

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

% Judgment Delivered on: 30.08.2012

+ WP(C) No. 2171/2010 & CM No. 4418/2010

QUICK CABS PVT. LTD.

..... Petitioner

Vs

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms Rani Chhabra, Advocate.

For the Respondents: Ms Neha Kapoor, Advocate

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. This writ petition has been filed to seek a declaration that the action of the respondents in challaning the vehicles plied by the petitioner, in exercise of powers under Sections 66 read with Section 192A and the consequent institution of proceedings under Section 66 of the Motor Vehicles Act, 1988 (in short MV Act) was illegal, unjustified and contrary to the provisions of the MV Act. In addition the said action of the respondents is also assailed under Article 14 and 19 of the Constitution of India.

1.1 A consequential prayer is also sought, which is to quash notices dated 25.02.2010, 05.03.2010 and 09.03.2010. To be noted that the notices dated 25.02.2010 is not appended to the writ petition, though that in itself may not make much difference in view of the fact that it is only a consequential

prayer, and notices have been appended to demonstrate the alleged illegality of the actions of the respondents.

2. The challenge, as referred to hereinabove, is founded on the following broad facts:

2.1 In 2006 respondent no. 1 evidently floated a scheme, known as, the Radio Taxi Scheme, 2006 (in short the scheme). The purpose of the scheme was to invite offers from interested parties, who were inclined to operate a radio taxi network within the National Capital Territory of Delhi (NCT of Delhi), and thereupon grant permits in exercise of powers under Section 74 and other accompanying provisions of the MV Act. The scheme prescribed the criteria on the basis of which permits/ licenses would be granted to the applicants.

2.2 The petitioner applied, and has evidently, pursuant to the contract carriage permits granted by the respondents, inducted 205 radio taxi cabs. These cabs are operating within the National Capital Region (in short NCR). It is the case of the petitioner that the radio taxi cabs operated by it, are light motor vehicles, similar to private cars; the only difference being that they are available to commuters at large, who intend travelling within the NCR.

2.3 The petitioner's case is: often the vehicles plied by it are challaned for over-speeding, for which fines have been paid from time to time. It is petitioner's stand that often fines are paid which vary from Rs 2600 to 5900. According to the stand of the petitioner once fines are paid, the offence of over-speeding gets compounded. Therefore, the power exercised thereafter by the respondents under Section 86(4) of the MV Act to issue notices which threaten to suspend the permit/license of the petitioner for a period of 30 days by treating the very same offence as a breach of the conditions on which the permit was granted in the first instance, is illegal and unjustified, as it is contrary to the provisions of the MV Act. Such actions, according to the

petitioner, also violate its fundamental rights conferred under the Constitution.

3. A perusal of the impugned notices dated 05.03.2010 and 09.03.2010 shows that they were preceded by earlier show cause notices which date back to November, 2008 and March, 2009. Because the impugned show cause notices were reminders, which forewarned the petitioner that in case replies, as directed earlier, were not filed within a period of seven days, the case would be decided ex-parte; the petitioner approached this court by way of the present writ petition. Consequent thereto, on 05.04.2010 notice was issued in the writ petition by this court. On the said date, an interim direction was issued whereby the respondents were restrained from taking coercive steps against the petitioner till the next date of hearing. This interim order has continued to date.

4. In the background of these brief facts and the prayers made in the writ petition, Ms Rani Chhabra, who appears for the petitioner, made the following submissions:

4.1 The power to specify speed limits is provided in Section 112 of the MV Act. The penalty for contravening the speed limit prescribed under Section 112 is provided in Section 183 of the MV Act; which broadly provides that the offence will be punishable with a fine which may extend to Rs 400 and if the driver of the offending vehicle has a record of a previous conviction, in respect of over speeding, the fine would extend to Rs 1000.

4.2 Section 200 of the MV Act provides for composition of certain offences, which are punishable under provisions referred to in the said Section including the offence of over speeding referred to in Section 183 of the MV Act. Ms Chhabra submitted that if an offender chooses to compound the offence, whether before or after the institution of prosecution, then, in terms of Section (2) of Section 200, the offender, if in custody, is to be

discharged and no further proceedings can be taken against the offender in respect of such offence qua which he has chosen the route of composition.

