

(2015) 12 SC CK 0070

In the Supreme Court Of India

Case No : I.A. Nos. 366, 367, 368, 370, 371, 372 in I.A. No. 365 in I.A. No. 345, I.A. Nos. 369, 373, 374 in I.A. No. 366 in I.A. No. 365 in I.A. No. 345 in Writ Petition (Civil) No. 13029/1985, Writ Petition (Civil) No. 817 of 2015, Writ Petition (Civil) No. 116 o

M.C. Mehta

APPELLANT

Vs

Union of India (UOI) and others

RESPONDENT

Date of Decision : 16-12-2015

Acts Referred:

Citation : (2015) 225 DLT 549 : (2016) 1 MLJ 410 : (2016) 1 RCR(Civil) 646 : (2015) 13 SCALE 736

Hon'ble Judges : T.S. Thakur, C.J.I., A.K. Sikri and R. Banumathi, JJ.

Bench : Full Bench

Final Decision : Allowed

Judgement

1. We had by our order dated 9th October, 2015 issued certain directions, aimed at mitigating the hardship which the people living in Delhi undergo having regard to the high of pollution in the city that has earned to it the dubious reputation of being the most polluted city in the world. We had among others directed the following measures to be taken:

(1) The Governments of the States of Uttar Pradesh, Haryana and Rajasthan shall take steps to ensure that commercial traffic for destinations other than Delhi use alternative routes and to ensure that in the course of implementation of the said direction no traffic jams and other inconvenience is caused to the public.

(2) The Government of NCT of Delhi shall direct issue advertisements to inform commercial traffic of the bypass routes and the imposition of the ECC imposed by this Court for entry of the vehicles into Delhi.

(3) The toll collectors shall put in place Radio Frequency Identification (RFID) systems at their own costs at nine main entry points in the city by November 30,

2015 and by 31st January, 2016 at all the remaining 118 entry points to the city. The NCT Government shall install its own CCTV cameras at nine entry points and also organise surprise visits to oversee the collection of ECC and other necessary arrangements.

2. We had by the same order directed levy and collection of ECC at the following rates:

(i) The Category 2 (light duty vehicles etc.) and Category 3 (2 axle trucks) at the rate of Rs. 700/- per vehicle;

(ii) Category 4 (3 axle trucks) and Category 5 (4 axle trucks and above) at the rate of Rs. 1300/- per truck.

3. Passenger vehicles, ambulances and vehicles carrying essential commodities like food stuffs and oil tankers for Delhi were exempted from the above charges.

4. Mr. Harish N. Salve, learned senior Counsel appearing as amicus, argued that imposition of ECC and the directions issued by this Court regarding diversion of commercial vehicles/trucks to alternative routes has made some difference but the pollution levels continue to remain high despite such measures. He submitted by reference to the material placed on record that the level of pollution detected on or before 9th October, 2015 was infact lower than the levels recorded on subsequent dates. Mr. Salve further submitted that although diversion of vehicles to alternative routes in terms of the order passed by this Court was given effect to belatedly on 6th November, 2015, yet the said direction has not been effectively enforced inasmuch as vehicles not bound for Delhi are being allowed to enter Delhi on payment of the prescribed ECC. It was submitted that the true spirit of the order passed by this Court was that vehicles that were bound for Delhi alone were to enter Delhi and other vehicles bound for other destinations/cities were supposed to bypass Delhi by using alternative routes. He drew our attention to a similar direction issued by this Court in *M.C. Mehta v. Union of India and Ors.* - (2003) 10 SCC 561. It was in that view urged that the order passed by this Court on 9th October, 2015 could be modified/clarified to make it clear that the State Governments shall take steps to divert vehicles that are not bound for Delhi through alternative routes especially those using National Highway-8 and National Highway-1 for entering the national capital. It was also contended by Mr. Salve that in order to effectively discourage vehicles from entering Delhi, the ECC could be revised upwards especially when the Government of NCT of Delhi, the M.C.D. and the Union of India were all agreeable to the same.

5. Mr. Ranjit Kumar, learned Solicitor General appearing for the Union of India, submitted that diversion of traffic away from Delhi by use of alternative routes as also by way of enhancement of the ECC has been thoroughly discussed with the learned Amicus Curiae and that the Union of India and so also the Government of NCT have no objection to such a direction being issued. He submitted that as a matter of fact discussions held between the representatives of the two

governments, namely, Union of India and Government of NCT of Delhi as also the M.C.D. had led to a consensus on five other points also on which this Court could issue suitable directions to help reduce the pollution levels in Delhi. It was submitted that the revision of ECC could be upto 100% of the amount already stipulated for vehicles that are Delhi bound while other vehicles which are not bound for Delhi could be directed to bypass Delhi by using alternative routes which the two governments could be directed to specify.

