

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 31.08.2007

CORAM

THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MS. JUSTICE K.SUGUNA

W.P. NOS. 18708, 18665 & 19187 OF 2007

AND

M.P. NOS. 2 OF 2007

W.P. NO. 18708 OF 2007 :

R.Muthukrishnan

... Petitioner

- Vs -

The Secretary to Home Department
Government of Tamil Nadu
Secretariat, Chennai 600 009.

... Respondent

W.P. NO. 18665 OF 2007 :

J.S.N.Nimmu Vasanth

... Petitioner

- Vs -

1. The State of Tamil Nadu
rep. by Secretary to Government
(Transport) Home Department
Government of Tamil Nadu
Secretariat, Fort St. George
Chennai 600 009.

2. The Special Commissioner and
Transport Commissioner
Government of Tamil Nadu
Ezhilagam, Chepauk, Chennai - 5.

... Respondents

W.P. NO. 19187 OF 2007 :

K.Pushparaj

.. Petitioner

- Vs -

1. The Secretary to Government
Home (Transport) Department
Secretariat, Fort St. George
Chennai 600 009.

2. The Special Commissioner and
Transport Commissioner
Ezhilagam, Chepauk, Chennai - 5.

.. Respondents

W.P. No.18708 of 2007 filed for the issuance of a writ of certiorari calling for and quashing the order G.O. Ms. No.292, Home (Tr. V) Department, dated 22nd February, 2007, issued by the respondent holding it as arbitrary, patently illegal, unconstitutional for it lacks authority and is inconsistent with or in derogation of Article 19 (1) (d) and Article 21 of the Constitution of India and further for the reason that the said order is misconceived and impracticable of its implementation.

W.P. Nos. 19187 & 18665 of 2007 filed for the issuance of a writ of certiorari calling for and quashing the order G.O. Ms. No.292, Home (Tr. V) Department, dated 22nd February, 2007, and quash the same.

For Petitioner : Mr. R.Muthukrishnan in WP 18708/07
(Party-in-Person)
Ms.J.S.N.Nimmu Vasanth in WP 18665/2007
(Party-in-Person)
Mr. M.Gnanasekar in WP 19187/2007
(No Appearance)

For Respondents : Mr. K.Elango, Spl. G.P.

COMMON ORDER

S.J.MUKHOPADHAYA, J.

In all these writ petitions as common order is under challenge and common question of law involved, they were heard together and disposed of by this common judgment.

2. The petitioners have challenged G.O. Ms. No.292 dated 22nd Feb., 2007, issued from Home (Tr. V) Department, Government of Tamil Nadu, Chennai. By the said order, giving reference to Section 129 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'MV Act'), wearing of headgear (helmets) have been made compulsory for drivers and pillion riders of all two wheelers.

3. Mr.R.Muthukrishnan, advocate of this Court, who is the petitioner in W.P. No.18708/07, made the following submissions :-

a) The impugned order is arbitrary, patently illegal and unconstitutional, being in derogation of Article 19 (1)(d) of the Constitution of India as it restricts the freedom of movement of two wheeler riders and pillion riders.

b) The said order infringes the personal liberty protected under Article 21 of the Constitution of India.

c) The order being misconceived, it is impracticable for implementation of such order.

Further, according to the petitioner, there are about 1.5 Crores of citizens living in the State of Tamil Nadu. They are living in a democratic country having civil rights. No person can force such persons to wear headgear or helmet, as in no manner it will affect any other citizen of the country. The safety of a person can be seen by the person concerned and no law could be enforced on the ground of safety of a person concerned, who do not want it.

The petitioner, Mr.Muthukrishnan, has also challenged the authority of the person, i.e., the Secretary to Government, Home (Tr. V) department, Government of Tamil Nadu, who signed and issued G.O. Ms. No.292 dated 22nd Feb., 2007, on the ground that he has no jurisdiction to issue such order, which could be done by issuance of a rule under the MV Act. Further, according to him, Section 129 of the MV Act is declaratory in nature and not mandatory. It is an enabling provision to enforce such law, which is a benign Act and could be enforced only by the State in exercise of power conferred by Section 138 by framing a rule. The Secretary to the Government, according to him, having no law making power, is incompetent to issue any order, including the impugned order in question.

It was further submitted by Mr.Muthukrishnan, that the Bureau of Indian Standards has not prescribed any standard of design of a helmet as evident from their letter dated 2nd March, 2007, wherein it is stated that the Indian Standards for protective helmets for scooter and motor cycle riders is prescribed in IS 4151 : 1993 and as on the date this IS 4151 is not covered under mandatory BIS certification as per provision of clause 14 of BIS Act, 1986. The prescription of a helmet as per requirement of Bureau of Indian Standards as laid down under the impugned order dated 22nd Feb., 2007, according to the petitioner, has been inserted without application of mind.

