



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.08.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.5441 of 2020

and

W.M.P. (MD)No.4742, 4743 and 4745 of 2020

WEB COPY

C.Sathaiah,
Vice President,
State Lorry Owners Federation,
Tamil Nadu, having Registration No.60/1987,
Office at No.112/231, East Marret Street,
Madurai - 625 001.

... Petitioner

Vs.

1.The Government of India,
Rep by its Director,
Ministry of Road Transport & Highways
Department,
Transport Bhawan No.1, Parliament Street,
New Delhi - 110 001.

2.The Government of Tamil Nadu
Represented by its Secretary to
Home Department, Secretariat,
Fort St.George, Chennai.

3.The Principal Secretary/Transport Commissioner,
Transport Department, Chepauk,
Chennai - 600 005.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned circular issued by the third respondent vide Circular No.59/2019, dated 18.12.2019 and alike circulars, which is/are against the Guidelines of the first respondent (MORTH) dated 16.06.2016 and the same has to struck down and quash as illegal, ultra vires and also arbitrary in nature and consequently, direct the respondent department to check the maximum speed of the lorries manufactured prior to 01.10.2015 before insisting for SLD installations, and in respect of other lorries manufactured after 01.10.2015 by accepting the installation certificate already issued by the manufacturer of SLD's as accepted by the respondent department for issuing fitness certificate in the previous years.

For Petitioner
For R1

: Mr.VS.Karthi
: Mr.P.Dharmaraj
Central Government Standing Counsel.



For R2 and R3

: Mr.K.Chellapandian,
Assisted by Mr.P.Mahendran AGP
Additional Advocate General.

O R D E R

Heard the learned counsel appearing for the petitioner, learned Central Government Standing Counsel for R1 and the learned Additional Advocate General for R2 and R3.

2.The petitioner is an Office bearer of State Lorry Owners Federation, Tamil Nadu. The petitioner states that the third respondent by impugned communication has made it appear as if only the Speed Limiting Device manufactured by the empanelled companies can be fitted in the vehicles operating in the State of Tamil Nadu. Hence, he has filed this Writ Petition questioning the same.

3.I went through the contents of the impugned circular bearing No.59/2019, dated 18/12/2019 issued by the Principal Secretary/Transport Commissioner/third respondent.

4.As rightly pointed out by the learned Additional Advocate General, the said circular only mandates the registering authorities to entertain the Speed Limiting Devices manufactured by M/s.TEDI India Private Limited, Chennai, as one among the manufacturers/company in the relevant field. The impugned circular by itself does not state that the SLD manufactured by M/s.TEDI India Private Limited alone is acceptable. When I clarified this position to the petitioner's counsel, the petitioner's counsel drew my attention to the annexure to the circular which contains a list of 11 companies.

5.The learned Additional Advocate General has also confirmed that the SLDs manufactured by those companies empanelled by the Government of Tamil Nadu alone will be recognised. He further submitted that even if the manufacturers fulfil all the requirements set out in Rule 118 of the Central Motor Vehicles Rules 1989 (for brevity, 'the Rules') still they will have to formally apply to the State Government for getting empanelled. The learned Additional Advocate General further submitted that this is insisted to save lives and therefore, no compromise can be allowed in matters concerning safety. The respondents have also filed counter and the learned Additional Advocate General reiterated its contents.

6. I carefully considered the rival contentions and went through the materials on record.

7.The relevant provisions are Rules 118 and 126 of Central Motor Vehicles Rules, 1989. They are as follows:

"118. Speed governor.--

(1)Every transport vehicle notified by the Central Government under Sub-section (4) of Section 41 of the Motor



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

Provided further that the transport vehicles that are-

- (i) two wheelers;
- (ii) three wheelers;
- (iii) quadricycles;
- (iv) four wheeled and used for carriage of passengers and their luggage, with seating capacity not exceeding eight passengers in addition to driver seat (M1 Category) and not exceeding 3500 kilogram gross vehicle weight;

- (v) fire tenders;

- (vi) ambulances;

- (vii) police vehicles;

- (viii) verified and certified by a testing agency specified in rule 126 to have maximum rated speed of not more than 80 kilometre per hour, shall not be required to be equipped or fitted with speed governor (speed limiting device or speed limiting function);

provided further that the transport vehicles manufactured on or after 1st October, 2015 that are dumpers, tankers, school buses, those carrying hazardous goods or any other category of vehicle, as may be specified by the Central Government by notification in the Official Gazette from time to time, shall be equipped or fitted by the vehicle manufacturer, either in the manufacturing stage or at the dealership stage, with a speed governor (speed limiting device or speed limiting function) having maximum speed of 60 kilometre per hour conforming to the Standard AIS 018,2001, as amended from time to time.

