Ajay Canu vs Union Of India & Ors on 29 August, 1988

Equivalent citations: 1988 AIR 2027, 1988 SCR SUPL. (2) 632, AIR 1988 SUPREME COURT 2027, 1988 (4) SCC 156, (1988) 3 JT 523 (SC), (1988) 2 APLJ 58, (1988) 2 ACC 554, (1988) 2 KER LT 68

Author: M.M. Dutt

Bench: M.M. Dutt, E.S. Venkataramiah

PETITIONER:
AJAY CANU

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT29/08/1988

BENCH:
DUTT, M.M. (J)
BENCH:
DUTT, M.M. (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1988 AIR 2027 1988 SCR Supl. (2) 632
1988 SCC (4) 156 JT 1988 (3) 523
1988 SCALE (2)556

ACT:
Motor Vehicle Act 1939, Sections 85A and 91.
%
A.P. Motor Vehicles Rules l964, Rule 498-A & Commissioner of Police, Hyderabad Notification dated July 8, l956.
Hyderabad City Policy Act. Section 21(1) and Commissioner's Notification dated July 8, 1956.
Crash helmets-Wearing of-By drivers of motor cycles and and scooters-Validity and necessity of.
Constitution of India 1950. Part II and Articles 19 (1)(d),(5) and 21.
Any act aimed at doing public good-Not violaive of any fundamental right-A.P. Motor Vehicles Rules 1964,Rule 498-A-Crash helmets-Wearing of-Statutory rule being for public good-Restriction if any put by rule is reasonable.

HEADNOTE:

The Commissioner of Police, Hyderabad and Secunderabad, in exercise of his powers under Section 21(1) of the Hyderabad City Police Act, issued a Notification dated July 8,1986 directing that in order to ensure adequate safety of two-wheeler riders, wearing of protective helmets is made compulsory for riders of motor-cycles and scooters, as envisaged by rule 498-A of the Andhra Pradesh Motor Vehicles Rules, 1964 with effect from August 1,1986.

The petitioner, a student having a permanent driving licence for a two-wheeler vehicle, filed a writ petition in the High Court challenging the validity of the aforesaid Notification as also rule 499-A of the Andhra Pradesh Motor Vehicles Rules, l964 on the ground that the same was violative of the fundamental rights guaranteed to the petitioner under Article 13(1)(d) and Article 21 of the Constitution. It was contended by the petitioner that as Section 85A of the Motor Vehicles Act, 1939 was yet to be enforced, rule 498-A was illegaI and ultra vires the Motor

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Vehicles Act, 1939. It was further contended that the wearing of helmets preventing the free flow of breeze to the head result in giddiness and affect sight and hearing. The petitioner also filed an affidavit of one Dr. Prabhakar Korada to support the contention that continuous wearing of helmets can raise the pressure leading to irritation, confusion, headaches, giddiness and falling of hair etc.

The High Court overruled the contentions of the petitioner and upheld the validity of the notification and the provisions of rule 498-A of the A.P. Motor Vehicles Rules. The High Court also relied upon the medical opinions of some Neuro-Surgeons of repute, and came to the finding that wearing of helmets would not cause any ailment whatsoever as contended by the petitioner. The writ petition was accordingly dismissed.

The petitioner appealed to this Court by Special Leave. It was contended on his behalf that in view of the cancellation of the notification dated May 14, 1988, Section 85-A had not come into force and as such, there was no provision in the Motor Vehicles Act providing for wearing of protective headgear or helmet by the driver of a motor-cycle of any class while driving the same. It was also submitted that in the absence of any specific provision in the Act, rule 498-A was ultra vires the Act itself and consequently, the notification issued under Section 21(1) of the Hyderabad City Police Act was illegal and should he struck down.

As there was some doubt whether Section 85-A had come into force by virtue of the notification dated May-l4, I988 and whether the Central Government had the power to cancel the said notification by their subsequent notification dated October 31, l980. the Court issued notice to the Attorney

General of India, who appeared and relying on the decision in Om Prakash and Others v. Union of India and Others, AIR l97l SC 771 submitted that even assuming that rule 498-A does not come within the purview of clause (i) of sub-section (2) of section 91, still the State Government could frame such a rule under sub-section (1) of section 91 and that the clauses under sub-section (2) of section 91 are only illustrative and not exhaustive.