4. The petitioner, Ms.J.S.N.Nimmu Vasanth, in W.P. No.18665/07 appeared in person and adopted the arguments advanced by Mr.Muthukrishnan, who is the petitioner in the first case. She relied on second additional affidavit and submitted that though there was no direction given by this court in any of the writ petition, but the impugned G.O. Ms. No.292 dated 22nd Feb., 2007, was issued on the presumption as if there was a direction given by this Court in another case. She relied on Section 212 of the MV Act to suggest that public opinion ought to have been obtained prior to implementation of Section 129, but the impugned order dated 22nd Feb., 2007, was issued without obtaining public opinion. Reliance was placed on notification contained in G.O. Ms. No.797, Home (Tr. V) Department dated 4th June, 2007, published in the Extraordinary Tamil Nadu Government

Gazette, wherein, in exercise of powers conferred by 2nd proviso to Section 129 of MV Act, categories of persons, i.e., those who belong to 'Meivazhi Sabha', who wear turban while they ride on motor cycle, women and children travelling in motor cycle as pillion riders, proposal has been made to exempt them and for that objections or suggestions have been called for as required by sub-section (1) to Section 212 of the said Act. According to the petitioner, similar objection should have been called for prior to issuance of the impugned G.O. Ms. No.292 dated 22nd Feb., 2007.

Ms.Nimmu Vasanth, the petitioner of W.P. No.18665/07, relied on para-3 of her additional affidavit, wherein following plea has been taken :-

a) Persons find wearing of helmet extremely uncomfortable and face suffocation, excess sweating in the ear, nauseated feeling due to blockage of ears, etc.

b) Ladies and girls with simple hairdos attending their day to day activities and having hairdos with flowers with mild or heavy jewellery and bindi, etc., as per traditional Indian culture, when attend functions such as wedding, etc., it is difficult for them to wear helmet.

c) People with various attire participating in fancy dress competitions or representing various other religious sentiments other than turban wearing Sikhs, they also feel difficulty in wearing helmet.

There are other examples given with regard to religious heads, practitioners and/or followers such as Pundits, Vadhiyars, Swamijis, Christian Fathers, Islam embracing Priests/practitioners, etc., it was submitted that all of them should be exempted from wearing helmets.

5. Though the same order is challenged in W.P. No.19187/07, neither the petitioner nor any counsel on behalf of the petitioner appeared, but the same order having been challenged and case being analogous, we have also gone through the averments made in the writ petition and the documents filed therein.

6. According to the State of Tamil Nadu, the Government of India having enacted law relating to compulsory wearing of helmets by two wheeler riders and pillion riders u/s 129 of the MV Act, it was cast upon the State Government to enforce such law. The orders issued in G.O. Ms. No.292, Home (Tr. V) Department, dated 22nd Feb., 2007, is in the nature of direction to authorities to enforce the law. Nobody should be aggrieved if law is enforced. Further, according to the State of Tamil Nadu, helmet is the most known form of protective device to guard against possible major injuries to brain cells. Advantage of wearing helmet will outweigh the temporary discomfort in not wearing them. In an accident, not only the motorist or the driver is affected, but also the society in general and the MV Act envisages certain safety standards and traffic regulations to ensure safe journey, which cannot be discontinued on the pretext of personal liberty, etc. Wearing of helmet is an act of traffic regulation rather than dressing sense and it is not correct to say that Section 129 of the MV Act is only advisory in nature. There being no unconstitutionality in the Government order or in the Central Motor Vehicle Act, 1988 or Central Motor vehicle rules, 1989, the Act having enacted by Government of India making wearing of helmet compulsory, it is

the duty of the State Government to enforce the same. The number of major accidents on the road is on the increase and the State Government and the authorities have taken all possible steps to ensure adequate supply of quality helmets. Though accident occurs due to several reasons, but whatever the reasons, the two wheeler riders are more prone to accident and also sustain head injuries. Helmets will certainly act as a protective device for averting major injuries to the brain cells and its importance cannot be excluded.

7. While we agree with the submissions made on behalf of the State of Tamil Nadu, make it clear that Section 129 of the MV Act, 1988 is mandatory in nature, as will be evident from its plain reading.

So far as exemption is concerned, the 1st proviso to Section 129 has is specific with regard to Sikhs, who wear turbans while driving or riding on two wheelers in a public place. Under the law they have been exempted.

So far as the 2nd proviso to Section 129 is concerned, power has been delegated to the State Government to provide for such exemption in other cases at it may think fit, but such power could be exercised only by issuance of rules. It is in this background, for the purpose of framing rule granting exemption in favour of one or others, such as women, children, etc., as required under sub-section (1) to Section 212, objections and suggestions have been called for vide G.O. Ms. No.797, Home (Tr. V) Department, dated 4th June, 2007, published in the Extraordinary Gazette of Tamil Nadu. Section 129 being mandatory in nature, no separate rule is required to be framed, which could be given effect to by mere issuance of a Government circular.

