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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 14th August, 2020
Decided on: 17th September, 2020

+ W.P.(C) 9952/2019 & CM APPL. 49727/2019

RANA MOTORS PVT. LTD. ..... Petitioner

Through: Mr. Siddharth Nath, Advocate

versus

GOVT. NCT OF DELHI & ORS. ..... Respondents

Through: Mr. Sanjoy Ghose & Mr. Anupam Srivastava, ASC with Mr.Rishabh Jetley & Mr.Naman Jain, Advocates for GNCTD.
Mr. Ajay Gupta, Advocate for R-3.

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CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

PRATEEK JALAN, J.

1. The petitioner has filed the present writ petition challenging the legality of a notification issued by the Government of NCT of Delhi [respondent no.1 herein] wherein provisions have been made for transport vehicles of various categories to be equipped with speed governors of the specifications set out therein. The said notification, bearing no. F.No.MLO(VIU)/TPT/2017/165/315 dated 17.07.2018

("the impugned notification"), has purportedly been issued in exercise of powers conferred by Rule 118(2) of the Central Motor Vehicles Rules, 1989 ("the Rules") and Section 2(41) of the Motor Vehicles Act, 1988 ("the Act").

Facts

2. The petitioner is a dealer in motor vehicles, particularly those manufactured by Maruti Suzuki India Limited. These include the models Maruti Suzuki Omni Cargo, EECO Cargo, and Super Carry, which are classified as light goods vehicles. According to the petitioner, it has been unable to register the said vehicles in Delhi due to the restrictions laid down in the impugned notification.

3. As far as the present petition is concerned, the petitioner claims that the vehicles have been verified and specified by an authorized testing agency to have a rated speed of not more than 80 kilometres per hour ("kmph"). The present petition does not concern vehicles registered prior to 01.10.2015.

Provisions of the Act and Rules

4. Section 2(41) of the Act and Rule 118(2) of the Rules have been cited as the statutory basis for issuance of the impugned notification.

5. Section 2(41) of the Act provides for the definition of the term "State Government" in relation to a Union Territory. It reads as follows:

> *"State Government, in relation to a Union Territory means the administrator thereof appointed under article 239 of the Constitution".*

6. Rule 118 of the Rules framed by the Central Government, pursuant to the provisions of the Act, deals with installation of speed governors. Rule 118, as substituted by an amendment dated 15.04.2015, reads as follows:-

> *"118. Speed governor.- (1) Every transport vehicle notified by the Central Government under sub-section (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 pre-set speed of 80 kilometre per hou****r conforming to the Standard AIS 018/2001, as amended from time to time:*
>
> ***Provided further that the transport vehicles that are-***
> *(i) two wheelers;*
> *(ii) three wheelers;*
> *(iii) quadricycles;*
> *(iv) four wheeled and used for carriage of passengers and their luggage, with seating capacity not exceeding eight passengers in addition to driver seat (M1 Category) and not exceeding 3500 kilogram gross vehicle weight;*
> *(v) fire tenders;*
> *(vi) ambulances;*
> *(vii) police vehicles;*
> ***(viii) verified and certified by a testing agency specified in rule 126 to have maximum rated speed of not more than 80 kilometer per hour,***
> ***shall not be required to be equipped or fitted with speed governor*** *(speed limiting device or speed limiting function):*
>
> *Provided further that the transport vehicles manufactured on or after 1st October, 2015 that are dumpers, tankers,*

school buses, those carrying hazardous goods or any other category of vehicle, as may be specified by the Central Government by notification in the Official Gazette from time to time, 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 speed of 60 kilometer per hour conforming to the Standard AIS 018/2001, as amended from time to time.

(2) The State Government shall, ***by notification in the Official Gazette, specify on or before 1st October, 2015****, the categories of transport vehicles* ***registered prior to the 1st October, 2015*** *which are not already fitted with a speed governor (speed limiting device or speed limiting function), and are not covered under the first proviso to sub-rule 1 above,* ***that such transport vehicles shall be equipped or fitted by the operators of those vehicles on or before 1st April, 2016*** *with a speed governor (speed limiting device or speed limiting function), having* ***maximum pre-set speed of 80 kilometre per hour or such lower speed limit as specified by the State Government from time to time****, conforming to the Standard AIS: 018/2001, as amended time to time:*

Provided that the categories of transport vehicles carrying hazardous goods and those transport vehicles that are dumpers, tankers or school buses, registered prior to the 1st October, 2015 and not already fitted with a speed governor (speed limiting device or speed limiting function), shall be equipped or fitted by the operator of such vehicle, with a speed governor (speed limiting device or speed limiting function) having maximum pre-set speed of 60 kilometre per hour or such other lower speed limit as may be specified by the State Government, conforming to the Standard AIS: 08/2001, as amended from time to time."

