

C.W.P. No. 22319 of 2017

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1.

C.W.P. No. 22319 of 2017

Vinod Kumar and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

2.

C.W.P. No. 15786 of 2017

Harpal Singh and another

.....Petitioners

Versus

State of Haryana and another

.....Respondents

DATE OF DECISION: 30.1.2018

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Kulwant Singh, Advocate
for the petitioners in C.W.P. No. 22319 of 2017.

Mrs. Sharmila Sharma, Advocate
for the petitioners in C.W.P. No. 15786 of 2017.

Mr. SS Mann, Sr. DAG, Haryana.

DAYA CHAUDHARY, J.

This order of mine shall dispose of two writ petition bearing
Nos. 22319 and 15786 of 2017 as common question of law and facts are
involved in both the cases. For the sake of convenience, the facts have been
extracted from C.W.P. No. 22319 of 2017.

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of instructions dated 22.6.2017 (Annexure P-1) issued by respondent No.1 contrary to instructions dated 9.2.2009 (Annexure P-2) issued by Government of India. A further prayer has also been made for directing respondents to re-register/transfer the ownership of pre-owned BS-III complaint vehicles, in the name of the petitioners, as the same had been purchased and to get NOC from the competent authority, the vehicles were registered in other States much earlier to 31.3.2017.

Briefly, the facts of the case as made out in the present petition are that the petitioners purchased pre-owned BS-III vehicles prior to 31.3.2017 and also got 'No Objection Certificate' as well as fitness inspection certificate after depositing requisite fee from the concerned authorities. After obtaining all necessary documents for transfer of ownership of the vehicles, the petitioners presented the same before Regional Transport Authority, Nuh, Haryana. As per case of the petitioners, initially an assurance was given to re-register the vehicles after getting verification from the concerned quarter but on one pretext or the other, the matter was kept pending. Subsequently it was informed to the petitioners that ownership of the vehicles cannot be re-registered/transferred in view of instructions dated 22.6.2017 (Annexure P-1) issued by Transport Commissioner, Haryana.

Learned senior counsel for the petitioners contends that respondent-authorities are misinterpreting instructions dated 9.2.2009 issued by Government of India and also the judgment of Hon'ble the Apex Court in Writ Petition (Civil) No. 13029 of 1985 titled as **M.C. Mehta Vs.**

Union of India and others, wherein, it has been observed that no BS-III vehicles after 31.3.2017 would be sold and registered but BS-III vehicles purchased before 31.3.2017 would stay in use. Learned senior counsel further contends that as per instructions dated 3.3.2015 issued by Government of Haryana, four wheelers manufactured prior to 1.4.2010 complying with BS-III Mass emission standards can be re-registered on transfer in the NCR Districts like Faridabad, Gurugram, Mewat, Rohtak, Sonapat, Rewari, Jhajjar, Panipat, Hisar, Karnal, Yamuna Nagar and Kurukshetra. He also contends that there is no bar in re-registering BS-III vehicles sold and registered prior to 31.3.2017 as per provisions of Section 50 of Motor Vehicles Act, 1988. It is also the contention of learned senior counsel that as per provisions of Section 50 Sub Clause(II) “in the case of a vehicle registered outside the State, within forty-five days of the transfer, forward to the Registering Authority, referred to in Sub Clause-I. The petitioners produced all the requisite document including 'No Objection Certificate' issued by the concerned authority but their request for re-registration was not accepted because of instructions dated 22.6.2017. At the end, learned senior counsel contends that the same issue was there before the Delhi High Court in the case of **Sandeep Sindhwani and others Vs. Govt. of NCT of Delhi and others** 2017 (3) RCR (Civil) 498 and the instructions dated 22.6.2017 issued by Government of Haryana is contrary to the judgment of Hon'ble the Apex Court in **MC Mehta's case (supra)** and liable to be quashed.

In response to notice of motion, reply on behalf of respondents No. 1 to 3 has already been filed and the same is on record.