6. By our order dated 6th December, 2001 passed in *M.C. Mehta v. Union of India and Ors.* - (2003) 10 SCC 561, we had, inter alia, directed:

8. It appears that vehicles which transit through Delhi do not adhere to the vehicular standards which are applicable in Delhi, namely, they are not Euro II-compliant nor are they using low sulphur and low benzene fuel. There is no reason why very large number of goods vehicles should transit through Delhi thereby adding to the pollution level and the traffic on the road.

9. It is, therefore, proposed that with effect from 15.1.2002 no heavy-, medium- or light-goods vehicles will ply on inter-State routes by passing through Delhi or New Delhi. It is only those goods vehicles which on payment of octroi/toll tax carry goods to or from Delhi which would be allowed to ply. The Commissioner of Police is directed to formulate a scheme in this behalf and give due publicity to all concerned and implement the same.

7. Our order dated 9th October, 2015 was in the same spirit intended to act as a restraint against vehicles not bound for Delhi entering Delhi. The said direction appears to have been understood to mean as though vehicles not bound for Delhi could also enter Delhi provided they pay ECC. The true intention, however, was that the vehicles that are not bound for Delhi are diverted to alternative routes to bypass Delhi. The levy of ECC has no doubt resulted in some diversion of such vehicles but a very large number of vehicles not bound for Delhi still appear to be entering Delhi on payment of ECC, stipulated by us. In the circumstances, we consider it necessary to make it clear that no vehicle which is not bound for Delhi will be allowed to enter from N.H.-8 which connects Jaipur to Delhi and N.H.-1 that connects the States of Punjab, Haryana and other northern States to Delhi via Kundli border. We are limiting the restraint order to these two entry points for the present because from the figures given to us the largest number of vehicles that are entering into Delhi are from these two entry points. We accordingly direct that traffic from these two entry points viz. Kundli border on N.H.-1 and Rajokri on N.H.-8, shall be diverted to bypass Delhi through such alternative routes as the transport/traffic departments of the governments concerned may stipulate.

8. We are further of the view that empty/unladen vehicles bound for Delhi, can enter Delhi on payment of the ECC earlier stipulated by us @ Rs. 700/- and Rs. 1300/- per vehicle depending upon the category to which the vehicle belongs. We, however, direct that for Delhi bound vehicles loaded with goods, the ECC will be twice the charge stipulated by us by our order dated 9th October, 2015. This

measure shall, in our opinion, discourage any vehicle trying to enter Delhi on a false pretext of the goods loaded on it being Delhi bound.

9. Mr. Salve next argued that the transport vehicles registered on or before 2005 which are non-compliant with the current pollution control standards also need to be disallowed from entering Delhi even if the same are Delhi bound with goods loaded for consumption in the city. There was a consensus among learned Counsel for the parties even on this issue who submitted that Union of India or Government of NCT of Delhi have no real objection if a direction to that effect is issued. We accordingly direct that while vehicles "bound for Delhi" may enter on payment of ECC at the rates stipulated hereinabove, those registered in the year 2005 or earlier shall not qualify for such entry. State Governments and Union Territories concerned shall ensure that vehicles bearing registration numbers of the year 2005 or earlier do not enter Delhi. The governments will evolve a suitable system for implementation of this direction.

10. It was contended by Mr. Salve that since diesel vehicles are the most polluting vehicles contributing to the current state of affairs in Delhi, it is time to issue directions banning registration of any new private and/commercial light duty diesel vehicles in the National Capital Region. This submission was opposed by Mr. Ranjit Kumar who submitted that banning of commercial light duty diesel vehicles is likely to affect trade and commerce within Delhi and supply of essential commodities to the people living in the National Capital Region especially because such vehicles are used in large numbers for ferrying goods from one place to the other in the region.

