

(2023) 02 DEL CK 0057

In the Delhi High Court

Case No : Civil Writ Petition No. 13924 Of 2021

Sonali Karwasra

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 09-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Central Motor Vehicles Rules, 1989 — Rule 2, 139, 139A, 165, 167
Motor Vehicles Act, 1988 — Section 136A, 200

Citation : (2023) 02 DEL CK 0057

Hon'ble Judges : Satish Chandra Sharma, CJ;Subramonium Prasad, J

Bench : Division Bench

Advocate : Ajay Diggpaul, Kamal Diggpaul, Swati Kwatra, Santosh Kumar Tripathi, Arun Panwar, Utkarsh Singh, Tapeshe Raghav

Final Decision : Disposed Of

Judgement

Satish Chandra Sharma, CJ

1. The present Writ Petition has been filed under Article 226 of the Constitution of India as a Public Interest Litigation (PIL), and the Petitioner has shown serious concern with respect to imposition of fine for violation of various statutory provisions under the Motor Vehicles Act, 1988 and the subsequent amendment to it, i.e., the Motor Vehicle (Amendment) Act, 2019.

2. The Petitioner's contention is that the infrastructure in respect of technology for detection of violation of traffic rules is not in consonance with international standards. Further, the same is not standardized throughout the country and no information/ minimal information is available with respect to the operation/ limitation/ errand/ challenges in respect of the technology which is being used. The Petitioner has stated that there are various instances where hefty fines have been levied upon innocent citizens on account of faulty equipment and technology used by the Traffic Police, and citizens at large are suffering due to the same.

3. The Petitioner has further stated that in a large number of developed countries, there are well-established standards/ rules/ guidelines along with monitoring agencies which efficiently monitor traffic violations and implement vehicular law. It has been submitted by the Petitioner that in our country, the technical equipment purchased and deployed to enforce laws concerning motor vehicles is done so without considering any standards/ guidelines. Further, several lacunae exist with respect to the manner of functioning of monitoring agencies as well as when it comes to efficient implementation of laws.

4. The Petitioner has further stated that the equipments used to detect violation of traffic lights are sub-standard. They are not based on updated technology, which is resulting in erroneous imposition of fines on the common man.

5. The Petitioner has further stated that the Motor Vehicles Act, 1988 was previously amended in 1994 and now has been amended through the Amendment Act of 2019. However, the speed limit violation detection technology, the drunken driving breath analyzing technology and the red-light violation technology are not in sync with the changing times. It was submitted that there is a need for more advanced technology.

6. The Petitioner has further stated that no guidelines have been implemented with respect to the technology relied upon by Traffic officials to detect violations. It is submitted that the same is creating a lacuna in the infrastructure of the system relied upon. It is stated that the lacunae created due to the infrastructure and the subsisting system is leading to an arbitrary imposition of fines upon innocent citizens who in fact abide by traffic rules. It has been further stated that the equipment used by the Traffic Police is neither calibrated nor maintained, thereby resulting in errors in detection of traffic violations.

7. The Petitioner has stated that after the amendment of the Motor Vehicles Act in 2019, it was anticipated that the Amendment Act will provide an efficient, safe and corruption free system in the country. However, the implementation of the same throughout the country has shown that there is an increase in instances of faulty systems for detection of speed violations, red light violations, drunken driving, etc.

8. The Petitioner has filed various reports stating that the challans issued have been recalled in bulk. It is stated that the traffic department had to call back more than 1.5 Lakh challans issued on account of over-speeding on just one highway stretch in the NCR area alone. It has been further stated that in one case, fine to the tune of Rs. 2,00,500/- was imposed upon a Truck driver for overloading near Mukarba Chowk in Delhi. It has been further contended that there are no checks on what basis the challans are issued and there is no monitoring agency which can effectively monitor implementation of the statutory provisions under the Act.

9. The Petitioner has further stated that the documents relating to motor vehicles such as registration certificate, driving license, insurance can be made available

on Parivahan App or Digi locker App, and they should be treated as legally recognized proof at par with original documents. The Petitioner, at the same time, has stated that the documents which are on Digi locker/ various Apps have been recognized and accepted by the Traffic Police. However, every police personnel should have a mobile compatible to access the relevant App to verify the authenticity of the driving license and other documents. The Petitioner has also pointed out several difficulties which are being faced by the traffic police personnel and offenders even though the documents are available on mobile Apps/ Digi Locker and she has placed newspaper clippings on record to buttress her averments.

