* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: 26th November, 2014.

\+ **W.P.(C) 6825/2014**

AMIT BHAGAT ..... Petitioner

Through: Mr. Bhupender Pratap Singh, Adv.

Versus

GOVT OF NCT OF DELHI, DEPARTMENT OF TRANSPORT & ANR ..... Respondents

Through: Ms. Zubeda Begum, Standing Counsel (GNCTD) and Ms. Sana Ansari, Adv. for Transport Department.

AND

\+ **W.P.(C) 6854/2014 & CM No.16179/2014 (for stay)**

JAMSHED ANSARI ..... Petitioner

Through:

Versus

THE STATE, GOVT. OF NCT OF DELHI & ANR ..Respondents

Through: Ms. Zubeda Begum, Standing Counsel (GNCTD) and Ms. Sana Ansari, Adv. for Transport Department.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. Both these petitions under Article 226 of the Constitution of India, filed as Public Interest Litigations, impugn the Notification dated 28th August, 2014 of the Government of National Capital Territory of Delhi (Transport Department) amending Rule 115(2) of the Delhi Motor Vehicles

Rules, 1993, by, though doing away with the exemption earlier in favour of all women from, when riding on pillion or driving a motor cycle, wearing protective headgear (helmet) and thereby making it mandatory for women as well , to wear helmet, but making it optional for *Sikh* women. The petitioners also seek a direction for amending Rule 115(2) so that *Sikh* women are not exempted from compulsorily wearing helmet when driving or riding pillion on a motor cycle.

2. Section 129 of the Motor Vehicles Act, 1998 (MV Act) is as under:-

> *"**129. Wearing of protective headgear. -** Every person driving or riding (otherwise than in a side car, on a motor cycle of any class or description) shall, while in a public place, wear protective headgear conforming to the standards of Bureau of Indian Standards:*
>
> *Provided that the provisions of this sections shall not apply to a person who is a Sikh, if he is, while driving or riding on the motor cycle, in a public place, wearing a turban:*
>
> *Provided further that the State Government may, by such rules, provide for such exceptions as it may think fit.*
>
> *Explanation.-"Protective headgear" means a helmet which,-*
>
> *(a) by virtue of its shape, material and construction, could reasonably be expected to afford to the person driving or riding on a motor cycle a degree of protection from injury in the event of an accident; and*

> *(b) is securely fastened to the head of the wearer by means of straps or other fastenings provided on the headgear."*

3. Section 129 supra is contained in Chapter VIII titled "Control of Traffic" of the M.V. Act, Section 138, also in the said Chapter, empowers the State Government to make Rules for the purposes of carrying into effect the provisions thereof. The Government of NCT of Delhi (GNCTD) in exercise of powers under the Second proviso aforesaid, had enacted Rule 115 of the Delhi Motor Vehicles Rules, 1993 which, prior to its amendment vide Notification dated 28th August, 2014 was as under:-

> *"(1) The protective headgear which a person is required to wear under Section 129 of the Act, shall be of I.S.I. specification and in good condition. It shall be securely fastened to the head by means of strips and other fastenings, provided on the headgear.*
>
> *(2) It shall be optional for woman whether riding on pillion or driving on a motor cycle to wear a protective headgear."*

4. The Notification dated 28th August, 2014 amends Rule 115(2) supra by substituting the word 'woman' with the words '*Sikh* women'. The effect thereof is that though women, who were earlier exempted by the GNCTD

from operation of Section 129 supra i.e. from, when driving or riding a motor-cycle, wearing a helmet, are now no longer so exempted and are required to compulsorily wear a helmet; however 'Sikh women' continue to be so exempted.

5. The contention of the petitioners is:-

(i) that the exception carved out in Section 129 is for a *Sikh* man wearing a turban; it is not a blanket exception for all persons belonging to the *Sikh* community; the said exception is a matter of necessity in as much as it is not possible for a *Sikh* man wearing a turban to wear a helmet;

(ii) that the State Government in exercise of powers under the second proviso to Section 129 cannot overturn the substantive effect of Section 129 itself;

(iii) that the exemption granted to *Sikh* women is in disregard for the safety of women belonging to the *Sikh* community;

(iv) that the classification made between women professing *Sikh* religion and other women is arbitrary and violative of Article 14 of the Constitution of India;

(v) wearing of helmet by *Sikh* women does not militate against a practice that is essential to practicing the religion and the consequences of not wearing a helmet far outweigh the trivial and insubstantial interference that it is perceived to cause to a non-existent religious practice;

(vi) wearing of helmet by *Sikh* women does not go against the tenets of *Sikhism*;

(vii) the amended Rule 115(2) supra causes undue hardship to the enforcement agencies;

(viii) that the classification between women professing *Sikh* religion and other women is not founded on any intelligible differentia having a reasonable nexus with the object sought to be achieved; and,

(ix) that Rule 115(2) as amended by the Notification supra discriminates between *Sikh* and non-*Sikh* women on the ground of religion and which is against the mandate of Article 15(1) of the Constitution of India.

