Ajay Canu

Vs

Union of India and Others

Special Leave Petition (Civil) No. 1252 of 1988

(E. S. Venkataramiah, M. M. Dutt JJ)

29.08.1988

JUDGMENT

DUTT, J. –

1. The only question that is involved in this petition relates to the validity of Rule 498-A of Andhra Pradesh Motor Vehicles Rules, 1964 and a notification dated July 8, 1986 issued by respondent 3, the Commissioner of Police, Hyderabad and Secunderabad in exercise of his powers under Section 21 (1) of the Hyderabad City Police Act, inter alia, directing that in order to ensure adequate safety of two-wheeler riders, wearing of protective helmets is made compulsory for riders of motor-cycles and scooters, as envisaged by Rule 498-A, with effect from August 1, 1986.

2. Rule 498-A provides as follows :

> 498-A. Crash helmets to be worn.-No person shall drive a motor-cycle or a scooter in public place unless such driver wears a crush helmet :
>
> Provided that nothing in this rule shall apply to person professing Sikh religion and wears a turban.

3. The petitioner, who is a student and has a permanent driving licence for a two-wheeler vehicle, filed a writ petition in the Andhra Pradesh High Court Challenging the validity of the said notification as also of Rule 498-A on the ground that the same was violative of the fundamental rights of the petitioner as guaranteed under Article 19 (1) (d) and Article 21 of the Constitution of India. It was contended by the petitioner before the High Court that as Section 85-A of the Motor Vehicles Act, 1939 was yet to be enforced, Rule 498-A was illegal and ultra vires the Motor Vehicles Act. It was also contended that the wearing of helmets prevented the free flow of breeze to the head would result in giddiness and affect sight and hearing.

4. The petitioner filed an affidavit of one Dr. Prabhakar Korada wherein it has been stated inter alia that continuous wearing of helmets can rise the pressure leading to irritation, confusion, headaches giddiness, falling of hair etc.

5. The High Court has overruled the contentions of the petitioner that the said notification or the provision of Rule 498-A of the Andhra Pradesh Motor Vehicles Rules is violative of Article 19 (1) (d) or Article 21 of the Constitution or that it is illegal or ultra vires the provisions of the Motor Vehicles Act, 1939. The High Court also relied upon medical opinions of some Neuro-Surgeons of repute and came to the finding that wearing of helmets would not cause any ailment whatsoever as

contended by the petitioner. In that view of the matter, the High Court dismissed the writ petition upholding the validity of the notification and the provision of Rule 498-A of Andhra Pradesh Motor Vehicle Rules. Hence this petition for special leave.

6. At this stage, it may be noticed that by Motor Vehicles (Amendment) Act 27 of 1977, a new section being Section 85-A was inserted in the Motor Vehicles Act, 1939, hereinafter referred to as 'the Act' Section 85-A provides as follows :

> 85-A. Every person driving or riding (otherwise than in a side car) on a motor-cycle of any class shall, while in a public place, wear a protective headgear of such description as may be specified by the Central Government by rules made by it in this behalf, and different descriptions of headgears may be specified in such rules in relation to different circumstances or different class of motor-cycles :
>
> Provided that the provisions of this section shall not apply to a person who is a Sikh, if he is, while driving or riding on the motor-cycle, in a public place, wearing a turban :
>
> Provided further that the Central Government may, by such rules, provide for such exceptions as it may think fit.

7. Sub-Section (2) of Section 1 of Act 27 of 1977 provides that the Amendment Act shall Come into force on such date as the Central Government may, by notification in the official gazette, appoint and different dates may be appointed for different provisions of the Amendment Act. In view of Sub-section (2) of Section 1 of Act 27 of 1977, the Central Government by a notification dated May 14, 1980 fixed November 1, 1980 as the date on which the provision of Section 85-A would come into force. But, by another notification dated October 31, 1980, the earlier notification dated May 14, 1980 - fixing the dated of enforcement of Section 85-A as November 1, 1980 was canceled.

8. It is contended by Mr. Ghatate, learned counsel appearing on behalf of the petitioner, that in view of the cancellation of the notification dated May 14, 1980, Section 85-A has not come into force and, as such, there is no provision in the Motor Vehicles Act providing for wearing of protective headgear or helmet by the driver of a motor-cycle of any class while driving the same. It is submitted that in the absence of any specific provision in the Act, Rule 498-A is ultra vires the Act itself and, consequently, the impugned notification issued under Section 21 (1) of the Hyderabad City Police Act is illegal and should be struck down.

9. As there was some doubt as to whether Section 85-A had come into force by virtue of the notification dated May 14, 1980 and whether the Central Government had the power to cancel the said notification by the subsequent notification dated October 31, 1980, we thought it expedient to request the learned Attorney General to appear and assist the court. In compliance with our request, the learned Attorney General has appeared before us, but we are of the view that no assistance will be necessary on the point, as we do not think that we are called upon to adjudicate upon the question for the reason stated hereafter. The learned Attorney General has, however, assisted us in disposing of this petition, and we are thankful to him.