10. The Petitioner has also raised concerns in respect of spot challans where the offenders are being penalised for violation of Motor Vehicles Act, 1988 and the subsequent amendment which is in force. It is the Petitioner's contention that the traffic officials should wear a body camera. She has stated that though the traffic officials have been ordered to wear body cameras while issuing challans, the same is not being followed.

11. The Petitioner has further stated that the speed violation or red light violation equipments have not been placed at proper locations and they should be placed at proper locations in order to ensure that the public at large is not made to suffer. The Petitioner has stated that the Breath Analyzers used by the Traffic Police suffers from medically and scientifically established errors and the traffic police have no formal training for utilizing the same. Therefore, proper steps should be taken in the matter for standardization/ calibration of such equipments and the Traffic Police should also be trained.

12. It has been submitted by the Petitioner that certain Traffic signals are fixed at such places that they are obstructed and not visible, thereby leading to people violating the obstructed signal and being imposed a fine upon. Therefore, steps should be taken to remove all such defects in order to ensure that the traffic lights are visible to all those persons who are using motor vehicles. The Petitioner has given some examples of violation of traffic signals and the difficulty faced by the public at large. In respect of speed, it has been reiterated by the Petitioner that the Radar Technology used by the Delhi Traffic Police is not in conformity with the international standards and there exists a need to revisit the technology and implement standardization of the same. There are some stray examples given by the Petitioner in respect of the challans issued by the Traffic personnel and the Petitioner has also given various suggestions in respect of Red Light Jumping, Road Sign Error, Radar Coverage, Multiple Vehicle Radar Speed Meters. Further, several other suggestions for improving the infrastructure, imposition of fine and effective implementation of traffic laws so that the common man is not wrongly levied a challan upon have also been put forth.

13. In light of the submissions put forth, the Petitioner has prayed for the following reliefs:

"A. Issue Writ of mandamus under Article 226 of the Constitution of India or any other appropriate Writ or directions to the Respondent to ensure the presence of proper infrastructure for monitoring the traffic violation and its effective functioning.

B. Issue Writ of mandamus under Article 226 of the Constitution of India or any other appropriate Writ or directions to the Respondent to remove the faulty system and deploy the appropriate technology.

C. Issue Writ of Mandamus under Article 226 of the Constitution of India or any other appropriate Writ or directions to the Respondent to set appropriate guidelines for monitoring of the traffic violations.

D. Issue Writ of Mandamus under Article 226 of the Constitution of India or any other appropriate Writ or directions to the Traffic Police to device a mechanism where the online traffic challan available on its website can be accessed only after an OTP Authentication on registered mobile number or any other verifiable mode.

E. Issue Writ of Mandamus under Article 226 of the Constitution of India or any other appropriate Writ or directions to the Respondent to standardize and upgrade the technology pertaining to monitoring of traffic violation equipment in consonance with international standards and the technology may also be implemented in sync with international standards.

F. Issue Writ of Mandamus under Article 226 of the Constitution of India or any other appropriate Writ or directions to the Government to put information regarding the technology being installed to monitor the traffic violations pertaining to the errors/limitations/restrictions.

G. Issue Writ of Mandamus under Article 226 of the Constitution of India or any other appropriate Writ or directions to the Respondent to provide appropriate training and guidelines to the Traffic Police to calibrate and use the equipment for monitoring of traffic violation in an efficient manner.

H. Issue Writ of mandamus under Article 226 of the Constitution of India or any other appropriate Writ or directions to the Respondents for formation of a committee, to re-assess the effectiveness of the technology already in place and replacement of the outdated technology in consonance with international standards, with members having technical know-how."

