



THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

S.B. : HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE

WP(C) No.39 of 2014

Petitioners : 1. Shri J. B. Chettri,
S/o Late D. B. Chettri,
President,
Sikkim Trucks Owners Association,
R/o Daragoan, Tadong,
Near Defence Cinema Hall,
P.O. Tadong,
P. S. Gangtok,
East Sikkim.

2. Shri Migma Sherpa,
S/o Shri Passang Sherpa ,
President,
Sikkim Trucks Drivers Association,
R/o Chandmari, J. N. Road,
Near Forest Check Post,
P.O. Raj Bhawan,
P. S. Gangtok,
East Sikkim.

versus

Respondents : 1. The Chief Secretary,
Government of Sikkim,
Manan Kendra,
Development Area,
P.O. & P.S. Gangtok,
East Sikkim.

2. The Secretary,
Transport Department,
Government of Sikkim,
Yatayat Bhawan,
P.O. & P.S. Gangtok,
East Sikkim.



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3. The Secretary,
State Transport Authority,
Motor Vehicle Division,
Transport Department,
Government of Sikkim,
Yatayat Bhawan,
P.O. & P.S. Gangtok,
East Sikkim.
4. The Secretary,
Home Department,
Government of Sikkim,
Manan Kendra,
Development Area,
P.O. & P.S. Gangtok,
East Sikkim.
5. The Director General of Police,
Government of Sikkim,
Police Headquarters,
P.O. & P.S. Gangtok,
East Sikkim.
6. The Secretary,
Ministry of Road, Transport, Highways & Shipping,
Government of India,
Transport Bhawan,
1, Parliament Street,
New Delhi.

Application under Article 226 of the Constitution of India

Appearance

Mr. O. P. Bhandari, Advocate with Ms. Babita Rai and Ms. Ranjeeta Kumari, Advocates for the Petitioners.

Mr. J. B. Pradhan, Additional Advocate General with Mr. S. K. Chhetri and Mrs. Pollin Rai, Assistant Government Advocates for the State-Respondents No.1 to 5.

Mr. Karma Thinlay Namgyal, Central Government Counsel for Respondent No.6.



J U D G M E N T

(26th May, 2015)

Wangdi, J.

1. The Petitioners No. 1 and 2 are the President, Sikkim Trucks Owners Association and President, Sikkim Trucks Drivers Association, respectively. In the Writ Petition, they seek to quash and set aside amendment to Rule 93 of the Central Motor Vehicles Rules, 1989 (for short the “Rules”) by which Sub-Rule (8) thereto was omitted, stated in the Writ Petition as the “impugned omission of Sub-Rule (8) of Rule 93 of the Central Motor Vehicles Rules, 1989”. The grounds seeking such relief are that —

- (a) the omission violates the fundamental rights of the Petitioners guaranteed under Articles 19, 21 and 300A of the Constitution of India;
- (b) the difficulties that such omission would cause in transportation of goods in hilly States like Sikkim has not been considered;
- (c) no opportunity was afforded to the Petitioners before making such omission and, to the contrary, the recital contained in the opening paragraph of Notification dated 05-03-2014 of the Ministry of Road Transport and Highways published in the Extraordinary Gazette of India, was misleading;



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- (d) the decision to make such omission was not published in the local newspaper as mandatorily required under the law; and
- (e) the omission would adversely affect the development projects in the State due to difficulties that would arise as a consequence in transporting construction materials and that there was no risk or danger to life in Sikkim if such omission had not been made.

2. The State-Respondents No.1 to 5 have filed a common counter-affidavit denying and disputing the contentions raised in the Writ Petition and so has the Respondent No.6, the Secretary, Road Transport, Highways and Shipping, Government of India, by a separate counter-affidavit.

3(i). In his arguments, Mr. O. P. Bhandari, Learned Counsel for the Petitioners, reiterating the averments contained in the Writ Petition, would submit that the omission of proviso to Sub-Rule (8) of Rule 93 of the Rules has seriously affected the rights of the Petitioners under Article 19(1)(g) of the Constitution of India guaranteeing freedom of trade and business. He contended that as a consequence of such amendment,



the Petitioners' business have virtually come to a standstill. Referring to Notification dated 17-10-2013 of the Ministry of Road Transport and Highways published in the Extraordinary Gazette of India, it was submitted that since the amendment has been made in exercise of the powers conferred, *inter alia*, under Section 41 of the Motor Vehicles Act, 1988 (for short the "Act"), it was mandatory to comply with the provisions of Sub-Section (4) of Section 212 of the Act under which the Petitioners' rights would stand protected.

