13 & 14

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 1538/2006

ALL INDIA HELMET MANUFACTURERS ASSN. & ORS. ..... Petitioners

Through: Mr. Atul Sharma, Advocate

versus

UOI & ORS. ..... Respondents

Through: Mr. Mukul Rohatgi, Sr. Advocate with with Mr. Nanju Ganpathy, Advocate for applicant/intervenor in CM No.9274/09.
Mr. Navin Chawla & Mr. Prakash Kumar,Advocate for R-2 to 4.
Mr. J.P. Sengh, Sr. Advocate with Mr. Manoj Ohri & Mr. Sumeet Batra, Advocates for UOI.
Mr. Rajiv Nanda, Advocate for GNCTD.

AND

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\+ W.P.(C) 7769/2009

SOCIETY FOR AWARENESS AND DEVELOPMENT ..... Petitioner

Through: Mr. Manik Dogra & Mr. Amit Mahajan, Advocates.

versus

UOI & ORS. ..... Respondents

Through: Mr. R.S. Suri, Sr. Advocate with Mr. Rahul Malhotra, Adv. for R-6 &13.
Mr. Amit S. Chadha, Sr. Advocate with Mr. P.B. Suresh & Mr. Vipin Nair, Advocates for respondent No.7.
Mr. Mahesh Agarwal, Advocate with Ms. Rohma Hameed, Mr. Ankit Shah & Mr. B.S. Shukla, Advocates for respondent No.8.
Mr. Rajat Juneja, Advocate for R-11.
Mr. Atul Kumar, Advocate for R-12.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

O R D E R

% 30.07.2009

1. While writ petition being W.P.(C) No. 7769/2009 has been filed in public interest for a direction to the respondents to effectively implement Section 129 of the Motor Vehicles Act, 1988 (hereinafter referred to as "Act 1988") and Rule 138 of the Central Motor Vehicles Rules, 1989 (hereinafter referred to as "Rules 1989), writ petition being W.P.(C) No. 1538/2006 has been filed primarily seeking quashing of the amendment dated 16th September, 2005 in so far as it adds new sub-rule 4(f) to Rule 138 of Rules 1989 on the ground that the impugned sub-rule is unconstitutional and ultra vires of the Act 1988. The impugned sub-rule 4(f) to Rule 138 is reproduced hereinbelow for ready reference:

> *"(4) On and after expiry of one year from the date of commencement of Central Motor Vehicle (Amendment) Rules, 1999, the driver of every vehicle shall ensure that the following items are carried in the vehicle, namely:*
>
> *……….*
> *……….*
> *(f) At the time of purchase of the two wheeler, the manufacturer of the two wheeler shall supply a protective headgear conforming to specifications prescribed by the Bureau of Indian Standards under the Bureau of Indian Standard Act, 1986 (63 of 1986):*
> *"Provided that these conditions shall not apply to category of persons exempted in terms of section 129 and these rules made thereunder by the concerned state government."*

2. Mr. Atul Sharma, learned counsel for petitioner in W.P.(C) 1538/2006 submitted that the impugned sub-rule was a colourable exercise of power and it did not further the intent of Act 1988. He further submitted that the impugned sub-rule was violative of fundamental right of the helmet manufacturers to carry on the business of manufacturing of protective headgear and sales to consumer inasmuch as it made it compulsory for each consumer to procure at the time of purchase of a two wheeler only from the manufacturer of the said vehicle, protective headgear conforming to Bureau of Indian Standards specifications. According to him, the impugned sub-rule to Rule 138 was also arbitrary and violative of Articles 14, 19(1)(g), 21 of the Constitution in so far as it created a monopoly in favour of manufacturers of two wheelers to supply protective headgear. Mr. Sharma, learned counsel for petitioner relied upon a judgment of the Supreme Court in ***Collector (District Magistrate) Allahabad and Anr. v. Raja Ram Jaiswal*** reported in ***1985 3SCC 1*** wherein it has been held as under:

