

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

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Date of decision: 29th January, 2016

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W.P.(C) No.3626/2011

LALIT MOHAN SHARMA

..... Petitioner

Through: Mr. Pardeep Dahiya, Adv.

Versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Ruchir Mishra and Mr. Mukesh
Kumar Tiwari, Advs. for UOI.

AND

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**W.P.(C) No. 5691/2012 & CM No.28295/2015 (for deletion of
respondents no.2,3,4,5&6)**

LALIT MOHAN SHARMA

..... Petitioner

Through: Mr. Pardeep Dahiya, Adv.

Versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Rajesh Gogna, CGSC for R-1.
Ms. Rachna Gupta, Adv. for R-2.
Ms. Sumedha Dang, Adv. for R-6.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. W.P.(C) No.3626/2011 has been filed seeking mandamus to the respondent no.2 Bureau of Indian Standards (BIS) to a) establish and publish Indian Standard for the safety device "Auto-dipper" claimed by the

petitioner to be an essential safety device under Section 110 of the Motor Vehicles Act, 1988; and, b) to notify the foreign standard J-565: Semi Automatic Headlamp Beam Switching Devices in which the petitioner was holding a patent (and which is stated to have expired in January, 2016) as Indian Standard under Rule 8 of the Bureau of Indian Standards Rules, 1987 till the time respondent no.2 BIS further evolves and formulates its own standard.

2. W.P.(C) No.5691/2012 is filed impleading, besides Ministry of Road, Transport and Highways, Government of India, also, National Road Safety Council, Vehicle Research and Development Establishment, Automotive Research Association of India, Central Farm Machinery Testing and Training Institute and Council of Scientific and Industrial Research (CSIR)-Indian Institute of Petroleum and seeking directions for mandatory implementation of Rule 106 of the Motor Vehicles Rules, 1989 read with 110(1)(j) of the Motor Vehicles Act, 1988 and for mandatory fitment of 'Auto-Dipper' in every motor vehicle (existing or new).

3. Needless to state that the petitions were entertained, pleadings got completed and additional affidavit filed.

4. The counsels have been heard.

5. Section 110 of the Motor Vehicles Act empowers the Central Government to make rules regulating the construction, equipment and maintenance of motor vehicles and trailers with respect to all or any of the matters specified therein. Clause (j) thereunder is as under:-

“(j) safety belts, handle bars of motor cycles, auto-dippers and other equipments essential for safety of drivers, passengers and other road users.”

6. The counsel for the petitioner contends that the legislature has thus treated ‘Auto-Dipper’ as essential to the safety of drivers, passengers and other road users. He argues that in exercise of the power under Section 110(j), the Central Government in the year 1993 amended Rule 125 of the Motor Vehicle Rules to in Sub-Rules (3) and (4) thereof provide that a) within three years therefrom, every goods vehicle and heavy passenger vehicle shall be equipped with an ‘Auto-Dipper’; and b) within four years therefrom every motor vehicle other than motor cycles and three-wheeler of engine capacity not exceeding 500 cc shall be equipped with an ‘Auto-Dipper’.

7. Attention is next invited to the amendment dated 15th January, 1998 to the Motor Vehicle Rules providing in Rule 125(4) thereof that every motor

vehicle other than a motorcycle and three-wheeler of engine capacity not exceeding 500 cc shall be equipped with an 'Auto-Dipper'.

8. It is contended that the petitioner first approached the BIS in the year 2010 for establishing the standard for a 'Auto-Dipper' but BIS asked the petitioner to pay cost of Rs.2 crores and upon failure of the petitioner to pay the same, the BIS did not establish the standard of an auto-dipper and resulting in, notwithstanding the amendments of the years 1993 and 1998 to the Motor Vehicle Rules, the provision for mandatory installation of auto-dipper in the motor vehicles not being implemented, to the prejudice of the petitioner who as aforesaid was holding the patent therefor.

