

PETITIONER:
M.C. MEHTA

Vs.

RESPONDENT:
UNION OF INDIA & ORS. ETC.

DATE OF JUDGMENT: 20/11/1997

BENCH:
B.N. KIRPAL, V.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:

THE 20TH DAY OF NOVEMBER, 1997

Present:

Hon'ble the Chief Justice
Hon'ble Mr. Justice B.N. Kirpal
Hon'ble Mr. Justice V.N. Khare

M.S. Usgaonkar, Additional Solicitor General, Harish Salve, Sr. Adv. (A.C.) Dr. Rajiv Dhawan, Arun Jaitley, Swaraj Kaushal, Sr. Adv., Mukul Mudgal, (M.C. Mehta) Adv.-In-person (NP), Ms. Seema Midha, Wasim A. Qadri, A.D.N. Rao, Niranjana Singh, S.N. Sikka, Ms. Indra Sewhney, Ms. Anubha Jain, Arvind Kumar Sharma, Rajiv Nanda, Hardeep Singh Anand, R.K. Kapoor, P. Verma, S.K. Srivastava, B.R. Kapur, Anis Ahmed Khan, Shri Narain, Sandeep Narian, D.K. Garg, Sanjeev Pabby, Vijay Panjwani, R.K. Maheshwari, Ms. Manju Bharti, Ranjit Kumar, R. Sasiprabhu, Manish Garg, Ashok Mathur, D.M. Nargolkar, Pradeep Misra, Ms. Niti Dikshit, Mrs. Anil Katiyar, Ms. Sushma Suri, D.S. Mehra, Saharya & Co., Advs., Ejaz Maqbool, R.P. Gupta, K.K. Gupta, C.V.S. Rao, L.K. Pandey, S.B. Upadhyay, S.R. Setia, Sanjay Parikh, Satish Aggarwal, Advs. with them for the appearing parties.

O R D E R

The following order of the court was delivered:

One of the aspects covered by this writ petition relates to proper management and control of the traffic in the national capital region (NCR) and the National Capital Territory (NCT), Delhi to ensure the maximum possible safeguards which are necessary for public safety. The problem is too obvious to require elaboration and the need for urgent measures to prevent any further delay in enforcement at least of the existing provisions of law is imperative. The need is accentuated by the alarming rise in the number of road accidents and the resulting deaths and bodily injuries caused thereby. The most recent tragedy in which a school bus broke the parapet of a bridge and fell into the river a couple of days back does not permit any further delay in taking urgent measures in this behalf. For this reason, in addition to the assistance we have been given by the learned amicus curiae, the Additional Solicitor General and the Bar in general, we considered it appropriate to also require the presence of the Chief Secretary Mr. P.V.

Jaikishan, the police commissioner mr. T.R. Akkar and the Commissioner (Traffic) Ms. Kiran Dhingra. to examine the matter at some length.

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 concerned authorities to take adequate and suitable measures for speedy enforcement of these provisions and the remedial steps needed to curb the growing menace of un-regulated 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. 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 concerned Executive authorities so that the continuance thereafter of these directions may not be necessary. 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 the road traffic and to suspend/cancel the registration or permit of a motor vehicle if it poses 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.

Section 2(47) defines "transport vehicle" to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. Each one of these vehicles are separately defined in other Sub-sections of Section 2. Sub-section (28) defines "motor vehicle". In short, the definitions contained in Section 2 of the Act cover all kinds of Vehicles which ply on the roads so that they are all governed by the provisions of the Act.

Chapter II relates to licensing of drivers of motor vehicles wherein Section 129 confers power on the licensing authority to disqualify any person from holding a driving licence or revoke such licence. a few of the grounds on which this power can be exercise. are : when the motor vehicle is used or has been used in commission of a cognizable offence: When the previous conduct as driver of a motor vehicle has shown that his driving is likely to be attended with danger to the public: or when he has committed any such act which is likely to cause nuisance or danger to the public, etc. These general grounds alone are sufficient to indicate that any person who poses any threat or is likely to cause nuisance or danger to the public can be

disqualified and his licence revoked.

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 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 concerned authority 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 concerned authorities 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.

It is indisputable that heavy and medium vehicles as well as light goods vehicle are in a class by themselves in so far 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.

