
(2018) 10 SC CK 0062

Supreme Court Of India

Case No: Civil Writ Petition No. 13029 Of 1985

M.C. Mehta

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision: Oct. 24, 2018

Acts Referred:

- Central Motor Vehicle Rules, 1989 - Rule 14, 115, 115(16), 115(21)
- Constitution Of India, 1950 - Article 21, 142

Citation: (2018) 14 Scale 263 : AIR 2018 SC 5194 : (2018) SCR 565

Hon'ble Judges: Madan B. Lokur, J; S. Abdul Nazeer, J; Deepak Gupta, J

Bench: Full Bench

Advocate: Harish N. Salve, Aparajita Singh, A.D.N. Rao, Siddhartha Chowdhury, A.N.S. Nadkarni, Pinky Anand, S.W.A. Qadri, D.L. Chidanand, Devasis Bharuka, Suhasini Sen, Ritesh Kumar, Saudamini Sharma, Snidha Mehra, G.S. Makker, B.V. Balramdas, Anil Katiyar, Chirag M. Shroff, Neha Sangwan, Joyshree Barman, Ajay Bansal, Praveen Swarup, Gaurva Yadava, Anil Grover, Shivam Kumar, Sanjay Kr. Visen, Dr. Monika Gusain, Baij Nath Patel, Rachana Gupta, Jitendra Kumar Tripathi, S.S. Shamsheery, Amit Sharma, Sandeep Singh, Ankit Raj, Nidhi Jaswal, Indira Bhakar, Ruchi Kohli, Dr. A.M. Singhvi, Ranjit Kumar, Sandeep Narain, Avishkar Singhvi, Anjali Agarwal, Gopal Subramaniam, Akshat Hansaria, Pavan Bhushan, Akash Chatterjee, Ashwini Mata, Vijay K. Sondhi, Nakul sachdeva, Nayamat S., Aakarshan Sahay

Judgement

Deepak Gupta, J.

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

31.03.2020.

2. In an earlier judgment dated 13.04.2017, we have given detailed reasons for the order dated 29.03.2017 whereby this Court had directed that on and

from 01.04.2017, vehicles which are not BSâIV compliant, shall not be sold by any manufacturer or dealer or motor vehicle company whether such

vehicle is a two wheeler, three wheeler, four wheeler or commercial vehicle etc.. We had also by the said order prohibited registration of nonâ BSâ-

IV vehicles from 01.04.2017 except if such vehicles were sold on or before 31.03.2017. Since in the judgment dated 13.04.2017, we have set out in

detail the history leading to implementation of the Bharat Stage compliant fuels, it is not necessary to repeat the same here. However, a short recap of

the same would be apposite to understand the issues in hand.

3. In 2003, the Government of India announced the National Auto Policy based on the recommendations of the Mashelkar Committee constituted in

2001. BSâIV compliant vehicles were made compulsory for four wheelers in different parts of the country on different dates starting from

01.04.2005, from which date registration of only BSâIV compliant vehicles were permitted in the metropolises of Delhi, Ahmedabad, Bengaluru,

Mumbai, Pune and Kolkata. Thereafter, it was made compulsory to have BSâIV compliant vehicles in some other cities from 01.04.2010. More cities

were added on 21.05.2010 and on 14.07.2015. Finally, by amendment dated 19.08.2015 it was mandated that BSâIV norms would come into force

throughout the country w.e.f. 01.04.2017.

4. As far as two and three wheelers are concerned, they were made subject to BSâIII norms on and with effect from 01.04.2010 by insertion of

subârule 16 in Rule 115 of the Central Motor Vehicle Rules, 1989 hereinafter referred to as â€the Rulesâ€™. With effect from 04.07.2014, it was

mandated that on and from 01.04.2016 all two wheeler vehicles will comply with BSâIV emission norms and all existing models will shift to BSâIV

emission norms from 01.04.2017. Similarly, Rule 17 was inserted in Rule 115 of the Rules on 12.06.2015 in respect of three wheelers wherein BSâIV

standard would be applicable to new models on or after 01.04.2016. Resultantly, only those vehicles which were BSâIV compliant would be sold after

01.04.2017.

