

(1991) 08 KL CK 0023

In the High Court Of Kerala

Case No : Q.P. NJ. 7931 of 1991 and 8127 of 1991

T.M. Usman and others

APPELLANT

Vs

State of Kerala and others

RESPONDENT

Date of Decision : 12-08-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Motor Vehicles Act, 1988 — Section 110(1)(d), 110(3)(d)

Citation : (1991) 2 KLJ 390

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : T.P.M. Ibrahim Khan and V. Ramachandran, for the Appellant; M.C. Gopi, Govt pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedharan, J.—When original Petition 7931/1991 came up for admission on 6-8-1991, a copy of the same was served on the learned Government Pleader and was posted to today for final hearing. Learned Government pleader got instructions from the respondents. A copy of written instruction received by him has been made available to Court. That has been incorporated in the judges papers. When O. P. 8127/1991 Came up for admission on 9-8-1991, it was posted to today for being heard along with the earlier petition.

2. Learned counsel appearing on either side wanted these Original Petitions to be heard, and finally disposed of. Accordingly I heard them at length. I am disposing of the Original. Petitions. Common issue arises for consideration in these petitions. Therefore, I consider it advantageous to dispose of them by a common judgment.

3. Petitioners are owners of motor cars. They are aggrieved by the announcement made by the Commissioner of Police, Kochi to the effect that motor vehicles should not have coloured glasses. Petitioners are having Sun Control Films pasted on the windscreen window glasses and the rear glass of the

vehicles. It is the petitioners further case that the Commisnoner of Police has no authority to enforce the provision of the Central Motor Vehicles Rules within his jurisdiction while the officers in the adjoining areas are not enforcing the same provision.

4. The written statement filed by the Commissioner is to the following effect.-- Department has no intention to cuitail the use of vehicle by the public at large without inconvenience to the general public as the city has to be kept under well protected law and order situation. Department has no objection in having safety transparent glasses. Department is eager to have safety glasses. Tinted transperent glasses fitted in vehicles by the manufacturing companies are not objected to by the department, The intention is to prohibit the use of non - transparent deep dark glasses. Manufacturers of Air - Conditioned cars also use tinted glasses, which are transparent. Those glasses allow clear vision from outside. Such tinted glasses prohibit outside radiation, facilitating good air conditioning effect Department is not against the use of such glasses Petitioner's contention that without the dark sun controlled film* the air conditioning will be ineffective is not correct. Standard tinted glasses used by manufacturers of air-conditioned cars like "Maruthi" permit clear vision and it does not affect air conditioning. The plea that the air-conditioned cars have to use Sua Controlled Films is incorrect. It is statutory that glasses of windscreens and windows of every, motor vehicle shall be of glasses approved by the Bureau of Indian Standards. Those glasses if" fractured, should not fly or break into pieces capable of causing severe cuts. It is statutoiy that the glassed of wind screens and windows of every motor vehicle shall be such and shall be maintained in such condition ai to be clearly transparent and allow clear vision outside from inside and inside from outside. The police insist that motor vehicles in the city should comply with the said specific conditions. Cochin City is nearer to the Air Terminal and also to the port. Possibility of different crimes being committed are many if dark glasses, which are not transparent, are used in motor vehicles. Police official on the road will not be in a position to detect suspects without making much inconvenience to the passengers of the vehicles. If dark glasses are allowed to be used, police will have to stop and check each and every suspected vehicle. This may cause very great inconvenience to the traffic and general public. The peculiar circumstances now in this city requires some portection especially in the light of the recent happenings in other cities. A safeguard has to be formulated and implemented. A vigilant eye of the police is required to watch the moving vehicles. Smuggled articles, explosives, house breaking equipments and such other materials can be carried in cars and vans with dark glares with immunity. If dark glasses are used, criminal activities will be shielded from the eyes of law acd police officials on duty. The action contemplated is for the safety of the general public and also in the best interest of the owners of the vehicles.

