

BHARAT PETROLEUM CORPORATION LTD.

v.

SUNIL BANSAL & ORS.

(Civil Appeal No. 6392 of 2009)

SEPTEMBER 18, 2009

**[DALVEER BHANDARI AND DR. MUKUNDKAM
SHARMA, JJ.]**

Central Motor Vehicles Rules, 1989 – r 115(14) (as inserted by notification no.GSR 686 (E) dated 20.10.2004) – Mass emission standard – BS-III for four wheeled vehicles – Four wheeled vehicles manufactured on and from 1.4.2005 permitted to ply in NCR and certain selected cities only if they have BS-III certificate – Vehicles plying on Inter-State Permits or on National Permits or All India Tourist Permits exempted – Petitioner inviting tenders for transportation of LPG Cylinders within NCR from Bahadurgarh to Badarpur Depot – Trucks to comply with BS-III emission norms if manufactured on or after 1.4.2005 and not to be more than 12 years old – Challenge to, by one of the intending bidders – High Court holding that bidder entitled to participate in the tender process – On appeal, held: High Court misread the notification which was issued to reduce vehicular pollution in a phased manner – Legislature could not have prohibited all vehicles plying in the city which did not have BS-III compliant as that would create total chaos – Vehicles manufactured prior to 1.4.2005 being permitted to ply does not discriminate against the prohibition of plying vehicles manufactured after 1.4.2005 which were not BS-III complaint as they fell in different classes – There is a clear nexus of classification with the objects sought to be achieved – Proviso to r.90(7) clarifies that vehicle registered in NCR, shall pick up or set down goods between two points situated in NCR only when it conforms to BS-III compliant – Environment law.

A The Central Government issued notification no.GSR
686 (E) dated 20.10.2004 whereby sub-rule (14) was
B inserted in rule 115 of the Central Motor Vehicles Rules,
1989. It prescribed mass emission standards-Bharat
C Stage-III called Euro-III for four wheeled vehicles. As per
the notification the four-wheeled transport vehicles
D manufactured on and from 1.4.2005, except in respect of
four wheeled vehicles plying on Inter-State Permits or on
the National Permits or All India Tourist Permits within the
E jurisdiction of the National Capital Region and certain
other selected cities, would be permitted to ply only if they
have Bharat Stage-III certificate. Appellant invited tenders
for transportation of LPG Cylinders within the National
Capital Region from Bahadurgarh to its Badarpur Depot
and therefrom to LPG distributors within Delhi. The
eligibility criteria was that the trucks should comply with
BS-III emission norms if manufactured on or after 1.4.2005
and truck should not be more than 12 years from the
month of floating of the Notice inviting tenders.
Respondent no.1 challenged the eligibility criteria. High
Court dismissed the writ petition. Respondent no.1 filed
another writ petition praying for directions to the
appellant to call and include his companies to participate
in the price bids. High Court allowed the same. Hence the
present appeal.

F Allowing the appeal, the Court

HELD: 1.1. The notifications by the Central
Government were issued in pursuance to the directions
of this Court to achieve the object of reducing pollution
G in the National Capital Region. As per the clear
interpretation of the notification, only those vehicles will
ply in National Capital Region which were manufactured
on or after 1.4.2005 and are complying with BS-III norms.
The vehicles manufactured prior to 1.4.2005 and

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complying with BS-I and BS-II norms but are not more than 15 years old can also ply. This notification was issued to reduce vehicular pollution in a phased manner. By one stroke, the legislature could not have prohibited all vehicles plying in the city which did not have BS-III compliant as that would have created total chaos, therefore, it was introduced in a phased manner as has been done in the impugned notification. [Para 23] [724-F-H; 725-A-B]

