

Court on its own motion vs. NHAI & ors.

CWPIL No. 249/2017

21.3.2024 Present: Court on its own motion.

Mr. K. D. Shreedhar, Sr. Advocate with Ms. Shreya Chauhan, Advocate, for the respondent-NHAI.

Mr. Balram Sharma, DSGI, for respondent No.2-UoI.

Mr. Y. W. Chauhan & Mr. I. N. Mehta, Sr. Addl. A.Gs. with Mr. Ramakant Sharma, Ms. Sharmila Patial, Addl. A.Gs. and Mr. Raj Negi, Dy.A.G., for the respondents -State.

Ms. Kiran Dhiman, Advocate, for respondent No.6.

Mr. Anand Kumar, Project Director, NHAI, is present in person. We have interacted with him and expressed concern about various bottlenecks on the National Highway causing obstruction to the free flow vehicular traffic particularly stretch between Kaithlighat to Salogra (Solan) and stretch between Kumarhatti Bazaar. He has assured the Court that all-out efforts shall be made to ensure free flow traffic by removing all bottlenecks before the next date of hearing.

2 In compliance to order, dated 14.3.2024, respondent-NHAI has filed fresh affidavit, which goes to indicate that the respondent-NHAI has, vide letter dated 12.1.2024, requested the Deputy Commissioner, Solan, to issue suitable directions to the respective authorities under his control for removing encroachments/illegal parking from National Highway (NH) land so that service road/carriage

way can be used for its intended purpose and accidents could be avoided.

3 We deem it appropriate to direct Deputy Commissioner as well as Superintendent of Police, Solan, to render all the necessary assistance to the NHAI so as to enable it to remove all illegal parking and the NHAI shall be at liberty to remove all encroachments from NH land without getting any formal demarcation as it is more than settled that it is for the occupant(s) to prove his lawful possession and not otherwise and more over, these encroachments and illegal parking have come up on the NHAI land, which otherwise has already been demarcated. Ordered accordingly.

4 It is also averred that many vehicles are seen parked idly on NH service road, particularly at Dharampur, Anji, Rabon, near Subatoo road etc. causing hindrance in the vehicular movement and street vendors and also encroaching upon the NH land on the Parwanoo-Solan section under the M.C. limit and even the respondent-NHAI has also requested the Municipal Commissioner, Solan, to issue suitable directions to the respective authorities to remove such unauthorized parking/encroachments.

5 In the given facts and circumstances, we also direct the Municipal Commissioner, Solan, to remove all hindrances be it by way of encroachment, idle parking or street vendors squatting on the NH land. The police

authorities shall also provide all necessary assistance to the Municipal Commissioner, Solan.

6 The entire exercise be completed before the next date of hearing when status report shall be filed by the Deputy Commissioner, Superintendent of Police and Municipal Commissioner, Solan.

7 As regards stage of construction of road, respondent-NHAI is directed to adhere to timeline, as sought for in the compliance affidavit and file fresh status report by the next date of hearing.

8 We notice even though road between Parwanoo and Kaithlightat via Solan has though been widened, yet there has been considerable rise in the accidents in this stretch.

9 Many of such accidents could be attributed to drunken driving, but a lot many accidents are occurring due to LED/laser/neon/flash lights being used in the vehicles contrary to the provisions of the The Central Motor Vehicles Rules, 1989 (for short, the Rules, 1989).

10 It is commonly seen that high-power audio systems producing loud sound with rating of several thousand watts PMPO impair hearing of the driver(s) and passengers of the vehicles thereby causing distraction to other drivers and road users. It is difficult to distinguish between emergency vehicles like ambulances, fire brigade and authorized users under the Disaster Management Act

from other vehicles as these vehicles are fitted with red and blue lights contrary to the Rules, 1989. 11 Multi-coloured LED/laser/neon lights, booster amplifiers, equalizer, DJ mixer, etc., with illuminated control panels in the driver cabin, has been seen causing glare and reflection of light on the windscreen of the vehicle, endangering the safety of the passengers and other road users as also tampering with the percentage of visual transmission of light of the safety glass of the windscreen, rear window and side windows, by pasting stickers, tint films, etc. upon the safety glass, fixing sliding cloth curtains, etc., in violation of sub-rule (2) of Rule 100 of the Rules, 1989.

