

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2378 OF 2022**

Micropark Logistics Pvt Ltd ...Petitioner
Versus
The State of Maharashtra & Anr ...Respondents

**WITH
WRIT PETITION NO. 4270 OF 2022**

Nirmal Motors Through its Proprietor ...Petitioner
Versus
State of Maharashtra Through Dept of Transport ...Respondents
& Ors

**WITH
WRIT PETITION NO. 4271 OF 2022**

Nevaa Motors Pvt Ltd Through Its Director ...Petitioner
Versus
State of Maharashtra Through Dept of Transport ...Respondents
& Ors

**WITH
WRIT PETITION NO. 4267 OF 2022**

Bavaria Motors Pvt Ltd ...Petitioner
Versus
State of Maharashtra Through Dept of Transport ...Respondents
& Ors

SHEPHALI
SANJAY
MORMARE

Digitally signed
by SHEPHALI
SANJAY
MORMARE
Date: 2022.04.13
18:45:32 +0530

WITH
WRIT PETITION NO. 4269 OF 2022

Asset Cars Pvt Ltd ...Petitioner
Versus
State of Maharashtra Through Dept of Transport ...Respondents
& Ors

WITH
WRIT PETITION NO. 5409 OF 2021

Vitality Business Support Services LLP Through ...Petitioner
Partner Bhavik M Thakkar
Versus
State of Maharashtra Through Secretary & Ors ...Respondents

WITH
WRIT PETITION NO. 7695 OF 2021

Harshil Chokey ...Petitioner
Versus
State of Maharashtra & Anr ...Respondents

WITH
WRIT PETITION NO. 7682 OF 2021

Renul H Chokey ...Petitioner
Versus
State of Maharashtra & Anr ...Respondents

WITH
WRIT PETITION NO. 7689 OF 2021

Gautam C Modi ...Petitioner
Versus
State of Maharashtra & Anr ...Respondents

WITH
WRIT PETITION NO. 7674 OF 2021

Forthpoint Automotive Pvt Ltd & Anr ...Petitioners
Versus
State of Maharashtra & Anr ...Respondents

WITH
WRIT PETITION (ST) NO. 24215 OF 2021

Salasar Autocrafts Pvt Ltd Through Its ...Petitioner
Authorized Officer
Versus
The State of Maharashtra Through Its Secretary ...Respondents
& Ors

WITH
WRIT PETITION NO. 1774 OF 2022

Aditya P Jakhete ...Petitioner
Versus
The State of Maharashtra Through The Secretary ...Respondents
& Ors

WITH
WRIT PETITION NO. 1054 OF 2022

Megha Ajay Garg ...Petitioner
Versus

The State of Maharashtra Through Secretary ...Respondents
Transport Dept & Ors

WITH

WRIT PETITION NO. 2095 OF 2022

Ajay P Garg ...Petitioner
Versus

The State of Maharashtra Through Secretary ...Respondents
Transport Dept & Ors

Mr Pradeep Thorat, *with Aditi S Naikare & Aniesh Jadhav, for the
Petitioner in WP/4271/2022, WP/4267/2022, WP/4269/2022,
WP/7695/2021, WP/7682/2021 & WP/7689/2021.*

Mr PP Kakade, GP, *with SS Panchpor, AGP, for the Respondent-State
in all Writ Petitions.*

Ms Pooja Thorat, *with Anukul Seth, for the Petitioner, in
WP/7674/2021.*

**CORAM G.S. Patel &
Madhav J. Jamdar, JJ.**
DATED: 13th April 2022

PC:-

1. This group of matters Relates to the *second* sale and several Bharat Stage-IV (“**BS-IV**”) compliant vehicles. Shortly stated, the Respondents have in most cases blacklisted these vehicles. In two cases, Writ Petition Nos. 4270 and 4271, registrations have actually being cancelled.

2. Mr Thorat for the Petitioner has taken us to a compilation of orders passed by the Supreme Court in the *MC Mehta vs Union of India & Ors* orders relating to vehicular pollution. This compilation starts with orders of 27th March 2020, very shortly after the Covid 19 pandemic and lockdown was announced, because there was a peculiar situation that arose in those circumstances.

3. The origin of the regulations and restrictions placed by the Supreme Court may be traced to the order of 24th October 2018 of the Supreme Court in *MC Mehta vs Union of India & Ors.*¹ In paragraph 25, interpreting the Central Motor Vehicle rules, the Supreme Court said:

“25. Therefore, in exercise of the power vested in this Court under Article 142 of the Constitution, we read down sub-rule (21) of Rule 115 and direct that sub-rule (21) of Rule 115 shall be interpreted and understood to read that no motor vehicle conforming to the emission standard Bharat Stage-IV shall be sold or registered in the entire country with effect from 1-4-2020.”

