

Chairman, R.S.R.T.C. & Anr vs Santosh & Ors on 10 May, 2013

Equivalent citations: AIR 2013 SUPREME COURT 2150, 2013 (7) SCC 94, 2013 AIR SCW 2791, 2013 (3) AJR 160, (2013) 127 ALLINDCAS 133 (SC), 2013 (3) SCC (CRI) 37, 2013 (7) SCALE 230, (2013) 4 CIVLJ 781, (2013) 2 CLR 67 (SC), (2013) 3 JCR 91 (SC), (2013) 4 CPR 616, 2013 (2) CLR 67, 2013 (127) ALLINDCAS 133, AIR 2013 SC (CIVIL) 1906, (2013) 2 WLC(SC)CVL 171, (2013) 2 ACC 501, (2013) 3 RAJ LW 2114, (2013) 3 ACJ 1906, (2013) 4 ALL WC 4058, (2013) 6 MAH LJ 97, (2013) 4 MPLJ 292, (2013) 4 PUN LR 3, (2013) 3 TAC 19, (2013) 7 SCALE 230, (2013) 99 ALL LR 475

Bench: Fakkir Mohamed Ibrahim Kalifulla, B.S. Chauhan

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) No.3265 of 2012

Chairman, Rajasthan State Road Transport
...Petitioners
Corporation & Ors.

Versus

Smt. Santosh & Ors.

...Respondents

O R D E R

1. Originally this petition had been filed challenging the judgment and order of the Rajasthan High Court dated 21.9.2011 passed in S.B. Civil Misc. Appeal No. 480 of 2001, wherein the complete liability of providing compensation in a vehicular accident had been fixed upon the appellant-Rajasthan State Road Transport Corporation (hereinafter referred to as the 'RSRTC'), while unfastening the liability of the driver and the owner of the vehicle, known as 'Jugaad', under the provisions of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act').

2. At the time of hearing the petition, this court vide order dated 6.2.2012 did not consider it proper to examine the issue in respect of compensation. However, the question was raised by Shri Imtiaz Ahmed, learned counsel appearing for the RSRTC that this court must examine whether 'Jugaad' is a vehicle under the Act, and in case, it is a motor vehicle under Section 2(28) of the Act, whether such 'Jugaad' is required to be insured and registered before it is permitted to ply on the road and whether the driver of 'Jugaad' must compulsorily have a driving licence. As such important issues have been raised by Shri Imtiaz Ahmed, we had requested Shri H.P. Raval, learned ASG to assist the court, after taking instructions from the Road Transport Ministry of the Central Government about the status of 'Jugaad' under the Act. Shri Raval responded to the aforesaid queries on 13.4.2012 and submitted that it is a motor vehicle as defined under Section 2(28) of the Act, and the Ministry of Shipping, Road Transport and Highways had issued a circular dated 26.7.2007 issuing instructions to all State transport authorities clarifying that 'Jugaad' is a vehicle under Section 2(28) of the Act and all the States are under a legal obligation to enforce the same. Therefore, no person should be permitted to ply a 'Jugaad' as it violates all the provisions of the Act. It must have a registration and insurance and the driver must have a valid driving license and in case of an accident etc, the liability under the provisions of the Act, may be properly determined. However, Shri Raval has raised a grievance that in spite of issuance of such a circular, most of the States have not enforced the terms of the said circular issued by the Central Government.

3. Considering the aforesaid grievance raised by Shri Raval, this court impleaded the Transport Secretary/Commissioner of all the States as party respondents and asked them to submit their response. While some of the States have submitted that it is not a vehicle within the meaning of the provisions of Section 2(28) of the Act. The State of Karnataka has submitted the vehicle like 'Jugaad' was not in existence in the State.

4. It has further been pointed out by learned counsel for the parties that enforcement of the provisions of the Act and the rules framed under it, come within the jurisdiction of the State Governments. Therefore, they must be directed to ensure strict compliance of the said provisions of the Act. It has also been pointed out by Shri Siddharth Luthra, learned ASG that a letter dated 19.7.2012 was sent by the Director (RT) of the Ministry of Road Transport & Highways, Government of India, to all the State Authorities to ensure compliance of the statutory provisions of the Act and the rules.

5. Shri Manish Singhvi, learned senior counsel appearing for the State of Rajasthan has submitted that the government of Rajasthan has examined the matter and decided to prohibit the plying of "Jugaad" on the roads completely. Such a vehicle cannot be used for any commercial purpose, without being registered and duly insured and in compliance with the other statutory requirements. However, the State Government carved out an exception that farmers/poor villagers may be permitted to use the same for their agricultural purposes as an interim measure till the rules are framed in this regard. It has further been submitted that in case 'Jugaads' are found plying on the roads, they shall be impounded and will be dealt with strictly in accordance with law. A similar stand has been taken by the majority of the States.