1.2. The High Court held that respondent no.1 is entitled to participate in the tender process initiated by the appellant, offering four wheeled vehicles manufactured on or after 1.4.2005 which are Euro-II/ Bharat Stage-II compliant and having national permits/ Inter-state permits. However, a perusal of the notification- GSR 686 (E) dated 20.10.2004 which was issued for the purpose of controlling pollution within the National Capital Region in phased manner, makes it quite clear that the vehicles manufactured prior to 1.4.2005 being permitted to ply does not anyway militate or discriminate against the prohibition of plying vehicles manufactured after 1.4.2005 which were not Bharat Stage-III compliant as they clearly fell in different classes. Further, the other notification GSR 37(E) dated 20.1.2009 which inter-alia inserts proviso to sub-rule (7) in Rule 90 clarifies that where such vehicle is registered in the National Capital Region, it shall not pick up or set down goods between two points situated in the National Capital Region unless it conforms to the mass emission standards (Bharat Stage-III). [Paras 24 and 25] [725-B-F]

1.3. The classification is essential in view of the fact that all vehicles could not have been prohibited from plying on road in one stroke. Therefore, there is a clear nexus of the classification with the objects sought to be achieved by the legislation. The rationale behind the said

A notification is to phase out the older vehicles automatically in due course and newer vehicles would necessarily have to comply with Bharat Stage-III norms in order to gradually increase the emission norms thereby curbing air pollution as per the directions issued by this Court in **M.C. Mehta's* case. The said classification in the notification intends to gradually improve the environment by providing a mechanism for a gradual induction of Bharat-III emission norms. In view of the same, if the submission of the respondent is accepted, the same would amount to negation of the direction of this Court in *M.C. Mehta's* case and would also frustrate the effect of the notifications dated 20.10.2004 and 20.1.2009. Further, in the absence of any challenge to the validity of the proviso to sub-rule (7) of Rule 90 inserted by Notification dated 20.1.2009, the said provision has to be held valid and must be given full effect. The view taken is the only possible and intended view which can be inferred from a reading of the amended provisions which is of clarificatory nature. The High Court misread and misconstrued the notification. Thus, the impugned judgment of the High Court is set aside. [Paras 26 and 27] [725-F-H; 726-A-E]

**M.C. Mehta v. Union of India and Ors.* 1998 (6) SCC 63; *Harakchand Ratanchand Banthia and Ors. etc. v. Union of India and Ors.* (1969) 2 SCC 166, referred to.

Case Law Reference:

	1998 (6) SCC 63	Referred to.	Para 3
G	(1969) 2 SCC 166	Referred to.	Para 17

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6392 of 2009.

From the Judgment & Order dated 29.10.2007 of the High

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Court of Delhi at New Delhi in Writ Petition (C) No. 5532 of 2007. A

Sudhir Chandra, Parijat Sinha, Reshmni Rea Sinha and Debapriya Samanta for the Appellant.

Sudhir Nandrajog, P.P. Malhotra, ASG (NP), Asha G. Nair D.S. Mahra, K.K. Mani, Ankit Swarup, Siddharth, Subramonium Prasad for the Respondents. B

The Judgment of the Court was delivered by

DALVEER BHANDARI, J. 1. Leave granted. C

2. The appellant Bharat Petroleum Corporation Limited has filed this appeal against the judgment of the High Court of Delhi passed in writ petition No.5532 of 2007 dated 29th October, 2007. D

3. It is imperative to evaluate the historical perspective in order to properly appreciate main issue involved in this case. The notification no.GSR 686 (E) dated 20th October, 2004 is in issue by which sub-rule (14) was inserted in Rule 115 of the Central Motor Vehicles Rules, 1989. This sub-rule prescribed the mass emission standards (Bharat Stage-III which is popularly called Euro-III)) for four wheeled vehicles. This notification was based on the judgment of this court in *M.C. Mehta v. Union of India & Others* (1998) 6 SCC 63. The relevant portion of the notification dated 20th October, 2004 reads as under:- E

“(1) These rules may be called the Central Motor Vehicles (Fourth Amendment) Rules, 2004. F

(2) They shall come into force- G

(a) in the National Capital Region and the cities of Mumbai, Kolkata, Chennai, Bangalore, Hyderabad including Secunderabad, Ahmedabad, Pune, Surat, H

A Kanpur and Agra in respect of four wheeled
vehicles manufactured on and from 1st April, 2005
except in respect of four wheeled transport vehicles
plying on Inter-State Permits or National Permits or
All India Tourist Permits within the jurisdiction of
B these cities; and

(b) In other areas of the country, from such date as may
be notified by the Central Government.

