Khandekar Moazzem Hossain and Another Vs The State of West Bengal and Others

Writ Petition No. 2369 (W) of 2006

Court: Calcutta High Court

Date of Decision: Sept. 10, 2007

Acts Referred:
Central Motor Vehicles Rules, 1989 â€" Rule 108(i)#West Bengal Motor Vehicles Rules, 1989 â€" Rule 226, 226(3)

Citation: (2009) 1 ILR (Cal) 385

Hon'ble Judges: Surinder Singh Nijjar, C.J; Pinaki Chandra Ghose, J

Bench: Division Bench

Advocate: Idris Ali, Denabrata Chatterjee and Aparna Samanta, for the Appellant; Balai Roy, learned Advocate General and N.I. Khan, for the Respondent

Judgement

S.S. Nijjar, C.J.(Oral)

1. This writ petition has been filed by an Advocate highlighting a Newspaper report dated January 5, 2006 in a Newspaper known as ""Daily

Pratidin"". In this Newspaper report it was mentioned that--""There must be a prohibition to be issued by the Court not to allow a person to use the

red light without any authority"". This newspaper report was prompted by the wide spread misuse of affixing a flashing red light at the top of the

motor vehicles carrying persons who are not authorized or entitled to use of the red light at the top of the vehicle in which they were travelling. In

the writ petition it is pointed out that even hired cars are using red light, quite easily by taking money from the hirer. The Government quite casually

ignores the wide spread misuse of the red lights. It is pointed out that the worse kind of misuse is when anti-social elements affix the red lights on

cars which are not carrying high dignitaries in accordance with the various notifications issued by the Central Government or the State Government.

By easily misusing the red lights even criminals are able to evade apprehension as they are not challenged by the traffic police or even by the other

authorities. It is also pleaded that use of red lights has been restricted by notification No. 33 Press/79 dated July 26, 1979 to a number of high

dignitaries. This notification has been followed by a number of notifications issued by the State of West Bengal. In these notifications the high

dignitaries within the state have also been enumerated.

2. When this matter came up for hearing on February 23, 2007 directions were issued to restrict the use of the red lights to the dignitaries who are

mentioned in the notification dated April 3, 2000 and December 31, 2001. This notification had been issued by the State Government purportedly

under Clause (ill) of the Rule 108(i) of the Central Motor Vehicles Rule, 1989. However, when the matter came up for hearing before this Court it

was pointed that even the aforesaid notification is contrary to the provisions of Rule 226(3) of the West Bengal Motor Vehicles Rules, 1989,

consequently it was directed by this Court as follows:

One thing, however, is clear from the provision contained in Rule 226 of the West Bengal Motor Vehicles Rules, 1989 that even if a person is

entitled to use Red Light on the car, such Red Light should not be fitted at the top of the front side of the vehicle except in cases of Ambulance,

Police Pilot Van and Fire Brigade Vehicles and such Red Light should be fitted in the motor vehicles near the front bumper of the vehicle.

Therefore, there is no justification of allowing any vehicle to fix the Red Light at the top of the vehicle unless such vehicle happens to be a Police

Pilot Van, Ambulance or a Fire Brigade vehicle.

We, therefore, direct the State Government to strictly enforce the aforesaid Rule 226(3) of the West Bengal Motor Vehicle Rules, 1989

prohibiting fixation of Red Light at the top of the vehicle except for the aforesaid three categories.

3. It is not disputed by the learned Counsel for the parties that since the issuance of the order dated February 23, 2007, there has been no

infringement thereof by any individual throughout the State of West Bengal. The red lights which even high dignitaries are entitled to put on the cars

have been affixed strictly in accordance with the provisions of Rule 226(3) of the West Bengal Motor Vehicle Rules, 1989. When the matter came

up for hearing on September 6, 2007 it was brought to the notice of the Court that in fact Rule 226(3) has now been omitted from the West

Bengal Motor Vehicle Rules, 1989 by notification No. 2883-WT/3M-118/2001 Pt-IV dated August 30, 2007 published in Calcutta Gazette On

Friday, August 31, 2007. By this notification the West Bengal Amendment Rule, 2007 have been enforced. The amendment is as follows:

Amendments

(1) These rules may be called the West Bengal Motor Vehicles (Amendment) Rules, 2007.

(2) These rules shall come into force on the date of their publication in the Official Gazette.

2. in the West Bengal Motor Vehicles Rules, 1989,

Omit Rule 226

By order of the Governor

(Sumantra Choudhury)

Additional Chief Secretary to the Government of West Bengal

4. After the amendment of the Rules by the aforesaid notification the State of West Bengal have now issued the notification September 7, 2007 by

which the Governor has been pleased to direct that a vehicle carrying high dignitaries as specified therein shall be permitted to use red light with

flasher or red light without flasher. The aforesaid notification is as follows:

NOTIFICATION

No. 2998-WT/3M 118/2001 Pt. IV

Dated 7th September, 2007

In cancellation of this Department''s Notification Nos. 3782-WT/3M-85/95 dated 03.04,2000 and No. 8498-WT/3M-118/2001 dated

31.12.2001 and in exercise of the powers under Clause (iii) of the proviso to Rule 108(1) of the Central Motor vehicles rules, 1989 read with

Notification No. s.O. 52(E) dated January 11, 2002 published in the Gazette of

India, by the Ministry of Road Transport & Highways, Government of India, the Governor has been pleased to direct that a vehicle carrying high

dignitaries as specified herein shall be permitted to use:

