SUPREME COURT OF INDIA

Avishek Goenka

Vs.

Union of India

W.P(Civil)No.265 of 2011

(A.K.Patnaik and Swatanter Kumar,JJ.)

03.08.2012

JUDGMENT

Swatanter Kumar,J.

1. The applications for impalement and intervention are allowed subject to just exceptions. All applications for placing documents on record are also allowed.

2. I.A. No. 5 of 2012 has been filed by the Dealers and Distributors of tinted films in Writ Petition (Civil) No. 265 of 2011 under Order XVIII, Rule 5 of the Supreme Court Rules, 1966 against the dismissal of two interim applications, i.e., seeking permission to file application for impalement and application for modification by the Registrar of this Court vide his Order dated 16th May, 2012.

3. The learned Registrar vide the impugned order noticed that application for impleadment was not maintainable inasmuch as the writ petition in which the application was filed has already been disposed of. In regard to the application for modification, according to the applicants, the petitioner suppressed various aspects of the matter and misled the court in passing the order and the same order was therefore, liable to be modified. Dealing with this contention, the learned Registrar, while referring to the judgment of this Court in *Delhi Administration v. Gurdip Singh Uban and Ors*[1]held that the application, in fact, was an application for review and not for modification. Thus, he declined to receive the application and registered the same in accordance with the Rules of the Supreme Court.

4. We hardly find any error of law in the Order of the Registrar under appeal, but we consider it entirely unnecessary to deliberate upon this issue in any further detail, since, we have permitted the applicants to address the Court on merits of the application. Keeping in view the fact that a number of other applications have been filed for clarification and modification of the judgment of this Court dated 27th April, 2012, without commenting upon the merit or otherwise of the present appeal, we would deal only with the application for modification or

clarification filed by these applicants along with others.

5. I.A. No. 15 has been filed by the International Window Film Association. I.A. No. 4 has been filed on behalf of Vipul Gambhir.

6. An unnumbered I.A. of 2012 is filed by 3M India Ltd. Another unnumbered I.A. has been filed on behalf of the dealers and distributors of the tinted films.

7. I.A. No. 3 of 2012, an application on behalf of the petitioner to appear in person, is allowed.

8. I.A. No. 7 of 2012 has been filed on behalf of M/s. Garware Polyester Ltd. I.A. No. 10 of 2012 is an application filed by M/s. Car Owners and Consumer Association.

9. Another unnumbered I.A. has been filed on behalf of M/s. Gras Impex Pvt.Ltd. All these applications have been filed by various applicants seeking clarification and/or modification of the judgment of this Court dated 27th April, 2012 on various grounds.

10. The petitioner has filed I.A. No. 11 of 2012 by way of a common reply to the grounds taken in all these applications and has also placed certain documents on record. The various applicants above-named have sought modification/clarification of the judgment of this Court dated 27th April, 2012 principally and with emphasis on the following grounds:

> "1)That the applicants were not parties to the writ petition and were not aware of the proceedings before this Court. Thus, their submissions could not be considered by the Court, hence the judgment of the Court requires modification.
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> 2) The applicants have placed material and reports on record that the use of films or even black films is permissible scientifically and in law.
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> 3) It is contended that Rule 100(2) uses the expression 'maintained' which implies that safety glasses, including the wind screen, can be maintained with requisite VLT percentage even by use of black films.
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> 4) Lastly, it is contended that para 27 of the judgment needs modification by substituting the words 'use of black films of any VLT percentage' by the words 'use of black films of impermissible VLT percentage".

11. We must notice at the very threshold that in the main Writ Petition no. 265 of 2011 and even in the present applications, there is no challenge to Rule 100 of the Motor Vehicles Rules, 1989 (for short, 'the Rules'). This Court vide its judgment dated 27th April, 2012, has

interpreted the said Rule de hors the other factors. Once this Court interprets a provision of law, the law so declared would be the law of the land in terms of Article 141 of the Constitution of India. The law so declared is binding on all and must be enforced in terms thereof. Having interpreted the Rule to mean that it is the safety glasses alone with requisite VLT that can be fixed in a vehicle, it is not for this Court to change the language of the said Rule. It would, primarily, be a legislative function and no role herein, is to be performed by this Court.

12. In the applications before us, as already noticed, some grounds have been taken to demonstrate that some other interpretation of the provision was possible. These grounds, firstly, are not grounds of law. They are primarily the grounds of inconvenience. Enforcement of law, if causes any inconvenience, is no ground for rendering a provision on the statute book to be unenforceable. The challenge to the legislative act can be raised on very limited grounds and certainly not the ones raised in the present application. In fact, all the learned counsel appearing for various applicants fairly conceded that they were not raising any challenge to Rule 100 of the Rules. Once that position is accepted, we see no reason to alter the interpretation given by us to the said Rule in our judgment dated 27th April, 2012.