14. A detailed reply has been filed by the Union of India on affidavit and paragraph 4 of the said affidavit reads as under:

"4. That on a bare perusal of the writ petition, it transpired that the petitioner is aggrieved by the faulty mechanism of issuing challans under the Motor Vehicles (Amendment) Act, 2019 without having proper and reliable technology in place, and seeking direction to the Respondents to set appropriate Guidelines/Rules and standardization of technology used for monitoring traffic violation. As far as

question of relief sought by the petitioner is concerned, the answering respondent submits as under:-

i) The Motor Vehicle Act, 1988 is the principal instrument through which road transport is regulated in the country. The same has now been amended first time in a comprehensive way after thirty years by Motor Vehicles (Amendment) Act, 2019, passed by the Parliament and published in the Gazette of India on 9th August, 2019.

ii) The Motor Vehicles (Amendment) Act, 2019 intends to bring reforms in the area of Road Safety, bring citizen facilitation, transparency and reduce corruption with the help of information technology and removing intermediaries. The Act will strengthen transport safeguard and protect Good Samaritan and reform the insurance and compensation regime.

iii) The Motor Vehicles (Amendment) Act, 2019 inter alia provides for enhancement of penalties for offences for ensuring greater compliance and enhancing deterrence for violation of traffic rules which is intended to provide for better Road Safety resulting in reduction of accidents and fatalities on roads.

iv) The Motor Vehicle Act, 1988 (as amended by the Motor Vehicles (Amendment) Act, 2019) is a Parliamentary legislation, the State Governments cannot pass any law/take executive action to lower the penalty/fine below that prescribed under the statutory provisions of the Motor Vehicles Act, unless the assent of the president is obtained to State Law.

v) As per section 200 of the Motor Vehicles Act, 1988 the State Government may, by notification in the official gazette, specify such amount for compounding of certain offences.

vi) Through the Motor Vehicles (Amendment) Act, 2019 a new section 136A has been inserted in the Motor Vehicle Act, 1988 as under: (Copy thereof annexed herewith as Annexure R-1.

136A. (1) The State Government shall ensure electronic monitoring and enforcement of road safety in the manner provided under sub-section (2) on National Highways, State Highways, roads or in any urban city within a State which has a population up to such limits as may be prescribed by the Central Government.

(2) The Central Government shall make rules for the electronic monitoring and enforcement of road safety including speed cameras, closed-circuit television cameras, speed guns, body wearable cameras and such other technology.

Further, Section 137(c), empowers state government(s) to make rules on the matters under section 136A.

vii) The Ministry of Road Transport and Highways has issued G.S.R 1081 (E) dated 02.11.2018 to amend rule 139 of the Central Motor Vehicles Rules, 1989 vide which production of certificate of registration, insurance, fitness and permit,

the driving licence and any other relevant documents in electronic form has been made valid. A copy of the said G.S.R 1081(E) dated 02.11.2018 is annexed herewith as Annexure R-2.

viii) Further, as per rule 139 of the Central Motor Vehicles Rules, 1989 if any or all of the documents are not in his possession, he shall produce in person an extract or extract of the documents duly attested by any police officer or by any other officer or sent it to the officer who demanded the documents by registered post within 15 days from the date of demand.

ix) The Ministry of Road Transport and Highways on 17.12.2018 had issued Standard Operating Procedure (SOP) regarding validation of Driving License, Registration Certificate and other transport related documents/ information presented in Electronic form through IT or mobile app platform and that contains SOP for Generating Challans for violations as under:-

(i) When an offence is made out against the citizen, the enforcement officer can create a challan using an on-line point of Sale or CCTV eChallan facility. An option to create a challan using the real time database of VAHAN and SARATHI has been provided.

(ii) After creating a challan, offence history will get registered in the database in VAHAN for the vehicle and SARATHI for the driver respectively.

(iii) All offences data is available in real time online basis and easily available to the enforcement officers throughout the country.

(iv) Enhanced penalties for repeat violations is reflected and the action against the violator can be initiated accordingly as the past offence history is available to the enforcement officer through the database.

(v) Violator can pay the penalty or the compounding amount on-line and the citizens need not worry for physical document collection. After the payment or compounding, the case is disposed and data reflected in the database.

(vi) If a challan is pending or has not been disposed, then all transactions involving the vehicle i.e. NOC, Fitness, Tax etc. and for the Driving License i.e. the renewal, address change etc. are not permitted and are reflected to the traffic enforcement agencies across India.