(Emphasis supplied)

Impugned notification

7. Before dealing with the contentions of the parties, the relevant parts of the impugned notification are set out below:-

"*TRANSPORT DEPARTMENT*
NOTIFICATION
Delhi, the 17th July, 2018

F.No.MLO(VIU)/TPT/2017/165/315.-*In exercise of the powers conferred by sub-rule (2) of rule 118 of the Central Motor Vehicles Rules, 1989 and clause (41) of section 2 of the Motor Vehicles Act, 1988 (Act No. 59 of 1988) the Lieutenant Governor of the National Capital Territory of Delhi, in supersession of earlier notification bearing No. PCO/STA/II/2001/PF-2/194, dated 24.02.2003, hereby orders that,* ***every transport vehicle registered prior to the 1st October, 2015****, which are not already fitted with a speed governor (speed limiting device or speed limiting function), and are not covered under the first proviso to sub-rule (1) of rule 118 of the Central Motor Vehicles Rules, 1989 shall be equipped or fitted by the operator of those vehicles with a speed governor (speed limiting device or speed limiting function) conforming to the AIS Standard 018/2001, as amended from time to time, having maximum pre-set speed as specified below:*

TABLE

S.No.	*Vehicle category*	*Maximum Pre-set speed in Kilometer per hour*
(1)	*(2)*	*(3)*
(i)	*Transport vehicles covered with All India Tourist Permits, Interstate Permits and National Permits, save as provided in (ii) below*	*80*
(ii)	*Dumpers, tankers and vehicles carrying hazardous goods*	*60*

(iii)	*School buses covered by any permit, all transport vehicles covered with permits to ply only within the National Capital Territory of Delhi or National Capital Region and all transport vehicles exempted from the necessity of permits*	*40*
(iv)	*Airport Passenger bus referred to in rule 93-C of the Central Motor Vehicles Rules, 1989*	*30*

Provided that out of the categories of vehicles mentioned in (iii) tabulated above and registered on or after 1st October, 2015 & covered by the Hon'ble Supreme Court Order dated 20th November 1997, in the matter of M.C. Mehta Vs Union of India & Ors. in WP(C) No.13029 of 1985 i.e. heavy and medium transport vehicles, and light goods vehicles being four wheeler shall also be equipped or fitted with a speed governor (speed limiting device or speed limiting function) having maximum pre-set speed of 40 Kilometer per hour.

(2) *Every speed governor (speed limiting device or speed limiting function) shall be type approved for the particular model of the vehicle by any one of the testing agencies specified under rule* ***126*** *of the Central Motor Vehicles Rules,* ***1989****.*

(3) *The retro-fitment of Speed Limiting Device shall be in accordance with guidelines issued by the Ministry of Road Transport and Highways, Govt of India and Hon'ble Supreme Court Committee on Road Safety from time to time.*

(4) *Every speed limiting device shall be sealed by the concerned vehicle manufacturer or the manufacture of concerned speed limiting device or their authorized representative, whosoever fitted the speed limiting device with a type of seal specified by the Transport Department, Government of NCT of Delhi.*

(5) *The owner / driver of every vehicle equipped with the speed governor (speed limiting device or speed limiting function) shall produce a certificate issued by the*

concerned vehicle manufacturer or the manufacturer of concerned speed governor (speed limiting device or speed limiting function) or their authorized representative, whosoever fitted the speed governor, confirming the maximum pre-set speed specified herein above, at the time of production of vehicle for grant or renewal of certificate of fitness.

Provided that the issuance of said certificate should have been made within fifteen days prior to the date of production of vehicle for grant or renewal of certificate of fitness."