5. An issue was raised by the manufacturers of motor vehicles that they should be given reasonable and sufficient time for sale of stocks of those

vehicles which are not BS-IV compliant vehicles but manufactured up to 31.03.2017. This Court did not accept the submission of the manufacturers and issued the direction referred

6. The issue before us is somewhat similar. Mr. Ranjit Kumar, learned senior counsel and Mr. Sandeep Narain, learned counsel appearing for the

Society of Indian Automobile Manufacturers (for short "SIAM"), have submitted that though they are not averse to manufacturing BS-IV

compliant vehicles, they should be given some time to sell the stocks of non-BS-IV compliant vehicles manufactured upto 31.03.2020. In this regard,

they have made reference to the notification dated 20.02.2018 whereby sub-rule 21 has been inserted in Rule 115 of the Rules, which reads as

follows:

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

"(21) New motor vehicles conforming to Emission Standard Bharat Stage-IV, manufactured before the 1st April, 2020 shall not be registered

after the 30th June, 2020:

Provided that the new motor vehicles of categories M and N conforming to Emission Standard Bharat Stage-IV, manufactured before the 1st April,

2020 and sold in the form of drive away chassis, shall not be registered after the 30th September, 2020."

7. It is submitted that the Government of India while balancing the need for a cleaner environment with the practical difficulties faced by the

manufacturers has given a three months' window to the automobile manufacturers to dispose of the vehicles conforming to BS-IV norms. In

respect of certain categories of commercial vehicles in which only a chassis is sold and a body has to be built thereupon, the period of registration has

been extended up to 30.09.2020.

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

vehicles when a higher quality of fuel is introduced and the fuel is introduced much earlier and thereafter an outer limit is fixed for sale of compliant

vehicles. According to SIAM, BS-IV fuel will be available in the entire country only with effect from 01.04.2020 and manufacturers are, therefore,

forced to stop production after 31.03.2020. Therefore, it is not feasible for the manufacturers to switch over to BSâVI compliant vehicles overnight.

They have to be given some reasonable time for sale of the accumulated stocks of nonâBSâVI (i.e. BSâIV) compliant vehicles. It is further

submitted that six to nine monthsâ€™ time is required to shift the assembly line to make BSâVI compliant vehicles and if the request of the

manufacturers is not accepted, they will have to start manufacturing BSâVI compliant vehicles well before 31.03.2020 and at least three to six

monthsâ€™ prior to the said date. It has also been contended that earlier BSâVI fuel was to be introduced with effect from 01.04.2024, which was

preâponed to 01.04.2023 and it was then preâponed to 01.04.2021 and finally the date was advanced to 01.04.2020. It was decided to leapfrog from

BSâIV fuel to BSâVI fuel without shifting to BSâV fuel. According to SIAM, this is creating a lot of difficulties for the manufacturers.

9. Mr. Gopal Subaramaniam, learned senior counsel appearing for one of the manufacturers, submits that his clients are already manufacturing

vehicles which are both BSâIV and BSâVI fuel compliant and they are on the road already. Mr. A.N.S. Nadkarni, learned Additional Solicitor

General submits that keeping in view the difficulties faced by the manufacturers and balancing the need to have a cleaner environment, three

monthsâ€™ period given to the manufacturers is reasonable. He also urges that the Rules have not been challenged by any party and, therefore, this

Court should not go into the validity of the Rules.

10. On the other hand, Ms. Aparajita Singh, learned amicus curiae, has made a passionate plea that no nonâBSâVI compliant vehicle should be

permitted to be sold in the entire country after 01.04.2020. She has drawn our attention to the Report of the Parliamentary Standing Committee (for

short â€˜the Committeeâ€™) dated 07.08.2018. This Report mainly deals with National Capital Region (NCR) of Delhi but there are some references

to the entire country. Some of the observations made by the Committee need to be considered and taken note of. The Committee in Para 5.15 notes

that the problem of air pollution is affecting all human beings and any leniency on the part of the Government in tackling it will have a cascading effect

on the health of the citizens. These observations have been made with specific reference to vehicular pollution and the need to ensure compliance of

