

2017 (1) GLR 590

GUJARAT HIGH COURT

Hon'ble Judges:N.V.Anjaria, J.

Shaileshbhai C Patel Versus State Of Gujarat

SPECIAL CIVIL APPLICATION No. 16059 of 2007 ; *J.Date :- DECEMBER 2, 2015

- [MOTOR VEHICLES ACT, 1988](#) Section - [207](#) , [200](#) , [113](#) , [114](#) , [115](#)

Motor Vehicles Act, 1988 - S. 113, 114, 115, 200, 207 - motor accident - petitioner is an owner of the vehicle - goods vehicle carried the goods beyond the permissible limit - order of recovery of compounding penalty and levy of fees - order passed u/s 207 of MV Act - challenged - procedure laid down u/s 114 of the MV Act - non-compliance with the provisions of S. 114 of the MV Act - no prior notice given to petitioner before passing an impugned order - impugned order set aside - petition allowed.

Imp.Para: [[5](#)] [[6](#)] [[7](#)]

Equivalent Citation(s):
2017 (1) GLR 590 : 2016 (2) GCD 1722

JUDGMENT :-

1 By filing the present Writ Petitioner, petitioner prayed to set aside order dated 06/08th September, 2006 passed by the Regional Transport Officer, Bhavnagar-respondent No.3. The petitioner further prayed to set aside the consequential action taken based on the said order. Respondent No.3 by the impugned order directed recovery of Rs.08,44,550/- being the total amount of compounding penalty/fee sought to be levied from the petitioner in respect of the vehicles, list of which was attached to the order, on the ground that for the period from 16th August, 2006 to 04th September, 2006, the vehicles carried the goods beyond the prescribed permissible limit.

1.1 It appears that on the basis of the said order, amongst the total 98 vehicles mentioned, in respect of vehicles bearing Nos.GJ-1-AU-8139, GJ-1-AU- 4999, GJ-1-AU-4935, GJ-1-AU-4098 and GJ-1-AU-4067, amount of Rs.68,100/- was paid towards the compounding penalty to get

the said vehicles released. In that regard, the prayer is made for refund of the said amount.

2 The impugned order was passed in purported exercise of Section 207 of the Motor Vehicles Act, 1988 and sought to impose the compounding penalty as per the Schedule of the Notification issued by the State Government in that regard under Section 200 of the Motor Vehicles Act (hereinafter mentioned as the Act).

3 It is the case of the petitioner that respondent No.4-Gujarat State Fertilizer Company had awarded a contract to the petitioner company for transportation of rock phosphate from Bhavnagar Port to GSFC site at Vadodara during the period from 01st April, 2006 to 31st March, 2007. The contract included taking and receiving delivery of the goods by a sub- contractor, to get the empty trucks weighed at weigh bridge and to get loaded the goods, etc. It was stated that the transport vehicles of the petitioner company were being plied to carry goods pursuant to the said contract. The aforesaid impugned order seeking to levy the penalty for overloading came to be addressed to the petitioner as well as to respondent No.4 company. According to the petitioner since pursuant to the impugned order, the authorities started to take action against the petitioner only and the vehicles were being detained even after the passing of the order on the ground of alleged overloading during the period in question for which the order was passed, the petitioner approached this Court to challenge the same.

4 Learned advocate Mr.Ramkrishna Dave assailed the legality of the order outrightly on the ground that neither any prior notice nor any opportunity was given to the petitioner before passing the order. He submitted that the compounding fees readily sought to be recovered was not permissible because such fees mentioned in the Notification issued under Section 200 of the Act could not have been levied without consent; Section 200 provided for launching of prosecution and in lieu compounding penalty could be levied if agreed. It was submitted that had the prosecution been launched, petitioner could have defended for his rights. Learned advocate for the petitioner further submitted that even though the authority have powers under Sections 113, 114 and 115 of the Act for overloading, action thereunder could be taken only after following the procedure envisaged under Section 114 of the Act, which was not followed. It was further submitted that the impugned order was purportedly passed invoking Section 207 of the Act, which provision was not applicable in the facts of the case. He submitted that the respondent-authorities continued to harass the petitioner and used to detain the other vehicles on the stance that penalty under the impugned order was not being paid.

4.1 On the other hand learned Assistant Government Pleader Mr.Bharat Vyas supported the order and vehemently submitted that the petitioner was guilty of carrying goods beyond prescribed weight and had thus

committed offence. He relied on the affidavit-in-reply filed on behalf of the respondent authority, in which it was inter alia contended that as the petitioner committed number of irregularities, after following the procedure certain vehicles were detained and compounding fee was recovered. The deponent of the affidavit-in-reply mentioned in the affidavit 5 vehicles and the compounding fees recovered in respect of each of them. It was contended that notices dated 06th August, 2006 and 09th August, 2006 were issued for recovery of the fees.

