

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writs No. 17454/2018

Banwari Lal Sharma S/o Late Sh. Hari Narayan Sharma

-----Petitioner

Versus

State Of Rajasthan Through Chief Secretary

-----Respondent

For Petitioner(s) : Mr Prateek Kasliwal, Mr Divesh
Sharma

For Respondent(s) :

**HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI
HON'BLE MR. JUSTICE DINESH CHANDRA SOMANI**

Order

08/08/2018

Learned counsel submits that in the case of "MC Mehta versus Union of India", Writ Petition (Civil) No.13029 of 1985, decided on 10.8.2017, the Hon'ble Supreme Court has given following directions -

i.The state transport department all over the country will mandate a PUC center at every fuel station in their state.

ii.The calibration of PUC machine should be done at regular periodically by third party agencies duly authorised by transport departments of the state. Further, the transport departments are also advised to carry random checks of the PUC centers and also to carry enforcement run for PUC compliance by motor vehicle owners.

iii.Mandate prepayment of PUC fee before the test are conducted.

iv.Introduce ban equipped mobile test centers and a programme to check visibly polluting vehicles.

v.Enforce stringent penalty for PUC center for non-compliance and mal practices and to cancel the authorisation of non-compliant PUC center.”

The compliance of the directions has not been made by the State Government by putting PUC center at every fuel station in the State. Instead, State Government has come out with a policy in the year 2017, wherein, a penalty of Rs.1000/- has been imposed on vehicle owner if they fail to obtain PUC certificate. It is without competence, rather, as per section 190(2) of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') if any one ply vehicle in violation of the standards prescribed for road safety, control of noise and air pollution, he/she can be subjected to compounding for the first instance with a fine of Rs.1000/- and for second or subsequent stage, with a fine of Rs.2000/-.

The Government of Rajasthan has issued a Circular dated 4.7.2017 at annexure-2 without even its paper publication so that everybody may take PUC certificate from the fuel station or from such centers, as are available. The State Government started imposing penalty of Rs.1000/- though not provided under the Act of 1988 or the Rules made thereunder. It has been done unauthorisedly. It is even in the case where a vehicle owner may not be plying the vehicle for some or the other reason. It may be that he is out of the town for long time yet he would be subjected to penalty, whereas, as per section 190(2) of the Act of 1988, if somebody ply a vehicle in violation of the provisions, he can be subjected to compounding. The scheme is thus hit by section 190(2) of the Act of 1988.

The State has already issued Notification under section 190(2) of the Act of 1988 to quantify the fine on compounding yet penalty by way of circular has been provided. The State Government has no competence for it. The prayer is accordingly to stay operation of the scheme.

We have considered the submissions and perused the record. We find that so far as requirement of PUC certificate is concerned, it is mandatory and has to be obtained by every vehicle owner who is plying the vehicle on road. In absence of it, the owner can be subjected to compounding under section 190(2) of the Act of 1988. A scheme cannot be brought for imposition of penalty despite a Notification for fine.

Issue notice. Learned counsel for the petitioner would supply copy of the writ petition to Mr JM Saxena, Additional Advocate General, who may seek instructions and file reply within four weeks.

In the meanwhile, if the vehicle owner is plying the vehicle without PUC certificate then he can be subjected to compounding of offence under section 190(2) of the Act of 1988. Accordingly, while seeking PUC certificate by the vehicle owner, condition to show receipt of penalty cannot be asked and to that extent the Scheme is stayed.

The State Government is further directed to make strict compliance of the directions of the Apex Court in the case of MC Mehta (supra). Every vehicle owner should take PUC certificate

for plying the vehicle. The State Government is further directed to refrain itself from imposing penalty for getting PUC certificate otherwise it is keeping vehicle owners away to get PUC certificate. The requirement of PUC certificate may be published in the news papers with a clarification that in absence thereof, it would attract section 190(2) of the Act of 1988.

(DINESH CHANDRA SOMANI),J

(MN BHANDARI),J

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