13. Still, we will proceed to discuss the contentions raised. The judgment dated 27th April, 2012 was passed in a Public Interest Litigation and the orders passed by this Court would be operative in rem. It was neither expected of the Court nor is it the requirement of law that the Court should have issued notice to every shopkeeper selling the films, every distributor distributing the films and every manufacturer manufacturing the films. But, in any case, this was a widely covered matter by the Press. It was incumbent upon the applicants to approach the Court, if they wanted to be heard at that stage. The writ petition was instituted on 6th May, 2011 and the judgment in the case was pronounced after hearing all concerned, including the Union Government, on 27th April, 2012, nearly after a year. Hence, this ground raised by the applicants requires noticing only for being rejected.

14. Not only the present judgment but even the previous judgments of this Court, in the cases referred to in the judgment dated 27th April, 2012, in some detail have never permitted use of films on the glasses. What the Court permitted was tinted glasses with requisite VLT. Thus, the view of this Court has been consistent and does not require any clarification or modification.

15. Equally, without substance and merit is the submission that the expression ‘maintained’ used in Rule 100 would imply that subsequent to manufacturing, the car can be maintained by use of films with requisite VLT of 70 per cent and 50 per cent respectively. In the

judgment, after discussing the scheme of the Act, the Rules framed thereunder and Rule 100 read in conjunction with Indian Standard No.2553 Part II of 1992, this court took the view that the Rule does not permit use of any other material except the safety glass 'manufactured as per the requirements of law'. Rule 100 categorically states that 'safety glass' is the glass which is to be manufactured as per the specification and requirements of explanation to Rule 100(1). It is only the safety glasses alone that can be used by the manufacturer of the vehicle. The requisite VLT has to be 70 per cent and 50 per cent of the screen and side windows respectively, without external aid of any kind of material, including the films pasted on the safety glasses. The use of film on the glass would change the very concept and requirements of safety glass in accordance with law. The expression 'maintained' has to be construed to say that, what is required to be manufactured in accordance with law should be continued to be maintained as such. 'Maintenance' has to be construed ejusdem generis to manufacture and cannot be interpreted in a manner that alterations to motor vehicles in violation of the specific rules have been impliedly permitted under the language of the Rule itself. The basic features and requirements of safety glass are not subject to any alteration. If the interpretation given by the applicants is accepted, it would frustrate the very purpose of enacting Rule 100 and would also hurt the safety requirements of a motor vehicle as required under the Act. Number of Rules have been discussed in the judgment dated 27th April, 2012 to demonstrate that these Rules are required to be strictly construed otherwise they would lead to disastrous results and would frustrate the very purpose of enacting such law.

16. Now, we may come to the last contention that para 27 of the judgment needs modification as noticed above. Para 27 of the judgment reads as under:

> "27. For the reasons afore-stated, we prohibit the use of black films of any VLT percentage or any other material upon the safety glasses, windscreens (front and rear) and side glasses of all vehicles throughout the country. The Home Secretary, Director General/Commissioner of Police of the respective States/Centre shall ensure compliance with this direction. The directions contained in this judgment shall become operative and enforceable with effect from 4th May, 2012."

17. According to the applicant, the expression „we prohibit the use of black film of any VLT percentage or any other material upon safety glasses' should be substituted by „we prohibit the use of black films of impermissible VLT percentage or any other material upon the safety glasses'. The suggestion of the applicants would be in complete violation of the substantive part of the judgment. We have already noticed that it is not the extent of VLT percentage of films which is objectionable under the Rules but it is the very use of black films or any other material, which is impermissible to be used on the safety glasses. Once the prescribed specifications do not contemplate use of any other material except what is specified in the

Explanation to Rule 100(1), then the use of any such material by implication cannot be permitted. Quando aliquid prohibetur ex directo, prohibetur et per obliquum. If we substitute the plain language in para 27, it would render the entire judgment ineffective and contradictory in terms. Having already held that no material, including the films, can be used on the safety glasses, there is no occasion for us to accept this contention as well.

