

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 02.07.2008

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WPC 18871-76/2006

VIJAY KUMAR AND ORS.

... Petitioners

- Versus -

GOVERNMENT OF NCT & ORS

... Respondents

Advocates who appeared in this case:-

For the Petitioners : Mr Sandeep Sethi, Sr Advocate with Mr D. S. Kohli

For the Respondents : Ms Sujata Kashyap with Mr Chandramani Bhardwaj

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ? YES
2. To be referred to the Reporter or not ? YES
3. Whether the judgment should be reported in Digest ? YES

BADAR DURREZ AHMED, J

1. This writ petition seeks the quashing of Direction No.2 in Notification No. F.19(22)/Tpt./Sectt./2006/197 dated 26.05.2006 issued by the Respondent No.2 (Lt Governor of the National Capital Territory of Delhi), in purported exercise of powers conferred by Section 67(1)(ii) read with Section 2(41) of the Motor Vehicles Act, 1988 (hereinafter referred to as “the said Act”), whereby goods carriages having a gross vehicle weight upto 3000 kgs and which are registered outside the National

Capital Territory of Delhi (NCT of Delhi) have been prohibited from entering into and plying on the roads of NCT of Delhi.

2. The petitioner Nos. 1 – 4 are residents of NOIDA, UP. They are registered owners of three-wheeler goods carriages, each having a gross vehicle weight of less than 3000 kgs. The said vehicles are registered with the registering authority, Motor Vehicles Department, NOIDA, UP. The vehicles of petitioner Nos. 1 to 3 run on diesel whereas petitioner No.4's vehicle runs on Compressed Natural Gas (CNG). All the vehicles are Euro-II compliant and were being used to transport goods to and from adjoining areas – NOIDA, Ghaziabad, etc., — and NCT of Delhi. Petitioner No.5 is an association of persons such as the petitioner Nos. 1 to 4 and is registered in UP. The petitioner No.6 is the financier of the vehicles.

3. The petitioners have challenged the said Direction No.2 in the impugned notification on the following grounds:-

- (1) That it is ultra vires the said Act;
- (2) That the classification of similar vehicles running on CNG on the basis of registration in or outside Delhi is arbitrary;

- (3) That there is no nexus between the impugned notification and the object purportedly sought to be achieved;
- (4) That the impugned notification has been issued upon a complete non-application of mind and, that too, without following the mandatory provision of circulating the draft proposals to those who would be affected (ie., persons such as the petitioner Nos. 1 to 4 who are residents of adjoining areas in the State of Uttar Pradesh);
- (5) That the impugned notification contravenes articles 19(1)(g) and 301 of the Constitution of India.

4. The respondents have responded to the challenge by filing a counter affidavit of Mr N. Balachandran, Special Commissioner (Transport), Govt of NCT of Delhi on behalf of the Respondent No.1 (Govt of NCT of Delhi). It is, *inter alia*, stated that the impugned notification was issued after exhausting all the requirements as mandated under the said Act. It is further stated that the draft of the directions had been published in compliance of the provisions of the said Act and, in fact, objections had been received from the Society of Indian Automobile Manufacturers which had been duly considered and rejected.

5. Importantly, the counter affidavit states that “*the directives under challenge are intended to minimize Ambient Air Pollution in Delhi and rising Vehicular congestion and are entirely under public interest*”. It was further submitted that light goods carriers upto 3000 kgs are exempt from the necessity of obtaining permits vide Section 66(3)(i) of the said Act. And that, “*the purpose behind this exemption being that small load/ goods carriers vehicles may move locally in the jurisdiction of the place of registration*” and “*in case movement of such vehicles is allowed, cross border on routine basis, this will be against the letter and spirit of the Motor Vehicles Act..*”. The counter affidavit goes on – “*Moreover, in terms of Section 40 of the Motor Vehicles Act every owner of a motor vehicle shall cause the vehicle to be registered by a Registering Authority in whose jurisdiction he has residence or place of business where the vehicle is normally kept. In the present case the petitioners No.1 to 4 have residence and place of business outside Delhi and are registered with the local authority of this area namely Noida, U.P. and Ghaziabad U.P. The reason the Petitioners number 1 to 4 are exempt from the necessity of a permit is that they are intended to ply only within the area of local jurisdiction as per Section 40 of MV Act.*” Though the counter affidavit is silent with regard to the circulation of the draft proposals in neighbouring states, with regard to the