4.3 This being the scheme of the MV Act, the respondents have acted contrary to the provisions of the said Act by issuing the impugned notices, by treating the said offence as a violation of the conditions of the permit and thereupon proceedings to threaten suspension of the petitioner's permit(s) for a period of 30 days.

4.4 The ostensible basis on which the impugned show cause notices have been issued, are the observations/ directions contained in the judgment of the Supreme Court in the case of ***M.C. Mehta vs Union of India 1997 (8) SCC 770***. Ms Chhabra drew my attention to the relevant observations which are contained in paragraph 14 at pages 777 to 779 of the said judgment.

4.5 Briefly, Ms Chhabra submitted that the directions issued by the Supreme Court in ***M.C. Mehta*** case apply to heavy and medium transport vehicles as also to light goods vehicles. The vehicles, that petitioner plies, are light commercial vehicles and, therefore, the speed limit adverted to in the Supreme Court judgment of 40 KM per hour would have no application to vehicles such as the ones the petitioner plies.

4.6 The judgment of the Supreme Court in ***M.C. Mehta*** case has been explained by a Division Bench of the Supreme Court in the case of ***U.P.S.R.T.C. vs Asstt. Commissioner of Police (Traffic) Delhi (2009) 3 SCC 634***. The Supreme Court in the said case was pleased to observe as follows: “....the directions in MC Mehta case that any breach will be considered to be in contravention of the conditions of the permit, which could entail suspensions/cancellation of the permit and impounding of the vehicle must be read in the light of the provisions of the MV Act and not de hors the same. Right to ply a vehicle in terms of the provisions of the MV Act or the Rules framed thereunder is a statutory right. Where a person, including a juristic

person, is conferred a right to carry on business, regulation thereof should ordinarily be govern by the statute under which the permit has been granted. Even if additional regulatory measures are laid down, the same, should be construed strictly. The Supreme Court could not and, in fact, did not while issuing the said direction confer a statutory authority upon a person who did not have any authority under the statute. The Judge made law in an area covered by the parliamentary Act should not be applied in an expansive manner. Nothing should be deduced therefrom. An order passed by an authority without jurisdiction, it is trite, would be a nullity.....”. Relying upon the said observations Ms Chhabra said that the notices are patently illegal and hence deserves to be quashed.

5. On the other hand, Ms Neha Kapoor, who appears for the respondents, submitted that the writ petition is not maintainable in view of the fact that the petitioner has chosen to approach the court at the stage of issuance of show cause notice. She submitted that opportunities had been granted to the petitioner; the petitioner has chosen not to file a reply and have the show cause notices adjudicated upon. Ms Kapoor submitted that ordinarily this court would not countenance such a route being adopted by the petitioner, as surely, if the show cause notice results in an adverse consequences, the petitioner could approach this court.

5.1 On merits, in respect of the other submission of the petitioner as to whether the offence of over speeding could be treated as a violation of the conditions of the permit, and thereby authorizing the respondents to suspend the license/permit of the petitioner, Ms Kapoor sought to place reliance on the observations of the Supreme Court in ***M.C. Mehta*** case. Ms Kapoor also submitted that in view of the observations of the Supreme Court in ***UPSRTC*** case, this Hon'ble Court in WP(C) 2838/2010 titled Tara Kant Jha & Ors. vs State Transport Authority & Ors. vide judgment dated 20.05.2010 has

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directed the petitioners to obtain appropriate clarification from the Supreme Court as to whether the observations in the latter judgment, i.e., *UPSRTC* case, are to be read in supersession of that which is observed by the Court in *M.C. Mehta* case. Ms Kapoor submitted that since *M.C. Mehta* case was a judgment delivered by a Larger Bench of the Supreme Court, it would hold the field.

