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

Date of decision : 10.12.2019

+ **W.P.(C) 11692/2016**

VIPUL GAMBHIR

..... Petitioner

Through : Ms. Amrita Panda and
Ms.Surbhi Bhuraria, Advocates.

versus

UNION OF INDIA

..... Respondent

Through : Mr. Ravi Prakash, CGSC for
UOI with Mr.Farman Ali,
Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

1. The petitioner has filed this writ petition under Article 226 of the Constitution of India, praying *inter alia* as under :

“A. Declare that Rule 100 of the Central Motor Vehicle Rules, 1989 is *ultra vires* Articles 14, 19 and 21 of the Constitution of India;

B. Issue a writ of mandamus or a writ in the nature of mandamus or an order, direction of injunction permanently restraining the Respondent and its officers from taking any steps for implementation or

enforcement of R.100 of the Central Motor Vehicle Rules, 1989; and

C. Pass any such further order or direction that this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

2. Learned counsel for the petitioner submits that the petitioner is a citizen of India and an advertising and marketing consultant by profession. The petitioner is suffering from a genetic skin disease called *Xeroderma Pigmentosum*, which is incurable and the petitioner is under treatment and follow-up for the same with medical agencies since November, 2007. It is submitted that *Xeroderma Pigmentosum* is an incurable genetic skin disease where the skin lacks the ability to repair itself from damage caused by ultra-violet radiation. The damage caused may lead to multiple types of skin cancers at an early age; and therefore the petitioner has repeatedly been asked to avoid exposure to direct sunlight and ultra-violet radiation and to take necessary precautions for the same.

3. Learned counsel for the petitioner at the very outset submits that the challenge raised in the present writ petition arises not really from the operation of Rule 100 (2) of the Central Motor Vehicles Rules, 1989 but from the interpretation and application of the judgment of the Apex Court rendered in *Avishek Goenka vs. Union of India & Anr.* reported as (2012) 5 SCC 321 and also order dated 03.08.2012 passed by the Supreme Court in subsequent applications which have been filed, including an application filed by the petitioner being IA No. 4/2012 in W.P.(C) No. 265/2011.

4. For clarity, Rule 100 (2) of the Central Motor Vehicles Rules, 1989 is reproduced below :

“Rule 100 Safety Glass:

The glass of windscreens and the windows of every motor vehicle (other than agricultural tractors) shall be of safety glass:

(2) The Glass of the windscreen and rear window of every motor vehicle shall be such and shall be maintained in such a condition that the visual transmission of light is not less than 70%. The glasses used for side windows are such and shall be maintained in such condition that the visual transmission of light is not less than 50% and shall conform to Indian Standards [IS: 2553-part 2-1992]”

5. Learned counsel submits that a bare reading of Rule 100 (2) of the Central Motor Vehicles Rules, 1989 makes it abundantly clear that the glass of the windscreen and rear window of every motor vehicle are required to be maintained in such condition that the Visual Transmission of Light (VLT) is not less than 70%; and that of the side-windows, such that the VLT is not less than 50%.

6. Learned counsel for the petitioner submits that it is common knowledge that barring high-end models of motor vehicles, ordinary vehicles and models are not fitted with tinted glass and yet, Rule 100(2) would apply to all types of vehicles.

7. Counsel further submits that therefore, for a person such as the petitioner, who is medically advised to avoid exposure to ultra-violet radiation in sunlight, it would be critical to install tinted films on car-

windows. It is pointed-out that replacing all windows and the windscreen/rear-window of an ordinary car with tinted glasses is extremely expensive and unaffordable, at least for the petitioner. The petitioner contends that Article 14 of the Constitution would be violated if un-equals are treated equally with persons who have no skin disease, by applying Rule 100 harshly to persons like the petitioner.

8. The grievance really lies in that the judgment in ***Avishek Goenka*** (supra) bars usage of films completely; and the prohibition applies even to the use of films to reach standards of light transmission as stipulated in Rule 100 (2). Counsel further submits that the Supreme Court has declined to entertain various applications filed in the case of ***Avishek Goenka*** (supra), on the ground that challenge was not being laid to Rule 100(2). She submits that the petitioner is thus in a difficult situation, since a bare reading of Rule 100 (2) would show that the Rule does not bar the usage of film, provided the VLT standard set in the said Rule is followed; and thus there is no requirement to challenge Rule 100(2) but the observation of the Supreme Court stands in her way, more particularly in para 39 of the judgment in ***Avishek Goenka*** (supra) which we reproduce hereunder :

“39. The manufacturer of the vehicle may manufacture the vehicles with tinted glasses which have visual light transmission (VLT) of safety glass windscreen (front and rear) as 70% VLT and side glasses as 40% VLT (sic), respectively. No black film

or any other material can be pasted on the windscreens and side glasses of a vehicle.”