Dismissing the special leave petition,

HELD: 1. Rule 498-A has been framed by the State Government by virtue of its rule making power under clause (i) of sub-section (2) of section 19 of the purpose of protecting the head from being injured in case of an accident.[l638E]

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2. It is common knowledge that head of the driver of a two- wheeler vehicle is the main target of an accident and often it is fatal to the driver. By insisting on the wearing of a helmet by the driver driving a two-wheeler vehicle, rule 498-A intends to protect the head from being totally injured in the case of an accident. Clause (i) is wide enough to include the driver of a motor cycle or a scooter. The expression "any person"in clause (i) also includes within it a driver of a two-wheeler vehicle. [638E-F]

3. Clause (i) is also intended for the prevention of danger, injury or annoyance to the public or any person including the driver of a two-wheeler vehicle. [638G]

4. Rule 498-A is, therefore, quite legal and valid, in spite of the absence of any provision like section 85-A. [638H]

5. There can be no doubt that rule 498-A is framed for the benefit, welfare and the safe journey by a person in a two-wheeler vehicle. It aims at prevention of any accident being fatal to the driver of a two-wheeler vehicle causing annoyance to the public and obstruction to the free flow of traffic for the time being.[639G]

6. Even assuming that rule 498-A is not clause (i) of sub-section (2), it is quite immaterial inasmuch as such a rule can be framed in exercise of the general power under sub-section (1) for the purpose of carrying into effect Chapter V1 relating to control of traffic. [639D]

7. There is hardly any fundamental right against any act aimed at doing some public good. [640A]

8. Even assuming that rule 498-A has put a restriction on the exercise of a fundamental right under Article 19 (1)(b), such restriction being in the interest of the general public, is a reasonable restriction protected by Article 19(5) of the Constitution. [64OB]

9. As rule 498-A has been framed in accordance with procedure established by law, that is, in exercise of the ulre making power conferred on the State Government under Section 19 of the Motor Vehicles Act, the question of infringement of Article 21 of the Constitution does not

arise [640B]

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10. Rule 498-A helps the driver or a two wheeler to drive the vehicle in exercise of his freedom of movement without being subjected to a constant apprehension of a fatal head injury, if any accident takes place.[639H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (C) No. 1252 of 1988.

From the Judgment and Order dated 10.8.87 of the Andhra Pradesh High Court in W.P. -10800187.

P.A. Choudhary, TVSN Chari, C. Badrinath and Mrs. Sunitha Rao for the Petitioner.

K.Parasaran, Attorney General G. Chandra and A. Sub- hashini for the Respondents.

The Judgment of the Court was delivered by Dutt, J. The only question that is involved in this petition relates to the validity of rule 498-A of Andhra Pradesh Motor Vehicles Rules, 1964 and a notification dated July 8, 1986 issued by the respondent No. 3, the Commissioner of Police, Hyderabad and Secunderabad, In exercise of his Powers under section 21(1.) of the Hyderabad City Police Act, inter alia, directing that in order to ensure adequate safety of two-wheeler riders, wearing of protective helmets is made compulsory for riders of motor- cycles and scooters, as envisaged by rule 498-A, with effect from August 1, 1986.

Rule 498-A provides as follows:

> "Rule 4983-A. Crash helmets to be worn No person shall drive a motor-cycle or a scooter in a public place unless such driver wears a crash helmet:
>
> Provided that nothing in this rule shall apply to a person professing Sikh religion and wears a turban. " The petitioner, who is a student and has a permanent drivined licence for a two-wheeler vehicle, filed a writ petition in the Andhra Pradesh High Court challenging the validity of the said notification as also of rule 498-A on the ground that the same was violative of the rights of the petitioner as guaranteed under Article 19(l)(d) and Article PG NO 636 21 of the Constitution of India. It was contended by the petitioner before the High Court that as section 85-A of the Motor Vehicles Act, 1939 was yet to be enforced, rule 498-A was illegal and ultra vires the Motor Vehicles Act. It was also contended that the wearing of helmets preventing the free flow of breeze to the head would result in giddiness and affect sight and hearing.