1) red light with flasher on the top front of the vehicle, while on duty any where in this State,

i) Holders of Bharat Ratna Decoration;

ii) Governor of this State and Governors of other-States and Lieutenant Governors of Union Territories;

iii) Chief Minister of the Stale and Chief Ministers of other States and Union Territories;

iv) Deputy Chief Minister of the State and Deputy Chief Ministers of other States;

v) Chief Justice of Calcutta High Court, Puisne Judges of Calcutta High Court, Chief Justice of other High Courts, Puisne Judges of other High

Courts;

vi) Speaker of the Legislative Assembly of this State;

vii) Speakers and Chairmen of the Slate Legislatures of other States;

viii) Cabinet Ministers of this State and other States and Union Territories;

ix) Ministers of State from this State and other States/Union Territories;

x) Deputy Ministers of this State and other States and Union Territories;

xi) Deputy Speaker/Deputy Chairman of the State Legislatures;

xii) Advocate General of this State and other States;

2. red light without flasher on the top front of the vehicle, while on duty any where in this State (unless indicated otherwise),

i) Chief Secretary of this State and Chief Secretary of other States and Additional Chief Secretaries of this State;

ii) Principal Secretaries and Secretaries of the Government Departments of this State Government:

iii) Chairman, State Administrative Tribunal;

iv) Chairman, Commercial Taxes Appellate Tribunal;

v) Chairman, Land & Land Reforms Tribunal;

vi) Additional Advocate General of this State;

vii) Chairman and Members. Human Rights Commission of. this State;

viii) Director-General of Police/Additional Director Generals of Police of this Stater;

ix) Commission of Police in Kolkata, within his jurisdiction;

x) Divisional Commissioners within their respective Divisions;

xi) Field Level Inspector Generals of Police within their Zones and Deputy Inspector Generals of Police within their Rages;

xii) District Magistrate and Superintendent of Police within their respective districts;

xiii) Mayors of Municipal Corporations of Kolkata, Howrah. Asansol and Siliguri, within their respective areas;

xiv) Chairman, Bidhannagar Municipality, within his area;

xv) Deputy Mayor, Kolkata Municipal Corporation, within his area;

xvi) Chairman, Kolkata Municipal Corporation, within his area;

xvii) Chairman, West Bengal Women''s Commission;

xviii) Chairman, West Bengal Commission for Backward Classes;

xix) Chairman, West Bengal Minorities Commission;

xx) Chairman, West Bengal Legal Services Authority;

xxi) State Chief Information Commissioner, West Bengal;

xxii) State Election Commissioner, West Bengal;

xxiii) Vice Chancellors of all recognized Universities in this State;

xxiv) Chairman, Public Service Commission, West Bengal;

xxv) Vigilance Commissioner, West Bengal;

xxvi) Lokayukt of this State;

xxvii) Sabhadhipaties of Zilla Parishads of this State within their areas.

In case the vehicle fitted with red light on top front is not carrying the dignitaries, then such red light shall not be used and be covered by a black

cover.

This shall come into immediate effect.

By order of the Governor.

Sumantra Choudhuri,

Additional Chief Secretary to the Government of West Bengal.

5. Learned Advocate General appearing for the State of West Bengal has submitted that in view of the aforesaid notification the present writ

petition has been rendered infructuous. We are unable to accept the submissions made by the learned Advocate General. True, the qualifying

clause which was in existence by virtue of Rule 226 is no longer any impediment as the same has been deleted by the amended rules, 1989.

Therefore, it is clear that the dignitaries mentioned in paragraph 1 and paragraph 2 of the Notification are entitled to use red light with flasher or red

light without flasher on top of the front of the vehicle in which they are traveling according to the category in which the dignitaries fall. This,

however, was not the entire relief that was claimed in the writ petition. A grievance has been made that the fixation of the red light at the top of the

vehicle which was meant only for high dignitaries was actually being misused by persons for unauthorized purposes. During the pendency of the

writ petition the Respondents filed a number of affidavits and have given details as to the action that has been taken against the offending vehicles

which were displaying red lights in contravention of law. There is no indication whatsoever, however, that the menace of unauthorized use of red

lights on top of the vehicles has been completely eradicated.

6. We are of the considered opinion that it is necessary for the State Government to continue the exercise for eradicating the use of red lights. For

this purpose, it. would be necessary for the State of West Bengal to evolve ways and means of restricting or regulating the display of red lights on

the vehicles which are permitted to use red lights in accordance with law. It is, therefore, necessary for the State of West Bengal to introduce a

system of identifying the vehicle(s) on which the high dignitary is entitled to display the red light. This may be in the form of display badge similar to

the one which is issued by the Police Department permitting the use of Sun film/coloured film on the windows of the cars. No red light should be

permitted to be affixed on any car unless and until a certificate to this effect is permanently displayed on the front of the wind screen of the car

which is entitled to use the red light with or without the flasher at all time.

7. In view of the Notification now issued on September 7, 2007 and on coming into operation of the amended rule, 1989 by which Rule 226 of

the West Bengal Motor Vehicle Rules, 1989 has been deleted, the interim order dated February 23, 2007 would have to be vacated. We order

accordingly. The State of West Bengal is directed to introduce a system of recognizing the vehicles as indicated by this Court within a period of

two weeks from today and let the writ petition come up for hearing after one month.

Xerox plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the learned Counsel for the parties on usual

undertaking.

Order accordingly.