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M. C. MEHTA

v.

UNION OF INDIA & ORS.

(I.A.No. 487/2017, I.A. No. 491/2017, I.A. No. 494/2017,
I.A. No. 489/2017, I.A. No. 495/2017)

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in

(Writ Petition(Civil) No.13029 of 1985)

APRIL 13, 2017

[MADAN B. LOKUR AND DEEPAK GUPTA, JJ.]

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Environment – Pollution– Air Pollution – National Auto Fuel Policy, 2003– Implementation of Bharat Stage norms for vehicular emissions gradually over a period of time in view of phenomenal rise in air pollution –Consequent prohibition on sale and registration of stock of vehicles not compliant with Bharat Stage-IV emission standards from 1st April, 2017 – Plea of interveners-manufacturers

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of such vehicles that they were permitted to manufacture such vehicles upto 31st March, 2017 and hence may be given reasonable time to dispose of such existing stock – Held: The implementation of National Auto Fuel Policy was gradual – The intent of the Government was clear that with progress in the implementation plan,

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the sale and registration of vehicles that were not Bharat Stage IV complaint would eventually be prohibited with the cut-off date being 1st April, 2017 – The determination to switch over from Bharat Stage III compliant vehicles to Bharat Stage IV compliant vehicles was more than evident – Thus, in view of the history of the last decade

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leading to the introduction of Bharat Stage norms and their implementation in a phased manner, the automobile industry had, at the very minimum, a five-year warning to consider issues relating to air pollution as a part of its manufacturing activities and revisit its production strategy – But it did not do so – None of the explanations given by interveners-manufacturers justify the failure

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of automobile industry to increase the production of Bharat Stage IV compliant vehicles, in spite of sufficient notice of a switch-over – Admittedly, use of Bharat Stage IV auto fuel reduces particulate matter in air by 80% as compared to Bharat Stage III auto fuel – The health of millions of country men and women is important and cannot be compromised for the commercial interests of the automobile

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industry – Art. 21 entitles them to breathe fresh air or at least less polluted air – Intervention applications by manufacturers, rejected – Constitution of India – Art.21. A

Interpretation of Statutes– Literal interpretation vis-a-vis purposive interpretation – When – Plea of manufacturers/interveners that various notifications issued from time to time should be interpreted only in a literal manner allowing them to manufacture Bharat Stage III compliant vehicles till 31st March, 2017 and therefore, it is unreasonable to expect them to clear the stock of such vehicles on or before 31st March, 2017 – Held: When the health of millions of people in the country is involved, notifications relating to commercial activities ought not to be interpreted in a literal manner – A purposive interpretation needs to be given to notifications that directly concern public health issues having an impact not only in the present but also in the future. B C

Dismissing the I.As. filed by manufacturers/interveners, the Court D

HELD: 1.1 The National Auto Fuel Policy, 2003 was announced by the Government of India taking into account, *inter alia*, the rapid growth in the automobile industry and the increasing number of vehicular population which had become “one of the major causes in the phenomenal rise of air pollution in India.” It was noted that air pollution is caused by several factors but the dramatic rise in vehicular emissions has compounded the problem. [Para 38] [699-F] E

1.2 It is clear that the Government was quite determined to introduce Bharat S-IV emission norms in respect of all vehicles manufactured on and from 1st April, 2017 onwards. The implementation of this policy was gradual, starting with the NCR Region and ten mega cities and this was extended from time to time to other cities. The intent was made clear that with the progress in the implementation plan there would be an increase in the number of cities where the sale and registration of vehicles that are not BS-IV compliant would be prohibited with the cut-off date being 1st April, 2017. This was coupled with the mandate to manufacturers of two and three wheeler vehicles that they could manufacture new models of vehicles on and after 1st April, 2016 only if they comply with BS-IV emission norms. The determination to switch over from BS-III compliant vehicles to BS-IV compliant F G H

A vehicles was more than evident. To avoid any inconvenience, the Government was quite clear that Bharat Stage IV auto fuel would also be made available throughout the country. [Paras 17, 18] [694-F-H; 695-A-B]

B 1.3 Implicit in this nation-wide exercise was the possibility of the unexpected, that is, unsold stock of BS-III compliant vehicles or the non-availability of BS-IV auto fuel. It is in this context that the Government gave clarifications in 2005 and 2010 and suggested in March 2015 employing a rather amorphous phrase, that the sale and registration of non-compliant vehicles would be permitted till the 'accumulated stock' is exhausted.

C However, this was not and could not reasonably be intended to permit the interveners to continue manufacturing non-compliant vehicles and then depend on grace for the disposal of accumulated stock. Plan A was to switch over to BS-IV compliant vehicles and Plan B was to take care of unforeseen and emergent situations – it is not that the Government gave up implementation of Plan A. [Para 19] [695-C-D]

D 1.4 The interveners had completely ignored the history of the last decade or so which led to the introduction of Bharat Stage norms and their implementation in a phased manner. [Para 38] [699-E]

E 1.5 The automobile industry had, at the very minimum, a five-year warning that it would have to consider issues relating to air pollution as part of its manufacturing activities and production strategy and thereafter the industry had more than five years to plan out its activities and revisit the strategy, but did not do so. On the contrary the automobile industry gave a variety of excuses for not making adjustments for the benefit of the people of the country. [Paras 44, 45] [701-F-G]

