



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE **T.RAJA**

AND

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P. (MD)No.1079 of 2020

and

W.M.P. (MD)Nos.868, 869 and 2222 of 2020

C.Santhosam,
President,
Vadagai Vaagana Urimaiyalargal Ottunargal
Nala Munnetra Sangam,
Having registered Office
No.16, 3rd Thomas Street,
Perumalpuram Roundtana,
Tirunelveli - 627 007.

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep. by its Secretary to Home Department,
Secretariat, Fort St. George, Chennai.
- 2.The Transport Commissioner,
Transport Department,
Ezhilagam, Chennai - 600 005.
- 3.The District Collector,
Tirunelveli District, Tirunelveli.
- 4.The Regional Transport Officer,
Regional Transport Office,
NGO 'B' Colony,
Tirunelveli.
- 5.TEDI (India) Private Ltd.,
No.18A, 2nd Floor,
Self Help Industrial Estate,
Keelkattalai, Chennai - 600 117.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, forbearing the respondents from insisting for the fixation of Speed Governors in Taxies with the seating capacity upto 8+1 passengers and the maximum weight of 3500 Kgs. and thereby, issue Fitness Certificates to all passenger Taxies having seating capacity upto 8+1 and maximum weight of 3500 Kgs. manufactured prior to 01.10.2015 and in respect of other passenger taxies manufactured after 01.10.2015 by accepting the installation



certificate already issued by the Manufacturer of Speed Governors as accepted by the respondents for issuing the Fitness Certificate in the previous years.

For Petitioner

: Mr.G.Prabhu Rajadurai

For R1 to R4

: Mr.Vijay Narayanan

Advocate General

Assisted by

Mr.VR.Shanmuganathan

Special Government Pleader

ORDER

[Order of the Court was made by **T.RAJA, J.**]

This Writ petition has been filed by the President of Vadagai Vaagana Urimaiyalargal Ottunargal Munnetra Sangam, seeking for issuance of a Writ of Mandamus, forbearing the respondents from insisting for the fixation of Speed Governors in Taxies with the seating capacity upto 8+1 passengers and the maximum weight of 3500 Kgs. and thereby, issue Fitness Certificates to all passenger Taxies having seating capacity upto 8+1 and maximum weight of 3500 Kgs. manufactured prior to 01.10.2015 and in respect of other Passenger Taxies manufactured after 01.10.2015 by accepting the installation certificate already issued by the Manufacturer of Speed Governors as accepted by the respondents for issuing the Fitness Certificate in the previous years.

2.Mr.G.Prabhu Rajadurai, learned counsel appearing for the petitioner has contended that Rule 118 of the Central Motor Vehicle Rules, 1989, [hereinafter referred to as 'the Rules'] empowers the State Government to issue Notification requiring the Transport Vehicle to be fitted with Speed Governors and to set maximum speed limit. But, the State Government did not bring about any Notification mandating the installation of Speed Governors. In the year 2015, Rule 118 of the Rules was substituted with a new Rule and the said amendment came into force from 01.10.2015, which mandates the manufacturers to fix Speed Governors in the Transport Vehicles manufactured on or after 01.10.2015. Since the said Rule also directed the State Government to issue Notification in respect of the Transport Vehicle manufactured prior to 01.10.2015 to fix such Speed Governors with a maximum speed limit of 80 Kms., the State Government also issued a Notification on 01.10.2015, mandating the fixation of Speed Governors in all Transport Vehicles in accordance with Rule 118 of the Rules.

3.Learned counsel appearing for the petitioner also argued that as Rule 118(1) of the Rules exempted certain types of motor vehicles from being fitted with Speed Governors and among the list of such exempted vehicle under Serial No.(iv) passenger four wheelers with a