BSÂVI norms with effect from 01.04.2020. There can be no two views that air pollution is hazardous to health. We may, also take note of certain

observations of the Report of the Committee which show that one out of three children in Delhi suffers from respiratory problems. This is almost

twice as high as compared to the city of Kolkata or rural areas. We may note that the World Health Organisationâ€™s (WHO) database of more

than 4,300 cities showed Indian cities of Gwalior, Allahabad, Raipur, Delhi, Ludhiana, Khanna, Varanasi and Patna as being among the most polluted

in the world¹. Our attention has been drawn to various other documents which clearly show the deleterious effects of pollution on health. The hazards

of pollution and its ill effect on the health of the citizens especially children are not limited to the city of Delhi or the NCR of Delhi but affect all the

citizens of the country.

11. The Union Government has spent about Rs.30,000 crores to manufacture BSÂIV compliant fuel. We have been informed that another Rs.

30,000/Â crores of the taxpayersâ€™ money have been expended by the Union to ensure that the fuel available in the country is BSÂVI compliant. It

is heartening to note that the Union, being concerned with the health of the citizens and also taking note of the urgent need for a clean environment,

has taken steps to manufacture cleaner fuel. This fuel has already been made available in the National Capital Territory (NCT) of Delhi from

01.04.2018 and we have been informed that barring a few places, it shall be available in the entire NCR from 01.04.2019. It will probably be available

in many parts of the country prior to 01.04.2020 and the entire country will shift to BSÂVI fuel from 01.04.2020. Obviously, the manufacture of clean

fuel is being done in a phased manner because all the refineries cannot simultaneously start manufacturing clean fuel. It is not as if on 01.04.2020 just

by waving a magic wand the entire country will change to BSÂVI compliant norms. If all the refineries and manufacturers by taking note of the

requirement to bring in BSÂVI fuel, have introduced such fuel from 2018 and are introducing it in a phased manner in the entire country by

31.03.2020, we see no reason why manufacturers of automobiles, two wheelers, three wheelers etc. cannot also do so.

12. We may note that whereas in this Court SIAM has been canvassing that the shift to BSâVI compliant vehicles is a long drawn out process

requiring huge changes in technology, the very same manufacturers are selling and exporting BSâVI compliant vehicles to Europe and other

countries. With regard to two wheelers it has been specifically urged that the technological changes are immense. To counter this argument the

learned amicus curiae has drawn our attention to a Press Release issued by M/s. Hero MotoCorp., which is one of the largest motor manufacturers of

two wheelers in the country. In this Press Release issued in July 2017 it has been stated that M/s. Hero MotoCorp. has begun developing BSâVI

compliant models and it aims to introduce such products much before the timeline of 2020. The company has also stated that it will manufacture only

BSâVI fuel compliant vehicles well before the date stipulated by the authorities. If one manufacturer can do this, we see no reason why other

manufacturers of two wheelers cannot do so.

13. With regard to trucks and buses, from a news item published in the Financial Express dated 06.07.2018, it is apparent that Eicher is already

manufacturing trucks and buses which are not only BSâVI compliant but BSâVI CNG compliant. Another manufacturer of heavy vehicles i.e.

Ashok Leyland had, in August, 2018 through its subsidiary Optare obtained an order to manufacture the worldâ€™s first electric double decker buses.

The technology needed to manufacture such electric buses is much more advanced and difficult as compared to the technological changes required to

manufacture petrol and diesel vehicles which are BSâVI compliant. Similarly, TVS Motors on 07.08.2018 has issued a press note that it will be

manufacturing BSâVI compliant vehicles much ahead of the deadline of 2020. Many members of SIAM in the Auto Expo held in February, 2018

have exhibited vehicles which are technologically much more advanced than BSâVI compliant vehicles. These manufacturers have not only asserted

that they can manufacture electric vehicles but also asserted that they are developing hydrogen cell fuel vehicles along with hybrid, electric and CNG

vehicles.

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

15. When we compare BSâVI fuel with BSâIV fuel, there is a massive improvement in environmental terms. Once BSâVI emission norms are enforced, there will be a 68% improvement in PM2.5. This is not a small change. It is a vast improvement and the faster it is brought, the better it is.

