

P. Ratnakar Rao and Others

Vs

Govt. of A.P. and Others

Slp (C) No. 14373 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

10.05.1996

ORDER

1. Delay condoned.

2. This special leave petition arises from the judgment and order of the Andhra Pradesh High Court dated 29-12-1995 made in Writ Petition No. 23323 of 1995. The petitioners are the owners of goods motor vehicles and were plying the same on the basis of pucca national/State permits issued by the appropriate transport authorities. When they challenged the validity of GOMs No. 54 dated 31-3-1995 issued by the Department of Transport (Roads and Buildings) enhancing the compounding fee from Rs. 10 per kg to Rs. 100 per kg as being violative of the Motor Vehicles Act, 1988 (for short "the Act") and being arbitrary violating Article 14 of the Constitution, the Division Bench in the impugned judgment upheld the said GOMs.

3. Section 194 of the Act enacts penal sanctions for driving a vehicle in violation of Sections 113 to 115 of the Act with a minimum fine of Rs. 2000 and additional amount of Rs. 1000 per tonne of excess load together with liability to pay charges for off-loading of the excess load. Sub-section (2) thereof imposes penalty on the driver who refuses to stop and submit the vehicle to weighing after being directed to do so by the authorised officer in that behalf under Section 114 or refuses to remove or causes to remove the load or part of it, prior to weighment in the form of fine to the extent of Rs. 3000. Section 200 of the Act empowers the authorised officer to compound the offences punishable under the provisions enumerated in sub-section (1) thereof. Section 194 is one of the provisions for the offence of which the officer is empowered either before or after the institution of the proceedings for prosecution, to compound such an offence for such amount as the State Government may by notification in the Official Gazette specify in this behalf. Under sub-section (2) thereof, after compounding the offence the accused in custody shall be discharged and the proceedings shall be dropped in respect of such an offence.

4. The contention raised before the High Court and repeated before us by Shri Rajeev Dhavan, the learned Senior Counsel for the petitioners is that the discretion given in Section 200(1) of the Act is unguided, uncanalised and arbitrary. Until an accused is convicted under Section 194, the right to levy penalty thereunder would not arise. When discretion is given to the court for compounding of the offence for the amount mentioned under Section 200, it cannot be stratified by specified amount. It would, therefore, be clear that the exercise of power to prescribe maximum rates for compounding the offence is illegal, arbitrary and violative of Article 14 of the Constitution. We find no force in the contention. For violation of Sections 113 to 115, Section 194 accords penal sanction and on conviction for violation thereof, the section sanctions punishment with fine as has been enumerated hereinbefore. The section would give guidance to the State Government as a delegate under the

statute to specify the amount for compounding the offences enumerated under sub-section (1) of Section 200. It is not mandatory that the authorised officer would always compound the offence. It is conditional upon the willingness of the accused to have the offences compounded. It may also be done before the institution of the prosecution case. In the event of the petitioner's willing to have the offence compounded, the authorised officer gets jurisdiction and authority to compound the offence and call upon the accused to pay the same. On compliance thereof, the proceedings, if already instituted, would be closed or no further proceedings shall be initiated. It is a matter of volition or willingness on the part of the accused either to accept compounding of the offence or to face the prosecution in the appropriate court. As regards canalisation and prescription of the amount of fine for the offences committed, Section 194, the penal and charging section prescribes the maximum outer limit within which the compounding fee would be prescribed. The discretion exercised by the delegated legislation, i.e., the executive is controlled by the specification in the Act. It is not necessary that Section 200 itself should contain the details in that behalf. So long as the compounding fee does not exceed the fine prescribed by the penal section, the same cannot be declared to be either exorbitant or irrational or bereft of guidance.

5. It would, therefore, be clear that the Government as a delegate, did not exceed its power under Section 200 of the Act in prescribing the compounding fee for the offence punishable under Section 194 of the Act.

6. The special leave petition is accordingly dismissed.