impugned notification it states – “[t]he final notification however, was got vetted by the Law Department, Govt. of NCT of Delhi. This notification has since been circulated to all concerned i.e. Enforcement Branch, Delhi Traffic police and also Transport Departments of neighbouring States etc. for information and necessary action.” It was also stated that “any interstate movement is considered to be a long distance movement and same is covered under Section 67(1)(d)(ii) of Motor Vehicles Act 1988.”

6. This is the right stage to consider the relevant statutory provisions. Registration of a motor vehicle and obtaining a permit are different and distinct. Section 39 of the said Act deals with the necessity of registration and provides that no person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with Chapter-IV (Registration of Vehicles) and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner. Section 40 prescribes that, subject to the provisions of Section 42, Section 43 and Section 60, every owner of a motor vehicle shall cause the vehicle to be registered by a registering authority in whose jurisdiction “*he has the residence*”

or “*place of business where the vehicle is normally kept*”. Section 46 provides that, subject to the provisions of Section 47 (Assignment of new registration mark on removal to another State), a motor vehicle registered in accordance with Chapter-IV in any State shall not require to be registered elsewhere in India and a certificate of registration issued or in force under this Act in respect of such vehicle “*shall be effective throughout India*”. So, it clear, no motor vehicle unless registered under the said Act can be driven in any place. The registration is to be done at the place of residence of the owner or the place of business where the vehicle is normally kept. And, subject to the provisions of Section 47, once it is registered in any state, the vehicle will not require to be registered elsewhere in India. This was with regard to registration of motor vehicles.

7. I shall now refer to the relevant provisions dealing with permits. Section 66 of the said Act falls under Chapter-V (Control of Transport Vehicles) and prescribes the necessity of obtaining permits. Sub-section (1) of Section 66, *inter alia*, stipulates that no owner of a motor vehicle shall use or permit the use of a vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or

countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used. However, by virtue of clause (i) of sub-section (3) of Section 66, the necessity of obtaining a permit does not apply to “*any goods vehicle, the gross vehicle weight of which does not exceed 3,000 kilograms*”. The petitioners’ vehicles, being goods vehicles, each having a gross vehicle weight of less than 3000 kgs, are, therefore, exempt from the requirement of permits.

8. Since, the whole case turns on the provisions of Section 67, it would be appropriate if it is set out in its entirety:

“67. Power to State Government to control road transport.— (1) A State Government, having regard to—

- (a) the advantages offered to the public, trade and industry by the development of motor transport,
- (b) the desirability of co-ordinating road and rail transport,
- (c) the desirability of preventing the deterioration of the road system, and
- (d) **the desirability of preventing uneconomic competition among holders of permits,**

may, from time to time, by notification in the Official Gazette, issue directions both to the State Transport Authority and Regional Transport Authority—

- (i) regarding the fixing of fares and freights (including the maximum and minimum in

respect thereof) for stage carriages, contract carriages and goods carriages;

- (ii) **regarding the prohibition or restriction, subject to such conditions as may be specified in the directions, of the conveying of long distance goods traffic generally, or of specified classes of goods by goods carriages;**
- (iii) regarding any other matter which may appear to the State Government necessary or expedient for giving effect to any agreement entered into with the Central Government or any other State Government or the Government of any other country relating to the regulation of motor transport generally, and in particular to its co-ordination with other means of transport and the conveying of long distance goods traffic:

Provided that no such notification in respect of the matters referred to in clause (ii) or clause (iii) shall be issued unless a draft of the proposed directions is published in the Official Gazette specifying therein a date being not less than one month after such publication, on or after which the draft will be taken into consideration and any objection or suggestion which may be received has, in consultation with the State Transport Authority, been considered **after giving the representatives of the interests affected an opportunity of being heard.**

(2) Any direction under sub-section (1) regarding the fixing of fares and freights for stage carriages, contract carriages and goods carriages may provide that such fares or freights shall be inclusive of the tax payable by the passengers or the consignors of the goods, as the case may be, to the operators of the stage carriages, contract carriages or goods carriages under any law for the time being in force relating to tax on passengers and goods.”

(emphasis supplied)

9. Since the directions sought to be notified were in respect of matters specified in Section 67(1)(ii), in view of the proviso to Section 67(1), it became necessary that a draft of the proposed directions be published in the Official Gazette specifying therein a date being not less than one month after such publication, on or after which the draft would be taken into consideration and any objection or suggestion which may have been received would, in consultation with the State Transport Authority, be considered *after giving the representatives of the interests affected an opportunity of being heard*. The draft directions were notified in the Delhi Gazette: Extraordinary on 05.01.2006 as under:

“TRANSPORT DEPARTMENT

NOTIFICATION

Delhi, the 5th January, 2006

No.F.PA/JVC/OPS/Tpt./1613/05/1447.—The following draft of directions which the Lt. Governor of the National Capital Territory of Delhi proposes to issue to the State Transport Authority, Delhi, in exercise of the powers conferred by clause (ii) of sub-section (1) of Section 67 read with clause (41) of Section 2 of the Motor Vehicle Act, 1988 (59 of 1988), is hereby published for the information of persons likely to be affected thereby, and notice is hereby given that the said draft will be taken into consideration after the expiry of thirty days from the date of publication of this notification in the Delhi Gazette, together with any objections and suggestions that may be received in respect thereto by the stipulated period.

The objections or suggestions in this behalf should be addressed to Secretary-cum-Commissioner (Transport), Govt. of NCT of Delhi, 5/9 Under Hill Road, Delhi.

DRAFT DIRECTIONS

"1. Light Goods vehicles up to 3,000 Kg, and all Light Goods Vehicle between 3,000 Kg. and 7,500 Kg. plying on Goods Carriage Permit except vehicle plying on National Permit, running on clean fuel only shall be eligible for registration in the National Capital Territory of Delhi with effect from the 1st January, 2006.

2. No Light Goods Vehicles up to 3,000 Kg. registered outside National Capital Territory of Delhi shall be permitted to operate in Delhi with effect from the 1st January, 2006.

3. No Light Goods Vehicles between 3,000 Kg. and 7,500 Kg. registered outside Delhi and running on non-clean fuel shall be permitted to enter Delhi except under a valid National Permit and, in any case, shall not be permitted to pick up or set down goods from one place to another in Delhi in accordance with the provisions of rule 90 (7) of the Central Motor Vehicle Rules, 1989."

By order and in the name of the
Lt. Governor of the National
Capital Territory of Delhi.

Vijay S. Madan, Secy.-cum-Commissioner"

(emphasis supplied)

10. A reading of Section 67 of the said Act makes it clear that the directions which can be issued thereunder must have regard to one or more of the objects specified in clauses (a) to (d) in subsection (1). The notification of the draft directions does not give

