

ITEM NO.1

COURT NO.5

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s).13029/1985

M.C. MEHTA

Petitioner(s)

VERSUS

UNION OF INDIA &amp; ORS.

Respondent(s)

(IN RE: THREE WHEELERS

IA NO. 138385/2021 (APPLN. FOR DIRECTIONS ON B/O BAJAJ AUTO LTD.) ONLY" IN W.P.(C) NO. 13029/1985 IS LISTED."ONLY" NAME OF THE FOLLOWING ADVOCATES MAY BE TREATED TO HAVE BEEN SHOWN IN THE LIST: MR. HARISH N. SALVE, SR. ADVOCATE (A.C.)MS. APARAJITA SINGH, SR. ADVOCATE (A.C.)MR. A.D.N. RAO, ADVOCATE (A.C.)MR. SIDDHARTHA CHOWDHURY, ADVOCATE (A.C.)PETITIONER-IN-PERSONMR. G.S. MAKKER, MR. AMRISH KUMAR,MR. SANJAY KR. VISEN, MR. KAMLENDRA MISHRA, MR. SANDEEP KR. JHA, MS. RANJEETA ROHTAGI,MR. JYOTI MENDIRATTA, MS. PRITHA SRIKUMAR IYER, ADVOCATES)

Date : 15-12-2021 This petition was called on for hearing today.

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HON'BLE MR. JUSTICE B.R. GAVAI  
HON'BLE MRS. JUSTICE B.V. NAGARATHNA

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UPON hearing the counsel the Court made the following  
O R D E R  
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O R D E R

I.A.No.138385 of 2021:

The Transport Department, Government of NCT of Delhi invited online applications for registration 4,261 electric auto rickshaws (e-autos). The applicant has approached this Court to declare the said advertisement as ultra-vires Articles 14 and 19 (1) (g) of the Constitution of India being arbitrary and discriminatory to manufacturers of existing clean fuel/CNG TSRs. On 16.12.1997, this Court identified Two-Seater Rickshaws using two stroke engine as contributing to pollution in Delhi in light of which, a direction was given that the number of TSRs should be freezed at the level at which they are actually used in the city. Later, on 20.12.2002, permission was granted for registration of 5,000 new auto rickshaws. We are informed that several applications have been filed for removal of the cap of TSR permits. By an order dated 11.11.2011, the cap of TSR permits were enhanced to 1,00,000 and liberty was given to the parties to move this Court for suitable orders, if found necessary.

The applicant submits that CNG autos that are manufactured by it are BS-VI compliant and the emission

profiles have improved by almost 90% as compared to BS-I model. Restriction of grant of e-permits to battery permitted autos (e-autos) would be in restriction of the applicant's Fundamental Right under Article 19 (1) (g) of the Constitution of India. The applicant has alleged that vehicles that are manufactured by it which are BS-VI complied cannot be sold in view of the advertisement issued on 18.10.2021.

An affidavit has been filed by the Ministry of Road Transport and Highways in which it has been brought to the notice of this Court that an amendment has been made to Section 66 of the Motor Vehicles Act, 1988 and Rule 81 of the Central Motor Vehicle Rules, 1989 by which, battery operated transport vehicles and transport vehicles running on ethenol and methanol fuels have been exempted from registration. Government of NCT of Delhi is opposing the relief that is sought by the applicant on the ground that CNG auto-rickshaws cannot be compared to e-autos. There is a proposal to switch to electric vehicles with a view to de-carbonize the transport sector. A comparison of the electric vehicle with zero pollution with a CNG vehicle with less emission would show that preference given to e-autos for 4,261 permits is justifiable. The decision of the government is also supported by referring to Faster Adoption and Manufacturing of Hybrid and EV (FAME-II) scheme of the Government of India and Electric Vehicles Policy, 2020.

It has been further mentioned in the reply filed on behalf of the Government of NCT of Delhi that 92,000 CNG auto rickshaws have been already registered in NCT of Delhi and there is continuous process being undertaken for replacement of old CNG auto rickshaws. The learned Amicus Curiae submitted that the application deserves to be dismissed as the Amendment that is made to the Motor vehicles Act and Central Motor Rules only relates to the exemption from payment of registration fee.

There has been a request for removal of cap of 1,00,000 autos and we are informed that there is a recommendation made by the EPCA to that effect. The removal of the cap of the number fixed by this Court on 11.11.2011 shall be considered at a later stage. The advertisement that was issued by the Government of NCT of Delhi inviting applications for grant of registration for 4,261 e-autos cannot be said to be arbitrary for the following reasons:

(1) the decision of the government is in conformity with FAME II scheme of the Government of India and Electric Vehicles Policy, 2020.

(2) Residents of Delhi are badly affected by air pollution, undoubtedly a part of which is attributable to vehicles. Even though CNG autos are BS-VI complied, still there is some carbon emission.

(3) We do not agree with Mr. Basava Prabhu Patil, learned senior counsel appearing for the applicant that

the fundamental right of the applicant, especially under Article 14 and 19 (1) (g) of the Constitution of India, is violated.

(4) There are 92,000 CNG autos on the road. Replacement of old vehicles can be done by vehicles manufactured by the applicant.

(5) The amendment to the Motor Vehicles Act and Central Motor Vehicle Rules cannot be read to mean that addition of e-autos on the road can be done over and above 1,00,000 autos that are permitted to ply on the roads of Delhi.

I.A.No.138385 of 2021 is accordingly, dismissed. Pending application(s), if any, shall stand disposed of.

I.A.No.176097 of 2018: (Bajaj Auto Ltd.)

Taken on Board:

UPON oral request made by Mr. Basava Prabhu Patil, learned senior counsel list on 01.02.2022.

(B.Parvathi)  
Court Master

(Anand Prakash)  
Court Master