

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2015

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P. No.35394 of 2015
and M.P.No.1 of 2015

R.Muthukrishnan, .. Petitioner

-vs-

State of Tamil Nadu, rep. By its

1.Chief Secretary,
Govt. of Tamil Nadu,
Secretariat, Chennai-600 009.

2.Principal Secretary (Home)
Govt. of Tamil Nadu,
Secretariat, Chennai-600 009.

3.Secretary,
Home (Transport V) Dept.,
Govt. of Tamil Nadu,
Chennai-600 009.

4.Director General of Police,
Govt. of Tamil Nadu,
Mylapore, Chennai-600 009.

5.Public Information Officer /
Under Secretary to Govt.,
Home (Tr.V) Dept.,
Govt. of Tamil Nadu,
Secretariat, Chennai-600 009. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration to declare that the Public Notice issued by the 2nd respondent informing the Public that wearing of helmet by two wheeler driver and rider is compulsory from 01.07.2015 failing which, all the documents of the two wheeler including the driving licence of the driver shall be impounded under Section 206 of the Motor Vehicles Act, 1988, as per the procedure stated therein and the impounded

documents would be released only on production of new ISI certified helmet with purchase receipt is without authority, improper, illegal and unconstitutional and that the enforcement / implementation of the Public Notice by the 4th respondent is illegal and violative of fundamental right to freedom of movement guaranteed under Article 19(1)(d) and personal Liberty guaranteed under Article 21 of the Constitution of India to the two wheeler users and to order the 1st respondent to pay compensation for the mental pain, distress, indignity and loss of liberty caused to the two wheeler users, with costs.

For Petitioner : Mr.R.Muthukrishnan
Party-in-person

For Respondents : Mr.S.T.S.Murthi,
Govt. Pleader, assisted by
Mr.V.Shanmuga Sundar, G.A.

O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

The petitioner claims to be an advocate, who is a public-spirited citizen and seeks to assail the public notice issued by the second respondent / Principal Secretary (Home), making it compulsory from 01.07.2015 for drivers and riders of two wheelers to wear helmet, as also the procedures required to be followed in case of violation of the same resulting in driving licence being impounded and the circumstances in which the documents will be returned back.

2.It is the submission of the petitioner that the G.O. is without any authority of law and that there are two earlier G.Os. dated 22.02.2007 and 13.08.2007 dealing with the subject matter. The petitioner claims that the print media reported on 18.06.2015 that the Government, on 17.06.2015, had announced that two wheeler riders must wear helmet from 01.07.2015, failing which consequences would follow. He, through the Right to Information Act, 2005, sought copies of the press release. The petitioner alleges that enforcement of the Public Notice is illegal and violative of the fundamental right of freedom of movement guaranteed under Article 19 (1)(d) of the Constitution of India as well as the personal liberty guaranteed under Article 21 of the Constitution of India to two wheelers, it does not have reference to the Parent Act, it is in the nature of an executive order, it has created an emergency like situation in the minds of 1.5 crores two wheeler users and even goes as far as to claim that the action reminds him of the emergency enforcement in 1975.

3.We have heard the petitioner at length.

4. In our view, the petition is misconceived and meritless. It is not as if there is lack of awareness of the issue of enforcement of the compulsory rule of wearing helmet. It has been addressed in press and otherwise. In fact, the petitioner claims that the judicial order passed by the learned Single Judge in C.M.A.No.3235 of 2014 on 08.06.2015 is an order without jurisdiction and he has also moved the learned Single Judge for review of the order on which orders have been reserved on 28.09.2015, but the judgment is yet to be pronounced.

5. On perusal of the order passed in C.M.A.No.3235 of 2014, it emanates that directions were issued by the Court in the following terms:

''48. Therefore, this Court directs:

(a) Respondents 3 and 4 shall inform the public through media on or before 18.6.2015 that wearing of helmet by two wheeler riders is compulsory from 1.07.2015, failing which, all the documents of the two wheeler including driving licence of the rider shall be impounded under Section 206 of the Act as per the procedure stated therein and impounded documents would be released only on production of new ISI certified helmet with purchase receipt.

(b) If the order of this Court, namely, direction given to the respondents 3 & 4 to inform the people through media on or before 18.06.2015 about wearing of helmet compulsorily from 1.07.2015 onwards, is not complied with, the 3rd and 4th respondents namely, Home secretary, Tamil Nadu and the Director General of Police Chennai, shall appear before this Court on 19.6.2015.

