

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL PUBLIC INTEREST LITIGATION NO. 33 OF 2017

Viniyog Pariwar Trust through
Vinod Bhanvarlal Kothari Jain

... Petitioner

Vs

1 The State of Maharashtra & Ors.

... Respondents

Mr. J.S. Kini with Ms. Siddh Vidya, Mr. Raju Gupta, Ms. Sneha Jain, Mr. Mukesh Gupta, Mr. Dhruv Gupta, Mr. Shashikant Chandak and Ms. Kanchan Chandak i/b Arya Amre for the Petitioner.

Mrs. P.P. Shinde, APP, for the Respondent-State.

Mr. Rajendra Mahadev Madaney, Dy. T.C. Enf.II present.

**CORAM : S.C. DHARMADHIKARI &
G.S. PATEL, JJ.**

TUESDAY, 06TH AUGUST, 2019

P.C. :

1 Pursuant to our earlier order, this matter was placed today.

2 Our earlier order reproduces the Rule under the Motor Vehicles Act.

3 Today, the Deputy Commissioner of Transport is present in Court and Mrs. Shinde, learned APP, on instructions from him, makes a statement that the State of Maharashtra has issued a Circular to all the Regional Transport Officers and Deputy Regional Transport Officers. That Circular dated 10th May, 2019, sets out that the Central Motor Vehicles Rules, 1989 and particularly Rule 125E will have to be complied with. The existing regime must give way to this and licences will have to be obtained in compliance with the Rules.

4 During the course of arguments and in answer to our queries it is stated that several applications have been received but primarily from Mumbai East, Thane, Kalyan, Ratnagiri, Kolhapur and which are in double digits. It is also said that there are actions taken and, for instance, in Mumbai Western Suburbs, about 918 vehicles were checked, in Mumbai Central 211 and in Mumbai East 409.

5 In answer to our queries, it is stated that these are the figures which are pertaining to the vehicles scrutinized, but

presently, there is no data on how many applications for issuance of licences were issued, how many have been granted (in the sense, the number of licences issued) and whether the licencees have abided by the terms and conditions of the licence and the Central Motor Vehicles Rules. To this latter query, there is presently no answer.

6 We are worried because this is not the only legislation in the field. The Prevention of Cruelty to Animals Act, 1960, enables under Section 38 of that Act, the Central Government to make Rules. There are two sets of Rules. The Prevention of Cruelty to Animals (Transport of Animals on Foot) Rules 2001 and The Transport of Animals Rules, 1978, enact schedules for the transportation of animals, such as dogs or cats, monkeys, cattle, sheep and goats, pigs, horses and poultry. We are concerned in this case essentially with the transport of cattle, sheep and goats. Chapter IV of The Transport of Animals Rules, 1978, contains a title 'Transport of Cattle'. Rules 47 to 56, *inter alia*, set out the special requirement for cattle while being transported in commonly sized road vehicles. In Chapter VI of these Rules, we have found elaborate provisions of Rules 64 to 75

in relation to transport of sheep and goats. There are also general provisions in this Chapter. *Prima facie*, these Rules and the legislation, meaning The Prevention of Cruelty to Animals Act, 1960, and the Motor Vehicles Act, so also the Rules framed thereunder, ought to be read harmoniously and together. So read, all the provisions therein are enacted to subserve the larger public interest. The concern of public safety and public health are, to our mind, predominant in character.

7 To our mind, the Circulars issued demonstrate that the authorities are not aware of and rather oblivious to these Rules and the parent statute, namely, The Prevention of Cruelty to Animals Act, 1960. Eventually, animals brought for slaughter on festive occasions in Mumbai do not necessarily enter the city only from designated entry points where there are check posts. Even though in this city there are limited points of road entry in the northern suburbs, within those northern areas there are several roads and lanes that lead and connect southwards. There are ways and means to avoid these statutes and compliance therewith. The animals, therefore, are brought for slaughter and on occasions, they may be tired, ill and infirm. They may not be

looked after properly during the journey. In such circumstances, it would be hazardous to permit their slaughter and particularly without the fitness certificate. There is no material at all to show that all the vehicles that are utilised for transportation meet the standards and norms prescribed in the Motor Vehicles Act and the Central Motor Vehicles Rules, 1989.