(Emphasis supplied)

8. It is evident from the above that the principal part of Clause 1 of the impugned notification deals with transport vehicles registered prior to 01.10.2015, to the extent that such vehicles are neither fitted with speed governors nor exempted under the first proviso to Rule 118(1) of the Rules. Such vehicles are required to be fitted with speed governors, the maximum speed being specified in the table according to the category of vehicle. The proviso to Clause 1, in turn, deals with a class of vehicles registered after 01.10.2015. For those vehicles which fall within the classes mentioned in the judgment of the Supreme Court dated 20.11.1997 [reported as *M.C. Mehta vs. Union of India* (1997) 8 SCC 770], the proviso to clause 1 requires fitment of a speed governor with a maximum speed of 40 kilometres per hour.

Submissions of counsel for the parties

9. Although the prayers, as framed in the writ petition, are of somewhat wider amplitude, Mr. Siddharth Nath, learned counsel for the petitioner, confined the challenge to the proviso to Clause 1 of the

impugned notification ("the impugned proviso"), which deals with vehicles registered on or after 01.10.2015. He submitted that the impugned proviso is *ultra vires* the powers of GNCTD for the following reasons:-

a) Rule 118(2) empowers the State Government to issue a notification in respect of vehicles registered prior to 01.10.2015, whereas the impugned proviso applies to vehicles registered on or after 01.10.2015.

b) Rule 118(2) expressly stipulates that the notification in question must be made by the State Government before 01.10.2015, whereas the impugned notification was issued only on 17.07.2018 i.e. almost three years after the date fixed in the Rule.

c) Rule 118(2) empowers the State Government to require the transport vehicles covered thereunder to be equipped or fitted with speed governors on or before 01.04.2016. The issuance of the impugned notification after 01.04.2016 renders the mandate of the Rule impossible of compliance.

d) The power under Rule 118(2) is only in respect of those vehicles, which are not covered under the first proviso to Rule 118(1), whereas the light goods vehicles in which the petitioner deals, are covered under Clause (viii) of the first proviso to Rule 118(1), as they have been verified and certified by a testing agency specified in Rule 126 to have maximum rated speed of not more than 80 kmph.

10. Mr. Nath further submitted that, for the category of vehicles with which the present case is concerned (*viz.*, light goods vehicles

registered on or after 01.10.2015), Rule 118(1) covers the field. The said Rule provides that the vehicles shall be equipped or fitted by the manufacturer, either in the manufacturing stage or at the dealership stage, with a speed governor having maximum pre-set speed of 80 kmph. By virtue of the first proviso to Rule 118(1), various exceptions have been set out. The exception in Clause (viii) to the first proviso to Rule 118(1) exempts a vehicle which is verified and certified by a testing agency to have a maximum rated speed of not more than 80 kmph. Mr. Nath submitted on facts that the light goods vehicles in which the petitioner deals fall within Clause (viii) of the said proviso. In any event, he submitted that the maximum speed of 80 kmph required by Rule 118(1) could not have been reduced to 40 kmph, by virtue of impugned proviso.

11. Mr. Anupam Srivastava and Mr. Sanjoy Ghose, learned Standing Counsel for the GNCTD, defended the impugned notification on the basis of the judgment in *M.C. Mehta* (supra). Although it was expressly conceded by learned counsel that the impugned proviso could not be issued under Rule 118(2), it was submitted that the aforesaid judgment of the Supreme Court directed the respondent authorities to ensure that the concerned categories of vehicles, including light goods vehicles, were fitted with speed governors with a pre-set speed limit of 40 kmph. Learned counsel relied particularly upon the directions contained in paragraph 1 of the annexure to the said judgment.

12. Learned counsel submitted that the judgment in *M.C. Mehta* is still in operation by relying upon orders dated 20.11.2015 and

14.12.2015 passed by the Supreme Court in W.P. (C) 793/2015, and upon a Division Bench judgment of the Punjab and Haryana High Court in *G.R.L. Engineers vs. State of Haryana & Anr.*, 2017 SCC OnLine P&H 441 [CWP-380-2017 (O&M), decided on 01.02.2017].