F 1.6 None of the explanations given justify the failure of the automobile industry to increase the production of BS-IV compliant vehicles, in spite of sufficient notice of a switch-over and reduce the production of BS-III compliant vehicles. The attempt, sadly, seems to have been to push all concerned to the wall by putting before them a *fait accompli* situation and by ignoring the concerns of millions of our country men and women who are entitled to breathe fresh air or at least breathe less polluted air. [Para 45] [702-B-C]

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1.7 When the health of millions of people in our country is involved, notifications relating to commercial activities ought not to be interpreted in a literal manner. The only option in such eventualities is to give a purposive interpretation to notifications that directly concern public health issues which have an impact not only in the present but also in the future. The health of every person in our country is important and cannot be compromised, even in the smallest measure, for the commercial interests of the automobile industry or of any industry for that matter. [Paras 46, 47] [702-E, G]

1.8 The entire issue must be looked at as a matter of public health and as a matter of public concern. It is a matter of common knowledge that polluted air can lead to a variety of health problems and this is evident from a casual visit to the website of the CPCB and the World Health Organization. Admittedly, the use of BS-IV auto fuel reduces particulate matter in the air by 80% as compared to BS-III auto fuel. [Para 50] [703-E-F]

1.9 Additionally, if the entire scheme laid out by the Government- of discouraging the manufacture of polluting vehicles and gradually phasing them out coupled with their gradual replacement with fuel efficient vehicles, availability of cleaner and greener fuel and compliance with fuel emission norms is appreciated in a much larger context rather than on a notification by notification basis – the objective behind the scheme would be apparent. The Government could very well have issued one single notification way back in 2010 that with effect from 1st April, 2017 the manufacture, sale and registration of vehicles that do not comply with BS-IV emission norms would be prohibited. It did not do so to enable all concerned, particularly the auto industry and marketing strategists to gradually manage their affairs rather than subject them to a sudden future shock. The scheme of a gradual phase-out is now sought to be perverted through a literal interpretation of each notification, unfortunately, for a commercial benefit rather than being appreciated in a larger canvas for the benefit of society as a whole. [Para 52] [704-B-D]

CIVIL ORIGINAL JURISDICTION: I. A. No. 487/2017, I. A. No. 491/2017, I. A. No. 494/2017, I. A. No. 489/2017 and I. A. No. 495/2017 in Writ Petition (Civil) No. 13029/1985

A Under Article 32 of the Constituion of India.

Ranjit Kumar, SG, Harish N. Salve, Sr. Adv.(AC), Siddhartha Chowdhury, A.D.N. Rao, Ms. Aparajita Singh, (ACs), S. Wasim A. Qadri, Zaid Ali, G.S. Makkar, Kaushik Poddar, Gautam Singh, Ms. Snehil Sonam Singh, Ms. Isha Singh, Tarun Gulati, Neil Hildreth, Rahul Jain, Kishore Kunal, Ankur Talwar, Anupam Mishra, Ms. Aswathi Balraj, Ms. Hitakshi Mittal, Abeer Kumar, Ms. Nandini Gidwaney, Sachin Pujari, R.V. Prabhat, Hrishikesh Chitale, Ashish Verma, Chandra Prakash, Sandeep Naryan, Mrs. Nandini Gore, Ms. Tahira Karanjawala, Ms. Natasha Sehrawat, Ms. Khushboo Bari, Mrs. Manik Karanjawala, Sidharth Sharma, Sandeep Narain, Avishkar Singhvi (for M/s. S. Narain & Co.), Vijay Panjwani, Sandeep Narain (for M/s. S. Narain & Co.) Vijay K. Sondhi, Sujeeta Srivastava, Cauveri Birbal, Arnav Sanyal, Advs. for the appearing parties

Petitioner-in-person.

The Judgment of the Court was delivered by

D **MADAN B. LOKUR, J. 1.** We had heard I.A. No. 494 of 2017 along with other I.As and had passed an order on 29th March, 2017. The operative portion of the order is as follows:

“Accordingly, for detailed reasons that will follow, we direct that:

E (a) On and from 1st April, 2017 such vehicles that are not BS-IV compliant shall not be sold in India by any manufacturer or dealer, that is to say that such vehicles whether two wheeler, three wheeler, four wheeler or commercial vehicles will not be sold in India by any manufacturer or dealer on and from 1st April, 2017.

F (b) All the vehicle registering authorities under the Motor Vehicles Act, 1988 are prohibited for registering such vehicles on and from 1st April, 2017 that do not meet BS-IV emission standards, except on proof that such a vehicle has already been sold on or before 31st March, 2017.”

2. We now give our reasons for the above order.

G **Recent history**

H 3. Sometime in 2003 the National Auto Fuel Policy was announced by the Government of India for the implementation of Bharat Stage norms for vehicular emissions. This Policy was based on the recommendations of the Mashelkar Committee constituted in 2001. It is not necessary to detail the Policy except to say that it provides a road

map for achieving vehicular emission norms over a period of time and the corresponding fuel quality upgradation requirements. A road map for vehicular emission norms for new vehicles was drawn up and those cities facing serious pollution levels were brought under a separate road map for quicker adoption of emission norms. A

