



\$~34, 35, 36, 37, 55, 56, 57, 98, 99 and 101

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

% **Date of Decision: 29.05.2024**

+ **W.P.(C) 3124/2024**

(34) SUNIL RATHORE Petitioner
versus
GOVT OF NCT OF DELHI AND ANR Respondents

+ **W.P.(C) 4652/2024**, CM APPL.29372/2024

(35) M/S GANPATI GOLDEN TRANSPORT CO. Petitioner
versus
TRANSPORT DEPARTMENT(GOVT OF NCT OF DELHI)
..... Respondent

+ **W.P.(C) 4780/2024**

(36) SONU PURBIYA Petitioner
versus
TRANSPORT DEPARTMENT Respondent

+ **W.P.(C) 6049/2024**, CM APPL. 25080/2024 - STAY

(37) MAKFOOR HUSAIN Petitioner
versus
GOVERNMENT OF NCT OF DELHI AND ANR. Respondents

+ **W.P.(C) 6805/2024**

(55) SHUBHAM Petitioner
versus
TRANSPORT DEPARTMENT (GOVT OF NCT OF DELHI)
..... Respondent

+ **W.P.(C) 6822/2024**

(56) ASHOK SINGH Petitioner
versus
TRANSPORT DEPARTMENT (GOVT OF NCT OF DELHI)
..... Respondent

+ **W.P.(C) 7045/2024**, CM APPL. 29380/2024



- (57) MANOJ KUMAR SINGH Petitioner
 versus
 TRANSPORT DEPARTMENT ENFORCEMENT BRANCH
 Respondent
- + **W.P.(C) 7775/2024**, CM APPL. 32257/2024 (Exemption)
- (98) SANDEEP Petitioner
 versus
 TRANSPORT DEPARTMENT (GOVT. OF NCT OF DELHI)
 Respondent
- + **W.P.(C) 7781/2024**, CM APPL. 32270/2024 (Exemption)
- (99) RAJESH SINGH Petitioner
 versus
 TRANSPORT DEPARTMENT (GOVT OF NCT OF DELHI)
 Respondent
- + **W.P.(C) 7796/2024**, CM APPL. 32307/2024 (Stay)
- (101) RAJESH SINGH Petitioner
 versus
 GOVERNMENT OF NCT OF DELHI
 Respondent

Presence:

Mr. Abhigyan, Adv. for petitioner along with Mr. Sunil Rathod, petitioner in person in W.P.(C) 3124/2024.

Mr. T. Singh Dev, Adv. along with Mr. Bhanu Gulati, Ms. Ujjawala Gupta and Mr. Prithu Chawla, Adv. for petitioner in W.P.(C) 6049/2024.

Mr. Vishnu Deo Yadav, Adv. for petitioners in W.P.(C) 4652/2024, W.P.(C) 4780/2024, W.P.(C) 6805/2024, W.P.(C) 6822/2024, W.P.(C) 7775/2024 and W.P.(C) 7781/2024.

Mr. Dhruv Gautam, Adv. and Mr. Tushar Tyagi, Adv. for petitioner in W.P.(C) 7796/2024. (through VC)

Mr. Sachidanand Chaudhary, Adv. for petitioner in W.P.(C) 7045/2024. (through VC)



CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (ORAL)

1. The present batch of petitions has been filed by the petitioners seeking release of their respective vehicles which have been seized by the respondents, on account of being 'end of life vehicles'.
2. The petitioners seek release of their respective vehicles in terms of the judgement dated 22.08.2023 passed by this Court in W.P.(C) No. 10749/2023 titled "*Seema Chopra v. Government of NCT of Delhi*", wherein certain directions have been passed by this court to release such seized/impounded vehicles.
3. The vehicles in question are transport vehicles running on diesel fuel and aged more than 10 years. Except for W.P.(C) 6822/2024, the vehicles in question are registered outside Delhi. The details are as under:

Case No.	Vehicle Number	Date of Seizure	Petrol or Diesel	State of Registration
W.P.(C) 6805/2024	PB-13AW-8998	12.04.2024	Diesel	Punjab
W.P.(C) 6822/2024	DL-1PC-6273	29.04.2024	Diesel	Delhi
W.P.(C) 7045/2024	NL-01AF-2338	29.04.2024	Diesel	Nagaland
W.P.(C) 7775/2024	HR-39B-6345	21.03.2024	Diesel	Haryana
W.P.(C) 7781/2024	MH-04GC-1844	24.04. 2023	Diesel	Madhya Pradesh



W.P.(C) 7796/2024	MH-04GC-1844	April 2023	Diesel	Madhya Pradesh
WP.(C) 3124/2024	MP-07GA-2580	12.01.2024	Diesel	Madhya Pradesh
WP.(C) 4652/2024	PB-08CH-3081	19.02.2024	Diesel	Punjab
WP.(C) 4780/2024	GJ-2QU-4973	19.10.2023	Diesel	Gujarat
W.P.(C) 6049/2024	UP-21AN-5990	04.08.2023	Diesel	Uttar Pradesh

4. Respondent/GNCTD has taken an objection that the aforesaid vehicles cannot be released in view of Clause 8(ii) of the Guidelines For Handling End Of Life Vehicles In Public Places Of Delhi, 2024 (“**2024 Guidelines**”), which Guidelines have been framed on 20.02.2024 as directed vide the aforesaid judgement dated 22.08.2023. In W.P.(C) 7796/2024 and W.P.(C) 6049/2024, the vires of the said Clause 8(ii) has been challenged by the petitioners. It is further prayed that the said clause be declared to have a prospective operation and the vehicles impounded before coming into force of the said Guidelines, be released in terms of the judgement dated 22.08.2023.

5. Clause 8(ii) of 2024 Guidelines reads as under:

“8. IMPOUNDED VEHICLE WHICH CAN NOT BE RELEASED

(i)

(ii) Transport vehicles running on diesel fuel and aged more than 10 years old.”

6. Other relevant Clauses of 2024 Guidelines are reproduced hereunder:

1. SHORT TITLE AND APPLICATION:-

(i) These Guidelines shall be called "Guidelines for Handling End of Life Vehicle in Public Place 2024"



(ii) *These Guidelines shall be applicable in NCT of Delhi.*

(iii) *They shall come into force with effect from date of issuance.*

2. IN THE GUIDELINES, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(viii) *"End of life Vehicles" means all vehicles which are no longer validly registered or their registration has been cancelled under Chapter IV of the Act or due to an order of a court of Law*

xxx

xxx

xxx

6. RELEASE PROCEDURE OF IMPOUNDED VEHICLES (Registered in Delhi- NCR)

Category 1: Those who wish to Shift their vehicle out of Delhi-NCR

(i) *On plying and parking of ELVs in public place in NCT of Delhi, once impounded for the first time it can be released on the basis of submission of below documents:*

a) An undertaking that vehicle will not be plied or parked in any public place within the territory of NCT of Delhi and will be removed from the NCT of Delhi.

b) A copy of the Registration Certificate of the vehicle.

c) NOC of the vehicles to shift the vehicle outside of Delhi-NCR, in case vehicle registered in Delhi-NCR

d) In the case of 4-wheeler, a penalty of Rs 10,000 along with towing charge and parking fee as notified in Delhi Maintenance and Management of Parking Places Rules, 2019 (hereinafter "Parking Rules 2019"), shall be charged before releasing of such ELVs.

e) In the case of 2-wheeler, a penalty of Rs 5,000 along with towing charge and parking fee as notified in Parking Rules 2019 shall be charged before releasing of such ELVs.

(ii) *On submission of above document, Enforcement agency will issue releasing order based on which concerned RVSF can release the vehicle from their scrapping yard.*

In case, vehicle is already outside of Delhi-NCR after seizure, it shall not be allowed to enter in Delhi-NCR and should be shifted outside of Delhi- NCR



from scrapping yard itself.

Category 2: Those who wish to park their vehicle in Private space which is not shared Parking place.