9. Hence these petitions.

10. The counsel for the petitioner has next drawn attention to Rule 106 titled "Deflection of lights" of the Motor Vehicle Rules to contend that the same also provides for the headlamps of the motor vehicle to be capable of being deflected downwards by the driver in such manner as to render it incapable of dazzling any approaching person and of being extinguished by the operation of a device which at the same time causes a beam of light to be emitted from the lamp. It is contended that the amendments aforesaid of the

years 1993 and 1998 in Rule 125 were to give effect to the said provision in Rule 106.

11. The counsel however on enquiry admits that Rule 106 by itself does not mention an 'Auto-Dipper' but contends that Rule 125(4) as introduced in 1993 and 1998 supra mentions an 'Auto-Dipper'.

12. Attention of the counsel for the petitioner has been invited to the fact that Rule 106 has been amended vide Notification dated 24th April, 2014 and which has deleted the clause thereof on which the counsel for the petitioner was placing reliance. The counsel agreed that Rule 106 as now stands pursuant to the amendment of 24th April, 2014 does not advance the case of the petitioner insofar as for mandatory fitment of 'Auto-Dipper' in motor vehicles.

13. It is the contention of the counsel for the respondent Union of India (UOI) that even Rule 125 was amended yet again on 12th September, 2001 and sub Rule (4) providing for mandatory fitment of the 'Auto-Dipper' in the motor vehicles has been deleted. He further points out that even after the amendment of 1993 and 1998, the date of implementation of the provision for mandatory fitment of motor vehicle with 'Auto-Dipper' was extended from time to time and never enforced, till ultimately the said provision was

dropped as aforesaid in the year 2001. He thus contends that the premise on which these petitions have been filed i.e. that fitment of automobiles with 'Auto-Dipper' is mandatory, is erroneous.

14. The counsel for the respondent UOI has further drawn attention to the additional affidavit dated 26th November, 2015 in which it is stated as under:-

“3. THAT I say and submit that matter was discussed in detail in the meeting held on 6.10.2015 under the Chairmanship of Joint Secretary (Transport). It was informed that the Technical Committee which was earlier constituted to examine and submit a report on auto-dipper comprised also of representatives from CIRT (Central Institute of Road Transport), VRDE (Vehicle Research and Development Establishment) and OEMs where ARAI was a facilitator only and not the sole testing agency which conducted the test and submitted the report. Besides, separate reports have also been received from CIRT, ICAT (International Center for Automotive Technology) and VRDE stating that fitment of auto-dipper is not necessary and safe in today's traffic scenario.

4. ICAT's views lab trials at ARAI and field trials at VRDE (in 2000) as well as Hyderabad (in 2001) had been conducted to evaluate the on road performance and safety related aspects of this concept. During these trials various combinations of the vehicles were tried (bus-bus, truck-car, car-car etc.). As a result of these experiments, it was discovered that the concept of Auto-dipper does not add anything to safety but is more of a safety hazard. The details of the experiments conducted and their conclusions are available at ARAI for reference. A copy

of ICAT's views is annexed hereto and marked as Annexure A-1.

5. THAT VRDE has furnished its views that Auto Dipper is a device which will dip when an incoming vehicle is in high beam. At the same time, the ongoing vehicle also shall go into dip beam mode and both vehicle shall cross each other in dip mode and after crossing shall come back to main beam automatically. The function of auto dipper as a separate unit is not required as there is a new standard coming up i.e. Automotive Industry Standard AIS-127 in the line with ECE R123 standard used in European countries. This standard is for Adaptive Front Lighting System (AFLS) in which auto dipper function is one of the functions. The Govt. wanted to incorporate this advanced device as a mandatory fitment as it also covers adaptive lighting on to the road which takes care of incoming traffic lighting conditions, ongoing traffic conditions, ambient lighting conditions and cornering while taking, a turn. This device once made mandatory the function of auto dipper with additional safety feature will be available to the vehicle users. A copy of VRDE views annexed hereto and marked as Annexure A-2.

6. The standard AIS-127 is finalised and will be put up to the next decision making body CMVR TSC and after approval will be made mandatory with specific lead times. This will solve all the problems of dazzling on the road by various vehicles."