Learned State counsel submits that keeping in view the spirit of

the directions issued by Hon'ble the Apex Court and by virtue of notification dated 19.8.2015 issued by the Ministry of Road Transport and Highways, Government of India, BS-IV emission norms have been made applicable in the State and no BS-III complied new vehicle or the vehicle registered in the other State on the basis of NOC can be registered in the State of Haryana. He further submits that in case re-registration is allowed then the whole purpose of issuing directions by Hon'ble the Apex Court in **MC Mehta's case (supra)** would be frustrated. Learned State counsel also submits that registration of the vehicles of other States on the basis of NOC in case of transfer of vehicle as well as re-assignment of new registration mark on removal to other States also amounts to registration of such vehicles in the State as complete procedure is followed for the same as is followed in case of registration of new vehicle. The term 're-registration' has nowhere been defined in the Motor Vehicles Act, 1988. Subsequently a clarification was also issued by Hon'ble the Apex Court vide its order dated 8.5.2017 stating that no vehicle would be allowed to register w.e.f. 1.4.2017 in case it does not meet BS-IV emission standard norms except the vehicles falling under Rule 115-A of the Central Motor Vehicles Rules, 1989.

Heard the arguments advanced by learned counsel for the parties and have also gone through the impugned instructions and other documents available on the file.

The facts relating to purchase of vehicles, registration of the same, moving of an application for transfer or re-registration and issuance of directions by Hon'ble the Apex Court in **MC Mehta's (supra)** as well as clarification issued thereafter are not disputed. The petitioners are

aggrieved by the action of the respondents in not registering BS-III vehicles even inspite of having 'No Objection Certificate' in view of instructions dated 22.6.2017 issued by State of Haryana. The relevant portion of said instructions is reproduced as under:-

“It has come to the notice of this office that taking benefit of this provision some vehicle owners have got registration of their BS-III vehicles as Inter State/National Permit/All India Tourist Permit vehicle and now they want to transfer those vehicles in other kind of permit. They want to re-register their BS-III vehicles in State of Haryana after obtaining NOC from other States. In this manner orders passed by Hon'ble Supreme Court and order passed by NGT cannot be bypassed. Therefore following proceedings be taken into consideration. BS-III vehicles which have already been registered as Inter State/National Permit/All India National Tourist Permit in the State they may not be granted any kind of permit and may not be re-registered in some other category.

2. BS-III vehicles which has been purchased before 1.4.2017 prior to their registration matter may be brought to the notice of head office so that orders passed by Hon'ble Supreme Court and NGT may be complied with.

3. That BS-III vehicles which have already been registered in some other States may not be re-registered.

4. Only BS-IV vehicles be registered for CNG fuel vehicles. All registration authority will keep a watch in these cases and if any violation of these directions are found then they themselves

be responsible. Instructions may strictly be followed.”

The relevant portion of judgment of **MC Mehta's case (supra)** relevant for deciding the controversy in the present case is reproduced as under:-

“56. In our opinion, the only reasonable construction of the office memorandum (issued two years ago) would be that subject to the occurrence of some extraordinary or unforeseen event, should it become necessary to sell and register BS-III compliant vehicles on or after 1st April, 2017 limited exceptions on a case to case basis could be claimed and considered. The office memorandum cannot reasonably be interpreted as a carte blanche to the automobile industry to continue the manufacture of BS-III complaint vehicles till the very last day and then plead the necessity of clearing accumulated stock of BS-III vehicles. This would make a mockery of the efforts to all concerned in regulating vehicular emissions and virtually enabling the interveners to emasculate an important component of the right to life guaranteed by Article 21 of the Constitution, namely, the entitlement of millions of our country men and women to breathe less polluted air and ignore public health issues in conducting their business. We cannot be asked to shut our eyes to the phenomenal rise in pollution levels in the country.

58. In any event, the fact is that EPCA had convened a meeting of all stakeholders on 19th October, 2016 and had brought to the notice of the representatives of SIAM that there would be no

sale and registration of BS-III compliant vehicles from 1st April, 2017 and that this should be communicated to all manufacturers. The clear intention of EPCA was to give sufficient notice of almost six months to enable the automobile industry to plan its production and sale and take pro-active steps to significantly decrease the production of BS-III compliant vehicles and correspondingly significantly increase the production of BS-IV compliant vehicles. Unfortunately, SIAM did not heed the caution but expressed the view that it would be difficult to ensure compliance. We were also told that EPCA had no jurisdiction or authority to give such a direction. However, that is not an issue of concern at the present moment.”