13. In rejoinder, Mr. Nath drew our attention to the opening words of the impugned notification, which clearly state that the notification has been issued under Rule 118(2) of the Rules. He submitted that although the judgment in *M.C. Mehta* (supra) is referred to in the impugned proviso and in the counter affidavit dated 14.07.2020 filed on behalf of GNCTD, the respondent has not sought to derive power to issue the notification from the said judgment, but from the Rule itself. Mr. Nath referred to the *M.C. Mehta* judgment in some detail to contend that the directions contained in the annexure were intended to operate only until necessary action was taken by the executive. He submitted that the intention of the Supreme Court was not to fix a specific speed limit in perpetuity but for the directions given in the judgment to hold the field until the executive filled the lacuna. Mr. Nath relied upon the judgment of this Court in *Avtar Singh Hit vs. Delhi Sikh Gurdwara Management Committee & Ors.*, (2006) 127 DLT 535 in support of his submission that an authority cannot be permitted to justify its order on the basis of reasons not found therein but subsequently placed on affidavit. Learned counsel distinguished the judgment in *G.R.L. Engineers* (supra) on the ground that the Punjab and Haryana High Court was concerned with the question of empanelment of manufacturers of speed governors and not with the

substantive direction contained in paragraph 1 of the annexure to the judgment in *M.C. Mehta*.

Analysis

(a) Scope of consideration

14. From the submissions of counsel as recorded above, it is evident that the petitioner's challenge has been limited to the impugned proviso, which the GNCTD seeks to justify, not on the basis of Rule 118(2), but on the judgment of the Supreme Court in *M.C. Mehta* (supra).

15. At the outset, we may note that, in the impugned notification, Rule 118(2) alone has been identified as the source of the power under which it has been issued. The reference to *M.C. Mehta* in the proviso to Rule 118(1) is only for the purpose of identifying the class of vehicles to which it applies and not as a source of power. Similarly, in the counter-affidavit to the present petition, the GNCTD has sought to justify the impugned notification on the basis of the Rules, and has cited the judgment in *M.C. Mehta* only to justify the classification between vehicles having a national permit on the one hand and those, which have a permit only for NCR/NCT [paragraph 7]. The following averments are relevant in this regard:

> *"6. The Petitioner has contended that the State Government can only concern itself with vehicles registered prior to 01.10.2015 and not afterwards, and that too with a notification that should have been issued prior to 01.10.2015. However, this is nowhere indicated in the Rules.* ***The Rules do not bar the State Government from issuing the instant notification, and covering vehicles manufactured on or after 01.10.2015. Sub-Rule***

(1) of Rule 118 provides that those motor vehicles that have been notified by the Central Government under Section 41 (4) and manufactured on or after 01.10.2015, would have to be equipped or fitted by the manufacturer with a speed governor having maximum pre-set speed of 80 km/hr. *It nowhere states that the State Government does not have the power to issue a Notification enforcing these requirements.*

7. ***The Petitioner has also challenged the Notification on the ground that it creates different classes of vehicles, having National permit and NCR/NCT permit respectively, with different speed limits, and that there is no intelligible differentia for the same. However, this distinction is itself created by the Hon'ble Supreme Court in M.C. Mehta v. Union of India (1997 8 SCC 770),*** *where NCR has been treated to be a special case, and having a more serious traffic situation than other areas. The Hon'ble Supreme Court, in its directions has held that heavy, medium transport and light goods vehicles would not be permitted to operate on roads of NCR/NCT unless they have speed control devices to ensure that they do not exceed the speed limit of 40 km/hr. It has been clearly stated that this would not be applicable to Inter-state permit and national permit vehicles. Therefore, the distinction challenged by the Petitioner has been created by the Hon'ble Supreme Court itself.*

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9. ***Section 110 (1) (f) states that the Central Government has the power to make rules regarding speed governors. Rule 118 has been made pursuant to this power, and in sub-Rule 2, the State Government has been explicitly directed to specify regarding vehicles prior to 01.10.2015. However, this does not imply that the State Government has no power to monitor the vehicles after 01.10.2015, under sub-Rule (1).*** *Sub-Rule (1) concerns those vehicles notified by the Central Government under Section 41 (4), and manufactured on or after 01.10.2015, but nowhere*

states that the State Government would have no power to ensure compliance of Sub-Rule (1).

