M.K. Chandran and etc. Vs Commissioner of Police, Kochi and Others

Court: High Court Of Kerala

Date of Decision: May 20, 1998

Acts Referred: Constitution of India, 1950 â€" Article 21
Motor Vehicles Act, 1988 â€" Section 110(1), 110(2), 110(3)

Citation: AIR 1998 Ker 347 : (1998) 3 ILR (Ker) 597

Hon'ble Judges: P.A. Mohammed, J; B.N. Patnaik, J

Bench: Division Bench

Advocate: V. Ramachandran and Pulikool Abubacker, for the Appellant; P.K. Santhamma, Govt. Pleader and George C.P. Tharakan, Central Govt. Standing Counsel, for the Respondent

Judgement

Mohammed, J.
The issues involved in these two cases are identical and hence they are being dealt with and disposed of by this common

judgment.

2. The main question relates to the interpretation of the provisions contained in Rule 100 of the Central Motor Vehicles Rules, 1989 (for short ''the

Rules'') dealing with safety glass on wind screens and windows of motor vehicles. Section 110(1)(d) of the Motor Vehicles Act, 1988 (for short

''the Act'') authorises the Central Government to make rules with respect to the use of safety glasses including prohibition of the use of tinted safety

glasses. In exercise of the said power the Central Government framed Rule 100 prescribing the usage of safety glass for wind screens and

windows of motor vehicles other than agricultural tractors.

3. The petitioner in O.P. No. 8127 of 1991 against the judgment of which W.A. No. 919 of 1991 has been filed, is the owner of an ambassador

car and the proprietor of a business unit known as ''''M/s. Kumara Pillai Enterprises'''' whereas the petitioner in O.P. No. 8901 of 1991 is the owner

of a maruti van and proprietor of an automobile workshop known as ''''Auto Plaza''''. The petitioner in O.P. No. 8127 of 1991 firstly challenged the

validity of Rule 100. Secondly he prayed for a writ of certiorari calling for the records leading to the decision regarding the enforcement of the ban

of using tinted glasses on motor vehicles as published in Ext. P1. Thirdly it is prayed for a direction to the respondents to continue to permit the use

of timed glasses on motor vehicles. The petitioner in O.P. No. 8901 of 1991 prayed for a direction to strike down all statutory rules, provisions

and executive instructions which insisted that the colour glasses and sun control device on wind screen and windows of motor vehicles be

removed. He also prayed for a direction restraining the respondents from insisting on removal of colour glasses and sun control films on wind

screens and windows on motor vehicles.

4. A learned single Judge, after the hearing dismissed the writ petition, O.P. No. 8127 of 1991. While doing so the learned judge has given the

following directions to the State Government.

The Slate Government is directed to issue necessary instructions to the authorities under the Motor Vehicles Act and to the Officers of the Police

Department to see that motor vehicles registered and plying in the State of Keralashould have wind screens and windows maintained in such a

condition as to be clearly transparent and allow the clear vision outside from inside and inside from outside. They must take effective and urgent

steps to have the wind screens and windows maintained in such a condition, at the earliest.

Being highly aggrieved by the above direction and the dismissal of the.writ petition. Writ Appeal No. 919 of 1991 has been filed by the petitioner

in O.P. No. 8127 of 1991. When O.P. No. 8901 of 1991 which came up for hearing on 6-9-1991, that is to say, after the disposal of O.P. No.

8127 of 1991 on 12-8-1991, another learned judge took note of the decision rendered in O.P. No. 8127 of 1991 and hence by a detailed order

of reference the question was referred to a Division Bench for decision. In the said reference order, the learned judge observed as below :

As already indicated, the rule refers only to transparency, and transparency as I said, is a state where rays can pass through without diffusion.

Anything that gives a vision of outlines and movements in a vehicle, must be considered as meeting the requirement, as otherwise it would lead to

arbitrariness and varying standards of judgment. When necessary, a rule has to be read down, to give it a reasonable meaning, consistent with the

requirements of the rule and with the requirements of Constitutional provisions. I should think that the requirements sought to be achieved, can be

achieved by leaving out the front windshield and any two windows with glassess not coloured, or leaving front windshield uncoloured and

permitting the rest to be transparently coloured, affording reasonable view, and not total view. Since a different view has been expressed by a

learned Judge, I think that the matter must be finally decided by a Divisional Bench, and not a Bench of coeval jurisdiction.

5. Let us now examine the position with regard to the maintenance of wind screens and windows with coloured glass, as it exists today in view of

the interim orders passed in these cases, The learned judge who passed the reference order in O.P. No. 8901 of 1991 has given the following

interim direction.

The question of balance of convenience during pendency of the writ petition has then to be considered. If colour devices are indiscriminately

removed as alleged, it would deny petitioner the relief, that may be ultimately available. At once, the orders of the learned single Judge have to be

viewed with respect. The learned judge did not direct implementation from any particular date, or in any particular manner. But, the authorities

decided to enforce prohibition from 1-9-1991, and without any guidelines ensuring certainty or predicability. In the circumstances, 1 direct that no

coercive steps will be taken, and status quo as on 31-8-1991 will be maintained unless otherwise directed. But, front windshields of the vehicles

shall not use any coloured devices, except a small sunsharc on the top of the windshield at the level of the sun-visors fitted by the manufacturers

and above the level of the head of the driver, so that his vision is not impaired affecting the right to safety available to other road users.