(ii) He would further submit that it was also mandatory for the Respondents to have complied with Section 100 of the Act that mandates publication of any proposal such as the impugned amendment in not less than one newspaper circulating in the area in the regional language, calling for objections within 30 (thirty) days from the date of publication of such proposal in the Official Gazette.

(iii) Since both such provisions were complied with in the present case, the impugned amendment



could not be given effect to being *ultra vires* the law. In this regard, reference was also made to Section 23 and Sub-Sections thereunder of the General Clauses Act, 1897.

(iv) Apart from the above, the Learned Counsel also contended that the impugned amendment infringed upon the rights of the Petitioners under Articles 21, 31, 300A, 301, 302 and 302 of the Constitution of India. He would also submit that the amendment was *ultra vires* Article 368 of the Constitution of India. It was his submission that even though this Article was some other purpose, the principle applicable to this provision would apply in the present case.

4(i). Mr. J. B. Pradhan, Learned Additional Advocate General, appearing on behalf of the State-Respondents No.1 to 5 and Mr. Karma Thinlay Namgyal, Learned Central Government Counsel, appearing on behalf of the Respondent No.6, submitted that the amendment had been carried out after due compliance of the procedure prescribed in that behalf.



The draft amendment was published in the Official Gazette of the Ministry of Road, Transport and Highways dated 17-10-2013 by which notice was given to all persons likely to be affected by the proposed amendment duly informing that the draft amendment would be taken into consideration after expiry of a period of 30 (thirty) days from the date on which the copies of the Notification are made available to the public and further that objections or suggestions received from any person with respect to the draft Rules within the period as specified would be considered by the Central Government.

(ii) That G.S.R.152(E) of the Ministry of Road, Transport and Highways, was then published in the Extraordinary Gazette of India dated 05-03-2014 giving effect to the amendment, after the expiry of 30 (thirty) days stipulated in G.S.R.693(E) published in the Extraordinary Gazette dated 17-10-2013 as no objections and suggestions were received from the public on the draft Rules. Thus, as per Learned Counsel, there was no illegality or violation of the procedure in making the amendment.



(iii) It is further submitted that the communication dated 30-09-2014 received from the Chief Secretary, Government of Sikkim, seeking exemption of the State from the purview of the amendment was examined by the Respondent No.6 but, was not accepted which had been conveyed to the Chief Secretary by letter of the latter dated 05-11-2014.

5. On a careful consideration of the rival submissions of the Learned Counsel for the parties, the records and the relevant provisions of the law, I am of the view that the Writ Petition cannot be allowed as it appears to have been filed under a clear misconception of the laws.

6. It appears that by the impugned amendment the following proviso to Sub-Rule (8) to Rule 93 of the Rules was omitted:-

“Provided that clause (iii) shall not apply to a goods carriage when loaded with any pole or rod or indivisible load so long as the projecting part or parts do not exceed the distance of one metre beyond the rearmost point of the motor vehicle.”



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In order to decide on the validity of this amendment and the cognate issues raised in the Writ Petition, we need only to examine the provisions of the Act and the Rules framed thereunder. Sub-Sections (1) and (2) of Section 212 of the Act provides that the power to make Rules under the Act is subject to the condition of the Rules being made after previous publication and that all Rules made under the Act shall be published in the Official Gazette respectively. It has, therefore, to be seen as to whether these procedures prescribed under the Statute have been followed or not.