10. We shall proceed on the assumption that Section 85-A has not yet been enforced by the Central Government. We may now deal with the question as to the legality or otherwise of Rule 498-A. The said rule has been framed by the State Government by virtue of its rule making power under clause

(i) of sub-section (2) of Section 91 of the Act. Sub-Section (1) of Section 91 and clause (i) of sub-section (2) provide as follows :

> 91 (1) The State Government may make rules for the purpose of carrying into effect the provisions of this Chapter.
>
> (2) Without prejudice to the generality of the foregoing power, such rules may provide for-
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> # * * *##
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> (i) generally, the prevention of danger, injury or annoyance to the public or any person, or of danger or injury, to property or of obstruction to traffic;

11. It is urged on behalf of the petitioner that Rule 498-A does not and cannot come within the rule making power of the State under clause (i) of sub-section (2) of Section 91 of the Act, for it does not refer to the driver of a motor-cycle or scooter. It is true that clause (i) does not refer to the driver of a motor-cycle or a scooter, but it is much wider inasmuch as it provides, inter alia, for the prevention of danger, injury or annoyance to the public or any person. It is not disputed that Rule 498-A has been framed for the purpose of protecting the head from being injured in case of an accident. It is common knowledge that head of the driver of a two-wheeler vehicle is the main target of an accident and often it is fatal to the driver. By insisting on the wearing of a helmet by the driver driving a two-wheeler vehicle, Rule 498-A intends to protect the head from being fatally injured in case of an accident. Clause (i) is wide enough to include the driver of a motor-cycle or a scooter. The expression "any person" in clause (i) also includes within it a driver of a two-wheeler vehicle. We are unable to accept the contention of the learned counsel for the petitioner that the words "any person" do not include the driver of two-wheeler vehicle and the rule is intended to prevent the danger, injury or annoyance to the public or any person other than the driver of a two-wheeler vehicle. In our view, clause (i) is also intended for the prevention of danger, injury or annoyance to the public or any person including the driver of a two-wheeler vehicle. Rule 498-A is, therefore, quite legal and valid, in spite of the absence of any provision like Section 85-A.

12. It is submitted by the learned Attorney General that even assuming that Rule 498-A does not come within the purview of clause (i) of sub-section (2) of Section 91, still the State Government could frame such a rule under sub-section (1) of Section 91. The learned Attorney General submits that the clauses under sub-section (2) of Section 91 are only illustrative and not exhaustive and the power is really under sub-section (1). In support of his contention, he has referred to a decision of this Court in Om Prakash v. Union of India where it has been observed by this Court that it is a well established proposition of law that where specific power is conferred without prejudice to the generality of the general power already specified, the particular power. In the instant case also, the general power is in sub-section (1) and sub-section (2) contains illustrations and does not, in any way, restrict the general power under sub-section (1). Thus, even assuming that Rule 498-A is not covered by clause (i) of sub-section (2), it is quite immaterial inasmuch as such a rule can be framed in exercise of the general power under sub-section (1) for the purpose of carrying into effect Chapter VI relating to control of traffic. There is, therefore, no substance in the contention of the petitioner that Rule 498-A is ultra vires the provisions of the Act.

13. The next attack to Rule 498-A and to the impugned notification is based on the fundamental right of citizen. It is submitted that the compulsion for the wearing of a helmet by the driver of a

two-wheeler vehicle is an infringement of the freedom of movement of such a driver, as guaranteed by Article 19 (1) (d) of the Constitution, and that such compulsion by Rule 498-A interfering with the freedom of movement, not having been made in accordance with the procedure established by law, is also violative of Article 21 of the Constitution. The contention does not at all commend itself to us. Rule 498-A ensures protection and safety to the head of the driver of a two-wheeler vehicle in case of an accident. There can be no doubt that Rule 498-A is framed for the benefit, welfare and the safe journey by a person in a two-wheeler vehicle. It aims at prevention of any accident being fatal to the driver of a two-wheeler vehicle causing annoyance to the public and obstruction to the free flow of traffic for the time being. It is difficult to accept the contention of the petitioner that the compulsion for putting on a headgear or helmet by the driver, as provided by Rule 498-A, restricts or curtails the freedom of movement. On the contrary, in our opinion, it helps the driver of a two-wheeler vehicle to drive the vehicle in exercise of his freedom of movement without being subjected to a constant apprehension of a fetal head injury, if any accident takes place. We do not think that there is any fundamental right against any act aimed at doing some public good. Even assuming that the impugned rule has put a restriction on the exercise of a fundamental right under Article 19 (1) (d), such restriction being in the interest of the general public is a reasonable restriction protected by Article 19 (5) of the Constitution. As Rule 498-A has been framed in accordance with the procedure established by law, that is, in exercise of the rule making power conferred on the State Government under Section 91 of the Act, as discussed above, the question of infringement of Article 21 of the Constitution does not arise. The contention of the petitioner that Rule 498-A and the impugned notification dated July 8, 1986 issued by the Commissioner of Police in exercise of his powers under Section 21 (1) of the Hyderabad City Police Act, infringe the fundamental right of the petitioner under Article 19 (1) (d) and Article 21 of the Constitution, is devoid of merit and is rejected.

14. As to the contention of the petitioner that the wearing of the helmet causes some ailments, we do not think that there is any merit in the contention, particularly in view of the medical opinions of some Neuro-Surgeons of repute, as referred to by the High Court in its judgment. The contention has not also been seriously pressed before us. The High Court was, therefore, perfectly justified in rejecting the contention.

15. For the reasons aforesaid, the special leave petition is dismissed. As no notice has been served on the respondents, there will be no order as to costs.

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