

(2016) 02 KAR CK 0233

In the Karnataka High Court

Case No : Writ Petition No. 52082 of 2015 (MV-PIL)

Y.N. Nanjappa

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-02-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 21, Article 226
Motor Vehicles Act, 1988 — Section 41

Citation : (2016) 3 ACC 391 : (2016) AIR(Karnataka) 119 : (2016) 2 AirKarR 732 : (2016) ILRKarnataka 2475 : (2016) 4 KantLJ 22

Hon'ble Judges : Subhro Kamal Mukherjee, Actg. C.J. and Ravi V. Malimath, J.

Bench : Division Bench

Advocate : Sajan Poovayya, Senior Advocate for Anandarama, Advocate for Nalina Mayegowda, Advocate for Poovayya & Co., for the Appellant; Aravind Sharma, Advocate and Krishna S. Dixit, Asst Solicitor General, for the Respondent

Final Decision : Allowed

Judgement

Subhro Kamal Mukherjee, Actg. C.J.

1. This is a writ petition assailing the notification dated April 15, 2015 giving into force Central Motor Vehicles (Sixth Amendment) Rules 2015, and, also, the notification dated October 01, 2015.

2. Mr. Sajan Poovayya, learned senior advocate appears for the petitioner, Mr. Arvind Sharma, learned advocate appears on behalf of Respondent No. 1 - Union of India and Mr. R. Devadas, learned principal government advocate, appears for the State of Karnataka.

3. Sub-clause (iv) of the proviso to Rule 118(1) of the Central Motor Vehicle Rules, 1989, exempted certain motor vehicles from fitting with speed governor, that is, speed limit device or speed limiting function.

4. The relevant portion of the amended provisions runs as under:

"118. Speed Governor-

(1) Every transport vehicle notified by the Central Government under subsection (4) of section 41 of the Motor Vehicles Act, 1988 (59 of 1988), save as provided herein, and manufactured on or after the 1st October, 2015 shall be equipped or fitted by the vehicle manufacturer, either in the manufacturing stage or at the dealership stage, with a speed governor (speed limiting device or speed limiting function) having maximum preset speed of 80 kilometre per hour conforming to the Standard AIS 018/2001, as amended from time to time:

Provided further that the transport vehicle that are-

(i).....

(ii).....

(iii).....

(iv) Four wheeled and used for carriage of passengers and their luggage, with seating capacity not exceeding eighth passengers in addition to driver seat (M1 category) and not exceeding 3500 kilogram gross vehicle weight;

(v).....

(vi).....

(vii).....

(viii)....

Shall not be required to be fitted with the speed governor (Speed Limiting Device or Speed Limiting Function)

(emphasis supplied)

5. Further, by the aforementioned notification dated October 01, 2015, the authorities exempted N1 and M2 category of vehicles from installing a speed governor.

6. The Central Motor Vehicles Rules defines M1, M2 and N1 categories of vehicles as under:

"Category M-1" means a motor vehicle used for carriage of passengers, comprising not more than eight seats in addition to the driver's seat";

"Category M-2" means a motor vehicle used for carriage of passengers, comprising nine or more seats in addition to driver's seat and having Gross Vehicle Weight not exceeding 5 tonnes;

"Category N-1" means a motor vehicle used for carriage of goods and having Gross Vehicle Weight not exceeding 3.5 tonnes;

7. In recent times there has been significant growth of motor vehicles.

Unfortunately, there are accidents causing disabilities and even death. It was felt that some measures were to be taken to curb such menace. The provisions were incorporated in the said Rules for the purpose of carving the speed limit of the vehicles. In substance, it was incorporated that vehicles must be fitted with speed limit device or speed limiting function.

8. In the year 2014 a booklet was published on the road accidents in India by the Transport Wing of the Ministry of Road Transport and Highways, Government of India. The publication was prepared for the purpose to present an in depth analysis and an overview of accidents in India and bringing into focus the challenges relating to prevention of road accidents and their impact. It was suggested for formulation of multi-pronged strategy to prevent loss of human resources on account of road accidents.

9. This litigation has a chequered history. The present petitioners filed one public interest litigation in the form of an application under Article 226 of Constitution of India before this Court, which was registered as W.P. No. 10416 of 2007, inter alia, for issuing directions on the government for installation of speed governors as the authorities decided to postpone indefinitely from enforcing the requirements of installation of speed governors.

10. A Division Bench of this Court by judgment and order dated June 30, 2008, inter alia, directed the authorities to enforce the aforementioned rules for installation of speed governors in all applicable vehicles without wasting time.