In C.M.P. No. 4488 of 1991 in W.A. No. 919 of 1991 the Division Bench at the time of admission of the appeal, has ordered as below :

Interim order passed under the reference order in O.P. 8901/91 dated 6-9-1991 shall be the interim order in this CMP also.

In other words, the interim direction contained in the reference order (quoted above) passed by the learned Judge on 6-9-1991 in O.P. No. 8901

of 1991 is holding the field in so far as the present writ petitioners are concerned. We are told that the position as obtained from the above interim

directions continue as such without any modification or alteration in whatever form.

6. In O. P. No. 8127 of 1991 the petitioner alleged that he came to know a press statement issued by the Commissioner of Police. Kochi in the

Mathrubhumi daily dated 3-8-1991, a copy of which has been marked Ext. P1 therein. The gist of the statement is that the wind screens and

windows of the vehicles shall be maintained in such a condition as to allow clear vision outside from inside and inside from outside and that

therefore the police has prohibited to use of coloured glasses for such screens and windows with effect from 25-8-1991. The enquries were

therefore made by the petitioner as tc whether third respondent has issued any notification laying down rules u/s 111 of the Act lending credence to

the proposed prohibition against the use of coloured glasses and whether the police has been conferred with the power to take action for such use,

It was then known that there was no written order or instruction by any competent authority inclusive of the third respondent State prompting the

Commissioner of Police, Kochi to come forward with the statements as contained in Ext. P1. The case of the petitioner in O.P. No. 8901 of 1991

is that the second respondent, Director General of Police, Trivandrum has given instructions to all police officers to insist that the glass on

windscreen and windows of every motor vehicle shall be in such a condition as to be clearly transparent and allow the clear vision inside from

otuside and outside from inside and tinted glass or sun control devices should not be used from 1 -9-1991. He further alleged that this was done,

on the basis, of sonic executive instructions and no written orders had been passed in this regard, but only oral instructions had been given to

subordinate officers of police force. The above allegations contained in both the writ petitions were not specifically dented or explained in the

counter affidavits filed by the Commissioner of Police, Kochi on behalf of the respondents. It can therefore be presumed that measures had been

taken by the first respondent not on the basis of any written or executive orders. The reasonableness or otherwise of the action can be examined

only when the order in support of such action is produced. The learned Judge while disposing of O.P. No. 8127 of 1991 observed that for proper

maintenance of law and order the use of dark colour glasses in motor cars and vans should be prevented and on that basis it was found that there

was no impropriety in the action proposed by the Commissioner of Police, Kochi.

7. The provisions of Section 110(1)(d) of the Act in so far as they are relevant in the present comext are extracted hereunder :

110. Power of Central Government to make rule

(1) The Central Government may make rules regulating the construction, equipment and maintenance of motor vehicles and trailers with respect to

all or any of the following matters, namely :--

(a) to (c) .....

(d) the use of safety glasses including prohibition of the use of tinted safety glasses.

(e) to (p) .....

(2) Rules may be made under Sub-section (1) governing the matters mentioned therein, including the manner of ensuring the compliance with such

matters and the maintenance of motor vehicles in respect of such matters, either generally in respect of motor vehicles or trailers or in respect of

motor vehicles or trailers of a particular class or in particular circumstances.

(3) Notwithstanding anything contained in this Section-

(a) the Central Government may exempt any class of motor vehicles from one provisions of this Chapter;

(b) a State Government may exempt any motor vehicle or any class or description of motor vehicles from the rules made under subsection (1)

subject to such conditions as may be prescribed by the Central Government.

The above Section authorises the Central Government to make rules, in so far as applicable to the present context regarding the construction,

equipment and maintenance of motor vehicle and trailers with respect to the use of safety glasses including prohibition of the use of tinted safety

glasses. Sub-section (2) empowers the Government to make rules under Sub-section (1) in respect of the use of safety glasses including the

manner of ensuring the compliance with such matters. It also authorises to frame rules in respect of motor vehicles or trailers or in respect of motor

vehicles or trailers of a particular class or in particular circumstances. Sub-section (3) contains an exception to this provision. It empowers the

Central Government and the State Government to exempt any class of motor vehicles subject to certain conditions.

8. Rule 100 has been framed by the Centra) Government in exercise of the power conferred by Section 110(1)(d) of the Act, which is ectyped

hereunder.

100. Safety glass-- (1) The glass of windscreens and the windows of every motor vehicle other than agricultural traidors shall be of safety glass :

Provided that in the case of three-wheelers and vehicles with hood and side covers, the windows may be of acrylic or plastic transparent sheet.

