

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

209

CWP-380-2017 (O&M)

DATE OF DECISION:01.02.2017

G.R.L. ENGINEERS

... Petitioner

V.

STATE OF HARYANA AND ANR.

... Respondents

**CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

Present: Mr. Anurag Jain, Advocate
for the petitioner.

Mr. Sandeep Moudgil, Addl. A.G. Haryana.

Mr. Paras Kuhad, Senior Advocate with
Mr. Jitin Chaturvedi, Advocate
Ms. Aditi Tripathi, Advocate
Mr. Karanvir Khehar, Advocate and
Mr. R.K. Kartikeya, Advocate
for the Intervenor.

S.J. VAZIFDAR, C.J. (ORAL)

1. The petitioner seeks to quash certain criteria of a public notice stated to be dated 15.12.2016 inviting applications for empanelment from speed governor manufacturers.

2. Respondent No.2 is the Transport Commissioner, Haryana. Civil Miscellaneous Application No.1148 of 2017 is filed by Rosmerta Autotech Pvt. Ltd. for being impleaded as an intervenor claiming to be affected by the outcome of this petition on the ground that pursuant to the said public notice they have been empanelled. We heard Mr. Paras Kuhad, the learned senior counsel appearing on behalf of the intervenor. Their assistance we were in any event entitled to.

3. The respondents issued the said public notice inviting applications from manufacturers of speed governors for empanelment. The notice refers to a notification dated 15.04.2015 issued by the Central Government making compulsory fitment of speed governors for various categories of transport vehicles with effect from 01.10.2015 by way of an amendment to Rule 118 of the Central Motor Vehicle Rules, 1989. The petitioners do not challenge the issuance of the public notice. Nor do they state that no conditions ought to be imposed or no eligibility criteria ought to be insisted upon with respect to the applicants for empanelment. They however, contend that the following four eligibility criteria are contrary to law:-

“1. The Manufacture must be an Indian Company and registered with the Registrar of Companies as per Company Act 1956.

- 1. Copy of Company Incorporation*
- 2. Copy of Memorandum of Associations*
- 3. Copy of PAN Card*
- 4. Copy of Sales Tax/VAT Registration of the Manufacturing Plant and Haryana State.*
- 5. Manufacturing Address.*
- 6. Copy of Excise Registration.*

2. TURN-OVER OF THE COMPANY: The Turnover of the company should be Rs.15 Crores in the last three financial years from the business of manufacturing, sales and service of Speed Governors.

- 1. Details of Turn-Over from the business of manufacturing & selling Speed Governors.*
- 2. Copy of Audited Balance Sheet and IT Returns for 2013-14, 2014-15 and 2015-2016.*

3. NET WORTH OF THE MANUFACTURER: Net Worth of the Manufacture must not be less than Rs.10 Crores as on the financial year ending March 2016.

- 1. Certificate from Chartered Accountant certifying the net worth.*

2. *The Manufacturer who on being selected for supply of Speed Governors must provide a bank guarantee (Any National Bank) for Rs. 1 Crore.*

4. **CERTIFICATION:** *The Company be an ISO/TS 16949 Company”*

4. Two issues arise in this petition. The first relates to the power of the respondents to stipulate the eligibility criteria and the second relates to the validity of the said four criteria.

5. The first question requires a reference to certain facts which led to the issuance of the public notice.

The entire process started with the judgment of the Supreme Court in *M.C. Mehta v. Union of India & Ors. (1997) 8 SCC 770*. It would be necessary for us to refer to this judgment in some detail while deciding the first question. Suffice it to note at this stage that the need for speed governors was not only recognized but insisted upon by the Supreme Court. It is this judgment that was a starting point of the endeavors of the Central Government and the State Government to ensure the fitment of speed governors in vehicles.