The petitioner filed an affidavit of one Dr. Prabhakar Korada wherein it has been stated inter alia that continuous wearing of helmets can raise the pressure leading to irritation, confusion, headaches, giddiness, falling of hair etc. The High Court has overruled the contentions of the

petitioner that the said notification or the provision of rule 498-A of the Andhra Pradesh Motor Vehicles rules is violative of Article 19(1)(d) or Article 21 of the Constitution or that it is illegal or ultra vires the provisions of the Motor Vehicles Act,1939. The High Court also relied upon medical opinions of some Neuro-Surgeons of repute and came to the finding that wearing of helmets would not cause any ailment whatsoever as contended by the petitioner. In that view of the matter, the High Court dismissed the writ petition upholding the validity of the notification and the provision of rule 498-A of Andhra Pradesh Motor Vehicle Rules. Hence this petition for special leave.

At this stage, it may be noticed that by motor Vehicles (Amendment) Act XXVII of 1977 a new section 85-A was inserted in the Motor Vehicles ACt, 1939, hereinafter referred to as 'the Act' Section 85-A provides as follow:

> "S. 85-A Every person driving or riding (otherwise than in a side car) on a motor cycle of any class shall, while in a public place. wear a protective headgear of such description as may be specified by the Central Government by rules made by it in this behalf, and different descriptions of headgears may be specified in such rules in relation to deferent circumstances or different class of motor cycles:
>
> Provided that the provisions of this section shall not apply to a person who is a Sikh, if he is,while driving or riding on the motor cycle, in a public place, wearing a turban:
>
> Provided further that the Central Government may, by such rules, provide for such exceptions as it may think fit."

Sub-section (2) of section 1 of Act XXVII of 1977 provides that the Amendment Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of the Amendment Act. In view of sub-section (2) of section 1 of Act XXVll of 1977, the Central Government by a notification dated May 14, 1980 fixed November 1 1980 as the date on which the provision of section 85-A would come into force. But, by another notification dated October 3 1, 1980, the earlier notification dated May 14, 1480 fixing the date of enforcement of section 85-A as November 1, 1980 was cancelled.

It is contended by Mr. Ghatate, learned Counsel appearing on behalf of the petitioner, that in view of the cancellation of the notification dated May 14, 1980, section 85-A has not come into force and, as such, there is no provision in the Motor Vehicles Act providing for wearing of protective headgear or helmet by the driver of a motor-cycle of any class while driving the same. It is submitted that in the absence of any specific provision in the Act, rule 498-A is ultra vires the Act itself and, consequently, the impugned notification issued under section 21(1) of the Hyderabad City Police Act is illegal and should be struck down.

As there was some doubt as to whether section 85-A had come into force by virtue of the notification date May14- 1980 and whether the Central Government had the power to cancel-l the said notification by the subsequent notification dated October31,1980, we thought it expedient to request the learned Attorney General to appear and assist the Court. In compliance with our request, the

learned Attorney General has appeared before us, but we are of the view that no assistance will by necessary on the point, as we do not think that we are for the reasons state called upon to adjudicate upon the question hereafter. The learned Attorney General has, however, assisted us in disposing of this petition, and we are thankful to him.

We shall proceed on the assumption that section 85-A has not yet been enforced by the Central Government. We may now deal with the question as to the legality or otherwise of rule 498-A. The said rule has been framed by the State Government by virtue of its rule making power under clause

(i) of sub-section (2) of section 91 of the Act.

PG NO 637 Sub-section (1) of section 91 and clause (i) of sub- section (2) provide as follows:

> "91(1) The State Government may make rules for the purpose of carrying into effect the provisions of this Chapter.
>
> (2) Without prejudice to the generality of the foregoing power, such rules may provide for
>
> (i) generally, the prevention of danger, injury or annoyance to the public or any person, or of danger or injury to property or of obstruction to traffic;"