6. An application has been filed by Rashtriya Kisan Morcha, for impleadment/intervention which is allowed. The Morcha raised a grievance that in case plying of the 'Jugaad' is prohibited completely, it will create a serious problem for the farmers, as seizure/impounding of "Jugaad" would have penal consequences. The 'Jugaad' is nothing, but an improved version of a bullock cart which has been used for centuries in the villages. The farmer communities should not be restrained from using the improved carts/jugaad in the villages to and from houses to the farms and for bringing the agricultural produces from their agricultural lands.

7. Some of the lawyers have raised the issue that issuing any kind of direction by this Court in these regards would amount to legislation which is not permissible in law. Thus, they have suggested that instead of issuing the directions, the Central Government and the State authorities be directed to frame a policy, amend the rules specifically and enforce the same. However, other lawyers have opposed this view and submitted that the issue involved herein is restricted only with enforcement of law and not with legislation. As the "Jugaad" is a vehicle within the meaning of Section 2(28) of the Act.

8. We have considered the rival submissions made by learned counsel for the parties and perused the record.

So far as the legislation by the court is concerned, as a corollary to the doctrine of separation of powers, a judge merely applies the law that it gets from the legislature. Consequently, the Anglo-Saxon legal tradition has insisted that the judge only reflects the law regardless of the anticipated consequences, considerations of fairness or public policy. He is simply not authorised to legislate.

9. In kindred spirit, in *M. Nagaraj & Ors. v. Union of India & Ors.*, AIR 2007 SC 71, Justice Kapadia, writing for the Constitutional Bench, observed:

"The Constitution is not an ephemeral legal document embodying a set of legal rules for the passing hour. It sets out principles for an expanding future and is intended to endure for ages to come and consequently to be adopted to the various crisis of human affairs. . . . A constitutional provision must be construed not in a narrow and constricted sense but in a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that a constitutional provision does not get fossilized but remains flexible enough to meet the newly emerging problems and challenges."

10. Accordingly, in *State of U.P. & Ors. v. Jeet S. Bisht & Anr.*, (2007) 6 SCC 586, even though the matter was referred to another Bench, owing to a split decision—Justice S.B. Sinha aptly described the modern understanding of the separation of powers thus:

"Separation of power in one sense is a limit on active jurisdiction of each organ. But it has another deeper and more relevant purpose: to act as check and balance over the activities of other organs. Thereby the active jurisdiction of the organ is not

challenged; nevertheless there are methods of prodding to communicate the institution of its excesses and shortfall in duty. . . .Separation of power doctrine has been reinvented in modern times. . . . The modern view, which is today gathering momentum in Constitutional Courts world over, is not only to demarcate the realm of functioning in a negative sense, but also to define the minimum content of the demarcated realm of functioning.”

11. In *Dayaram v. Sudhir Batham & Ors.*, (2012) 1 SCC 333, this Court doubted the competence of this Court to issue such directions, which were allegedly to be legislative in nature. Therefore, the matter was referred to a larger bench, and such larger bench held, that in exercise of the powers conferred upon it by Article 32 r/w Article 142 of the Constitution, the directions issued by this Court were valid and laudable, as the same had been made to fill the vacuum that existed in the absence of any legislation, to ensure that only genuine SC/ST and OBC candidates would be able to secure the benefits of certificates issued, and that bogus candidates would be kept out. Simply filling up an existing vacuum till the legislature chooses to make appropriate laws, does not amount to taking over the functions of the legislature.

12. In its activist streak, this Court has also imparted new vigour to the process of constitutional interpretation. For instance, this Court has insightfully identified Article 32 as the constitutional provision that provides for the enforcement of fundamental rights in areas of legislative vacuum. Not only has it held that fundamental rights are limitations upon the State power, but the right to constitutional remedies is itself a fundamental right enshrined in Article 32 of the Constitution, and in the case of an infringement of a fundamental right by the State, an aggrieved party can approach this Court for a remedy.

13. In *Vishaka & Ors. v. State of Rajasthan & Ors.*, AIR 1997 SC 3011, this Court held:

“In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, we lay down the guidelines and norms specified hereinafter for due observance at all workplaces or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution.”