6. The Central Government, by a communication dated 21.08.2009 addressed to the Principal Secretary (Transport) and Secretary (Transport) of all States and Union Territories, expressed concern over the exponential rise in accidental deaths due to over-speeding and reckless driving on the roads all over the country and referred to the judgment in *M.C.Mehta’s case* (supra) directing the State Transport Departments to issue an order for installation of speed control devices in all commercial vehicles. Paragraphs 3 to 6 of this communication read as under:-

“3. Although the statutory requirements and Hon’ble Supreme Court orders direct for speed governor regulation to be implemented all over the country, it has been implemented partially in some States like Delhi, Kerala, Karnataka and Chandigarh, but not very effective. However the menace of improper management of the total exercise is due to tampering, non-supply of suitable spares in time, not honouring the warranties, improper or no maintenance and absence of MIS data/reports making this exercise ineffective and futile.

4. The whole issue has been examined in this Ministry and it is felt that the fitment of speed governors can take place in an effective manner if the following steps are taken:-

(a) That the adequate numbers are made available uniformly all over the state.

(b) That the good quality product is available for the vehicle owners as directed by Hon’ble High Court.

(c) That fly by night operators and sub standard manufacturers are avoided.

(d) That consistent and uninterrupted supply is maintained.

(e) That full system transparency is maintained by incorporation of efficient MIS system.

(f) That the vendor so selected can be made obligated to meet the requirements failing which a stiff penalty can be imposed on the vendor which will safeguard the state government obligations.

(g) That the accountability will thus increase and the state government can focus on the effective monitoring and enforcement of the legislation for public safety.

(h) That MIS data/reports can be generated for effective implementation of the speed governors through software to be provided by the selected vendors.

(i) Tampering issues are curtailed with proper technological developments and implementation.

(j) That AMC is properly undertaken.

5. *The above process can take place, if a suitable tender is invited with suitable eligibility criteria keeping in view the above mentioned points.*

6. *I am further to say that the above steps should be taken immediately for effective implementation of fitment of speed governors in all the commercial vehicles.”*

7. The communication does not deal only with the necessity of ensuring the quality of the equipment which pertains to the second question. It also indicates that it is for the State Government to invite tenders with suitable eligibility criteria. That is the reason why the communication is addressed to the Principal Secretaries and Secretaries of all the States as well.

8. The Central Government by a further communication dated 06.04.2011 addressed to the Financial Commissioner and Principal Secretary to the Government of Haryana and to the Principal Secretaries (Transport) through Transport Commissioners of all the States and Union Territories referred to the earlier communication and clarified that the same were only to express concern of the Ministry regarding non-implementation of the law by the States and to make certain ‘suggestions’ such as ensuring the quality of the product and selection of vendors capable of producing speed governors of specified standards, fixing the responsibility and accountability of the vendor and the tamper proof installation of the equipment. It was further stated that the earlier communication dated 21.08.2009 was only advisory in nature, not binding on the States and that it was the prerogative of the States to decide the manner in which the provisions of the 1989 Rules were to be implemented. The communication stated: “in case, any State decides to invite tenders, they may decide terms and conditions of the tender, as they deem appropriate.”

9. The Ministry of Road Transport and Highways issued a notification dated 15.04.2015 notifying that the Central Government had made Rules further to amend the Central Motor Vehicles Rules, 1989 which were called the Central Motor Vehicles (Sixth Amendment) Rules, 2015. Rule 118 stood substituted as follows:-

“118. Speed governor.- (1) Every transport vehicle notified by the Central Government under sub-section (4) of section 41 of the Motor Vehicles Act, 1988 (59 of 1988), save as provided herein, and manufactured on or after the 1st October, 2015 shall be equipped or fitted by the vehicle manufacturer, either in the manufacturing stage or at the dealership stage, with a speed governor (speed limiting device or speed limiting function) having maximum pre-set speed of 80 kilometre per hour conforming to the Standard AIS 018/2001, as amended from time to time:

Provided further that the transport vehicles that are-

- (i) two wheelers;*
- (ii) three wheelers;*
- (iii) quadricycles;*
- (iv) four wheeled and used for carriage of passengers and their luggage, with seating capacity not exceeding eight passengers in addition to driver set (M1 Category) and not exceeding 3500 kilogram gross vehicle weight;*
- (v) fire tenders;*
- (vi) ambulances;*
- (vii) police vehicles;*
- (viii) verified and certified by a testing agency specified in rule 126 to have maximum rated speed of not more than 80 kilometer per hour,*

shall not be required to be equipped or fitted with speed governor (speed limiting device or speed limiting function):

Provided further that the transport vehicles manufactured on or after 1st October, 2015 that are dumpers,

tankers, school buses, those carrying hazardous goods or any other category of vehicle, as may be specified by the Central Government by notification in the official Gazette from time to time, shall be equipped or fitted by the vehicle manufacturer, either in the manufacturing stage or at the dealership stage, with a speed governor (speed limiting device or speed limiting function) having maximum speed of 60 kilometer per hour conforming to the Standard AIS 018/2001, as amended from time to time.