Explanation-- For the purpose of this rule-

(i) ''safety glass'' means glass conforming to the specifications of the Bureau of Indian Standards or any international standards as certified by the

Automobile Research Association of India, Pune the Bureau of Indian Standards and so manufactured or treated that if factured, it does not fly or

break into fragments capable of causing severe cut;

(ii) any windscreen or window at the front of the vehicle, the inner surface of which is at an angle extending o thirty degrees to the longitudinal axis

of the vehicle shall be deemed to face to the from.

(2) The glass of the windscreen and rear window of every motor vehicle shall be such and shall be maintained is such a condition that the visual

transmission of light is not less than 70%. The glasses used for side windows are such and shall be maintained in such condition that the visual

transmission of light is not less than 50% and shall conform to Indian Standards IS : 2553 (Part 2)

(3) The glass of the front windscreen of every motor vehicle other than agricultural tractors manufactured after three years from the coming into

force of the Central Motor Vehicles (Amendment) Rules, 1993 shall be made of laminated safely glass.

Explanation-- For the purpose of these sub-rules "laminated safety glass" shall mean two or more pieces of glass held together by an intervening

layer or layers of plastic materials. The laminated safety glass will crack and break under sufficient impact, but the pieces of the glass lend to

adhere to the plastic material and do net fly, and if a hole is produced, the edges would be less jagged than they would be in the ease of an

ordinary glass.

(4) Notwithstanding anything contained in this rule if the Central Government is of the opinion that it is necessary and expedient to do so in public

interest, it may by order published in the Official Gazette exempt any motor vehicle for use by any person, from the provisions of this rule.

9. Chapter V of the Rules deals with provisions relating to construction, equipment and maintenance of motor vehicles. Section 109 contained in

Chapter VII of the Act prescribes that every motor vehicle shall be so constructed and so maintained as to be at all limes under the effective

control of the person driving the vehicle. Sub-rule (1) prescribes that the glass of windscreens and windows of every motor vehicle, other then

agricultural tractors shall be of safety glass. Though Section 110 does not define the words ''safety glasses'' the meaning of the said words is

contained in Rule 100. In this context it has to be observed that though Section 110(1)(d) also authorises the framing of rules with regard to

prohibition of the use of tinted safety glasses no rule has been brought to our notice in this behalf. No indication is given in Chapter V of the Rules

as to what actually means by the words ''tinted safety glasses'' or as to the manner, they have to be used on the motor vehicles. It cannot therefore

be said that there is a total prohibition of the use of tinted safety glasses. That Section 110(1)(d) authorises the Central Government to frame rales

with regard to prohibition of the use of timed safety glasses (sic) not mean that there is a total prohibition of the use of timed safety glasses till the

rule is framed in that behalf.

10. The counsel for the petitioners mainly contended that the provisions contained in Rule 100 violate ''right to privacy'' guaranted to the petitioners

under Article 21 of the Constitution. Their case is that the travel in a motor vehicle necessarily postulates the enjoyment of right of privacy. In the

course of such enjoyment the petitioners have the right to use tinted glasses and sun control film on the wind screens and windows of the motor

vehicles and the prohibition imposed by the police officials amounted to interference in the enjoyment of such rights by the petitioners. This

argument inevitably attracts adjudication of the questions; (i) whether the enjoyment of the right to privacy would come within the purview of

Article 21 of the Constitution, and (ii) if so, the travel in a motor vehicle having wind screens and windows with tinted glasses and sun control films

forms part of right to privacy.

11. What is ''right to privacy''? The word ''privacy'' means a state of being, private or in retirement; seclusion; secrecy or solitude. The phrase

''right to privacy'' is used in the Indian case law to refer to the right which an owner of a house may have under local custom to the seclusion of his

near apartments from the view of his neighbour. Under the Indian Easement Act, such a right may be acquired by local custom as in those parts of

the country where the custom of seclusion of women prevails. This phrase has been used in the United States and also in England to mean the right

to freedom from emotional disturbance like annoyance, mental pain or distress. Law of the United States affords protection against unauthorised

publicity of a person''s name or private affairs. The trend of English case law is however against any right of action for mere annoyance or injury to

feelings independently of the recognised heads of actionable injury like assault or defamation. However, for years there has been a feeling that the

law must afford some remedy for the unauthorised circulation of portraits of private person and evil of the invasion of privacy by newspapers. The

injunction has generally been granted on the theory of a breach of contract or of an abuse of confidence if there is wrongful publication or

circulation. The rights so protected whatever their exact nature, arc not rights arising from contracts or from special trusts, but are rights as against

the world; and the principle which has been applied to protect these rights is in reality not the principle of private property unless that word be used

in an extended and unusual sense. If the invasion of privacy constitutes a legal injuria, elements for demanding redress exist since already the value

of mental suffering caused by an act wrongful in itself is recognised as a basis for compensation. Samuel D. Warren and Louis D. Brandeis thus

analyse the nature of the right to privacy and the remedy for violation of such rights in an illustrative article ''''The Right to Privacy'''' in Harvard Law

Review Vol. IV 1890-91.

