

CASE NO.:  
Appeal (civil) 3700 of 1999

PETITIONER:  
Chandigarh Administration & Ors

RESPONDENT:  
Namit Kumar and Ors.

DATE OF JUDGMENT: 27/09/2004

BENCH:  
ARIJIT PASAYAT & PRAKASH PRABHAKAR NAOLEKAR

JUDGMENT:  
J U D G M E N T

[With CA No..6308/2004 (Arising out of SLP (C) No. 14342/98, CA No.6310/2004 (Arising out of SLP (C) No. 14639/98, CA Nos. .6311-6312/2004 (Arising out of SLP (C) No. 76-77/99, CA No.6309/2004 (Arising out of SLP (C) No. 13994/99 and CA No..6313/2004 (Arising out of SLP (C) No. 13720/99]

ARIJIT PASAYAT, J.

Leave granted in SLP (C) Nos. 14342/98, 14639/98, 76-77/99, 13994/99 and 13720/99.

In all these appeals challenge is to some of the directions given by the Punjab and Haryana High Court while dealing with a public interest litigation filed by an advocate and two doctors. Their main grievance was that there was immense air and noise pollution, traffic congestion and unsystematic functioning of the various authorities. It was specifically highlighted that there was increase in the number of vehicular accidents which resulted from absence of proper traffic control.

Civil Appeal No. 3700/1999 has been filed by the Chandigarh Administration. The appeals corresponding to SLP (C) No. 13994/99 and SLP (C) No. 14639/98 relate to a direction for use of helmets by ladies. Appeals corresponding to SLP (C) Nos.76-77/99 have been filed by the Government of Haryana taking the stand that some of the directions cannot be implemented due to financial stringency.

The Chandigarh Administration has called in question some of the directions which we shall deal with individually.

Direction no.10 relates to levy of parking charges. The High Court directed that the concerned authorities shall provide parking space and properly utilize the existing space in and around the commercial and public places. Additionally, it was directed that any person who enjoys the parking facilities should be charged keeping in view the period for which such vehicle was parked in the prescribed parking area.

Learned counsel for the appellant-Chandigarh Administration submitted that though the direction is being implemented in letter and spirit, some difficulties arise while fixing parking charges. Considering the difficulties highlighted, we modify the order to the extent that it shall be for the Chandigarh Administration to fix the

quantum of parking charges taking into account all relevant factors.

So far as direction no.23 is concerned, the same relates to introduction of one way traffic in Sectors 24, 17 and institutional and commercial sectors. It is submitted that wherever there is a need for introducing one way traffic system, the same will be introduced. There is no difficulty in introducing the system in institutional and commercial sectors but liberty should be given to the Administration to make relaxation taking into account the relevant factors. We modify the direction to the extent that proper traffic arrangements shall be made. If the Administration wants to relax the one way traffic system in any sector, the same can only be done by indicating the special features which warrant such a departure. The reasons shall be recorded and placed before the High Court so that it can be examined whether the reasons indicated justify the departure.

So far as long term directions are concerned, in direction no.2 it has been stipulated that whatever suggestions are made by the High Power Committee shall be treated as directions of the High Court. It was submitted that before these recommendations and suggestions are treated to be directions of the High Court, an opportunity be granted to the Administration to have its say. We consider the prayer to be reasonable. We modify the direction to the extent that whenever any suggestion is received from the High Power Committee the Administration shall be given an opportunity to have its say and thereafter the High Court shall pass necessary orders either accepting the recommendations or modifying the same suitably, if necessary.

One of the major difficulties highlighted by the Chandigarh Administration relates to the utilization of vehicles of Chandigarh Transport Undertaking. It was pointed out that to make the undertaking commercially and financially viable, operation of inter-state routes is a necessity. It is submitted that a number of vehicles plying inside the territory are sufficient to meet the local demands. In any event, it is submitted that the need for catering to the needs of traveling public can also be considered while making the undertaking financially and commercially viable.

Learned counsel for respondent no.1 who was writ petitioner submitted that the High Court while passing directions had taken note of the ground realities and no modification is necessary. Considering the rival contention we feel that it would be appropriate for the Chandigarh Administration to file an application before the High Court indicating the factual details so that the Court can decide as to whether any modification of the direction is called for.