seating capacity upto 8+1 and within 3500 Kgs. of gross weight are provided, no Taxi with the seating capacity of 8+1 and below is required to be fitted with Speed Governors. However, the respondents are insisting all the Taxies to be fitted with such Speed Governors ignoring the exemption granted and the respondents also insisted the members of the petitioner's Association to purchase such Speed Governors manufactured by the fifth respondent herein, recommending the product of the fifth respondent, which is in the capacity of the standard provided namely, AIS 018:2001. When all the Taxi Owners rushed to purchase such Speed Governors, the fifth respondent taking advantage of the same, has been selling the Speed Governors at an exorbitant cost of Rs.6,500/- instead of Rs.1,000/-. Since the fifth respondent has been making an illegal windfall profit at the suffering of the Taxi Owners, the respondents should be restrained from insisting for the fixation of Speed Governors in Taxies with the seating capacity upto 8+1 passengers and the maximum weight of 3500 Kgs. Therefore, the petitioner finding that there was another compelling necessity for its Members to go for installation of new Speed Governors and that should be uploaded in the respondent's Website by the Members of the Petitioner's Association, has been advised to come to this Court.

4.Learned counsel appearing for the petitioner submitted that this Court, while entertaining the Writ Petition, considering the difficulties faced by the Petitioner's Association, on 21.01.2020, has passed an interim order. The relevant portion of the said order runs thus:-

''4.There shall be an interim direction directing the respondents to issue fitness certificates to the passenger taxies manufactured prior to 01.10.2015 as contemplated in G.O.Ms.No.681/Home (Transport-V), dated 01.10.2015 on the basis of the installation certificates already issued by the Manufacturer of Speed Governors at the time of their installation. However, the interim order is granted to the petitioner association subject to the result of the Writ Petition.''

5.When already there is an interim direction, directing the respondent to issue fitness certificates to the Passenger Taxies manufactured prior to 01.10.2015 as contemplated in G.O.Ms.No.681, Home (Transport-V) Department, dated 01.10.2015, on the basis of the installation certificates already issued by the Manufacturer of Speed Governors at the time of their installation, no prejudice would be caused to the respondents. Aggrieved by the interim direction granted by this Court dated 21.01.2020, a vacate stay petition viz., W.M.P.(MD)No.2222 of 2020 has been filed by the respondents 1 to 4 and the same is liable to be dismissed.

6.Again, continuing his arguments, the learned counsel appearing for the petitioner also submitted that the members of the



petitioner's Association have installed Speed Governors in their cabs. Since the installation of new Speed Governors has caused prejudice and the fifth respondent also has been selling such Speed Governors at a higher price, due to which, many Taxi Owners are unable to meet the mandatory condition within the shortest period.

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7. Opposing the abovesaid prayer, Mr. Vijay Narayanan, learned Advocate General appearing for the respondents 1 to 4 urged this Court to dismiss the Writ Petition, as it is bereft of any merit. The learned Advocate General further submitted that as the present Writ Petition is filed on the basis of exemption granted in Rule 118 (1) of the Rules, it has no legs to stand, since the said exemption has been removed, vide Notification No.G.S.R.424(E), dated 01.05.2017, issued by the Ministry of Road Transport and Highways.

8. The learned Advocate General further pleaded that in the said Notification, Clause (iv) in the first proviso to Sub-Rule (1) in Rule 118 of the Rules has been omitted with effect from 01.05.2017. The relevant portion of the said Notification runs thus:-

'Now, therefore, in exercise of the powers conferred by clause (f) of sub-section (1) Section 110 of the Motor Vehicles Act, 1988 (59 of 1988), the Central Government hereby makes the following rules further to amend the Central Motor Vehicles Rules, 1989, namely:-

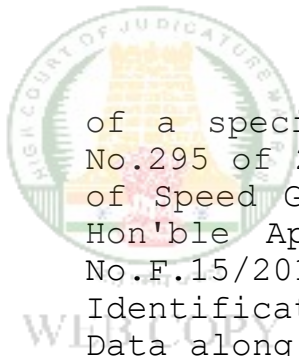
1. (1) These rules may be called the Central Motor Vehicles (Sixth Amendment) Rules, 2017.

(2) They shall come into force on the date of their publication in the official gazette.

2. In the Central Motor Vehicles Rules, 1989, in rule 118, in sub-rule(1), in the first proviso, clause (iv) shall be omitted.'