12. The Supreme Court of the United States in Estelle T. Griswold v. State of Connecticut (1965) 381 US 479 invalidated the statute prohibiting

the use and distribution of contraceptive articles. In the majority judgment Justice Goldberg observed :

The entire fabric of the Constitution and the purposes that clearly underlie its specific guarantees demonstrate that the rights to marital privacy and

to marry and raise a family are of similar order and magnitude as the fundamental rights specifically protected. Although the Constitution does not

speak in so many words of the right of privacy in marriage, I cannot believe that it offers these fundamental rights no protection.

He further said :

In sum, I believe that the right of privacy in the marital relation is fundamental and basic --a personal right "retained by the people" within the

meaning of the Ninth Amendment,

In Julius A Wolf v. People of the State of. Colorado (1948) 338 US 25 Justice Frankfurter of the U.S. Supreme Court on behalf of the bench

observed :

The security of one"s privacy against arbitrary intrusion by the police-which is at the core of the Fourth Amendment - is basic to a free society. It

is therefore implicit in "the concept of ordered liberty" and as such enforceable against the States through the Due Process Clause. The knock at

the door, whether by day or by night, as a prelude to, a search, without authority of law but solely on the authority of the police, did not need the

commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic

constitutional documents of English-speaking peoples.

Accordingly, we have ho hesitation in saying that were a State affirmatively to sanction such police incursion into privacy it would run counter to the

guarantee of the Fourteenth Amendment.

Learned judge further observed :

When we find that in fact most of the English-speaking world does nut regard as vital to such protection the exclusion of evidence thus obtained,

we must hesitate to treat this remedy as an essential ingredient of the right.

In Thomas S. Eisenstadt v. William R. Baird (1972) 405 US 438 the Court extended the principle laid down in Eslelle T. Griswold, supra holding

to protect the distribution of contraceptives to unmarried persons as well. Justice Brennan said :

If under Griswold the distribution of contraceptives to married persons cannot be prohibited, a ban on distribution to unmarried persons would be

equally impermissible. It is true that in Griswold the right of privacy in question inhered in the marital relationship. Yet the marital couple is not an

independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional make up.

If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into

matters so fundamentally affecting a person as the decision whether to bear or beget a child.

The above discussion would reveal how the U. S. Supreme Court has dealt with privacy cases. Many of the privacy cases decided by it relate to

problem of sexuality in wider sense, that is to say, the second impact on the people and the society in the social inter-actions of different type.

13. Now let us turn to certain privacy cases decided by our Supreme Court. It must be recalled that the ''right to privacy'' as such has not been

expressly recognised in the Indian Constitution. However, this right can be claimed by individuals under Articles 19 and 21 of the Constitution.

Subba Rao, J; (as the learned Judge then was) in Kharak Singh Vs. The State of U.P. and Others, in His Lordship''s minority judgment observed

(at p. 1306):

It is true our Constitution, does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of

personal liberty. Every democratic country sanctifies domestic life; it is expected to give him rest, physical happiness, peace of mind and security.

In the last resort, a person''s house, where he lives with his family, is his ''castle'', it is his rampart against encroachment on his personal liberty. The

pregnant words of that famous Judge, Frankfurther J. in (1948) 338 US 25 pointing out the importance of the security of one''s privacy against

arbitrary intrusion by the police, could have no less application to an Indian home as to an American one.

The learned Judge further said :

If physical restraints on a person''s movements affect his personal liberty, physical encroachments on his private life would affect it in a larger

degree. Indeed, nothing is more deleterious to a man''s physical happiness and health than a calculated interference with his privacy. We would,

therefore, define the right of personal liberty in Article 21 as a right of an individual to be free from restrictions or encroachments are directly

imposed or indirectly brought about by calculated measures. If so undertsood, all the acts of surveillance under Regulation 236 infringe the

fundamental right of the petitioner under Article 21 of the Constitution.

However, the majority judgment rendered by Ayyangar, J. expressed the view that the right of privacy is not a guaranteed right under the

Constitution and therefore the attempt to widen movements of an individual which is merely a manner in which privacy is invaded is not an

infringement of the fundamental right guaranteed under Part III.

14. Mathew, J. (as the learned Judge then was) speaking for the bench in Gobind Vs. State of Madhya Pradesh and Another, observed (Para 28)

:

The right to privacy in any event will necessarily have to go through a process of case-by-case development. Therefore, even assuming that the

right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy

as an emanation from them which one can characterise as a fundamental right, we do not think that the right is absolute.

The argument before the Supreme Court in this case was that the right to privacy is itself a fundamental right and that the said right is violated as

regulation 856 provides for domiciliary visits and other incursions into it. In answer to this, the Court said that even assuming the right of privacy as

a fundamental right it is found to be not absolute, for it is subject to the restriction on the basis of public interest.

15. In State of Maharashtra and another Vs. Madhukar Narayan Mardikar, the Supreme Court was dealing with a case of woman of easy virtue

who pleaded for the right of privacy. In this context the Supreme Court said (Para 8);

The High Court observes that since Ranubi is an unchaste woman it would be extremely unsafe to allow the fortune and career of a Government

Official to be put in jeopardy upon the uncorroborated version of such a woman who makes no secret of her illicit intimacy with another person.