12 In the given facts and circumstances, we deem it appropriate to implead Director General of Police (DGP) & Director (Transport) to the State of Himachal Pradesh as party respondents. Ordered accordingly.

13 The State Government has a statutory duty to scrupulously enforce through the police and the enforcement wing of the Motor Vehicles Department provisions of the Motor Vehicles Act and the Rules and Regulations made thereunder, as per the mandate of the decisions of the Hon'ble Supreme Court.

14 In view of the decision of the Apex Court in **S. Rajaseekaran v. Union of India (2018) 13 SCC 516** all States and Union Territories are expected to implement the Road Safety Policy with due earnestness and seriousness

and the provisions under the Motor Vehicles (Driving) Regulations, 2017 should be implemented by the State Governments and Union Territories strictly.

15 In ***Avishek Goenka v. Union of India (2012) 5 SCC 321***, the Hon'ble Supreme Court held that the Rules, 1989 deal with every minute detail of construction and maintenance of a vehicle. In other words, the standards, sizes and specifications, which the manufacturer of a vehicle is required to adhere to while manufacturing the vehicle, are exhaustively dealt with under the Rules. What is permitted has been specifically provided for and what has not been specifically stated would obviously be deemed to have been excluded from these Rules. The provisions of the Rules, 1989 demonstrate the extent of minuteness in the Rules and the efforts of the framers to ensure, not only the appropriate manner of construction and maintenance of vehicle, but also the safety of other users of the road. The legislative intent attaching due significance to 'public safety' is evident from the object and reasons of the Motor Vehicles Act, its provisions and more particularly, the Rules framed thereunder.

16 As regards the DGP, we direct him to issue necessary directions from preventing use of contract carriages and other transport vehicles on public place, which are found to be -

- i. flouting safety standards prescribed in AIS-008 and AIS-052 (Rev.1) 2008, after replacing the prototype approved lights, light-signalling devices and reflectors with after-market multi-coloured LED/laser/neon lights, flash lights, etc.;
- ii. without maintaining lighting and light-signalling devices and also retro-reflectors as per the individual specifications, namely, number, position, width, height, length, geometric visibility, orientation, etc. specified in AIS-008;
- iii. with high-power audio systems producing loud sound with rating of several thousand watts PMPO, impairing the hearing of the driver and the passengers and causing distraction to other road users;
- iv. with continuously blinking DJ rotating LED lights, multi-coloured LED/laser/neon lights in the passenger compartment, by converting the passenger compartment as a dancing floor, causing distraction to the driver of that vehicle and also to other road users;
- v. with multi-coloured LED/laser/neon lights and also booster amplifiers, equalizer, DJ mixer, etc., with illuminated control panels in

the driver cabin, causing glare and reflection of light on the windscreen of the vehicle, endangering the safety of the passengers and other road users;

- vi. mixing up of AC and DC power supply for high-power audio systems with DJ mixer, DJ dancing lights, laser lights, etc., violating safety standards, posing a potential fire hazard to the passengers of such vehicles;
- vii. tampering with the percentage of visual transmission of light of the safety glass of the windscreen, rear window and side windows, by pasting stickers, tint films, etc. upon the safety glass, fixing sliding cloth curtains, etc., in violation of sub-rule (2) of Rule 100 of the Rules, 1989;
- viii. using multi-toned horn giving a succession of different notes or horn giving unduly harsh, shrill, loud or alarming noise, in violation of sub-rule (2) of Rule 119 of the Rules, 1989.
- ix. Unauthorized use of flag rods or red/blue or both these lights giving an impression that the vehicle either belongs to the fire department, police department or as an ambulance etc.

17 As regards Director (Transport), in view of the prohibition contained in the first proviso to sub-rule (1) of Rule 62 of the Rules, 1989, renewal of fitness certificate in respect of a transport vehicle is to be made only after an Inspecting Officer or authorized testing stations as referred to in sub-section (1) of Section 56 of the Motor Vehicles Act has carried out the tests specified in the Table given below the first proviso to sub-rule (1), in order to certify that the vehicle complies with the provisions of the Motor Vehicles Act and the Rules made thereunder. A transport vehicle fitted with unauthorised lights cannot be granted fitness certificate. Therefore, Director (Transport) is directed to ensure that transport vehicle fitted with unauthorized lights is not granted fitness certificate.