14. Providing further reinforcement to the Article 32 jurisprudence, in *Vineet Narain v. Union of India*, AIR 1998 SC 889, this Court noted that the issuance of guidelines and directions, in the exercise of the powers under Articles 32 and 142, has become an integral part of our constitutional jurisprudence. It also pointed out that such an exercise of powers was absolutely necessary to fill the void in areas with legislative vacuum. In addition, the Court noted:

“As pointed out in Vishaka (supra), it is the duty of the executive to fill the vacuum by executive orders because its field is co-terminus with that the legislature, and where there is inaction even by the executive for whatever reason, the judiciary must step in, in exercise of its constitutional obligations under the aforesaid provisions to provide absolution till such time as the legislature acts to perform its role by enacting proper legislation to cover the field.

On this basis, we now proceed to give the directions enumerated hereafter for rigid compliance till such time as the legislature steps in to substitute them by proper legislation. These directions made under Article 32 read with Article 142 to implement the rule of law wherein the concept of equality enshrined in Article 14 is embedded, have the force of law under Article 141 and by virtue of Article 144 it is the duty of all authorities, civil and judicial, in the territory of India to act in aid of this Court.” (See also: L.K. Pandey v. Union of India & Anr., AIR 1986 SC 272; D.K. Basu v. State of West Bengal, AIR 1997 SC 610; Ramamurthy v. State of Karnataka, AIR 1997 SC 1739; Supreme Court Bar Association v. Union of India, AIR 1998 SC 1895; and Kalyan Chandra Sarkar v. Rajesh Ranjan, AIR 2005 SC 972).

15. Thus, the aforesaid cases clearly reveal that the courts in India have not violated the mandatory constitutional requirement, rather they have only issued certain directions to meet the exigencies. Some of them are admittedly legislative in nature, but the same have been issued only to fill up the existing vacuum, till the legislature enacts a particular law to deal with the situation. In view of the same, it is permissible to issue directions if the law does not provide a solution of a problem, as an interim measure, till the proper law is enacted by the legislature.

We may also issue necessary directions as an interim measure, if the need so arisen.

16. The Act replaced the Motor Vehicles Act, 1939, in view of the changes in transport technology, pattern of passenger and freight movements, taking into consideration the road safety standards, pollution control measures, standards in transportation of hazardous and explosive materials.

17. In M.K. Kunhimohammed v. P.A. Ahmedkutty & Ors., AIR 1987 SC 2158, this Court has made certain suggestions to raise the limit of compensation payable as a result of vehicular accidents in respect of death and permanent disablement in the event of their being no proof of fault on the part of the person involved in the accident and also in hit and run motor accidents. In this case, the court also suggested the removal of certain disparities in the liability of the insurer to pay compensation. The said recommendations/suggestions were also taken into consideration and incorporated in the Act.

18. The object of bringing and repealing the Act 1939 had been to rationalise certain definitions with additions of certain new definitions of new types of vehicles, strict procedures relating to grant of driving licenses and period of validity thereof; standards of anti-pollution control devices; provisions for issuance of fitness certificates of vehicles and provision for enhancing compensation in case of no fault liability and in hit and run vehicular accidents and also maintenance of State

register for driving licenses and vehicles registration.

19. Section 2(2) of the Act defines articulated vehicle which means a motor vehicle to which a semi-trailer is attached; Section 2(34) defines public place; Section 2(44) defines 'tractor' as a motor vehicle which is not itself constructed to carry any load; Section 2(46) defines 'trailer' which means any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle.

Section 3 of the Act provides for necessity for driving license; Section 5 provides for responsibility of owners of the vehicle for contravention of Sections 3 and 4; Section 6 provides for restrictions on the holding of driving license; Section 56 provides for compulsion for having certificate of fitness for transport vehicles; Section 59 empowers the State to fix the age limit of the vehicles; Section 66 provides for necessity for permits to ply any vehicle for any commercial purpose; Section 67 empowers the State to control road transport; Section 112 provides for limits of speed; Sections 133 and 134 imposes a duty on the owners and the drivers of the vehicles in case of accident and injury to a person; Section 146 provides that no person shall use any vehicle at a public place unless the vehicle is insured. In addition thereto, the Motor Vehicle Taxation Act provides for imposition of passenger tax and road tax etc.

20. Section 2(28) of the Act defines "Motor Vehicle" as under:

"Motor Vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty five cubic centimeters." (Emphasis added) Thus, any vehicle which is mechanically propelled and adapted for use upon roads and does not fall within the exceptions provided therein, is a Motor Vehicle within the meaning of Section 2(28) of the Act.

