

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

913 WRIT PETITION NO.7870 OF 2023

**K. K. FITNESS SERVICE CENTRE
THROUGH ITS PROPRIETOR ATHER KHAN SARDAR KHAN
VERSUS
UNION OF INDIA THROUGH ITS DIRECTOR AND OTHERS**

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Mr. Navnath S. Kalyankar a/w Mr. Vikram L. Bhangre h/for Mr. Kiran D. Jadhav, Advocates for Petitioner
Mr. D. R. Kale, Government Pleader for Respondents State
Mr. A. N. Patale, Advocate for Respondent No.1.

CORAM : RAVINDRA V. GHUGE &
Y. G. KHOBRADE, JJ.
DATE : 6th September, 2023

ORDER:

1. The Petitioner claims to be the authorized service centre for vehicles by manufacturers as well as Respondent No.4- Regional Transport Officer, Aurangabad. The names of various manufacturers are quoted in Paragraph No.1 of the Petition, who have granted the status of authorized service centre to the Petitioner. The Petitioner has trained and educated specialized mechanics.

2. The grievance raised is limited to installing speed governor i.e. speed limiting devices in each vehicle which is used for commercial/transport purposes. It is contended that the manufacturers have installed the speed limiting devices, in such vehicles which are to be sold as commercial vehicles, as OEM (Original Equipment

Manufacturer). Rule 118 of the Central Motor Vehicles Rule, 1989 deals with this aspect.

3. The grievance of the Petitioner is that the impugned Circular No.3/2023, dated 09.02.2023 does not make a mention of Rule 118 as well as Clause 8 of the notification dated 2nd February, 2018 issued by the Ministry of Road Transport and Highways (MVL Section), New Delhi addressed to all the Principal Secretaries Transport/The Secretaries (Transport)/Transport Commissioner of all the States/ UT Administrations. The subject of the said Notification is "Integration of the retro-fitted Speed Limitation Devices (SLD)/ Speed Governor data on Transport Vehicles with the VAHAN-database."

4. Clause 8 of the said Notification reads as under:

"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."

5. The learned Advocate for the Petitioner points out Paragraph 2 of another Notification dated 11.02.2021 issued by the same authority, which reads as under:

"2. In this regard, it is clarified that BS-IV and BS-VI engines have ECU based engine system, wherein speed limiting function is present and speed setting is done at vehicle manufacturer's end or through authorized service centers of

such vehicle manufacturers. In such vehicles, speed certificates issued by authorized service centres of the vehicle manufacturer shall be considered, and vehicle owners shall not be forced to obtain speed certificate from specific vendors."

6. As such, the grievance of the Petitioner is that, firstly, the vehicles which have such speed limiting devices installed as OEM, need not be subjected to an installation of such device for the second time and secondly, the authorized service centres may be permitted to issue fitness certificates to such vehicles which are subjected to an annual examination.

7. Insofar as the first contention of the Petitioner is concerned, we are in agreement. If there is already a speed limiting device fitted by the manufacturer which is now compulsory under the Bharat VI Emission norms for commercial vehicles, unless such device malfunctions and is required to be replaced, there need not be a second installation of the same speed limiting device.

8. Insofar as the second request of the Petitioner is concerned, after issuance of a calibration certificate, the same is required to be tendered to Respondent No.4 and it is Respondent No.4 RTO which issues the fitness certificate.

9. Insofar the vehicles conforming to BS-IV Emission norms, they have to be fitted with such speed limiting devices and on this count, we have no reason to entertain any grievance.

10. In view of the above observations, we expect the 3rd Respondent- Transport Commissioner to have a re-look at it's circular dated 09.02.2023 and issue a modified circular making it clear that the vehicles conforming to the BS-VI norms having ECU based engine system with speed limiting device fitted by the manufacturer, would be exempted from installation of such devices for the second time, save and except in cases wherein such devices are dysfunctional.

11. With the above observations and directions, **this Petition is disposed off.**

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan