Paramjit Bhasin And Ors vs Union Of India And Ors on 9 November, 2005

Equivalent citations: AIR 2006 SUPREME COURT 440, 2005 (12) SCC 642, 2005 AIR SCW 6097, 2006 (1) ALL LJ 353, 2006 (1) AIR BOM R 386, 2006 (1) AIR JHAR R 434, 2006 (1) AIR KANT HCR 325, (2006) 1 PAT LJR 65, (2006) 2 RAJ LW 1501, (2006) 1 ALLMR 229 (SC), (2006) 1 WLC(SC)CVL 481, (2006) 1 JCR 303 (SC), (2005) 4 ACC 573, (2006) 1 CAL LJ 277, (2006) 33 OCR 670, (2005) 8 SCJ 420, (2006) 1 RECCIVR 190, (2006) 2 GCD 1455 (SC), (2006) 62 ALL LR 499, (2006) 1 ORISSA LR 100, (2005) 7 SUPREME 518, (2005) 9 SCALE 238, (2006) 38 ALLINDCAS 537 (SC), (2006) 1 ALL WC 158, (2005) 4 CURCC 134, (2006) 1 TAC 102, (2005) 5 ANDHLD 137, (2006) 2 ACC 16, (2005) 4 ANDH LT 459, (2005) 3 CURLR 175, (2005) 107 FACLR 204, 2006 (1) SCC (CRI) 202, (2005) 10 JT 238 (SC), 2006 (1) KCCR SN 42 (SC), (2005) 6 BOM CR 722

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Bench: Arijit Pasayat, C.K. Thakker

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           CASE NO.:
Writ Petition (civil)  136 of 2003

PETITIONER:
Paramjit Bhasin and Ors.

RESPONDENT:
Union of India and Ors.

DATE OF JUDGMENT: 09/11/2005

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
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J U D G M E N T ARIJIT PASAYAT, J.

In this petition under Article 32 of the Constitution of India, 1950 (in short the 'Constitution') the petitioners have questioned legality of certain notifications purportedly issued by various States like Punjab and Haryana, Gujarat, Madhya Pradesh, Rajasthan, Orissa, Maharashtra, Karnataka and Uttar Pradesh under the provisions of Section 200 of the Motor Vehicles Act, 1988 (in short the 'Act'). Stand of the petitioners is that by the notifications certain acts outside the ambit of Section 200 of the Act have been covered, though those were committed in clear violation of mandate of

Sections 113 and 114 read with Section 194 of the Act. The notifications have been issued which in effect condone the offence and permit its continuance though legally no such continuation could have been permitted. It is the stand of the petitioners that under the Act and the Rules made thereunder the maximum gross weight of the vehicles, more particularly, transport vehicles have been fixed. Both under the Motor Vehicles Act, 1939 (in short the 'Old Act') and the Act maximum gross weight for each axle of a truck in relation to the size and number of tyres fitted therein is prescribed. The Ministry of Surface and Transport was empowered by the Old Act and the Act to specify maximum gross weight and maximum weight of transport vehicles. Chapter VII of the Act deals with construction, equipment and maintenance of motor vehicles. Section 110 empowers the Central Government to make Rules in respect of several matters. Power has also been conferred to make Rules under Section 111. As a part of Chapter VII under the heading "Control of Traffic" the limits of weight and limitations on use have been prescribed under Section 113. Section 114 deals with the powers to have vehicle weighed. Section 194 makes driving of vehicles exceeding permissible limit an offence and consequences of contravention of the provisions contained in Sections 113, 114 and 115 have been set out. Section 200 deals with composition of certain offences under several sections including Section 194.

As noted above, stand of the petitioners is that what is permissible is composition of offences punishable under Section 194. It does not, however, permit continuance of the infraction after the compounding. Illustratively it is stated that when any person drives or allows to be driven in any public place any motor vehicle exceeding the specified weight (in terms of Section 113(3)) the excess weight has to be off-load at the cost of the transporter. But in essence notifications issued by State Government permit carriage of the excess weight after compounding.

The Union of India in its response has pointed out that when several notifications issued by various State Governments were brought to the notice of the Central Government, it resulted in anxious consideration by the officials of the Central Government. Several meetings were called and the State Governments were given suitable directions for withdrawal/modification of the notifications. Some of the States to whom notices were issued in the present case have filed counter-affidavits while others have orally submitted about action taken by them, on the basis of the discussions held at the meeting with the Central Government officials. We shall deal with the individual cases later on.

Sections 113, 114, 194 and 200 read as follows:

> "113. Limits of weight and limitations on use (1) The State Government may prescribe the conditions for the issue of permits for [transport vehicles] by the State or Regional Transport Authorities and may prohibit or restrict the use of such vehicles in any area or route.
>
> (2) Except as may be otherwise prescribed, no person shall drive or cause or allow to be driven in any public place any motor vehicle which is not fitted with pneumatic tyres.

(3) No person shall drive or cause or allow to be driven in any public place any motor vehicle or trailer

(a) the unladen weight of which exceeds the unladen weight specified in the certificate of registration of the vehicle, or

(b) the laden weight of which exceeds the gross vehicle weight specified in the certificate of registration.