(i) On plying and parking of ELVs in public place, the vehicles impounded for the first time can be released on the basis of submission of following vehicles documents

a) An undertaking that if the vehicle is released, it will not be plied in Delhi or parked in any public space within NCT of Delhi, and they be kept in private parking space available to the applicant and not a space in a shared parking lot, even if it is part of a residential complex. A parking space which has been allotted to the owner inside the residential complex will be considered as a private parking space.

b) Proof of Private Parking space within the premises of applicant is to be submitted by the applicant which can be allotment letter from the RWA or any concerned authority whichever is applicable.

c) A copy of Registration certificate of the vehicle.

d) In the case of 4-wheeler, a penalty of Rs 10,000 along with towing charge and parking fee as notified in Parking Rules 2019 shall be charged before releasing of such ELVs.

e) In the case of 2-wheeler, a penalty of Rs 5,000 along with towing charge and parking fee as notified in Parking Rules 2019 shall be charged before releasing of such ELVs.

(ii) On submission of above documents, Enforcement agency will issue releasing order based on which concerned RVSF can release the vehicle from their scrapping yard. In case, vehicle is already outside of Delhi-NCR in scrapping yard, it should be transported by owner of vehicle by way of towing to the private parking space of vehicle owner.

7. PROCEDURE IN RESPECT OF VEHICLES (Registered Outside Delhi-NCR)

(1) On plying and parking of vehicles which are diesel vehicle more than 10 years old and petrol vehicle more than 15 years old in public place, and registered outside Delhi-NCR, the following procedure should be followed:

a) An undertaking from the registered owner explaining the reason of presence of such vehicle which is already banned in NCT of Delhi along with the confirmation that the vehicle will not enter into the territory of



NCT of Delhi.

b) A copy of the Registration Certificate of the vehicle.

c) In the case of 4-wheeler, a penalty of Rs 10,000 shall be charged.

d) In the case of 2-wheeler, a penalty of Rs 5,000 shall be charged.

e) In case the penalty amount is not paid on the spot by the vehicle owner, the first offence shall be recorded by the Transport department in the online portal, and the vehicle will be blacklisted. It will be removed only when the challan/penalty amount is paid by the vehicle owner.

(ii) In the case of the second offence by the same vehicle, the vehicle shall be impounded and sent to the scrapping unit.”

Submissions of respective counsel

7. Learned counsel for the petitioners have submitted that the vehicles in question are liable to be released in terms of the judgement of this Court in ***Seema Chopra*** (supra). It is submitted that 2024 Guidelines cannot be applied retrospectively to the petitioners, in respect of the vehicles in question. It is submitted that Clause 1(iii) of said guidelines clearly states that the said guidelines shall come into effect from date of issuance i.e. 20.02.2024. It is also submitted that any enactment which substantially affects the rights of individuals cannot be applied retrospectively, and therefore the 2024 Guidelines can only be prospective in nature. It is emphasised that the respondents have released various transport vehicles in terms of judgement in ***Seema Chopra*** (supra) and therefore, the petitioners, who are similarly situated, are entitled to similar relief/s. Alternatively, it is also submitted that vehicles in question are liable to be released in terms of Clause 6 and 7 of the 2024 Guidelines. It is submitted that Clause 8 (ii) of the said guidelines is arbitrary in nature and in contravention of Article 14 of the Constitution of



India as the said clause creates an unreasonable and arbitrary sub – classification between diesel vehicles i.e. by prescribing that transport vehicles older than 10 years cannot be released under any circumstances while similarly situated, more than 10-year-old private diesel vehicles can be released. It is emphasised that vehicles in question can be plied on roads across the nation except in Delhi-NCR, and therefore there is no impediment to the vehicles being released.