As per directions issued by Hon'ble the Apex Court on 29.3.2017, it is apparent that all vehicles, which are not BS-IV compliant shall not be sold in India by any manufacturer or dealer, may be two wheelers, three wheelers or four wheelers or commercial vehicles on and from 1.4.2017. It has also been directed that all vehicles registering authorities under the Motor Vehicles Act, 1988 are prohibited for registering such vehicles on and from 1.4.2017 in case the vehicles do not meet BS-IV emission standards, except on proof that such a vehicle has already been sold on or before 31.3.2017. Subsequently, said order has been clarified by Hon'ble the Apex Court vide order dated 13.4.2017, which is reproduced as under:-

“It appeared to us that if someone was to make a bona fide

purchase of a BS-III compliant vehicle on or immediately before 31st March, 2017 it might not be possible for that individual to have the vehicle registered before the cut-off date. Therefore, we felt it reasonable to permit the registration of BS-III compliant vehicles purchased on proof on or before 31st March, 2017 from 1st April, 2017 and have ordered accordingly.”

In Sandeep Sindhwani and others Vs. Govt. of NCT of Delhi and others, Delhi High Court in W.P. (C) 3791 of 2017 on 8.5.2017 issued certain directions, which are reproduced as under:-

The Writ Petitions are accordingly allowed in the following terms:

(i) The Registering Authority would permit registration of vehicles in terms of order dated 29.03.2017 of the Supreme Court of India in M.C.Mehta (supra) as clarified in para 35 of the judgment dated 13.04.2017.

(ii) A proof would be required to be submitted by the dealer that he is a non self-registering dealer, i.e. does not have the online registering facility. This aspect would then be verified by the Registering Authority and only where it is found that the dealer is non registering dealer, the Registering Authority would take steps to verify the factum of the sale having been completed on or before 31.03.2017.

(iii) The dealer is required to submit all the requisite details as also the proof of the sale having been completed on or before 31.03.2017.

(iv) While considering that the sale has been completed prior to 31.03.2017, the Registering Authority would, inter alia, take into account the proof of online premium payment having been made on or before 31.03.2017 and/or issuance of an online insurance policy on or before 31.03.2017, in the name of the purchaser.

(v) In case online payment has not been made and/or online insurance policy has not been issued on or before 31.03.2017, the onus and responsibility of verifying the proof, for the vehicle offered for registration that it was sold on or before 31.03.2017 would lie with the Registering Authority/MLO. The verification may be done based on proof of sale generated from a statutory or regulatory authority and not based on a mere invoice generated by the dealer.

(vi) The concerned Registering Authority would have to examine each individual sale transaction to ascertain whether the said transaction is in compliance with the directions of the Supreme Court and only in case the Registering Authority is satisfied that the transaction was completed on or before 31.03.2017, the registration would be permitted.

(vii) Since the respondent Registering Authorities were not accepting the vehicles for physical verification, the time for

production of vehicles for physical verification is extended till 15.05.2017.

In **Sandeep Sindhvani's case (supra)**, the petitioners were not self-registering dealers and the Court did not examine the material on the prospect of self-registering dealer. Further it was directed that the issue was to be considered by the registering authority to satisfy itself about the genuineness of the transactions as claimed in the petition.

In the present case, the petitioners purchased vehicles, which were registered in the name of their first owners much prior to 31.3.2017 and 'No Objection Certificates' were also issued by the concerned authorities. Their vehicles were initially registered in different States and subsequently after having No Objection Certificate they made an application for re-registration before the competent authority. They also got fitness inspection certificate and paid requisite fee but re-registration was not made in view of instructions dated 22.6.2017.

A perusal of instructions dated 22.6.2017 clearly shows that it has come to the notice of the concerned authorities that for taking benefit of the provision some vehicle owners have got registration of their BS-III vehicles as Inter State/National Permit/All India Tourist Permit vehicles and want to transfer those vehicles in other kind of permit. For that purpose they want to re-register their BS-III vehicles in State of Haryana after obtaining NOC from other States. The purpose is to by-pass the judgment of Hon'ble the Apex Court in **MC Mehta's case (supra)**. It is also mentioned in instructions dated 22.6.2017 that BS-III vehicles which have already been registered as Inter State/National Permit/All India National Tourist Permit

in the State may not be granted any permit and also may not be re-registered in some other category.