15. What thus becomes evident is, that when the petitioner first approached the BIS in the year 2010 for establishing and publishing the standards of 'Auto-Dipper', not only was there no provision for mandatory fitment of 'Auto-Dipper' in motor vehicles but the provision to that effect

introduced in the year 1993 and 1998 as aforesaid was never implemented and had been expressly dropped in the year 2001.

16. It has in the circumstances been enquired from the counsel for the petitioner as to what is the right of the petitioner to claim the reliefs in the petition.

17. The counsel for the petitioner has again drawn attention to Section 110 supra of the Motor Vehicles Act and has contended that the legislature having deemed auto-dipper to be essential for the safety of drivers, passengers and other road users, the decision of the Central Government not to make the same mandatory is fallacious.

18. Attention of the counsel has however been drawn to the word ‘may’ used in Section 110 (1) of the Motor Vehicles Act while empowering the Central Government to make rules with respect to “all or any of the following matters” contained in clauses (a) to (p) thereunder and it has been enquired as to how a mandate can be sought against the subordinate legislature, as the status of the Central Government is under Section 110(1) supra, to make a particular law when the legislature itself has left it in the discretion of the Central Government. It has further been enquired that whether not, if the legislature was of the view that provision for auto-dipper

is mandatory, no discretion would have been left to the Central Government as is also evident from the use of expression “with respect to all or any of the following matters” in Section 110 (1).

19. The counsel for the petitioner has relied on the judgment dated 24th July, 2015 in Crl.M.P. No.16086/1997 titled ***Dilip K. Basu Vs. State of West Bengal*** in para 9 whereof the Supreme Court, while interpreting Section 21 of the Protection of Human Rights Act, 1993 also using the word ‘may’ while providing for the State Governments to constitute the State Human Rights Commission, held that the same could not be read as leaving it to the discretion of the State Governments whether to set up the State Human Rights Commission or not. On the basis thereof it is contended that similarly mere use of the word ‘may’ in Section 110 of the Motor Vehicles Act does not mean that the Central Government has a discretion whether to regulate the motor vehicles by providing for installation of ‘Auto-Dipper’ therein which were deemed by the legislature to be essential for safety of drivers, passengers and other road users.

20. I am afraid no parallel can be drawn between the two provisions. Though it is no longer *res integra* that the words ‘may’ and ‘shall’ are capable of being interpreted interchangeably but in the context of Section

110, it cannot be said that the legislature intended the Central Government to necessarily make the Rules with respect to the matters mentioned therein. What prevailed with the Supreme Court in *Dilip K. Basu* supra to interpret the word ‘may’ as ‘shall’ was the purpose for creation of State Human Rights Commission i.e. to protect the fundamental rights of the citizens. It was held that the functions to be performed by the State Human Rights Commission are critical for the promotion and protection of human rights at the State level and the State Government cannot frustrate the object underlying the legislation. However Section 110 has not only used the word ‘may’ but also the words “with respect to all or any of the following matters” and Section 110 (3) also leaves it to the discretion of the Central Government as well as State Government to exempt any class of motor vehicles from the provisions of the Chapter of the Act in which Section 110(1) is located.

21. While this judgment is being dictated, the counsel for the petitioner has also relied on *Radhakrishnan Vs. State of Kerala* 2002 SCC Online Ker 120 where the Division Bench of the High Court of Kerala in exercise of its power under Article 226 of the Constitution of India directed that all stage carriage permits and heavy transport vehicle permits should contain a

stipulation as to installation of a suitable speed governor to ensure that the vehicle is not driven at a speed in excess of what is notified in respect thereof.

22. In the present case the Government has given cogent reasons in the additional affidavit for arriving at a decision that mandatory fitment of 'Auto-Dipper' is not in the interest of general public. The same is a policy decision which is in the domain of the executive and the powers of judicial review thereof are to a very limited extent.

23. Not only so, in the present case the direction which the petitioner is effectively seeking is a mandate to the Central Government to, as subordinate legislature, make subordinate legislation.

