

IN THE HIGH COURT OF DELHI AT NEW DELHI

**WRIT PETITION (CRIMINAL) No. 1532 of 2007
& Crl M A No. 13580/2007**

Date of decision: January 15, 2009

**ALL HARYANA TOURIST TRANSPORT
WELFARE ASSOCIATION GURGAON ... PETITIONER**
Through Mr. Nidesh Gupta, Senior Advocate
with Mr. Atul Kumar and
Mr. Tarun Gupta, Advocates

versus

UNION OF INDIA & ORS RESPONDENTS
Through : Ms. Mukta Gupta, Senior Standing
Counsel for State.
Mr. S.K. Dubey with Mr. Nitin Kumar Sharma
and Mr. Deepak Sharma, Advocate for UoI.

**CORAM
HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE S. MURALIDHAR**

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

J U D G E M E N T
15.01.2009

S. MURALIDHAR, J.

Crl M Application No. 5944/2008

Having heard learned counsel for the parties and for the reasons stated in the application, the application for amendment is allowed. The application is disposed of. The amended writ petition is taken on record.

Writ Petition (Crl) No. 1532 of 2007 & Crl M A No. 13580/2007

1. This writ petition by All Haryana Tourist Transport Welfare Association, Gurgaon seeks a writ to quash an order dated 18th October 1997 passed by the Deputy Commissioner of Police (Traffic) as illegal, ultra vires and discriminatory. The petition also seeks a declaration that Rule 9 (1) of the Delhi Control of Vehicular & other Traffic and Road and Street Regulations, 1980 ('Regulations') is bad in law and prays for a writ to quash the same.

2. The Petitioner claims that it has more than 100 members and "represents the interest of a large number of cab owners." It is stated that in Writ Petition (Criminal) No.878 of 2007 hereinafter referred to as the 'Blue Line case' by an order dated 3rd October 2007 this Court directed the Delhi Police to insert an advertisement in all leading newspapers informing the call centre vehicle owners, users and drivers that running of a light commercial vehicles ('LCV') at speeds beyond 40 kms/hour was in violation of the order passed by the Supreme Court in *M.C.Mehta v. Union of India reported in (1997) 8 SCC 770*. It was further directed that the Administration would make it clear that any violation of the speed limit fixed by the Supreme Court may result in impounding or detaining of the vehicles from the first week of November 2007, subject to further orders of this Court.

3. In compliance with the said order dated 3rd October 2007 the

Delhi Traffic Police issued an advertisement in the newspapers dated 21st and 22nd October 2007. At the subsequent hearing of the Blue Line Case on 19th November 2007, this Court passed the following order:

“Ms. Mukta Gupta, Standing Counsel for the State submits that the present application is not maintainable. In support of her contention, Ms. Gupta has placed reliance on Regulation (1) of “The Delhi Control of Vehicular and Other Traffic on Roads and Streets Regulations, 1980”, which reads as follows: “9. No vehicle to be so driven as to endanger safety (1) The vehicle shall be driven on ridden in any street or road in which a way as to endanger the safety of, or cause obstruction or inconvenience to the public or at a speed in excess of the maximum speed limit fixed for the street or road by the Deputy Commissioner of Police (Traffic), Delhi by notification.”

Pursuant to the above power conferred by Regulation 9, the Delhi Police has issued a notification dated 18th October 1997, which prescribes the speed limit as under:

“In supersession of all previous orders issued from time to time by the District Magistrate, Commissioner of Police, Delhi etc. 1, Qamar Ahmed, Dy. Commissioner of Police, Traffic, Delhi in exercise of the powers conferred upon me under Section 29

(1) (B) of Delhi Police Act, 1978 read with Rule 9 (1) of the Delhi Control of Vehicular and Other Traffic on Roads & Streets Regulations 1980, do hereby declare the maximum speed limit (where Road Conditions permit) of all transport vehicles, TSRs, Jeep, Cars, Scooters as mentioned below:

	Speed in KMPH	
	Jeep, cars & two Wheelers etc.	All Transport vehicles, TCR
1. Trans Yamuna area, Area bounded by Ring Road except Indira Gandhi Marg i.e. Inside Ring Road.	50	40
2. Ring Road, Indira Gandhi Marg and all Roads outside Ring Road	50	40
3. National Highways beyond outer Ring Road,Gurgaon Road beyond Dhaula Kuan, Mathura Road beyond Ashram Chowk	60	40

This order shall come into force with immediate effect. This order shall be published for information of general public in the official gazette and by affixing a copy on the notice boards of the officers of all District, DSSP and Police Stations in Delhi/New Delhi.”

It has been submitted by Ms.Mukta Gupta, the learned Standing Counsel for the State that for all transport vehicles including Call Centre Cabs a speed limit of 40 kms, has been prescribed as per the above notification. Counsel for the applicant

seeks time to respond. Response be filed
before the next date of hearing.
List on 30th November 2007.”