(2) The State Government shall, by notification in the Official Gazette, specify on or before 1st October, 2015, the categories of transport vehicles registered prior to the 1st October, 2015 which are not already fitted with a speed governor (speed limiting device or speed limiting function), and are not covered under the first proviso to sub-rule 1 above, that such transport vehicles shall be equipped or fitted by the operators of those vehicles on or before 1st April, 2016 with a speed governor (speed limiting device or speed limiting function), having maximum pre-set speed of 80 kilometre per hour or such lower speed limit as specified by the State Government from time to time, conforming to the Standard AIS: 018/2001, as amended from time to time:

Provided that the categories of transport vehicles carrying hazardous goods and those transport vehicles that are dumpers, tankers or school buses, registered prior to the 1st October, 2015 and not already fitted with a speed governor (speed limiting device or speed limiting function), shall be equipped or fitted by the operator of such vehicle, with a speed governor (speed limiting device or speed limit function), having maximum pre-set speed of 60 kilometre per hour or such other lower speed limit as may be specified by the State Government, conforming to the Standard AIS: 018/2001, as amended from time to time”.

10. Thereafter, the Ministry of Road Transport and Highways, Government of India addressed a communication dated 16.06.2016 again to the officers of the State Governments and Union Territories which was relied upon by the petitioners as well as the respondents. Paragraph 2 of this communication insofar as it is relevant, reads as under:-

“(i) The Speed Limiting Device (SLD) shall be type approved by any of the following test agencies authorized under Rule 126 of CMVR, namely:-

- 1. Automotive Research Association of India (ARAI)*
- 2. Central Institute of Road Technology (CIRT)*
- 3. International Centre for Automotive Technology (ICAT)*
- 4. Vehicle Research & Development Establishment (VRDE)*

For compliance to AIS-018 along with,

(a) Valid Type Approval Certificate or COP as prescribed in AIS-037/2004, as amended from time to time.

(b) Performance test report on different vehicle models and their variants approved as per AIS-018/2001 as amended from time to time.

(vii) Individual states(s) shall take steps to ensure implementation of Speed Limiting Device (SLD) on vehicles. If required States (s) may frame appropriate eligibility criteria for effective implementation.

(x) Individual State(s) may incorporate/mandate any additional condition to ensure effective implementation of Speed Limiting Device (SLD) fitment including submission of periodic reports process, audit etc.”

11. The Ministry of Road Transport and Highways, Government of India addressed a further communication to the State Governments and the

Union Territories. It referred to the notification amending Rule 118. The relevant part of this communication reads as under:

“Ministry of RTH has received a number of grievances with regard to undue restrictions placed on vendors leading to supply issues and increased prices. In this regard, the Ministry has issued detailed procedure and guidelines on 16th June, 2016 vide File No.RT-11017/13/2005-MVL.

In continuation of the guidelines dated 16th June 2016 and in supersession of all earlier communications regarding installation of speed limiting devices, it is clarified that a vehicle owner should be at his liberty to choose the Speed Limiting Device from any source/vendor as long as it is duly type approved by any of the test agencies under Rule 126 of CMVR. It is strongly recommended that the State Governments do not restrict the freedom of the vehicle owners to choose the type approved speed limiting device of any manufacturer. It will be the responsibility of the manufacturer to comply with the requirements of the AIS 018 along with the guidelines prescribed in the letter dated 16th June 2016. The State Government would have to ensure the effective implementation of the notification for fitment of the speed limiting device.