8 This being a very serious matter, we would expect an affidavit of compliance. That affidavit should demonstrate statute-wise/rule-wise compliance, particularly on transportation of animals. We are not only concerned with the transportation or rather illegal transportation of animals for festive occasions, we are concerned with the aspect of preventing cruelty to them otherwise as well. In the circumstances, we would expect first a compliance affidavit so as to denote the fulfillment of the pre-conditions which are mandatory in character without which such animals which are brought in the city in contravention of the above regime can be seized, the vehicles can also be taken into custody, the prosecution can be launched and the guilty brought to book. It is not then permissible for anybody to release the animals or the seized material, including the vehicles.

9 Today, we have a scenario where the Deputy Commissioner who is present Court, instructs Ms. Shinde to tell the Court that the seized vehicles are released by the Regional Transport Office staff. How do they derive this power has not been explained to us. These vehicles are subject of an offence. They are seized and taken into custody because they are used for transporting illegally the animals. The animals have to be taken to proper rescue shelters and homes. If the vehicles as also the animals cannot be released until the competent criminal court passes appropriate orders in accordance with law, then, the Transport Office should not ordinarily release the seized vehicles or the animals. The authorities under the Act, the MMC Act and allied laws ought to be intimated so that they can take care of the animals after taking them over from the persons transporting them. Thus, multiple authorities are involved and they have to work in coordination. We do not think that there is room for a non-governmental organisation in merely filing a public interest litigation and doing nothing more. They ought to assist these officials by maintaining a continuous vigil. The members of the NGO should realise that dropping a complaint at the door of

this Court and then desiring that the Court should take over ever single function is not expected from them.

10 We would, therefore, also expect a proper affidavit from the petitioners as to how they can assist or have assisted the officials and the police machinery till date.

11 The affidavit of compliance shall be filed within six weeks. However, for the festive occasion falling on 12th August, 2019, we would expect the Regional Transport Office, particularly the Commissioner of Transport to ensure that on the website of this Commissionerate, all the relevant laws, rules and regulations are displayed and that those interested in transporting animals would have to be necessarily applying and obtaining licences. If such persons do not obtain the licence, they would face these consequences. Thus, stringent measures as regards them should also be displayed with necessary details on the website. It is mandated by rules and particularly the Transport of Animals Rules, 1978 in Chapter IX that there has to be a certificate issued before transportation. Therefore, the Mumbai Regional Transport office would have to necessarily get in touch with the authorities

from where the vehicle commenced its journey. The registration number of the vehicle may provide some clue. However, it is not necessary that a particular vehicle having a registration of a particular zone or region would commence its journey from that region. Sometimes, the number plates may also be changed. The registration would be fake as well.

12 To our mind, therefore, Rules 96, 97 and 98 would enable the authorities to take stringent measures and prevent any violation or breach of the Act and the Rules. We would, therefore, expect the Regional Transport Office, the Commissioner of Police, Mumbai to display all the details and today, we have an arrangement where such displays are possible on heavy roads flowing with traffic right upto Mulund Check Post as also the Check Post at Vashi. On the way and equally at those Check Posts themselves, all these details should be displayed. In the event anybody is booked, then, the details of the crime should also be uploaded so as to prevent recurrences of the violations and breach. It is no answer to say that the vehicles do not necessarily come from these points or enter the City through them alone. If there are other areas from where the activities are

reported, then, equally we expect the police machinery as also the Regional Transport Office to plug any loopholes and leakages. The past experience is bound to provide enough guidance to them.

13 Stand over to 16th September, 2019.

G.S. PATEL, J.

S.C. DHARMADHIKARI, J.