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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 11th January, 2016

+ W.P.(C) 11398/2015 & CM No.30014/2015 (*stay*)

SHWETA KAPOOR Petitioner

Versus

THE GOVT. OF NCT OF DELHI AND ANR Respondents

+ W.P.(C) 11424/2015 & CM No.30131/2015 (*stay*)

SARVESH SINGH Petitioner

Versus

GOVT. OF NCT OF DELHI Respondent

+ W.P.(C) 11711/2015

NIPUN MALHOTRA Petitioner

Versus

GOVERNMENT OF DELHI NCT THROUGH THE CHIEF
SECRETARY Respondent

+ W.P.(C) 11713/2015

ANIT KUMAR BAHUTAY Petitioner

Versus

GOVT OF NCT OF DELHI & ORS. Respondents

- + W.P.(C) 11808/2015 & CM APPL. 32800/2015 (*stay*)
- GUNJAN KHANNA & ANR Petitioners
- Versus
- THE GOVERNMENT OF NCT OF DELHI Respondent
- + W.P.(C) 12352/2015 & CM No.32816/2015 (*stay*)
- KARUNA CHHATWAL Petitioner
- Versus
- GOVERNMENT OF NCT DELHI Respondent
- + W.P.(C) 12353/2015
- RAHUL AGGARWAL Petitioner
- Versus
- NATIONAL CAPITAL TERRITORY OF DELHI Respondent
- + W.P.(C) 39/2016 & CM No.246/2016 (*stay*)
- B. BADRINATH Petitioner
- Versus
- GOVT. OF NCT OF DELHI Respondent
- + W.P.(C) 63/2016
- AMET SIKKA Petitioner
- Versus
- GOVERNMENT OF DELHI NCT, DELHI GOVERNMENT
SECRETARIAT Respondent

+ W.P.(C) 71/2016 & CM No.393/2016 (*stay*)

SHWETA KAPOOR

..... Petitioner

Versus

THE GOVT OF NCT OF DELHI AND ANR

..... Respondents

+ W.P.(C) 74/2016 & CM No.397/2016 (*directions*)

RAJIV KHOSLA

..... Petitioner

Versus

GOVERNMENT OF NCT OF DELHI AND ORS Respondents

Counsel for the petitioner: Ms. Shweta Bharti, Mr. Neelesh Sinha, Mr. Nishant Gaurav Gupta & Ms. Rashmi Gupta, Advocates for the petitioners in W.P.(C) 11808/2015.

Ms. Shweta Kapoor, Petitioner in person in W.P.(C) 11398/2015.

Mr. Jai A. Dehadrai & Mr. Jaspreet Singh Chawla, Advocate for petitioners in W.P.(C) 11711/2015.

Mr. Ashutosh Dixit, Advocate for the petitioner in W.P.(C) 11713/2015.

Mr. P.R. Sikka, Advocate for the petitioner in W.P.(C) 63/2016.

Mr. Shivram & Mr. B.Badrinath, Advocates for the petitioner in W.P.(C) 39/2016.

Mr. Joginder Sukhija, Advocate for petitioner in W.P.(C) 12353/2015. Petitioner in person in W.P.(C) 71/2016.

Petitioner (Sh. Rajiv Khosla) in person with Mr. Vikas K. Chadha, Advocate in W.P.(C) 74/2016.

Counsel for the respondents: Mr. Harish Salve, Sr. Adv. with Mr. Rahul Mehra, Sr. Standing Counsel (Civil) & Mr. Peeyoosh Kalra, Standing Counsel (Civil) with Mr. Sanyog Bahadur & Mr. Shekhar Budakoti, Advocates for GNCTD in all the cases.

Mr. Sanjay Jain, ASG with Mr. Jasmeet Singh, CGSC for the Union of India in W.P.(C) 11713/2015.

Mr. Amit Mahajan, CGSC for the Union of India in W.P.(C) 74/2016.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH

COMMON JUDGMENT

G.ROHINI, CHIEF JUSTICE:

1. The Notification dated 28.12.2015 issued by the Transport Department, Government of NCT of Delhi prohibiting plying of non-transport four wheeled vehicles in the area of National Capital Territory of Delhi on alternate days on the basis of registration numbers of the vehicles is the subject matter of this batch of writ petitions filed by way of Public Interest Litigation.
2. The said Notification dated 28.12.2015 which prohibits plying of the vehicles having registration number ending with odd digits on even dates of the month and vehicles having registration number ending with even digits on odd dates of the month, reads as under:

“NOTIFICATION

Whereas the National Capital Territory of Delhi has more than nine million registered vehicles and the vehicular pollution has become a major source of air pollution in Delhi, and

Whereas Hon'ble Supreme Court of India, Hon'ble High Court of Delhi and Hon'ble National Green Tribunal have passed various directions from time to time to take immediate action to control the alarming level of vehicular pollution in Delhi and all out efforts are being made to give effect to the directions of the Hon'ble courts.

