
(2003) 04 CAL CK 0037

In the Calcutta High Court

Case No : Writ Petition No. 2062 of 1999, G.A. No. 1798 of 2001 with C.A. No. 1605 of 2002

S.M. Ghosh

APPELLANT

Vs

Secretary, Ministry of Environment

RESPONDENT

Date of Decision : 03-04-2003

Acts Referred:

Citation : (2003) 2 ILR (Cal) 148

Hon'ble Judges : Ashok Kumar Mathur, C.J.; Jayanta Kumar Biswas, J

Bench : Division Bench

Advocate : Samarjit Ghosh, S.K. Deb and S.B. Sinha Roy, for the Appellant; Balai Chandra Ray, Debashish Kar Gupta and Ashim Kumar Chatterjee for State, S. Pal, Pratap Chatterjee, Nadria Patheria and U. Shroff for I.O.C, Soumitra Sen and Subhas Bhattacharjee for B.P.C.L., Pramit Roy, Pratap Kumar Mukherjee for Respondent No. 11, Samrat Sen and P.C. Pal Chowdhury for H.P.C.L., Alok Ghosh and Achintya Kumar Banerjee for C.M.C., for the Respondent

Final Decision : Allowed

Judgement

1. This public interest litigation has been filled by a public spirited person in which it has been prayed that directions may be given to the Respondents/ Statutory authorities to ensure compliance with the provisions of law relating to environment and pollution for curbing of the pollution immediately and to save the public health. It is also prayed that all vehicles, older than 5 years from the date of registration, should be fitted with the anti-pollutant device. It is also prayed to ensure that the vehicle should not be allowed to operate unless a certificate is issued by the appropriate authority that the vehicle conforms to the pollution standard.

2. After filing this writ petition this Court appointed a Committee to suggest ways and means to check the pollution in the State. The Committee was constituted with about 10 members from the various sections, i.e. from Police Department, Transport Department, Oil Coordinator Indian Oil, a Mechanical Engineer, a

Senior Environment Officer, Senior Scientist from Pollution Control Board, a representative from the Central Pollution Control Board, one Head of the Eastern Zonal Office, Calcutta Zonal Laboratory as well as the Joint Commissioner of Police. The said Committee submitted their recommendations and suggested various ways to check the pollution.

3. This Committee, after going through various data which was made available to them, found that in the year 1997 a study was undertaken which estimated emission from the various sources for the city for the period of 1980-1990 and according to that estimate the projected air pollution load of Calcutta for 2000 was 3,53,000 tons and out of that transport sector contributes 50 % of the share followed by 48 % by industrial sector and remaining by the domestic sector.

4. Therefore, we will confine ourselves to 50 % of the cause of pollution through the vehicles. It was also recommended by the said Committee that for improvement of mass emission standards Bharat Stage-II Emission Standard norms should be introduced for new passenger cars in Kolkata Metropolitan Area (K.M.A.) and they also made certain suggestions with regard to improvement of quality of petrol, diesel and oil etc. It was also recommended by the said Committee that new vehicles which are being registered should conform to the Bharat Stage-II Emission Standard norms. The other existing vehicles should also use L.P.G. or C.N.G. or any other conventional modes to conform to Bharat Stage-II. They also specifically mentioned that the buses and Government vehicles should also conform to these norms.

5. It was also pointed out that the present system of imposing fine on vehicles failing to meet standards does not improve the emission status. Suitable amendments in the Motor Vehicles Rules were also suggested. It was also pointed out that in terms of the West Bengal Motor Vehicles Rules, the total life of a taxi permit is restricted to 15 years, to be extendable by another five years by a committee and this has not been followed in practice. They also suggested that no private non-commercial vehicles including two wheelers manufactured prior to 1975 should be allowed to ply in K.M.A. with effect from January 1, 2002 unless they convert to L.P.G. wherever technically feasible or Bharat Stage-II compliant engines and they suggested that from January 1, 2003 such restriction will apply to all 25 years old vehicles and they also suggested that by January 1, 2005 the age of the vehicles will be brought down to 20 years.

6. They also made recommendation that the age of retirement of other commercial vehicles including three wheelers should be the same as that of taxis and exception should be allowed if such vehicles change over to Bharat Stage-II Emission Standard compliant engines or run on cleaner fuels. They also recommended that the new registration of three wheelers should be stopped. They observed that a large number of three wheelers are plying in the city without any valid registration and department of Transport should take steps to stop their unauthorized use. Other necessary recommendations have also been made with regard to the traffic congestions and for improvement of the road

transport, which at present moment we are not dealing with. We are now only confined to the limited question with regard to the pollution by the automobiles.

