

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

* * * *

WRIT PETITION Nos.7618 and 10266 of 2006

Between:

R.Suresh and others.

....Petitioners

and

Govt. of Andhra Pradesh,
Rep.by Principal Secretary,
Transport Roads and Buildings Department,
Secretariat, Hyderabad,
And others.

....Respondents

JUDGMENT PRONOUNCED ON : 12.04.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : No
Marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to : No
see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT PETITION Nos.7618 and 10266 of 2006

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COMMON ORDER:

These two Writ Petitions are being disposed of by this common order as they involve same point of law.

The petitioners are owners of lorries covered by goods vehicle permits counter signed by the competent transport authorities of Tamil Nadu, Karnataka and Andhra Pradesh. They have been plying the vehicles under valid permits issued by the competent authorities. They carry the load within

the permissible limits of their registered laden weight. However, they admit that some vehicles marginally over load either due to the negligence of the drivers or due to the unavoidable circumstances. It sometimes occur while carrying single block granites, machinery etc., which are indivisible in nature. Section 113 of the Motor Vehicles Act, 1988 (for short, the Act), prohibits the plying of vehicle exceeding the permissible limits specified in the registration certificates. Section 194 of the Act imposes a minimum fine of two thousand rupees and an additional amount of one thousand rupees per tonne of excess load, together with the liability to pay charges for off-loading of the excess load in case of contravention of the provisions of Section 113 or 114 or 115. The petitioners submit that, notwithstanding the punishment provided under Section 194 of the Act, Section 200 provides for the composition of the offences committed under Section 194 of the Act. The said provision makes the offences compoundable. Accordingly, the State Government issued G.O.Ms.No.54, dated 31.03.1995, G.O.Ms.No.69, dated 16.05.2001 followed by G.O.Ms.No.138, dated 31.10.2001 specifying the schedule for compounding the offences committed under various provisions of the Act including the provisions of Section 194 at serial No.15 of the notification issued in G.O.Ms.No.69, dated 16.05.2001, which provides for compounding fee of Rs.2,000/- and an additional amount of Rs.100/- per 100 Kgs or part thereof of excessive weight. The said amount was subsequently revised in G.O.Ms.No.138, dated 31.10.2001. While so, when the State Government issued G.O.Ms.No.38, dated 04.03.2006, by way of amendment to G.O.Ms.No.138, dated 31.10.2001, omitting serial No.15 and the corresponding entries relating thereto in columns 2, 3 and 4, the present Writ Petitions are filed.

A counter affidavit is filed in W.P.No.7618 of 2006 on behalf of the second respondent stating that, pursuant to the observations made by the Supreme Court in **Paramjit Bhasin v. Union of India**^[1] the Government of India wrote a letter to all the State Governments on 14.11.2005 to make note of the said observations and make necessary amendments relating to the compounding of offences under Section 200 of the Act. In pursuance of the same, the notification in G.O.Ms.No.38, dated 04.03.2006, was issued duly

amending the orders in G.O.Ms.No.69, dated 16.05.2001. Though Section 200 of the Act vests power on the Government to compound the offences, it is not mandatory to compound the offence. In view of the same, the Government issued the impugned Government Order deleting the offences under Section 194 of the Act for the purpose of compounding.

In **Paramjit Bhasin's** case (supra) the petitioner challenged the legality of certain notifications issued by various State Governments under Section 200 of the Act stating that certain acts outside the ambit of Section 200 of the Act have been covered, though those were committed in clear violation of mandate of Sections 113 and 114 read with Section 194 of the Act. It was further contended that the notifications issued in effect condone the offence and permit its continuance though legally no such continuation could have been permitted. The Supreme Court heard the stand of the Union of India and the State Governments. It noticed that Section 200 does not in any way authorize the State Government to permit the excess weight to be carried when on various inspection/detection it is noticed that there is carriage of load beyond the permissible limit. It only gives an opportunity of compounding so that instead of the amounts fixed, lesser amounts can be accepted by the authorised officers. The intention of uploading the excess weight is apparent from a bare reading of the Section 194(1). Any notification which runs counter to the clear import of Section 194 has no validity. After compounding the excess load, the same cannot be permitted to be carried in the concerned vehicle and it would amount to infraction of Section 113 of the Act. Ultimately, the Supreme Court disposed of the Writ Petitions with the following observations:

“It is indisputable that the power of compounding vests with the State Government, but the notification issued in that regard cannot authorize continuation of the offence which is permitted to be compounded by payments of the amounts fixed. If permitted to be continued, it would amount to fresh commission of the offence for which the compounding was done. The State Governments which have not yet withdrawn the notifications shall do it forthwith. So far as the practical difficulties highlighted are concerned, it is for the State Governments concerned to make necessary arrangements to ensure that the difficulties highlighted can be suitably remedied by the State Government themselves without in any way overstepping statutory prescriptions.”

In view of the above observations of the Supreme Court and the consequential letter of the Union of India, I do not find any illegality in the impugned Government Order passed making amendments to G.O.Ms.No.138, dated 31.10.2001. The learned Counsel for the petitioners could not point out the lack of jurisdiction of the Government to issue such Government Order. No other point was urged by the learned Counsel for the petitioners. In view of the same, keeping in view the legislative intent as explained by the Supreme Court, the impugned order cannot be held to be illegal.

The Writ Petitions are, accordingly, dismissed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

12.04.2016
vs

[\[1\]](#) (2005) 12 SCC 642