21. In *Natwar Parikh & Co. Ltd. v. State of Karnataka & Ors.*, AIR 2005 SC 3428, this Court dealt with the issue while dealing with "Tractor" and held as under:

"Under Section 61 of the 1988 Act, which comes within Chapter IV dealing with registration of motor vehicles, registration of trailers is made compulsory. Under Section 61(2), the registration mark assigned to a trailer is required to be displaced on the side of the drawing vehicle. In the present case, we are not concerned with tractors in the conventional sense. Even the legislature has used the word "drawing vehicle"

in place of tractors. Under Section 61(3), it is provided that no person shall drive a motor vehicle to which a trailer is attached unless the registration mark of the motor

vehicle is displayed on the trailer. Similarly, under Section 66 in Chapter V which refers to control of transport vehicles, no owner of a motor vehicle can use the vehicle as a transport vehicle carrying passengers or goods without a permit. Under Section 66(2), the holder of a goods carriage permit may use the vehicle for drawing any trailer. Therefore, under the M.V. Act, 1988, the Parliament has kept in mind the existence of a vehicle classifiable as "tractor-trailer"... Section 2(28) is a comprehensive definition of the words "motor vehicle". Although, a "trailer" is separately defined under Section 2(46) to mean any vehicle drawn or intended to be drawn by motor vehicle, it is still included into the definition of the words "motor vehicle" under Section 2(28). Similarly, the word "tractor" is defined in Section 2(44) to mean a motor vehicle which is not itself constructed to carry any load. Therefore, the words "motor vehicle" have been defined in the comprehensive sense by the legislature. Therefore, we have to read the words "motor vehicle" in the broadest possible sense keeping in mind that the Act has been enacted in order to keep control over motor vehicles, transport vehicles etc. A combined reading of the definitions under Section 2, shows that the definition of "motor vehicle" includes any mechanically propelled vehicle apt for use upon roads irrespective of the source of power and it includes a trailer. Therefore, even though a trailer is drawn by a motor vehicle, it by itself being a motor vehicle, the tractor- trailer would constitute a "goods carriage" under Section 2(14) and consequently, a "transport vehicle" under Section 2(47). The test to be applied in such a case is whether the vehicle is proposed to be used for transporting goods from one place to another. When a vehicle is so altered or prepared that it becomes apt for use for transporting goods, it can be stated that it is adapted for the carriage of goods. Applying the above test, the tractor- trailer falls under Section 2(14) as a "goods carriage" and consequently, it falls under the definition of "transport vehicle" under Section 2(47) of the M.V. Act, 1988."

22. The Tractor is a machine run by diesel or petrol. It is a self- propelled vehicle for hauling other vehicles. It is used for different purposes. It is also used for agricultural purposes, along with other implements; such as harrows, ploughs, tillers, blade-terracer, seed- drills etc. It is a self-propelled vehicle capable of pulling alone as defined under the definition of Motor Vehicles. It does not fall within any of the exclusions as defined under the Act. Thus, it is a Motor Vehicle in terms of the definition under Section 2(28) of the Act, which definition has been adopted by the Act. So, even without referring to the definition of the Tractor, if the definition of the Motor Vehicle as given under the Act is strictly construed, even then the Tractor is a Motor Vehicle as defined under the Act. The Tractor is not only used for agricultural purposes but is also used for other purposes as stated above. Therefore, it cannot be said that the Tractor in its popular meaning is only used for agricultural purposes and, thus, is not a Motor Vehicle as defined under the Act. The Tractor is a Motor Vehicle is also proved by this definition under Section 2(44) of the Act. Different types of Motor Vehicles have been defined under the provisions of the Act, and the Tractor is one of them. Thus, considering the question from any angle, the Tractor is a Motor Vehicle as defined under the Act.

23. Section 3 of the Act casts an obligation on a driver to hold an effective driving license for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licenses for various categories of vehicles mentioned in sub-section (2) of the said Section. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10. They are 'goods carriage', 'heavy goods vehicle', 'heavy passenger motor vehicle', 'invalid carriage', 'light motor vehicle', 'maxi-cab', 'medium goods vehicle', 'medium passenger motor vehicle', 'motor-cab', 'motorcycle', 'omnibus', 'private service vehicle', 'semi- trailer', 'tourist vehicle', 'tractor', 'trailer' and 'transport vehicle'.