(vii) The violators are required to compound and close pending cases as early as possible to start or avail services like tax payment, NOC, fitness etc.

A copy of the said SOP dated 17.12.2018 is annexed herewith as Annexure R-3.

x) This Ministry has issued following notification regarding electronic enforcement and monitoring of Provisions of Motor Vehicles Act, 1988 and Central Motor Vehicles Rules, 1989:-

(1) G.S.R. 584(E) dated 25.09.2020 through which:-

- (a) new definition of "Challan "and "Portal" has been inserted in Rule 2 of CMVRs.
- (b) As per Rule 139 of Central Motor Vehicles Rules, 1989, the production of License and certificate of registration In physical or electronic form has been mandated.
- (c) Rule 139A provides provisions regarding Seizure of documents produced in electronic form.
- (d) Rule 165 provides provisions regarding Use of handheld device.
- (e) Rule 167 provides provisions regarding Procedure for issuance of payment of challan through e-challan facility physical or electronic from.

A copy of the said G.SR. 584(E) dated 25.09.2020 is annexed herewith as Annexure R-4.

(2) G.SR 586 (E) dated 25.09.2020 regarding Motor Vehicles (Driving) (Amendment) Regulations, 2020 through which in regulation 38 the words "documents in original" have been substituted with the words "documents in physical or electronic form". A copy of the said G.SR. 586(E) dated 25.09.2020 is annexed herewith as Annexure R-5.

(3) The Ministry vide notification GSR 575(E) dated 11.08.2021 has inserted Rule 167 A in Central Motor Vehicle Rules 1989. A copy of the said G.SR. 575(E) dated 11.08.2021 is annexed herewith as Annexure R-6 .

" 167 A. Electric Monitoring and Enforcement of Road Safety: -(1) The electronic enforcement device used for issuance of a challan shall have an approval certificate signed by a designated authority of the State Government certifying that the device is accurate ad operating properly and the approval certificate shall be renewed on a yearly basis.

Explanation.- (1) For the purpose of this rule, "electronic enforcement device means a speed camera, closed-circuit television camera, speed gun, body wearable camera, dashboard camera, Automatic Number Plate Recognition (ANPR), weigh in machine (WIM) and any such other technology specified by the State Government.

(2) Body wearable camera may be worn by police officer, transport official or any other official authorized by the State Government and such officer or official shall notify to the offender that he is being recorded by the body camera and similarly. dashboard camera may be place on the dashboard of any police vehicle or in any other vehicle as authorized by the State Government for enforcing the traffic rules and such officer or official shall notify to the offender that he is being recorded by the dashboard camera.

(2) State Governments shall ensure that appropriate electronic enforcement devices are placed at high-risk and high-density corridors on National Highways and State Highways, and at critical junctions at least in major cities with more

than one million population. Further, the electronic enforcement device shall be placed in such a manner so as not to cause any obstruction, line of sight issues or interruption in traffic flow.

.....

(4) (a) State Government shall ensure that appropriate warning signs are conspicuously placed before the stretches monitored by electronic enforcement device, notifying the public that such device is in use and the concerned authorities shall ensure that physical markings, physical stop lines and pedestrian crossing are clearly marked on the road.

(b) Appropriate fixed and dynamic speed limit signs may also be used to notify the speed limits on the road sections during adverse weather conditions, such as rain, hail, foggy weather etc. as well as for indicating any obstruction ahead in the route.

.....

(6) All challans issued under rule 167 in electronic form using auto-generation of challan through the electronic monitoring and enforcement system shall be accompanied with the following information, namely:--

(i) clear photographic evidence highlighting the offence and the license plate of the vehicle;

(ii) measurement from the electronic enforcement device;

(iii) Date, time and place of the offence;

(iv) notice specifying the provision of Act that has been violated;

(v) certificate as per sub-section (4) of section 65 8 of the Indian Evidence Act 1872 (I of 1872), which,-

(a) identifies the electronic record and describes the manner in which it was produced ;

(b) gives such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) is signed by the officer authorized in this behalf by the State Government.