7. Mr. Kar Gupta, learned Counsel for the State has invited our attention to a Notification dated April 2, 2003 which is yet to be gazetted in which certain rules have been sought to be amended specifically with regard to the Retro Fitters Agent License popularly known as "Gas Kit". It is submitted that the State Government is undertaking necessary amendments in the West Bengal Motor Vehicles Rules, 1989. He has also invited our attention to the communication dated March 25, 2003 and submitted that the Government of West Bengal has passed order that henceforth all applications for replacement of existing auto rickshaws should be allowed on specific conditions that only L.P.G. driven auto rickshaws shall be placed on the existing petrol/diesel driven auto rickshaws.

8. In this context the argument has been advanced at length and various suggestions have been considered by us. There is no two opinion in this matter that because of the pollution by the automobiles the public health is being seriously affected all over the country and various orders have been passed by the Apex Court in the Writ Petition (Civil) No. 13029 of 1985 in the case of M.C. Mehta from time to time and pursuant to that Central Rules have been amended to a greater extent and the matter is still pending before the Apex Court and all the vehicles operating in Delhi have been asked to conform to Bharat Stage-II Emission Standard, which changed the environment with regard to pollution in Delhi to greater extent.

9. Calcutta is also one of the highly populated Metropolitan City of the country out of four Metropolises. Therefore, Calcutta cannot remain behind in march of time. The public health is a prime concern and air quality is a crucial factor in determining the public health. As we mentioned above, one of the reasons for polluting this quality of air is the automobile and as per findings of the committee it contributes to the extent of 50%.

10. Therefore, this is a major cause for pollution of the air and that has to be right. Earlier, Government of India appointed Mashelkar Committee headed by Dr. R.A. Mashelkar, Director General of Scientific and Industrial Research and he has given a report which has been implemented to a great extent by Government and new auto policy has already come into force.

11. That Committee has recommended that Bharat stage-II Emission standard norms should be immediately put into operation in four mega cities, i.e., Delhi, Mumbai, Kolkata and Chennai. Therefore, now we propose to issues the following directions:

1. That within a year from date all the vehicles, be it private or commercial, should conform to Bharat Stage-II Emission Standard as recommended by Mashelkar Committee and it has also been accepted by the State of West Bengal. It would be the responsibility of the State Government to see that all the vehicles which are operating in K.M.A. should conform to Bharat Stage-II Emission

Standard. This will be applicable also to all private, Commercial, Government, Semi-Government automobiles, buses and goods carriers which will enter into the K.M.A. after one year from date.

2. That all three wheelers and two wheelers will also conform to Bharat Stage-II Emission Standard either by converting to C.N.G., L.P.G. or any other mode so as to conform to Bharat Stage-II Emission Standard at the time of new registration.

3. That all the vehicles including two wheelers and three wheelers which are at present operating will have to conform to Bharat Stage-II Emission Standard within one year from date by adopting any of the methods, i.e., C.N.G., L.P.G. or any other conventional method.

4. That all two wheelers and three wheelers which are operating in Calcutta without licence shall be checked by the State and they shall be properly booked for taking necessary steps.

5. That the Ministry of Petroleum & Natural Gas, Indian Oil Corporation, Bharat Petroleum, Hindusthan Petroleum and I.B.P. and other oil companies will ensure regular supply of L.P.G., C.N.G. and other conventional fuel so that consumers who are operating in Calcutta may not be put to difficulties. Union of India will ensure the regular supply of L.P.G., C.N.G. and other conventional fuel with minimum lead content so that such gas or fuel may be available easily in Calcutta and. the consumers are not put to any hardship.

6. That Auto Emission Testing Centres which have been licensed by the State will be periodically monitored by the State for ensuring that their instruments are properly equipped to check the norms of Bharat Stage-II Emission Standard and they should be properly calibrated by the State from time to time. If the adequate number of testing centers are not available, then numbers may also be increased so as to provide facility to the consumers to get their vehicles periodically checked. It will be the responsibility of the State to see that Auto Testing Centres are properly calibrated from time to time and they must be properly equipped to test the vehicles so as to conform to Bharat State-II Emission Standard.

7. Union of India and the aforesaid oil companies will ensure sufficient outlets so as to avoid hardship of the public at large.

8. If the vehicles do not change over to conform to Bharat State-II Emission Standard within one year from date, then the State Government within ensure that such vehicles are not allowed to operate in K.M.A. and it will be the responsibility of the State Government to see that these directions given by this Court are enforced effectively and in their true perspective.

9. All the aforesaid directions will be enforced by the State and those should be properly notified for information of the public at large and should be give wide publicity all over the State so that the public may know about the effect of this order and the State Government should undertake necessary amendments in the

West Bengal Motor Vehicles Rule to implement these directions.

10. Let this matter appear after Puja Vacation. Liberty to mention.

Let affidavit-in-opposition filed by the Respondent Nos. 7, 8 and 15 and added Respondents be kept with the records.

All parties concerned are to act on a xerox signed copy of this dictated order on the usual undertaking.