(4) Where the driver of person in charge of a motor vehicle or trailer driven in contravention of sub-section (2) or clause

(a) of sub-section (3) is not the owner, a court may presume that the offence was committed with the knowledge of or under the orders of the owner of the motor vehicle or trailer.

114. Power to have vehicle weighed : (1) Any officer of the Motor Vehicles Department authorized in this behalf by the State Government shall, if he has reasons to believe that a goods vehicle or trailer is being used in contravention of Section 113 require the driver to convey the vehicle to a weighing device, if any, within a distance of ten kilometers from any point on the forward route or within a distance of twenty kilometers from the destination of the vehicle for weighment; and if on such weighment the vehicle is found to contravene in any respect the provisions of Section 113 regarding weight, he may, by order in writing, direct the driver to off-load the excess weight at his own risk and not to remove the vehicle over trailer from that place until the laden weight has been reduced or the vehicle or trailer otherwise been dealt with so that it complies with Section 113 and on receipt of such notice, the driver shall comply with such directions. (2) Where the person authorized under sub-

section (1) makes the said order in writing, he shall also endorse the relevant details of the overloading on the goods carriage permit and also intimate the fact of such endorsement to the authority which issued that permit.

194. Driving vehicle exceeding permissible weight: (1) Whoever drivers a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of Section 113 or Section 114 or Section 115 shall be punishable with minimum fine of two thousand rupees and an additional amount of one thousand rupees per tonne of excess load, together with the liability to pay charges for off-loading of the excess load.

(2) Any driver of vehicle who refuses to stop and submit his vehicle to weighing after being directed to do so by an officer authorized in this behalf under Section 114 or removes or cause to removal of the load or part of it prior to weighing shall be punishable with fine which may extend to three thousand rupees.

200. Composition of certain offences: (1) Any offence whether committed before or after the commencement of this Act punishable under Section 177, Section 178, Section 179, Section 180, Section 181, Section 182, sub- section (1) or sub-section (2) of Section 183, Section 184, Section 186, Section 189, sub-section (2) of Section 190, Section 191, Section 191, Section 194, Section 196, or Section 198, may either before or after the institution of the prosecution, be compounded by such officers or authorities and for such amount as the State Government may, by notification in official gazette, specify in this behalf.

(2) Where an offence has been compounded under sub-section (1) the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of such offence."

Section 200 does not in any way authorize the State Government to permit the excess weight to be carried when on various inspection/detection it is noticed that there is carriage of load beyond the permissible limit. It only gives an opportunity of compounding so that instead of the amounts fixed, lesser amounts can be accepted by the authorised officers. The intention of uploading the excess weight is apparent from a bare reading of the Section 194(1). The liability to pay charge for uploading of the excess load is fixed on one who drives a vehicle or causes a motor vehicle to be driven in contravention of the provisions of Sections 113, 114 and 115. It is to be noted that compounding can be done either before or after the institution of the prosecution in respect of the enumerated offences. Any notification which runs counter to the clear import of Section 194 has no validity. As rightly submitted by learned counsel for the petitioners after compounding the excess load, same cannot be permitted to be carried in the concerned vehicle. Such carriage would amount to infraction of Section 113 of the Act. The object for which the maximum permissible weights have been fixed is crystal clear. On a perusal of the provisions it is clear that the maximum gross weight (in short 'GVB') of the trucks is 16.2 tonnes which enables loading of about 9 tonnes. The load rating is primarily based on the road design, specifications of Indian roads. Rule 95(2) of the Central Motor Vehicles Rules, 1989 (in short 'the Central Rules') prescribes the principles which cover the fixation of GVB of the vehicles. The same reads as follows:-

> "Rule 95(2): The maximum gross vehicle weight and the maximum safe axle weight of each axle of a vehicle shall, having regard to the size, nature and number of types and maximum weight permitted to be carries by the types as per sub-rule (1), be i. Vehicle rating of the gross vehicle weight and axel weight respectively as duly certified by the testing agencies for compliance of the rule 126, or ii. the maximum vehicle weight and maximum safe axle weight of each vehicle respectively as notified by the Central Government, or iii. the maximum total load permitted to be carried by the tyre as specified in sub-rule (1) for the size and the number of the tyres fitted on the axles (s) of the vehicle.
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> Whichever is less:
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> Provided that the maximum gross vehicle weight in respect of all vehicles, including multi axle vehicles not be more than the sum total of all the maximum safe axle weights put together."

The Government of India had also fixed GVB for different categories of vehicles. Reference may be made to notifications dated 18th October, 1996 (no. SO728(E) and 26th May, 2000 (no. SO517E) issued by the Ministry of Surface Transport (Department of Road Transport and Highways) (Transport Wing).