8. Learned counsel for the respondent/GNCTD has submitted that the present petitions are not covered by the judgment of *Seema Chopra* (supra) as in that case the court was only dealing with impounded private vehicles parked on public road and directed the release thereof; the court did not deal with or directed release of ‘transport vehicles’. It is submitted that impounded vehicles can only be released as per 2024 Guidelines irrespective of the date when they were seized by the department. It is emphasised that the vehicles in question cannot be released by the department since they are ‘transport vehicles’ running on diesel fuel, and as such barred from being released under Clause 8(ii) of the 2024 Guidelines. It is submitted that the transport vehicles cannot be equated with private vehicles since transport vehicles/trucks are major contributors to PM2.5 and NOx emissions in Delhi. It is submitted that diesel transport vehicles, registered in other states, ply on roads of Delhi without valid permit and fitness, and exacerbate/worsen the air in the Delhi-NCR-region. It is submitted that in order to stop the deliberate violation committed by the owners of transport vehicles and to mitigate the pollution generated from transport vehicles, strict measures have been adopted under 2024 Guidelines, and the same are required for effective implementation of various orders passed by the National Green Tribunal



(NGT).

Orders passed by the NGT and Supreme Court

9. Learned counsel for the respondent/GNCTD has relied upon the following orders passed by the NGT and the Supreme Court:

a. Order dated 26.11.2014 in O.A. 21/2014, wherein it has been *inter alia* directed as under:

“In the meanwhile, we issue the following directions:

1. All vehicles, diesel or petrol, which are more than 15 years old shall not be permitted to ply on the roads and wherever such vehicles of this age are noticed, the concerned authorities shall take appropriate steps in accordance with law including seizure of the vehicles in accordance with the provisions of the Motor Vehicle Act, 1988.

2. The vehicles which are more than 15 years old, will not be permitted to be parked in any public area and they shall be towed away and challaned by the police in accordance with law. This direction would be applicable to all vehicles without exception i.e. two wheelers, three wheelers, four wheelers, light vehicles and heavy vehicles irrespective of whether commercial or otherwise.

....

12. RTO shall not issue/ renew registration of the vehicles or fitness certificate to any vehicle which is more than 15 years old”

b. Order dated 07.04.2015 in O.A. 21/2014, wherein it has been *inter-alia* directed as under:

“We have already noticed that certain stringent measures need to be taken to improve the ambient air quality in NCR, Delhi and to ensure that the residents of this area do not travel closer to ill-health by each breath that they take. Thus we hereby direct that all diesel vehicles (heavy or light) which are more than 10 years old, will not be permitted on the roads of NCR, Delhi. All the registering authorities in the state of Haryana, U.P. and NCT, Delhi would not register any diesel vehicle which is more than 10 years old and shall file the list of vehicles before the Tribunal and provide the same to the Police and other concerned authorities. Petrol vehicles which are more than 15 years old and diesel vehicles that are more than 10 years old shall not be registered in the NCR, Delhi.”



c. Order dated 18.07.2016 in O.A. 21/2014, wherein it has been *inter alia* directed as under:

“It is an accepted fact, not only in India but all over the world, that the emission from diesel vehicle are more injurious to environment and consequently the health of the people than petrol or the vehicles being run on other sources of energy like CNG, Electricity etc. This vehicular pollution could be controlled by not permitting the vehicles causing emissions which would increase PM10, PM2.5, SO2 and NOx in the ambient air quality of that place. Furthermore, it is the NCR Delhi where the vehicular density is very high, the prohibitory directions have been passed. The same very vehicles could be driven in other places where there is larger space available for dispersion and dilution of vehicular emission from such vehicles

.....

Consequently, we hereby direct that the RTOs of NCR, Delhi, Haryana, Rajasthan will deregister all the diesel vehicles which are more than 10 years of age. Upon deregistering such vehicles they will supply the list of all deregistered vehicles to the Traffic Police which in turn to take appropriate steps as already directed under the order of the Tribunal and under the provision of the Motor Vehicle Act.”

d. Order dated 20.07.2016 in O.A. 21/2014, wherein it has been *inter alia* directed as under:

“In continuation of our order dated 18th July, 2016 we pass the following further directions for appropriate and effective implementation of the directions issued.

1. We make it clear that deregistration of the diesel vehicles, more than 10 years old shall be complied with effectively and without default. However, the deregistration authorities are directed to start deregistration with reference to the oldest of the vehicles, in other words at the first step the vehicles which are more than 15 years old would be deregistered and then gradually other vehicles would be deregistered from 15 years to 10 years respectively.