any indication as to which of the objects is sought to be fulfilled by the proposed issuance of directions. Therefore, to this extent, the notification of 05.01.2006 is, indeed, vague, as submitted by the learned counsel for the petitioners. It must also be kept in mind that the proviso to Section 67(1) required that any direction concerning the matters specified in clause (ii) of Section 67(1) be issued only after considering the objections, if any, and *after giving the representatives of the interests affected an opportunity of being heard*. Opportunity of hearing means an effective opportunity of hearing. When what is notified is itself vague, what objections can be taken? Moreover, in the present case the affected persons, such as the petitioner nos. 1 to 4, would all be located outside Delhi. But, the notification of 05.01.2006 was not circulated in the neighbouring States including U.P. As admitted in the counter affidavit filed on behalf of Respondent No.1, it is only the final notification of 26.05.2006 (the impugned notification) which was “*circulated to all concerned i.e. Enforcement Branch, Delhi Traffic police and also Transport Departments of neighbouring States etc. for information and necessary action*”. The draft directions were not so circulated in the neighbouring states. The draft directions definitely affected the interests of persons such as the petitioner nos.1 to 4 who were located in neighbouring states. Since the draft directions were not

circulated in the neighbouring states, the only conclusion which can be drawn is that a reasonable opportunity was not given to the affected persons for preferring their objections and of being heard.

11. The impugned notification reads as under:

“TRANSPORT DEPARTMENT

NOTIFICATION

Delhi, the 26th May, 2006

No. F.19(22)/Tpt./Sectt./2006/197.-- Whereas the draft of the directions was published as required by the **proviso to sub-clause (ii) of clause (d) of sub-section (1) of Section 67 of the Motor Vehicles Act, 1988 (59 of 1988)** in the Delhi Gazette-extraordinary, Part IV on the 5th January, 2006 *vide* this Government's notification Number F. PA/JCV/OPS/Tpt./1613/05/1447 inviting objections and suggestions from the persons likely to be affected, thereby till after thirty days from the date of the publication of the said notification in the Delhi Gazette;

And whereas the said Gazette was made available to the public on the 5th January, 2006;

And whereas all objections and suggestions received with regard to the said draft directions have been duly considered by the Government of the National Capital Territory of Delhi.

Now, therefore, **in exercise of the powers conferred by clause (ii) of sub-section (1) of Section 67** read with clause (41) of Section 2 of the Motor Vehicles Act, 1988 (59 of 1988), the Lieutenant Governor of the National Capital Territory of Delhi, hereby issues the following directions, both to the State Transport Authority, Delhi and the registering authorities of Delhi, namely:-

DIRECTIONS

1. With effect from the 1st July, 2006, goods carriages having gross vehicle weight up to three thousand kilograms and goods carriages having gross vehicle weight between three thousand kilograms and seven thousand five hundred kilograms plying on goods carriage permit except vehicle plying on National permit, running on fuel other than clean fuel, shall not be registered in the National Capital Territory of Delhi.
2. **From the date of publication of this notification, goods carriages having gross vehicle weight up to three thousand kilograms, registered outside the National Capital Territory of Delhi shall not be permitted to ply in National Capital Territory of Delhi.**
3. From the date of publication of this notification, goods carriages having gross vehicle weight between three thousand kilograms and seven thousand five hundred kilograms, registered outside Delhi and running on a fuel other than clean fuel, shall not be permitted to ply in the National Capital Territory of Delhi except under a valid National Permit and, in any case, shall not be permitted to pick up or set down goods between two points within the National Capital Territory of Delhi in accordance with the provisions of sub-rule (7) of rule 90 of the Central motor vehicle rules, 1989.

By order and in the name of the
Lieutenant Governor of the
National capital Territory of Delhi,

Vijay S. Madan, Secy.-cum-Commissioner (Tpt.)”