4. According to the Petitioner, the order dated 18th October 1997 (which has been reproduced in the above order dated 19th November 2007 of this Court in the Blue Line Case) has not yet been notified in the official gazette. It is contended that the said notification is not in accordance with Section 28 of the Delhi Police Act 1978 (‘Act’); that it has been issued without the previous sanction of the Administrator and is therefore unsustainable in law. Without prejudice to these contentions, it is averred that in the roads of Delhi no such speed limit for call centre cabs has been fixed and that commercial cars, jeeps etc. have not been treated as transport vehicles for the purpose of fixing speed limits. The further contention is that since call centre cabs are not light commercial vehicles, they are not covered by the said notification. It is stated that as per notification SO 436 (1) dated 12th June 1989 issued under Section 41 (4) of the Motor Vehicles Act, 1988 (‘MV Act’), the Central Government has specified the types of motor vehicles and as per the said notification while every four wheeler goods carriage is a light motor vehicle (‘LMV’), every LCV is not a light goods vehicle. Further the Central Government had exercised its power under Section 112 (1) of MV Act and issued a notification stipulating the maximum speed limit in public places for LMVs at 65 kmph which was higher than 40 kmph fixed by the Delhi Traffic Police by the

notification dated 18th October 1997. It is stated that while the members of the Petitioner Association are willing to take all steps for reduction of accidents, it is not feasible to curtail the maximum speed of a car to 40 Kmph on a highway. Therefore, the fixing of the aforementioned speed limit was arbitrary and unreasonable apart from the inconsistent with the MV Act. The present writ petition was filed on 27th November 2007 and notice was directed to issue on 29th November 2007. Thereafter on 25th January 2008 the Deputy Commissioner of Police (Traffic), Delhi issued another notification under Regulation 9 (1) of the Regulations fixing the maximum speed limit for all transport vehicles including TSRs at 40 kmph and for cars, jeep, two wheelers etc. at 60 kmph in, inter alia, on all National Highways beyond outer ring road, Gurgaon Road beyond Dhaula Kuan and Mathura Road beyond Ashram Chowk. It was stated therein that this notification would supercede the previous notifications.

5. Consequent upon the issuance of the aforementioned notification the Writ Petitioner filed an application to amend the writ petition to challenge the said notification dated 25th January 2008 as well. This application being Crl Miscellaneous Application No. 5944 of 2008 has been heard along with the main writ petition itself.

6. We have heard the submissions of Mr. Nidesh Gupta, learned Senior counsel appearing for the Petitioner and Ms. Mukta Gupta,

learned Senior standing counsel appearing for the respondent respectively.

7. In the first place it is necessary to note that Section 112 of MV Act provides the overall limits of speed to be fixed either by the Central Government or the State Government. Under sub-section (2), the State Government can fix speed limits for any specified class or description of motor vehicles or for any particular area or for particular road. Section 112 reads as under:

“Section 112. Limits of speed -

(1) No person shall drive a motor vehicle or cause or allow a motor vehicle to be driven in any public place at a speed exceeding the maximum speed or below the minimum speed fixed for the vehicle under this Act or by or under any other law for the time being in force.

Provided that such maximum speed shall in no case exceed the maximum fixed for any motor vehicle or class or description of motor vehicles by the Central Government by notification in the Official Gazette.

(2) The State Government or any authority authorized in this behalf by the State Government may, if satisfied that it is necessary to restrict the speed of motor vehicles in the interest of public safety or convenience or because of the nature of any road or bridge, by notification in the Official Gazette, and by causing

appropriate traffic signs to be placed or erected under Section 116 at suitable places, fix such maximum speed limits or minimum speed limits as it thinks fit for motor vehicles or any specified class or description of motor vehicles or for motor vehicles to which a trailer is attached, either generally or in a particular area or on a particular road or roads.

(c) Provided that no such notification is necessary if any restriction under this section is to remain in force for not more than one month.

(3) Nothing in this section shall apply to any vehicle registered under Section 60 while it is being used in the execution of military manoeuvres within the area and during the period specified in the notification under sub-section (1) of Section 2 of the Manoeuvres, Field Firing and Artillery Practice Act 1938 (5 of 1938).”

8. Further Section 28 of the Delhi Police Act 1978 vests the Commissioner of Police with power to notify in the Official Gazette regulations for regulating the traffic. The said provision reads as under:

“28. Power to make regulations for regulating traffic and for preservation of order in public places, etc.

1. The Commissioner of Police may, by notification in the Official Gazette, make regulations to provide for all or any of the following matters, namely:-

(a) licensing and controlling persons offering themselves for employment, outside railway stations and other places where passengers arrive, for the carriage of passenger's baggages and fixing and providing for the enforcement of a scale of charges for the labour of such person so employed;

(b) regulating traffic of all kinds in streets and other public places, and the use of streets and other public places by persons riding, driving, cycling, walking or leading or accompanying cattle, so as to prevent danger, obstruction or inconveniences to the public.”