2. All the vehicles which are deregistered in Delhi/NCR would not be permitted to ply in Delhi/NCR. However, the authorities will issue NOC for such vehicles to be registered outside the Delhi/NCR. We further clarify that in terms of the orders of the Tribunal every State has to



identify areas where the dispersion of the air is higher and vehicular density is least, if the States have not done it so far we grant last opportunity to the States and the Union Territories to identify such areas and put them on the respective websites. The RTO, Delhi will issue NOC for transfer of these vehicles only for such areas which are identified by the States.

3. The diesel vehicles which are more than 15 years old and are BS I or BS II compliant shall be scraped and no NOC will be issued for transfer of the vehicles

4. The vehicles which possess national permit, but are covered under the directions of the Tribunal will also not be permitted to ply in Delhi/NCR. However, they would be permitted to by-pass Delhi and follow the routes directly connecting Haryana and Rajasthan or vice-versa. For instance the heavy vehicles are being permitted under the orders of the Tribunal from Panipat and Rewari without entering Delhi.

e. Order dated 29.10.2018 in SLP (C) No. 13029/2015, wherein it has been *inter alia* directed as under:

“The Transport Departments of NCR will immediately announce that all the diesel vehicles more than 10 years’ old and petrol vehicles more than 15 years’ old shall not ply in NCR in terms of the order of the National Green Tribunal dated 07.04.2015. The order of the National Green Tribunal was challenged in this Court and the Civil Appeal was dismissed. Vehicles violating the order will be impounded. The list of such vehicles should be published on the websites of the Central Pollution Control Board (CPCB) and the Transport Departments of NCR. Similarly, a meaningful advertisement should be published in a local newspaper for the convenience of the owners of the vehicles.”

Analysis and Findings

10. I have perused the record and heard learned counsel for the parties.

11. The orders passed by the NGT and as affirmed by the Supreme Court, relied upon by the respondent/GNCTD, *inter alia*, hold as under:

a. emissions from diesel vehicles are more injurious to the environment than petrol or vehicles being run on other sources of



energy like CNG, electricity etc.;

b. all diesel vehicles which are more than 10 years old and petrol vehicles more than 15 years old will not be permitted to ply on the roads of Delhi ;

c. if any vehicles violating the aforesaid direction are found, the authorities shall take appropriate steps in accordance with law including seizure of the vehicle in accordance with provision of Motor Vehicle Act ;

d. the aforesaid diesel vehicles could be driven to other places where there is larger space available for dispersion and dilution of vehicular emission from such vehicles ;

e. the authorities will issue NOC for such vehicles i.e. diesel vehicles (registered in Delhi) more than 10 years old, to be registered outside Delhi. However, no NOC will be issued for the diesel vehicles which are more than 15 years old and such vehicles shall be scrapped.

12. In the present batch of petitions, the vehicles in question have been seized on the ground that the same are “End-of-life vehicles”. Such vehicles can be seized/impounded under the provisions of Motor Vehicle Act. Section 207 of Motor Vehicle Act confers power on specific authorities to seize and detain vehicles used without certificate of registration, permit, etc. to be exercised in the prescribed manner. The said section also deals with releasing the seized and detained vehicles. The same reads as under:

“207. Power to detain vehicles used without certificate of registration permit, etc.—(1) Any police officer or other person authorised in this behalf by the State Government may, if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of section 3 or section 4 or section 39 or without the permit required by sub-section (1) of section 66 or in contravention of any condition of such



permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle, in the prescribed manner and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle:

Provided that where any such officer or person has reason to believe that a motor vehicle has been or is being used in contravention of section 3 or section 4 or without the permit required by sub-section (1) of section 66 he may, instead of seizing the vehicle, seize the certificate of registration of the vehicle and shall issue an acknowledgment in respect thereof.

(2) Where a motor vehicle has been seized and detained under sub-section (1), the owner or person in charge of the motor vehicle may apply to the transport authority or any officer authorised in this behalf by the State Government together with the relevant documents for the release of the vehicle and such authority or officer may, after verification of such documents, by order release the vehicle subject to such conditions as the authority or officer may deem fit to impose.”