18 A transport vehicle governed by AIS-008, which is not installed with lighting and light-signalling devices and also retro-reflectors referred to in Para 6.0, conforming to the individual specifications for such lighting and light-signalling devices and also for retro-reflectors prescribed in Paras 6.1 to 6.20, or a transport vehicle governed by AIS-008, which is installed with lighting and light-signalling devices or retro-reflectors other than those referred to in Para 6.0, cannot be granted fitness certificate, since such a vehicle cannot be treated as a vehicle which complies with the provisions of the Motor Vehicles Act and the rules made thereunder, for the purpose of grant of certificate of fitness.

Therefore, Director Transport is directed to ensure that no fitness certificate is granted to such vehicles.

19 Similarly, a transport vehicle, fitted with high-power audio system, having multiple booster/power amplifiers, speakers and sub-woofers producing loud noise, DJ rotating LED lights, continuously blinking multi-coloured LED lights, laser lights, etc. in the passenger compartment and the driver cabin, cannot be treated as a vehicle, which complies with the provisions of the Motor Vehicles Act and the Rules made thereunder, for the purpose of grant of certificate of fitness. Here also, the Director (Transport) is directed to ensure that no fitness certificate is granted in such cases.

20 Likewise, a transport vehicle in which safety glass is not maintained with the visual transmission of light not less than that prescribed under sub-rule (2) of Rule 100 or with a clear vision to the driver, both to the front and through an angle of ninety degrees to his right or left-hand side, cannot be granted fitness certificate. The Director (Transport) is accordingly directed to ensure that no fitness certificate in such cases is granted and in case such fitness certificate has been granted to anyone, the same is liable to be cancelled in accordance with the provisions under subsection (4) of Section 56 of the Motor Vehicles Act and to proceed accordingly.

21 As per sub-section (4) of Section 182A of the Motor Vehicles Act, whoever, being the owner of a motor vehicle, alters a motor vehicle, including by way of retrofitting of motor vehicle parts, in a manner not permitted under the Act or the Rules and Regulations made thereunder shall be punishable with imprisonment for a term which may extend to 6 months, or with fine of Rs.5000/- per such alteration or with both.

22 As per sub-section (2) of Section 190 of the Motor Vehicles Act, any person who drives or causes or allows to be driven, in any public place a motor vehicle, which violates the standards prescribed in relation to road safety, control of noise and air-pollution, shall be punishable for the first offence with imprisonment for a term which may extend to 3 months, or with fine, which may extend to Rs.10,000/- or with both and he/she shall be disqualified for holding licence for a period of 3 months and for any second or subsequent offence with imprisonment for a term, which may extend to 6 months, or with fine, which may extend to Rs.10,000/- or with both.

23 As per sub-section (3) of Section 190 of the Motor Vehicles Act, any person who drives or causes or allows to be driven, in any public place a motor vehicle which violates the provisions of this Act or the rules made thereunder relating to the carriage of goods which are of dangerous or hazardous nature to human life, shall be

punishable for the first offence with a fine of Rs.10,000/- and he shall be disqualified for holding licence for a period of 3 months, or with imprisonment for a term, which may extend to 1 year, or with both, and for any second or subsequent offence with fine of Rs.20,000/-, or with imprisonment for a term, which may extend to 3 years, or with both.

24 As per sub-section (4) of Section 206 of the Motor Vehicles Act, a police officer or other person authorized in this behalf by the State Government shall, if he has reason to believe that the driver of a motor vehicle has committed an offence under any of Sections 183, 184, 185, 189, 190, 194C, 194D, or 194E, seize the driving licence held by such driver and forward it to the licensing authority for disqualification or revocation proceedings under Section 19.

25 As per proviso to sub-section (4) of Section 206, the person seizing the licence shall give to the person surrendering the licence a temporary acknowledgement thereof, but such acknowledgement shall not authorize the holder to drive until the licence has been returned to him.

26 Accordingly, the Director General of Police and Director (Transport) are directed to ensure that the provisions of the Motor Vehicles Act and Rules and Regulations framed thereunder are fully complied with and file status report(s) on or before the next date of hearing. All

the concerned authorities, Traffic Magistrates as also other Magistrates in the State of Himachal Pradesh are also directed to ensure due compliance of this order.

27 List on 3.4.2024.

(Tarlok Singh Chauhan)
Judge

(Sushil Kukreja)
Judge

21.3.2024
(pankaj)