9. Pursuant to the aforementioned power, the 1980 Regulations have been made. Regulation 9 reads as under:

“9. No vehicle to be so driven as to endanger safety – (1) The vehicle shall be driven or ridden in any street or road in which a way as to endanger the safety of, or cause obstruction or inconvenience to the public or at a speed in excess of the maximum speed limit fixed for the street

or road by the Deputy Commissioner of Police (Traffic), Delhi by notification.

(2) No person shall in any manner prevent any other person or liicle from passing him or any vehicle or animal of his care on any or road or prevent, interrupt or hinder the free passage (including overtaking and passing) of any person, vehicle or animal on any street, or 11 (d) and shall, for the purpose of allowing such passage, keep his vehicle or animal as near the left hand side of the street as is possible, having regard to the condition of the street or road, or the traffic condition thereon.”

10. It may be mentioned at this stage that 1980 Regulations were published in the Official Gazette on 26th April 1980. A copy of the gazetted Regulations has been placed before this Court. With the Regulations specifically empowering the Deputy Commissioner of Police to fix the maximum speed limit, it cannot be said that the notification issued in exercise of the delegated legislative power is ultra vires the Act. We reject the argument of the petitioner that the impugned notification dated 18th October 1997 and the subsequent notification dated 25th January 2008 suffer from vice of arbitrariness or being ultra vires the Act. We hold that the Deputy Commissioner of Police acted within the scope of the power conferred on him by the Act and the Regulations in fixing the speed limits.

11. We are also not impressed with the submission of the petitioner that call centre cabs cannot be treated as light commercial vehicles. It is seen that under the MV Act and Rules two kinds of permits are issued by the State where the vehicle is registered which do not require the counter signature or approval of the other State i.e. (1) National permits for goods vehicle and (2) Tourists permits for tourists vehicles for passengers. The permits granted in all other cases in any one State are not valid in the other State unless countersigned by the State Transport Authority of the other State. It has been stated in the affidavit dated 4th February 2008 filed by Shri D.M. Spolia, Principal Secretary-cum-Commissioner (Transport), Government of National Capital Territory of Delhi that as far as the call centre cabs are concerned, the State Transport Authority, Delhi has not counter signed any permit issued by his counterpart in Haryana. It is further clarified that the tourist vehicles for which permit have been issued under Rule 85 of the Central Motor Vehicles Rules, 1989 can only carry tourists to visit places of interest. However, such tourist vehicles “cannot ferry call centre or BPO employees. These tourist vehicles cannot operate as stage carriages.” It is stated that the name of the petitioner suggests that it is an association of tourist transport vehicle operators and as such its members cannot use such vehicles to ferry employees of a call centre or of a BPO.

12. Without going into the aforementioned controversy raised by the Transport Department, it appears to this Court that call centre cabs do not stand on the same footing as private cars for the purpose of the MV Act. It is, therefore, not possible to accept the contention of the petitioner that by treating the call centre cabs as vehicles different from private cars for the purpose of fixing maximum speed limits, the call centre cabs are being subject to hostile discrimination. To this Court it appears that classifying the call centre cabs, which have been ferrying the employees of the BPO or call centres, different from private vehicles for the purpose of maximum speed limits does not suffer from the vice of arbitrariness or discrimination.

13. It was urged by the petitioner in its rejoinder affidavit dated 12th May 2008 that when compared to private vehicles, call centre cabs were hardly involved in fatal or non-fatal accidents. This does not appear to be correct. Ms. Mukta Gupta, learned Senior standing counsel has placed before us the details of prosecution against call centre cabs between 1st January 2008 to 31st July 2008. The number of instances of such vehicles being challaned in the aforementioned 8 months period for dangerous driving is 1198. For driving without a speed governor it is 1658. The total number of challans for all violations by call centre cabs the period of the above eight months in 2008 alone is 7033. This is a deterioration of the situation in the previous year 2007. The total challans issued to the call centre cabs

in 2007 were 4726. Notwithstanding the number of challans issued to private cars, it is seen that the call centre cabs are indeed involved in a large number of traffic violations. A substantial number of these challans are for dangerous driving and driving without the use of a speed governor.

14. Therefore, even on a factual basis, there appears to be a reasonable nexus between the speed limit stipulated by the impugned notifications and the legitimate aim of ensuring safe driving of call centre cabs. In the circumstances, it cannot be said that the fixing of maximum speed limits for call centre cabs by the impugned notifications is unreasonable or arbitrary.

15. We therefore, find no merit in this writ petition, and it is dismissed as such with no order as to costs. The pending application also stands dismissed.

S. MURALIDHAR, J.

CHIEF JUSTICE

January 15, 2009

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