

SUPREME COURT OF INDIA

M.C.Mehta

Vs.

Union of India

WP(Civil)No.13029 of 1985

(Madan B.Lokur,J., S.Abdul Nazeer and Deepak Gupta,JJ.,)

24.10.2018

JUDGMENT

Deepak Gupta,J.,

1. The seminal issue to be decided is whether Bharat Stage IV (for short BS-IV) compliant vehicles should be permitted to be sold in India after 31.03.2020.

2. In an earlier judgment dated 13.04.2017, we have given etailed reasons for the order dated 29.03.2017 whereby this Court had directed that on and from 01.04.2017, vehicles which are not BS-IV compliant, shall not be sold by any manufacturer or dealer or motor vehicle company whether such vehicle is a two wheeler, three wheeler, four wheeler or commercial vehicle etc.. We had also by the said order prohibited registration of non- BS- IV vehicles from 01.04.2017 except if such vehicles were sold on or before 31.03.2017. Since in the judgment dated 13.04.2017, we have set out in detail the history leading to implementation of the Bharat Stage compliant fuels, it is not necessary to repeat the same here. However, a short recap of the same would be apposite to understand the issues in hand.

3. In 2003, the Government of India announced the National Auto Policy based on the recommendations of the Mashelkar Committee constituted in 2001. BS-IV compliant vehicles were made compulsory for four wheelers in different parts of the country on different dates starting from 01.04.2005, from which date registration of only BS-IV compliant vehicles were permitted in the metropolises of Delhi, Ahmedabad, Bengaluru, Mumbai, Pune and Kolkata. Thereafter, it was made compulsory to have BS-IV compliant vehicles in some other cities from 01.04.2010. More cities were added on 21.05.2010 and on 14.07.2015. Finally, by amendment dated 19.08.2015 it was mandated that BS-IV norms would come into force throughout the country w.e.f. 01.04.2017.

4. As far as two and three wheelers are concerned, they were made subject to BS-III norms on and with effect from 01.04.2010 by insertion of sub-rule 16 in Rule 115 of the Central Motor Vehicle Rules, 1989 hereinafter referred to as 'the Rules'. With effect from 04.07.2014, it was mandated that on and from 01.04.2016 all two wheeler vehicles will

comply with BS-IV emission norms and all existing models will shift to BS-IV emission norms from 01.04.2017. Similarly, Rule 17 was inserted in Rule 115 of the Rules on 12.06.2015 in respect of three wheelers wherein BS-IV standard would be applicable to new models on or after 01.04.2016. Resultantly, only those vehicles which were BS-IV compliant would be sold after 01.04.2017.

5. An issue was raised by the manufacturers of motor vehicles that they should be given reasonable and sufficient time for sale of stocks of those vehicles which are not BS-IV compliant vehicles but manufactured up to 31.03.2017. This Court did not accept the submission of the manufacturers and issued the direction referred to hereinabove. It would be interesting to note that though some of the manufacturers of two wheelers and three wheelers took a stand before this Court that great technological changes are required to make the vehicles BS-IV compliant, one of the largest manufacturers of two wheelers and three wheelers in India i.e. Bajaj Auto, filed an application in this Court praying that it was already manufacturing BS-IV compliant vehicles and that the vehicles not complying to BS-IV norms should not be registered after 2017.

6. The issue before us is somewhat similar. Mr. Ranjit Kumar, learned senior counsel and Mr. Sandeep Narain, learned counsel appearing for the Society of Indian Automobile Manufacturers (for short 'SIAM'), have submitted that though they are not averse to manufacturing BS-VI compliant vehicles, they should be given some time to sell the stocks of non-BS-VI compliant vehicles manufactured upto 31.03.2020. In this regard, they have made reference to the notification dated 20.02.2018 whereby sub-rule 21 has been inserted in Rule 115 of the Rules, which reads as follows:

“In the Central Motor Vehicle Rules, 1989, in rule 115, after sub-rule (20), the following sub-rule shall be inserted namely:-

“(21) New motor vehicles conforming to Emission Standard Bharat Stage-IV, manufactured before the 1st April, 2020 shall not be registered after the 30th June, 2020:

Provided that the new motor vehicles of categories M and N conforming to Emission Standard Bharat Stage- IV, manufactured before the 1st April, 2020 and sold in the form of drive away chassis, shall not be registered after the 30th September, 2020.”

7. It is submitted that the Government of India while balancing the need for a cleaner environment with the practical difficulties faced by the manufacturers has given a three months' window to the automobile manufacturers to dispose of the vehicles conforming to BS-IV norms. In respect of certain categories of commercial vehicles in which only a chassis is sold and a body has to be built thereupon, the period of registration has been extended up to 30.09.2020.