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



specified by the State Government from time to time, conforming to the Standard AIS:018/2001, as amended from time to time:

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

"126. Prototype of every motor vehicle to be subject to test.--

On and from the date of commencement of Central Motor Vehicles (Amendment) Rules, 1993, every 105 [manufacturer or importer] of motor vehicles other than trailers and semi-trailers shall submit the prototype of the vehicle 106[to be manufactured or imported by him] for test by the Vehicle Research and Development Establishment of the Ministry of Defence of the Government of India or Automotive Research Association of India, Pune, 150[or the Central Farm Machinery Testing and Training Institute, Budni (MP)], or the Indian Institute of Petroleum, Dehradun, 151[or the Central Institute of Road Transport", Pune, or the International Centre for Automotive Technology, Manesar,] and such other agencies as may be specified by the Central Government for granting a certificate by that agency as to the compliance of provisions of the Act and these rules:] 25[Provided that the procedure for type approval and certification of motor vehicles for compliance to these rules shall be in accordance with the AIS:017-2000, as amended from time to time:] 19[Provided further that in respect to the vehicles imported into India as completely built units (CBU), the importer shall submit a vehicle of that particular model and type to the testing agencies for granting a certificate by that agency as to the compliance to the provision of the Act and these rules."

Provided that the procedure for type approval and certification of motor vehicles for compliance to these rules shall be in accordance with the AIS: 017-2000, as amended from time to time.

Provided further that in respect to the vehicles imported into India as completely built units (CBU), the importer shall submit a vehicle of that particular model



and type to the testing agencies for granting a certificate by that agency as to the compliance to the provisions of the Act and these rules."

8. There cannot be any dispute that the manufacturer of a speed limiting device will have to conform to the quality standards set out in Rule 118 of the Rules. Now the only question that arises is whether the manufacturer, who fulfills the requirement of Rule 118 should also be empanelled by the State Government so that their speed limiting devices can be accepted by the RTOs.

9. After a careful reading of both the statutory Rules, namely Rule 118 and Rule 126, one can note that the retro-fitting centre should have been approved in terms of Rule 126. In other words the manufacturer of SLD should conform to the standards set out in Rule 118 and that device should be fitted on the vehicle by a retro-fitting centre (RFC) and that RFC should have been approved in terms of Rule 126 of the Rules. Nowhere in the statute either in the parent statutory provisions or in the Rules framed thereunder, is there any requirement that all the manufacturers should also be empanelled by the State Government.

10. On the other hand, the communication dated 10.02.2017, issued by the Ministry of Road Transport Highways, Government of India makes the position abundantly clear. For the purpose of easy reference, I would extract the entire text of the aforesaid communication dated 10.02.2017:

"No. RT-11017/13/2005-MVL
Government of India
Ministry of Road Transport and Highways
Transport Bhawan, 1 Parliament Street,
New Delhi - 110 001.
Dated : 10.02.2017

To

Principal Secretaries (Transport)/The Secretaries
(Transport)/ The Transport Commissioners of all the States /
UT Administrations.

Subject : Fitment of speed limiting devices -reg.

Sir/Madam,

"Reference is invited to this Ministry's letter dated 2nd August 2016 on the above subject. Since then the MORTH has received several references regarding the imposition of restrictive conditions on the supply of Speed Limiting Devices (SLD).

2. In continuation to the guidelines issued vide letter of even number dated 2nd August 2016 and in supersession of all earlier guidelines, the undersigned is directed to



clarify further as follows:

a) there are no requirements for the registration/empanelment and/or selection of vendors by the State Governments for the fitment of SLDs in privately owned vehicles. The only requirement is that the SLD should be type approved by the authorized testing agencies as per CMVR. A list of such authorized testing agencies is enclosed.

b) any such empanelment/restrictive practices including the imposition of any additional .. for SLD manufacturers would restrict competition, may lead to higher prices, hurt the interest of the consumers and raise legitimate concerns regarding unfair practices.

3. The State Governments may, however, choose to impose eligibility and price criteria while selecting the vendors for fitment of SLDs on their vehicles owned by it or any SRTUs, corporations or a local authority under their control.

4. It is requested that registering authorities be suitably advised to ensure strict compliance with the above guidelines."