5.2 As regards the submissions of Ms Chhabra that the observations of *M.C. Mehta* case were applicable only to heavy and medium transport vehicles and light goods vehicles; was rebutted by Ms Kapoor by seeking to place reliance on a judgment of a Division Bench of this court in the case of *All Haryana Tourist Transport Welfare Association & Ors. vs UOI & Ors. passed in WPC(Crl.) no. 1532/2007 dated 15.01.2009*, to contend that the observations in *M.C. Mehta* case were made applicable to even call centre vehicles. In other words the contention was that the view taken by this court is that *M.C. Mehta* judgment still holds the field. Specific reliance was placed on observations made in paragraph 12 of the said judgment.

6. I have heard the learned counsels for the parties. Upon hearing the counsels for the parties, the following emerges.

6.1 Undoubtedly, that the respondents have issued the impugned show cause notices to the petitioner, for an offence of over speeding, for which, the petitioner has already paid the fines by treating the very same offense as the breach of condition of the permit/license.

6.2 The petitioner, which is in the business of operating radio taxi cabs, plies its vehicles in large numbers within the NCR. The show cause notices apparently emanate on account of violation of speed limits by drivers engaged by the petitioner, who ply its vehicles. There is apparently a case set up of recurrent violations by drivers of offending vehicles owned by the petitioner, who have been found, violating the prescribed speed limits from

time to time. The question which arises for consideration qua the said show cause notices would be whether repeated violations by drivers of offending vehicles engaged and owned by the petitioner could form the basis for issuance of the impugned notices.

6.3 Admittedly, the respondents in issuing the impugned notices are relying upon the directions of the Supreme Court in the ***M.C. Mehta*** case. Even according to the petitioner (as stated in its rejoinder affidavit) the special leave petition (SLP) filed against the judgment of this court in ***Tara Kant Jha*** case, has been referred to a larger bench. Therefore, the issue as to whether the directions issued in ***M.C. Mehta*** case stand substituted by those issued in ***UPSRTC*** case, is a matter which is still at large. Notwithstanding that, it would have to be borne in mind that the judgment in the case of ***M.C. Mehta*** was delivered by a three-Judge Bench, whereas the one delivered in ***UPSRTC*** case was pronounced by a Division Bench of the Supreme Court. Ordinarily, the directions and observations made in ***M.C. Mehta*** case should prevail.

6.4. What is required to be addressed is whether the respondents can proceed with the impugned action in exercise of its powers under Section 86(4) of the MV Act having regard to the aforementioned judgment of the Supreme Court and of this court and other provisions of the MV Act.

6.5 I tend to agree with the submissions of the learned counsel for the respondent that these are aspects which require adjudication by the authority concerned which issued the impugned show cause notices. This is not a case where authority concerned is acting completely without jurisdiction. The respondents need to adjudicate and come to a firm conclusion as to whether petitioners, and the like entities, which are in the business of plying light commercial vehicles, whose vehicles tend to, repeatedly, violate the stipulated speed norms, can be subjected to the rigours of Section 86(4) of the

MV Act, having regard to the pronouncements of the Supreme Court and of this court and also to the provisions of the MV Act.

7. I therefore, propose to dispose of the writ petition by directing the petitioner to file its reply to the show cause notices issued within three weeks from today. The respondents shall upon receipt of the replies of the petitioner, issue a specific written notice, informing the petitioner as to the date, time and venue, when the petitioner through its representative shall be heard by the adjudicating authority. Upon hearing the petitioner's representative, the adjudicating authority shall pass a reasoned order, which shall be duly communicated to the petitioner within three days of the order being passed. Since this court, on the very first date, when the writ petition was filed, had directed that no coercive steps against the petitioner would be taken under Section 86 of the MV Act, I propose to extend the protection to the petitioner, till the adjudication of the impugned show cause notices. In case the final order of adjudication is adverse to the interest of the petitioner, no coercive action shall be taken against the petitioner for a period of two weeks thereafter so as to enable the petitioner to take recourse to an appropriate remedy in accordance with law.

8. Needless to say the adjudicating authority will deal with all contentions of the petitioner including the ones which have been noticed by me hereinabove. With the aforesaid observations, the writ petition and the application stand disposed of.

RAJIV SHAKDHER, J

AUGUST 30, 2012

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