8. It has been contended on behalf of SIAM that in Europe the normal practice is that about one year's time is given to the manufacturers of vehicles when a higher quality of fuel is

introduced and the fuel is introduced much earlier and thereafter an outer limit is fixed for sale of compliant vehicles. According to SIAM, BS-VI fuel will be available in the entire country only with effect from 01.04.2020 and manufacturers are, therefore, forced to stop production after 31.03.2020. Therefore, it is not feasible for the manufacturers to switch over to BS-VI compliant vehicles overnight. They have to be given some reasonable time for sale of the accumulated stocks of non-BS-VI (i.e. BS-IV) compliant vehicles. It is further submitted that six to nine months' time is required to shift the assembly line to make BS-VI compliant vehicles and if the request of the manufacturers is not accepted, they will have to start manufacturing BS-VI compliant vehicles well before 31.03.2020 and at least three to six months' prior to the said date. It has also been contended that earlier BS-VI fuel was to be introduced with effect from 01.04.2024, which was pre-poned to 01.04.2023 and it was then pre-poned to 01.04.2021 and finally the date was advanced to 01.04.2020. It was decided to leapfrog from BS-IV fuel to BS-VI fuel without shifting to BS-V fuel. According to SIAM, this is creating a lot of difficulties for the manufacturers.

9. Mr. Gopal Subramaniam, learned senior counsel appearing for one of the manufacturers, submits that his clients are already manufacturing vehicles which are both BS-IV and BS-VI fuel compliant and they are on the road already. Mr. A.N.S. Nadkarni, learned Additional Solicitor General submits that keeping in view the difficulties faced by the manufacturers and balancing the need to have a cleaner environment, three months' period given to the manufacturers is reasonable. He also urges that the Rules have not been challenged by any party and, therefore, this Court should not go into the validity of the Rules.

10. On the other hand, Ms. Aparajita Singh, learned amicus curiae, has made a passionate plea that no non-BS-VI compliant vehicle should be permitted to be sold in the entire country after 01.04.2020. She has drawn our attention to the Report of the Parliamentary Standing Committee (for short 'the Committee') dated 07.08.2018. This Report mainly deals with National Capital Region (NCR) of Delhi but there are some references to the entire country. Some of the observations made by the Committee need to be considered and taken note of. The Committee in Para 5.15 notes that the problem of air pollution is affecting all human beings and any leniency on the part of the Government in tackling it will have a cascading effect on the health of the citizens. These observations have been made with specific reference to vehicular pollution and the need to ensure compliance of BS-VI norms with effect from 01.04.2020. There can be no two views that air pollution is hazardous to health. We may, also take note of certain observations of the Report of the Committee which show that one out of three children in Delhi suffers from respiratory problems. This is almost twice as high as compared to the city of Kolkata or rural areas. We may note that the World Health Organisation's (WHO) database of more than 4,300 cities showed Indian cities of Gwalior, Allahabad, Raipur, Delhi, Ludhiana, Khanna, Varanasi and Patna as being among the most polluted in the world. Our attention has been drawn to various other documents which clearly show the deleterious effects of pollution on health. The hazards of pollution and its ill effect on the health of the citizens especially children are not limited to the city of Delhi or the NCR of Delhi but affect all the citizens of the country.

11. The Union Government has spent about Rs.30,000 crores to manufacture BS-IV compliant fuel. We have been informed that another Rs. 30,000/- crores of the taxpayers' money have been expended by the Union to ensure that the fuel available in the country is BS-VI compliant. It is heartening to note that the Union, being concerned with the health of the citizens and also taking note of the urgent need for a clean environment, has taken steps to manufacture cleaner fuel. This fuel has already been made available in the National Capital Territory (NCT) of Delhi from 01.04.2018 and we have been informed that barring a few places, it shall be available in the entire NCR from 01.04.2019. It will probably be available in many parts of the country prior to 01.04.2020 and the entire country will shift to BS-VI fuel from 01.04.2020. Obviously, the manufacture of clean fuel is being done in a phased manner because all the refineries cannot simultaneously start manufacturing clean fuel. It is not as if on 01.04.2020 just by waving a magic wand the entire country will change to BS-VI compliant norms. If all the refineries and manufacturers by taking note of the requirement to bring in BS- VI fuel, have introduced such fuel from 2018 and are introducing it in a phased manner in the entire country by 31.03.2020, we see no reason why manufacturers of automobiles, two wheelers, three wheelers etc. cannot also do so.