4. It may be advantageous at this point to straightaway turn to a summary of the legal position captured in the order of 28th June 2021 by a Division Bench of this Court (Gupte and Karnik, JJ) in Writ Petition No. 2209 of 2021. This is part of the compilation tendered by Mr Thorat from pages 79 to 82. Our Division Bench said:

“3. The controversy in this Petition concerns registration of about 15 four wheeler vehicles and 5 two wheeler vehicles which are registered by the Petitioner, who

1 (2019) 17 SCC 490.

is a dealer in BMW, Mini Cooper, Porsche Cars and Ducati Bikes, in its own name prior to 31/03/2020. The State's objection to the registration of these vehicles arises from an order passed by the Supreme Court on 24/10/2018 directing the Union and the States not to permit sale or registration of motor vehicles conforming to the emission standard BS -IV in the entire country with effect from 01/04/2020. This order has since been clarified by the Supreme Court by orders dated 27/03/2020 and 13/08/2020. The need for those clarifications arose as a result of the present Covid-19 pandemic, which held up registrations of vehicles which were sold prior to, but could not be registered as a result of the pandemic, and also for those vehicles whose sales were not reflected in E-Vaahan portals of the RTOs in addition to the lost opportunity to the dealers to sell vehicles during the 10 - day period of actual lockdown. In the Petitioner's case, the Petitioner had purchased these vehicles and registered them in its own name prior to 31/03/2020. The registration is, therefore, not in breach of the Supreme Court order of 24/10/2018. As for registration in the name of a dealer, there is no bar in law for the same. A dealer is within his rights to purchase and register any vehicle in his own name. There is no prescribed number of vehicles which the dealer can so purchase and register. The observations of the Supreme Court in its clarificatory orders of 27/03/2020 and 13/08/2020 are a result of sales, which were neither conducted nor registered or placed on the portal before 30/03/2020. The Court was mindful of the fact that the dealers were conducting inter se sales and registering vehicles in their own name under the extension granted by the Supreme Court in its order dated 27/03/2020 as a result of the peculiar situation arising out of the pandemic. **The dealers attempted to get over the bar in the order of 24/10/2018 by conducting inter se sales and register**

vehicles in the ten-day window opened by the Court for registration of sales of Bharat Stage IV compliant vehicles as a result of the pandemic. It was these sales and registrations which were frowned upon by the Supreme Court and not permitted in its orders dated 27/03/2020 and 13/08/2020. The observations of the Supreme Court in these two orders have nothing to do with those vehicles, which were sold prior to 31/03/2020, and which sales were registered and put on the portal before 31/03/2020.”

(Emphasis added)

5. We have also seen the orders passed by the Supreme Court on 27th March 2020, 8th July 2020, 31st July 2020, 13th August 2020, 24th November 2020 and 30th November 2020.

6. In our understanding of the situation and consistent with the 24th October 2018 order, the Supreme Court did not permit BS-IV vehicles to enter the market, that is to say to be allowed to ply on Indian roads after 1st April 2020. The cut-off date was 31st March 2020. The lockdown necessitated some flexibility in this deadline but the primary objective was to ensure strict adherence to the 31st March deadline and to then evolve steps by which this could be made effective. To this end, the directions that were issued required the details of the vehicles should be uploaded to the E-Vaahan portal before 31st March 2020. Another requirement was that transfers should be registered, that is to say from dealers to purchasers by that date. The third requirement was in regard to temporary or permanent registrations at the instance of various regional transport offices across the country.

7. To understand this clearly, what was prohibited was automobile and vehicle dealers holding on to vast inventories and stocks of un-transferred BS-IV-compliant vehicles and then offloading them into the market after 1st April 2020. That would have violated the 24th October 2018 order. The reason for the prohibition was that the regulatory regime was moving towards cleaner energy and fuels with stricter standards at the level of BS-VI. It would have been incongruous to allow BS-IV vehicles to flood the market at a time when the required norm was of BS-VI compliance. At the same time, sufficient allowance had to be made in keeping with the 24th October 2018 order to ensure that commercial interests were not jeopardized provided they met 31st March 2020 deadline.

8. Now in these cases something peculiar has happened. The automotive and vehicle dealers did in fact have unsold stock or inventory. To meet the 31st March 2020 deadline, they transferred their vehicle initially to the names of individuals. Some of those individuals were partners, proprietors or directors of the dealership themselves. This is the really concern of the authorities who say that these initial transfers, all done by 31st March 2022, were fraudulent and were meant to escape the Supreme Court-mandated orders.

9. We are unable to find anything in the Supreme Court orders that prohibited a transfer of this inventory or stock to individual directors, partners or dealers themselves. The requirement seem to be that there ought to have been an off-take from the distributors to individuals before 31st March 2022.

