
(1989) 04 MP CK 0021

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 302 of 1989

Ram Sahai Varma

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 17-04-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Motor Vehicles Rules, 1994 — Rule 257
Motor Vehicles Act, 1939 — Section 74

Citation : AIR 1989 MP 334 : (1989) JLJ 726 : (1989) MPJR 529

Hon'ble Judges : T.N. Singh, J;K.K. Verma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

T.N. Singh, J.

This order shall govern disposal of the connected petition also, namely, Misc. Petition No. 386 of 1989 (Vishnu Datt Tiwari v. State of Madhya Pradesh) as a common grievance is agitated by both petitioners regarding traffic problem in the city of Gwalior on a road facing this Court.

A return has come in this petition though in the other matter, there is no return as yet. However, both petitions being interlinked for analogous hearing, we have considered it appropriate to consider the stand of the respondents with respect to petitioners' common grievance and in that connection, we have read the return in appropriate perspective. But the short complaint of the petitioner, who is an Advocate of this Court and the legal basis thereof may be stated first. The complaint is that the authorities, namely, the Collector and District Magistrate, Gwalior (respondent No. 1) and Superintendent of Police (Traffic), Gwalior (respondent No. 2) have arbitrarily and illegally restricted movement on the road aforesaid which, as per Annexure R/2 of the return, is that the portion of the road which covers Inderganj (Ghoda Chowk) and runs up to "Jinsi Nala Chouraha". Admittedly, that portion of the road is kept open to oneway traffic

only and the undisputed position on facts is also that the road leads to Courts and educational institutions.

It is submitted that the restriction has resulted in serious hardship and inconvenience particularly to students and lawyers but generally to people from all walks of life who have been using that road and plying ordinary vehicles thereon. They are put to great inconvenience, it is submitted, as the alternative route is not convenient at all and the restrictions are not "in the interest of public safety or convenience". It is submitted also that the provisions of Section 74 of the Motor Vehicles Act, 1939 and of Rule 257 of M. P. Motor Vehicles Rules, 1974 are breached as the requirements thereof have not been fulfilled. Those are quoted :

"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 vehicles 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."

"257. Power To Restrict Use of Vehicles : In accordance with Section 74 of the Act, the District Magistrate may, within his jurisdiction, prohibit or restrict the use of motor vehicles, driving of motor vehicles or of any specific class of motor vehicle or use of trailers in a specified area or specified road in the interest of public safety, convenience or the condition of any road or bridge."

We have carefully gone through the averments made in the return and also the facts which appear in the annexures of the return. That on 25-5-1988, there was a meeting of Traffic Advisory Committee is clear from two Annexures. Indeed, as per minutes of the Meeting (Annexure R/2), it appears that the impugned decision regarding restriction aforesaid was taken in that meeting. By Annexure R/1, the Deputy Commissioner (Dev.), had sent copy of the minutes to Deputy Superintendent of Police (Traffic), for his information. The Meeting was presided over by the Commissioner and, therefore, possibly, the minutes was circulated by his Deputy and service report was required to be obtained in regard to those minutes being served on the Committee Members. There is nothing else to be read either in Annexure R/1 or Annexure R/2 to suggest that the respondents had in their contemplation the statutory requirement, as no mention of the relevant statutory provisions has to be read in those annexures. In the return,

though, it is submitted that the restrictions have been imposed in public interest on the decision taken by the Traffic Advisory Committee, Gwalior, and it is also submitted that the alternative route was a convenient route, while the restricted route (made "one-way") was overcrowded.

What is not disputed is that the impugned restrictions are operating since the first week of February, 1989 and it is difficult, therefore, to dispute that the statutory requirement contemplated in the Proviso to Section 74, afore-quoted, was to be satisfied. Despite adequate opportunity being given to the respondents to satisfy the Court that the impugned traffic restriction can be upheld, respondents have not taken care to do that by producing the necessary Gazette Notification, contemplated u/s 74, Proviso. The fact that the Proviso contemplates two types of publication of the restriction and links up the manner or nature of publication to the period of the prohibition or restriction, makes it clear that the provision for Gazette Notification in case of restriction lasting for a period of more than one month has to be regarded as mandatory. Rule 257 must be read accordingly to conform to the mandate of the Proviso and accordingly, even if an order of District Magistrate passed thereunder is produced to sustain the restriction, that order can have validity in respect of restriction with a life of less than a month.

However, in the instant case, not only respondents have not produced any Gazette Notification, no care is taken to produce any order passed by the District Magistrate in terms of Rule 257. The power which is to be exercised by the State Government or by the District Magistrate can only be used within the parameters prescribed statutorily and subject to the conditions prescribed therefor. When any restriction is challenged on the score of violation of either Section 74 or Rule 257, it becomes the duty of the State or the District Magistrate, or the Officer concerned, imposing or enforcing the impugned traffic restriction, to satisfy the Court that power exercised in that regard does not in any manner contravene the statutory authority conferred thereunder. Nothing has come on record to satisfy us in that regard.

Before we dispose of the petitions, we would like, however, to observe that no exception can be taken to consultation being held with a non-statutory Traffic Advisory Committee, but we would like to still observe that such a Committee has to reflect fully public opinion by ensuring that Members of such a Committee are drawn from all sections of the society. We have noted that in the instant case, the Traffic Advisory Committee does not have as Members any representative of the Bar Association or of the students despite the fact that lawyers and students were likely to be affected by the decision to be taken by the Committee in regard to the restriction complained. That apart, we have to also observe that the recommendations of the Advisory Committee cannot have statutory character and cannot be accepted as dispensing the statutory conditions prescribed u/s 74 or Rule 257 and we further add that powers under relevant statutory provisions have to be exercised by the authorities empowered

thereunder having clue regard to the statutory conditions prescribed for the exercise of powers contemplated therein. There can be no mechanical exercise of power in respect of traffic restriction relying merely on recommendations of a non-statutory body when indeed, in the minutes is not reflected the fact that in the interest of general public such restrictions were required for "safety or convenience" of the public generally.

For the several reasons aforesaid, both petitions must succeed and are allowed. We direct that the traffic restrictions in so far as they concern the impugned route, namely, Jirsi Nala Chouraha to Ghoda Chowk, shall not be enforced any further. The direction made herein shall take effect from 21st April, 1989 so that communication of the direction reaches the concerned authorities in the meantime.

Doing so, we would add further few words of caution in case action is taken afresh u/s 74 or Rule 257 aforequoted by complying with the requirement of the proviso to Section 74. Power envisaged under those provisions is to be exercised judiciously and reasonably. Minimum and reasonable restrictions matching the avowed objective can only stand the constitutional cavil of Article 19(1)(d) guaranteeing freedom of movement to citizens. To relieve the alleged overcrowding restrictions, may be appropriately devised to apply to "specified class of motor vehicles" and among other "exceptions and conditions" contemplated u/s 74, it has to be considered if relaxation can be made for "timings" as may suit lawyers and litigants coming to Courts and children going to schools and colleges. Section 74 does not contemplate arbitrary imposition of such blanket ban as of "oneway route" for all purposes and for all periods of times and seasons against all sections of people.

A typed copy of this order shall be furnished to Shri Roman, Deputy Government Advocate, so that he could take advance steps.