12. We may note that whereas in this Court SIAM has been canvassing that the shift to BS-VI compliant vehicles is a long drawn out process requiring huge changes in technology, the very same manufacturers are selling and exporting BS-VI compliant vehicles to Europe and other countries. With regard to two wheelers it has been specifically urged that the technological changes are immense. To counter this argument the learned amicus curiae has drawn our attention to a Press Release issued by M/s. Hero MotoCorp., which is one of the largest motor manufacturers of two wheelers in the country. In this Press Release issued in July 2017 it has been stated that M/s. Hero MotoCorp. has begun developing BS-VI compliant models and it aims to introduce such products much before the timeline of 2020. The company has also stated that it will manufacture only BS-VI fuel compliant vehicles well before the date stipulated by the authorities. If one manufacturer can do this, we see no reason why other manufacturers of two wheelers cannot do so.

13. With regard to trucks and buses, from a news item published in the Financial Express dated 06.07.2018, it is apparent that Eicher is already manufacturing trucks and buses which are not only BS-VI compliant but BS-VI CNG compliant. Another manufacturer of heavy vehicles i.e. Ashok Leyland had, in August, 2018 through its subsidiary Optare obtained an order to manufacture the world's first electric double decker buses. The technology needed to manufacture such electric buses is much more advanced and difficult as compared to the technological changes required to manufacture petrol and diesel vehicles which are BS-VI compliant. Similarly, TVS Motors on 07.08.2018 has issued a press note that it will be manufacturing BS-VI compliant vehicles much ahead of the deadline of 2020. Many members of SIAM in the Auto Expo held in February, 2018 have exhibited vehicles which are technologically much more advanced than BS-VI compliant vehicles. These manufacturers have not only asserted that they can manufacture electric vehicles but also asserted that they are developing hydrogen cell fuel vehicles along with hybrid, electric and CNG vehicles.

14. We have mentioned these facts only to highlight that some of the manufacturers are not willing to comply with the 31.03.2020 deadline not because they do not have the technology but because the use of technology will lead to increase in the cost of the vehicles which may lead to reduction in sales of the vehicles and ultimately their profit. There can be no compromise with the health of the citizens and if one has to choose between health and wealth, keeping in view the expanded scope of Article 21 of the Constitution, health of the teeming millions of this country will have to take precedence over the greed of a few automobile manufacturers. The automobile manufacturers must behave responsibly. We expected that keeping in view our earlier order, they would have themselves volunteered to be BS-VI compliant by 31.03.2020. Unfortunately, this has not been the case with some of the manufacturers and they want to stretch on the timeline by a few days or months for no other reason but to make a little more money.

15. When we compare BS-VI fuel with BS-IV fuel, there is a massive improvement in environmental terms. Once BS-VI emission norms are enforced, there will be a 68% improvement in PM25. This is not a small change. It is a vast improvement and the faster it is brought, the better it is. The amicus curiae has strenuously urged that, at least, in the NCR of Delhi, the BS-VI norms be applied for sale of vehicles from 01.04.2019. We feel that it may not be practical to introduce BS-VI compliant vehicles region-wise or city-wise. In our view, the BS-IV experiment in this regard was not very successful. BS-VI compliant vehicles are going to be more expensive than BS-IV compliant vehicles. People have a tendency to buy cheaper vehicle(s) even from a neighbouring city. We also strongly feel that the problem of pollution is not limited to the NCR of Delhi but it is a problem which has engulfed the entire country especially the major cities. India has the dubious distinction of having 15 out of the 20 most polluted cities in the world. The pollution in Gwalior, Raipur & Allahabad is worse than Delhi. The situation is alarming and critical. It brooks no delay.

16. It is an established principle of law that the right to life, as envisaged under Article 21 of the Constitution of India includes the right to a decent environment . It includes within its ambit the right of a citizen to live in a clean environment . With regard to vehicular traffic, this Court has issued a number of directions to ensure a clean environment and reduce pollution . It has been held that the right to clean environment is a fundamental right . The right to live in an environment free from smoke and pollution follows from the “quality” of life which is an inherent part of Article 21 of the Constitution. The right to live with human dignity becomes illusory in the absence of a healthy environment . The right to life not only means leading a life with dignity but includes within its ambit the right to lead a healthy, robust life in a clean atmosphere free from pollution. Obviously, such rights are not absolute and have to co-exist with sustainable development. Therefore, if there is a conflict between health and wealth, obviously, health will have to be given precedence. When we are concerned with the health of not one citizen but the entire citizenry including the future citizens of the country, the larger public interest has to outweigh the much smaller pecuniary interest of the industry, in this case the automobile industry, especially when the entire wherewithal to introduce the cleaner technology exists.