4. In the process of implementing the Bharat Stage vehicular emission norms, or the BS norms for short, a few communications were issued concerning the registration of motor vehicles. Our attention was first drawn to a communication dated 23rd March, 2005 issued by the Ministry of Shipping, Road Transport and Highways of the Government of India which related to the registration of motor vehicles from 1st April, 2005. This was in the context of the introduction of BS-III compliant vehicles in the cities of Delhi, Ahmedabad, Bangalore, Mumbai, Pune and Kolkata. The communication clarified that only BS-III compliant vehicles manufactured on or after 1st April, 2005 could be registered in these cities. However, BS-I and BS-II compliant vehicles could be registered in the rest of the areas of the States and also in these cities for some time till the accumulated stock is exhausted. B
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5. The relevant extract of the communication dated 23rd March, 2005 stated as follows:

“It is clarified that the gazette notifications in this regard clearly mention that these norms shall be applicable to only vehicles manufactured on or after 1st April, 2005. Bharat Stage II and Bharat Stage I compliant vehicles manufactured prior to this date would, therefore, be eligible for registration in the above named cities and rest of the areas of the States respectively for sometime after 1st April, 2005 till the accumulated stock is exhausted.” E

6. If we examine the text, it is not very clear how long after 1st April, 2005 would the registration of BS-I and BS-II compliant vehicles be permitted except that it would be till the accumulated stock is exhausted, that is for an indefinite period. Nothing of value can be derived from this communication but it is referred to only since learned counsel for the manufacturers and dealers of motor vehicles (for short the interveners) suggested that notifications that amend the Central Motor Vehicles Rules, 1989 and communications issued in the context of BS-IV compliant vehicles, which are the subject matter of the present discussion, should be similarly interpreted while learned *Amicus* submitted that we should look to the purpose of the National Auto Fuel Policy as also the overall objective in introducing Bharat Stage emission norms. F
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A 7. A second communication brought to our notice was issued by
the Ministry of Road Transport and Highways of the Government of
India on 5th April 2010 relating to the registration of four wheeled vehicles
with effect from 1st April, 2010. This communication is somewhat similar
to the earlier communication of 23rd March, 2005 and drew attention to
a notification dated 9th February, 2009 amending the Central Motor
B Vehicles Rules, 1989 (hereinafter referred to as "the Rules"). The
notification laid down the Mass Emission Standards (BS-III) for two
wheeler vehicles and three wheeler vehicles manufactured on and from
1st April, 2010. It also laid down the Mass Emission Standards (BS-
IV) for M and N category four-wheeled vehicles manufactured on or
C after 1st April, 2010. The notification required that BS-III emission norms
would be applicable to all vehicles manufactured on or after 1st April,
2010. However, BS-IV emission norms would be applicable in the
National Capital Region and ten other mega cities, that is, Mumbai,
Kolkata, Chennai, Ahmedabad, Bangalore, Hyderabad including
D Secunderabad, Kanpur, Pune, Surat and Agra in respect of four-wheeled
vehicles manufactured on or after 1st April, 2010 except four wheeler
transport vehicles plying on Inter State Permits, National Permits or All
India Tourist Permits.

E 8. The communication dated 5th April, 2010 clarified that BS-III
compliant vehicles could be registered in the abovementioned Region
and cities even after 1st April, 2010 till the accumulated stock is
exhausted. To get over the uncertainty of determining the accumulated
stock, the Principal Secretaries (Transport) and Transport Commissioners
of the concerned States were expected to get details of BS-III compliant
vehicles in the accumulated stock from the concerned dealers and
F manufacturers. In any event, the period for registration of such vehicles
was again left indeterminate and only the accumulated stock was identified
or quantified.

G 9. In this background, a further amendment was carried out to
sub-rule (15) of Rule 115 of the Rules on 21st May, 2010 by adding a
proviso to the effect that BS-IV emission norms would be applicable in
the cities of Sholapur and Lucknow in respect of four wheeler vehicles
manufactured on or after 1st June, 2010 except four wheeler transport
vehicles plying on Inter-State Permits or National Permits or All India
Tourist Permits within the jurisdiction of the said cities. Yet another
amendment was carried out on 16th July, 2014 adding a proviso to sub-
H rule (15) of Rule 115 of the Rules to the effect that BS-IV emission

norms were made applicable to several other cities in respect of four-wheeled vehicles manufactured on or after 1st October, 2014 except four-wheeled transport vehicles plying on Inter-State Permits or National Permits or All India Tourist Permits within the jurisdiction of those cities.

10. A similar amendment was carried out on 14th July, 2015 including some other cities where BS-IV emission norms would be applicable in respect of four wheeler vehicles manufactured on or after 15th July, 2015 and finally an amendment was carried on 19th August, 2015 in respect of several other cities in respect of four-wheeled vehicles manufactured on or after 1st October, 2015 and 1st April, 2016. Eventually, by an amendment carried out on 19th August, 2015 it was mandated that BS-IV norms would come into force all over the country in respect of four-wheeled vehicles manufactured on or after 1st April, 2017.

Two and three wheeler vehicles

11. The application of BS-IV norms in respect of two wheeler and three wheeler vehicles was somewhat different. As mentioned above, BS-III emission norms were made applicable to two and three wheeler vehicles on and from 1st April, 2010.

12. Thereafter sub-rule (16) was inserted in Rule 115 of the Rules on 4th July, 2014 to the effect that new models of two wheeler vehicles manufactured on and after 1st April, 2016 shall comply with BS-IV emission norms and existing models of two wheeler vehicles would comply with BS-IV emission norms from 1st April, 2017.