She was honest enough to admit the dark side of her life. Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as

and when he likes. So also it is not open to any and every person to violate her person as and when he wishes. She is entitled to protect her person

if there is an attempt to violate it against her wish. She is equally entitled to the protection of law. Therefore, merely because she is a woman of

easy virtue, her evidence cannot be thrown overboard.

16. The Supreme Court in R. Rajagopal alias R.R. Gopal and Another Vs. State of Tamil Nadu and Others, observed that the right to privacy as

an independent and distinctive concept originated in the field of Tort law, under which a new cause of action for damages resulting from unlawful

invasion of privacy was recognised. The Court further held (at p. 269 of AIR):

In recent times, however, this right has acquired a constitutional status. We shall proceed toexplain how? Right to privacy is not enumerated as a

fundamental right in our Constitution but has been inferred from Article 21. The first decision of this Court dealing with this aspect is Kharak Singh

Vs. The State of U.P. and Others, A more elaborate appraisal of this right took place in a later decision in Gobind v. State of M. P. AIR 1915 SC

1378 wherein Mathew, J. speaking for himself, Krishnalyer and Goswami. JJ. traced the origins of this right and also pointed out how the said right

has been dealt with by the United States Supreme Court in two of its well known decisions in Griswold v. Connecticut (1965) 381 US 479 and

Roe v. Wade, (1973) 410 US 113.

After an elaborate analysis of the earlier decisions, the Supreme Court finally observed that the rights privacy is implicit in the right to life and liberty

guaranteed to the citizens of this country by Article 21. It is a ""right to be let alone"". A citizen has a right to safeguard the privacy of his own, his

family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above

matters without hisconsent-whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy

of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself

into controversy or voluntarily invites or raises a controversy. But the Supreme Court has laid down six other principles in this regard and also

added thus (Para 29 of AIR) :

We may hasten to add that the principles above mentioned are only the broad principles. They are neither exhaustive nor all-comprehending;

indeed no such enunication is possible or advisable. As rightly pointed out by Mathew, J. this right has to got through a case-by-case development.

Theconcepts dealt with herein are still in the process of evolution.

17. Recently a question arose before the Supreme Court in People''s Union of Civil Liberties (PUCL) Vs. Union of India (UOI) and Another,

whether the telephone-tapping of an individual is an action in violation of his right of privacy. With reference to this, the Supreme Court said (Para

1 of AIR):

Telephone-tapping is a serious invasion of an individual''s privacy.-- With the growth of highly sophisticated communication technology, the right

to hold telephone conversation, in the privacy of one''s home or office without interference, is increasingly susceptible to abuse. It is no doubt

correct that every Gpvernment, howsoever democratic, exercises some degree of sub rosa operation as a part of its intelligence outfit but at the

same time citizen''s right to privacy has to be protected from being abused by the authorities of the day.

The Supreme Court further observed (at p. 574 of AIR) :

The right to privacy -- by itself-- has not been identified under the Constitution. As a concept it may be too broad and moralistic to define it

judicially. Whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case. But the right to

hold a telephone conversation in the privacy of one''s home or office without interference can certainly be claimed as ""right to privacy"".

Conversations on the telephone are often of an intimate and confidential character. Telephone conversation is apart of modern man''s life. It is

considered so important that more and more people are carrying mobile telephone instruments in their pockets. Telephone conversation is an

important facet of a man''s private life. Right to privacy would certainly include telephone conversation in the privacy of one''s home or office.

Telephone-tapping would, thus, infract Article 21 of the Constitution of India unless it is permitted tinder the procedure established by law,

From the above discussion it is crystalline that the right to privacy claimed in a particular case shall be established by the facts and circumstances.

Once the right to privacy is thus established, it is protected under Article 21 of the Constitution.

18. The Secretary, Social Action and Legal Aid Society filed C.M.P. No. 17302 of 1991 seeking to implead him as additional fourth respondent

in the writ petition inasmuch as he is vitally interested in defending the impugned action. In the affidavit filed in support of the said petition he

pleaded for sustaining the impugned action in implementation of Rule 100. When the petition came up for hearing on 31-10-1991 a Division Bench

of this Court ordered that it was not necessary to implead the petitioner as respondent in the original petition. However, the Court ordered that in

accordance with the provisions of Rule 152 of the Kerala High Court Rules, the petitioner would be heard at the time of hearing of the O.P. In

view of the above order, we heard the counsel. He made the submissions in suppor.t of the validity of the impugned rule and also the direction

issued by the Commissioner of Police prohibiting the use of tinted glasses on the windscreens and windows of the vehicles. His case is that what is

contained in Rule 100 is only regulations and even if it is assumed that they are restrictions they can be justified on the ground of being reasonable

restrictions in public interest.