It is urged on behalf of the petitioner that rule 498-A does not and cannot come within the rule making power of the State under clause (i) of sub-section (2) of section 19 of the Act, for it does not refer to the driver of a motor- cycle or scooter. It is true that clause (i) does not refer to the driver of a motor-cycle or a scooter, but it is much wider inasmuch as it provides, inter alia, for the prevention of danger, injury or annoyance to the public or any person. It is not disputed that rule 498-A has been framed for the purpose of protecting the head from being injured in cast of an accident. It is common knowledge that head of the driver of a two-wheeler vehicle is the main target of an accident and often it is fatal to the driver. By insisting on the wearing of a helmet by the driver driving a two-wheeler vehicle rule 498-A intends to protect the head from being fatally injured in case of an accident. Clause (i) is wide enough to include the driver of a motor- cycle or a scooter. The expression "any person"in clause (i) also inlucdes within it a driver of a two-wheeler vehicle. We are unable to accept the contention of the learned Counsel for the petitioner that the words "any person" do not include the driver of a two-wheeler vehicle and the rule is intended to prevent the danger, injury or annoyance to the public or any person other than the driver of a two- wheeler vehicle. In our view, clause (i) is also intended for the prevention ot danger, injury or annoyance to the public or any person including the driver of a two-wheeler vehicle. In our view. clause (i) is also in Tended for the prevention of danger, injury or annoyance to the public or any person including the driver of a two-wheeler vehicle. rule 498-A is, therefore, quite legal and valid, in spite of the absence of any provision like section 85-A. PG NO 638 It is submitted by the learned Attorney General that even assuming that rule 498-A does not come within the purview of clause (i) of sub-section (2) of section 91, still the State Government could frame such a rule under sub-section (1) of section 9 1. The learned Attorney General submits that the clauses under sub-section (2) of section 91 are only

illustrative and not exhaustive and the power is real under sub-section (1). In support of his contention, he has referred to a decision of this Court in Om Prakash and others v. Union oflndia and others, AIR 1971 SC 77 1 where it has been observed by this Court that it is a well-established proposition of law that where specific power is conferred without prejudice to the generally of the general power already specified, the particular power is only illustrative and does not in any way restrict the general power. In the instant case also, the general power is in sub-section (1) and sub-section (Z) contains illust- rations and does not, in any way, restrict the general power under sub-section (1). Thus, even assuming that rule 498-A is not covered by clause (i) of sub-section (2), it is quite immateriaI inasmuch as such a rule can be framed in exercise of the general power under sub-section (1) for the purpose ot carrying into effect Chapter V1 relating to con- trol of traffic. There is, therefor, no substance in the contention of the petitioner that rule 498-A is ultra vires the provision of the Act.

The next attack to rule 498-A and to the impugned notification is based on the fundamental right of a Citizen. It is submitted that the compulsion for the wearing of a helmet by the driver of two-wheeler vehicle is an infringement of the freedom of movement of such a driver,as guaranteed by Article 19(1)(d) do the Constitution, and that such compulsion be rule 498-A interfering with the freedom of movement, not having made in accordance with the procedure established by law, is also violative of Article 21 of the Constitution. The contention does not at all commend to us. Rule 498-A ensures protection and safety to the head of the driver of a two-wheeler vehicle in case of an accident. There can be no doubt that rule 498-A is framed for the benefit, welfare and the safe journey by a person in a two-wheeler vehicle. It aims at prevention of any accident being fatal to the driver of a two-wheeler vehicle causing annoyance to the public and obstruction to the flow of traffic for the time being. It is difficult to accept the contention of the petitioner that the compulsion for putting on a headgear or helmet by the driver, as provided by rule 498-A,restricts or curtails the freedom of movement. On the contrary, in our opinion, it helps the driver of a two- wheeler vehicle to drive the vehicle in exercise of his freedom of movement without being subjected to a constant apprehension of a fatal head injury, if any accident takes PG NO 640 place. We do not think that there is any fundamental right against any act aimed at doing some public good. Even assuming that the impugned rule has put a restriction on the exercise of a fundamental right under Article 19(1)(d) such restriction being in the interest of the general public, is a reasonable restriction protected by Article 19(5) of the Constitution. As rule 498-A has been framed in accordance with the procedure established by law, that is, in exercise of the rule making power conferred on the State Government under section 91 of the Act, as discussed above, the question of infringement of Article 21 of the Constitution does not arise. The contention of the petitioner that rule 498-A and the impugned notification dated July 8,1986 issued by the Commissioner of Police in exercise of his powers under section 21(1) of the Hyderabad City Police Act, infringe the fundamental right of the petitioner under Article 19(l)(d) and Article 21 of the Constitution, is devoid of merit and is rejected. As to the contention of the petitioner that the wearing of the helmet causes some ailments, we do not think that there is any merit in the contention, particularly in view of the medical opinions of some Neuro-Surgeons of repute, as referred to by the High Court in its judgment. The contention has not also been seriously pressed before us. The High Court was, therefore, perfectly justified in rejecting the contention.

For the reasons aforesaid, the special leave petition is dismissed. As no notice has been served on the respondent, there will be no order as to costs.

N.V.K. Petition dismissed.