13. In respect of three wheeler vehicles, sub-rule (17) was inserted in Rule 115 of the Rules on 12th June, 2015 to the effect that BS-IV standards would be applicable to new models of three wheelers manufactured on or after 1st April, 2016 and for existing models of three wheelers manufactured on or after 1st April, 2017.

View of the Government

14. It seems that there still remained some confusion with regard to the interpretation of the various notifications relating to the registration of vehicles conforming to BS-III emission norms. This confusion partly arose from a response submitted by the Environment Protection Control Authority (for short EPCA) constituted by a notification issued under the provisions of the Environment (Protection) Act, 1986. To clear the air, so to say, the Ministry of Petroleum & Natural Gas filed an affidavit

- A in I.A. No.345 of 2014 on or about 27th March, 2015 to place on record certain additional documents on behalf of the Ministry of Environment, Forests and Climate Change. One of the additional documents was the comments of the Ministry of Petroleum and Natural Gas in response to issues raised by EPCA. It was stated therein that the Government has fully implemented the recommendations of the Auto Fuel Policy, 2003.
- B In fact it has decided to go beyond the recommendations made therein on a voluntary basis by extending BS-IV auto fuel to 50 more cities by March 2015 with preference to most polluted cities, State capitals and cities with million plus population subject to logistical constraints. It was further stated that out of these 50 cities, BS-IV auto fuel has already
- C commenced supply to 26 cities and the remaining 24 cities would be covered by 15th March, 2017.

15. It was clear therefore that as far back as in March, 2015 the Government was prepared to walk the extra mile in ensuring that BS-IV auto fuel is readily available at least in the mega cities.

- D 16. Earlier, an office memorandum was issued by the Ministry of Road Transport and Highways on 3rd March, 2015 (apparently in response to the issues raised by EPCA) wherein it was stated that though the intent is to have only BS-IV compliant vehicles manufactured after 1st April, 2017 but the inventory of old vehicles manufactured by 31st March, 2017 would need to be 'protected' and registered. It was clarified
- E that there is no bar on the sale or registration of vehicles produced prior to the above time lines and that this was the procedure followed when the country migrated to BS-II and BS-III emission norms in 2001 and 2005.

The perspective

- F 17. To place the matter in perspective, it is clear that the Government was quite determined to introduce BS-IV emission norms in respect of all vehicles manufactured on and from 1st April, 2017 onwards. The implementation of this policy was gradual, starting with the NCR Region and ten mega cities and this was extended from time to time to other cities. The intent was made clear that with the progress in
- G the implementation plan there would be an increase in the number of cities where the sale and registration of vehicles that are not BS-IV compliant would be prohibited. This was as broad a hint as any that the sale and registration of vehicles that were not BS-IV compliant would be eventually prohibited with the cut-off date being 1st April, 2017. This

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was coupled with the mandate to manufacturers of two and three wheeler vehicles that they could manufacture new models of vehicles on and after 1st April, 2016 only if they comply with BS-IV emission norms. The determination to switch over from BS-III compliant vehicles to BS-IV compliant vehicles was more than evident. A

18. To avoid any inconvenience to anybody, the Government was quite clear that BS-IV auto fuel would also be made available throughout the country. B

19. Implicit in this nation-wide exercise was the possibility of the unexpected, that is, unsold stock of BS-III compliant vehicles or the non-availability of BS-IV auto fuel. It is in this context that the Government gave clarifications in 2005 and 2010 and suggested in March 2015 employing a rather amorphous phrase, that the sale and registration of non-compliant vehicles would be permitted till the 'accumulated stock' is exhausted. However, this was not and could not reasonably be intended to permit the interveners to continue manufacturing non-compliant vehicles and then depend on grace for the disposal of accumulated stock. Plan A was to switch over to BS-IV compliant vehicles and Plan B was to take care of unforeseen and emergent situations – it is not that the Government gave up implementation of Plan A. C D

20. This is more than clear from the fact that when this writ petition was taken up for consideration on 5th January, 2016, it was submitted by the learned Solicitor General that BS-IV fuel would be available by 1st April, 2017 all over the country. This submission is recorded in *M.C. Mehta v. Union of India*.¹ E

Recommendation to Parliament

21. In the meanwhile, the Standing Committee of Parliament on Petroleum & Natural Gas also expressed concern over the phenomenal rise of air pollution and made some recommendations. We are mentioning this only in the limited context of indicating the concern of the Executive earlier expressed and now the Legislature also over issues of air pollution. F

22. The Standing Committee submitted its Fifth Report to the Lok Sabha Secretariat. This was presented to the Lok Sabha on 7th May, 2015 and was laid in the Rajya Sabha on the same date. In the introductory paragraphs, it is stated by the Standing Committee as follows: G

¹ (2016) 4 SCC 269 para 36.

A “Greenhouse gases induced global warming and subsequent
climate change are some of the perils threatening the survival of
present day generation. The process of industrialization and
development has caused innumerable changes in global climate.
B These climatic changes, which have occurred principally through
the burning of fossil fuels such as gasoline and diesel in the
transportation sector and automobile industry have led to an
increase in the concentration of green house gases such as Carbon
Dioxide, Methane, Nitrous Oxide and Hydro Flouro Carbons in
the atmosphere, thus disrupting the ecological and social systems
across the globe.

C 1.2 The rapid growth in automobile industry and the increasing
number of vehicular population have become one of the major
causes in the phenomenal rise of air pollution in India. Though air
pollution is caused by several factors, the dramatic rise in the
vehicular emissions has compounded the problem.”

