road humps or speed breakers, as the case may be, and if such rules are framed the rules may even specify the height and the size of the speed breakers or road humps after careful consideration of the situation. It was, therefore, contended by the petitioner that as there is no legal justification for constructing these road humps or speed breakers, they could not be justified, whereas it was contended by the respondents that in absence of regulations having been framed u/s 91, executive instructions have been issued by the Central Government and the Traffic Committee representing the population in their administrative wisdom has chosen to put up such speed breakers or road humps which may be necessary in order to provide safety in view of the peculiar situation where the highway or the road passes. It was contended that under these circumstances although there may not be a legal authority but as it is done in public interest, it could be justified.

8. It was also suggested that the highway itself has not been defined and therefore it could not be contended that the highway will not include road humps or speed breakers as they may have been erected. However, it was not disputed that in absence of any specification or any particular design of the road humps, road humps have been erected of various types and of different heights and at a number of places. It was, however, not disputed that road signals wherever road humps or speed breakers are erected to control speed should be erected as in fact that is what has been provided in the Motor Vehicles Act itself for checking the speed or limiting the maximum speed of the vehicle at a particular place and

it is also not disputed that wherever any speed breaker or road hump is erected it is expected that signals clearly giving a warning to the driver in advance must be put up so that the road hump or the speed breaker instead of serving the purpose for which it is constructed may itself not endanger a vehicle or a person riding in a vehicle.

9. Although a highway may not have been defined, but it could not be said that highway will mean not a plain road. Highway, in Shorter Oxford English Dictionary, has been explained to mean a public road open to all passengers, a high road; esp. a main or principal road; the ordinary or main route by land or water; any well beaten track. Therefore, it could not be doubted that highway means a plain road open to vehicular traffic.

10. As discussed above, it is clear that so far as we are concerned, there is no provision in either the Highway Act or the Motor Vehicles Act or in the Municipal Corporation Act providing for the construction of road humps or speed breakers. It is also clear that as it appears from the observations in Halsbury's Laws of England, there some regulations have been framed but unfortunately we have no regulations also. It was contended by learned Counsel for the parties that in the scheme of the Motor Vehicles Act u/s 91 the power has been conferred on the State Government to frame rules and Sub-clauses (i) and (j) of this section bring this matter within the scope of Section 91 and it is open to the State Government to frame rules for road humps or speed breakers as and when they are thought necessary to achieve the purpose indicated in Sub-clause (i) or Section 91 of the Motor Vehicles Act and it was contended that this Court should issue direction to the State Government to frame rules.

11. It is also clear that Section 71 of the Motor Vehicles Act provides for speed limit in certain cases but the scheme of that section does not provide for creation of any road hump or speed breaker and it is not disputed that these speed breakers and road humps wherever they have been constructed either on the main roads in the town or on the national highway, they have been done under the executive authority for which there are some instructions to which reference has already been made from the Cenral Government but it was contended that in the absence of any rules and as there is no specific provision laying down the type of the road humps and design, height and other things, the speed breakers and road humps are being erected indiscriminately and without any system. On behalf of the Municipal Corporation a number of papers have been filed which indicate that as and when there was a road accident or a possibility thereof because of the public demand some of these road humps and speed breakers have been erected. There is also a reference to some committee which advised the Corporation to do it but none of these papers disclose that any thought has been given to the nature of road humps or speed breakers, their dimensions and other things and it is because of this that speed breakers and road humps of different varieties and different sizes have been erected at different places in the town and also elsewhere. For the petitioners it was seriously contended that

apart from this kind of road humps and speed breakers wherever they have been constructed, proper road signals as is provided in the Motor Vehicles Act have also not been put up or have been put up in a manner in which they do not give a caution to the driver sufficiently in advance and as a result of which instead of securing the purpose, i.e. safety and security, it sometimes even endangers life and property. Learned Counsel appearing for the respondents frankly conceded that road signals as provided in the Motor Vehicles Act and rules have to be put up wherever speed limit is provided and if a road hump or a speed breaker is erected for purposes of checking the speed of the vehicle of signal to indicate it ought to be provided.

12. In view of the discussion above, therefore, the question that arises is about the directions which the petitioner seeks in this petition. So far as the direction about putting up of the road signals is concerned, there is hardly any controversy. It is, therefore, directed that wherever any speed limit for vehicle is fixed or some kind of road hump or speed breaker is erected appropriate road signals giving a clear indication all the time during day and night shall be put up, and it will also be kept in view that the signals should be so put as will give a caution to the drivers of the vehicles that they have to pass through an area where there is restriction of speed and there is some kind of road hump or speed breaker.

13. As regards the second direction, the petitioner seeks a direction for removal of all road humps and speed breakers. Strictly there is no justification of these road humps or speed breakers as there is no provision in law or rules but it was seriously contended on behalf of the respondents that although it has been done under the administrative power, it has been done in public good with the intention to safeguard the life and secure safety to the users of road and highway. This basic intention is not even disputed by the petitioner and in view of this, in our opinion, it will not be proper to issue a direction for removal of all these road humps and speed breakers. In our opinion, it is not necessary for us to issue a direction to the State Government to frame rules u/s 91 but it is directed that unless such rules are framed, the respondents will examine the matter and prepare a scheme conducive to the purpose for which the road humps and speed breakers are erected and also conducive to the safety of the persons travelling in vehicles and their property that a reasonable design and scheme about road humps may be prepared and all the speed breakers and road humps may be made uniform in accordance with that scheme within six months.

14. In the circumstances of the case, parties are directed to bear their own costs. Security amount deposited shall be refunded to the petitioner.