C *Explanation.*- In this sub-rule "National Capital Region"
shall have the same meaning as assigned to it in clause
(f) of section 2 of the National Capital Region Planning
Board Act, 1985 (2 of 1985)."

D 4. According to the appellant, the notification dated
20.10.2004 makes it abundantly clear that the four-wheeled
transport vehicles manufactured on and from 1.4.2005, except
in respect of four wheeled vehicles plying on Inter-State Permits
or on the National Permits or All India Tourist Permits within the
jurisdiction of the National Capital Region and certain other
E selected cities, would be permitted to ply only if they have
Bharat Stage- III certificate. In other words, it became mandatory
for all the vehicles manufactured after 31.3.2005 to obtain
Bharat Stage-III certificate.

F 5. In *M.C. Mehta (supra)*, this court realizing the urgency
and importance of protection and improvement of the
environment directed the authorities to take urgent steps to
tackle the acute problem of vehicular pollution in Delhi. The
court was distressed at the apathy of the State Administration
when according to the white Paper published by the
G Government of India, the vehicular pollution contributed 70% of
the air pollution as compared to 20% in 1970. In the said white
paper, a deadline of 1.4.1998 had been proposed for
implementation of major actions. No concrete steps were
taken. It may be pertinent to mention that the authority headed

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by Shri Bhure Lal proposed certain measures for immediate improvement of air quality and had given a time-frame but those important recommendations of the Committee were not implemented. The Bhure Lal Committee also proposed the following measures within the time-frame in its action-take report filed in this court:

		Time Frame	
A	Augmentation of public transport (stage carriage) to 10,000 buses.	1-4-2001	A
B	Elimination of leaded petrol from the NCT Delhi as proposed by the Authority and agreed to by the Ministry of Petroleum & Natural Gas.	1-9-1998	B
C	Supply of only premix petrol in all petrol-filling stations to two-stroke engine vehicles.	31-12-1998	C
D	Replacement of all pre-1990 autos and taxis with new vehicles on clean fuels.	31-3-2000	D
E	Financial incentives for replacement of all post-1990 autos and taxis with new vehicles on clean fuels.	31-3-2001	E
F	No 8-year-old buses to ply except on CNG or other clean fuels.	1-4-2000	F

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A	G	Entire city bus fleet (DTC & private) to be steadily converted to single-fuel mode on CNG.	31-3-2001
B	H	New ISBTs to be built at entry points in North and South-West to avoid pollution due to entry of inter-State buses.	31-3-2000
C	I	GAIL to expedite and expand from 9 to 80 CNG supply outlets.	31-3-2000
D	J	Two independent fuel-testing labs to be established.	1-6-1999
E	K	Automated inspection and maintenance facilities to be set up for commercial vehicles in the first phase.	Immediate
F	L	Comprehensive I/M programme to be started by the Transport Department and private sector.	31-3-2000
G	M	CPCB/DPCC to set up new stations and strengthen existing air-quality monitoring stations for critical pollutants.	1-4-2000

6. This court approved the directions given and the time-frame fixed by Shri Bhure Lal Committee. The court directed that the committee's recommendation shall be strictly adhered

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to by all the authorities who shall also take effective and adequate steps to tackle the problem of vehicular pollution. A

7. Pursuant to the directions of this court, the Central Government issued various notifications in this regard. On 1.6.1999, the Central Government issued a notification introducing Euro-I/Bharat Stage-I (BS-I) emission norms, pursuant to which vehicles manufactured after 1.6.1999 had to comply with BS-I norms. The Central Government on 31.1.2000 issued another notification introducing Euro-II/BS-II emission norms, pursuant to which vehicles manufactured after 1.3.2000 had to comply with BS-II norms. B C