11. The Supreme Court of India by order dated August 18, 2011 in SLP No. 18112 of 2008, filed by Mysore Rasthe SSS Malikara Sangha, upheld the order of this Court by recording the undertaking of the State Government that Rule 118 of the said Rules would be strictly implanted without wasting any time.

12. The present petitioners filed yet another writ petition, which was registered as W.P. No. 41890 of 2015. This court issued, further, directions for implementation of Rule 118 of Central Motor Vehicle Rules and recorded an undertaking by the authorities that no Fitness Certificates would be issued to transport vehicles without a speed governor.

13. It appears to us the principal issue in this writ petition is, if such classification of the vehicles or, in other words, providing exemption to M1, M2 and N1 categories of vehicles from the requirements of installation of speed governors, is in violation of law?

14. The Supreme Court of India in the case of M.C. MEHTA vs. UNION OF INDIA AND OTHERS reported in , 1997) 8 SCC 770 held as under:

"7. It is indisputable that heavy and medium vehicles as well as light goods vehicles are in a class by themselves insofar as their potential to imperil public safety is concerned. There is, therefore, immediate need to take measures such as installation of speed-control devices and ensuring that such vehicles are driven by authorised persons. Such measures, designed to further public safety,

would undoubtedly be covered by the aforementioned provisions".

15. Thus, it appears to us that the vehicles where speed governors are to be installed and the vehicles, which have been exempted from installing speed governors belong to the same class when it comes to the peril they pose to the commuters and pedestrians in causing accidents.

16. The Supreme Court of India, also, held that the control and the regulation of traffic has been a matter of paramount public safety and, therefore, evidently it comes within the ambit of Article 21 of the Constitution of India. It was provided that no heavy or medium transport vehicles or light goods vehicles should be permitted to be operated in the roads in the National Capital Region unless they are fitted with suitable speed governors.

17. An issue as to exemption of maxi-cabs from installation of speed governors came up for consideration before a Division Bench of this Court in RAGHUPATHY BHAT AND OTHERS vs. STATE OF KARNATAKA AND OTHERS reported in , AIR 2008 KARNATAKA 203. It was held that no such distinction can be made under Rule 118 of the Central Motor Vehicles Rules, 1989, so as to exempt maxi-cabs as a category from the requirements of installation of speed governors.

18. It is settled law that classifications are permissible, but the classifications should be based on intelligible criteria. For qualifying as a reasonable classification it should pass the twin tests, that is, (a) there should be an intelligible difference between those, who are included in the case which is affected by any law or rule and those, who are placed outside the said law or rule; and (b) there should be reasonable nexus between the classification and the object sought to be achieved by the rule or law in question.

19. The aspect of reasonable classification under Article 14 of the Constitution of India came up for consideration before the Supreme Court of India in the case of S. SESHACHALAM AND OTHERS vs. CHAIRMAN BAR COUNCIL OF TAMIL NADU AND OTHERS reported in , 2014 (16) SCC 72. The Supreme Court of India held as under:

"21. Article 14 of the Constitution of India states that:

"14. Equality before law - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".

Article 14 forbids class legislation but it does not forbid reasonable classification. The classification, however, must not be "arbitrary, artificial or evasive" but must be based on some real and substantial bearing, a just and reasonable relation to the object sought to be achieved by the legislation. Article 14 applies where equals are treated differently without any reasonable basis. But where equals and unequals are treated differently, article 14 does not apply. Class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons arbitrarily selected from a large number of persons all of whom stand in the same relation to the privilege granted and between those on

whom the privilege is conferred and the persons not so favoured, no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege.

"22. While Article 14 forbids class legislation, it does not forbid reasonable classification of persons, objects and transactions by the legislature for the purpose of achieving specific ends. But classification must not be "arbitrary, artificial or evasive". It must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislation. Classification to be reasonable must fulfill the following two conditions: firstly, the classification must be founded on the intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group. Secondly, the differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are two distinct things. What is necessary is that there must be nexus between the basis of classification and the object of the Act. It is only when there is no reasonable basis for a classification that legislation making such classification may be declared discriminatory".