4.2 It was the submission of learned AGP that even if the order is to be held bad in law, the same was passed without compliance of the certain provisions of the Act. He submitted that it amounted to only irregularity and not illegality. He referred to decision in Deepak Agro Foods Vs State of Rajasthan [(2008)7 SCC 748] It was submitted that if the procedure is not followed as alleged by the petitioner, such irregularity could be cured by the authorities and for that reason, the order is not required to be quashed and the case may be remanded to the authority.

4.3 Learned advocate Mr.Kunal Nanavati representing respondent No.4 submitted that the vehicles in respect of which the impugned order related, were owned by the petitioner who was given a contract and the ownership and the drivers belonged to the petitioner. According to him, the order was applicable to the petitioner only and respondent No.4 had even requested the Regional Transport Officer to remove name of respondent No.4 from the order.

5 With the relevant facts outlined and the contentions defined above, considering the merits of the impugned order with reference to the applicable statutory provisions, the ground on which the action was taken and the order was passed seeking to levy and recover the compounding fee was that the vehicles in question were overloaded and that the carried the goods during the period mentioned beyond permissible weigh. Section 113 of the Act prescribes for the limits of weight and limitations on use of the vehicle. It is not disputed that the action is in relation to and exercise of powers derived from the aforesaid sections. The ground mentioned in the impugned order is overloading and carrying goods beyond permissible limit of weight. Sections 113, 114 and 115 would operate.

5.1 Section 113 prescribes limits of weight and limitations on use of the vehicle. Sub-section(3) thereof says that no person shall drive or cause or allow to be driven any motor vehicle or trailer in a public place (a) the unladen weight of which exceeds the unladen weight specified in the certificate of registration of the vehicle, or (b) the laden weight of which exceeds the gross vehicle weight specified in the certificate of registration. Further, sub- section(4) says that where the driver or person in charge of a motor vehicle or trailer driven in contravention of sub-section (2) or

clause (a) of sub-section (3) is not the owner, a Court may presume that the offence was committed with the knowledge or or under the orders of the owner of the motor vehicle or trailer. Section 114 gives power to the competent officer to have the vehicle weighed. Section-115 authorizes the State Government or any competent authority authorised in that behalf to restrict the use of the vehicle.

5.2 Section 114 of the Act empowers the Officer authorised to have the vehicle weigh and prescribes the procedure in that regard. The said provision is extracted hereinbelow.

"114. Power to have vehicle weighed.

(1) Any officer of the Motor Vehicles Department authorised in this behalf by the State Government shall, if he has reason to believe that a goods vehicle or trailer is being used in contravention of section 113, require the driver to convey the vehicle to a weighing device, if any, within a distance of ten kilometres from any point on the forward route or within a distance of twenty kilometres from the destination of the vehicle for weighment; and if on such weighment the vehicle is found to contravene in any respect the provisions of section 113 regarding weight, he may, by order in writing, direct the driver to off-load the excess weight at his own risk and not to remove the vehicle or trailer from that place until the laden weight has been reduced or the vehicle or trailer has otherwise been dealt with so that it complies with section 113 and on receipt of such notice, the driver shall comply with such directions.

(2) Where the person authorised under sub-section (1) makes the said order in writing, he shall also endorse the relevant details of the overloading on the goods carriage permit and also intimate the fact of such endorsement to the authority which issued that permit."

5.3 Section 194, which occurs in Chapter(XIII) titled as "offences, penalties and procedures" deals with the offence of driving a vehicle exceeding permissible weight. The provision reads as under.

"194. Driving vehicle exceeding permissible weight.

(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 113 or section 114 or section 115 shall be punishable with minimum fine of two thousand rupees and an additional amount of one thousand rupees per tonne of excess load, together with the liability to pay charges for off- loading of the excess load].

(2) Any driver of a vehicle who refuses to stop and submit his vehicle to weighing after being directed to do so by an officer authorised in this behalf under section 114 or removes or causes the removal of the load or part of it prior to weighing shall be punishable with fine which may extend to three thousand rupees."

5.4 Section 86 of the Act may also be referred to which deals with cancellation and suspension of permit and provides that the transport authority may cancel the permit or suspend the same for such period as he thinks fit and for the reasons mentioned in Clauses (a) to (f). Under sub-section (1), an opportunity of hearing to the holder of the permit to furnish his explanation is expressly contemplated. Sub-section (5) of Section 6 provides that instead of canceling or suspending the permit, the transport authority may recover from the holder of the permit a sum of money agreed upon. In other words, this provision is for compounding, the benefit of which may also be availed by the holder of the permit of the vehicle in a given case.

5.5 As noted above, the act of overloading the goods is made a punishable offence under Section 194 of the Act. Under Section 200 of the Act, the authorities are empowered to prosecute for the offences under the Act, which includes the aforesaid offence under Section 194. Section 200 is usefully reproduced.