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11. Therefore, it is evident that the responsibility of ensuring that transport vehicles are equipped or fitted with speed governors conforming to the standards, whether these vehicles were manufactured before or after 01.10.2015, is that of the State Government. The different categories created by the two Sub-Rules, do not concern the power of the State Government to ensure enforcement of the Rule and the standards prescribed therein. Moreover, it has been recognised that State Governments would be justified in imposing even additional requirements concerning speed governors which have not been provided in the Rules. Therefore, the answering Respondent had sufficient power and competence to issue the Impugned Notification, and the same is lawful and valid."

(Emphasis supplied)

16. It is settled law that an executive order cannot be justified on grounds which are not borne out by the record, but sought to be urged during the course of litigation, by way of affidavit or otherwise. The Constitution Bench judgment of the Supreme Court in *Mohinder Singh Gill & Anr. vs. Chief Election Commissioner, New Delhi & Ors.*, (1978) 1 SCC 405 laid down this principle in the following terms:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to

> *court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16] :*
>
> *"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."*
>
> *Orders are not like old wine becoming better as they grow older."*

The judgment in *Mohinder Singh Gill* (supra) has been followed in several later judgments of the Supreme Court including *inter alia Dipak Babaria & Anr. vs. State of Gujarat & Ors.*, (2014) 3 SCC 502 [paragraph 64] and *Pavanendra Narayan Verma vs. Sanjay Gandhi PGI of Medical Sciences & Anr.*, (2002) 1 SCC 520 [paragraph 34].

17. It is however also the settled position [laid down *inter alia* in *P.K. Palanisamy vs. N. Arumugham & Anr.*, (2009) 9 SCC 173 (paragraphs 28 & 29) and *Mohd. Shahabuddin vs. State of Bihar & Ors.*, (2010) 4 SCC 653 (paragraph 208)] that an act of a public authority cannot be invalidated merely because a wrong provision or section was cited as the source of authority. Where an authority is competent to exercise a particular power, the exercise of that power is not invalidated merely because the authority has misquoted the provision under which it acts. So long as the order is within

jurisdiction, a misunderstanding or misstatement as to the source of the power is not fatal to its exercise.

18. We have therefore examined the respondent's contentions, both on the basis taken in the counter-affidavit (i.e., that the impugned proviso flows from the Rules), and the arguments advanced by learned Standing Counsel (i.e., that it is derived from the directions of the Supreme Court in *M.C. Mehta*).

(b) Is the notification ultra vires Rule 118?

19. As far as Rule 118 is concerned, the power conferred under Rule 118(2) is expressly limited to issuance of a notification in respect of transport vehicles registered prior to 01.10.2015. The requirement for installation of speed governors for vehicles registered after the said date is dealt with in Rule 118(1), which itself lays down the required specifications, and does not leave it to the State Governments to prescribe. Inasmuch as the impugned proviso expressly deals with transport vehicles of certain categories registered on or after 01.10.2015, we are therefore of the view that it cannot be justified by reference to the aforesaid Rules.

20. Further, the impugned notification was issued only on 17.07.2018, whereas the State Government was required to exercise the power conferred by Rule 118(2) before 01.10.2015. This limitation becomes particularly relevant when it is seen that the operators of the concerned vehicles were required to have the vehicles equipped or fitted with a speed governor of the specified speed limit on or before 01.04.2016. Thus, Rule 118(2) required the State Government to act on or before 01.10.2015, after which the operators of the concerned

vehicles would have six months to ensure compliance. The issuance of the impugned notification in 2018, when read in the context of the Rule, cannot be justified.

21. Mr. Nath also contended that, even in respect of vehicles registered prior to 01.10.2015, Rule 118(2) carves out an exception in respect of vehicles covered by the proviso to Rule 118(1). He submitted that the vehicles in which the petitioner deals are covered by clause (viii) of the said proviso. While it is true that the impugned notification does not appear to take account of this exception, we would ordinarily have read down the requirement to bring it in line with the proviso to Rule 118(1). However, in view of our findings hereinabove regarding the power of the GNCTD, it is not necessary to enter into this exercise.

(c) Does* M.C. Mehta *(supra) confer the requisite power upon the GNCTD?