(c) Respondents shall suspend the driving licence of the riders and to cancel after enquiry for violation of Section 129 of the Motor Vehicles Act, after registering a case for violating the said provision.

(d) Respondents 3 and 4 are directed to install CCTV cameras in important junctions and Roads including National Highways to monitor the wearing of helmet by two wheeler riders and those fail to wear helmets have to be issued notice about non-wearing of helmet and to cancel the licence after enquiry.

(e) The fifth respondent (Central Government) shall go into the details of the design of the helmets to provide visibility on the sides as well as at the front of the wearer of helmet, as suggested by the intervenor.

(f) Respondents 3 and 4 shall file details of number of cases filed and other connected data every two months once before this Court.

(g) The fifth respondent shall direct all the

States to monitor the wearing of helmet compulsory and take actions.

(h) The respondents are directed to conduct programmes sensitizing two wheeler riders about the necessity to wear helmets by distribution of pamphlets, short films, advertisements etc.''

6.Thus, what the Government was doing was in pursuance to the directions issued by the Court and the petitioner was very much conscious of this fact and that is the reason has moved the review application. The earlier G.Os. have also been referred to in those proceedings.

7.Despite the aforesaid fact, the present petition is sought to be separately filed seeking to rake up the same issue again. Incidentally, the endeavour to stall the rule coming into force was unsuccessful in W.P.No.19020 of 2015 and W.P.No.19034 of 2015, which were dismissed by this Court on 30.06.2015.

8.The pleas raised have no force of law, as the constitutional right to travel any part of the country does not entitle a person to travel on a two wheeler without safety norms. That the petitioner seeks to raise the issue about emergency because some rule is sought to be enforced for the safety of passengers to ride two wheelers itself shows the extent of irrelevance in the submissions of the petitioner.

9.Section 129 of the Motor Vehicles Act, 1988, provides for wearing of protective headgear and it reads as under:

'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.''

Rule 206 of the Tamil Nadu Motor Vehicle Rules provides for compounding of offences on certain terms. The exceptions to wearing of helmet are provided in Rule 417 A of the said Rules. The most material fact is that all these aspects have received the attention of the learned Single Judge when he passed the order. Till that judgment stands, it is good law and has to be followed. It has not been appealed against nor was set aside in any proceedings.

10.In our view, the endeavour through the present petition is to circumvent the rigors of the judgment passed by the learned Single Judge and since the petitioner is an advocate, he very well knows the legal procedures and the consequences thereof. To once again raise this issue is nothing but a publicity stunt.

11.It is high time that there is a value to be assigned to the judicial time which is spent on such matters and the insistence of the petitioner to go on to argue such matters. The petitioner must pay for it.

12.Writ Petition is, accordingly, dismissed as meritless, with costs of Rs.10,000/- (Rupees ten thousand only) to be deposited with the Tamil Nadu Mediation and Conciliation Centre, Madras High Court Campus, within fifteen days from today. In case, no costs are deposited, no further P.I.L. will be entertained as filed by the petitioner. Consequently, M.P.No.1 of 2015 stands closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sra

Note: Mark a copy to the Tamil Nadu
Mediation and Conciliation Centre,
Madras High Court Campus,
Chennai.

सत्यमेव जयते

WEB COPY

To

1.The Chief Secretary,
Govt. of Tamil Nadu,
Secretariat, Chennai-600 009.

2.The Principal Secretary (Home)
Govt. of Tamil Nadu,
Secretariat, Chennai-600 009.

3.The Secretary,
Home (Transport V) Dept.,
Govt. of Tamil Nadu,
Chennai-600 009.

4.The Director General of Police,
Govt. of Tamil Nadu,
Mylapore, Chennai-600 009.

5.The Public Information Officer /
Under Secretary to Govt.,
Home (Tr.V) Dept.,
Govt. of Tamil Nadu,
Secretariat, Chennai.-600 009.

6. The Assistant Registrar, Tamil Nadu Medication and
Conciliation Centre, High Court Buildings,
Chennai 104.

+2ccs to Mr.R. Muthukrishnan, Party in person, S.R.No.60483

+1cc to the Government Pleader, S.R.No.60296

MSM(CO)
EU(17/11/2015)

सत्यमेव जयते

W.P.No.35394 of 2015

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