8. The clear interpretation of the notification dated 20.10.2004 was that the vehicles manufactured after 1.4.2005 and complying with BS-III norms and the vehicles manufactured prior to 1.4.2005 complying with BS-I and BS-II norms but not more than 15 years old could ply within the National Capital Region. In the said notification, an exception has been provide in respect of four wheeled transport vehicles holding Inter-State Permits or National Permits or All India Tourist Permits but not complying with BS-III norms even though manufactured on or after 1.4.2005, which exception would apply only if such vehicles were plying on the Inter-State Routes beyond the National Capital Region. In other words, such vehicles could not ply within the National Capital Region and other cities mentioned in the notification. D E F

9. The appellant Bharat Petroleum Corporation Limited, in view of the legal position, on 30.3.2007, issued notice inviting tenders for transportation of Liquefied Petroleum Gas (LPG) Cylinders within the National Capital Region from its bottling plant at Piyala in Bahadurgarh to its Badarpur Depot and therefrom to the godowns of its LPG distributors within Delhi. Clauses 9.3 (a) and 9.3(b) of the special terms of contract of the Notice inviting tenders prescribed that the trucks offered for Delhi should comply with BS-III emission norms if manufactured on or after 1.4.2005 and the age of the truck should not be more G H

A than 12 years from the month of floating of the Notice inviting tenders as would appear from the "Registration Certificate Book" of the truck.

B 10. It may be pertinent to mention that respondent no.1 filed a writ petition No.2882 of 2007 in the High Court of Delhi challenging the eligibility criteria of the trucks to be offered by the bidders. The Delhi High Court on 10.5.2007 dismissed the said writ petition holding *inter alia* that respondent no.1 had not been able to make out a case for interference in the exercise of writ jurisdiction. It could not be said that the tender conditions as framed by the appellant Bharat Petroleum Corporation Limited are violative of the norms and notifications issued under the Central Motor Vehicles Rules or the directions of the Supreme Court. The decision to permit vehicles which are less than 15 years old, even if they do not conform to BS-II norms subject to the condition that no fresh registration of vehicles not conforming to Bharat Stage-II norms would be granted after 24.10.2001 and the vehicles registered after 1.4.2005 would conform to BS-III norms is intended to phase out old vehicles in a progressive manner while addressing the concern of adhering to the emission norms to control vehicular pollution.

F 11. Respondent no.1 on 27.7.2007 filed another writ petition no.5532 of 2007 praying *inter alia* for directions to the appellant Bharat Petroleum Corporation Limited to call and include the companies/firms owned by respondent no.1 and his brothers to participate in the price bids; for directions to the appellant Bharat Petroleum Corporation Limited not to exclude the companies/firms owned by respondent no.1 and his brothers from the price bids on the wrong assumption and interpretation of clause 9.3(b) of the standard terms & conditions of the notice inviting tenders.

H 12. The Central Government on 20.1.2009 issued a notification making the Central Motor Vehicles (First Amendment) Rules, 2009 for amendment of the Central Motor

Vehicle Rules, 1989. In the Amendment Rules of 2009, a proviso was added to sub-rule (7) of Rule 90 of the Central Motor Vehicles Rules, 1989. The said proviso provides that where 'such' vehicle is registered in the National Capital Region, it shall not pick-up or set down goods between two points situated in the National Capital Region unless it conforms to the mass emission standards (BS-III) specified in sub-rule (14) of Rule 115.

13. According to the interpretation of the notification dated 20.10.2004, the Delhi High Court found that "it is clear that a vehicle compliant with Bharat Stage-III norms possessing a National or Inter-State Permit may ply in the National Capital Region or Delhi, more so when vehicles older and less efficient and manufactured prior to that date are permitted to ply on the Delhi roads." The court further held that the "interpretation" sought to be given by respondent no.1 to the relevant Rules would also lead to absurd results, if implemented. The result would be that while respondent no.1 would entertain the bids in respect of goods carriage which are not even Bharat Stage-I compliant or are Bharat Stage-I and II compliant and are manufactured before 1.4.2005, it would not entertain bids in respect of goods carriage which are relatively new and are manufactured after 1.4.2005 and are also Euro-II/Bharat Stage-II compliant

14. According to the appellant, the High Court has misconstrued and misread the notification dated 20.10.2004 which was made expressly for the purpose of controlling pollution within the National Capital Region in stages. The fact of older vehicles manufactured prior to 1.4.2005 being permitted to ply does not militate or discriminate against the prohibition of plying vehicles manufactured after 1.4.2005 which were not Bharat Stage-III compliant, because they fell in different classes. The classification was necessitated on account of the fact that all vehicles could not have been prohibited from plying in one stroke as that would have created total chaos in the

A National Capital Region.