5. Section 110 (1) (d) of the Motor Vehicles Act, 1988, hereinafter referred to as "the Act", authorises the Central Government to frame rules in relation to the use

of safety glasses, including prohibition of the use of tinted safety glasses. In exercise of this power while framing the Central Motor Vehicles Rules, 1989, hereinafter referred to as "the Rules, the Central Government made Rule 100. It relates to safety glasses. As per that Rule, the glasses of windscreens and windows"-of every motor vehicle shall be of safety glasses. Safety glass has been defined as "glasses approved by the Bureau of Indian Standards and so manufactured or treated that if fractured, it does not fly or break into fragments capable of causing severe cut". Clause (2) of Rule 100 (further provides that glass of the windscreens and the windows of every motor vehicle shall be such and shall be maintained; in such condition as to be clearly transparent and allow the clear vision outside from inside and Inside from outside. Thus, this Rule makes it abundantly clear that the glass of windscreens and windows of every motor vehicle shall be safety glasses and should be clearly transparent. It must allow clear vision outside from inside and inside from outside. If the glass used is such that it interferes with the clear vision, then the use of such glass is against this statutory provision. Rule 128 of the Rules relates to the tourist vehicles other than motor cabs. Clauses (6) and (7) of that Rule relate to windscreen and windows of such tourist vehicles. As per clause (6), the front wind screen shall be of clear view and distortion free, with safety glass. It should be of full width of the tourist vehicle. If made in two halves, the width of the centre vertical joint, fitment of the front windshield should be such as to enhance the elegance of the tourist vehicle. The rear wind screen shall also be of safety glass or laminated safety glass. Sliding curtains shall be provided on the rear wind screen. According to Clause (7) of the Rules, windows of tourist vehicles should have a minimum space of 14.25 millimetres and shall be of safety or laminated safety glass. All safety or laminated safety glasses used for windows should conform to standards laid down by the Bureau of Indian Standards. Windows shall be provided with eliding curtains. Thus, in the case of tourist vehicles, other than motor cabs, the rear wind screen and the windows can be fixed with safety glasses or laminated safety glasses. They can also be provided with sliding curtains. If laminated safety glasses are used for windows and rear wind screen, it should conform to the standards laid down by the Bureau of Indian Standards. This provision cannot apply to other vehicles like cars and vans.

6. In the cases before me, I am concerned with motor cars and not with tourist vehicles other than motor cabs. So, as per the Rule that is applicable to the vehicles involved in these cases, only safety glasses, which should be clearly transparent can be used as windscreens or windows. Glasses should allow clear vision outside from inside and inside from outside. On the petitioner's showing, the windows and the rear glass of the vehicle are not transparent. It is their case that they were having virtually opaque glasses for a long time past. As they were allowed to have such glasses, it is contended that the action taken by the Commissioner of Police, Kochi to have the vehicles fitted with transparent glasses only is illegal. In other words, the contention is that they were violating the Rules for some time past and so, they should be allowed to continue to act in

violation of the rules. The action taken by the Commissioner in dicing them to obey the Rules, according to them, should be prevented by this Court in exercise of the powers under Article 226 of the Constitution- I find it difficult to agree to this argument. It is true that they have been using virtually opaque glasses for a long period, That action was Against the Rule framed by the Central Government. They want to continue to violate the provisions of the Rule with the help of this court. This court is not to allow them to continue to violate the statutory provision.

7. Learned counsel representing the petitioner submitted that as per Section 110 (3) (d) the Central Government can make Rules prohibiting the use of tinted safety glasses. Instead of prohibiting the use of tinted glasses, the central government while framing Rule 100(2) imposed a condition that the glass of the windscreen and the windows shall be maintained in such a condition as to be clearly transparent and allow the clear vision. According to counsel, the Rule so made is against the Act and so ultra vires of Section 110(1) (d). central Government, it is argued can only prohibit the user of tinted glasses had not to restrict its use. I am not impressed with this argument. whether statute give power to frame Rules prohibiting the use of tinted safety glasses the Rules framed can provide for restricted use of tinted glass as well. It is stated by the petitioners that tinted glasses cannot be clearly transparent. But, the Commissioner has stated that tinted glasses fixed by the manufacturers of cars in their vehicles are transparent Rules allow the use of tinted glasses. When this Rule allows use of tinted glasses, it is argued, the use of tinted glasses cannot be prohibited depending on degrees of transparency. This argument is not at all convincing. The primary object sought to be achieved by Rule 100 is that the windscreens and windows of every motor vehicle should be maintained in such a condition as to be clearly transparent, any interference with clear vision is taboo. If the tinted glasses, that are used are clearly transparent and allow clear vision outside from inside and inside from outside it will be in conformity with the Rules. Use of any glass which obstructs clear vision will go against the statutory provision. petitioner have no case That their vehicles are fitted with tinted glasses, which are not transparent. Their case is that the windscreens and window glasses are pasted with Sun Control Films. sun control films, which are of dark colours, virtually make windscreens and windows opaque. It will not allow clear vision outside from inside and inside from outside. If the windscreens and windows of the motor car are pasted with Sun Control Films of dark colours, transparency will be virtually lost and the vision will be obstructed.

8. This court can take judicial notice of the terrorists activities going on in various parts of the country. It is reported that terrorists move about in vehicles, having wind screens and windows pasted with dark coloured Sun Control Films, so as to conceal their identity from persons outside. This type of movement of the terrorists creates a hazard to the law and order situation. The police now want such a situation to be prevented. That can be done only by removing dark coloured Sun Control Films and dark coloured glasses. For proper maintenance;

of law and order, I feel use of dark coloured glasses in motor cars and vans thou'id be prevented. I find no impropriety in the action proposed by the Commissioner of Police, Kochi.

9. Yet another argument advanced by the petitioners was that City Commissioner of Police, Kochi alone is taking action to have transparent safety glasses as wind screens and windows for vehicles. The other authorities in the State are not imposing such condition. So, VL hides which are befog used outside the territorial jurisdiction of the. City Commissioner of Police can have. Sun Control Films pasted to its glasses. The owners of such vehicles can enjoy its comforts as well. This, according to counsel, violates the equality provision contained m Article 14 of the Constitution. Consequently it was submitted that the direction given by the City Commissioner of Police should be quashed. I find it difficult to accept this argument either. The City Commissioner of Police is not imposing any restriction on the use of the vehicle on his own accord. He has only intimated the owners of the vehicle to comply with the statutory provision. Those who are violating the Rules, are now told that they should not continue to violate the same. This action on the part of the City Commissioner of Police cannot in any way be termed as discriminatory because the Rule is applicable throughout the country. All authorities under the Motor Vehicles Act and the police in the State are bound to implement the statutory provision contained in the Rules framed by the Central Government. Since the Rules has been found to be valid and its applicability throughout the country is not questioned, the Rules are to be strictly implemented. It therefore follows that motor cars should have windscreens and windows of safety glass having clear transparency allowing clear vision outside from inside and inside from outside. Windscreen and window safety glasses should not have anything pasted to it which will blur the vision.

10. In view of what has been stated above, I do not find any ground to interfere with the action proposed to be taken by the City Commissioner of Police, Kochi for removing the Sun Control Films pasted to wind screens and windows, which make the glasses virtually non-transparent. The State Government is directed to issue necessary instructions to the authorites under the Motor Vehicles Act and to the Officer of the Police Department to sea that motor vehicles registered and plying in State of Kerala should have wind screens and windows maintained in such a condition as to be clearly transparent and allow the clear vision outsider from inside and inside from outside. They must take effective and urgent steps to have the wind screens and windows maintained in such a condition, at the earliest.

In view of what has been stated above, these Original Petitions fails They are accordingly dismissed.

Issue photo copy of the judgment to the parties on usual terms. A copy of the judgment will be sent to the Chief Secretary to the Government for necessary follow up action.