8. Article 166 of the Constitution deals with conduct of business of a Government of a State, empowers execution of Government Orders and other instruments in the name of the Governor in the manner as may be specified under the rules (Rules of Executive Business). Under such rule, the officials of the rank of Secretary having been empowered to execute the orders and instruments in the name of the Governor, the impugned G.O. Ms. No.292, Home (Tr. V) Department, dated 22nd Feb., 2007, issued cannot be held to be without jurisdiction.

9. The High Court, under Article 226 of the Constitution, cannot determine the question whether wearing of protective headgear (helmet) should be made mandatory or optional if it is uncomfortable for certain persons or affects the hairdos of a lady. It is for the Legislature to determine, who, should be exempted. Section 129 of the MV Act having been enacted, all concerned, including the State Governments, are bound to give effect to it. In this case, we are not inclined to deliberate on the issue as to which category of persons should be exempted from wearing headgear (helmet).

10. Article 19 of the Constitution of India guarantees freedom to move freely throughout the territory of India, apart from freedom of speech, expression, etc., it is in addition to the right to personal liberty guaranteed under Article 21. While orders violating such right cannot stand the test of Articles 19 and 21, it is always open to the State to impose permissible restriction without interfering with the basic rights

to move freely or personal liberty guaranteed under Articles 19 and 21 of the Constitution of India. By the impugned G.O. ms. No.292 dated 22nd Feb., 2007, the Government has not restricted physical movement or personal liberty of any person. It is open to a person to move at any place with complete liberty without any restriction. But, for the purpose of movement in a vehicle no person could claim any fundamental right to move in a vehicle in any manner the person so desires, which could be regulated by reasonable restrictions, if imposed under the law. There are reasonable restrictions imposed under the MV Act for driving a vehicle. For example, a person cannot drive a motor vehicle without a licence. Similarly, u/s 124, a person is prohibited to enter or remain in any stage carrier for the purpose of travelling therein without a proper pass or ticket.

Safety measures for drivers and pillion riders may not be a fundamental duty of the State, but public health being concern of the State, it is always open to a welfare State to enact the provisions for safety measures for the drivers and pillion riders. For example Section 128 of the MV Act, prohibits the driver of a two wheeler to carry more than one person in addition to himself on a motor cycle, and no person can sit at any place except on a proper seat, which has been framed as safety measure not for others but for the drivers and pillion riders.

11. The argument of the petitioner, Mr.Muthukrishnan that as the matter relates to how he will be leading his life is his concern and no suggestion or direction is required from the State, cannot be accepted. A motor vehicle, including two wheeler, cannot be taken on road without valid insurance. In case of death, even though not caused by any other person, but the driver himself, it is not the driver of the pillion rider, who may die, their family is directly affected because of such death. In such case, because of the fault on the part of the driver or pillion rider, and even for no fault, the insurance company becomes liable for payment of compensation to the family of the deceased. Therefore, it cannot be stated that State has no role to play for safety of the driver or the pillion rider of a two wheeler.

12. It has been brought to out notice that a number of public interest litigations were preferred for implementation of Section 129. Though no specific direction was issued by the Court, during the pendency of the case, the State of Tamil Nadu of its own implemented the law vide impugned G.O. Ms. No.292 dated 22nd Feb., 2007 and for the purpose of grant of exemption in appropriate cases, draft Gazette notification under 2nd proviso to Section 129 has been issued on 4th June, 2007, calling for objections and suggestions.

Learned counsel for the State has also brought to our notice that one W.P. No.4740/05 was filed by one Mr.N.Balakrishnan against the impugned order dated 22nd Feb., 2007, before the Madurai Bench of this Court and the said case was dismissed on merits on 24th May, 2007. Another writ petition preferred by V.Rajalakshmi in W.P. No.13257/07, wherein the same G.O. Ms. No.292 dated 22nd Feb., 2007, was challenged was also dismissed by a Division Bench of this Court on 12th April, 2007.

13. In view of the findings as recorded above and similar writ petitions having already been dismissed, we are not inclined to interfere with the impugned G.O. Ms. No.292, Home (Tr. V) Department, dated 22nd Feb., 2007 and allow the State Government to implement the order and provision of law in its letter and spirit in respect of all, except those who may be excluded from the provision. There being no merit, all the writ petitions are dismissed. Consequently, connected miscellaneous petitions are also dismissed. However, there shall be no order as to costs.

GLN

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
Home (Transport) Department
Secretariat, Fort St. George
Chennai 600 009.
2. The Special Commissioner and
Transport Commissioner
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+3 ccs to Mr.R.Muthu Krishnan, Advocate Sr.No.54438.

SSV(CO)
dcp/31.8

W.P. NOS. 18708, 118665 &
19187 OF 2007

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