19. In support of the above proposition, various decisions were cited by the counsel. The first decision brought to our notice is the decision of the

Supreme Court in Ajay Canu Vs. Union of India (UOI) and Others, . There a contention was advanced before Court that Rule 498-A of the

Andhra Pradesh Motor Vehicles Rules, 1964 and the notification issued by the police that wearing of helmet by the driver of a two wheeler was

compulsory and they violated the freedom of movement as guaranteed by Article 19(f)(d) of the Constitution and that such compulsion not having

been made in accordance with the procedure established by law they are also violative of Article 21 of the Constitution. Answering this contention

the Supreme Court held that the compulsion for putting on a headgear or helmet by the driver, as provided by Rule 298-A did not restrict or

curtai1 the freedom of movement. It further said (Para 13 of AIR):

..... in our opinion, it helps the driver of a two wheeler vehicle to drive the vehicle in exercise of his freedom of movement without being subjected

to a constant apprehension of a fatal head injury, if any accident takes place. We do not think that there is any fundamental right against any act

aimed at doing some publ ic good. Even assuming that the impugned rule has put a restriction on the exercise of a fundamental right under Article

19(1)(d). such restriction being in the interest of the general public, is a reasonable restriction protected by Article 19(5) of the Constitution. As

Rule 498-A has been framed in accordance with the procedure established by law, that is, in exercise of the rule making power conferred on the

State Government u/s 91 of the Act, as discussed above, the question of infringement of Article 21 of the Constitution does not arise. The

contention of the petitioner that Rule 498-A and the impugned notification dated July 8, 1986 issued by the Commissioner of Police in exercise of

his powers u/s 210) of the Hyderabad City Police Act, infringe the fundamental right of the petitioner under Article 19(1)(d) and Article 21 of the

Constitution, is deyoid of merit and is rejected.

The other decisions cited are : (1) Haji Usmanbhai Hasanbhai Qureshi and others Vs. State of Gujarat, , (2) Municipal Corporation of the City of

Ahmedabad and Others Vs. Jan Mohammed Usmanbhai and Another, , (3) Rajbandha Maidan Vyavasayee Samiti, Raipur and Others Vs.

Collector, Raipur and Others, (4) Bombay Hawkers" Union and Others Vs. Bombay Municipal Corporation and Others, , (5) M.J. Sivani and

Others Vs. State of Karnataka and Others, and (6) G. Balakrishna Pillai Vs. The Joint Regional Transport Officer and Another, In substance these

decisions broadl y bring forth a fundamental principle that it"" an action alleged is a regulation, it is permissible under Article 19 whereas if the action

alleged is a total restriction it is not protected under the said Article. What is permitted is only reasonable restrictions in public interest under Article

19. In the present case, this question would be relevant only when the right to privacy is established. When the right to privacy is established it may

be possible for the petitioners to argue that there is violation of Article 19(1)(d) and (g) or Article 21.

20. Can it be said that the petitioners have succeeded in establishing right to privacy in using the motor vehicles with tinted glasses owned by them?

The answer to this question no doubt depends on the facts as aforesaid and it is essential in this context to examine the pleading of the parties. In

O.P. No. 8127 of 1991 it is averred thus: The petitioner and similarly situated persons were allowed the use of tinted safety glasses"" laminated with

sun control films upon side windows and rear metallic hood of motor vehicles. The automobile dealers were allowed to manufacture vehicles with

tinted glasses or at least they are not prevented from doing so. The use of tinted glasses assumed more relevance with progressively increased use

of air conditioners in automobiles. Minimisation of the direct entry of sun light is one of the pre-requisites of effective air conditioning. These

averments are hardly sufficient to plead for right to privacy. The averments contained in O.P. No. 8901 ,of 1991 in this regard do not in any way

sufficient to improve the position. What is required to be established is that the use of motor vehicle, involves the privacy. The use of the motor

vehicle with tinted glasses is not similar to the telephone conversation which involves privacy as observed by the Supreme Court. Conversations on

the telephone are often an intimate and confidential character and hence telephone-tapping infracts Article 21. That the purpose for which the

motor vehicle is used is relevant while examining the element of privacy. When the three victorious players using a motor vehicle for a joyous ride

no element of privacy is involved. Whereas a motor vehicle is used by a newly married couple for their happy trip, the element of privacy cannot

be totally ruled out. This would mean the element of privacy has to be established on facts in each case. It is pointed out when the motor vehicles

are used on the public road, the right to privacy cannot be claimed. It cannqt be said so at all times. When the use of motor vehjcle involves the

element of privacy it does not matter whether it is used on the public road or private road. When a telephone conversation is made from a public

telephone-booth its privacy element does nol efface. However, in view of the deficiency of facts, we refrain from deciding the issue whether the use

of motor vehicles with tinted glasses involve the right to privacy in these cases. That question is left open.

21. The question finally to be considered is whether the petitioners can be totally prohibited from using the tinted safety glasses. It is axiomatic that

without a rule, direction or order by the Central or State Government or by any competent authority, the petitioners cannot ,be restrained from

doing so. As pointed out earlier the phrase "tinted safety glasses" has not been defined either in the Act or Rules. In this context it is worthwhile to

note what actually is "tinted safety glasses". The dictionary meaning of the word "tint" is this :

A slight colouring or tincture distinct from the ground or principal colour; a hue; a tinge; degree of intensity of a color; hair dye; print, a pale color

over which something in a darker shade of color is printed"".