Therefore, in exercise of the powers conferred vide section 115 read with clause (41) of section 2 of the Motor Vehicles Act 1988, (59 of 1988), the Lieutenant Governor of the National Capital Territory of Delhi, on being satisfied that further steps are required to control vehicular pollution caused by non-transport four wheeled vehicles (motor cars etc.), hereby orders, in the interest of public safety, that the following prohibitory /

restrictive measures shall be in vogue in the area of National Capital Territory of Delhi; namely:-

- (i) The plying of non-transport four wheeled vehicles (Motor Cars etc.) having registration number ending with odd digit (1, 3, 5, 7, 9) shall be prohibited on even dates of the month (i.e. 2nd, 4th, 6th, 8th, 10th, 12th day and so on) and plying of the non-transport Vehicles having registration number ending with even digit (0, 2, 4, 6, 8) shall be prohibited on odd dates of the month (i.e. 1st, 3rd, 5th, 7th, 9th, 11th day and so on).
- (ii) These restrictions shall also apply to the non-transport four wheeled vehicles bearing registration number of other states.
- (iii) These restrictions shall be applicable from 8 AM to 8 PM of such dates.
- (iv) These restrictions shall not be applicable on Sundays.
- (v) These restrictions shall not apply to the vehicles of such categories as mentioned in the Schedule annexed to this notification.
- (vi) Violation of these orders shall attract a fine of Rs. 2000/- in accordance with the provisions of sub-section (1) of section 194 of the Motor Vehicles Act, 1988.

Further, in exercise of the powers conferred vide sub-section (1) of section 200 of the Motor Vehicles Act, 1988 (59 of 1988), the Lieutenant Governor of the National Capital Territory of Delhi is pleased to authorize the following officers to compound the aforementioned offence with the amount of Rupees 2000/-:

- (a) Officers of the rank of Head Constable and above of Delhi Police.
- (b) Officers of the rank of Head Constable and above of the Transport Department, GNCTD.
- (c) Officers or authorities as authorized by Divisional Commissioner, Revenue Department, GNCTD.

The amount compounded by the authorized officers/authorities shall be deposited in the "Major Head 0041, taxes on vehicles, 101-IMV (Fees & Fine)", of the Transport Department, Govt. of NCT of Delhi.

The above notification shall come into force with effect from **1st January, 2016** and will remain in force till **15th January, 2016**.

**By order and in the name of
the Lieutenant Governor of the
National Capital Territory of Delhi,**

3. The following exempted categories of vehicles have been specified in the schedule appended to the Notification:

SCHEDULE

- (i) Vehicles of the President of India;
- (ii) Vehicles of the Vice President of India;
- (iii) Vehicles of the Prime Minister of India;
- (iv) Vehicles of Governors of States;
- (v) Vehicles of Chief Justice of India;
- (vi) Vehicles of the Speaker of Lok Sabha;
- (vii) Vehicles of the Ministers of the Union;
- (viii) Vehicles of the Leaders of Opposition in the Rajya Sabha and Lok Sabha;
- (ix) Vehicles of Chief Ministers of States and Union Territories except Chief Minister, Government of National Capital Territory of Delhi;
- (x) Vehicles of the Judges of Supreme Court of India;
- (xi) Vehicles of the Deputy Chairman of Rajya Sabha;
- (xii) Vehicles of the Dy. Speaker of Lok Sabha;
- (xiii) Vehicles of Lieutenant Governors of Union Territories;
- (xiv) Vehicles of the Judges of Delhi High Court;
- (xv) Vehicles of the Lokayukta;
- (xvi) Emergency Vehicles i.e. Ambulance, Fire Brigade, Hospital, Prison, Hearse vehicles;
- (xvii) Enforcement vehicles i.e. vehicles of Police, Transport Department GNCTD, vehicles authorised by the Divisional Commissioner GNCTD, para military forces etc.;
- (xviii) Vehicles bearing Ministry of Defence number plates;
- (xix) Vehicles which are having a pilot/escort;
- (xx) Vehicles of SPG protectees;
- (xxi) Embassy Vehicles bearing CD numbers;
- (xxii) Compressed Natural Gas driven vehicles (these vehicles should prominently display sticker 'CNG Vehicle' on the front windscreen – issued by M/s Indraprastha Gas Ltd.), Electric vehicles, Hybrid vehicles;
- (xxiii) Vehicles being used for medical emergencies – (will be trust based);
- (xxiv) Women only vehicles – including children of age upto 12 years travelling with them;
- (xxv) Vehicles driven/occupied by handicapped persons.

