

***THE HONOURABLE SRI JUSTICE P.NAVEEN RAO**

+W.P. Nos. 1635, 1668, 5885, 7727, 8431, 9985, 11028, 13925, 15353, 23844, 24190, 24852, 26360, 28014, 28028, 28076, 28302, 28741, 28745, 31520, 31588, 32028, 33625, 33630, 33678, 34225, 41239, 43062, 43067, 43578 of 2017, 9233, 18245, 18290, 18739, 18866, 19291, 19931, 20377, 20440, 21379, 21465, 22654, 23884, 24188, 25205, 26827, 28358, 28760, 28768, 29186, 29415, 29667, 30643, 32081, 35468 & 37242 of 2018.

% 7.8.2019

#Raju Katravath S/o K Thourya
Aged 26 years Occ Owner of the vehicle bearing
No AP 29 V 6099 Goods Carriage
R/o H No 1-85 Nazeerabad Parigi Vikarabad District
.....petitioner

Vs.

\$The State of Telangana rep by its Principal Secretary to
Transport Roads Buildings TR I Department
Secretariat Buildings Hyderabad & others

.... Respondents

!Counsel for the petitioners : Sri V Brahmaiah Chowdary, Sri Ch.Ravinder, Sri Janardhana Reddy Ponaka, Sri P Phalguna Rao, Sri Pale Sriharinath Chowdary, Sri Mohd Arifwati and Sri Karunakar Reddy

Counsel for the Respondents: GP for Transport
GP for Industries
GP for Home
GP for Mines and Geology

<Gist :

>Head Note:

? Cases referred:

(1979) 4 SCC 719

2014 (3) ALD 651

(2005) 12 SCC 642,

(2014) 6 SCC 36

Based on Ministry of Road Transport & Highways reply on 11th July, 2019, to a question raised in the Lok Sabha on number of road accidents in India.

2000 (1) ALT 170

1996 (1) ALT 915

1998 (6) ALD 340

AIR 2000 AP 442

AIR 1968 SC 372

(1989) 2 SCC 754

**IN THE HIGH COURT FOR THE STATE OF
TELANGANA**

W.P. Nos. 1635, 1668, 5885, 7727, 8431, 9985, 11028, 13925, 15353, 23844, 24190, 24852, 26360, 28014, 28028, 28076, 28302, 28741, 28745, 31520, 31588, 32028, 33625, 33630, 33678, 34225, 41239, 43062, 43067, 43578 of 2017, 9233, 18245, 18290, 18739, 18866, 19291, 19931, 20377, 20440, 21379, 21465, 22654, 23884, 24188, 25205, 26827, 28358, 28760, 28768, 29186, 29415, 29667, 30643, 32081, 35468 & 37242 of 2018.

Between :

Raju Katravath S/o K Thourya

Aged 26 years Occ Owner of the vehicle bearing

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....petitioner

Vs.

The State of Telangana rep by its Principal Secretary to
Transport Roads Buildings TR I Department
Secretariat Buildings Hyderabad & others

JUDGMENT PRONOUNCED ON : 7-8-2019

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may :
Be allowed to see the Judgments ? :YES
2. Whether the copies of judgment may be marked :
To Law Reporters/Journals : YES
3. Whether Their Ladyship/Lordship wish to :
See fair Copy of the Judgment ? :

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION NOs.1635, 1668, 5885, 7727, 8431, 9985, 11028, 13925, 15353, 23844, 24190, 24852, 26360, 28014, 28028, 28076, 28302, 28741, 28745, 31520, 31588, 32028, 33625, 33630, 33678, 34225, 41239 43062 43067, 43578 of 2017, 9233, 18245, 18290, 18739, 18866, 19291, 19931, 20377, 20440, 21379, 21465, 22654, 23884, 24188, 25205, 26827, 28358, 28760, 28768, 29186, 29415, 29667, 30643, 32081, 35468 & 37242 of 2018.

Date : 7.8.2019

WP No. 1635 of 2017

Between:

Raju Katravath S/o K Thourya

Aged 26 years

Occ Owner of the vehicle bearing No AP 29 V 6099

Goods Carriage R/o H No 1-85

Nazeerabad Parigi Vikarabad District

Petitioner

And

The State of Telangana

rep by its Principal Secretary to Transport Roads Buildings

TR I Department

Secretariat Buildings

Hyderabad & others

Respondents

The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOS.1635, 1668, 5885, 7727, 8431, 9985, 11028, 13925, 15353, 23844, 24190, 24852, 26360, 28014, 28028, 28076, 28302, 28741, 28745, 31520, 31588, 32028, 33625, 33630, 33678, 34225, 41239 43062 43067, 43578 of 2017, 9233, 18245, 18290, 18739, 18866, 19291, 19931, 20377, 20440, 21379, 21465, 22654, 23884, 24188, 25205, 26827, 28358, 28760, 28768, 29186, 29415, 29667, 30643, 32081, 35468 & 37242 of 2018.

COMMON ORDER:

The menace of road accidents is increasing day by day taking away the lives of thousands. One facet of cause of road accidents is plying of motor vehicles with excess load than permissible.

2. Before *proverbial travelling* into the litigation in these batch of writ petitions, it is apt to extract the observations of Justice V.R.Krishna Iyer in ***Rattan Singh v. State of Punjab***¹. It reads as under:

“This is a case which is more a portent than an event and is symbolic of the callous yet tragic traffic chaos and treacherous unsafety of public transportation – the besetting sin of our highways which are more like fatal facilities than means of mobility. More people die or road accidents than by most diseases, so much so the Indian highways are among the top killers of the country. What with frequent complaints of the State’s misfeasance in the maintenance of roads in good trim, the absence of public interest litigation to call State transport to order, and the lack of citizens’ tort consciousness, and what with the neglect in legislating into law no-fault liability and the induction on the roads of heavy duty vehicles beyond the capabilities of the highways system, ***Indian Transport is acquiring a meaning reputation which makes travel a tryst with Death.*** It looks as if traffic regulations are virtually dead and police checking mostly absent. ***By these processes of lawlessness, public roads are now lurking death traps.*** The State must rise to the gravity of the situation and provide road safety measures through active police presence beyond frozen indifference, through mobilization of popular organization in the field of road safety, frightening publicity for

¹ (1979) 4 SCC 719

gruesome accidents, and ***promotion of strict driving licensing and rigorous vehicle invigilation, lest human life should hardly have a chance for highway use.***

[emphasis supplied]

3. These observations are symbolic of the malady that has crept into use of public roads and thirty years later the situation is more grave.

4. In substance, in all these writ petitions, petitioners assail seizure of their motor transport vehicles and seek release of the vehicles. The seizure of vehicles is assailed on the ground that it violates their right to carry on business in transportation as guaranteed by Article 19(1)(g) of the Constitution of India.

5. The seizure of vehicles in issue is primarily on the ground that at the time of inspection, the vehicle was carrying load in excess of permissible limit i.e., sand or other commodities/ without weigh bills without permit/ and in some cases, inter-state transport of sand without transit permit, etc. Following the earlier decisions of this Court, in these matters, interim directions were granted, directing grant of interim custody of the vehicle to the owner of vehicle subject to his depositing 2000/- and additional amount of .1000/- per tonne of excess load, unloading charges with other conditions. In all these orders, no restraint is imposed on prosecution proceedings. What was granted was only an interim custody of the vehicle. In terms thereof, on depositing the amount specified in the respective interim orders, vehicles were released.

6. Learned counsel for petitioners placed extensive reliance on the directions issued by this Court in several decisions and prayed to affirm the order granting interim custody of vehicles.

7. According to learned counsel for petitioners, as directed by this Court in **K.Ram Reddy v. Government of Andhra Pradesh and others**², it is mandatory for the checking officials while checking the vehicles on the allegation of contravention of the Act, 1988 to give option to the driver/owner/accompanier of the vehicle to opt for payment of penalties specified instantaneously for release of vehicle as an interim measure instead of seizing the vehicle, and though circular instructions are issued by the Commissioner for Transport, they are observed more in breach and in spite of request made by the petitioners to release the vehicles on payment of amount as per Section 194 of the Act, 1988, their vehicles are not released and the same amounts to arbitrary exercise of power and authority and violating the directions of this Court. They would further contend that whenever there is an allegation of overload, the vehicle has to be released by collecting overload penalty @ 1000/- for each excess tonne. Learned counsel further contended that Section 194 of the Act, 1988 only invites penal consequences on the driver, but no penal consequences other than payment of penalty can be imposed on the owner of the vehicle and, therefore, detaining the vehicle even when the owner of the vehicle is agreeing to pay the penalty, amounts to arbitrary exercise of power.