> *"25. It is well-settled that where power is conferred to achieve a certain purpose, the power can be exercised only for achieving that purpose. Section 4(1) confers power on the Government and the Collector to acquire land needed for a public purpose. The power to acquire land is to be exercised for carrying out a public purpose. If the authorities of the Sammelan cannot tolerate the existence of a cinema theatre in its vicinity, can it be said that such a purpose would be a public purpose? May be the authority of the Sammelan may honestly believe that the existence of a cinema theatre may have the pernicious tendency to vitiate the educational and cultural environment of the institution and therefore, it would like to wish away a cinema theatre in its vicinity. That hardly constitutes public purpose. We have already said about its*

proclaimed need of land for putting up Sangrahalaya. It is an easy escape route whenever Sammelan wants to take over some piece of land. Therefore, it can be fairly concluded that the Sammelan was actuated by extraneous and irrelevant considerations in seeking acquisition of the land and the statutory authority having known this fact yet proceeded to exercise statutory power and initiated the process of acquisition. Does this constitute legal mala fides?

26. *Where power is conferred to achieve a purpose it has been repeatedly reiterated that the power must be exercised reasonably and in good faith to effectuate the purpose. And in this context "in good faith" means "for legitimate reasons". Where power is exercised for extraneous or irrelevant considerations or reasons, it is unquestionably a colourable exercise of power or fraud on power and the exercise of power is vitiated. If the power to acquire land is to be exercised, it must be exercised bona fide for the statutory purpose and for none other. If it is exercised for an extraneous, irrelevant or non-germane consideration, the acquiring authority can be charged with legal mala fides. In such a situation there is no question of any personal ill-will or motive. In Municipal Council of Sydney v. Campbell it was observed that irrelevant considerations on which power to acquire land is exercised, would vitiate compulsory purchase orders or scheme depending on them. In State of Punjab v. Gurdial Singh acquisition of land for constructing a grain market was challenged on the ground of legal mala fides. Upholding the challenge this Court speaking through Krishna Iyer, J. explained the concept of legal mala fides in his hitherto inimitable language, diction and style and observed as under: (SCC p. 475, para 9)*

> *"Pithily put, bad faith which invalidates the exercise of power — sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions — is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: "I repeat ... that all power is a trust — that we are accountable for its exercise — that, from the people, and for the people, all springs, and all must exist."*

3. Having heard the parties and perused the affidavits, we are of the view that the impugned sub-rule furthers the intent of Act 1988 in so far as it promotes safety of two wheeler riders. The predominant purpose and intent behind incorporating impugned sub-rule is to avoid fatal and serious accidents. In fact, in our view, the impugned sub-rule is in conformity with the Act 1988, as it implements the mandate of Sections 110 and 129 of the Act 1988. The relevant portion of the said sections are reproduced hereinbelow:

> ***"110. Power of Central Government to make rules -*** *(1)The Central Government may make rules regulating the construction, equipment and maintenance of motor vehicles and trailers with respect to all or any of the following matters, namely:-*
> *…..*
> *…….*
>
> *(j) safety belts, handle bars of motor cycles, auto-dippers and other equipments essential for safety of drivers, passengers and other road users.*
>
> *xxx xxx xxx*
>
> ***129. Wearing of protective headgear –*** *Every person driving or riding (otherwise than in a side car, on a motor cycle of any class or description) shall, while in a public place, wear [protective headgear conforming to the standards of Bureau of Indian Standards;]*
> *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 State Government may, by such rules, provide for such exceptions as it may think fit.*
> *Explanation—"Protective headgear" means a helmet which, -*
> *(a)by virtue of its shape, material and construction, could reasonably be expected to afford to the person driving*

or riding on a motor cycle a degree of protection from injury in the event of an accident; and

(b) is securely fastened to the head of the wearer by means of straps or other fastenings provided on the headgear."

4. We are further of the opinion that the impugned sub-rule does not place any restriction on the right of the helmet manufacturer to carry on their trade. In fact, there is no ouster of the petitioners by virtue of the impugned sub-rule. Even assuming that the impugned sub-rule puts restriction on the exercise of petitioners fundamental right under Article 19, we are of the view that such a restriction being in the interest of general public is a reasonable restriction protected by Article 19(5) of the Constitution. In this context, we may refer to a judgment of the Apex Court in ***Ajay Canu v. Union of India & Ors.*** reported in ***1988 4 SCC 156*** wherein it has been held as under:

"13. *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 a two-wheeler vehicle is an infringement of the freedom of movement of such a driver, as guaranteed by Article 19(l)(d) of the Constitution, and that such compulsion by Rule 498-A interfering with the freedom of movement, not having been 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 itself 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 free 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 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(l)(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."