13. As per Section 2(32) of Motor Vehicles Act, “prescribed” means prescribed by rules made under this Act. Rule 123 of Delhi Motor Vehicles Rules, 1993, framed under the Motor Vehicles Act provides the manner in which the vehicle can be seized and released. The same *inter alia* read as under:

“123...

(7) Any police officer(s) or the person(s) appointed as officer(s) under Section 213 of the Act and specified as such in rule 123, not below the rank of 65(Assistant Sub-Inspector), shall have power, if they have reasons to believe that a motor vehicle has been or is being used in contravention of the provisions of Section 3 or Section 4 or Section 39 or without the permit required by sub-section (1) of section 66 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used to seize and detain the vehicle, and shall keep the same in safe custody of the nearest police station or police post or traffic police circle officer or any other designated place declared by the Delhi Police or in the designated impounding pits of the Transport Department against a proper receipt to be given by him in Form O.S.S. to the owner or in charge



of the vehicle from whose custody the vehicle was seized and detained.

(8)The officer in charge of the Police Station or police Post or Traffic Inspector of the circle or the officer in charge of the impounding pit shall ensure that the vehicle is kept in safe custody along with the goods contained therein, if any, at the time of keeping the same in his custody.

(9)The concerned person may get the vehicle released within a period of ten days from the date of seizure or detention of the vehicle, as the case may be, after complying with the requirements of law and on approval of the competent authority.

(10)In case the vehicle is not got released within the period specified in Sub-rule (9), then, rental charges at the rate of one hundred rupees per day, subject to a maximum of one thousand rupees, shall be charged after the expiry of the said period of ten days from the date of seizure or detention of the vehicle”

14. Vehicles not covered by Section 207 of the Motor Vehicle Act may also be seized under the provisions of Cr.P.C, granting jurisdiction to the relevant Magistrate to authorize their release.

15. The Motor Vehicles (Registration and Functions of Vehicle Scrapping Facility) Rules, 2021 framed by the Central Government *inter alia* provide for handing over the vehicles impounded by enforcement agency to the Registered Vehicle Scrapping Facility, if they meet the criteria for vehicles scrapping as provided under Rule 8 thereunder. The said rules are silent on the aspect of releasing the impounded vehicles.

16. In ***Seema Chopra*** (supra), certain vehicles were seized by GNCTD on the ground that they are petrol vehicles of over 15 years of age or diesel vehicles of over 10 years of age, and thus classified as “End-of-Life Vehicles”. The validity of the seizure of vehicles was *inter alia* assailed before the court. However, this issue was not determined by the court, as the petitioners therein all undertook that the vehicles will either be removed from



the NCT of Delhi to other States, or that the vehicles will be parked in a private parking space available to the owner. It was *inter alia* observed as under:

“14. As far as removal of vehicles outside the NCT of Delhi is concerned, there is no dispute that GNCTD was issuing No Objection Certificates [“NOCs”] for transfer of vehicles to a different State upon applications made by the owners of end-of-life vehicles prior to their seizure. In the present batch of cases, in fact, several of the vehicles in question are registered in other States, where the registrations remain valid, and the vehicles can legally be plied. It is also the accepted position that the orders upon which GNCTD has based the seizure of these vehicles are confined to the NCT of Delhi, and that the vehicles can legally be plied in other States. GNCTD, thus, can have no objection, in principle, to the release and transfer of the vehicle to another State or for removal of the vehicles registered outside Delhi...”

15. As far as parking of the vehicles in private parking places within Delhi is concerned, with an undertaking that they will not be plied on the streets of Delhi or parked in any public place in Delhi, the petitioners in, W.P.(C) 9158/2023, W.P.(C) 9166/2023, W.P.(C) 5508/2023, W.P.(C) 11254/2022 & W.P.(C) 87/2023, seek release of their vehicles on such an undertaking

16..., if the petitioners are able to demonstrate that they have private parking places available to them, the release of vehicles to them in terms of the aforesaid undertaking will not impede the objective with which the orders of the Supreme Court and NGT were passed

17. These directions are passed in view of the fact that the specific objective of the orders of the NGT, as affirmed by the Supreme Court, which were intended to address the vital and urgent issue of vehicular air pollution, is not compromised thereby, while recognising the petitioners’ interest in retaining their valuable assets...”