² 2014 (3) ALD 651

8. Learned Government Pleader did not dispute the directions issued by this Court in **K.Ram Reddy** (supra) and the circular instructions issued by the Commissioner for Transport, and as per the directions of the Court release of the vehicles. However, learned Government Pleader would urge that under the guise of interim orders, owners have got the vehicles released on paying the penalty but have not surrendered the driving licences of drivers of the offending vehicles and since driving licences were not surrendered, no further action could be taken against the driver of offending vehicle. He would further submit that the owners are indulging in repeated offences but pay the same penalty whenever they are searched and vehicle is seized.

9. Learned Government Pleader emphasized that levying of penalty as prescribed in Section 194 of the Act can only be when such an offence is committed initially, but cannot be made applicable for repeated offences and there should be stringent action whenever there are repeated offences. Having regard to the increase in rate of accidents resulting in human loss, learned Government Pleader endeavoured the Court to view the offences as grave and would urge that mere payment of penalty as stipulated in Section 194 is not sufficient, more particularly on vehicles involved in repeated offences. He would submit that unless stringent measures are enforced and implemented, road accidents cannot be reduced. Learned Government Pleader placed reliance on the judgments rendered by this Court and judgments of Supreme Court, directions issued by the Monitoring Committee appointed by the Supreme Court, and the guidelines formulated.

10. The following issues require consideration in these writ petitions :

(1) Whether petitioners can institute writ petitions directly without availing remedy provided under the Act, 1988?

(2) Whether owner of motor vehicle can seek release of the vehicle on payment of penalties prescribed in Section 194 even before prosecution is launched and no orders compounding the offence are made under Section 200 of the Act, 1988 ?

(3) Whether motor vehicles involved in repeated offences require to be subjected to more rigorous penalties ?

11. The issues for consideration revolves on right of individual vehicle owner to use his vehicle as per his convenience verses the right to life of millions of road users.

12. The observations and enunciation of law by Supreme Court throw enough light on the crux of the issue, in **Paramjit Bhasin v. Union of India**³ Supreme Court looked into the reason behind establishing permissible weights and the extent to which the offences of overloading can be compounded by the State Government, when notifications issued by various State Governments condoning offences under Section 113 and 114 of the Act as allowed under Section 200 of the Act were challenged; and held as follows:

“5. Section 200 does not in any way authorise the State Government to permit the excess weight to be carried when on various inspections/detections 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 Section 194(1). The liability to pay

³ (2005) 12 SCC 642,

charge for uploading of the excess load is fixed on one who drives a vehicle or causes a motor vehicle to be driven in contravention of the provisions of Sections 113, 114 and 115. It is to be noted that compounding can be done either before or after the institution of the prosecution in respect of the enumerated offences. Any notification which runs counter to the clear import of Section 194 has no validity. As rightly submitted by learned counsel for the petitioners after compounding the excess load, same cannot be permitted to be carried in the vehicle concerned. Such carriage would amount to infraction of Section 113 of the Act. The object for which the maximum permissible weights have been fixed is crystal-clear. On a perusal of the provisions it is clear that the maximum gross weight (in short "GVB") of the trucks is 16.2 tonnes which enables loading of about 9 tonnes. The load rating is primarily based on the road design and specifications of Indian roads. Rule 95(2) of the Central Motor Vehicles Rules, 1989 (in short "the Central Rules") prescribes the principles which cover the fixation of GVB of the vehicles. The same reads as follows:

"95. (2) The maximum gross vehicle weight and the maximum safe axle weight of each axle of a vehicle shall, having regard to the size, nature and number of tyres and maximum weight permitted to be carried by the tyres as per sub-rule (1), be—

- (i) vehicle rating of the gross vehicle weight and axle weight respectively as duly certified by the testing agencies for compliance with Rule 126, or
- (ii) the maximum vehicle weight and maximum safe axle weight of each vehicle respectively as notified by the Central Government, or
- (iii) the maximum total load permitted to be carried by the tyre as specified in sub-rule (1) for the size and the number of the tyres fitted on the axle(s) of the vehicle, whichever is less:

Provided that the maximum gross vehicle weight in respect of all vehicles, including multi-axle vehicles shall not be more than the sum total of all the maximum safe axle weights put together."

11. It is to be noted that the constitutional validity of Sections 194 and 200 was challenged. It was noted in **P. RatnakarRao v. Govt. of A.P.** [(1996) 5 SCC 359] that the discretion given under Section 200(1) to the State Government to prescribe the maximum rates for compounding the offence is not unguided, uncanalised and arbitrary. It was, inter alia, held as follows: (SCC p. 361, para 4)

"4. The contention raised before the High Court and repeated before us by Shri Rajeev Dhavan, the learned Senior Counsel for the petitioners is that the discretion given in Section 200(1) of the Act is unguided, uncanalised and arbitrary. Until an accused is convicted under Section 194, the right to levy penalty thereunder would not arise. When discretion is given to the court for compounding of the offence for the amount mentioned under Section 200, it cannot be stratified by specified amount. It would, therefore, be clear that the exercise of power to prescribe maximum rates for compounding the offence is illegal, arbitrary and violative of Article 14 of the Constitution. We find no force in the contention. For violation of Sections 113 to 115, Section 194 accords penal sanction and on conviction for violation thereof, the section sanctions punishment with fine as has been enumerated hereinbefore. The section would give guidance to the State Government as a delegate under the statute to specify the amount for compounding the offences enumerated under sub-section (1) of Section 200. It is not mandatory that the authorised officer would always compound the offence. It is conditional upon the willingness of the accused to have the offences compounded. It may also be done before the institution of the prosecution case. In the event of the petitioner's willing to have the offence compounded, the authorised officer gets jurisdiction and authority to compound the offence and call upon the accused to pay the same. On compliance thereof, the proceedings, if already instituted, would be closed or no further proceedings shall be initiated. It is a matter of volition or willingness on the part of the accused either to accept compounding of the offence or to face the prosecution in the appropriate court. As regards canalisation and prescription of the amount of fine for the offences committed, Section 194, the penal and charging section

prescribes the maximum outer limit within which the compounding fee would be prescribed. The discretion exercised by the delegated legislation i.e. the executive is controlled by the specification in the Act. It is not necessary that Section 200 itself should contain the details in that behalf. So long as the compounding fee does not exceed the fine prescribed by the penal section, the same cannot be declared to be either exorbitant or irrational or bereft of guidance.”

12. It is indisputable that the power of compounding vests with the State Government, but the notification issued in that regard cannot authorise 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 the statutory prescriptions.”

(Emphasis supplied)

13. Going a step further, the Supreme Court took cognizance of the rising number of road accidents through a Working Group’s report and the Petitioners plea by a three-member Bench in **S. Rajasekaran v. Union of India**⁴ (2014) 6 SCC 36, established a mechanism for implementation and enforcement. The order reads as under:

“14.3. An amendment to the Act to provide enhanced penalties for different offences has been passed by the Upper House on 8-5-2012 and the Bill is presently pending before the Lok Sabha. So far as overloading of vehicles, a major cause of road accidents, is concerned, according to the Union, the enforcement of the law in this regard is the responsibility of the State Governments. 27 States, according to Respondent 1, have taken necessary action for enforcement of the provisions of Section 114 of the Act...” (Excerpt of detailed counter-affidavit filed by Respondent 1, the Road Transport and Highways Ministry, regarding the steps taken to combat high number of road accidents).

19. Finally, in its counter-affidavit, the Ministry (MoRTH) has stated that the enforcement of the core provisions of the Act comes within the purview of the States/Union Territories and though the first respondent has been impressing upon all States/Union Territories for strict enforcement of the provisions of the Act by issuing advisories from time to time, eventually, it is up to the States to respond appropriately in the matter.”

14. While categorizing various offences under the Act for the purposes of identifying them for enforcement, the Supreme Court also, in this judgment, ordered the Central Government to form a Monitoring Committee with members as stated in the order. All

⁴ (2014) 6 SCC 36

State Governments were directed to continue the 4 dimensional approach as established by the Central Government and to report to the Monitoring Committee within three months on the status of implementation of all the existing laws covering the aforementioned categories. The Monitoring Committee in turn was directed to undertake a detailed scrutiny of the reports submitted from State Governments and then within three months report to the Supreme Court expressing its views and highlighting deficiencies on the part of any of the stakeholders.

15. On 18th August 2015, the Supreme Court Committee on Road Safety issued directions to the States/U.T.'s to implement road safety laws. Following are brief excerpt of its findings:

15.1. The Committee constituted by the Supreme Court of India to monitor and measure implementation of road safety laws in the country has had detailed discussions with the concerned Central Ministries and all the States/U.T.'s on the trend of road accidents and fatalities. The data furnished by them has clearly established that the number of fatalities in India continues to be very high, causing serious emotional trauma and economic loss to the families of the deceased and society. The compensation awarded to the victims by the Insurance Companies also runs into hundreds of crores of rupees every year.