17. It is therefore necessary to ensure that BS-VI compliance is uniform throughout the country so that even those areas of the country which fortunately have not suffered the ills of extreme pollution are safe in the future. The sale of automobiles and other vehicles is rising exponentially and the number of vehicles on the road is increasing day by day. Therefore, even a day's delay in enforcing BS-VI norms is going to harm the health of the people. We are dealing here with a situation where children and unborn children suffer from pollution and issues of inter-generational equity are involved. Do we as a society or as manufacturers of automobiles have a right to manufacture more polluting vehicles when we have the technology to manufacture less polluting vehicles? The answer is obviously a big NO. If we were to factor only economics even then it makes no economic sense to have more polluting vehicles on the roads. The effect of pollution on the environment and health is so huge that it cannot be compensated in the marginal extra profits that the manufacturers might make. The amount spent on countering the ills of pollution such as polluted air, damaged lungs and the cost of healthcare far outweigh the profits earned.

18. It was urged on behalf of the manufacturers that there are multiple sources of pollution and vehicles only contribute to 2% of the pollution. We are not in agreement with this submission because the Report of the Committee to which we have adverted hereinabove states that contribution of vehicles to ambient PM25 concentration during winter season is 25% and in the summer season it contributes 9%. Even if we were to accept the figures submitted by SIAM, we are of the view that no step is too small when it comes to fighting pollution. Small steps to reduce pollution when taken together will lead to large scale reduction in pollution which will result in much cleaner air, which eventually will result in a cleaner and better environment, healthier citizens and most importantly a healthier generation to come.

19. In view of the fact that these proceedings have been pending in court for a long time and also in view of the fact that it is because of orders of this Court that BS-IV and now BS-VI norms have been introduced from the dates which were not even thought of by the Government, we feel that we have to take suo moto notice of the Rules. At the outset, we may notice that sub-rule 21 of Rule 115 is very vague. It does not talk of sale of vehicles. It only mentions registration of vehicles and permits registration of vehicles conforming to BS-IV norms up to 30.06.2020 and in case of categories M & N, up to 30.09.2020. This rule, in our view, is violative of Article 21 of the Constitution in as much as it extends time for registration of vehicles beyond 31.03.2020 and must be accordingly read down. Any extension of time in introducing the new norms which is not absolutely necessary adversely impacts the health of the citizens and is, therefore, violative of Article 21 of the Constitution of India. This Rule goes against the spirit of all the orders passed earlier by this Court. In the month of March, 2017 we were dealing with a situation when BS-VI norms were to be made effective throughout the country with effect from 01.04.2020 and this Court had directed that non-BS-IV compliant vehicles shall not be registered on or after 01.04.2017. The situation in the present case is totally different. 31.03.2020 is almost 1 V2 years away. There is sufficient time for the manufacturers to change over to the new system and, therefore, we see no reason why they should be given a window of three or six months for sale of accumulated vehicles. Every vehicle sold after the cut-off date of 01.04.2020 is bound to cause more

pollution and, therefore, the manufacturers, in our considered view, cannot be permitted to sell any non-BS-VI compliant vehicle on or after 01.04.2020. On the one hand, the Government has been pro-active in spending huge amounts of money to move to the BS-VI technology, but on the other hand, the automobile industry is coming up with a variety of untenable excuses just to delay the introduction of BS- VI compliant vehicles by a few months. We, in our judgment dated 13.04.2017, had clearly held “when the health of millions of our countrymen is involved, notification relating to commercial activities ought not to be interpreted in a literal manner.” We have to give a purposive interpretation to notifications specially those dealing with public health issues and even more so, when health not only of the citizens at present but also the citizens in the future is involved. There is more than sufficient time for the manufacturers to manufacture BS-VI compliant vehicles. They already have the technology to do so. The automobile industry must show the will, responsibility and urgency in this regard.

20. The Government has developed a policy of phasing out polluting vehicles and discouraging the manufacture of polluting vehicles. This has been done in a gradual manner. Europe introduced Euro-IV fuel in the year 2009 and Euro-VI standards in 2015. We are already many years behind them. We cannot afford to fall back further even by a single day. The need of the hour is to move to a cleaner fuel as early as possible.

21. Therefore, in exercise of the power vested in this Court under Article 142 of the Constitution, we read down sub-rule 21 of Rule 115 and direct that sub-rule 21 of Rule 115 shall be interpreted and understood to read that no motor vehicle conforming to the emission standard Bharat Stage-IV shall be sold or registered in the entire country with effect from 01.04.2020.