4. While W.P.(C) Nos.11398/2015, 11424/2015, 11711/2015, 11713/2015 & 11808/2015 came to be filed even before the issuance of the

Notification on the basis of the media reports about the Odd-Even programme proposed by the Govt. of NCT of Delhi, the other writ petitions have been filed after the issuance of the Notification.

5. The learned counsel appearing for both the parties were heard on 06.01.2016 and the matters were adjourned to 08.01.2016 to enable the learned Standing Counsel for GNCTD to get instructions as to whether it is feasible to reduce the period of operation of the Odd-Even scheme in the light of the air pollution data that has already been collected in this week. We have also directed the learned Standing Counsel to furnish to this Court a statement of daily based data on air pollution during 1st January to 7th January, 2016 in comparison relating to pre-scheme period.

6. On 08.01.2016, Sh. Harish Salve, the learned Senior Counsel appeared for the Govt. of NCT of Delhi and submitted that the Odd-Even scheme has a definite positive effect and there is a significant reduction in air pollution levels in Delhi. It is also submitted by the learned Senior Counsel that the data of pollution levels collected during the one week period is not enough to decide the future course of action and therefore, it is necessary to continue the Odd-Even scheme till 15th January, 2016 in terms of the Notification dated 28.12.2015.

7. A report regarding the air quality benefits of Odd-Even vehicle rationing programme in Delhi, stated to have been prepared by the Environment Pollution (Prevention and Control) Authority for NCR, has also been handed over to us. Though it is an unsigned report, Ms. Sunita Narain, Member, Environment Pollution (Prevention and Control) Authority for NCR who is present in the Court has confirmed the contents of the said report and the statement of the officer is hereby placed on record.

8. As we could see, certain details have been furnished in the report under captions (1) Overall pollution level this winter is higher than last winter. This demands emergency action; (2) The odd-even scheme has resulted in the lowest pollution peak compared to the previous high smog episodes this winter; (3) During odd-even programme daytime even with lower winds speed has shown faster drop in pollution; (4) Pollution load from cars are lower; per capita emissions of car users is also down during odd and even programme; (5) Vehicles need special attention as they are the second highest polluters in the city - vehicles need to be included in emergency action; (6) Impact of odd and even number programme on air quality in other countries and (7) Overall benefit of the programme and recommendations. The report also included graphs showing (i) the drop in the intensity of the smog episodes due to Odd and Even programme in one week; (ii) decline of wind pollution as opposed to pre-scheme days; (iii) particulate and nitrogen oxide load reduction from cars during odd-even scheme; (iv) reduction in per capita emission of PM and NO_x due to car pooling during odd and even programme; (v) sources of PM 2.5 in Delhi: Vehicles are second highest and (vi) contribution of fuels in vehicular pollution. No further details are given.

9. However, the learned counsels appearing for the petitioners disputed the stand taken by the respondents that there is significant reduction in pollution levels during the enforcement of Odd-Even scheme compared to pre-scheme days. Placing before this Court the air quality reports from the Central Pollution Control Board and Delhi Pollution Control Committee, it is vehemently contended by the learned counsels for the petitioners that the scheme has no positive effect as claimed by the respondents. Stress is laid

on the various readings in the afore-mentioned reports of the Central Pollution Control Board and Delhi Pollution Control Committee