D 23. In the first recommendation made by the Standing Committee
in its Report, it was noted that the Auto Fuel Policy of 2003 and the
Expert Committee Report on Auto Fuel Vision & Policy, 2025 (chaired
by Shri Saumitra Chaudhury, the then Member of the Planning
Commission) are vital public policy instruments at the disposal of the
Government to address growing vehicular pollution in the country. The
E Committee therefore recommended that the concerned Ministry should
chalk out an action plan for the implementation of the Expert Committee
recommendations as per the time line suggested or wherever possible
earlier and adhere to the policy in letter and spirit.

F 24. The recommendation was made in the context of the Standing
Committee having noted that the Expert Committee had recommended
a detailed road map for auto fuel quality till 2025 for the country. The
Standing Committee appreciated the comprehensive coverage of various
issues by the Expert Committee in its Report such as fuel quality, demand
and supply of fuel, infrastructure and logistics of fuel quality related
projects, promotion of alternate fuels, vehicular technologies, emission
G norms, health issues, ambient air quality, reduction of pollution from in-
use vehicles and fiscal measures for funding requisite up-gradation of oil
refineries.

H 25. At this stage we must record that the learned Solicitor General
stated before us that the Central Government through its refineries had
incurred an expenditure of about Rs. 30,000 crores to make available

BS-IV auto fuel from 1st April, 2017 all over the country. This was a reaffirmation, confirmation and reiteration of the submission made on 5th January, 2016 that BS-IV fuel would be available by 1st April, 2017 all over the country. In other words, we take it that the Government was and is pro-actively supporting the reduction of vehicular pollution by controlling the emission norms and complying with the Bharat Stage standards keeping in view the auto fuel policy and the Report of the Expert Committee referred to by the Parliamentary Standing Committee.

Proximate developments

26. To revert to the narration of facts, it may be stated that more than a year after the 5th January, 2016 submission, EPCA held a meeting with various stakeholders on 19th October, 2016 for reducing vehicular emission norms. The minutes of that meeting record that the Ministry of Surface Transport and Highways as well as the Ministry of Petroleum and Industrial Gas intimated that BS-IV standards had been notified and introduced in key cities in 2010. *Ergo*, the country was well prepared for a nation-wide roll out of BS-IV auto fuel.

27. In the meeting, the representatives of the Society of Indian Automobile Manufacturers (SIAM) assured that the automobile industry will not manufacture any vehicle on and from 1st April, 2017 which did not meet BS-IV emission norms. Keeping this in mind and the progression over the last more than a decade to control emission norms, EPCA clarified that there would be no sale or registration of non-BS-IV compliant vehicles from 1st April, 2017 and that this should be communicated to all manufacturers so that they have sufficient notice of about six months to plan their production and sales. In response, the representatives of SIAM expressed the view that it would be difficult for the automobile manufacturers to ensure compliance. EPCA however insisted that all manufacturers should ensure that the BS-III compliant stock of vehicles is exhausted before 1st April, 2017 since BS-IV compliant vehicles reduce pollution by about 80% in particulate matter as compared to BS-III compliant vehicles.

28. On 1st December, 2016 SIAM wrote to the Central Pollution Control Board (CPCB) confirming that only BS-IV compliant vehicles would be manufactured from 1st April, 2017. However, it was submitted that EPCA's direction that there should be no sale or registration of BS-III compliant vehicles from 1st April, 2017 is at variance with the notifications issued by the Government of India. It was also mentioned in the communication that the sale of BS-III compliant vehicles would

A depend on market forces and that it is beyond the control of vehicle manufacturers to ensure that the entire stock of BS-III compliant vehicles is exhausted by 1st April, 2017.

B 29. This communication was responded to by the CPCB on 10th December, 2016 indicating that EPCA had called the meeting on 19th October, 2016 only to ensure that stock of BS-III compliant vehicles are exhausted before 1st April, 2017 for the reasons mentioned in the minutes of that meeting. It was reiterated that BS-IV auto fuel would be available all over the country from 1st April, 2017.

C 30. Thereafter, there were communications exchanged between EPCA and CPCB and SIAM wherein it was reiterated that the stock of BS-III compliant vehicles should be exhausted by 31st March, 2017 while SIAM stated that it would not be possible to exhaust that stock.

D 31. In this background, one of the members of SIAM, that is, Bajaj Auto Limited filed I.A. No. 487 of 2017 wherein it is prayed that an order may be passed by this Court directing the Union of India and/or EPCA to issue a communication to all vehicle manufacturers that on or after 1st April, 2017 vehicles that are not BS-IV compliant would not be manufactured, sold or registered across the country.

E 32. Notice was issued in the above application on 20th March, 2017 which led to a spate of intervention applications by some of the automobile manufactures, by SIAM and by an association of dealers of automobile vehicles. Learned *Amicus* also filed an independent application being I.A. No. 494 of 2017 wherein it was prayed that on and from 1st April, 2017 only such vehicles that comply with BS-IV standards shall be manufactured, sold and registered across the country.

F 33. As mentioned above, we heard all the learned counsel and passed the order extracted above on 29th March, 2017.

The issue

G 34. A perusal of the facts leading up to presentation of the IAs before us leads us to the simple question whether the accumulated stock of BS-III compliant vehicles manufactured on or before 31st March, 2017 could be sold and registered after 1st April, 2017.