22. In *M.C. Mehta* (supra), the Supreme Court was considering a public interest litigation relating to proper management and control of traffic in the National Capital Region and in the National Capital Territory of Delhi. The Court took into account the submissions of counsel and also required the presence of senior officers of the respondent authorities. Various directions were thereafter issued and reproduced in an annexure to the judgment. The following extracts of the aforesaid judgment are relevant to examine whether the judgment in fact confers power upon the GNCTD to issue the impugned notification:-

"2. Having heard all of them and after taking into account the various suggestions which have been given at the hearing, ***we find that there are adequate provisions in the existing law which, if properly enforced, would take care of the immediate problem and to a great extent eliminate the reasons which are the cause of the road accidents in NCR and NCT, Delhi.*** *In view of the fact that the above officers expressed some doubt about the extent of powers of the authorities concerned to take adequate and suitable measures for speedy enforcement of these provisions and the remedial steps needed to curb the growing menace of unregulated and disorderly traffic on the roads, we consider it expedient to clarify that position in this order with reference to the relevant provisions of the existing law.* ***It is obvious that it is primarily for the Executive to devise suitable measures and provide the machinery for rigid enforcement of those measures to curb this menace. However, the inaction in this behalf of the Executive in spite of the fact that this writ petition is pending since 1985 and the menace instead of being controlled continues to grow in perpetuation of this hazard to public safety, it has become necessary for this Court to also issue certain directions which are required to be promptly implemented to achieve the desired result. <u>It is needless to add that these directions are to remain effective till such time as necessary action in this behalf is taken by the Executive authorities concerned so that the continuance thereafter of these directions may not be necessary.</u>***

3. ***In our opinion, the provisions of the Motor Vehicles Act, 1988, in addition to the provisions in the existing laws, for example, the Police Act and the Code of Criminal Procedure, confer ample powers on the authorities to take the necessary steps to control and regulate road traffic and to suspend/cancel the registration or permit of a motor vehicle if it poses a threat or hazard to public safety.*** *It need hardly be added that the claim of any right by an individual or even a few persons cannot override and must be subordinate to the*

larger public interest and this is how all provisions conferring any individual right have to be construed. We may now refer to some provisions of the Motor Vehicles Act, 1988 (for short "the Act") which are relevant for the purpose.

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6. Chapter IV deals with the registration of motor vehicles wherein Section 39 prescribes the necessity for registration. It says that unless the vehicle is registered in accordance with the provisions of the Act, it cannot be driven in any public place. The responsibility to ensure that such a vehicle is not driven is not merely on the person driving the vehicle but also on the owner of the vehicle. ***Section 45 permits refusal of registration or renewal of the certificate of registration inter alia on the ground that the vehicle is mechanically defective or fails to comply with the requirements of the Act or the rules made thereunder.*** *It is obvious that the vehicle must be roadworthy in the sense that there is no mechanical defect therein to permit it being used as a motor vehicle.* ***The necessity of complying with all the requirements makes it clear that any requirement which is specified under the Act or by the rules, has to be fully complied with and such a requirement would include the requirement of a specified category of motor vehicles being fitted with speed governors or such other devices as may be prescribed by law.*** *Section 53 permits suspension of registration by the registering authority or other prescribed authority if it has reason to believe that any motor vehicle is in such a condition that its use in a public place would constitute a danger to the public or that it fails to comply with the requirements of this Act or of the rules made thereunder. It is significant that this power to suspend the registration is available to the authority even if the condition of the motor vehicle is found to be such that its use in a public place would constitute a danger to the public, irrespective of whether that is a specific requirement of the Act or the rules. The conferment of this*

power is for the obvious reason that a motor vehicle which is considered to be unsafe or which poses a danger to the public in a public place, if driven, should not be permitted to ply at a public place since the paramount need is public safety. ***It is, therefore, clear that even if speed governors are not prescribed for a particular class of motor vehicles by any requirement of the Act or the rules made thereunder, it is permissible for the authority concerned to require the fitting of the speed governors in such motor vehicles for the purpose of ensuring that there is no danger to the public by the use of such a motor vehicle in a public place.*** *The power under Section 53 to this extent is wider. Section 53 read with Section 45 leaves no doubt about the amplitude of power of the authorities concerned whose duty it is to control and regulate the traffic in public places. The basic test to be applied by them for exercise of this power is the need to ensure that there is no danger to the public by use of any motor vehicle in a public place.*

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.