9. Secondly, regarding the statement made by the learned counsel appearing for the petitioner that they have already installed Speed Governors in their cabs, the learned Advocate General submitted that in view of the recent Notification, omitting the exemption, the Members of the Petitioner's Association also should comply the mandatory requirement for fitment of the Speed Governors. If they have already fitted the Speed Governors in their cabs, they need not once again go for installing new Speed Governors. They should upload the Unique Identification Number of the SLD [Speed Governor/Speed Limiting Device/Speed Limiting Functions] in the VAHAN Data along with the details of the Vehicles such as, Chassis Number, Engine Number, etc., besides the Registration Number of the vehicle should also be engraved on the SLD to ensure that the same SLD is not used in another vehicle. In addition thereto, the SLD should be sealed at the time of installation.

10. Proceeding further, the learned Advocate General also submitted that the second respondent herein even before the issuance



of a specific direction by the Hon'ble Apex Court in W.P.(Civil) No.295 of 2012, dated 30.11.2017, had requested all the manufactures of Speed Governors, vide letter dated 07.07.2017, stating that the Hon'ble Apex Court Committee on Road Safety, vide their Letter No.F.15/2016/CoRS, dated 11.04.2017, has directed that a Unique Identification Number of the SLD should be uploaded in the VAHAN Data along with the details of the vehicles such as, Chassis Number, Engine Number, etc., and the Registration Number of the vehicle should be engraved on the SLD to ensure that the same SLD is not used in another vehicle. The second respondent also requested all the manufactures of Speed Governor to produce their SLD product along with the Test Approval Certificate for verification and for being uploaded in the SLD Portal developed by National Informatics Centre (NIC), for being linked with VAHAN Database. The petitioner is trying to break the fool-proof system implemented by NIC for verifying the genuineness of the Speed Governors fitted with the Transport Vehicles as per Rule 118 of the Rules by suppressing the real facts of the case.

11.As over speeding is a major cause for road related fatalities and injuries mutilating the injured life long, the Hon'ble Supreme Court Committee on Road Safety vide their letter No.F.15/2016/CoRS, dated 11.04.2017, issued direction to all the State and Union Territories to ensure that the Speed Governors installed by retro-fitment on existing vehicles shall be as given below:-

''(i) The SLD (Speed Limiting Device or Speed Governor) should be approved by any one of the testing agencies under Rule 126 of the Central Motor Vehicle Rules, 1989.

(ii) The SLD (Speed Governor) fitted in the model of the vehicle should have been type approved for that particular model.

(iii) Each SLD (Speed Governor) manufacturer is required to take the following steps at the time of installing SLD (Speed Governor) in a vehicle.

a.A Unique Identification Number should be generated for the SLD (Speed Governor) installed in each vehicle.

b.Unique Identification Number of the SLD should be uploaded in the VAHAN data along with details of the vehicle such as Chassis Number, Engine number, etc.,

c.The Registration Number of the vehicle should be engraved on the SLD (Speed Governor) to ensure that the same SLD is not used in another vehicle.

d.The SLD (Speed Governor) should be sealed at the time of installation.

(iv) In the event the above directions are not strictly implemented during the installation of SLD



(Speed Governor), the approval certificate granted to the manufacturer should be withdrawn; in the event the SLD (Speed Governor) is tampered with, the Fitness Certificate should not be issued for the vehicle.''