The amicus curiae has strenuously urged that, at least, in the NCR of Delhi, the BSâVI norms be applied for sale of vehicles from 01.04.2020. We feel that it may not be practical to introduce BSâVI compliant vehicles regionâwise or cityâwise. In our view, the BSâIV experiment in this regard was not very successful. BSâVI compliant vehicles are going to be more expensive than BSâIV compliant vehicles. People have a tendency to buy cheaper vehicle(s) even from a neighbouring city. We also strongly feel that the problem of pollution is not limited to the NCR of Delhi but it is a problem which has engulfed the entire country especially the major cities. India has the dubious distinction of having 15 out of the 20 most polluted cities in the world. The pollution in Gwalior, Raipur & Allahabad is worse than Delhi. The situation is alarming and critical. It brooks no delay.

16. It is an established principle of law that the right to life, as envisaged under Article 21 of the Constitution of India includes the right to a decent

environment M.C. Mehta v. Union of India, (1998) 6 SCC 60, M.C. Mehta v. Union of India, (1998) 6 SCC 63, M.C. Mehta v. Union of India (Matter

regarding emission standard for vehicles), (1999) 6 SCC 12, M.C. Mehta v. Union of India, (2002) 10 SCC 191, M.C. Mehta v. Union of India, 2017

SCC Online SC 394. It includes within its ambit the right of a citizen to live in a clean environment M.C. Mehta v. Union of India, (1998) 6 SCC 60,

M.C. Mehta v. Union of India, (1998) 6 SCC 63, M.C. Mehta v. Union of India (Matter regarding emission standard for vehicles), (1999) 6 SCC 12,

M.C. Mehta v. Union of India, (2002) 10 SCC 191, M.C. Mehta v. Union of India, 2017 SCC Online SC 394 . With regard to vehicular traffic, this

Court has issued a number of directions to ensure a clean environment and reduce pollution M.C. Mehta v. Union of India, (1998) 6 SCC 60, M.C.

Mehta v. Union of India, (1998) 6 SCC 63, M.C. Mehta v. Union of India (Matter regarding emission standard for vehicles), (1999) 6 SCC 12, M.C.

Mehta v. Union of India, (2002) 10 SCC 191, M.C. Mehta v. Union of India, 2017 SCC Online SC 394. It has been held that the right to clean

environment is a fundamental right Shantistar Builders vs Narayan Khimalal Gotame & Ors. Etc, AIR 1990 SC 630, M.C. Mehta v. Union of India,

(2004) 12 SCC 118, State of M.P. v. Kedia Leather & Liquor Ltd., (2003) 7 SCC 389. The right to live in an environment free from smoke and

pollution follows from the "equality" of life which is an inherent part of Article 21 of the Constitution. The right to live with human dignity becomes

illusory in the absence of a healthy environment Shantistar Builders vs Narayan Khimalal Gotame & Ors. Etc, AIR 1990 SC 630, M.C. Mehta v.

Union of India, (2004) 12 SCC 118, State of M.P. v. Kedia Leather & Liquor Ltd., (2003) 7 SCC 389. The right to life not only means leading a life

with dignity but includes within its ambit the right to lead a healthy, robust life in a clean atmosphere free from pollution. Obviously, such rights are not

absolute and have to co-exist with sustainable development. Therefore, if there is a conflict between health and wealth, obviously, health will have to

be given precedence. When we are concerned with the health of not one citizen but the entire citizenry including the future citizens of the country, the

larger public interest has to outweigh the much smaller pecuniary interest of the industry, in this case the automobile industry, especially when the

entire wherewithal to introduce the cleaner technology exists.