11. From a reading of the above communication, I can note that it is open to the State Government to impose eligibility and price criteria while selecting the vendors for fitment of SLDs on their vehicles owned by it or any State Transport Corporations or local authority under their control. That power of the State Government cannot be questioned. But the question that arises is whether the State Government can insist that even the vehicles that fall outside the classification set out in paragraph No.3 of the aforesaid communication dated 10.02.2017, ought to be fitted only those SLDs that have been manufactured by the empanelled companies.

12. Similarly, the Ministry of Road Transport and Highways had issued communication dated 02.02.2018, to all the Principal Secretaries (Transport)/The Secretaries (Transport)/ The Transport Commissioners of all the States /UT Administrations. The said communication reads as follows :

"No.RT-11036/70/2017-MVL

Government of India

Ministry of Road Transport and Highways

(MVL Section)

Transport Bhawan, 1, Parliament Street, New delhi - 110 001.

Dated the 2nd February, 2018.

To

1. The Principle Secretaries (Transport)/The Secretaries (Transport)/ The Transport Commissioners of all the States /UT Administrations.

Subject: Integration of the retro-fitted Speed Limitation

<https://hcservices.hcscourt.org/hcservices/hcsccs> / Speed Governor data on Transport Vehicles



with the VAHAN data base.

Sir/Madam

"In terms of the Hon'ble Supreme Court's order in the case of writ petition (Civil)No.295 of 2012, dated 30th November, 2017 regarding retro-fitment of Speed Limiting Devices(SLD) for the transport vehicles, the following be ensured with respect to linking of approved Speed Limiting Device(SLD)/Speed Governor with the specific vehicle model through VAHAN database.

1.Speed Limitation Devices (SLD) fitted on the vehicle shall be type approved by test agency for that respective vehicle model.

2.After the approval, NIC will issue a unique username and password to each Speed Limitation Device (SLD) manufacturer for uploading the TYPE approval date on VAHAN portal.

3.Speed Limitation Devices (SLD) Manufacturers will upload the date in VAHAN portal as indicated below:

a) Speed Limitation Device (SLD)/Speed Governor make and model

b) Type Approval Certificate (TAC) and /or Conformity of Production Certificate (COP) as applicabl

c) Vehicle model name

d)Unique identification number as per following format:

Four alpha-numerical characters	One alphabetical [character]	One numerical digit	Four numerical digits	Six numerical digits
For name of Manufacturer	For designation of Test agency as per AIS-037	For month of Device to address 3 types	For month and year of manufacture in format MMY	For Production Sr.No.

4.All Speed Limitation Device (SLD)/Speed Governor Manufacturers will upload the production stock date of the typed approved Speed Limitation Device(SLD)/Speed Governor on VAHAN Portal.

5.SLD manufactures will put the unique identification number on each Speed Limitation Device (SLD)/Speed Governor.

6.All Speed Governor manufacturers shall ensure that registration number of that particular vehicle is engraved on the type approved SLD at the time of installation on vehicle.

7.RTOs shall enter the unique identification number of SLD device at the time of fitness testing. In case of vehicles with speed limiting function installed at the time



of manufacturing, the unique identification shall be OEM.

8.All the above requirements are waived in cases where speed limiting function is already provided for at the time of manufacture of the vehicle."

13.The above communication provides sufficient guidance to the RTOs as regards integration of SLDs on the Transport Vehicles by comparing the details with Vahan database.

14. Since the statute does not prescribe, it is not open to the State Government to insist that SLDs manufactured by the State Government empanelled companies alone will be accepted. Even though I am not interfering with the impugned communication/circular as such, I make it clear that the Road Transport officers shall recognise and accept any SLDs manufactured by those companies that fulfil the requirements set out in Rule 118 of the Rules.

15.With this clarification and direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CSII)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1.The Government of India,
Rep by its Director,
Ministry of Road Transport & Highways Department,
Transport Bhawan No.1, Parliament Street,
New Delhi - 110 001.

2.The Government of Tamil Nadu
Represented by its Secretary to
Home Department, Secretariat,
Fort St.George, Chennai.

<https://hcservices.ecourts.gov.in/hcservices/>



3.The Principal Secretary/Transport Commissioner,
Transport Department, Chepauk,
Chennai - 600 005.

+1 CC to M/s.P. DHARMARAJ, Advocate (SR-14478[F] dated 20/08/2020)

+1 CC to M/s.Government Pleader (SR-14626[F] dated 21/08/2020)

W.P. (MD)No.5441 of 2020

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W.M.P. (MD)No.4742, 4743 and 4745 of 2020

19.08.2020

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