The State Governments may, however, choose to impose eligibility and price criteria while selecting the vendors for fitment of speed governors on the vehicles owned by it or any transport undertakings, corporations or a local authority under its control.

The above has been approved by the Hon’ble Minister (RTH&S).”

12. This brings us to a consideration of the first question namely whether the State Government was entitled to stipulate the said eligibility criteria.

13. The learned counsel have taken us through the various provisions of the Act. Mr. Anurag Jain, the learned counsel appearing on behalf of the petitioner pointed out for instance that under section 110 of the Motor Vehicles Act, it is the Central Government that is authorized to make rules regulating the construction, equipment and maintenance of motor vehicles and trailers *inter alia* with respect to speed governors. He contrasted this with Section 111 which entitles the State Government to make rules for the same purpose with respect to all the matters other than the matters specified in section 110 (1). He submitted, therefore, that the State Governments are not entitled to make any rule in relation to speed governors.

14. Mr. Sandeep Moudgil, the learned counsel appearing on behalf of the respondents and Mr. Paras Kuhad, the learned senior counsel appearing on behalf of the intervener on the other hand referred to various provisions of the Act including sections 45, 53, 66, 67, 68 and 138 of the Act to contend that the State Governments also have the power to make rules in respect of speed governors. They submit that in any event the State Governments have the duty *inter alia* of regulating the speed of vehicles which in turn would entitle them to stipulate the eligibility criteria of those seeking empanelment for the supply of the speed governors.

15. It is not necessary, however, for us to analyze the provisions of the Act in view of the judgment of the Supreme Court in *M.C. Mehta's case* (supra). The parties in that matter were the National Capital Region and the National Capital Territory, Delhi. The observations, however, cannot be read as being restricted only to those parties or to those regions. The Supreme

Court recorded the concern of the petitioner regarding road safety in general.

Paragraphs 2, 3, 6 and 12 of the judgment read as under:-

“2. Having heard all of them and after taking into account the various suggestions which have been given at the hearing, we find that there are adequate provisions in the existing law which, if properly enforced, would take care of the immediate problem and to a great extent eliminate the reasons which are the cause of the road accidents in NCR and NCT, Delhi. In view of the fact that the above officers expressed some doubt about the extent of powers of the authorities concerned to take adequate and suitable measures for speedy enforcement of these provisions and the remedial steps needed to curb the growing menace of unregulated and disorderly traffic on the roads, we consider it expedient to clarify that position in this order with reference to the relevant provisions of the existing law. It is obvious that it is primarily for the Executive to devise suitable measures and provide the machinery for rigid enforcement of those measures to curb this menace. However, the inaction in this behalf of the Executive in spite of the fact that this writ petition is pending since 1985 and the menace instead of being controlled continues to grow in perpetuation of this hazard to public safety, it has become necessary for this Court to also issue certain directions which are required to be promptly implemented to achieve the desired result. It is needless to add that these directions are to remain effective till such time as necessary action in this behalf is taken by the Executive authorities concerned so that the continuance thereafter of these directions may not be necessary.

3. In our opinion, the provisions of the Motor Vehicles Act, 1988, in addition to the provisions in the existing laws, for example, the Police Act and the Code of Criminal Procedure, confer ample powers on the authorities to take the necessary steps to control and regulate road traffic and to suspend/cancel the registration or permit of a motor vehicle if it poses a threat or

hazard to public safety. It need hardly be added that the claim of any right by an individual or even a few persons cannot override and must be subordinate to the larger public interest and this is how all provisions conferring any individual right have to be construed. We may now refer to some provisions of the Motor Vehicles Act, 1988 (for short “the Act”) which are relevant for this purpose.