15.2. It appears the Committee issued directions to the States/U.T.'s to establish institutional arrangements to promote road safety, undertake engineering measures to make roads safe, tighten enforcement together with promoting road safety education and establishing adequate trauma care facilities, and the

Committee has been closely monitoring the action being taken by the States/U.T.'s. even though a number of measures have been taken by the States/U.T.'s as directed by the Committee, the Committee on the basis of detailed analysis of traffic accidents and fatalities has come to the conclusion that unless strong and urgent measures are taken to deal with over speeding, drunken driving, red light jumping, violation of helmet laws and seat belt laws, and use of mobile phones while driving, and overloading, the number of accidents and fatalities will continue to remain high.

15.3. The Committee, directed the States/U.T.'s and their concerned departments to take the following action forthwith: suspension of the license for a period of not less than 3 months under Section 19 of the Motor Vehicles Act, 1988 read with Rule 21 of the Central Motor Vehicle Rules, 1989 for:

- i. Driving at a speed exceeding the specified limit which in the Committee's view would also include red light jumping;
- ii. Carrying overload in goods carriages and carrying persons in goods carriages;
- iii. Driving vehicles under the influence of drinks and drugs;
- iv. Using mobile phone while driving a vehicle....

16. The Supreme Court Committee on Road Safety had convened a meeting on 2nd November, 2015 with the Government of Telangana to discuss and review the status of implementation by the State Govt. of the directions issued by the Committee vide its letter dated 8th July, 2015 and also the Road Safety Action Plan. The further deliberations are not placed on record.

17. It is no more a lurking danger, but a reality of how overloading of vehicles causes havoc on the roads. When the load is more than permissible limit, driver cannot have control on the

vehicle movement. The chassis of the vehicle and axle and wheels may not sustain the pressure. In addition, poor upkeep may compound the problem and result in fatal accidents. It also damages the road and cause pollution. For the greediness of owners of the vehicles to earn few rupees more, lives of millions are jeopardized. In spite of concern expressed by NGOs and by the Hon'ble Supreme Court on increase in road accidents, mostly caused due to negligence of driver and owner and cause for many fatal accidents being the motor vehicles plying on public roads carrying excess load, no serious effort is made to penalize the offenders. It cannot be said that the competent authority is without power to penalize the owner of the vehicle and the driver which results in repeated offences. Statistics placed on record and even otherwise, clearly demonstrate that the cause for major road accidents is overload of vehicles plying on the roads.

17.1. India ranks first in the world for road accidents. A major contributor to these accidents is motor vehicles plying on the public roads with excess load. As statistics noted by Hon'ble Supreme Court in **S. Rajaseekaran** in the decision dated 22.4.2014 illustrates by 2006 fatal accidents in India crossed one lakh and after 11 years the figures stand at 1,47,913 fatal road accidents as of 2017.⁵ The accidents reported are far less as compared to accidents that actually happen on the roads. The cases booked are also far few and are only a sample of actual number of vehicles with overload, plying on the roads. The factum of overload is not confined to such vehicles but also has more

⁵Based on Ministry of Road Transport & Highways reply on 11th July, 2019, to a question raised in the Lok Sabha on number of road accidents in India.

serious consequences as most of the vehicles plying on the road are very old and badly maintained. The owners intend to squeeze every ounce of the vehicle before it succumbs.

17.2 Whenever an overloaded vehicle travels on the road there is a lurking danger of accidents. By seizing the vehicle that danger is avoided for the time being. Thus, it is not a simple case of overloading but a serious issue of averting a grave fatal accident.

17.3. In this context it is appropriate to note the observations of Supreme Court in **S.Rajaseekaran** (cited supra).

23. An accident is an incident that happens unexpectedly and unintentionally. It is occasioned either by human failure or human negligence. Viewed from the above perspective and also thorough hindsight, every road accident is an avoidable happening. The history of humankind has been one of conquests over the inevitable. The resignation to fate has never been the accepted philosophy of human life. Challenges have to be met to make human life more meaningful. This is how the constitutional philosophy behind Article 21 has been evolved by the Indian courts over a long period of time. It is this process of development and the absence of significant and meaningful results from the governmental action till date that impels us to delve into the realms of the issues highlighted by DrRajaseekaran in the present writ petition under Article 32 of the Constitution.

18. There are two enactments made by the Indian Parliament which have bearing on the issues, the Motor Vehicles Act, 1988 (Act, 1988) and the Prevention of Damage to Public Property Act, 1984 (Act 3 of 1984).

i) Sections 19, 113, 114, 194, 200 and 207 of the Motor Vehicles Act, 1988, to the extent relevant read as under :

“S.19. Power of licensing authority to disqualify from holding a driving licence or revoke such licence.—(1) If a licensing authority is satisfied, after giving the holder of a driving licence an opportunity of being heard, that he—

(d) has by his previous conduct as driver of a motor vehicle shown that his driving is likely to be attended with danger to the public; or
...

(f) has committed any such act which is likely to cause nuisance or danger to the public, as may be prescribed by the Central Government, having regard to the objects of this Act; or.....

(2) Where an order under sub-section (1) is made, the holder of a driving licence shall forthwith surrender his driving licence to the licensing authority making the order, if the driving licence has not already been surrendered, and the licensing authority shall,—

(a) if the driving licence is a driving licence issued under this Act, keep it until the disqualification has expired or has been removed; or

(b) if it is not a driving licence issued under this Act, endorse the disqualification upon it and send it to the licensing authority by which it was issued; or

(c) in the case of revocation of any licence, endorse the revocation upon it and if it is not the authority which issued the same, intimate the fact of revocation to the authority which issued that licence: Provided that where the driving licence of a person authorises him to drive more than one class or description of motor vehicles and the order, made under sub-section (1), disqualifies him from driving any specified class or description of motor vehicles, the licensing authority shall endorse the disqualification upon the driving licence and return the same to the holder.

(3) Any person aggrieved by an order made by a licensing authority under sub-section (1) may, within thirty days of the receipt of the order, appeal to the prescribed authority, and such appellate authority shall give notice to the licensing authority and hear either party if so required by that party and may pass such order as it thinks fit and an order passed by any such appellate authority shall be final.

(Emphasis supplied)

S.113. Limits of weight and limitations on use -

(1) The State Government may prescribe the conditions for the issue of permits for 1[transport vehicles] by the State or Regional Transport Authority and may prohibit or restrict the use of such vehicles in any area or route.

(2) Except as may be otherwise prescribed, no person shall drive or cause or allow to be driven in any public place any motor vehicle which is not fitted with pneumatic tyres.

(3) No person shall drive or cause or allow to be driven in any public place any motor vehicle or trailer-

(a) the unladen weight of which exceeds the unladen weight specified in the certificate of registration of the vehicle, or

(b) the laden weight of which exceeds the gross vehicle weight specified in the certificate of registration.

(4) Where the driver or person in charge of a motor vehicle or trailer driven in contravention of sub-section (2) or clause (a) of sub-section (3) is not the owner, a Court may presume that the offence was committed with the knowledge of or under the orders of the owner of the motor vehicle or trailer.

S.114. Power to have vehicle weighed -

(1) 2 [Any officer of the Motor Vehicles Department authorised in this behalf by the State Government shall, if he has reason to believe that a goods vehicle or trailer is being used in contravention of section 113] require the driver to convey to a weighing device, if any, within a distance of ten kilometers from any point on the forward route or within a distance of twenty kilometers from any point on the forward route or within a distance of twenty kilometers from the destination of the vehicle for weighment; and if on such weighment the vehicle is found to contravene in any respect the provisions of section 113 regarding weight, he may, by order in writing, direct the driver to off-load the excess weight at his own risk and not to remove the vehicle or trailer from that place until the laden weight has been reduced or the vehicle or trailer has otherwise been dealt with so that it complies with section 113 and on receipt of such notice, the driver shall comply with such directions.

(2) Where the person authorised under sub-section (1) makes the said order in writing, he shall also endorse the relevant details of the overloading on the goods carriage permit and also intimate the fact of such endorsement to the authority which issued that permit

S.194 . Driving vehicle exceeding permissible weight:

(1) whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of Section 113 or Section 114 shall be punishable with 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.

(2) Any driver of a vehicle who refuses to stop and submit his vehicle to weighing after being directed to do so by an officer authorized in this behalf under Section 114 or removes or causes the removal of the load or part of it prior to weighing shall be punishable with fine which may extend to three thousand rupees.

S. 200. Composition of certain offences-

(1) Any offence whether committed before or after the commencement of this Act punishable under section 177, section 178, section 179, section 180, section 181, section 182, sub-section (1) or sub-section (2) of section 183, section 184, section 186, 1[section 189, sub-section (2) of section 190], section 191, section 192, section 194, section 196 or section 198, may either before or after the institution of the prosecution, be compounded by such officers or authorities and for such amount as the State Government may, by notification in the Official Gazette, specify in this behalf.