5. Moreover, this Court in the case of ***Permanand Katara v. UOI*** ***CWP 3385/1996*** decided on 01st September, 1997 has observed as under:

"*(6) The framers of the Act have incorporated Sections 128 and 129 of the Act in the larger public interest. The predominate purpose behind incorporating these provisions was to avoid fatal and serious accidents. This fact is abundantly proved even from the counter-affidavit of the respondent, Deputy Commissioner of Police. In case a large number of fatal and other serious accidents can be avoided by the strict compliance of the provisions of Sections 128 and 129 of the Act, in that event slight inconvenience, if any, in its compliance, may have to be suffered in the larger interest of the drivers and pillion riders of the two wheeled motorcycles.*

(7) This is the settled principle of the interpretation of the statute that the framers of the Act are presumed to have

taken into consideration all the relevant aspects at the time of framing the statute. Once the Act has come into force, no one can be permitted to bypass or ignore the provisions of the Act on the ground of inconvenience and some difficulties in its implementation. In the instant case, we do not see any insurmountable difficulty in its implementation."

6. Consequently, we direct the respondents to effectively implement the provisions of Section 129 of the Act 1988 read with Rule 138 4(f) of the Rules, 1989. We further direct the respondents to initiate appropriate actions in accordance with law against any person or persons violating the aforesaid provisions.

7. Mr. Mukul Rohtagi, learned senior Counsel appearing for Society of Indian Automobile Manufacturers contended that as the sizes of helmets to be supplied with each two wheeler vehicle varied, it would only be proper and practical if the obligation to supply the headgear is placed on the dealer instead of the manufacturer. In this context, he referred to a letter dated 27th December, 2005 issued by Government of India, Ministry of Shipping, Road Transport and Highways, Department of Road Transport and Highways. The relevant portion of the said letter reads as under:

"xxx xxx xxx

2. This amendment would come into force on 16th March, 2006. A question has arisen as to the procedure to be followed for enforcement of this provision. It is suggested that the States may follow the following procedure:

- *The manufacturers and dealers of two-wheelers are*

to be made aware of the exemptions, if any, under Section 129 and under States rules made thereunder.

- *No new two-wheeler is to be sold without a protective headgear conforming to the Standards of BIS, unless the purchaser gives an undertaking that he/she has been exempted in terms of the Section 129 or the State rule.*

xxx xxx xxx

- *The registering authority would not register a two-wheeler without satisfying itself that the same is sold with a helmet conforming to the BIS standard and the helmet is also shown along with the vehicle. In case of a purchaser claiming exemption, the claim is to be verified and allowed in terms of the rules in force.*
- *Record of such exemptions would be kept with both dealers and the registering authorities.*
- *The question of choice of helmet and the price etc., would be mutually decided between the purchaser and the dealer/manufacturer. In other words, the dealers of two wheelers may stock and sell the helmets or may get it arranged from other sources. The requirement of the rule would be met by the dealer/manufacturer providing the helmet conforming to the standards of BIS along with the two wheeler.*

3. *The police/enforcement authorities would need to strictly enforce use of helmets on the road. Otherwise, the underlying objective of the rule would be defeated.*
4. *The above are only suggestive guidelines. The States may add to/modify these guidelines, if required, to enforce the rule in letter and spirit."*

8. In our opinion, impugned sub-rule casts an obligation on the manufacturer to supply protective headgear conforming to BIS standards and the said responsibility cannot be passed on to the dealer. However, as sale of two wheelers is carried out by a manufacturer

through a dealer and the sizes of the protective headgear are different, in our view, it is for the manufacturer to arrive at an arrangement with the dealer who actually in law is an agent of the manufacturer to ensure compliance with the impugned sub-rule.

9. To ensure that the impugned sub-rule is actually implemented at the ground level, we direct that when an application is made for registration of a motor vehicle under Rule 47 of the Rules, 1989, the dealer would have to certify that protective headgear conforming to the Bureau of Indian Standards has been supplied to the purchaser of a two wheeler vehicle.

10. In view of the above, Writ petition (Civil) No. 1538/2006 stands dismissed, whereas Writ petition (Civil) No. 7769/2009 stands disposed of with the aforesaid directions.

CHIEF JUSTICE

MANMOHAN, J

JULY 30, 2009
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