6. Chapter IV deals with the registration of motor vehicles wherein Section 39 prescribes the necessity for registration. It says that unless the vehicle is registered in accordance with the provisions of the Act, it cannot be driven in any public place. The responsibility to ensure that such a vehicle is not driven is not merely on the person driving the vehicle but also on the owner of the vehicle. Section 45 permits refusal of registration or renewal of the certificate of registration *inter alia* on the ground that the vehicle is mechanically defective or fails to comply with the requirements of the Act or the rules made thereunder. It is obvious that the vehicle must be roadworthy in the sense that there is no mechanical defect therein to permit it being used as a motor vehicle. The necessity of complying with all the requirements makes it clear that any requirement which is specified under the Act or by the rules, has to be fully complied with and such a requirement would include the requirement of a specified category of motor vehicles being fitted with speed governors or such other devices as may be prescribed by law. Section 53 permits suspension of registration by the registering authority or other prescribed authority if it has reason to believe that any motor vehicle is in such a condition that its use in a public place would constitute a danger to the public or that it fails to comply with the requirements of this Act or of the Rules made thereunder. It is significant that this power to suspend the registration is available to the authority even if the condition of the motor vehicle is found to be such that its use in a public place would constitute a danger to the public, irrespective of whether that is a specific requirement of the Act or the rules. The

conferment of this power is for the obvious reason that a motor vehicle which is considered to be unsafe or which poses a danger to the public in a public place, if driven, should not be permitted to ply at a public place since the paramount need is public safety. It is, therefore, clear that even if speed governors are not prescribed for a particular class of motor vehicles by any requirement of the Act or the rules made thereunder, it is permissible for the authority concerned to require the fitting of the speed governors in such motor vehicles for the purpose of ensuring that there is no danger to the public by the use of such a motor vehicle in a public place. The power under Section 53 to this extent is wider. Section 53 read with Section 45 leaves no doubt about the amplitude of power of the authorities concerned whose duty it is to control and regulate the traffic in public places. The basic test to be applied by them for exercise of this power is the need to ensure that there is no danger to the public by use of any motor vehicle in a public place.

12. *In our opinion, the existing provisions in the Act alone are sufficient to clothe the members of the police force and the transport authorities with ample powers to control and regulate the traffic in an appropriate manner so that no vehicle being used in a public place poses any danger to the public in any form. The requirement of maintaining the motor vehicles in the manner prescribed and its use if roadworthy in a manner which does not endanger the public, has to be ensured by the authorities and this is the aim of these provisions enacted in the Act. As earlier stated, we reach this conclusion even without reference to the general powers available to the police officers under the police Act and the Code of Criminal Procedure.”*

16. Even assuming that the directions are issued in exercise of the power of the Supreme Court under Article 142, it would make no difference. We are bound by the observations and the directions issued by the Supreme Court. We will restrict our judgment to speed governors and determine the

question of the State Government's power to stipulate the eligibility criteria for empanelment of suppliers thereof only on the basis of *M.C. Mehta's case* (supra). It is important to note a few aspects of this judgment. In paragraph 3, it is held that not only the provisions of the Motor Vehicles Act, 1988 but even the provisions of other existing laws such as the Police Act and the Code of Criminal Procedure confer ample power upon the authorities to take necessary steps to control and regulate the traffic and to suspend/cancel the registration or permit of a motor vehicle if it poses a threat or hazard to public safety. It is the State Governments that exercise the control under the Police Act. These provisions have been interpreted by the Supreme Court as conferring power on the authorities to take steps to control and regulate road traffic. The power, therefore, is traced not only under the Motor Vehicles Act but even otherwise. Further these observations are in respect *inter alia* of speed governors. This is clear from the observations in paragraph 6 of the judgment where firstly it is stated that section 45 of the Act permits refusal of registration on the ground that the vehicle fails to comply with the requirements of the Act or the Rules made thereunder and that the necessity of complying with all the requirements makes it clear that any requirement which is specified under the Act or the rules has to be fully complied with. The word "requirement" relates to the requirements of the Act or the Rules. It is of vital importance to note that it is further held that such requirement would include the requirement of a specified category of motor vehicles being fitted with speed governors or such other devices as may be prescribed by law. The Supreme Court therefore read into the Act and the Rules the requirement of speed governors. It is equally, if not more important, to note that in the last but one sentence, it is held that section 53 read with section 45 leaves no

doubt about the amplitude of the power of the authorities concerned “whose duty is it to control and regulate the traffic in public places”. As we noticed earlier the duty to control and regulate the traffic in public places is also of the State authorities. The doubt in this regard is set at rest by the observations in paragraph 12 where it is expressly held that the existing provisions of the Act alone are sufficient to clothe the police force and transport authorities with ample power to control and regulate the traffic in an appropriate manner so that no vehicle used in a public place poses any danger to the public in any form. This conclusion was clarified to be even without reference to the general powers available to the police officers under the Police Act and the Code of Criminal Procedure. As noted earlier, the power was recognized in the State authorities even under the Police Act and the Code of Criminal Procedure.