(2) Where an offence has been compounded under sub-section (1) the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of such offence.

S. 207. Power to detain vehicles used without certificate of registration permit, etc.—(1) Any police officer or other person authorised in this behalf by the State Government may, if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of Section 3 or Section 4 or Section 39 or without the permit required by sub-section (1) of Section 66 or ***in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used,*** seize and detain the vehicle, in the prescribed manner and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle:

Provided that where any such officer or person has reason to believe that a motor vehicle has been or is being used in contravention of Section 3 or Section 4 or without the permit required by sub-section (1) of Section 66 he may, instead of seizing the vehicle, seize the certificate of registration of the vehicle and shall issue an acknowledgment in respect thereof

(2) Where a motor vehicle has been seized and detained under sub-section (1), the owner or person in charge of the motor vehicle may apply to the transport authority or any officer authorised in this behalf by the State Government together with the relevant documents for the release of the vehicle and such authority or officer may, after verification of such documents, by order release the vehicle subject to such conditions as the authority or officer may deem fit to impose.”

ii) Rule 21 of Central Motor Vehicles Rules, 1989.

Rule 21. Powers of licensing authority to disqualify.—

For the purpose of clause (f) of sub-section (1) of Section 19, the commission of the following acts by holder of a driving licence shall constitute nuisance or danger to the public, namely:—

.....Carrying persons in goods carriage, either inside the driver's cabin in excess of its capacity or on the vehicle, whether for hire or not.....

iii) Rules 448, 448-A and 448-B of T.S. Motor Vehicles Rules, 1989:

Rule 448. Powers to detain vehicles :- Officer of the Transport Department not below the rank of Assistant Motor Vehicles Inspector and every Police Officer not below the rank of Circle Inspector of Police are authorised to exercise powers under Section 207.

Rule 448-A. Procedure of seizing and detaining a Motor Vehicle :-
When a motor vehicle is seized and detained by any officer referred to Rule in 448, he shall take the following steps :-

(i) arrangements shall be made for temporary safe custody of the motor vehicle in the nearest Police Station or at any appropriate place ;

(ii) the fact of seizure and detention shall be informed without delay to the Secretary, Regional Transport Authority of the region and the Secretary, Regional Transport Authority of the region to which the motor vehicle belongs ;

(iii) the officer who seized and detained the motor vehicle may release the vehicle of the offence for which it is seized and detained are compounded under Section 200 under intimation to the Secretaries of Regional Transport Authorities mentioned in Clause (ii) ;

(iv) where prosecution of the driver or owner or both is necessary, charge sheets against them shall be filed before the concerned Magistrate within three days from the date of seizure and the motor vehicle shall be released by the Officer who detained it after the prosecution is completed under intimation to Secretaries of Regional Transport Authorities mentioned in Clause (iii) ;

(v) Mahazor of the vehicles is to be carried out notifying its condition of each tyre fitted and parts which are easily removable, replaceable and tamperable, viz., batteries, fuel-pump, Dynamo, Differential, engine, extra lights etc. and loose parts, Stepney tyres and tools and a copy of it is to be delivered to the person from whom it is seized, duly signed.

Rule. 448-B. Release of seized and detained vehicles :- (1) An application for release of a vehicle seized and detained under sub-section (1) of Section 207 shall be in the form of a memorandum in duplicate with relevant documents duly enclosing a fee of rupees twenty five.
(2) The Secretary, Regional Transport Authority, of the Region shall be entertain application for release of vehicles sized and detained by his subordinate officers :
Provided that application shall be made to the Deputy Transport Commissioner in the case of check made by the Secretary, Regional Transport Authority in the cadre of Regional Transport Officer and the Transport Commissioner, if the Secretary, Regional Transport Authority is of the Deputy Transport Commissioner or Joint Transport Commissioner.]”

19. Section 113 of the Act, 1988 vests discretion in the State Government to prescribe the conditions for issue of permits. According to sub-section (3) of Section 113, no person is authorized to drive or allow the motor vehicle to be driven in any public place when unladen weight exceeds unladen weight specified in the Certificate of Registration of the Vehicle or the laden weight of the vehicle exceeds the gross vehicle weight. Section 114 of the Act, 1988 vests power in the competent authority to order weighing of the vehicle if that authority has

reason to believe that a goods vehicle or trailer is being used in contravention of provisions of Section 113 of the Act, 1988.

20. The offending vehicle owner and driver are liable for prosecution under Section 194. S.194 prescribes punishment of minimum of fine of 2000/- and an additional amount of 1000/- per tonne of excess load, together with the liability to pay charges for off-loading of the excess load. In other words, under this provision, 1) the driver/occupier of the vehicle has to pay fine of minimum of 2000/-, 2) 1000/- per tonne of excess load and 3) charges for off-loading of the excess load.

21. Section 19 of the Act, vests power in the licensing authority to disqualify driver from holding a driving licence or refuse to renew the driving licence on various offences committed by him mentioned in sub-section (1) of Section 19. One of the offences mentioned in clause (f) is committing any such act, which is likely to cause nuisance or danger to the public, as prescribed by the Central Government, having regard to the objects of the Act. Carrying excess load than permissible is certainly dangerous to the public and, therefore, under this provision driving licence of the driver of vehicle found to have violated the provisions of Sections 113 and 114 is liable for suspension for a specified period and in a given case to revoke the driving licence. Section 207 of the Act, 1988 vests power to detain the vehicle whenever the vehicle is found to have violated the provisions of the Act. Sub-section (2) thereof provides for redressal mechanism against seizure of the vehicle.

22. Two aspects are required for a transport vehicle to ply on the road. Firstly, registration of the vehicle and secondly permit to transport. Chapter IV deals with Registration of Motor Vehicles. In this chapter, Sections 39, 58 and 59 are crucial provisions. Under Section 39 registration of a vehicle is mandatory before it is driven in public place. Section 58 deals with transport vehicles other than motor cabs. It has two parts. Sub-Section 1 vests power in the Central Government to specify maximum gross vehicle weight and maximum safe axle weight of each axle of such vehicle. Sub-Section 2 requires the registration authority to enter in the certificate of registration of the vehicle particularly (a) Unladen weight; (b) number, nature and size of tyres attached to each wheel; (c) the gross vehicle weight and the registered axle weight pertaining to several axles, thereof; and (d) if vehicle is used/adopted to use for carriage of passengers solely and in addition to goods, and the number of passengers for whom accommodation is provided. Section 59 vests power in the Central government to specify life of a motor vehicle.

23. Chapter V deals with control of transport vehicles. Section 77 enables a person to apply for goods transport permit. In the application he has to specify the area and the route /routes, the type and capacity of the vehicle. There are other similar provisions dealing with stage carriage, contract carriage, private service vehicle, motor cabs etc. Section 79 vests power to grant goods carriage permit. While granting permit, the competent authority shall specify the conditions of permit. Among other terms of permit, significant conditions are area/route/routes [79 (2)(i)]; the gross vehicle weight; the conditions of permit cannot be departed

without the approval of Regional Transport Authority. Section 84 requires vehicle to comply general conditions attaching to all permits. Significant conditions are valid certificate of fitness; not to exceed permissible speed limit; hours of work of drivers.

24. Chapter VIII deals with control of traffic. Section 112 deals with limits of speed. Section 113 on limits of weight and limitations on use. Section 113 (1) vests power in state government to prescribe conditions for issue of permits for transport vehicles, including area and route. Sub-Section (3) mandates driver and owner and any other person-in-use of the vehicle not to drive the vehicle in public place if it exceeds the unladen weight, specified in the certificate and the laden weight exceeds the gross vehicle weight specified in the certificate. Sub Section (4) pre-supposes knowledge of the owner of the vehicle on committing such offence. Section 114 vests power in the inspecting officer to subject a vehicle allegedly carrying excess load to weigh the vehicle. Section 115 vests power in the State Government to impose restrictions on road use.

25. The above provisions mandate a vehicle owner to comply and obtain registration and permit to use the vehicle on public road. Use the vehicle in strict compliance of terms of registration and permit and other general conditions.

26. The Act also envisages enforcement mechanism. Chapter XIII deals with offences, punishments for violation of various clauses of the Act and procedures thereon. Sections 194, 200 and 207 are part of this chapter.

27. Section 194 is a penal provision. It prescribes punishment for violating the provisions of Sections 113, 114 and 115.

28. As seen from the scheme of the Act in the earlier paragraphs, any goods transport vehicle is entitled to ply on the roads and transport goods, in accordance with the terms of registration of the vehicle and permit granted. Certificate of registration specifies the unladen weight of the vehicle while granting permit to transport goods. The permit also specifies the weight it can carry, route where it can operate and the period of validity. Goods transport vehicles cannot operate the vehicle contrary to registration and permit conditions. If a person is found carrying excess load/plying on a route not permitted, it would be amounting to violating the terms of Registration and permit granted and would be liable for seizure and launching of prosecution.