(emphasis supplied)

12. The impugned notification indicates that the draft directions were notified in view of the provisions of the “*proviso to sub-clause (ii) of clause (d) of sub-section (1) of Section 67*”. So, while the notification of 05.01.2006 did not indicate as to in pursuance of which clause of section 67(1) the draft directions were proposed to be issued, the impugned notification recites that it was under clause (d). But, clause (d), as we have seen above, relates to “*the desirability of preventing uneconomic competition among holders of permits*”. This clause is limited to the category of “holders of permits”. It does not have any applicability to the case of persons such as the petitioner nos. 1 to 4, who do not hold permits and, as pointed out above, are not required to hold permits because of clause (i) of sub-section (3) of Section 66, which stipulates that the necessity of obtaining a permit does not apply to “*any goods vehicle, the gross vehicle weight of which does not exceed 3,000 kilograms*”. Direction No.2 in the impugned notification is targeted at “*goods carriages having gross vehicle weight up to three thousand kilograms*”. But, such vehicles do require permits. Whereas, clause (d) of Section 67(1) pertains only to the category of permit holders. Clearly, there is no nexus between the objective set out in Section 67(1)(d) and the impugned Direction No.2.

13. Faced with this difficulty, the learned counsel appearing for the respondents submitted that the mention of clause (d) in the impugned notification was a typographical error and that the objective behind directions was “*to minimize Ambient Air Pollution in Delhi and rising Vehicular congestion and are entirely under public interest*”. Reference was also made to the order dated 06.12.2001 passed by the Supreme Court in the case of **M.C. Mehta v. Union of India** (I.A. No. 150 in I.A. Nos. 15-16 in Writ Petition (Civil) No. 13029/85) wherein the court observed:-

“It appears that the **vehicles which transit through Delhi** do not adhere to the vehicular standards which are applicable in Delhi, namely, **they are not Euro-II compliant** nor are they using low sulphur and low benzene fuel. There is no reason why very large number of goods vehicles should transit through Delhi thereby adding to the pollution level and the traffic on the road.

It is, therefore, proposed that with effect from 15th January, 2002 no heavy, medium or light goods vehicles will ply **on inter-state routes by passing through Delhi or New Delhi. It is only those goods vehicles which on payment of octroi/toll tax carry goods to or from Delhi which would be allowed to ply.** The Commissioner of police is directed to formulate a scheme in this behalf and give due publicity to all concerned and implement the same.”

It can be seen that these observations and directions of the Supreme Court are of no help to the case of the Respondents. First of all, the restrictions are in respect vehicles which transit through Delhi. In other words, it relates to those vehicles which

do not have Delhi as a destination or end point but to those which merely pass through Delhi, the end points of their routes lying in different states. The petitioners' vehicles, on the other hand, do not transit or pass through Delhi. They move goods to and from Delhi from adjoining areas in U.P. Secondly, the observations are directed against non Euro-II compliant vehicles. The vehicles belonging to the petitioner nos. 1 to 4 are all Euro-II compliant. Lastly, the Supreme Court has itself permitted goods vehicles which, on payment of applicable octroi/ toll tax, carry goods to or from Delhi.

14. Coming back to the submission of the learned counsel for the respondents that the mention of clause (d) in the impugned notification was a typographical error and that the objective behind directions was “*to minimize Ambient Air Pollution in Delhi and rising Vehicular congestion and are entirely under public interest*”, it must be said straightaway that this is not one of the objectives mentioned in clauses (a) to (c) in Section 67(1). Clause (a) speaks of “*the advantages offered to the public, trade and industry by the development of motor transport*”. Clause (b) concerns itself with “*the desirability of co-ordinating road and rail transport*” and clause (c) deals with “*the desirability of preventing the deterioration of the road system*”. None of these

cover the purported objective behind the issuance of the impugned notification and, in particular, behind the issuance of Direction No.2 therein.

15. Apart from this, and, in any event, nothing has been placed on record to show that the mention of clause (d) in the impugned notification was a typographical error. In fact, this was merely the submission of the learned counsel for the respondents. It was not even stated so in the counter affidavit. On the contrary, the impression given by the counter affidavit is that the directions were issued under Section 67(1)(d)(ii) of the said Act. This would be clear from the contents paragraph 14 of the petition and the reply given by the respondents in their counter affidavit.