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14. It is needless for us to add that the entire scope of this matter and particularly this aspect to which this order relates, namely, the control and regulation of traffic in NCR and NCT, Delhi, is a matter of paramount public safety and, therefore, is evidently within the ambit of Article 21 of the Constitution. That being so, the making of this order has become necessary and can no longer be delayed because of the obligation of this Court under Article 32 of the Constitution which is invoked with the aid

of Article 142 to give the necessary directions given today separately.

[Annexure]

Order given on November 20, 1997 in W.P. (C) No. 13029 of 1985 and in W.Ps. (C) No. 9300 of 1982, 939 of 1996, 95 of 1997 and I.As. Nos. 7, 8, 9 & 10 in W.P. (C) No. 13029 of 1985

1. After hearing learned counsel for the parties and learned amicus curiae, for reasons indicated separately, in exercise of the power of this Court under Article 32 read with Article 142 of the Constitution of India, we hereby give the following directions, namely:

A. The Police and all other authorities entrusted with the administration and enforcement of the Motor Vehicles Act and generally with the control of the traffic shall ensure the following:

(a) ***No heavy and medium transport vehicles, and light goods vehicles being four-wheelers would be permitted to operate on the roads of the NCR and NCT, Delhi, unless they are fitted with suitable speed-control devices to ensure that they do not exceed the speed-limit of 40 kmph.*** *This will not apply to transport vehicles operating on inter-State permits and national goods permits. Such exempted vehicles would, however, be confined to such routes and such timings during day and night as the police/transport authorities may publish. It is made clear that no vehicle would be permitted on roads other than the aforementioned exempted roads or during the times other than the aforesaid time without a speed-control device.*

……"

(Emphasis supplied)

23. On a careful reading of the said judgment, we are of the view that it does not confer power upon the State Government to issue the impugned notification. The judgment proceeds on the basis that the

Act and Rules contain sufficient provisions to enable the authorities to act in the interest of curbing the menace of traffic in Delhi. In view of the inaction of the executive, the Supreme Court issued the directions contained in the Annexure to the judgment. However it was made expressly clear in paragraph 2 of the judgment that the directions issued by the Supreme Court were intended to have effect until the executive acted to fill the lacuna. As the Rules in respect of speed governors have been amended thereafter, lastly in 2015, the directions in para 1(A)(a) of the Annexure to the judgment, cannot be said to clothe the respondent with the power to issue the impugned proviso.

24. Learned Standing Counsel for the GNCTD submitted that the judgment of the Supreme Court in *M.C. Mehta* (supra) continues to hold the field by reference to orders dated 20.11.2015 and 14.12.2015 passed by the Supreme Court in W.P.(C) 793/2015 titled as *Suraksha Foundation vs. Union of India and Ors.* The said orders are set out below:

> Order dated 20.11.2015
>
> *" Heard learned counsel for the petitioner and perused the relevant material.*
>
> *Issue notice, returnable on 11th January, 2016.*
>
> *The State Governments, Union Territories as also the Union of India to submit report(s) with regard to implementation of the judgment of this Court in M.C. Mehta Vs. Union of India & Ors [(1997) 8 SCC 770]."*
>
> Order dated 14.12.2015
>
> *" On due consideration the prayer made in I.A. No.1 of 2015 is allowed. The last para of the order dated 20.11.2015 is modified to read as follows :*

> *"Union of India as well as the States/Union Territories are directed to furnish reports as regards the steps taken by them in pursuance of the various judgments passed by this Hon'ble Court as well as the statutory notifications and the letter dated 21.08.2009 for the implementation of the notification dated 15.04.2015 issued by the Ministry of Road Transport & Highways."*
>
> *Accordingly, I.A. No.1 of 2015 – Application for modification is disposed of."*

25. Neither of these orders, in our view, supports the argument on behalf of the GNCTD. Although the order dated 20.11.2015 cites the judgment in *M.C. Mehta*, it is clear that the said reference was in fact deleted by virtue of the order dated 14.12.2015.

