

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3747 OF 2016

M/S SAI AUTO CORPORATION AURANGABAD THROUGH ITS PARTNER SUSHIL
SUDHAKAR MAPARI
VERSUS
THE UNION OF INDIA AND OTHERS

...
Advocate for Petitioner : Mr. Girish K. Thigale (Naik)
Advocate for respondent No.1 & 2: Mr. S.G. Deshpande, ASG
Advocate for respondent No.3 : Mr. S.S. Dande, AGP.

**CORAM : S.V. GANGAPURWALA &
K.K. SONAWANE, JJ.**

DATE : 2nd APRIL, 2016.

PER COURT:

1] Heard. Notice to respondents. Shri Deshpande, learned ASG waives notice for respondent Nos. 1 and 2. Shri Dande, learned AGP waives notice for respondent No.3.

2] We have heard Mr. Thigale, learned counsel for the petitioner, who states that Rules 100(2),(3) & (3A) of the Motor Vehicle Rules, 1989 are ultra-vires the Constitution. Same are discriminatory. The use of glasses over wind screen which would maintain 70% visibility would be economical. Prima dona requirement of the said rules is to maintain visibility of 70% and 50% respectively. Even by use of tinted glasses same can be maintained. According to learned counsel, the said rules deserve to be struck down.

3] Mr. Thigale, submits that the Constitutional validity of the said rules has been left open by the Apex Court even in case of “**Avishek Goenka (1) vs. Union of India and another**” reported in (2012)5 SCC 321.

4] Mr. Deshpande, learned ASG submits that the said issue is no longer res-integra in view of the judgment of the Apex Court in the matter of “**Avishek Goenka (1)**” referred to supra.

5] We have considered the submissions. The Apex Court in the matter of **“Avishek Goenka (1)”** referred to supra, has observed as under :-

“ In light of the above discussion, we have no hesitation in holding that use of black films or any other material upon safety glass, windscreen and side windows is impermissible. In terms of Rule 100(2), 70% and 50% VLT standard are relatable to the manufacture of the safety glasses for the windshields (front and rear) and the side windows respectively. Use of films or any other material upon the windscreen or the side windows is impermissible in law. It is VLT of the safety glass without any additional material being pasted upon the safety glasses which must conform with manufacture specifications.”

6] Subsequently, the Apex Court in the matter of **“Avishek Goenka (2) Vs. Union of India and another”**, reported in **(2012) 8 SCC 441**, has observed as under :-

“ We must notice at the very threshold that in the main Writ Petition No.265 of 2011 and even in the present applications, there is no challenge to Rule 100 of the Motor Vehicles Rules, 1989 (for short “the Rules”). This Court vide its judgment dated 27.4.2012, has interpreted the said Rule de hors the other factors. Once this Court interprets a provision of law, the law so declared would be the law of the land in terms of Article 141 of the Constitution of India. The law so declared is binding on all and must be enforced in terms thereof. Having interpreted the Rule to mean that it the safety glasses alone with requisite VLT that can be fixed in a vehicle, it is not for this Court to change the language of the said Rule. It would, primarily, be a legislative function and no role thereon, is to be performed by this Court.”

7] It has been reiterated that said rule has been interpreted in case of **Avishek Goenka (1)** and the law declared would be law of the land in terms of Article 141 of the Constitution of India. Same would be binding on all courts.

8] Mr. Thigle, also relied on the judgment of the Kerala High Court in the case of “**M.K. Chandran and etc. Vs. Commissioner of Police, Kochi and others**” AIR 1998 Ker 347 (anexed at Page 80) and the judgment of the Division Bench of the Delhi High Court, dated 21.9.2007, in C.M. 9754 of 2007, 13271-72/2007 and R.P. 188/2008 in W.P. 16565 of 2006 (annexed at page 62).

9] These judgments relied upon by Mr. Thigale are prior in point of time. The Apex Court in the matter of **Avishek Goenka(1) and Avishek Goenka (2)** referred to supra, has considered the said controversy and put the said controversy to rest.

10] Considering the above, the contentions raised in the writ petition cannot be entertained. As such, the writ petition is disposed of. No costs.

[K.K. SONAWANE,J.]

[S.V.GANGAPURWALA,J]

grt/-