20. From perusal of the report, as aforesaid, published by the Ministry of Road Transport and Highways, it appears to us that the category of vehicles, which are involved in a large number of accidents are the same as the category of vehicles now exempted from being fitted with speed governors. It is evident that nearly 23% per centum of the road accidents are caused by cars, jeeps and taxis, which is the second highest category of vehicles causing accidents. The category of vehicles, which are involved in a large number of accidents are exempted from being fitted with speed governors. We regret to say that the authorities failed to produce any material before us to establish intelligible criteria between the classes of vehicles, which are sought to be exempted vis-a-vis the vehicles, which are mandatorily required to be fitted with speed governors. We fail to see the reasons for exempting four wheel vehicles used for carriage of passengers and their luggage with seating capacity of not exceeding eight passengers in addition to driver seat and not exceeding 3500 kilogram gross vehicle weight. It was suggested by the authorities that the classification has been line with the practice in European Continent. We feel that this is insufficient to justify the reasonableness of the classification.

21. Clearly, the said Report demonstrates that the category of vehicles, that is, M1, M2 and N1, exempted under the notification dated October 1, 2015, do not have any defensible or intelligible criteria, which entitles them to be treated differently in comparison to the other vehicles, which have not been exempted from installation.

22. It is suggested that it was posed before the authorities that the manufacturers of such vehicles would face difficulties in implementation of the rules of installation of speed governors. We hold that such reason is insufficient

to uphold exemption to certain class of vehicles when it comes to the peril and threats they pose to the commuters and pedestrians. Certainly, difficulty in implementing a rule shall not constitute sufficient ground to justify an exemption, which is otherwise violative of Article 14 of the Constitution of India.

23. It is true that generally there is a presumption in favour of constitutional validity of the statutory provisions and the subordinate legislations. Of course, such presumption is, always, a rebuttable presumption.

24. In the case in hand, it is abundantly clear that there is no defensible or intelligible criteria between the categories of vehicles, which have been exempted from the requirements of speed governors and the other vehicles requiring speed governors. Both pose equal peril to the commuters and pedestrians. We feel that there is no rational nexus in granting such exemption and such artificial classification is illegal and ultra vires the Constitution of India.

25. In so far as it relates to affixation of the official seal of the transport authorities on speed limit devices, we are not favoured with any material in opposition thereof. It is merely submitted on behalf of respondent No. 1 that by April 2017, Stage IV norms will be implemented throughout the country and the vehicles will have electronic speed limit functions. It was suggested that at that point of time sealing of speed limit in devices may not be necessary. However, sealing of speed limit devices that are fitted into vehicles at present could be enforced by the Transport Authority or Regional Transport Authority so that the speed limit devices cannot be removed or tampered without breaking the seal. The Respondent No. 1 in its previous notification dated December 31, 2012, made it mandatory that the speed limiting devices on all applicable vehicles should be fitted in such a manner that the said devices could be sealed with an official seal of the said Transport Authority or the Regional Transport Authority to prevent removal or tampering of such devices without breaking the seal. Of course, such sealing will not be necessary when the transport vehicles are equipped with a speed limit function controlling the speed by electronic controlling units. However, such sealing is certainly necessary in case of mechanical speed limit devices that are fitted in the vehicles by the dealer or the operator.

26. We feel that after going through the affidavit of respondent No. 1 that there is no serious objection by the Respondent No. 1 on the issue of sealing of speed limit devices. The only requirement is, therefore, that the speed limit devices fitted to the vehicles are sealed by the authorities in such a manner so as to prevent it from being removed or tampered to frustrate the object sought to be achieved by the requirements of installation of speed governors.

27. We feel that the authorities must implement Rule 118 of the said Rules in its true spirit without any further postponement and delay.

28. Thus, we allow the writ petition and declare that the clause (iv) of the proviso to sub-rule (1) of Rule 118 of the Central Motor Vehicles Rules, 1989,

brought into force by the Central Motor vehicles (Sixth Amendment) Rules, 2015, granting exemption to M1, M2 and N1 category of vehicles and the notification dated October 10, 2015, relating to exemption of M1 category of vehicles are illegal and ultra vires to the Constitution of India. We declare that the notification dated October 01, 2015 being Annexure-B to the writ petition granting exemption of M2 and N1 vehicles is illegal and violative of Article 14 of the Constitution of India. Therefore, the said notification being No. S.O.2687(E) dated October 01, 2015, is, also, quashed.

29. All transport vehicles notified under sub-section (iv) of Section 41 of the Motor Vehicles Act, 1988, other than those specifically exempted in the proviso to Rule 118 of the Central Motor Vehicle Rules, 1989, shall be equipped with speed governors.

30. The authorities are directed to take all effective measures to enforce Rule 118 of the said rules and ensure that speed limiting devices are installed on all applicable vehicles by the operators and sealed by the appropriate authorities in such a manner so that it cannot be removed or tampered without breaking the seal.

31. The writ petition is, thus, allowed.

32. We make no order as to costs.