17. Ultimately, the court passed the following directions:

For vehicles registered outside Delhi

“18A

a. The petitioners will file affidavits of undertakings with the Enforcement Officer, Department of Transport, GNCTD within two weeks from today to the effect that if the vehicles are released to them, they will not be plied or parked in any public space within the territory of NCT of Delhi, and will be removed from the NCT of Delhi within two weeks after release.



b. The undertaking will also state that the vehicles will be towed or otherwise transported to the borders of the NCT of Delhi.

c. Upon the affidavit of undertaking being received by the Enforcement Officer, he/she will facilitate the release of the vehicle by the scrapping agency to the petitioners within one week thereafter.

d. The petitioners will also file an affidavit before the Enforcement Officer within four weeks after the release of the vehicle stating that the vehicle has been removed from the territory of the NCT of Delhi. e. In the case of vehicles registered in Delhi, the petitioners may apply for issuance of NOCs for transport of vehicles outside Delhi. The NOCs will be processed in accordance with law, within a period of two weeks from the date of the application.

For vehicles registered within Delhi

“18B

a. The petitioners will file affidavits before the Enforcement Officer, Department of Transport, GNCTD within two weeks from today, undertaking that if the vehicles are released to them, they will not be plied on the streets of Delhi or parked in any public space within the NCT of Delhi, and that they will be kept in a private parking space available to the petitioners.

b. Alongwith the aforesaid affidavits of undertaking, the petitioners will produce evidence of availability of private parking space, either owned or leased by them, or accompanied by a consent letter of the owner or lessee permitting them to park their vehicle indefinitely in the aforesaid private parking space.

c. It is made clear that the private parking space must be one within the premises owned or leased by the vehicle owner, and not a space in a shared parking lot, even if it is part of a residential complex.

d. The respondents may verify the availability of the aforesaid private parking space within a period of four weeks after the filing of the undertaking, and upon due verification, the vehicle may be released to the petitioners within a period of one week thereafter”

18. In para 21 of ***Seema Chopra*** (supra), the Court directed GNCTD to frame a policy for release of seized/impounded vehicles on the aforesaid undertakings by the owners, and to give due publicity to the same.

19. The 2024 Guidelines have been framed pursuant to the aforesaid directions. Clause 6 and 7 of the said Guidelines prescribe the procedure for releasing the impounded vehicles. Clause 8 contemplates that a category of



impounded vehicles which cannot be released.

20. A perusal of the instruction/ guidelines incorporated in Clause 8(ii) leads to an inevitable conclusion that the categorization/distinction sought to be made between diesel transport vehicles and other diesel vehicles has no statutory basis. The same is also not borne out from the order/s of the NGT. To restrict a particular class of vehicles from being released is manifestly arbitrary and discriminatory. The guidelines do not disclose the basis or rationale for creating such a dispensation. The attempt on the part of learned counsel for the respondents to find/cite justification for the differential treatment accorded to one particular class of vehicles, cannot be countenanced, when the policy/ guidelines itself does not disclose the basis thereof.

21. It is well settled that courts can examine a policy of the Government to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. [*Directorate of Film Festivals v. Gaurav Ashwin Jain*, (2007) 4 SCC 737, para 16]

22. Once vehicles have been classified on the basis of type of fuel/pollution emissions – diesel vehicle more than 10 years old and petrol vehicle more than 15 years old - and certain rights/obligations have been imposed thereon, there is no intelligible differentia, discernable from the guidelines, in prescribing a further sub-classification of the diesel vehicles on the basis of the vehicle being a transport vehicle or otherwise. Such exclusion of one sub-category of vehicles from Clause 6 and 7 is impermissible, especially when the excluded sub-category belongs to the same genus. In *Union of India v. N.S. Rathnam*, (2015) 10 SCC 681, it has been held as under:



“12...When the exemption is granted to a particular class of persons, then the benefit thereof is to be extended to all similarly situated persons. The notification has to apply to the entire class and the Government cannot create sub-classification thereby excluding one sub-category, even when both the sub-categories are of same genus. If that is done, it would be considered as violating the equality clause enshrined in Article 14 of the Constitution. Therefore, judicial review of such notifications is permissible in order to undertake the scrutiny as to whether the notification results in invidious discrimination between two persons though they belong to the same class.”