Paragraph 14 of the petition reads as under:-

"14. That the petitioners came to know only after reading notification dated 26.5.2006 that the draft of proposed directions was issued under Section 67 (1) (d) (ii) of the act since it is found mentioned in the notification issued thereafter on 26.5.2006. It is submitted that under Section 67 (1) (d) (ii) of the act, the State Government has power to issue directions by way of notification for the purpose of preventing uneconomic competition among holder of permits only. This power can be invoked only with respect to transport vehicles which require a permit under Section 66 (1) to ply. The vehicles owned by the petitioners do not require transport permits and therefore do not fall within the purview of the Section. The correct and relevant provision was however not indicated in the draft itself which has prevented

the similarly situated persons from filing effective objections and therefore the draft as well as the entire process of inviting objections etc stands vitiated on the ground of non-application of mind and vagueness which has reduced the entire process into a mere formality."

Paragraph 14 of the counter affidavit read as under:-

"14. That the contents of para 14 of the writ petition are admitted only in so far as they are matters of record anything contrary thereto is wrong and denied. The contents of preliminary submissions are reiterated herein. It is wrong in the night that the correct and relevant provisions were not indicated or the same stands vitiated. The petitioner admits reading the notification and complete knowledge of the same. **Any interstate movement is considered to be a long distant movement and same is covered under Section 67 (1) d (ii) of Motor vehicles act, 1988.**"

(emphasis added)

16. It is easily discernible that while the petitioners specifically pleaded that it is only through the impugned notification dated 26.05.2006 that they came to know that the draft proposed directions were issued under Section 67(1)(d)(ii) of the said Act, the respondent's reply, which is somewhat evasive, when it denies that the "*correct and relevant provisions were not indicated*", is, however, categorical in stating that interstate movement is covered under Section 67(1)(d)(ii) of the said Act. Clearly, the respondents had invoked the provisions of clause (d) of Section

67(1) in issuing the draft directions as well as the impugned notification dated 26.05.2006. It has already been noted above that clause (d) applies only to permit holders and, therefore, the Direction No.2 in the impugned notification could not have related to “*goods carriages having gross vehicle weight up to three thousand kilograms*” which, in any event, do not require permits.

17. It was argued by the learned counsel appearing on behalf of the respondents that the power to issue the draft directions as well as the impugned notification is to be found in clause (ii) of sub-Section (1) of Section 67 of the said Act which provides that directions regarding the prohibition or restriction, subject to such conditions as may be specified in the directions, of the conveying of long distance goods traffic generally, or of specified classes of goods by goods carriages could be issued by the State Government to the State Transport Authority and Regional Transport Authority from time to time by notification in the official gazette. While it is true that directions regarding prohibition and restriction of the conveying of long distance goods traffic generally, or of specified classes of goods by goods carriages can be issued, it must also be noted that such directions must have regard to any one of the clauses (a) to (d) specified in

Section 67 (1) of the said Act. It has already been noted above that none of the situations specified in the said clauses (a) to (d) has arisen and definitely the circumstance in clause (d), under which the draft directions and the impugned notification have purportedly been issued, does not arise. Clauses (a) to (d) indicate the circumstances under which and the objectives for issuing directions whereas clauses (i) to (iii) stipulate the nature of directions that can be issued by the State Government to the State Transport Authority and Regional Transport Authority in the circumstances and for attaining the objectives specified in clauses (a) to (d). The directions cannot be issued without having regard to clauses (a) to (d). Consequently, the power to issue directions has to be traced to one of the said clauses (a) to (d). Clause (ii) of Section 67 (1) of the said Act does not empower the State Government to issue directions but stipulates the nature of the directions that can be issued. Therefore, the contention of the learned counsel for the respondents that the power to prohibit and restrict the conveying of long distance goods traffic generally can be traced to Section 67 (1) (ii) even in the absence of any reference to clauses (a) to (d) thereof, is clearly untenable.