7. When we examine the records, we find that the first of such Notification proposing the amendment was published in the Extraordinary Gazette of India dated 17-10-2013, which we may reproduce below, for convenience:-

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MINISTRY OF ROAD TRANSPORT AND HIGHWAYS

NOTIFICATION

New Delhi, the 17th October, 2013

G.S.R.693(E).— The following draft rules further to amend the Central Motor Vehicles



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Rules, 1989, which the Central Government proposes to make in exercise of the powers conferred by sections 27, 41, 50 and 110 of the Motor Vehicles Act, 1988 (59 of 1988) is hereby published as required by sub-section (1) of Section 212 of the said Act for information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration after expiry of a period of thirty days from the date on which the copies of this notification as published in the Gazette of India are made available to the public;

2. Any objections or suggestions which may be received from any person with respect to the said draft rules within the period as specified will be considered by the Central Government;

3. Objections or suggestion, if any, may be sent to the Joint Secretary (Transport), Ministry of Road Transport and Highways, Transport Bhawan, New Delhi – 110 011.

DRAFT RULES

1. (1) These rules may be called the Central Motor Vehicles (4th Amendment) Rules, 2013.
(2) They shall come into force on the date of their final publication in the Official Gazette.
2. In the Central Motor Vehicles Rules, 1989, in sub-rule (8) of rule 93, the proviso shall be omitted.

[F. No. RT-11036/46/2013-MVL]

SANJAY BANDOPADHYAYA, Jt. Secy.

.....”

8. It is, therefore, quite obvious that the action is in compliance with Sub-Section (1) of Section 212 of



the Act. It was then followed by the Extraordinary Gazette of India of Ministry of Road, Transport and Highways dated 05-03-2015 by which the proposed amendment was finally published thereby satisfying the requirement of Sub-Section (2) of Section 212 of the Act. Of course, Mr. Bhandari submitted that copies of the Notification published vide the Extraordinary Gazette dated 17-10-2013 was not made available to the general public including the Petitioners. But, in my view, the submission does not appear to have any force as the very fact that it was published in the Gazette belies this position. Reference to Section 100 of the Act made by the Learned Counsel by which publication of any proposal regarding a scheme in the Official Gazette in not less than one newspaper in the regional language circulating in the area or route which is covered by the proposal enabling any person to file objections within 30 (thirty) days from the date of publication, pertains to Section 99 of the Act which enables a State to formulate a proposal regarding a scheme of road transport services in relation to any area or route or portion thereof to be operated by a



State transport. This falls under Chapter VI of the Act and does not apply to the one under consideration having been framed in exercise of the powers conferred under Sections 27, 41, 50 and 100 of the Act as would appear from the first preamble to the draft Rules reproduced earlier.

9. In view of the aforesaid circumstances, the rest of the grounds raised to assail the amendment appear to be quite mis-conceived and, therefore, irrelevant and unnecessary to deal with.

10. A large number of decisions were cited at the bar by the Learned Counsel for the Petitioners which we may mention below:-

- a) ***Sambhu Ratan Tewari vs. Administrator and Chief Commissioner of Tripura and Others : AIR 1963 Tripura 1;***
- b) ***Joseph Antony vs. State of Kerala and Others : AIR 1986 Kerala 238;***
- c) ***S. Krishna and Others vs. The State of Karnataka and Others : AIR 1989 Karnataka 291;***
- d) ***Sodan Singh and etc. etc. vs. New Delhi Municipal Committee and Another etc. : AIR 1989 SC 1988;***



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- e) ***Buxa Dooars Tea Company Ltd., etc. vs. State of West Bengal and Others : AIR 1989 SC 2015;***
- f) ***Rajasthan Matsya Vyavasayee Sangh vs. State of Rajasthan and Others : AIR 1991 Rajasthan 72;***
- g) ***G. Srinivasa Reddy, Secunderabad and Others vs. The Municipal Corporation of Hyderabad : AIR 1992 AP 45;***
- h) ***M/ s. Maa Dakshinakali Animal Feeds vs. State of Orissa and Others : AIR 1992 Orissa 278; and***
- i) ***State of Tamil Nadu and Others vs. M/ s. Sanjeetha Trading Co. and Others : AIR 1993 SC 237.***

The decisions, in my view, do not apply in the facts and circumstances of the case being clearly distinguishable from the one obtaining in those cases.

11. In the result, the Writ Petition is dismissed.

12. No order as to costs.

Sd/-
(**S. P. Wangdi**)
Judge
26-05-2015

Approved for reporting : Yes

Internet : Yes