xi) The answering respondent no.1 vide letter dated 08.08.2018 and 19.11.2018 has issued advisory 10 all the States/UTs to accept the documents presented in electronic form through the Digilocker platform or the mParivahan App as valid under Motor Vehicles Act, 1988 and be treated at par with the certificates issued by transport authorities. A copy of the said letter dated 08.08.2018 and 19.11.2018 are annexed herewith as Annexure R-7(Colly.).

xii) The answering respondent no. I vide letter dated 17.12.2018 has circulated

an advisory containing the Standard Operating Procedures to be adopted by traffic/ transport related enforcement agencies to validate or impound documents in case the citizens produce documents in an electronic form as per the provisions of rule 139 of the Central Motor Vehicles Rules, 1989.

xiii) The answering respondent no.1 had received certain grievances after the implementation of fines related to traffic violations under new Motor Vehicle (Amendment) Act, 2019 where citizens have raised the concerns that the documents available in Digi locker or m-Parivahan app of this Ministry are not considered valid by enforcement agencies. Accordingly, an advisory dated 23.09.2019 (copy enclosed) has been issued by this Ministry to State/UTs, advising them to issue necessary directions to all the enforcement agencies to accept documents in electronic form which is also available on Ministry's website www.morth.nic.in. A copy of the said advisory dated 23.09.2019 is annexed herewith as Annexure R-8."

15. In the affidavit, lastly, it has been stated that implementation of the provisions of the Motor Vehicles Act, 1988 and the Central Motor Vehicles Rules, 1989 comes under the purview of the State Transport Authorities & Union Territory Administration. Once the Rules are in place, the same have to be strictly adhered to.

16. Learned Counsel for the GNCTD has argued before this Court that the Government of Delhi is ensuring a strict compliance of the Motor Vehicles Act, 1988 and the subsequent amendment, i.e., Motor Vehicles (Amendment) Act, 2019 was introduced to bring rules in the area of road safety. It was submitted that the same was effectuated to bring citizen facilitation, transparency and to reduce corruption with the help of Information Technology. He has stated that the amendment which was brought in the Motor Vehicles Act has been implemented in Delhi and the most sophisticated equipments are being used by the Traffic Police in the matter of detection of violation of statutory provisions under the Motor Vehicles Act, 1988 read with the Motor Vehicles Rules framed there under.

17. Learned Counsel has vehemently argued before this Court that the Government of Delhi is strictly adhering to the relevant statutory provisions and Standard Operating Procedure issued by the Ministry of Road Transport & Highways on 17.12.2018 in respect of validation of Driving Licenses, Registration Certificates and other transport related documents. It has been submitted that the documents are available in electronic form and on Mobile Application Platforms, and the same are being accepted by the Traffic Police. At no point of time has any individual been harassed for not having a physical copy of documents. It has also stated that the notification dated 11.08.2021 issued by the Ministry for electronic monitoring and enforcement of road safety is also being strictly adhered to and the question of any deviation from the same does not arise.

18. Ld. Counsel for the GNCTD has brought to the notice of this Court that Breath Analyzers are being calibrated from time to time and other equipments are also subject to periodical check-ups. It has been stated that even the imposition of fine & payment of fine in Delhi is being done electronically with a view to reduce human intervention. It has been stated that the prayers made by the Petitioner vide this PIL have already been looked into and the Petitioner's genuine grievances have already been addressed by the Union of India and the Delhi Traffic Police. He has also assured this Court that the Traffic Police shall also welcome any other positive suggestion made by the public at large/ Petitioner in order to further improve the system which is in place.

19. This Court has carefully gone through the Writ Petition and the reply filed by the Respondents. Most of the Petitioner's grievances, as expressed in the Writ Petition, are genuine. They relate to issuance of safety challans, safety of the public at large and genuine difficulties which are being faced by the citizens with respect to the manner of implementation of the Motor Vehicle Act, 1988.

20. The Petitioner has shown serious concern in the matter of imposition of fine for violation of statutory provisions of the Motor Vehicle Act, 1988 and subsequent amendment Act i.e., Motor Vehicle (Amendment) Act, 2019. To bring transparency in the matter of imposition of challans - high speed cameras, closed-circuit television cameras, speed guns and body wearable cameras have been introduced vide amendment of the Motor Vehicle Act, 1988, through Section 136A.