H 35. It appeared to us that if someone was to make a *bona fide* purchase of a BS-III compliant vehicle on or immediately before 31st March, 2017 it might not be possible for that individual to have the vehicle registered before the cut-off date. Therefore, we felt it reasonable to

permit the registration of BS-III compliant vehicles purchased on proof on or before 31st March, 2017 from 1st April, 2017 and have ordered accordingly. A

36. Accordingly, the issue that remains for consideration is whether the stock of BS-III compliant vehicles manufactured on or before 31st March, 2017 can be sold from 1st April, 2017 onwards. B

Submissions and discussion

37. The primary contention of learned counsel for the interveners manufacturing and dealing in BS-III compliant vehicles is that in terms of the notifications issued from time to time, the manufacture of BS-III compliant vehicles was permitted up to 31st March, 2017 except new models of two wheeler and three wheeler vehicles. Consequently, the interveners were entitled to carry out such manufacturing activities and in doing so they had not violated any prohibition or any law. Therefore, it would be unreasonable to expect them to clear the stock of BS-III compliant vehicles on or before 31st March, 2017 or to prohibit the sale of such stock on and from 1st April, 2017. In this context it was submitted that it was erroneous for the learned *Amicus* to suggest that the 'manufacture' of BS-III compliant vehicles till 31st March, 2017 should be read in a manner which would result in a prohibition on and from 1st April, 2017 on the sale and registration of such vehicles or to prejudicially affect the commercial interest of the interveners. C D E

38. In our opinion, the interveners have completely ignored the history of the last a decade or so which led to the introduction of Bharat Stage norms and their implementation in a phased manner. The Auto Fuel Policy was announced by the Government of India, as mentioned by the Parliamentary Standing Committee, taking into account, *inter alia*, the rapid growth in the automobile industry and the increasing number of vehicular population which had become "one of the major causes in the phenomenal rise of air pollution in India." The Standing Committee noted that air pollution is caused by several factors but the dramatic rise in vehicular emissions has compounded the problem. F

39. It is quite evident therefore that given the recent history and unfolding of events, it was incumbent upon the automobile industry to modulate its views and give secondary importance to commercial profits and take pro-active steps to reduce vehicular pollution. It seems that the automobile industry was quite sanguine that its desire for selling accumulated stock of BS-III compliant vehicles even after 1st April, H

- A 2017 would be acceded to. This is evident from the past practice when it had become necessary, in one sense, for the Government of India to virtually submit to the commercial interests of the automobile industry by permitting the registration of BS-III compliant vehicles in some cities while permitting the sale and registration of BS-I and BS-II compliant vehicles in other cities even after the cut-off date of 1st April, 2005 till the accumulated stock is exhausted.

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C 40. Five years later the Government of India had again to submit to the commercial interests of the automobile industry when it was required to issue a communication on 5th April, 2010 permitting the registration and therefore the sale of BS-III compliant vehicles even after 1st April, 2010 till the accumulated stock is exhausted.

- D 41. No one knows, nor were we told how long these accumulated stock were expected to last or actually lasted. But the fact of the matter is that we would have expected the automobile industry to have shown some responsibility and taken a positive approach to reduce vehicular pollution and ensure that non-conforming vehicles are not manufactured so that air pollution in the country does not continue unabated and to take measures to curtail the phenomenal rise in air pollution recognized by the Parliamentary Standing Committee.

- E 42. Some responsible manufacturers, especially Maruti Suzuki being the market leader in four wheeler vehicles, did take the necessary 'down to business' approach and we were told that it had switched over to manufacturing BS-IV compliant vehicles quite a few years ago. Other manufacturers of four wheeler vehicles also took similar steps, but somewhat tentatively.

- F 43. Notwithstanding this, several members of SIAM continued rather unfortunately to take it easy and (as the figures filed before us by SIAM suggest) though there was a decrease in the production of BS-III compliant vehicles between January, 2016 and December, 2016 that is for the entire calendar year, unfortunately, there was only a marginal increase for the corresponding period in the manufacture of BS-IV compliant vehicles. However, there was a sudden spurt of manufacturing BS-IV compliant vehicles in February, 2017 and a decline in the manufacture of BS-III compliant vehicles except commercial vehicles – indicative of a lack of planning and perhaps real concern over a prolonged past period. The production figures of some of the major manufacturers are given below in the table:
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PRODUCTION OF VEHICLES
(as supplied by SIAM)

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Name of Company	January 2016 BS-III	December 2016 BS-III	February 2017 BS-III	January 2016 BS-IV	December 2016 BS-IV	February 2017 BS-IV
TWO WHEELERS						
Hero Motor Corp Ltd.	5,32,078	2,98,839	63,026	NIL	33,078	4,40,275
Honda Motorcycle & Scooters India Pvt. Ltd.	3,63,805	1,91,534	2,30,022	13,644	7,583	1,45,217
India Yamaha Motors	50,077	45,017	120	2,880	3,800	66,499
TVS Motor Company Ltd.	1,65,956	1,48,519	22,049	NIL	NIL	1,35,448
THREE WHEELERS						
Mahindra & Mahindra Ltd.	4,204	3,530	3060	NIL	NIL	52
Piaggio Vehicles Pvt. Ltd.	12,730	7,287	4,388	NIL	NIL	6,366
MEDIUM AND HEAVY TRUCKS, OTHER COMMERCIAL VEHICLES						
Ashok Leyland	10,935	9,402	11,528	642	1,661	1,998
Mahindra & Mahindra	12,001	8,708	11,287	2,600	4,605	6,096
Tata Motors	27,507	13,734	22,915	3,627	5,004	7,783

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44. The sum and substance of the discussion is that the automobile industry had, at the very minimum, a five-year warning that it would have to consider issues relating to air pollution as a part of its manufacturing activities and production strategy and thereafter the industry had more than five years to plan out its activities and revisit the strategy, but did not do so.