18. Furthermore, the respondents have not given a satisfactory answer to the submission of the petitioners that the carriage of

goods by them in their light goods vehicles having a gross vehicle weight up to 3000 kgs, from adjoining areas of Delhi, to and fro Delhi would not amount to “the conveying of long distance goods”. The only answer given by the respondents is that any inter-state movement is considered to be a long distance movement and the same would be covered under clause (ii) of Section 67 (1) of the said Act. This is so stated in paragraph 14 of the counter affidavit which has been set out earlier in this judgment. Apart from the statement of the respondents that any inter-state movement is considered to be a long distance movement, no other provision has been pointed out by the learned counsel for the respondents to show definitively that it is so.

19. It was also contended on behalf of the petitioners that Direction No. 2 in the impugned notification makes a classification between goods carriages of upto 3000 kgs registered within and outside the National Capital Territory of Delhi. Such vehicles which are registered within the National Capital Territory of Delhi would be permitted to ply in the National Capital Territory of Delhi. However, those which are registered outside the National Capital Territory of Delhi would not be permitted to ply in the National Capital Territory of Delhi. It was further contended that this classification does not have any nexus with the

avowed objective of minimizing Ambient Air Pollution in Delhi. Assuming for the moment that the objective behind the notification was the reduction of Ambient Air Pollution in Delhi it could very well have stipulated that no vehicles running on non-clean fuel would be permitted to ply within the National Capital Territory of Delhi. If such a condition was imposed, perhaps, the petitioners would have no grievance because, according to them, their vehicles are all Euro-II compliant.

20. It would also be pertinent to note Direction No. 1 in the impugned notification. This stipulates that with effect from the 01.07.2006, goods carriages having gross vehicle weight upto 3000 kilograms and goods carriages having gross vehicle weight between 3000 kilograms and 7500 kilograms plying on goods carriage permits except vehicles plying on National permits, running on fuel other than clean fuel, shall not be registered in the National Capital Territory of Delhi. This implies that insofar as goods carriages having gross vehicle weight up to 3000 kgs are concerned, unless and until they run on clean fuel, they shall not be registered in the National Capital Territory of Delhi with effect from 01.07.2006. It is obvious that this direction is targeted at registration and applies only to registration in the National Capital Territory of Delhi. Consequently, goods carriages having gross

weight upto 3000 kgs running on non-clean fuel could yet be registered outside the National Capital Territory of Delhi. Perhaps, the fear was that such vehicles could be located at areas adjacent and adjoining Delhi and could circumvent this stipulation with regard to registration in the National Capital Territory of Delhi by obtaining registration in adjoining states. Thereafter the same could be utilized for plying within the National Capital Territory of Delhi. This problem could easily have been solved by simply stipulating that no goods carriages, having gross weight upto 3000 kgs, whether registered within or outside the National Capital Territory of Delhi, running on non-clean fuel, would be permitted to ply in the National Capital Territory of Delhi. But this has not been done. The intelligible differentia for the purposes of classification ought to have been clean or non-clean fuel and not place of registration. Had the intelligible differentia been based on the clean— non-clean fuel criteria, the resultant classification would definitely have had a nexus with the avowed objective of reducing the Ambient Air Pollution within the National Capital Territory of Delhi. But that is not the case. The classification has been based on place of registration which has no nexus with the objective of reducing Ambient Air Pollution. The classification would, therefore, have to be held to be arbitrary and would be violative of Article 14 of the Constitution of India.

21. For all the reasons indicated above, I am of the view that Direction No.2 in the present form in the impugned notification is liable to be quashed. It is ordered accordingly. The rest of the impugned notification dated 26.05.2006 remains undisturbed. It is open to the respondents to bring out a fresh notification in terms of what has been stated above. With these directions the writ petition stands partly allowed. No costs.

(BADAR DURREZ AHMED)
JUDGE

July 02, 2008
HJ /SR