B 15. The appellant also submitted that the policy behind the notification was that in future, older vehicles would be phased out on completion of 12 years from their date of manufacture automatically and newer vehicles would necessarily have to
C comply with Bharat Stage-III norms so that gradually the emission norms would improve and in 12 years all vehicles would be at least Bharat Stage-III compliant. The appellant submitted that the notification dated 20.1.2009 issued by the Central Government adding the following proviso to sub-rule 7 of Rule 90 the Central Motor Vehicles Rules :

D “Provided that where such vehicle is registered in the National Capital Region, it shall not pick up or set down goods between two points situated in the National Capital Region unless it conforms to the mass emission standards (Bharat Stage-III) specified in sub-rule (14) of rule 115.”

E 16. According to the appellant, the clarificatory amendment made it abundantly clear that even vehicles possessing a national permit, but manufactured after 1.4.2005 cannot ply within the National Capital Region unless they are Bharat Stage-III compliant. According to the appellant, this classification subserves the object of the notification, namely, the gradual improvement of the environment in the National Capital Region by providing for a gradual induction of Bharat Stage-III emission norms compliant vehicles and gradual phasing out of the old vehicles simultaneously. Therefore, there is a clear nexus of the classification with the object of the legislation.

G 17. The appellant has placed reliance on the judgment of this court in *Harakchand Ratanchand Banthia & Others etc. v. Union of India & Others* (1969) 2 SCC 166 para 26 wherein the court held thus:

H “26.....When a law is challenged as violative of Article 14 of the Constitution it is necessary in the first place to

ascertain the policy underlying the statute and the object intended to be achieved by it. Having ascertained the policy and object of the Act the Court has to apply a dual test in examining its validity (1) whether the classification is rational and based upon an intelligible differentia which distinguishes persons or things that are grouped together from others that are left out of the group and (2) whether the basis of differentiation has any rational nexus or relation with its avowed policy and object....”

18. The appellant submitted that respondent no.1 in fact purchased the vehicles which do not conform with Bharat Stage-III norms even though they had been manufactured after the notification dated 20.10.2004 and sought to circumvent it by getting national permits.

19. In other words, the main submission of the appellant has been that the entire notification is meant to achieve the object of reducing pollution in consonance with the directions issued by this court. The said directions cannot be defeated by merely obtaining National, Inter-State or All India Tourist Permits. According to the appellant, the notification makes it crystal clear that the vehicles can ply in Delhi which are manufactured on or after 1.4.2005 complying with BS-III emission norms. According to the appellant after the notification date 20.10.2004, there is no room for any controversy and the High Court has totally misread and misconstrued the notification and consequently, the judgment of the High Court is, therefore, liable to be set aside.

20. The respondent submitted that vide notification GSR 686-(E) dated 20th October, 2004 issued by the Central Government Euro-III/Bharat Stage-III Emission norms were introduced only in few cities including the National Capital Region. As per the said notification vehicles manufactured after 1.4.2005 had to comply with emission norms of Euro-III/B.S.-III. An exception was provided to such notification according to which the vehicles getting a registration under the Inter-State

- A Permits or National Permits or All India Tourist Permits within the National Capital Region and certain other selected cities were exempted from the compliance of Bharat Stage-III emission norms and they were allowed to be governed by Bharat Stage-II emission norms. This was done for reason, the
 B petroleum companies could not provide fuel required for the Euro-III vehicle all over India, as such national permit vehicles had to travel through many cities where such notification was not applicable. Therefore, such exemption was given only to the vehicles which were moving/plying outside the cities where the
 C present notification was not applicable.