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45. On the contrary the automobile industry gave a variety of excuses for not making adjustments for the benefit of the people of the country. Similarly, efforts of the Government to regulate and reduce vehicular emissions were not given the support that they deserved, including taking advantage of time granted for phased introduction of BS-IV complaint vehicles as per the Government policy. It was submitted during the hearing that the sale of BS-III compliant vehicles would depend

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A on market forces; at one time it was submitted that demonetization (which took place in November, 2016) upset their plans; at another time it was submitted that some models are slow moving and therefore could not be sold and yet at another time it was submitted that weak market conditions did not make it possible for the industry to dispose of the existing BS-III compliant stock. None of these explanations justify the failure of the

B automobile industry to increase the production of BS-IV compliant vehicles, in spite of sufficient notice of a switch-over and reduce the production of BS-III compliant vehicles. The attempt, sadly, seems to have been to push all concerned to the wall by putting before them a *fait accompli* situation and by ignoring the concerns of millions of our country

C men and women who are entitled to breathe fresh air or at least breathe less polluted air. As is apparent from the figures relating to the production of BS-III and BS-IV compliant vehicles supplied to us, this activity and inactivity has been entirely for commercial benefits and to avoid the cost of upgrading available technology.

D **Literal versus purposive interpretation**

46. Learned counsel for the interveners sought to impress upon us that we should interpret the various notifications issued from time to time only in a literal manner. When the health of millions of people in our country is involved, notifications relating to commercial activities ought not to be interpreted in a literal manner. The only option in such

E eventualities is to give a purposive interpretation to notifications that directly concern public health issues which have an impact not only in the present but also in the future. We were informed that the life of vehicles is in the range of 10 and 15 years. While the development versus environment paradigm could be debated upon, there cannot be any debate

F in the development versus public health paradigm.

47. Our attention was also drawn to the fact that the existing stock of BS-III compliant vehicles is a miniscule percentage of the overall number of vehicles on the roads in the country and if that miniscule number is brought on the roads by way of sale, it would only result in a

G marginal increase in air pollution. With respect, this submission cannot be accepted. The health of every person in our country is important and we are more than reluctant to accept any submission that the health of the people can be compromised, even in the smallest measure, for the commercial interests of the automobile industry or of any industry for that matter. Additionally, given that the life of such vehicles would be at

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least 10 years (as submitted by the interveners) the concern is not only for the present population of the country but for future generations who also have an entitlement to breathe pollution free air. This is what sustainable development and inter-generational equity is all about. Do we really want to leave behind drastically polluted air to be breathed in this case at least for the next between 10 and 15 years?

48. We must also point out that it was brought to our notice by the learned Solicitor-General that the Government of India has expended, through its refineries, an amount of about Rs. 30,000 crores for implementing the Auto Fuel Policy along with the recommendations of the Expert Committee in making BS-IV quality fuel available positively by 1st April, 2017 in keeping with the stated objective of 'One country - One fuel' in the shortest possible time. Surely, such a huge investment from the tax payers earnings cannot be defeated only with a view to subserve the interest of the automobile industry which, as discussed by the Parliamentary Standing Committee, has become one of the major causes in the phenomenal rise of air pollution in India.

49. Given this background, it is not at all surprising that learned *Amicus* vehemently contended that the various notifications do not deserve to be given a literal meaning but a purposeful interpretation. What is the mischief sought to be remedied and how best is it possible to remedy that mischief? To recall what lyricist and singer Bob Dylan had to say – the answer is blowing in the wind.

50. Learned *Amicus* is right that the entire issue must be looked at in a particular context, as a matter of public health and as a matter of public concern. It is a matter of common knowledge that polluted air can lead to a variety of health problems and this is evident from a casual visit to the website of the CPCB and the World Health Organization. Admittedly, the use of BS-IV auto fuel reduces particulate matter in the air by 80% as compared to BS-III auto fuel. Under these circumstances, it cannot be said that learned *Amicus* erroneously seeks a prohibition on the sale and registration of BS-III compliant vehicles on and from 1st April, 2017.

51. It is worth noting that the WHO reported that as urban air quality declines, the risk of stroke, heart disease, lung cancer, and chronic and acute respiratory diseases, including asthma, increases.² Similarly, the CPCB says in its Annual Report 2014-15 that "Scientific studies

² http://www.who.int/phe/health_topics/outdoorair/databases/cities/en/ (Accessed on 5th April, 2017).

- A have indicated links between fine particulate matter and numerous health problems including bronchitis, acute and chronic respiratory symptoms such as shortness of breath and painful breathing.”³

52. Additionally, if the entire scheme laid out by the Government - of discouraging the manufacture of polluting vehicles and gradually phasing them out coupled with their gradual replacement with fuel efficient vehicles, availability of cleaner and greener fuel and compliance with fuel emission norms is appreciated in a much larger context rather than on a notification by notification basis – the objective behind the scheme would be apparent. The Government could very well have issued one single notification way back in 2010 that with effect from 1st April, 2017 the manufacture, sale and registration of vehicles that do not comply with BS-IV emission norms would be prohibited. It did not do so to enable all concerned, particularly the auto industry and marketing strategists to gradually manage their affairs rather than subject them to a sudden future shock. The scheme of a gradual phase-out is now sought to be perverted through a literal interpretation of each notification, unfortunately, for a commercial benefit rather than being appreciated in a larger canvas for the benefit of society as a whole.