In view of this wide meaning of the word "tint" there shall be guidelines as to what constitute "tinted safety glasses" referred to in Clause (d) of

Section 110(1). Of course, in Rule 100(1) Explanation1 (I) gives "the meaning of "safety glasses". This phrase means glass conforming to the

specifications of the Bureau of Indian Standards or any international Standards us certified by the Automobile Research Association of India, Pune,

the Bureau of Indian Standards and so manufactured or treated that if fractured it does not fly or break into fragments capable of causing severe

cut. It also means any windscreen or window at the front of the vehicle, the inner surface of which is at an angle extending to thirty degrees to the

longitudinal axis of the vehicle shall be deemed to face to the front. The above meaning given to safety glasses for the purpose of Rule 100(1) may

not be same meaning for the words ''tinted safely glasses'' used in Section 100(1)(d). Sub-rule (2) of Rule 100 states that the glass of the wind

screen and rear window of every motor vehicle shall be such and shall be maintained in such a condition that the visual transmission of light is not

less than 70%. The glasses used for side windows are such and shall be maintained in such condition that the visual transmission of light is not less

than 50% and conforms to Indian Standards JS : 2553 part 2. All these cannot be treated as prohibition of the use of safety glasses unless a

proper definition or meaning is supplied to the words ''tinted safety glasses'' in view of the wide meaning of the word ''tint'' as above specified. It is,

therefore, quite possible to argue that there is no proper guidelines as to the use of tinted safety glasses or the prohibition as to its use. No doubt

this is a matter for the authorities to have remedies or to explain the exact position so that the users of tinted safety glasses may be in a position to

know where they actually stand. The definitness or certainty is required while imposing prohibition or restriction on persons against the enjoyment

they alfeady had. At the same time this Court cannot for the said reason declare Rule 100 which contains regulations with respect to the use of

safety glasses, invalid.

22. Now let us see the impact of Sub-sections (2) and (3) of Section 110 and Sub-rule (4) of Rule 100 on the above question. As pointed out

earlier, Sub-section (2) authorises the framing of rules in respect of particular class of motor vehicle or trailers or in particular circumstances. Under

Sub-section (3)(a) the Central Government have power to exempt any class of motor vehicles from the provisions of Chapter VII. u/s 110(3)(b)

the State Government has power to exempt motor vehicles or any class or description of motor Vehicles from the rules made under subsection (1)

subject to such conditions as may be prescribed by the Central Government. Sub-rule (4) of Rule 100 empowers the Central Government to

exempt any motor vehicles for use by any person from the provisions of the said rule if it is expedient to do so in public interest. All these

provisions sufficiently confer power on the Central and as well as State Government to pass orders in general and individual cases allowing

exemption from the operation of the rules. It is alleged in the writ petition that after the coming into force of the Act and the Rules automobile

manufacturers were also allowed to manufacture vehicles with tinted glasses or at least they were not prevented from doing so. Therefore,

according to the petitioners it was to be deemed that both the Central and State Governments have been allowing the use of tinted safety glasses

upon automobile. It is not known whether any particular or general order has been passed by the Central Government or State Government or any

particular competent authority. Any way both parties have failed to produce any such order, if there is any. In view of the provision referred to

immediately herein above the possibility of such orders cannot be ruled out. Therefore we arc of the view unless the appropriate rules are framed

or orders or directions are issued by the competent authorities the use of the tinted safety glasses by the petitioners shall not be restrained.

23. Rule 92(1) contained in Chapter V runs thus :

No person shall use or cause or allow to be used in any public place any motor vehicle which does not comply with the provisions of this Chapter.

Provided that nothing contained in this rule shall apply to vehicles manufactured prior to the coming into force of the Central Motor Vehicles

(Amendment) Rules, 1993.

It has to be noted in this context that the above proviso was added to Sub-rule (1) with effect from 26-3-1993. Rule 92 provides that no person

shall use or cause or allow to be used in any public place any motor vehicle which does not comply with the provisions of Chapter V. However the

proviso stipulates that this rule shall not apply to vehicles manufactured prior to 26-3-1993. No doubt the vehicles involved in the present cases

were manufactured prior to 26-3-1993 inasmuch as to impugned steps were taken with respect to these vehicles in the year 1991. Rule 92(1) is a

general rule as to the applicability of Chapter V or the rules regarding construction, equipment and maintenance of motor vehicles. In view of the

aforesaid proviso, the impugned action of the police officers in respect of the present vehicles would have become redundant. But this question has

to be decided by the competent authority applying the facts of each case.