"200. Composition of certain offences

(1) Any offence whether committed before or after the commencement of this Act punishable under Section 177, Section 178, Section 179, Section 180, Section 181, Section 182, sub-section (1) or sub-section (2) or Section 183, Section 184, Section 186, Section 189, sub-section (2) of section 190, Section 191, Section 192, Section 194, Section 196 or Section 198 may either before or after the institution of the prosecution, be compounded by such officers or authorities and for such amount as the State Government may by notification in the Official Gazette, specify in this behalf.

(2) Where an offence has been compounded under sub-section (1) the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of such offence."

5.6 Under the aforesaid Section, either the offender in respect of the offences mentioned therein may be prosecuted or the offence can be compounded before or after the institution of prosecution. sub-section (2) says that where an offence has been compounded under sub-section (1), the offender, in custody, shall be discharged and no further proceedings shall be taken against him in respect of such offence. Thus if

the prosecution is started, the person facing such prosecution would have right to defend. In the alternative, he may choose not to invite prosecution or continuance thereof and the offence may be compounded.

5.7 The aforesaid provisions when read together, brings out a position that driving a vehicle exceeding permissible weight would be in contravention of Section 113 or Section 114 or Section 115 of the Act. Under Section 194 the Act is made punishable and in respect of that, Section 200 would come into play and either of the alternative, namely prosecution for or compounding of offence, would result. Before the prosecution is started on the ground of offence of overloading, for which Section 114 would apply. The said Section prescribes procedure on the officer authorized who exercises power to book the vehicle which is being plied by committing breach of weight, etc. contrary to Section 113 of the Act.

5.8 The conditions envisaged in Section 114 may look procedural in nature. However they could be said to be providing factual basis for prosecuting the offender for offence under Section 194 in accordance with Section 200 of the Act. Non-compliance of procedural conditions provided for under Section 114 can be a matter of defence for the offender facing the prosecution. Therefore the compliance of Section 114 is not a mere formality. When the powers are exercised under Section 114, the offender would further enjoy right to get the offence compounded. In case of applicability of Section 86 whereunder an action for cancellation and suspension of permit can be taken by the authority, under sub-section (5), similar benefit of compounding could be availed by the permit holder. In the present case however, as such Section 86 does not directly come into picture. But referring to sub-section (2) of Section 114, the authority after endorsing the details of overloading on the document of permit will send them to the authority which has issued the permit. The action under Section 86 may therefore thereafter follow.

6 The impugned order came to be passed without any prior notice. Secondly, the conditions and procedures of Section 114 were not complied with while taking action against the vehicles of the petitioner on the ground of overloading. The order is rendered bad for non-compliance of Section 114 of the Act. Further, by the impugned order, the Regional Transport Authority has imposed compounding fee on the basis of the Schedule for which the Notification is issued under Section 200 of the Act. The determination of quantum of the compounding fee is devoid of any basis and it did not preceded by pre-requisites necessary in law. Again, the offender may choose to face prosecution and defend himself that no offence was committed by him. Therefore in addition to the non-compliance of the provision of Section 114 and the conditions thereof, the order stands vitiated on several other

considerations and infirmity in law as stated above. It is therefore not possible to sustain the impugned order in eye of law.

6.1 The submission of learned Assistant Government that there was only non-compliance of certain provisions and it was irregularity and not illegality could hardly be countenance inasmuch as, the steps, conditions and procedures to be taken and contemplated under Section 114 are, as already stated, not mere procedural formality but would be a source of substantive right for the offender when he subjected to face the prosecution. The vehicles were subjected to action in the year 2006. After passage of almost a decades time, the question of allowing the authorities to follow the procedure does not arise, therefore the request made in that regard made by learned Assistant Government Pleader cannot be accepted.

7 In light of the above position of law and for the reasons recorded hereinabove, impugned order dated 06/08th September, 2006 passed by Regional Transport Authority, Bhavnagar-respondent No.3 herein seeking to impose and recover amount of compounding fees cannot sustain and deserves to be set aside. Accordingly the same is set aside.

8 It may be stated that out of the total vehicles, in respect of which the authority passed the impugned order, in respect of five vehicles bearing Registration No.GJ-1-AY-8139, GJ-1-AU-4999, GJ-1-AU- 4935, GJ-1-AU-4098 and GJ-1-AU-8067, the authority had recovered amount of Rs.68,100/-. In the petition, in addition to the prayer to set aside the impugned order, a further prayer is made to direct respondent No.3 to refund the aforesaid amount. Learned advocate for the petitioner stated that petitioner would not insist for the said prayer in paragraph 18(B) as setting aside of the order would amount to granting relief substantially.

9 This petition is accordingly allowed excepting prayer in paragraph 18(B) which is given up as above. Rule is made absolute in the terms aforesaid.