29. Power to seize is traceable to Section 207. Section 207 of the Act, 1988 vests power in the Police Officer or other person as authorised by the State Government to seize the vehicle if he has reason to believe that the same has been or is being used in contravention of the provisions of Sections 3 (driving licence) or Section 4 (Age limit to secure driving licence) or Section 39 (necessity for registration) or without the permit required by Sub Section 1 of Section 66 (necessity for permits) or any contravention of any of the conditions of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used. One of the grounds for detention of goods vehicle is violation of condition of permit. A goods transport vehicle requires registration under Section 39 and permit under Section 66. Section

113 has to be read in consonance with Chapter V and it only compliments explicitly what is obvious from various provisions of Chapter V.

30. Seizure is based on *prima facie* assessment of violation of the Act. On seizure of vehicle, proceedings would be launched against the driver and/or owner of the vehicle. In such proceedings if it is proved that the person has violated the provisions of the Act, punishment/s as mentioned in Section 194 may be imposed. The competent authority can also **suspend/cancel** the driving license of the driver/ permit/registration of the vehicle.

31. Section 200 vests discretion in competent authority to compound the offence even after prosecution was launched.

32. From a cumulative reading of various provisions of the Act, it is apparent, seizure of vehicle, launching prosecution and imposing penalties are not routine matters but are part of the statutory scheme to enforce safety on roads and to discipline erring owners and/or drivers of the vehicles.

33. While considering the scope of these provisions it is also necessary to telescope into **‘The Prevention of Damage to Public Property Act 1984 (Act 3/1984)’**.

34. Sections 2(a) & (b) and 3 of the Prevention of Damage to Public Property Act 1984 (Act 3/1984) read as under :

“2. Definitions.- In this Act, unless the context otherwise requires,-

a. "**mischief**" shall have the same meaning as in section 425 of the Indian Penal Code (45 of 1860);

b. "**public property**" means any property, whether immovable or movable (including put any machinery) which is owned by, or in the possession of, or under the control of –

i. the Central Government; or

- ii. any State Government; or
- iii. any local authority; or
- iv. any corporation established by, or under, a Central, Provincial or State Act or
- v. any company as defined in section 617 of the Companies Act, 1956 (1 of 1956); or
- vi. any institution, concern or undertaking which the Central Government may, by notification in the Official Gazette, specify in this behalf :

Provided that the Central Government shall not specify, any institution, concern or undertaking under this sub-clause unless such institution, concern or undertaking is financed wholly or substantially by funds provided directly or indirectly by the Central Government or by one or more State Governments, or partly by the Central Government and partly by one or more State Governments.

3. Mischief causing damage to public property. –

(1) Whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.

(2) Whoever commits mischief by doing any act in respect of any public property being –

a. any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy ;

b. any oil installation;

c. any sewage work;

d. any mine or factory;

e. any means of public transportation or of tele-communications, or any building, installation or other property used in connection therewith shall be punished with rigorous imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine:

Provided that the court may, for reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than six months.”

35. Section 425 of IPC defines ‘mischief’. It reads as under:

“S.425. Mischief – whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits ‘Mischief’.

Explanation-I. it is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation-2. Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others, jointly.”

36. According to Section 3, whenever a person commits

mischief by doing any act in respect of any public property he is

liable to be punished with imprisonment for a term which may extend to five years and with fine. According to sub-section (2), prevention of damage to public property would also mean, any means of public transportation, or other property use in connection therewith and such violation is liable for rigorous imprisonment for a term which should be not less than six months, but may extend to five years and with fine. Clause (b) of Section (2) defines 'public property'. According to this definition, public property includes movable or immovable, owned by or in possession, or under the control of the Central Government, State Government, local authority or Corporation established by the State, or any Government as defined by the Companies Act or any institution concern or undertaking of the Central Government or State Government, so on. The roads are under the control of Central Government or State Government or special purpose vehicle or the National Highways Authority. Therefore, the public roads are public property as defined in Section 2(b) of the Act, 1988. According to Section 2(a) of the Act, 1984, 'mischief' shall have the same meaning as defined in Section 425 of the Indian Penal Code.

37. From a cumulative reading of the provisions of the Act 3/1984 and Section 425 of IPC, it is apparent that a person knowingly causing damage to the public road is also liable to be proceeded against and be imposed with punishment.

38. It is important to note here that in **S.Rajaseekaran**, the Supreme Court recorded the recommendations of working Group. To the extent relevant para 5 reads as under :

5 ...After a detailed study the Working Group has recommended, in the main, the following measures for road safety:

(b) Overloading of commercial vehicles should be prosecuted under the Damage to Public Property Act. Liability should be imposed on the transporter, consignor and consignee.

39. In **Paramjit Bhasin** (cited supra), Supreme Court took judicial note of stand of Union of India. On damage to road surface and the decisions taken in the 30th meeting of Transport Development Council and recorded in its order as under:

"7. It is apparent from the reply filed by the Union of India that overloading causes significant damage to the road surface and also cause pollution through auto-emissions. Even overloaded vehicles are safety hazards not only for themselves, but also for other road users. It is pointed out that since the responsibility of enforcing of the provisions of the Act and the Central Rules is that of the State Government they have been advised by the Central Government to scrupulously enforce the provisions of the Act and the Central Rules. It appears that the matter was discussed at the 30th meeting of the Transport Development Council where the following decisions were taken:

(i) Strict enforcement of the provisions relating to overloading under the Motor Vehicles Act, 1988 and the Central Motor Vehicles Rules, 1989.

(ii) The State Governments are not to issue special cards/passes which legalise overloading.

(iii)-(iv)***

(v) Non-renewal of registration and denial of permit to habitual offenders of overloading.

A copy of the minutes of the TDC meeting is placed as Annexure R-5."

40. In spite of recommendation of working group extracted above and Supreme Court taking judicial note of the recommendations of working group and decision of Transport Development Council, the respondent have not invoked Act 3 of 1984. They appear to be blissfully ignorant of the said enactment. The roads are formed depending on the velocity of the traffic, including passenger vehicles and goods transport vehicles. The roads require regular maintenance also, and while planning formation of roads and its

maintenance, the authorities assess the traffic on the roads based on the vehicular movement and the vehicles that are entitled to carry load. Each category of transport vehicle has fixed carriage capacity and the same is also recorded in the licence/permit granted to such vehicle. So while assessing the road capacity, these parameters are taken note of. Whenever a transport vehicle which has permissible load carriage capacity specified in its licence/permit carries excess load, it will certainly cause damage to the road, in addition to danger to the public using the road and the impact on environment. A vehicle carrying load beyond its permissible limit requires higher energy to pull and can cause emission of pollutants. Therefore, the provisions of the Act (3) of 1984 are attracted whenever owner and/or the driver of the vehicle indulges in carrying excess load on the public road.

41. The Act of 1988 and Act, 1984 complement each other and not in derogation. There is no overlapping. They intend to subserve larger public interest. A cumulative reading of these two enactments make it clear that owner and the driver of the motor vehicle carrying excess load on public road is not only liable for prosecution under the Act, 1988 but also liable for prosecution and stringent punishment prescribed under the Act 3 of 1984. These are deterrent provisions and require strict enforcement. Their compliance/enforcement is in larger public interest.

42. In addition, such vehicles have to be driven by qualified driver having that class of subsisting driving licence and the vehicle fitness is maintained by the owner. These and other

provisions emphasize road worthiness of the transport vehicle to transport goods or persons and both.

43. Penalties prescribed in Section 194 can be imposed only if person is found guilty of violating Section 113. However, even before launching prosecution or before prosecution proceedings are concluded, offending vehicle owner/ driver can plead guilty and seek to compound the punishment. Such power to compound is traceable to Section 200.

44. If the Police officer/ designated authority, prima facie is of the opinion that the goods vehicle was carrying excess load, he can seize and detain the vehicle. Rules made under the Act prescribe formalities required to be observed at the time of seizure. Authority seizing the motor vehicle may release the vehicle on the spot, if according to that authority, the vehicle has contravened Section 3 (Driver does not have a valid driving license)/Section 4 (Driver driving is not meeting the age parameters)/Section 66 (1) (vehicle does not have permit and by seizing the certificate of registration of the vehicle). Except in these three contingencies, such authority is not competent to release the vehicle. On seizure of the vehicle, the officer has to initiate proceedings for prosecution. One other contingency when such officer can release the offending motor vehicle is when the owner of the vehicle pleads guilty and prays to compound the offence. Otherwise, he is not competent to collect the penalty and release the vehicle. After vehicle is seized and detained, only the Secretary, Regional Transport Authority or Officer authorized by the State Government is competent to release the vehicle on an application made by the owner or person

incharge of the vehicle as prescribed by Section 207 (2) of the Act, 1988.