24. The requirements provided under Chapter V shall be complied with before using the motor vehicles in any public place by any person. That

means it is pre-requisite before the vehicle is being put to use. As pointed out above, in this case the petitioners were allowed to use the vehicles

long prior to 1-9-1991, the date on which the authorities decided to enforce the prohibition against the petitioners. Once the petitioners were

allowed to put the vehicle to use it may be a case where the petitioners had complied with the requirements contained in Rule 100. Or it may be a

case of allowing exemption by the competent authorities. It was not disputed by the respondents that the petitioners were using the vehicle prior to

1-9-1991. Once they were allowed to put the vehicles to use then the question arises whether such vehicles could be restrained from using on the

road alleging that there is violation of the requirements prescribed under Rule 100. No such action can be taken for the alleged violation unless the

affected parties are given an opportunity to explain their case. It is pointed out by the counsel that no such opportunities had been granted to the

petitioners by the competent authorities before taking a decision as proposed in Ext. P1 in O.P. No. 8127 of 1991. In the facts of these cases, we

feel such opportunities should have been granted to the petitioners in view of the fact that they were allowed to put the vehicle, to use prior to 1-9-

1991.

25. It is specifically pleaded that the police officers had no power to impose any prohibition on using the vehicle once the vehicles were al lowed to

be put on road. It is poi nted out that the police officer is not an authority specified in that behalf either under the Act or Rules. This allegation has

not been specifically denied in the counter affidavit. It appears to be the case of the police officers that they are the enforcing authorities. A police

officer may be an enforcing officer for maintenance of law and order problem and for prevention of offences against the security of the State. They

have power to check the vehicles to find out whether it is involved in the commission of any offence. That does not mean they can compel the

owners of the motor vehicles to use particular kind of tinted safety glasses when the authorities had allowed them to put the vehicle on road after

satisfying the statutory requirement. If the conditions provided in Rule 100 are not satisfied, it is for the registering authorities not to allow the

vehicles to put on road. In this case it is the Commissioner of Cochin City who has issued certain prohibitions in so far as the use of the tinted

glasses sticking sun control film for which action he has no direct authority. His action can be validated or sustained only when a proper rule or

order or direction issued by the competent authority is produced.

26. It is pleaded by the petitioners that similarly situated persons residing outside Cochin Corporation have been availing the advantage of the use

of tinted glasses or safety glasses sticking sun control film upon them ever since such a practice came into vogue. This position is not disputed.

Persons living outside the limits of Cochin Corporation are not prohibited from using tinted glasses with sun control films and hence persons

residing outside Cochin will be free to have this advantage. That means there is no uniform rule or direction prohibiting the use of tinted safely

glasses in the State.

27. Another contention advanced by the petitioner in O.P. No. 8127 of 1991 is that the action proposed as per Ext. P1 therein violates Article 14

and 19(1)(d) and (g) of the Constitution. It is no doubt true that the Supreme Court in Krishna Bus Service Pvt. Ltd. Vs. State of Haryana and

Others, held (para 10) :

The powers of stopping the motor vehicles and the powers of inspection, search, seizure and detention exercised under the Act are serious

restrictions on the fundamental right of the operators of motor vehicles guaranteed under Article 19(1)(g) of the Constitution. These powers can be

considered as reasonable restrictions only when they arc exercised properly in the interests of the general public. They should be reasonable both

from the substantive as well as the procedural standpoint. Such powers should, therefore, be entrusted to a person who is expected to exercise

them fairly and without bias.

What is emerged from, the above decision is the restrictions can be considered reasonable when they are exercised in public interest and when

such powers are exercised by a person who in the normal course is expected to exercise them reasonably, In this context what is pleaded by the

third respondent is that Ext. P1 contains only regulations in exercise of power of surveillance and at any rate they arc reasonable restrictions. Then

prohibition of use of coloured glasses does not mean that there is a total prohibition of use of limed safety glasses. In sum and substance what is

provided in Rule 100 is regulations for construction, equipment and maintenance of motor vehicles etc. as aforesaid. When the provisions are only

in the nature of regulatory measure they cannot said to be provisions imposing total restrictions. Even assuming they arc restrictions, those

restrictions are reasonable in public interest. Though the petitioners contended that the provisions contained in Rule 100 are violative of Articles 14

and 19(1)(d) and (g) they failed to establish as to how these provisions are unreasonable or arbitrary. The said burden is no doubt on the persons

who make such allegations. In this context it has to be observed that the petitioners having complied with all the regulatory requirements they

cannot at a later stage be compelled to refrain from using tinted safety glasses on windows and windscreens without any prior notice.

28. In view of our finding that unless the proper rules are framed or orders or directions are issued by the competent authorities, the use of the

tinted safety glasses by the petitioners shall not be restrained. We state with all respect to our learned brother that we cannot agree with the

conclusion reached by him in the judgment in O.P. No. 8127 of 1991. We also specifically set aside all the directions given to the State

Government to issue necessary instructions to the authorities under the Motor Vehicles Act and to the officers of the Police Department in that

behalf. The judgment in O.P. No. 8127 of 1991 is accordingly set aside. The writ appeal is thus allowed.

29. We, therefore, direct that the position as obtained, by virtue or"" the orders passed in the reference order in O.P. No. 8981 of 1991 and in

C.M.P. No. 4488 of 1991 in W.A. 919/91, as referred to above, shall continue till the rules are framed, or orders or directions are issued by the

appropriate Government or competent authority as the case may be with regard to the prohibition of use of tinted safety glasses in view of what we

have observed above. The writ petitions are disposed of as above. No order as to costs.