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12. After issuing the above directions, the Hon'ble Supreme Court on Road Safety required the States and Union Territories to submit quarterly reports to the Committee on the number of vehicles, which failed to comply with the above directions. Moreover, the Hon'ble Apex Court in W.P.(Civil) No.295 of 2012, dated 30.11.2017, directed the State Governments and Union Territories to take steps to ensure that approved Speed Governors are fitted in the existing transport vehicles and given Unique Identification Number and further directed that these numbers should be uploaded in the VAHAN database along with the details of the Vehicle. Besides, the Transport Commissioner, the second respondent herein, even before issuance of specific direction dated 30.11.2017, by the Hon'ble Supreme Court, had requested all the manufacturers of Speed Governors, vide letter dated 17.07.2017 to produce their SLD (Speed Governor) product along with the Test Approval Certificate for verification and for being uploaded in the SLD Portal developed by National Informatics Centre (NIC), for being linked with VAHAN database. Therefore, the allegations made by the petitioners' association that TAXI Owners are insisted for fitting Speed Governor manufactured by fifth respondent alone is totally false and baseless. Moreover, the claim of the petitioner that under Rule 118 (1) of the Central Motor Vehicles Rules, 1989, the passenger taxi with maximum seating capacity not exceeding 8 + 1 are to be exempted from the fitment of Speed Governor, is totally false and is made by suppressing the fact that the Ministry of Road Transport and Highways have issued notification dated 01.05.2017, vide G.S.R. 424 (E) amending Rule 118 of the Central Motor Vehicle Rules, 1989, to specifically omit the exemption provided under sub clause (iv) for passenger taxis with seating capacity not exceeding 8 + 1. Therefore, as per the amended Rule 118(1) of the Central Motor Vehicles Rules, 1989, there is no exemption for the passenger taxis and hence, are required to mandatorily fit Speed Governors in case their maximum speed as verified and tested by the authorized testing agencies is more than 80 Kmph. Since the notification dated 1st May, 2017 was not brought to the notice of the Court, the interim order granted by this Court should be vacated.

13. We also find merits on the submissions made by the learned Advocate General. In this context, it is relevant to extract the following portion of the notification dated 01.05.2017, issued by Ministry of Road Transport and Highways vide G.S.R. 424(E):

'Now, therefore, in exercise of the powers conferred by clause (f) of sub-section (1) Section 110 of the Motor Vehicles Act, 1988 (59 of 1988), the



Central Government hereby makes the following rules further to amend the Central Motor Vehicles Rules, 1989, namely:-

1.(1) These rules may be called the Central Motor Vehicles (Sixth Amendment) Rules, 2017.

(2) They shall come into force on the date of their publication in the official gazette.

2. In the Central Motor Vehicles Rules, 1989, in rule 118 to sub-rule (1) in the first proviso, clause (iv) shall be omitted.

[F.No.RT-11017/13/2005-MVL]

ABHAY DAMLE, Jt. Secy.

Note: The principal rules were published to the Gazette of India, Extraordinary, Part II, Section 3, sub-selection (i) vide G.S.R. 590(E) dated the 2nd June, 1989 and last amended vide number G.S.R. 271(E) dated the 21.03.2017.''

A perusal of the above, clearly shows that as per the amended Rule 110 of Motor Vehicle Rules, 2017, there is no exemption for the passenger taxis. Therefore, they are required for fitment of Speed Governors in case their maximum speed as verified and tested by the authorized testing agencies is more than 80 Kmph. Since the amended Rule 110 of the Motor Vehicle Rules, 2017 and the fact that the Ministry of Road Transport and Highways have issued notification dated 01.05.2017, vide G.S.R. 424(E) amending Rule 118 of the Central Motor Vehicle Rules, 1989, specifically omitting the exemption provided under sub clause (iv) for passenger taxis with seating capacity not exceeding 8 + 1 have been completely suppressed at the time of filing the Writ Petition, the Writ Petition is not maintainable and hence, the same is dismissed. No costs. However, it is made clear that if the Members of the Petitioner's Association have already fitted the Speed Governors in their cabs, they need not once again go for installing new Speed Governors. They should upload the Unique Identification Number of the SLD [Speed Governor] in the VAHAN Data along with the details of the Vehicles such as, Chassis Number, Engine Number, etc., and the Registration Number of the Vehicle should be engraved on the SLD to ensure that the same SLD is not used in another Vehicle. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AS)

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/ /2020

Sub Assistant Registrar(CS)



To

1.The Secretary to Home Department,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai.

2.The Transport Commissioner,
Transport Department,
Ezhilagam, Chennai - 600 005.

3.The District Collector,
Tirunelveli District, Tirunelveli.

4.The Regional Transport Officer,
Regional Transport Office,
NGO 'B' Colony,
Tirunelveli.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-7236[F] dated
20/02/2020)

W.P. (MD)No.1079 of 2020
18.02.2020

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SDS (17.07.2020) 8P-6C