45. These writ petitions are instituted straight away even before prosecution was launched and without applying to the designated authority under sub section 2 of Section 207 for release of the vehicle. By virtue of the interim orders passed by this Court, the vehicles are released straightaway even before prosecution was launched by accepting the fine stipulated by the Court by mechanically referring to the penalties that can be imposed under Section 194.

46. In this context, there are two aspects that require consideration. Firstly, availing remedy provided by Section 207 (2) to seek release of the offending vehicle; and secondly, can the Court usurp power of statutory authority and by-pass statutory scheme.

47. Learned counsel for petitioners placed heavy reliance on **K.Ram Reddy** in support of their contention that writ petitions are maintainable without availing remedy under the Act, 1988 and that order to release is sustainable in exercise of extraordinary writ jurisdiction as detention of vehicle would lead to wear and tear, loss of fitness and possibilities of the material losing its value as well as security to such material.

48. The issue of availing remedy under Section 207 (2) was considered by the learned single Judge of this Court in **M. Venkateswara Rao and others Vs. Secretary, R.T.A.**

Warangal and others⁶. By placing reliance on opinion expressed by two Division Benches in **Deputy Commissioner (prohibition and Excise, Karimnagar Vs Shobalal**⁷ (which was under Excise Act) and in W.P.No.14331 of 1999 and a single judge in **A.Raghunandan Vs Assistant Secretary, Gudi Malkapur, Hyderabad**⁸ on need to avail statutory remedies before invoking jurisdiction of this Court under Article 226 held that writ petitions are not maintainable and relegated parties to avail remedies under Section 207 (2). Learned Single Judge held as under:

“18. At any rate, it is not possible for this Court to express any opinion whatsoever on the merits of each of the cases, as the same is required to be enquired into by the competent authority.

19. It is also conceded at the Bar that the competent authority has the jurisdiction to pass an appropriate order directing the release of the vehicle in exercise of jurisdiction under Section 207(2) of the Act. In fact, in the counter-affidavit itself, it is stated that the competent authority is willing to consider the release of the vehicle provided an application is filed under Section 207(2) of the Act. Learned Government Pleader submits that in every case, the competent authority is willing to consider the release of the vehicle provided an application is made under Section 207(2) of the Act.

20. In such view of the matter, I am of the considered opinion that it may not be appropriate to issue Writ of Mandamus compelling the respondents to release the vehicles whenever they are seized subject to such uniform conditions. The aggrieved persons have to necessarily go before the competent authority and ask for release of the vehicle. The application is required to be filed under Section 207(2) of the Act read with the A.P.M.V. Rules, 1989. Rule 448-A prescribes the procedure for seizing and detaining a Motor Vehicle. Rule 448-B says that an application for release of a vehicle seized and detained under sub-section (1) of Section 207 shall be in the form of a memorandum in duplicate with relevant documents duly enclosing a fee of rupees twenty-five. Sub-rule (2) of Rule 448-B says that the Secretary, Regional Transport Authority, of the Region shall entertain application for release of vehicles seized and detailed by his subordinate officers provided that an application shall be made to the Deputy Transport Commissioner in the case of check made by the Secretary, Regional Transport Authority in the cadre of Regional Transport Officer and the Transport Commissioner, if the Secretary, Regional Transport Authority is of the cadre of Deputy Transport Commissioner or Joint Transport Commissioner. Thus it is clear that an application for release of a vehicle seized and detained shall have to be made in accordance with the Rules. In some cases, it is brought to the notice of the Court that oral applications filed by them are not entertained by the authorities. In some other matters, applications are filed but without payment of any fee. Such a course is not permissible.”

21. Having regard to all the facts and circumstances of the case and in the light of various orders passed by this Court and the decisions referred to hereinabove, I am of the considered opinion that a Writ of Mandamus would not lie directing the release of the vehicles, nor the

⁶ 2000 (1) ALT 170

⁷ 1996 (1) ALT 915

⁸ 1998 (6) ALD 340

seizure itself can be declared as illegal. The aggrieved persons have to necessarily file application for release of the vehicle seized and detained by the competent authority for the release of the vehicle, if they so desire...”

49. This view of the learned single Judge was affirmed by Division Bench in **G. Nagaraju Vs. Government of A.P. and others**⁹. Division Bench held as under:

“5. At the outset, we may mention that a Division Bench of this Court to which one of us (PVR, J.) was a party decided a Batch of writ petitions in which the orders of the Transport Authorities requiring the petitioners to pay the estimated tax as a precondition for the release of the vehicles were challenged. Directions were sought for in these writ petitions for the release of the vehicles. The said judgment was reported in M. Venkateswara Rao v. Secretary, RTA, Warangal, 2000(1)ALT170 . This Court indicated that the vehicle owner should first approach the concerned Transport Authority for the release of the vehicle by filing an application under Section 207(2) read with the Rules and the Court also directed that such applications should be dealt with with utmost expedition and if no orders are passed within three days, the aggrieved person can invoke the writ jurisdiction of this Court under Article 226. This Court also dealt with certain other questions as regards the scope of power of seizure under Section 207, MV Act and Section 8 of APMV Taxation Act. The Division Bench also referred to with approval a decision of B. Sudershan Reddy, J., in which the procedure for obtaining the release of vehicles seized under Section 207(1) was laid down. Inter alia, it was held that the application should be filed with requisite fee under Section 207 read with Rule 448-B i.e., the impugned Rule. The next round of litigation has started with the filing of these writ petitions. In the garb of challenging the Rule 448-B, which is apparently innocuous, the petitioners sought for 'consequential order' for the release of the vehicles, by-passing the procedure indicated in the aforementioned decisions. We fail to understand how it can be a 'consequential order'. Even if Rule 448-B is assumed to be invalid, it does not follow that there should be a direction to release the vehicle. The question whether in the facts and circumstances of the case, the release could be ordered, is an independent issue. Be that as it may, as already observed, we would like to remove the lid of uncertainty at the earliest and thwart the attempts to overcome the recent decisions of this Court channelising the procedure to be invoked for obtaining the release of the vehicles. With this brief introduction, we would like to proceed to consider the validity of the impugned rule.”

50. In **K.Ram Reddy** while holding that remedy under Section 207 (2) is available, learned single Judge of this Court held that not approaching the Secretary, Regional Transport Authority seeking release of the seized vehicle for the alleged violation contemplated by Section 194 cannot be considered as a bar for invoking the writ jurisdiction. There is no disagreement with view expressed in precedent decisions but it was only stated that there is no bar to file writ petition even if alternative remedy is available.

⁹ AIR 2000 AP 442

51. Single Judge of High Court is bound by the view taken by coordinate bench. If he is not persuaded to agree with the view expressed by another learned single Judge, he should record his opinion and refer to Division Bench, but cannot take a different view unless earlier decision is held per-incuriam. That course was not adopted while considering the issue in **K Ram Reddy**. The two Division Bench judgments, mentioned above, categorically held that persons aggrieved by the seizure have to avail the remedy provided by sub section 2 of Section 207. The view taken by the learned single Judge in **M.Venkateshwar Rao**, was also affirmed by the Division Bench. I am therefore bound by law declared by the learned single Judge in **M.Venkateshwar Rao** affirmed by the Division Bench and view expressed by two Division Benches on the subject.

52. I am guided by following statement of law by Hon'ble Supreme Court on Rule of binding precedents:

52.1 In **Tribhuvandas Purshottamdas Thakur v. Ratilal Motilal Patel**¹⁰, Supreme Court held,

“8. The observations made by the learned Judge subvert the accepted notions about the force or precedents in our system of judicial administration. Precedents, which enunciate rules of law, form the foundation of administration of justice under our system. It has been held time and again that a Single Judge of a High Court is ordinarily bound to accept as correct judgments of courts of coordinate jurisdiction and of Division Benches and of the Full Benches of his Court and of this Court. The reason of the rule, which makes a precedent binding, lies in the desire to secure uniformity and certainty in the law.”