24. The question is not merely of interpretation of the language of Section 110 as was the case in *Dilip K. Basu* supra. In my opinion, no mandate can be given for making of any law including subordinate legislation. Supreme Court in *Mallikarjuna Rao Vs. State of Andhra Pradesh* (1990) 2 SCC 707 and *V.K. Sood Vs. Secretary, Civil Aviation* 1993 Supp. (3) SCC 9 held that a writ Court has no power to require the executive to exercise its law making power. The Court observed that it is neither legal nor proper for the High Court to issue direction or advisory sermons to the executive in respect of

the sphere which is exclusively within the domain of the executive under the constitution. With reference to the power under Article 309 of the Constitution of India to frame rules regulating the recruitment and conditions of service, it was held that it is a legislative power and the Court cannot usurp the functions assigned to the executive and cannot even indirectly require the executive to exercise its law making power in any way. It was held that the Court cannot assume to itself a supervisory role over the rule making power of the executive. Mention may also be made of *M/s. Narinder Chand Hem Raj Vs. Lt. Governor, Administrator, Union Territory, Himachal Pradesh* (1971) 2 SCC 747 holding that legislative power can be exercised only by the legislature or its delegate and by none else. A slightly different note though was struck in *Delhi Jal Board Vs. National Campaign for Dignity and Rights of Sewerage and Allied Workers* (2011) 8 SCC 568 where it was observed that in exceptional circumstances where there is inaction by the executive, the judiciary must step in to provide a solution till such time the legislature or its delegate performs its role, by enacting a proper legislation to cover the field. However subsequently in *V.K. Naswa Vs. Home Secretary, Union of India* (2012) 2 SCC 542, it has been held that the role of the Court remains a

limited one and the Court can neither legislate nor has any competence to issue directions to the legislature or its delegate to enact the law. The Full Bench of this Court in ***R.K. Singh Vs. Union of India*** 88 (2000) DLT 2005 has held that just like writ of mandamus cannot be issued to the legislature to enact a legislation, the same is true as regards the executive, when it exercises the power to make rules which are in the nature of subordinate legislation. It was held that when executive authority exercises legislative power by way of subordinate legislation, such executive authority cannot be asked to enact a law which he has been empowered to do with delegated legislative authority. Reliance was placed on ***A.K. Roy Vs. Union of India*** (1982) 1 SCC 271 and ***Narinder Chand Hem Raj*** supra holding that a writ of mandamus will not compel a person to complete legislative function in a particular manner.

25. Not only so, it is also not as if there is any inaction in the matter on the part of the Central Government. Though the Central Government in 1993 and 1998 introduced the provisions for mandatory fitment of 'Auto-Dipper' but did not implement the said law. The petitioner also did not seek any direction in this regard as indeed could not have been sought. Mention in this regard may also be made of the judgment in ***Common Cause Vs. Union of***

India (2003) 8 SCC 250 holding that no direction to the Government to bring a law into force even can be given. Not only so, the petitioner did not challenge the amendment of the year 2001 doing away with the provision in the Rules for mandatory fitment of 'Auto-Dipper' in the motor vehicles. The petitioner, without challenging the amendment of the year 2001 as well as the amendment of the year 2014 supra cannot be entitled to the reliefs which have been claimed. No such challenge has been made in the present petitions also which are being pursued before this Bench and which challenge can be made only before the Division Bench as per the Roster of this Court.

26. On these grounds alone the petitions are not maintainable.

27. In this view of the matter the need to go into the contentions of the counsel for the petitioner of non-application of mind in doing away with the provision of mandatory fitment of auto-dipper does not arise.

28. The counsel for the petitioner at this stage contends that for the said reasoning, only the second petition being W.P.(C) No.5691/2012 would be not maintainable but W.P.(C) No.3626/2011 would still be maintainable. The counsel for the petitioner states that the petitioner therein is aggrieved from the demand of the BIS of cost from the petitioner for establishing the

BIS standards of auto-dipper. He states that the said aspect is admitted in the counter affidavit.

29. The petitioner has however in W.P.(C) No.3626/2011 not challenged the said demand.

30. There is no merit in the petitions. The same indeed are found to be misconceived and are dismissed. However, I refrain from imposing any costs.

RAJIV SAHAI ENDLAW, J.

JANUARY 29, 2016
'pp/gsr'..