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

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Judgment delivered on: 21.12.2021

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W.P.(C) 13894/2018

FOUNDATION OF AZADPUR TEMPO & TRUCK WELFARE
..... Petitioner

versus

DELHI POLICE & ANR.

.....Respondent

Advocates who appeared in this case:

For the Petitioner:

Mr. Rakesh Kumar and Mr. Vishal Maan, Advocate.

For the Respondent:

Mr. Anupam Srivastava, Additional Standing Counsel
with Mr. Dhairya Gupta, Advocate

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM. APPL. 46586/2021

1. This is an application on behalf of the applicants seeking impleadment as petitioners
2. Issue notice. Notice is accepted by learned counsel for respondents, who submits that without prejudice to their rights and contentions, they have no objection to the application being allowed.
3. In view of the above, the application is allowed. The applicants

W.P. (C) 13894/2018

1 of 8

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to HMJ Sanjeev Sachdeva.

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are impleaded as co-petitioners. Amended memo of parties is taken on record.

W.P.(C) 13894/2018

1. Petitioners seek a direction to the respondents to permits the owners of BS-III compliant diesel commercial vehicles to apply for grant or renewal of “*all time no entry permission*” for operation of their vehicles in Delhi for supply of essential commodities such as fruits and vegetables.

2. Learned counsel for the petitioner submits that the online portal of the respondents, for making the applications, does not permit the owners of BS-III compliant diesel commercial vehicles to apply for grant or renewal of the said permit.

3. Learned counsel submits that the vehicles are otherwise compliant to the decision of the Supreme Court as well as the National Green Tribunal, which prohibits plying of diesel vehicles beyond the age of 10 years in Delhi, NCR.

4. Learned counsel appearing for the respondent submits that prohibition has been imposed in terms of Regulation 30 of The Delhi Control of Vehicular and Other Traffic on Road and Streets Regulations, 1980. He further submits that the direction has been further imposed in view of the order of the Supreme Court dated

20.11.2019 in Writ Petition (Civil) 13029/1985 titled M.C. Mehta and Ors. Versus Union of India.

5. Learned counsel appearing for respondent relies on the decision of the Division Bench of this Court in *M/s. Economic Transport and Ors. Vs. Commissioner of Police & Ors.*, AIR 1994 Delhi 140.

6. Regulation 30 relied upon by the learned counsel for respondents reads as under:-

“30. Restriction on Heavy and Medium Transport Vehicles

(1) The Deputy Commissioner of Police, Traffic, Delhi, may by due notification prohibit the plying of medium or heavy transport vehicles in any road or street either totally or during specified hours under a permit granted by him.

(2) He may also by due notification prohibit or regulate loads and projections on vehicles which may cause danger, obstruction or annoyance to other road users.”

7. Perusal of the said regulation shows that the Deputy Commissioner of Police has to issue a notification, whereby plying of medium or heavy transport vehicles in any road or street is prohibited either totally or during specified hours under a permit granted by him.

8. Admittedly, no notification has been issued by the Deputy Commissioner of Police under the said provision. Respondents have merely omitted to provide an option in the dropdown menu of the

online portal.

9. Since there is no notification, respondents cannot contend that power has been exercised under Regulation 30. It is settled principle of law that “*if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner*” [*Opto Circuit India Limited Versus Axis Bank & Others (2021) 6 SCC 707*]

10. Furthermore, it may be noticed that Regulation 30 prohibit plying of medium or heavy transport vehicles and does not make a distinction between the type of medium and type of heavy transport vehicle as is sought to be done by the respondents.

11. Admittedly, permits are being issued for the identical size and shape of the vehicles which are owed by the petitioners, the only distinction being that vehicles of the petitioners are BS-III compliant and permits are being issued only for BS-IV and above complaint diesel vehicles. It is not in dispute that CNG and petrol vehicles can apply for permit on the online portal and restrictions apply only to BS-III diesel vehicles.