52.2. In **Union of India v. Raghubir Singh**¹¹, the Supreme Court observed:

“27. What then should be the position in regard to the effect of the law pronounced by a Division Bench in relation to a case raising the same

¹⁰ AIR 1968 SC 372

¹¹ (1989) 2 SCC 754

point subsequently before a Division Bench of a smaller number of Judges? There is no constitutional or statutory prescription in the matter, and the point is governed entirely by the practice in India of the courts sanctified by repeated affirmation over a century of time. It cannot be doubted that in order to promote consistency and certainty in the law laid down by a superior Court, the ideal condition would be that the entire Court should sit in all cases to decide questions of law, and for that reason the Supreme Court of the United States does so. But having regard to the volume of work demanding the attention of the Court, it has been found necessary in India as a general rule of practice and convenience that the Court should sit in Divisions, each Division being constituted of Judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relative thereto, and by such other considerations which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. ***It is in order to guard against the possibility of inconsistent decisions on points of law by different Division Benches that the Rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges.*** This principle has been followed in India by several generations of Judges. We may refer to a few of the recent cases on the point. In *John Martin v. State of West Bengal* [(1975) 3 SCC 836: 1975 SCC (Cri) 255: (1975) 3 SCR 211], a Division Bench of three-Judges found it right to follow the law declared in *Haradhan Saha v. State of West Bengal* [(1975) 3 SCC 198: 1974 SCC (Cri) 816: (1975) 1 SCR 778], decided by a Division Bench of five Judges, in preference to *Bhut Nath Mate v. State of West Bengal* [(1974) 1 SCC 645: 1974 SCC (Cri) 300 : AIR 1974 SC 806] decided by a Division Bench of two Judges. Again in *Indira Nehru Gandhi v. Raj Narain* [1975 Supp SCC 1: (1976) 2 SCR 347], Beg, J. held that the Constitution Bench of five Judges was bound by the Constitution Bench of thirteen Judges in *Kesavananda Bharati v. State of Kerala* [(1973) 4 SCC 225 : 1973 Supp SCR 1]. In *Ganapati Sitaram Balvalkar v. Waman Shripad Mage* [(1981) 4 SCC 143], this Court expressly stated that the view taken on a point of law by a Division Bench of four Judges of this Court was binding on a Division Bench of three-Judges of the Court. And in *Mattulaly. Radhe Lal* [(1974) 2 SCC 365 : (1975) 1 SCR 127], this Court specifically observed that where the view expressed by two different Division Benches of this Court could not be reconciled, the pronouncement of a Division Bench of a larger number of Judges had to be preferred over the decision of a Division Bench of a smaller number of Judges. This Court also laid down in *Acharya Maharajshri Narandraprasadji Anandprasadji Maharaj v. State of Gujarat* [(1975) 1 SCC 11 that even where the strength of two differing Division Benches consisted of the same number of Judges, it was not open to one Division Bench to decide the correctness or otherwise of the views of the other. The principle was reaffirmed in *Union of India v. Godfrey Philips India Ltd.* [(1985) 4 SCC 369 : 1986 SCC (Tax) 11] which noted that a Division Bench of two Judges of this Court in *Jit Ram Shiv Kumar v. State of Haryana* [(1981) 1 SCC 11: (1980) 3 SCR 689] had differed from the view taken by an earlier Division Bench of two Judges in *Motilal Padampat Sugar Mills v. State of U.P.* [(1979) 2 SCC 409: 1979 SCC (Tax) 144: (1979) 2 SCR 641] on the point whether the doctrine of promissory estoppel could be defeated by invoking the defence of executive necessity, and holding that to do so was wholly unacceptable reference was made to the well accepted and desirable practice of the later Bench referring the case to a larger Bench when the learned Judges found that the situation called for such reference.”

(Emphasis supplied)

53. No doubt on the proposition that Jurisdiction of writ Court under Article 226 of the Constitution of India is very wide and has no bounds. The writ Court reaches out to the aggrieved person to remedy injustice meted out to him in public law domain. Entertaining writ petition is not constrained by any statutory remedy or other remedies available to an aggrieved person. However, writ Court imposes self restraint in entertaining writ petitions, whenever the aggrieved person has an alternative and efficacious remedy subjects him to avail such remedy. Thus, though the availability of alternative remedy is not a bar, the writ Court does not entertain writ petition unless, in the given facts of a case, it is necessary for the writ Court to intervene to grant the remedy required by a person without relegating him to avail the statutorily engrafted remedies. This principle is highlighted by the Division Benches and the learned single Judge in the decisions referred to above.

54. Section 194 is a penal provision. It prescribes punishments that can be imposed for violating Sections 113 and 114. On seizing the vehicle, on the allegation of overload, the competent authority has to launch prosecution. In the prosecution, if guilt is proved, penalties envisaged in Section 194 can be imposed by the jurisdictional Magistrate. However, if the owner or person-in-charge of the offending vehicle applies under Section 200 to compound the offence, the competent authority can levy appropriate penalty and release the vehicle. This remedy is available before and after launching of prosecution. Thus, issue of levying penalty does not arise before a person is found guilty or person applies for compounding under Section 200.

55. From the scheme of the Act, it is apparent that very limited scope is available to the officer authorized to seize the vehicle alleged to have violated any of the provisions of the Act. He can release the vehicle on the spot only if the alleged violation is under Section 3 or Section 4 or Section 39 but not otherwise. At that stage, he is not competent to decide whether the vehicle owner or the driver has committed the offence and is liable for punishment. He can only set in motion the proceeding to prosecute them. In all other cases, whenever vehicle is seized, the owner or the driver of the vehicle should file application under Section 207 (2) of the Act and subject to compliance of the required formalities and subject to conditions that may be imposed by the Secretary, Road Transport Authority, the vehicle can be released. Rule 448 (B) of A.P. Motor Vehicle Rules, 1989 deals with release of vehicle seized under the sub section 1 of Section 207 and sub Rule 2 thereof deals with entertainment of application for release of vehicles seized and detained by subordinate officers by the Secretary, Regional Transport Authority, who is designated as Appellate Authority. The power to frame such Rule and scope of application of 448 (B) was considered by the Division Bench in the judgments referred to above. By virtue of interim orders of this Court, the competent authority is directed to exercise powers not vested in him. He is asked to collect fine as leviable under section 194 and release the vehicle even before person is found guilty.

56. It is appropriate to note the language employed in Section 194 of the Act. There are three components on levying of penalty/charges and all three are independent. Notwithstanding the quantity of overload, per se, a vehicle found carrying more load

than permissible is liable for punishment in the form of fine. In addition, he is also liable to be fined Rs.1000/- for each excess ton of overload and unloading charges. It stipulates *minimum* fine of 2000/-. Thus what is prescribed is minimum fine for the offence of overload per se and there is no restriction to levy higher amount as fine in addition to fine of 1000/- per tonne of excess load. I am of the considered opinion that in exercise of power under Article 226 of the constitution of India, the writ Court cannot pre-determine the amount of fine that can be imposed and curtail the discretion vested in the Magistrate.

57. Court cannot travel beyond statutory framework and pass orders. Courts are only required to interpret the provisions of the law or require compliance of the statutory provisions by the competent authorities but Court cannot direct the officer of the Government to act in contravention of the provisions of the Act. In effect, interim directions issued are amounting to directing the officer competent to seize the vehicle to release the vehicle, whereas, he is not competent to release the vehicle unless proviso appended to Section 207 (1) is attracted and not competent to collect fine even before prosecution is launched or the owner or driver of the vehicle requests for compounding of the offence under Section 200. In these matters writ Court is not only entertaining writ petitions without subjecting the person to resort to remedy under Section 207 (2) but also, at the interlocutory stage of the writ petitions, subsuming the statutory mandate and usurping a role not envisaged by the Act. Thus, it is not a simple case of entertaining writ petition without relegating to avail statutory remedy but the Court is prejudging the issue and prescribing fines

to be imposed even before the person is found guilty, contrary to statutory scheme and offence is not recorded in the history sheet of the vehicle/ driver.

58. On due consideration of various provisions of the Act, 1986 and Act, 1984 imposing fine on finding guilt is not the only aspect. The statute envisages special mechanism to deal with violations on overload. It is not a simple case of releasing vehicle on payment of fine. Once a vehicle is found with excess load, the excess load has to be removed. Such load has to be carted away in a separate vehicle by the owner of the offending vehicle. Carrying excess load than permissible would damage vital parts of the vehicle and can develop mechanical problems which may be fatal. Repeatedly overloading also would impact vehicles durability. The road worthiness of the vehicle has to be assessed; the competency of the driver also to be verified before permitting the owner to use the vehicle. It is also necessary to ascertain as to whether the vehicle was involved in similar or in any other offence. According to Rule 184 (2)(i) of A.P. Motor Vehicle Rules, 1989, if history sheet of the owner is not clean and contains more than six entries relating to offence of overload and other offences, he can refuse to grant renewal. It is also relevant to note that wide options are available to competent authority to deal with offending vehicle including suspension and cancellation of driving licence/permit/registration. He is also required to examine whether by such conduct the owner/driver/person-in-charge of the vehicle violated provisions of Act, 3 of 1984 and whether prosecution can be launched under that Act. These are all matters best left to the discretion of the competent authority. Thus, statutory scheme impels the Court to

hold that it is not merely a case of not availing alternative remedy, writ petition cannot be instituted straight away as a matter of course the moment vehicle is seized on the allegation of overload and aggrieved persons have to avail statutorily engrafted remedies.