21. According to the respondents, the combined reading of the aforesaid notifications and the judgment, it can be said that the vehicles even if they do not conform to Euro-I/Bharat Stage-I emissions norms if manufactured prior to 1.6.1999 and
 D within 15 years can ply as per their permits. The decision to allow such vehicles which are less than 15 years old, even if they do not conform to any of the emissions norms, is intended to phase out old vehicles in progressive manner while addressing the concern of adhering to emission norms to
 E control vehicular pollution by not allowing any fresh registration of vehicles which are not conforming to emissions norms applicable according to their manufacturing date.

22. We have heard the learned counsel for the parties at
 F length and carefully perused the impugned judgment, provisions of the Act, relevant notifications and the Motor Vehicles Rules.

23. The entire controversy has to be properly
 G comprehended in proper perspective. The notifications issued by the Central Government were issued in pursuant to the directions of this court to achieve the object of reducing pollution in the National Capital Region. As per the clear interpretation of the notification in issue, only those vehicles will ply in National Capital Region which were manufactured on or after 1.4.2005 and are complying with BS-III norms. The vehicles
 H manufactured prior to 1.4.2005 and complying with BS-I and

BS-II norms but are not more than 15 years old can also ply. This notification was issued to reduce vehicular pollution in a phased manner. By one stroke, the legislature could not have prohibited all vehicles plying in the city which did not have BS-III compliant as that would have created total chaos, therefore, it was introduced in a phased manner as has been done in the impugned notification.

24. The High Court by its impugned judgment dated 29.10.2007 has held that respondent no.1 herein is entitled to participate in the tender process initiated by the appellant herein, offering four wheeled vehicles manufactured on or after 1.4.2005 which are Euro-II/ Bharat Stage-II compliant and having national permits/ Inter-state permits.

25. However, a perusal of the notification in question i.e. GSR 686 (E) dated 20.10.2004 which was issued for the purpose of controlling pollution within the National Capital Region in phased manner, makes it quite clear that the vehicles manufactured prior to 1.4.2005 being permitted to ply does not anyway militate or discriminate against the prohibition of plying vehicles manufactured after 1.4.2005 which were not Bharat Stage-III compliant as they clearly fell in different classes. Further, the other notification GSR 37(E) dated 20.1.2009 which inter-alia inserts proviso to sub-rule (7) in Rule 90 clarifies that where such vehicle is registered in the National Capital Region, it shall not pick up or set down goods between two points situated in the National Capital Region unless it conforms to the mass emission standards (Bharat Stage-III).

26. The aforesaid classification is essential in view of the fact that all vehicles could not have been prohibited from plying on road in one stroke. Therefore, there is a clear nexus of the classification with the objects sought to be achieved by the legislation. The rationale behind the aforesaid notification is to phase out the older vehicles automatically in due course and newer vehicles would necessarily have to comply with Bharat Stage-III norms in order to gradually increase the emission

A norms thereby curbing air pollution as per the directions issued by this Court in *M.C. Mehta's* case (supra). Clearly, the aforesaid classification in the notification intends to gradually improve the environment by providing a mechanism for a gradual induction of Bharat-III emission norms. In view of the same, if we accept the contention of the respondent the same would amount to negation of the direction of this Court in *M.C. Mehta's* case (supra) and would also frustrate the effect of the notifications dated 20.10.2004 and 20.1.2009. Further, in the absence of any challenge to the validity of the proviso to sub-rule (7) of Rule 90 inserted by Notification dated 20.1.2009, the said provision has to be held valid and must be given full effect. It is to be noted that the view we have taken here is the only possible and intended view which can be inferred from a reading of the amended provisions which is of clarificatory nature.

D 27. In our considered view, the High Court has misread and misconstrued the notification. Consequently, the appeal is allowed and the impugned judgment of the High Court is set aside.

E 28. In the facts and circumstances of the case, the parties are directed to bear their own costs.

N.J.

Appeal allowed.