12. Learned counsel for the respondents relies on paragraph (h) of the order of the Supreme Court in *M.C. Mehta (supra)*, which reads as under:-

“(h) We direct the police and the transport authorities to consider immediately the problems arising out of congestion caused by different kinds of motorized and non-motorised vehicles using the same roads. For this purpose, we direct the police and transport authorities to identify those roads which they consider appropriate to be confined only to motorised traffic including certain kind of motorised traffic and identify those roads which they consider unfit for use by motorised or certain kinds of motorised traffic and to issue suitable directions to exclude the undesirable form of traffic from those roads.”

13. Perusal of the said directions of the Supreme Court show that the said directions were was issue in respect of the problem arising out of congestion caused by different kinds of motorized and non-motorized vehicles using the same roads.

14. The police and transport authorities were directed to identify those roads and issue suitable directions to exclude the undesirable form of traffic from those roads,

15. It is admitted case of the respondents that the non inclusion of the option in the dropdown menu on the online portal is not consequent to any direction or notification issued by the respondents either under Regulation 30 or the order of the Supreme Court in *M.C. Mehta (supra)*.

16. Respondents without any order or notification have simply

excluded the option from the dropdown menu of the online portal.

17. Further, the judgment relied upon by the respondent in *M/s. Economic Transport and Ors.* (supra) is not applicable to the facts of the present case. In the said judgment, restrictions were imposed by a notification issued under Regulation 30. Said notification prohibited plying of heavy goods/transport vehicles and goods transport vehicle of and above laden weight of 4000 Kgs.

18. As noticed hereinabove, no such order or notification has been issued. Furthermore, there is no restriction on plying of identical type and size of vehicles as that of the petitioners, the restriction being only with regard to the type of engine of the vehicle i.e. BS-III compliant or BS-IV and above complaint. Clearly the said judgment is not applicable to the facts of the present case.

19. Further, the contention of learned counsel for the respondent that there is an intelligible differentia in the distinction made by the respondents for the object that is sought to be achieved i.e. reduction of congestion, is not sustainable.

20. One can understand, if respondents were prohibiting medium or heavy goods vehicles in totality from the streets during the specified hours to reduce congestion or restricting their number. But, that is not what the respondents are doing.

21. It is informed by learned counsel for the Respondents that respondents issue permits for all kinds of diesel commercial vehicles and do not restrict the number of vehicles that may be issued the said permit. There is no limit to the number of vehicles that may make an online application for the said permit.

22. The distinction which the respondents are seeking to make is only with regard to engine specification and not the size of the vehicle. So merely because a vehicle is BS-III compliant and not BS-IV or above compliant, it would not in any manner achieve the object allegedly sought to be achieved by respondents i.e., reduction of congestion during those periods in those areas.

23. Since the respondents have neither issued any order or notification, nor issued any direction but have simply omitted the option for applying in the dropdown menu on the online portal, said action of the respondents cannot be sustained.

24. Learned counsel appearing for respondents contended that permits are issued on yearly basis and accordingly, the permits for the year 2021 have already exhausted and now exercise is on for the grant of permits for the year 2022.

25. In view of the above, this petition is disposed of with a direction to the respondents to include the option of BS-III vehicles,

which are in conformity with the directions of the Supreme Court and National Green Tribunal with regard to their age and condition for, plying in Delhi in the dropdown menu of the online portal for grant or renewal of “*all time no entry permission*” permits.

26. This would, however, be without prejudice to the rights of the respondents to issue an appropriate notification under Regulation 30 or direction in terms of the order passed by the Supreme Court in *M.C. Mehta (supra)*, in accordance with law.

27. In case the respondents have closed the portal for making applications for the year 2022, the portal shall be opened for a limited period, after due publicity, to enable the owners of BS-III compliant diesel commercial vehicles to apply for the grant or renewal of the “*all time no entry permission*” permits.

28. Petition is disposed of in the above terms.

29. Order *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J.

DECEMBER 21, 2021

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