24. The Allahabad High Court in Writ Tax No. 573 of 2011- Kishun Ram v. State of U.P. & Ors., held that 'Jugaad' was squarely covered under the definition of motor vehicles as specified under Section 2(28) of the Act, since it was mechanically propelled adapted for use on road and hence other relevant provisions of the Act/rules were applicable. The Court further directed that as the said vehicle did not comply with the provisions of the Act/Rules, the seizure effected by the U.P. authorities could not be interfered with by the court.

25. Further, in Writ Petition No. 6611(M/B) of 2005 - Avnish Kumar v. State of U.P. & Ors. decided on 23.2.2011, the Allahabad High Court has issued directions to the statutory authorities to ensure compliance of the provisions of the Act and the rules, and to prevent the illegal plying of such vehicles, the statutory Authorities must take effective measures in conformity with the statutory rules.

26. Learned standing counsel appearing for the State of Haryana has submitted that even the Punjab and Haryana High Court while delivering the judgment as early as 29.3.1995 had directed the State authorities to ensure that no 'Jugaad' shall be permitted to ply in the State of Haryana under any circumstance. The relevant part of the said judgment reads as under:

“An interim direction is issued that no such Jugars shall be permitted to ply in the State of Haryana under any circumstance. All such Jugars being plied shall be seized by the concerned law enforcing agencies of the State. Since the aforesaid vehicles are being plied against the provisions of law and these vehicles are not recognised under the Motor Vehicles Act, the same cannot be released in favour of a person, who is not even admitted to be the registered owner of such vehicle. Despite directions, we have not been intimated as to how such unauthorised vehicles were ordered to be released and by whom. Prima facie, it appears to us that the aforesaid Jugars could not be released either by the law enforcing agencies or by the Magistrates.” (Emphasis added)

27. As such 'Jugaads' were being plied against the provisions of the Act and the rules framed under it, and in case any 'Jugaad' is found on the road and is seized by the police authorities, it could not be released in favour of its owner either by the law enforcing agency or even by the Magistrate. Plying of such vehicles was in utter disregard/violation of the provisions of the Act and the rules framed thereunder.

28. As to whether a particular vehicle can be defined as motor vehicle in terms of Section 2(28) of the Act, is to be determined on the facts of each case taking into consideration the use of the vehicle and its suitability for being used upon the road. Once it is found to be suitable for being used on the road, it is immaterial whether it runs on the public road or private road, for the reason, that actual user for a particular purpose, is no criteria to decide the name. Definition of motor vehicle takes within its ambit, a dumper and tractor. Tractor which is used basically for agricultural purpose and a dumper is used in the factory premises, can suitable be adapted for being used on the road, therefore, they will meet the requirement of definition of motor vehicle under Section 2(28) of the Act. The word 'only' used in Section 2(28) of the Act clearly shows that the exemption is confined only to those kinds of vehicles which are exclusively being used in a factory or in any closed premises. Thus, a vehicle which is not adapted for use upon the road, is only to be excluded.

29. However, Shri S.C. Maheshwari, learned senior counsel appearing for the applicant could not satisfactorily reply as under what circumstances, if the tractor which is exclusively used for agricultural purpose, does require registration and insurance and driver also require a driving license, why the same provisions would not apply in case of 'Jugaad'.

30. 'Jugaad' does not require the permit, insurance or a driving licence for its driver. There is no specification for its body. It does not require fitness certificate. However, passenger vehicle has a upper limit of number of passengers it can carry. The same remains the position for the goods vehicle as there is a specification for the maximum load it can carry. The 'Jugaad' is not liable to pay any passenger or road tax like other vehicles.

31. In view of the above, as the 'Jugaad' is covered in the definition of the motor vehicle under Section 2(28) of the Act, the statutory authorities cannot escape from their duty to enforce the law and restrain the plying of 'Jugaad'. The statutory authorities must ensure that 'Jugaad' can be plied only after meeting the requirements of the Act. The same has become a menace to public safety as they are causing a very large number of accidents. 'Jugaads' are not insured and the owners of the 'Jugaad' generally do not have the financial capacity to pay compensation to persons who suffer disablement and to dependents of those, who lose life. Thus, considering the gravity of the circumstances, the statutory authorities must give strict adherence to the circular referred to hereinabove by the Central Government.

32. However, we clarify that it is open to the statutory authorities to make exemptions by issuing a notification/circular specifically if such a vehicle is exclusively used for agricultural purposes but for that sufficient specifications have to be provided so that it cannot be used for commercial purposes.

The matter is closed now.

.....J. (Dr. B.S. CHAUHAN)
.....J. (FAKKIR MOHAMED IBRAHIM KALIFULLA) NEW
DELHI, May 10, 2013.