10. We return to the Division Bench order of 28th June 2021. This encapsulates the mischief that the Supreme Court sought to cure because it prevented a rush of inter se sales and registrations in a ten-day window that was opened up only on account of the pandemic. It was this that the Supreme Court frowned on and did not allow by its orders of 27th March 2020 and 13th August 2020. As the Division Bench noted, this had nothing to do with vehicles that were sold *prior* to 31st March 2020, and which sales were registered and entered on the E-Vaahan portal before 31st March 2020.

11. The result of this discussion is that if there was a sale prior to 31st March 2020 and an entry of that sale on the E-Vaahan portal on or before 31st March 2020, then the identity of the transferee was and is clearly immaterial. The requirement of a sale prior to that date and a registration prior to that date itself acted as an automatic filter and limited the number of BS-IV compliant vehicles that could possibly enter the market. To put it conversely, if a BS-IV vehicle was either not sold before 31st March 2020 *or* its sale was not registered on the E-Vaahan portal before 31st March 2020, then it could not be allowed to enter the market.

12. What has happened thereafter is that the individuals from the dealerships or distributorships who took the vehicles legitimately (or at least not illegitimately) in their names then *further* sold the vehicles to individuals. We imagine this was common business prudence because no individual director would know what to do with 295 BMWs or Mercedes-Benzes. The authorities seem to have taken the stand that such *second* sales by these distributors after 31st

March 2020 were all illicit and prohibited. We do not believe this is a correct reading of these orders. A more accurate reading is that the second sales are permitted but are restricted to those vehicles that were sold before 31st March 2020 and which sales were registered on the E-Vaahan portal before 31st March 2020. If such second sales are not allowed (of vehicles complying with the 31st March 2020 deadline), then another, possible absurd and possibly environmentally unacceptable result would occur namely that there would be a large stock of vehicles now in the names of individuals connected with distributorship or dealership which could not be used at all and would have to be turned to scrap or junked without ever being used. We see nothing in the orders passed by the Supreme Court to support such a rigid view.

13. There is the remaining question of registrations by the RTO and whether these registrations by the RTOs had to be *received* before 31st March 2020. In this context, we must bear in mind that the lockdown was announced on 24th March 2020. Many of the RTO offices were functioning in a limited way. Registrations though applied for in time may have been delayed. Mr Panchpor states that the offices were open only for the purposes of registration but we are also mindful of the fact that in some cases the actual registrations may have been received at some later date in April and were not necessarily received on or before 31st March 2020. In all the cases before us we are assured that the applications for RTO registration were *made* on or before 31st March 2020.

14. Thus, in all these cases sales were before 31st March 2020. The uploading to the E-Vaahan portal was before 31st March 2020.

Taxes were also paid prior to 31st March 2020. Registrations of the RTO was sought prior to that date.

15. The only question therefore is once these vehicles fall in the class of legitimately registered and permissible BS-IV compliant vehicles, are they prohibited from what is in effect a used-car or second-hand sale. This does not seem to have been prohibited by the Supreme Court orders. The apprehension by the authorities that the Supreme Court orders must necessarily result in a prohibition on second-hand sales does not appear to us to be correct. There was undoubtedly a mischief that was to the mind of the Court and, as the Division Bench of this Court noted, it was because of an opening or window for registration during which, the Supreme Court noted, an usually large number of applications being made of inter se transfers. In other words, having missed the 31st March 2020 deadline, people were rushing to take advantage of the ten-day extended window. This is what Supreme Court reversed as the Division Bench has noted in paragraph 3 of its 28th June 2021 order.

16. Consequently, in all these Petitions, we make Rule absolute and quash all blacklisting orders against all vehicles. The cancelled registrations in the two petitions mentioned above are also to be restored.

17. We make it clear that we have not by this order permitted the registration, sale or further transacting of any vehicle that does not meet all three requirements mentioned above. If any vehicle is found to have been first sold on or after 1st April 2020 or registered on E-

Vahan portal after 1st April 2020 or RTO registrations sought after that date, it falls afoul of the Supreme Court mandate and cannot be permitted to be registered, sold or plied.

18. Finally, we clarify that it is not sufficient to meet any one of these conditions. All three conditions must necessarily be met. Once those conditions are met, however, the owner of the vehicle may freely transfer that vehicle to another owner subject to the usual norms that are applicable (as for instance in the city prohibiting older vehicles above a certain age from plying within city limits).

19. In all cases where fitness certificates have lapsed, applications for renewal will be entertained and processed in due course in accordance with law.

20. All Writ Petitions are disposed of in these terms. There will be no order as to costs.

(Madhav J. Jamdar, J)

(G. S. Patel, J)