59. In addition to the general issue of overloading of transport vehicles, violating the provisions of the Motor Vehicles Act and the Rules made thereunder, in many of these cases there is an allegation of violation of Telangana State Sand Mining Rules, 2015 as amended from time to time. Most of the vehicles carrying sand were seized on two grounds; firstly that the vehicle was carrying excess load of sand than permitted and secondly the vehicle was not having permit to transport the sand/inter state permit to bring sand from neighbouring States. The Rules prescribe more stringent clauses on such violation. On the first offence, a tractor can be levied fine of 5000/-, lorry upto 10 tonnes capacity fine of 25,000/- and increases depending on the capacity of the transport vehicle. If the tractor is involved in second offence, the fine increases to 15000/-, and lorry of 10 tonnes capacity, to 50000/-. The vehicle is liable for seizure and sand is also liable for seizure and is not allowed to be taken by the owner of the vehicle even after off-loading the excess quantity. These provisions are required to be complied with strictly. This aspect also requires consideration while exercising powers under the Act, 1988 and Act 3 of 1984.

60. Having regard to the statutory provisions, the object of Motor Vehicles Act, the Act 3 of 1984 and the larger public interest of preventing road accidents due to the greediness of the owners of

the transport vehicles to carry excess load than permissible, it is always desirable to impose higher penalties to take stringent action and launch prosecution under both enactments which should act as a deterrent to commit repeated offences. The Monitoring Committee appointed by the Supreme Court directed to penalize in the case of first offence, suspension of licence for three months and in repeated offence, cancellation of licence permanently or for higher period as the case may be, and also suspension of the authorization to ply the vehicle by the owner, in addition to imposing higher fines. These directions are binding on the respondent-State and requires compliance.

61. In the cases on hand, on payment of penalty and/or fine interim custody of the vehicles was given to the owners. However, apparently so far prosecution is not taken up under the Act, 1988 and Act, 1984 and no action is taken against the driver of offending vehicles. Learned Government Pleader sought to contend that since driving licence of the driver of offending vehicle was not furnished to the competent authority, no further action could be taken against the driver as per the provisions of the Act. I cannot appreciate the stand of respondents in not taking action under Section 19 of the Act merely because the driving licence was not surrendered. It cannot be said that the authority is incompetent to mandate the owner of the vehicle involved in the offence to surrender the driving licence of the driver and instead allow the driver to go scot-free. On careful consideration of the orders passed by this Court directing release of vehicles, it is seen that Court directed to furnish undertaking to produce the subject vehicle as and when required and should file proof of ownership

and other valid documents. Therefore, if the owner has not produced the driving licence of the driver of offending vehicle, the competent authority could have compelled the owner to furnish the driving licence or failing thereof to detain the vehicle. The Court is constrained to observe that there is complacency on the part of the transport authorities also in letting off the drivers and the owners of the offending vehicles and tardy progress in penalizing them for the alleged violations. The owner as well as driver are happy to pay fine only when they were caught and to get away and indulge in committing the same offences repeatedly. There appears to be reluctance on the part of transport authorities to exercise the powers vested in them and are, in effect, abetting crime by such conduct. Further, there is stoic silence on enforcing Act 3 of 1984.

62. In retrospect, it is apt to remind the observations made by Justice V.R Krishna Iyer in the year 1979, extracted in the beginning of the judgment. 30 years later the situation is worse and unless the provisions of Act, 1988 and Act 3 of 1984 are strictly implemented without showing any leniency on violations of road safety norms and provisions of two enactments, more and more innocent will die for no fault of them. Be it noted, though only a miniscule percentage of vehicles plying on the roads are detained on the ground of overload, but at least, by such action, few accidents were averted. There is lurking danger of an accident whenever overloaded transport vehicle is plying on the roads, which may result in fatal consequences. A virtual death trap with wider net. The road that accident that occurred on 4.8.2019 where 13 agricultural labour died on the spot and others are critically injured is the grim reality. They were traveling in an Auto which

was designed to carry a driver and 6 adult passengers. Unless there is increase in percentage of seizure, with more rigorous test of suitability of the vehicle before releasing the vehicle and deterrent punishments imposed on offending vehicle owner and driver, the trend of accidents cannot be reversed and lives of innocents cannot be saved. The right of individual to operate his motor vehicle as he wishes shall be subservient to larger public interest. In the larger public interest, it is also necessary for expeditious disposal of applications made under Sections 200 and 207 and prosecution of offending vehicle owner and driver.

63. The writ petitions are disposed of with the following findings and directions:

- (i) Ordinarily, writ petitions against seizure of vehicle on the allegation of violation of Motor Vehicles Act, 1988 is not maintainable. Owner /person in charge/ driver of the offending vehicle has to avail statutorily engrafted remedies before seeking to initiate writ proceedings.
- (ii) On seizure of vehicle under Section 207 (1) of the Act, owner/ person-in-charge/ driver can file application under Section 207 (2) read with Rule 448 (B) of the Telangana State Motor Vehicles Rules. It is for the Secretary, Road Transport Authority to consider the application and to pass appropriate orders as warranted by law. If he agrees to release the vehicle he can impose appropriate conditions. However, it is necessary to assess the road worthiness of the vehicle

before it is released and a certificate be issued to that extent. Such course is in larger public interest.

(iii) The proceedings of seizure of a motor transport vehicle should be video recorded. The CCTV footage capturing the movement of the offending vehicle wherever available should be obtained and be made part of the case record. The Government shall prescribe procedure of video recording of seizure and collection of video footage as evidence.

(iv) Apparently, the primary grievance on not availing remedy under Section 207 (2) is delay in processing the applications and delay in the decisions. To expedite the process of decision making under Section 207 (2), the applications can be accepted through online web portal. For this purpose online web portal/web page on existing portal / a separate mobile application can be exclusively created to process the applications online and to take decisions thereon. The hearings can be conducted through video conference mode. The applicant need not come to the office of Secretary/ designated authority. Video conferencing facilities can be established at designated places. The Government shall prescribe, within six (6) weeks from date of receipt of judgment to stipulate procedure to file applications praying to grant interim custody of the vehicle and time frame to dispose of such applications. Ordinarily, such applications should be disposed of within one week.

- (v) Court is informed that pursuant to interim orders, vehicles were already released. In the peculiar facts of these cases Court is not directing authorities to take back possession of the vehicles. However, this does not come in the way of launching prosecution and penalizing the owner/driver/person in charge of the vehicle. Amount paid as per interim orders shall be adjusted towards fine that may be imposed, if found guilty. It is also open to owner/driver/person-in-charge to file application under Section 200 to compound. It is also open to authorities to initiate prosecution under Act, 3 of 1984. Similar system and procedure to applications under Section 207 (2) be evolved to applications under Section 200.
- (vi) Even if owner/driver/person-in-charge applies to compound the offence and such application is allowed, before permitting the vehicle to ply on the roads, road worthiness of the vehicle has to be assessed and certified. Owner/driver/person-in-charge can use such vehicle on the public roads only if such a certificate is issued.
- (vii) The authorities entrusted with the responsibility to enforce the provisions of the 'Telangana State Sand Mining Rules, 2015' shall ensure completion of confiscation proceedings within the time frame, not exceeding three months and collection of fine as prescribed in the Rules on the excess load transported and confiscation of sand as per the provisions of the

Rules. They shall also report to the Secretary, Road Transport Authority the action taken under the Rules, 2015. If petitioners have any grievance on levying of penalty under the Rules, 2015, it is open to them to file application and the same shall be acted upon and suitable reply be furnished expeditiously.

- (viii) Government and the Commissioner for Transport shall take immediate steps to ensure, by utilizing information technology platform, to put in place mechanism for online monitoring of offences committed by the transport vehicles/goods, as well as passenger vehicles, which is accessible to Police, officials of Industries Department as well as officials in transport department and whenever if owner/driver repeats the offence, the same should be reflected online and consequential action should be taken.
- (ix) The prosecution against owner/person-in-charge/driver of the offending motor vehicle has to be in a fixed time frame. The State Government may formulate guidelines fixing time frame. Such guidelines be notified within three months from the date of receipt of the copy of the judgment.

64. Miscellaneous petitions, if any pending, are closed.

JUSTICE P.NAVEEN RAO

Date: 07.08.2019
Kkm/Rds/tvk

L R COPY TO BE MARKED: YES/NO

HONOURABLE SRI JUSTICE P.NAVEEN RAO



WRIT PETITION NOS.1635, 1668, 5885, 7727, 8431, 9985, 11028, 13925, 15353, 23844, 24190, 24852, 26360, 28014, 28028, 28076, 28302, 28741, 28745, 31520, 31588, 32028, 33625, 33630, 33678, 34225, 41239 43062 43067, 43578 of 2017, 9233, 18245, 18290, 18739, 18866, 19291, 19931, 20377, 20440, 21379, 21465, 22654, 23884, 24188, 25205, 26827, 28358, 28760, 28768, 29186, 29415, 29667, 30643, 32081, 35468 & 37242 of 2018.

DATE: 7.8.2019