One of the directions which was also termed as impracticable related to the direction that parking space will be provided in all the sectors but no vehicle should be permitted to be parked in any other area more particularly on the main road or internal roads of the sectors.

Learned counsel for the respondent-writ petitioner submitted that the direction which is no.15 has to be read with the condition which notes that sufficient lane parking space can be used in all the areas wherever it is possible and workable.

Learned counsel for the appellant-Chandigarh Administration submitted that if parking is not permitted, it would mean that even old, disabled persons, children, and ladies have to walk long distance to go their residential house. We feel the High Court can consider whether any viable arrangement can be worked out taking into account suggestions made by the Chandigarh Administration and other parties before the High Court.

One of the directions which has been assailed by several appellants relates to direction no.14 regarding use of helmets. The exemption has only been extended to Sikh women while driving. All others including women are required to wear helmets. Stand of the appellants is that such direction is contrary to several statutory prescriptions. Particular reference has been made to Section 85A of the Motor Vehicles Act, 1939 (in short the 'Old Act') and Section 129 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'New Act'). It appears that Clause 3 of the Motor Vehicles (Protective Headgears) Rules, 1980 exempts Sikh women from wearing helmets. Reliance is also placed on Rule 193 of the Punjab Motor Vehicles Rules, 1989 and Rule 193 of the Chandigarh Motor Vehicles Rules, 1990 to contend that Sikh women are exempt from wearing the helmets, and, therefore the High Court could not have given the direction contrary to the suggestion.

It appears that the Rules were not brought to the notice of the High Court. We, therefore, direct that if any exemption is granted to any person including Sikh women from any of the Motor Vehicles Rules relating to different States or areas or under any Statutory Rule the same shall operate notwithstanding the directions of the High Court that all persons including women shall wear helmets.

One other direction which has been assailed relates to the use of black films on the glasses. It is submitted that Central Motor Vehicles Rules, 1989 (in short 'Central Rules') provide for the measure to be taken in such cases. We find that sub-rule (2) of Rule 100 of the said Rules deals with the issue. We, therefore, modify the direction of the High Court to the extent that while carrying out the directions, the mandate of sub-rule (2) of Rule 100 shall be kept in view. This shall be in addition to any security requirement as may be laid down by the law and order enforcing agencies.

The direction has been given for demolition of booths. Learned counsel for the Chandigarh Administration submitted that these are not on the main road but were on the diversion used when the roads were not operational. Learned counsel for respondent no.1 submitted that records were produced before the High Court for which strong exception was taken.

We feel that the materials which were not produced before the High Court shall be brought to the notice of the High Court so that necessary orders can be passed after consideration. We make it clear that we have not expressed any opinion on the merits of the rival contentions.

Appeals relating to SLP (C) Nos. 76-77/99 are by the State of Haryana. Direction nos. 20 and 24 were sought to be modified as the staff position is not adequate even to meet the normal functioning. We permit the State of Haryana to move the High Court for modification and place materials in support of the stand. The High Court shall consider the request in its proper perspective and pass necessary orders.

It has been submitted that directions have been given to remove all advertisements facing the highway, main roads and the side roads. The stand of the Government is that the same would result in huge loss of revenue by way of license fees for the licenses which have been granted for the purpose. It was pointed out that persons who would be affected were not heard. Though while dealing with issues like environmental pollution and road hazards there is no need for giving notice to all the persons affected, it shall be open to the State Government or licensee to bring to the notice of the High Court that there is no safety hazard involved. The High Court shall consider them, if raised, in the proper perspective.

One of the directions also relates to the providing of sign boards. The learned counsel for the State submitted that it will not be possible to implement the direction immediately and the State Government would do it in a phased manner. It is open to the State Government to approach the High Court for modification of the direction.

In appeal relating to SLP(C) No. 13720/99, the direction is for fulfilling all conditions in terms of Section 66 of the New Act. It was submitted that certain institutions using the vehicle are exempt from permit in terms of sub-section (3)(h) of Section 66 of the New Act. But we find that sub-section (3) of Section 66 has been deleted w.e.f. 11.8.2000. Therefore, the plea relating to exemption has no substance. The appeal relating to SLP 13994/99 is dismissed.

All other appeals are disposed of as indicated above. There will be no order as to costs.