Chapter V relates to control of transport vehicles. Section 66 prescribes the necessity of a permit without which the vehicle cannot be used in any public place. Section 84 deals with general conditions attaching to all permits. These conditions are deemed to be incorporated in

every permit and do not require any additional or further mention thereof in each permit. Some of the significant general conditions are that the vehicle is at all times to be so maintained as to comply with the requirements of the Act and the rules made thereunder; and that the vehicle is not driven at a speed exceeding the permitted speed. Section 86 provides for cancellation and suspension of permits. The authorities are empowered to cancel or suspend the permit on the breach of any of the general conditions specified in Section 84 or any other condition when contained in the permit. Both these provisions are to be read with Section 56 which provides for certificate of fitness of transport vehicles. We may also refer to sub-section (4) of Section 86 which permits exercise of the power of cancellation and suspension of permit by the transport authority or any authority or person to whom such powers are duly delegated.

The provision to enable delegation of these powers is obviously to make it workable in case the jurisdiction of the transport authority is so large, as in the case of NCR and NCT, Delhi, so that the need is of several persons to exercise this authority.

Chapter VIII deals with the control of traffic. Section 112 pertains to limits of speed and prohibits driving of a motor vehicle or it being allowed to be driven in any public place at a speed exceeding the maximum permissible speed.

Chapter XIII relates to offences, penalties and procedure. Section 177 contains the general provisions for punishment of offences which is available in the absence of any specific provision of punishment applicable in a given case. The punishment is a maximum fine of Rs. 100/- for the first offence and for the subsequent offence is only Rs. 300/- Section 183 provides the punishment for contravention of the speed limits referred in section 112 and Section 184 provides for punishment for dangerous driving. The maximum punishment provided in all these three Sections has ceased to have any efficacy in the present case and has, therefore, hardly any deterrent effect. We are informed that some time back Transport Commissioner, Delhi had recommended the raising of the maximum punishment but even the proposal for increase in the amount of maximum fine did not find favour with the Central Government. We have no doubt that the very thoughtful proposal made by the Transport Commissioner did not receive the attention it deserved at the level of the Central Government. Taking into account the realities and the Chaotic state of road traffic in NCR and NCT, Delhi, we are surprised that any one sitting in Delhi and seeing for himself these conditions, thought it fit not to accept the recommendations made by the Transport Commissioner when in fact the need for increase of the maximum punishment required in the existing circumstances is even more.

One of the aspects which was considered at length by us was the need to find some stringent and effective measure to at least bring to a halt the danger posed to the public by the continued use of a motor vehicle which is not roadworthy or was being used/driven dangerously. We find that Section 207 takes care of that situation by conferring power on any police officer or other person authorised in this behalf to seize and detain the vehicle if he has reason to believe that the same has been or is being used in contravention of the specified provisions or so as to pose a serious threat to the public. The object of enacting such a provision clearly is that such a vehicle cannot be continued to ply once it is found that it poses danger to the public because, in addition to punishing the guilty person for the contraventions committed earlier, it is also important and

necessary to prevent any further danger to the public by letting the vehicle continue to ply on a public place.

In our opinion, the existing provisions in the Act alone are sufficient to clothe the members of the police force and the transport authorities with ample powers to control and regulate the traffic in an appropriate manner so that no vehicle being used in a public place poses any danger to the public in any form. The requirement of maintaining the motor vehicles in the manner prescribed and its use if roadworthy in a manner which does not endanger public has to be ensured by the authorities and this is the aim of these provisions enacted in the Act. As earlier stated, we reach this conclusion even without reference to the general powers available to the police officers under the police Act and the Code of Criminal Procedure.

It is also to be noted that to overcome the situation when the strength of the police force is not adequate in a given area and the utilisation of more men is required for strict enforcement of these salutary provisions, that law confers power of delegation of the authority to other persons. We are conscious of the fact that the inadequacy of personnel and other infrastructure may be constraint which has impeded strict enforcement of these provisions so far. We have no doubt that after this clarification made by us in this order, the concerned authorities would mobilize the needed support by delegation of these powers to other authorities/officers and if need be even to responsible members of the public so that the resource crunch or inadequacy of infrastructure is not an impediment in enforcement of the law and the directions given today to obtain the desired results. No doubt, it is for the Government to make a realistic assessment of the strength of police force and Transport Department force to meet the felt need in this behalf but we consider it expedient to add that to overcome that deficiency/inaction, this order is to be construed as empowering the existing authorities to delegate their authority wherever permissible under the law, to responsible persons in the manner they deem fit in the circumstances. In view of the urgency of implementation of these measures, we also make it clear that for the purpose of such delegation to responsible persons chosen even from the public, these authorities would not suffer from any constraint and this order is sufficient empowerment to them in this behalf notwithstanding any administrative orders imposing any impediment or constraint on them, if any.

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.