Hon'ble the Apex Court in **M.C. Mehta's case (supra)** had permitted registration of those vehicles which were sold on or before 31.3.2017. However, it was left upon the Transport Department to lay down stipulations and conditions for verifying the factum of transaction of sale having been completed on or before 31.3.2017. The registering authority have been given liberty to permit registration of vehicles in case there is any proof of sale on or before 31.3.2017. The proof is required to be submitted by the dealer or by the purchaser that the vehicle was sold prior to 31.3.2017 but for any reason it is found that dealer is non-registering dealer, the registering authority would take steps to verify the factum of sale having been completed on or before 31.3.2017. For that purpose, the dealer is required to submit all the requisite details as also the proof of sale having been completed on or before 31.3.2017. While considering that the sale has already been completed prior to 31.3.2017, the registering authority is also to take into account the proof of online premium payment having been made on or before 31.3.2017 and/or issuance of an online insurance policy on or before 31.3.2017, in the name of purchaser. In case online payment has not been made and/or online insurance policy has not been issued on or before 31.3.2017, the onus and responsibility of verifying the proof, for the vehicle offered for registration that it was sold on or before 31.3.2017 would lie with the Registering Authority. The verification was to be done on proof of sale generated from a statutory or regulatory authority and nor merely on the basis of invoice generated by the dealer. In some of the cases, since the registering authorities were not accepting the vehicles for physical

verification, the time for production of vehicles for physical verification was extended upto 15.5.2017.

The issue before Hon'ble the Apex Court was as to whether the accumulated stock of BS-III compliant vehicles manufactured on or before 31.3.2017 could be sold and registered after 1.4.2017 or not. Hon'ble the Apex Court has observed that if someone was to make a bona fide purchase of a BS-III compliant vehicle on or immediately before 31.3.2017, it might not be possible for that individual to have the vehicle registered before the cut-off date. Accordingly, permission was granted to the registration of BS-III compliant vehicles purchased on proof on or before 31.3.2017 from 1.4.2017. Even it was also an issue before Hon'ble the Apex Court as to whether the BS-III compliant vehicles manufactured on or before 31.3.2017 could be sold from 1.4.2017 onwards or not. The manufacturer of BS-III compliant vehicles was permitted to sell those vehicles upto 31.3.2017. The period of five years was given to consider issues relating to air pollution as a part of its manufacturing activities and production strategy and to plan out its activities and revisit the strategy. It was done so by considering the very important issue i.e. health of every person in the country, which cannot be compromised, even in the smallest measure, for the commercial interests of the automobile industry. It has also been observed in the judgment that various notifications issued and amendments made to the Rules must be read cumulatively in a purposive manner with the objective of enhancing or protecting further deterioration of the quality of the air we breathe from a continuing and continuous onslaught of pollutants. A specific direction was also issued to the manufacturers of automobile industry to ensure that the stock of BS-III compliant vehicle be exhausted before the date for the

reasons recorded.

In the present case, it is not an issue that the petitioners purchased pre-owned BS-III vehicles prior to 31.3.2017. The petitioners got 'No Objection Certificate' as well as fitness inspection certificate after depositing requisite fee from the concerned authorities. After obtaining all necessary documents for transfer of ownership of the vehicles, the petitioners presented the same before Regional Transport Authority, Nuh, Haryana. The re-registration of the vehicles of the petitioners could not be done in view of instructions dated 22.6.2017 issued by the State of Haryana. Hon'ble the Apex Court vide order dated 29.3.2017 had ordered that registration of BS IV vehicle would be mandatory in the whole country after 1.4.2017. As per instructions dated 22.6.2017, after taking benefit of this provision some vehicle owners have got registration of their BS-III vehicles as Inter State/National Permit/All India Tourist Permit vehicle and now they want to transfer those vehicles in other kind of permit by re-registering BSIII vehicles in State of Haryana after obtaining NOC from other States and if this is allowed, the very purpose of passing directions by Hon'ble the Apex Court would be frustrated. By keeping this object in mind, instructions dated 22.6.2017 were issued so that the directions issued by Hon'ble the Apex Court in **MC Mehta's case (supra)** be not bypassed. In the present case, instructions dated 22.6.2017 have been challenged on the ground that it is contrary to the liberty given to those vehicles which were purchased but could not be re-registered before 31.3.2017. The petitioners in the present case cannot be said to be bona fide purchasers as the said vehicles were purchased by some other persons and instructions dated 22.6.2017 have been challenged only to bypass the directions issued

by Hon'ble the Apex Court. The instructions dated 22.6.2017 cannot be said to be illegal or contrary to the directions issued by Hon'ble the Apex Court. The purpose of filing this petition by challenging these instructions is not only to frustrate the purpose and object, which was in the mind of the authors of the judgment but to bypass the guidelines and to take undue benefit.

In view of the above, there is no reason to quash the impugned instruction dated 22.6.2017. Accordingly, the present petition being devoid of any merit is hereby dismissed.

January 30, 2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No