18. The manufacturer and distributors have placed certain material before us, including some photographs and reports of the American Cancer Society, to show that mostly skin cancer is caused by too much exposure to ultra- violet rays. From these photographs, attempt is made to show that in the day time when the films are pasted upon the safety glasses, still the face and the body of the occupant of the car is visible from outside. It is also stated that certain amendments were proposed in the Code of Virginia relating to the use of sun shading and tinting films, on the motor vehicles. Relying upon the material relating to America, it is stated that there are large number of cancer cases in USA and the framers of the law have amended the provisions or are in the process of amending the provisions. This itself shows that it is a case of change in law and not one of improper interpretation, which is not the function of this Court.

19. To counter this, the petitioner has filed a detailed reply supported by various documents. This shows that tinted glasses have been banned in a number of countries and it is not permissible to use such glasses on the windows of the vehicle. Annexure A1 and A3 have been placed on record in relation to New South Wales, Australia, Afghanistan and some other countries. He has also placed on record a complete research article on the cancer scenario in India with future perspective which has specifically compared India as a developing country with developed countries like USA and has found that cancer is much less in India despite the fact that most of the Indian population is exposed to ultra¬violet rays for the larger part of the day for earning their livelihood for their daily works, business and other activities.

20. This controversy arising from the submissions founded on factual matrix does not, in our opinion, call for any determination before this Court. As already noticed, the Court has interpreted Rule 100 as it exists on the statute book. The environment, atmosphere and geographical conditions of each country are different. The level of tolerance and likelihood of exposure to a disease through sun rays or otherwise are subjective matters incapable of being examined objectively in judicial sense. The Courts are neither required to venture upon such determination nor would it be advisable.

21. It cannot be disputed and is a matter of common knowledge that there are a large number of preventive measures that can be taken by a person who needs to protect himself from the

ultra-violet rays. Use of creams, sun- shed and other amenities would be beneficial for the individual alleged to be intolerable to sun rays. It does not require change of a permanent character in the motor vehicle, that too, in utter violation of the provisions of the statute. Suffice it to note that the reliance placed upon the literature before us is misconceived and misdirected. The interpretation of law is not founded on a single circumstance, particularly when such circumstance is so very individualistic. The Court is not expected to go into individual cases while dealing with interpretation of law. It is a settled canon of interpretative jurisprudence that hardship of few cannot be the basis for determining the validity of any statute. The law must be interpreted and applied on its plain language. (Ref. *Saurabh Chaudri & Ors.v.Union of India & Ors*[2]

22. In IA 4, a similar request is made. We are not dealing with individual cases and individual inconvenience cannot be a ground for giving the law a different interpretation.

23. The petitioner argued with some vehemence that despite a clear direction of this Court, the appellate authority has utterly failed in enforcing the law. According to him, in majority of the vehicles in the NCT Delhi and the surrounding districts of UP, like Ghaziabad, Noida as well as towns of Haryana surrounding Delhi, law is violated with impunity. All safety glasses are posted either with Jet black films or light coloured films. He has referred to two instances, one of rape in Ghaziabad and the other of kidnapping, where the cars involved in the commission of the crime had black films. He has also stated that as per the press reports, the vehicles which are involved in hit and run cases are also vehicles with black films posted on the safety glasses.

24. We are really not emphasizing on the security threat to the society at large by use of black films but it is a clear violation of law. In terms of Rule 100, no material including films of any VLT can be pasted on the safety glasses of the car and this law is required to be enforced without demur and delay. Thus, we pass the following orders :

> "1) All the applications filed for clarification and modification are dismissed, however, without any order as to costs.
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> 2) All the Director Generals of Police/Commissioners of Police are hereby again directed to ensure complete compliance of the judgment of this Court in its true spirit and substance. They shall not permit pasting of any material, including films of any VLT, on the safety glasses of any vehicle.
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> 3) We reiterate that the police authorities shall not only challan the offenders but ensure that the black or any other films or material pasted on the safety lasses are removed forthwith.

4) We make it clear at this stage that we would not initiate any proceedings against the Director Generals of Police/Commissioners of Police of the respective States/Union Territories but issue a clear warning that in the event of non-compliance of the judgment of this Court now, and upon it being brought to the notice of this Court, the Court shall be compelled to take appropriate action under the provisions of the Contempt of Courts Act, 1971 without any further notice to the said officers. We do express a pious hope that the high responsible officers of the police cadre like Director General/Commissioner of Police would not permit such a situation to arise and would now ensure compliance of the judgment without default, demur and delay.

5) Copies of this judgment be sent to all concerned by the Registry including the Chief Se cretaries of the respective States forthwith."

Judgment Referred

[1] *(2000) 7 SCC 0269*
[2] *AIR 2004 SC 0361*