17. It is therefore necessary to ensure that BSâVI compliance is uniform throughout the country so that even those areas of the country which

fortunately have not suffered the ills of extreme pollution are safe in the future. The sale of automobiles and other vehicles is rising exponentially and

the number of vehicles on the road is increasing day by day. Therefore, even a dayâ€™s delay in enforcing BSâVI norms is going to harm the health

of the people. We are dealing here with a situation where children and unborn children suffer from pollution and issues of inter-generational equity

are involved. Do we as a society or as manufacturers of automobiles have a right to manufacture more polluting vehicles when we have the

technology to manufacture less polluting vehicles? The answer is obviously a big NO. If we were to factor only economics even then it makes no

economic sense to have more polluting vehicles on the roads. The effect of pollution on the environment and health is so huge that it cannot be

compensated in the marginal extra profits that the manufacturers might make. The amount spent on countering the ills of pollution such as polluted air,

damaged lungs and the cost of healthcare far outweigh the profits earned.

18. It was urged on behalf of the manufacturers that there are multiple sources of pollution and vehicles only contribute to 2% of the pollution. We are

not in agreement with this submission because the Report of the Committee to which we have adverted hereinabove states that contribution of

vehicles to ambient PM 2.5 concentration during winter season is 25% and in the summer season it contributes 9%. Even if we were to accept the

figures submitted by SIAM, we are of the view that no step is too small when it comes to fighting pollution. Small steps to reduce pollution when taken

together will lead to large scale reduction in pollution which will result in much cleaner air, which eventually will result in a cleaner and better

environment, healthier citizens and most importantly a healthier generation to come.

19. In view of the fact that these proceedings have been pending in court for a long time and also in view of the fact that it is because of orders of this

Court that BSâIV and now BSâVI norms have been introduced from the dates which were not even thought of by the Government, we feel that we

have to take suo moto notice of the Rules. At the outset, we may notice that sub-rule 21 of Rule 115 is very vague. It does not talk of sale of vehicles. It only mentions registration of vehicles and permits registration of vehicles conforming to BSIV norms up to 30.06.2020 and in case of categories M & N, up to 30.09.2020. This rule, in our view, is violative of Article 21 of the Constitution in as much as it extends time for registration of vehicles beyond 31.03.2020 and must be accordingly read down. Any extension of time in introducing the new norms which is not absolutely necessary adversely impacts the health of the citizens and is, therefore, violative of Article 21 of the Constitution of India. This Rule goes against the spirit of all the orders passed earlier by this Court. In the month of March, 2017 we were dealing with a situation when BSIV norms were to be made effective throughout the country with effect from 01.04.2020 and this Court had directed that non-BSIV compliant vehicles shall not be registered on or after 01.04.2017. The situation in the present case is totally different. 31.03.2020 is almost 1½ years away. There is sufficient time for the manufacturers to change over to the new system and, therefore, we see no reason why they should be given a window of three or six months for sale of accumulated vehicles. Every vehicle sold after the cutoff date of 01.04.2020 is bound to cause more pollution and, therefore, the manufacturers, in our considered view, cannot be permitted to sell any non-BSIV compliant vehicle on or after 01.04.2020. On the one hand, the Government has been proactive in spending huge amounts of money to move to the BSIV technology, but on the other hand, the automobile industry is coming up with a variety of untenable excuses just to delay the introduction of BSIV compliant vehicles by a few months. We, in our judgment dated 13.04.2017, had clearly held "when the health of millions of our countrymen is involved, notification relating to commercial activities ought not to be interpreted in a literal manner." We have to give a purposive interpretation to notifications specially those dealing with public health issues and even more so, when health not only of the citizens at present but also the citizens in the future is involved. There is more than sufficient time for the manufacturers to manufacture BSIV compliant vehicles. They already have the technology to do so. The automobile industry must

show the will, responsibility and urgency in this regard.

20. The Government has developed a policy of phasing out polluting vehicles and discouraging the manufacturers of polluting vehicles. This has been

done in a gradual manner. Europe introduced Euro^{IV} fuel in the year 2009 and Euro^{VI} standards in 2015. We are already many years behind

them. We cannot afford to fall back further even by a single day. The need of the hour is to move to a cleaner fuel as early as possible.

21. Therefore, in exercise of the power vested in this Court under Article 142 of the Constitution, we read down sub^{rule} 21 of Rule 115 and direct

that sub^{rule} 21 of Rule 115 shall be interpreted and understood to read that no motor vehicle conforming to the emission standard Bharat Stage^{IV}

shall be sold or registered in the entire country with effect from 01.04.2020.