10. It may be mentioned that out of the writ petitions listed before us, the petitioner in W.P.(C) No.11713/2015 has not challenged the Odd-Even scheme introduced by Notification dated 28.12.2015, but has come out with certain suggestions for reducing the air pollution levels in Delhi by undertaking better alternative methods. Similarly in W.P.(C)No.12352/2015 the Scheme as such is not under-challenge but the contention is that the grant of exemption to two wheelers and vehicles driven by women is arbitrary and illegal since the same has no nexus to the object sought to be achieved. W.P.(C) No.74/2016 has been filed by the President of the Delhi High Court Bar Association pointing out certain practical difficulties being faced by the practicing lawyers due to the restriction imposed on plying of four-wheelers and claiming that the lawyers practising in various courts and Tribunals all over Delhi have been left immobile and are unable to attend to their professional duties on account of the restrictions imposed under the Notification dated 28.12.2015. Sh.Rajiv Khosla, President of the Delhi High Court Bar Association/the petitioner in the writ petition has also pointed out that though a detailed representation was made on 07.12.2015 on behalf of the Bar Association requesting to include the lawyers in the exempted category for various reasons explained therein, the respondents failed to consider the said request. While submitting that under Section 115 of the Motor Vehicles Act, 1988, it is open to the State Government to impose restrictions or prohibit plying of vehicles only in a specified area or on a specified road, it is contended by him that the notification dated 28.12.2015 imposing the restrictions in the area of entire National Capital

Territory of Delhi is beyond the scope of the statutory provisions. Thus, it is contended that the respondents have no power or authority to widen the scope of Section 115 of the Act by way of mere notification.

11. In W.P.(C) 12353/2015, W.P.(C) 63/2016, W.P.(C) 71/2016 and W.P.(C) 39/2016, which are also filed by practicing Advocates, similar contentions have been raised. It is also contended that no empirical study has been made by the respondents before imposing the restrictions under the Notification dated 28.12.2015 and there is no material to justify the classification of non-transport four-wheeled vehicles, the plying of which has been restricted. It is also alleged that the public transport system is insufficient to cater to the needs of people and the respondents could have adopted other methods like management of traffic, better roads and synchronization of traffic signals to reduce the air pollution levels. The other writ petitions are also based on more or less similar contentions except W.P.(C) No.11711/2015 filed by a person with a congenital disorder called “Arthrogryposis” wherein the petitioner has raised several issues about the impact of the ban on the rights of the disabled to travel without encumbrance.

12. It may at the outset be mentioned that the restriction on plying of vehicles imposed under the Notification dated 28.12.2015 is limited only for a period of 15 days. In the Status Report filed on 06.01.2016 by the Additional Standing Counsel (Civil) GNCTD, it is stated that it is a pilot project which is being conducted to study the effectiveness and efficacy of restricting vehicular movement in reduction of air pollution and improvement of air quality.

13. The views on the efficacy of such government policy may differ, however, the question is whether the policy decision warrants interference by this Court in exercise of power of judicial review. The law is well settled that on matters affecting policy this Court will not interfere unless the policy is unconstitutional or contrary to statutory provisions or arbitrary or irrational or in abuse of power, since the policy decisions are taken based on expert knowledge and the Courts are normally not equipped to question the correctness of the same. The scope of judicial enquiry is therefore confined to the question whether the decision taken by the Government is against any statutory provision or it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution of India. [Vide *Parisons Agrotech (P) Ltd. v. Union of India* (2015) 9 SCC 657, *Manohar Lal Sharma v. Union of India* (2013) 6 SCC 616, *Union of India v. Dinesh Engg. Corpn.* (2001) 8 SCC 491]

14. The implementation of the Odd-Even scheme may have caused hardship to a section of the society, however, the power of judicial review cannot be extended to determine the correctness of such a policy decision or to find out whether there could be more appropriate or better alternatives. As held in *BALCO Employees' Union Vs. Union of India* (2002) 2 SCC 333, it is neither within the domain of the Courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether a better public policy can be evolved as suggested by the petitioners.

15. Keeping in view that the restrictions under the Notification dated 28.12.2015 are only for a limited period of 15 days and it is stated that the Scheme has been enforced as a pilot project to ascertain the reduction, if

any, in the pollution levels, we are of the view that the interference by this Court is not warranted.

16. However, we consider it appropriate to direct that the respondents shall take into consideration the contents of these writ petitions before deciding the future course of action.

17. All the writ petitions except W.P.(C) No.11711/2015 are accordingly disposed of.

18. W.P.(C) No.11711/2015 be listed on 15.02.2016 for response of the respondents.

CHIEF JUSTICE

JAYANT NATH, J

JANUARY 11, 2016

kks/pmc