17. In view of the judgment in *M.C. Mehta’s case* (supra), it is not possible for us to hold that the State Government has nothing to do with speed governors.

18. Once it is held that the State Governments are also bound to ensure road safety and to that end are required to ensure the fitment of speed governors it follows that they are also bound to ensure that the speed governors fulfill their purpose and are of good quality. Quality control in turn can be ensured inter alia by sourcing the speed governors from qualified suppliers. The suitability of suppliers can be ensured by stipulating relevant criteria. The State Governments, therefore, have the power to stipulate criteria for the empanelment of suppliers of speed governors.

19. The next question is whether the impugned eligibility criteria are arbitrary or unreasonable. The necessity for ensuring road safety can hardly be over-stated. One of the methods of ensuring road safety is to limit the speed of the vehicles with the use of speed governors. It follows, therefore, that it is necessary to ensure quality of such equipment. If an Act or Rules or other law require the provision of any equipment it would imply that the equipment fulfills its purpose. The authorities must then ensure the same. It is open the authorities to decide the manner in which quality and suitability is ensured. These are technical aspects which must, absent anything else, be left to the experts in the field. There may be different ways of ensuring the quality. The eligibility criteria stipulated by a party inviting tenders, may not be the only possible way. However, merely because any other criteria is also suitable, it would not warrant quashing the criteria adopted.

20. It is true that the amended Rule 118 requires the State Government to ensure transport vehicles are equipped or fitted with speed governors conforming to the Standard AIS:018/2001, as amended from time to time. The amended rule, however, does not preclude State Governments from stipulating any other eligibility criteria as well. It is not sufficient for the speed governors to merely meet the eligibility criteria. The State Governments would also be entirely justified in ensuring that the equipment supplied by the vendors can, for instance, be serviced without difficulty or even replaced expeditiously. That the State Governments are not precluded from stipulating any other/additional conditions is also clear from the communication issued by the Central Government subsequently. For instance, in the said communication dated 16.06.2016, it is provided that the States would take steps to ensure implementation of the equipment, if required, by framing

appropriate eligibility criteria for the effective implementation of the scheme.

It is provided that the States may incorporate any additional conditions to ensure effective implementation of the fitment of the equipment.

21. Faced with this, it was contended that the 02.08.2016, communication revoked *inter alia* the communication dated 16.06.2016. We set out the relevant part of the communication dated 02.08.2016. The submission is not well founded for more than one reason. Firstly, it does not prohibit State Governments from implementing the scheme by ensuring the supply of adequate equipment of a high quality and with after sales service. The communication also merely recommended, indeed strongly, that the State Governments do not restrict the freedom of the vehicle owner to choose the type of approved speed limiting device of any manufacturer. The contention that this is prevented by the impugned eligibility criteria is erroneous. What the Central Government recommended against was a particular/specified manufacturer and not type of manufacturing enterprise. The State Government has not empanelled only particular vendors by name. What it seeks to do is to limit the empanelment to vendors equipped with certain technical, financial and business qualifications. Further, the communication mentions that the State Governments would have to ensure the effective implementation of the notification for fitment of speed limiting devices. One manner in which the same can be ensured is by stipulating conditions of eligibility.

22. We are unable to say that the impugned criteria are unreasonable or irrational. Turnover is an important criteria to determine the financial viability as well as staying power of an enterprise. So is the networth of the manufacturer. It is reasonable to presume that the higher the turnover and the

greater the networth, the less the possibility of the enterprise suffering a setback and in the event of its suffering a setback the greater the possibility of revival.

23. In the circumstances, the petition is dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
JUDGE

01.02.2017
SwarnjitS

Whether speaking/reasoned	Yes
Whether reportable	Yes