9. In the context of para 39 above, on a batch of applications moved by certain parties including the petitioner/Vipul Gambhir, the Supreme Court has made the following observations in paras 10 and 11 of its order dated 03.08.2012 :

“10. The petitioner has filed I.A. No. 11 of 2012 by way of a common reply to the grounds taken in all these applications and has also placed certain documents on record. The various applicants above-named have sought modification/clarification of the judgment of this Court dated 27th April, 2012 principally and with emphasis on the following grounds:

1) That the applicants were not parties to the writ petition and were not aware of the proceedings before this Court. Thus, their submissions could not be considered by the Court, hence the judgment of the Court requires modification.

2) The applicants have placed material and reports on record that the use of films or even black films is permissible scientifically and in law.

3) It is contended that Rule 100(2) uses the expression ‘maintained’ which implies that safety glasses, including the wind screen, can be maintained with requisite VLT percentage even by use of black films.

4) Lastly, it is considered that para 27 of the judgment needs modification by substituting the words 'use of black films of any VLT percentage' by the words 'use of black films of impermissible VLT percentage'.

11. We must notice at the very threshold that in the main Writ Petition no. 265 of 2011 and even in the present applications, there is no challenge to Rule 100 of the Motor Vehicle Rules, 1989 (for short, 'the Rules'). This Court vide its judgment dated 27th April, 2012, has interpreted the said Rule de hors the other factors. Once this Court interprets a provision of law, the law so declared would be the law of the land in terms of Article 141 of the Constitution of India. The law so declared is binding on all and must be enforced in terms thereof. Having interpreted the Rule to mean that it is the safety glasses alone with requisite VLT that can be fixed in a vehicle, it is not for this Court to change the language of the said Rule. It would, primarily, be a legislative function and no role herein, is to be performed by this Court."

10. Learned counsel for respondent has drawn the attention of the court to the short counter affidavit filed by them, more particularly to para (vii), which we reproduce below :

“(vii) As per the Rule 100(2) of the Central Motor Vehicles Rules, 1989, most of the Automobile Original Equipment Manufacturers are already providing vehicles with the tinted glasses conforming to the rules and tested by the testing agencies as per the prescribed standards. The glass of the windscreen of every vehicle

is such that the visual transmission of light is not less than 70% and that the glasses used for side windows are such that the visual transmission of light is not less than 50%. Any further pasting of tinted films on such glasses would reduce the visibility across the windows and would pose threat to internal security of the nation. It would also raise serious concerns for safety of women and children in transit. Thus, there is no further requirements for any other films on the glasses of the vehicles”.

11. A reading of para (vii) of the counter affidavit filed by the respondent would show that the objection of the respondent is against pasting tinted films on glass which would reduce the visibility across the windows and pose a threat to internal security; which, learned counsel for the petitioner submits, is mis-conceived and in fact, that it would apply only to those vehicles which are factory-fitted with tinted glass. The petitioner submits that those vehicles that are not factory-fitted with tinted glass and which would be affixing film for the first time, would not reduce the transmission of light; and even otherwise, it is for the respondent to only satisfy themselves whether, in vehicles with film installed, the requirement of Rule 100 (2) is being followed or not as far as the transmission of light is concerned.

12. Be that as it may, having regard to the fact that the Hon'ble Supreme Court has interpreted Rule 100 (2) of the Central Motor Vehicles Rules, 1989; and having regard to the fact that the respondents have not made any amendment to the said Rule to

incorporate the observations of the Supreme Court in *Avishek Goenka* (supra) or to clarify the same, it is not open for this court to interpret what the Supreme Court has already interpreted, except to say that the respondent would be bound by the counter affidavit filed by them in this court.

13. The writ petition, and the application, stand disposed of in the above terms.

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

DECEMBER 10, 2019

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