53. There is no doubt, therefore, that the various notifications issued and the amendments made to the Rules must be read cumulatively in a purposive manner with the objective of enhancing or protecting further deterioration of the quality of the air we breathe from a continuing and continuous onslaught of pollutants.

Office memorandum of 3rd March, 2015

54. In was submitted by learned counsel for the interveners that inherent in the manufacture of BS-III compliant vehicles was their entitlement to sell such vehicles any time on or after 1st April, 2017 until the accumulated stock is exhausted. Given the experience of the past, they legitimately expected that they would be allowed to clear the accumulated stock. We questioned learned counsel for the interveners on the time required for disposal of the accumulated stock. No one gave any definite answer – the answers varied from about 5 and 6 months to one year and hedged in with conditions dependent upon market forces and slow moving models. Perhaps Siri would have given a more definite answer.

³ http://cpcb.nic.in/upload/AnnualReports/AnnualReport_55_Annual_Report_2014-15.pdf (Accessed on 5th April, 2017).

55. In this context, reference was made to the most recent office memorandum dated 3rd March, 2015 issued by the Ministry of Road Transport and Highways. It was submitted that the office memorandum made clear the intention of the various notifications, namely, to ensure the manufacture of only BS-IV compliant vehicles after 1st April, 2017 and at the same time ensure that BS-III compliant vehicles manufactured on or before 31st March, 2017 are protected and registered. This is clear from the statement in the office memorandum that there is no bar on vehicles produced prior to the above time lines, meaning thereby that BS-III compliant vehicles manufactured on or before 31st March, 2017 could be sold or registered keeping in view the past practice.

56. In our opinion, the only reasonable construction of the office memorandum (issued two years ago) would be that subject to the occurrence of some extraordinary or unforeseen event, should it become necessary to sell and register BS-III compliant vehicles on or after 1st April, 2017 limited exceptions on a case to case basis could be claimed and considered. The office memorandum cannot reasonably be interpreted as a *carte blanche* to the automobile industry to continue the manufacture of BS-III compliant vehicles till the very last day and then plead the necessity of clearing accumulated stock of BS-III vehicles. This would make a mockery of the efforts of all concerned in regulating vehicular emissions and virtually enabling the interveners to emasculate an important component of the right to life guaranteed by Article 21 of the Constitution, namely, the entitlement of millions of our country men and women to breathe less polluted air and ignore public health issues in conducting their business. We cannot be asked to shut our eyes to the phenomenal rise in pollution levels in the country.

Blaming EPCA

57. It was also contended by learned counsel for the interveners that the automobile industry (as indeed any other industry) needs stability, certainty and predictability in the regulatory regime. This is undoubtedly true but that stability, certainty and predictability was apparent from the time the National Auto Fuel Policy was announced in 2003. Rather than admit responsibility for a lack of concern of public health issues, some of the interveners have sought to blame EPCA for its failure to approach the Government of India to seek amendments to the notifications issued from time to time and to incorporate a prohibition on the sale and registration of BS-III compliant vehicles on or after 1st April, 2017.

- A Unfortunately, finger-pointing and blame games do not lead anyone anywhere and deserve to be discouraged.

58. In any event, the fact is that EPCA had convened a meeting of all stakeholders on 19th October, 2016 and had brought to the notice of the representatives of SIAM that there would be no sale and registration of BS-III compliant vehicles from 1st April, 2017 and that this should be communicated to all manufacturers. The clear intention of EPCA was to give sufficient notice of almost six months to enable the automobile industry to plan its production and sale and take pro-active steps to significantly decrease the production of BS-III compliant vehicles and correspondingly significantly increase the production of BS-IV compliant vehicles. Unfortunately, SIAM did not heed the caution but expressed the view that it would be difficult to ensure compliance. We were also told that EPCA had no jurisdiction or authority to give such a direction. However, that is not an issue of concern at the present moment.

59. EPCA also pointed out in the meeting that BS-IV compliant vehicles reduce pollution by 80% of particulate matter as compared to BS-III compliant vehicles, but even this had no effect.

60. The meeting convened by EPCA was followed up by the CPCB when it wrote to SIAM on 10th December, 2016 reiterating that BS-IV fuel would be available all over the country from 1st April, 2017 and that the automobile industry should ensure that the stock of BS-III compliant vehicles are exhausted before that date for reasons mentioned in the minutes of the meeting held on 19th October, 2016. Even this had no effect on SIAM. Therefore, to blame EPCA for their problems is rather unfair of the interveners.

61. However one may look at the issue of air pollution, it is time to realize that a collective effort is needed to clear up the air. In this process, the interveners have a huge role and they should now wake up to their responsibility for the benefit of all of us.

Conclusion

62. For the reasons given above, we allow I.A. No. 494 of 2017 filed by the learned *Amicus* and I.A. No. 487 of 2017 by Bajaj Auto Limited. The intervention applications and submissions made therein by the automobile industry and the dealers association are rejected.