21. Section 136A of the Motor Vehicle Act, 1988 reads as under:

"136A. Electronic monitoring and enforcement of road safety

(1) The State Government shall ensure electronic monitoring and enforcement of road safety in the manner provided under sub-section(2) on national highways, State highways, roads or in any urban city within a State which has a population upto such limits as may be prescribed by the Central Government.

(2) The Central Government shall make rules for the electronic monitoring and enforcement of road safety including speed cameras, closed-circuit television cameras, speed guns, body wearable cameras and such other technology.

Explanation: For the purpose of this section, the expression "body wearable camera" means a mobile audio and video capture device worn on the body or uniform of a person authorized by the State Government."

22. The Central Government has amended the relevant Rules too. These Rules are known as Central Motor Vehicles (Fourteenth Amendment) Rules, 2018. The amendment to the Rules permits the driver to carry documents in digital form also. The Government of India has subsequently issued a notification dated 17.12.2018 for accepting driving licenses, registration certificates and other transport related information presented in electronic form and the said notification issued is reproduced as under:

"F. No. RT-11036/64/2017-MVL

Government of India

Ministry of Road Transport and Highways

(MVL Section)

Transport Bhawan, 1, Parliament Street, New Delhi-110001

Dated, the 17th of December, 2018

To

1. Principal Secretaries/ Secretaries, Department of Transport of all States/ UTs;
2. Directors General Police of all States/ UTs;
3. Transport Commissioners of all States/ UT Administrations

Subject: Acceptance of Driving License, Registration Certificate and other transport related information presented in Electronic form.

Subject: Acceptance of Driving Licence, Registration Certificate and other transport related information presented in Electronic form.

Madam/ Sir,

I am directed to refer to this Ministry's letter dated 8th August, 2018 and 19th November, 2018, and to say that this Ministry has received a number of representations about the mechanism to be adopted by traffic/ transport related enforcement agencies to validate or impound documents in case the citizens produce documents in an Electronic Form.

2. In view of the above, a Standard Operating Procedure (SOP), as annexed, may be adopted for ensuring compliance with the provisions of rule 139 of the Central Motor Vehicles Rules, 1989.

3. This issues with the approval of the Competent Authority.

Yours faithfully,

Sd/-

(Dharka R. Lulkang)

Under Secretary to the Govt. of India"

23. Not only this, but a Standard Operating Procedure is also in existence, also dated 17.12.2018. The same makes it very clear that in case a person has certificates in a digital form, the same is acceptable to the authorities. A very exhaustive SOP is in place and the same has been framed so that the citizens do not face any difficulty in case they have their relevant documents in digital form.

24. Various amendments have been issued, as reflected from the short affidavit

filed by Respondent No. 1 to ensure that the driver is not required to carry original documents with him, and that documents are accepted in digital form by all the authorities. The reply also reveals that the Government of Delhi is strictly adhering to all statutory provisions and the Standard Operating Procedure issued by the Ministry of Road, Transport and Highways dated 17.12.2018 in respect of validation of driving license, registration certificates and other transport related documents. The notification dated 11.08.2021 issued by the Ministry of Road Transport and Highways has also been issued for electronic monitoring and enforcement of road safety. The Delhi Government is strictly adhering to the same.

25. It has also been brought to the notice of this Court that so far as the Union Territory of Delhi is concerned, challans are being issued and fines are being paid through electronic mode only. The Delhi Model in respect of recovery of fines is also being adopted by other States in the country. So far as the State of Delhi is concerned, as reflected from the reply, the use of Information Technology has been incorporated, in order to ensure that a citizen is not harassed in the matter of payment of fine and time is not wasted in the same. Therefore, at this juncture, in light of the aforesaid discussion, findings, submissions and documents on record, this Court is of the opinion that no further orders are required to be passed in the present PIL. However, the GNCTD shall ensure strict compliance of the Motor Vehicle Act, 1988 and subsequent amendments along with the aforesaid SOP issued on 17.12.2018.

26. In light of the aforesaid, the PIL stands disposed of.