11. M/s. Dushyant Dave and Dhruv Mehta, learned senior Counsel appearing for the automobile dealers selling diesel vehicles, also opposed any ban on registration of new private vehicles and commercial light duty diesel vehicles as proposed by Mr. Salve. Having given our anxious consideration to the submissions made at the Bar, we are of the view that the new commercial light duty diesel vehicles can for the present continue being registered in Delhi on account of the dependence of the public on such vehicles for supply of essentials. There is, however, no reason why registration of private cars and SUVs using diesel with an engine capacity of 2000 cc and above should not be banned upto 31st March, 2016. It is noteworthy that diesel vehicles of 2000 cc and above and SUVs are generally used by more affluent sections of our society and because of the higher engine capacity are more prone to cause higher levels of pollution. A ban on registration of such vehicles will not therefore affect the common man or the average citizen in the city of Delhi. We accordingly direct that Registration of SUVs and private cars of the capacity of 2000 CC and above using diesel as fuel shall stand banned in the NCR upto 31st March, 2016.

12. It was then argued by Mr. Salve that all taxis including aggregators like OLA and UBER plying in the National Capital Region may be moved to C.N.G. fuel within a reasonable time but not later than 1st March, 2016. There was a general consensus on this subject also primarily because it is hoped by all concerned that

it will contribute substantially to the reduction of the pollution. We, therefore, direct that all taxis including those operating under aggregators like OLA and UBER in the NCT of Delhi, plying under city permits shall move to C.N.G. not later than 1st March, 2016.

13. It was submitted by Mr. Salve that one of the contributors to the pollution in the city is dust that rises from the roads and pavements which are not fully developed. It was submitted that Government of NCT of Delhi could be directed to vacuum clean the roads which will substantially reduce the pollution levels. To the credit of learned Counsel for the Government of NCT of Delhi and Union of India and the M.C.D. we must mention that a direction to that effect was not opposed by anyone of them. As a matter of fact, Mr. Wasim A Qadri, learned Counsel for the Government of NCT of Delhi submitted that the State Government is very keen to undertake these steps to reduce the pollution levels and ensure that paving of roadsides starts immediately. Vacuum cleaning will, however, take some time as the State Government shall have to purchase vacuum cleaning vehicles/appliances for use on the roads.

14. We accordingly direct the Government of NCT of Delhi to take immediate steps for repair of pavements and make pavements wherever the same are missing and also to take immediate steps for procurement of the requisite vacuum cleaning vehicles for use on Delhi roads expeditiously but not later than 1st April, 2016.

15. It was argued by learned Counsel for the parties that one of the major contributors to the current pollution levels is the construction activities going on in the National Capital Region. It was submitted that Union of India and State Governments concerned must be directed to take steps to enforce the C.P.C.B. rules and norms against those engaged in such construction activities to prevent further rise of pollution levels. We see no reason to decline a direction to that effect. C.P.C.B. norms regarding prevention of pollution by putting curtains and other devices at construction sites must be strictly enforced by the enforcement agencies concerned. We direct accordingly.

16. It is also contended by learned Counsel for the parties that one of the contributors to the pollution is burning of solid waste by local bodies like M.C.D., N.D.M.C. and institutions that generate such waste. It was submitted that burning of solid waste was impermissible under the relevant rules and that lapses on the part of the concerned authorities in the matter of enforcing the said rules is contributing to the deteriorating situation. It was, therefore, prayed that authorities including the local bodies and institutions within the National Capital Region be directed to refrain from disposing of solid waste by burning such waste and to take steps for proper management/disposal of such waste in a scientific manner following the norms and the requirements of the relevant rules in that regard. We see no reason to decline that prayer either. We accordingly direct that the State Government and the local bodies concerned including M.C.D., N.D.M.C. and all other institutions that are generating solid waste shall take steps to

ensure that no part of such waste is burnt and that proper arrangements are made for disposal of such waste in a scientific way without causing any hazard to environment.

17. There are a few other suggestions also mooted by learned Counsel for NCT of Delhi with which we are not dealing at present as learned Counsel for Union of India and the amicus curiae wanted some time to examine the same and make their submission. They may do so on or before the next date of hearing.

18. Mr. Shyam Divan, learned Counsel for the toll collector-SMYR Consortium LLP, prayed for early hearing of his (I.A. No. 366) for modification of our Order dated 9th October, 2015 as according to the learned Counsel, the diversion of vehicular traffic away from Delhi is seriously impacting the contract entered into by the applicant with M.C.D.

19. In the circumstances, therefore, while we adjourn these proceedings to Tuesday, the 5th January, 2016 to be listed along with all pending applications including those filed by the toll collector, we direct that steps that we have indicated hereinabove shall be taken by all concerned in the right earnest notwithstanding any order to the contrary passed by any court or authority or Tribunal whatsoever.

20. Post on 5th January, 2016.