26. Similarly, the Division Bench of the Punjab and Haryana High Court in *G.R.L. Engineers* (supra), cited by learned Standing Counsel, concerns empanelment of manufacturers of speed governors. While tracing the historical background in which the Government of Haryana had commenced the process of empanelment, the Court referred to *M.C. Mehta* (supra) and directions issued by the Union of India to all State Governments pursuant thereto. While dealing with the eligibility conditions stipulated in the public notice of the State of Haryana, the High Court relied upon *M.C. Mehta* to hold that the provisions of the Act and various other statutes were sufficient to confer power upon authorities to take all necessary steps to control and regulate traffic. The findings of the Court based upon the judgment in *M.C. Mehta* are as follows:-

> *"17. Even assuming that the directions are issued in exercise of the power of the Supreme Court under Article*

142, it would make no difference. We are bound by the observations and the directions issued by the Supreme Court. ***We will restrict our judgment to speed governors and determine the question of the State Government's power to stipulate the eligibility criteria for empanelment of suppliers thereof only on the basis of M.C. Mehta's case (supra).*** *It is important to note a few aspects of this judgment. In paragraph 3, it is held that not only the provisions of the Motor Vehicles Act, 1988 but even the provisions of other existing laws such as the Police Act and the Code of Criminal Procedure confer ample power upon the authorities to take necessary steps to control and regulate the traffic and to suspend/cancel the registration or permit of a motor vehicle if it poses a threat or hazard to public safety. It is the State Governments that exercise the control under the Police Act. These provisions have been interpreted by the Supreme Court as conferring power on the authorities to take steps to control and regulate road traffic. The power, therefore, is traced not only under the Motor Vehicles Act but even otherwise. Further these observations are in respect inter alia of speed governors. This is clear from the observations in paragraph 6 of the judgment where firstly it is stated that section 45 of the Act permits refusal of registration on the ground that the vehicle fails to comply with the requirements of the Act or the Rules made thereunder and that the necessity of complying with all the requirements makes it clear that any requirement which is specified under the Act or the rules has to be fully complied with. The word "requirement" relates to the requirements of the Act or the Rules. It is of vital importance to note that it is further held that such requirement would include the requirement of a specified category of motor vehicles being fitted with speed governors or such other devices as may be prescribed by law. The Supreme Court therefore read into the Act and the Rules the requirement of speed governors. It is equally, if not more important, to note that in the last but one sentence, it is held that section 53 read*

with section 45 leaves no doubt about the amplitude of the power of the authorities concerned "whose duty is it to control and regulate the traffic in public places". As we noticed earlier the duty to control and regulate the traffic in public places is also of the State authorities. The doubt in this regard is set at rest by the observations in paragraph 12 where it is expressly held that the existing provisions of the Act alone are sufficient to clothe the police force and transport authorities with ample power to control and regulate the traffic in an appropriate manner so that no vehicle used in a public place poses any danger to the public in any form. This conclusion was clarified to be even without reference to the general powers available to the police officers under the Police Act and the Code of Criminal Procedure. As noted earlier, the power was recognized in the State authorities even under the Police Act and the Code of Criminal Procedure.

18. ***In view of the judgment in M.C. Mehta's case (supra), it is not possible for us to hold that the State Government has nothing to do with speed governors.***

19. Once it is held that the State Governments are also bound to ensure road safety and to that end are required to ensure the fitment of speed governors it follows that they are also bound to ensure that the speed governors fulfill their purpose and are of good quality. Quality control in turn can be ensured inter alia by sourcing the speed governors from qualified suppliers. The suitability of suppliers can be ensured by stipulating relevant criteria. The State Governments, therefore, have the power to stipulate criteria for the empanelment of suppliers of speed governors."

(Emphasis supplied)

27. The judgment of the High Court of Punjab and Haryana does not, in our view, hold that *M.C. Mehta* confers an independent power

upon State Governments to prescribe a speed limit which is at variance with the mandate of the Rules framed by the Union of India.

Conclusion

28. For the reasons aforesaid, we conclude that the impugned proviso is neither referable to the powers vested in the respondent Government of NCT of Delhi under the Rules, nor to the judgment of the Supreme Court in *M.C.Mehta* (supra). The proviso to Clause 1 of the impugned notification dated 17.07.2018, insofar as it deals with vehicles registered on or after 01.10.2015, is therefore *ultra vires* the powers of the respondent/Government of NCT of Delhi, and is hereby quashed.

29. The writ petition is allowed to the extent aforesaid, but without any order as to costs.

30. The pending application also stands disposed of.

PRATEEK JALAN, J.

CHIEF JUSTICE

SEPTEMBER 17, 2020
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