23. The NGT in its orders (supra) was specifically dealing with air pollution caused in Delhi by diesel trucks aged more than 10 years. It was observed that trucks are a serious contributor to air pollution. At the same time, it was observed that these vehicles could be sent outside to areas where air dispersion is much higher and vehicular density is less. The dispensation created under Clause 6 and 7 of the 2024 Guidelines, to release the impounded diesel vehicles (for first time violation) on certain conditions will necessarily include the transport vehicles running on diesel fuel. To hold otherwise, will be violative of Article 14 and unreasonably deprive the petitioners’ of their right to property.

24. As noticed above, orders passed by NGT were intended to address the issue of vehicular air pollution in Delhi. The said orders contemplate a classification of vehicles on the basis of type of fuel/emission caused by the vehicle. Diesel vehicles are stated to be more polluting than petrol vehicles. However, NGT noted that these vehicles can be plied outside Delhi subject to certain conditions. In fact, the NGT directed the authorities to issue NOC for such vehicles (diesel vehicles aged 10 years but below 15 years) to be registered outside Delhi. In ***Seema Chopra*** (supra), this court observed that where the vehicle is registered outside Delhi and can be legally plied there,



GNCTD can have no objection to the release of such vehicles for removal to other states. In said conspectus, the classification created under Clause 8(ii), which purports to exclude transport vehicles running on diesel fuel from ambit of Clause 6 and 7, has no rational nexus with object of the 2024 Guidelines.

25. Consequently, Clause 8(ii) of the 2024 Guidelines is held to be violative of Article 14, and not in consonance with law.

26. Further, *ex facie*, the 2024 Guidelines are intended to have a prospective operation. Clause 1(iii) of 2024 Guidelines, expressly provides that the said Guidelines shall come in force with effect from date of issuance i.e., 20.02.2024. It is also well settled that administrative/executive orders or circulars, as the case may be, in the absence of any legislative competence cannot be made applicable with retrospective effect. [*Bharat Sanchar Nigam Ltd. v. Tata Communications Ltd.*, 2022 SCC OnLine SC 1280, para 30].

27. Learned counsel for respondent/GNCTD has also fairly not contended that the 2024 Guidelines have a retrospective operation. However, it is submitted that since the Guidelines have now been put into force the vehicles in question cannot be released in terms of the judgment dated 22.08.2023. I find no merit in this submission.

28. In W.P.(C) 7781/2024, W.P.(C) 7796/2024, WP.(C) 3124/2024, WP.(C) 4652/2024 and W.P.(C) 6049/2024, the vehicles in question have been impounded before the coming into force of the 2024 Guidelines. Consequently, the said vehicles would be governed by the regime that was in force before the coming force of the said Guidelines.

Conclusion

29. In W.P.(C) 7781/2024, W.P.(C) 7796/2024, WP.(C) 3124/2024,



WP.(C) 4652/2024 and W.P.(C) 6049/2024, the respondents are directed to release the seized/impounded vehicles in question upon the petitioners furnishing in requisite affidavits/ undertakings as prescribed in para 18A of the judgement in *Seema Chopra* (supra).

30. In W.P.(C) 6822/2024, W.P.(C) 6805/2024, W.P.(C) 7045/2024 and W.P.(C) 7775/2024 the respondents are directed to release of the seized/impounded vehicles in question in terms of Clause 6 and Clause 7 of the 2024 Guidelines.

31. The present petition, along with pending application/s, stands disposed of in the above terms.

MAY 29, 2024/hg

SACHIN DATTA, J