It is apparent from the reply filed by the Union of India that overloading causes significant damage to the road surface and also cause pollution through auto emissions. Even overloaded vehicles are safety hazards not only for themselves, but also for other road users. It is pointed out that since the responsibility of enforcing of the provisions of the Act and the Central Rules is that of the State Government they have been advised by the Central Government to scrupulously enforce the provisions of the Act and the Central Rules. It appears that the matter was discussed at the 30th meeting of the Transport Development Council where the following decisions were taken:-

> "(i) Strict enforcement of the provisions relating to overloading under the Motor Vehicles Act, 1988 and Central Motor Vehicles Rules, 1989.
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> (ii) The State Governments are not to issue special cards/passes which legalize overloading.
>
> (iii) .....
>
> (iv).....
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> (v) Non-renewal of registration and denial of permit to habitual offenders of overloading.

A copy of the minutes of the TDC meeting is placed as Annexure R-5."

Complaints were received that several States were issuing green cards/golden passes purportedly on the basis of the power of composition under Section 202. After examining the matter the Central Government requested the respective States to discontinue such cards/passes.

Learned counsel appearing for the States submitted that the system of issuing cards/passes has been discontinued. However, it was submitted that offloading excess weight from large number of vehicles creates traffic problems and several other practical problems which according to them need to be addressed.

The State of Gujarat has stated that though a system of special token was introduced, the same has been withdrawn after the discussion with the Central Government officers. It has been so stated in the counter-affidavit filed. Learned counsel for the State of Haryana has stated that though the counter affidavit has not been filed the notification which was earlier issued has been withdrawn. Learned counsel for the State of Orissa submitted that though there was earlier a scheme in operation the same has been withdrawn after discussion with Central Government officials on 13.10.2003. Learned counsel for the State of Maharashtra submitted that notification dated

24.6.1996 has been issued and at serial no.19 the limits of compounding charges have been indicated. It is, however, fairly accepted that the object of fixing the maximum weights has not been specifically taken care of. It was assured that proper notification keeping in view the object of Sections 113 and 114 shall be issued shortly. Similar is the stand of learned counsel for the State of Madhya Pradesh. Learned counsel for the State of U.P. submitted in the counter- affidavit filed by them the notification which was issued earlier has been withdrawn by notification dated 1st December, 2003. Learned counsel for the State of Rajasthan has candidly admitted that the notification issued has not been withdrawn, but it shall be done forthwith. Similar is the position with the State of Karnataka.

It is to be noted that the constitutional validity of Section 194 and 200 were challenged. It was noted in P. Ratnakar Rao and others V. Govt. Of A.P. and others (1996 (5) SCC 359) that the discretion given under Section 200(1) to the State Government to prescribe maximum rates for compounding the offence is not unguided, uncanalised and arbitrary. It was, inter alia, held as follows:

> "The contention raised before the High Court and repeated before us by Shri Rajeev Dhavan, the learned Senior Counsel for the petitioners is that the discretion given in Section 200(1) of the Act is unguided, uncanalised and arbitrary. Until an accused is convicted under Section 194, the right to levy penalty thereunder would not arise. When discretion is given to the court for compounding of the offence for the amount mentioned under Section 200, it cannot be stratified by specified amount. It would, therefore, be clear that the exercise of power to prescribe maximum rates for compounding the offence is illegal, arbitrary and violative of Article 14 of the Constitution. We find no force in the contention. For violation of Sections 113 to 115, Section 194 accords penal sanction and on conviction for violation thereof, the section sanctions punishment with fine as has been enumerated hereinbefore. The section would give guidance to the State Government as a delegate under the statute to specify the amount for compounding the offences enumerated under sub-section (1) of Section
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> 200. It is not mandatory that the authorised officer would always compound the offence. It is conditional upon the willingness of the accused to have the offences compounded. It may also be done before the institution of the prosecution case. In the event of the petitioner's willing to have the offence compounded, the authorised officer gets jurisdiction and authority to compound the offence and call upon the accused to pay the same. On compliance thereof, the proceedings, if already instituted, would be closed or no further proceedings shall be initiated. It is a matter of volition or willingness on the part of the accused either to accept compounding of the offence or to face the prosecution in the appropriate court. As regards canalisation and prescription of the amount of fine for the offences committed, Section 194, the penal and charging section prescribes the maximum outer limit within which the compounding fee would be prescribed. The discretion exercised by the delegated legislation, i.e., the executive is controlled by the specification in the Act. It is not necessary that Section 200 itself should contain the details in that

> behalf. So long as the compounding fee does not exceed the fine prescribed by the penal section, the same cannot be declared to be either exorbitant or irrational or bereft of guidance."

It is indisputable that the power of compounding vests with the State Government, but the notification issued in that regard cannot authorize continuation of the offence which is permitted to be compounded by payments of the amounts fixed. If permitted to be continued, it would amount to fresh commission of the offence for which the compounding was done. The State Governments which have not yet withdrawn the notifications shall do it forthwith. So far as the practical difficulties highlighted are concerned, it is for the State Governments concerned to make necessary arrangements to ensure that the difficulties highlighted can be suitably remedied by the State Government themselves without in any way overstepping statutory prescriptions.

The writ petition is accordingly disposed of with no order as to costs.