6. The Preamble of the Notification dated 28th August, 2014 amending Rule 115(2) supra records that, (i) in accordance with Section 212(1) of the MV Act, the proposed amendment to the Rules was published and objections and suggestions invited from persons likely to be affected thereby; and, (ii) objections and suggestions were received from the public and which had been considered by the GNCTD prior to issuing the Notification amending the Rule.

7. In view of the above, we, instead of calling upon the respondent GNCTD to file reply to the petition, asked for production of the records leading to the impugned Notification.

8. The counsel for the respondent GNCTD has today in Court produced the said record and which have been perused by us. We find therefrom that the GNCTD had proposed deletion of Rule 115(2) and which would have had the effect of making wearing of helmet mandatory for all women. The said proposal, in accordance with Section 212 of the M.V. Act (which provides that the Rule making power of State Government is subject to the Rules being made after previous publication), was published in the Official Gazette for the intimation of the persons likely to be affected thereby, to be taken up for consideration after thirty days together with any suggestions or

objections that may be received in respect thereto. Of the 26 objections received to the said proposed / draft Rules, as many as 25 were from men, women, organizations professing Sikh religion and *inter alia* to the effect that making wearing of helmets compulsory for Sikh women would be a hindrance in letting them follow their religious axioms in totality and in true spirit and would thus be clearly in violation of Article 25 of the Constitution of India. Though few letters supporting wearing of helmets by women including Sikh women were also received but not from persons professing Sikh religion. The record further reveals that the decision to amend the Rule 115(2) as done vide Notification dated 28th August, 2014, was taken after considering the views of Delhi Commission for Women, Traffic Police, Secretary-cum-Commissioner (Transport) as well as the judgments / orders of the Courts on the subject from time to time and *inter alia* for the reason that all religious sentiments need to be respected.

9. We reiterate that prior to the Notification dated 28th August, 2014, Rule 115(2) (supra) made it optional for women to wear helmet. After the amendment vide Notification supra, though it is mandatory for women also as for men (except Sikhs wearing a turban) to wear helmet while driving or riding on pillion a motorcycle of any description, exemption by GNCTD is

carved out in favour of Sikh women.

10. Having perused the records, we are satisfied that the decision of the GNCTD, to while making wearing of helmet by women compulsory, excluding Sikh women from the applicability of Section 129, is a well thought out and considered decision and taken after following the procedure prescribed in the MV Act. The only question which thus remains is, whether the amended Rule 115(2) is violative of the MV Act or is arbitrary, violative of Articles 14 and / or 15(1) or causes undue hardship to the enforcement agencies, and is thus liable to be quashed.

11. We may at the outset state that the ground taken, of the amended Rule 115(2) causing undue hardship to the enforcement agencies owing to it being difficult to determine whether a woman riding a motorcycle without helmet is of *Sikh* religion or not, cannot be a ground for declaring a provision on the statute book invalid or *ultra vires*. Difficulty involved in implementing a law, is no ground to apply the provisions of law in a manner different from what the law means. Law enforcers cannot nullify the provisions of the very law sought to be enforced in the guise of effectively implementing the law. Once a rule has come into force, no one can be permitted to challenge the same on the ground of inconvenience and

difficulty in its implementation. Reliance, if any required can be placed on the judgment of a Division Bench of this Court in ***Parmanand Katara Vs. Union of India*** AIR 1998 Delhi 200 and to the recent judgment of the Supreme Court in ***Avishek Goenka Vs. Union of India*** (2012) 5 SCC 321.

12. We next take up the aspect of, whether the amended Rule 115(2) can be said to be violative of Section 129 of the MV Act. The argument of the petitioners in this respect though not clearly spelt out appears to be that Section 129 mandates 'every person', irrespective of gender to wear a helmet and having itself carved out an exception only in favour of "a person who is a Sikh" (i.e. irrespective of gender) only if he is wearing a turban, the State Govt., in exercise of power under Second proviso thereto cannot provide for exception in favour of a Sikh who is not even wearing a turban i.e. a Sikh woman.

13. Though the petitioners / their counsels have not elaborated on this aspect, we find a Single Judge of the Karnataka High Court in ***S.R. Bhat Vs. State of Karnataka*** AIR 1998 Kant 153 to have held the exemption from wearing a helmet granted by the State Govt. to a person driving motorcycle with not more than three metric horse-power to be doing violence to Section 129 and wholly outside the legislative competence of the State Govt. It was

held that the power of the State Govt. under the Second Proviso to Section 129 is a limited one enabling the State Govt. to make an exemption only in respect of similar categories of persons who for reasons of religion or custom normally wear a turban and in whose case therefore the wearing of a helmet would not be feasible. It was held that it would be a misconception of law, if the said proviso could be said to empower the State Govt. to dilute the compulsory and mandatory requirement of Section 129.

14. However the amended Rule 115 (2) with which we are concerned cannot, in our opinion, be said to be diluting to any extent the scope of Section 129 of the MV Act. Though the amended rule certainly exempts Sikh women from the application / mandate of Section 129 of the MV Act but that cannot be said to be in conflict with Section 129 of the MV Act particularly when the very purpose of the Second proviso thereto is to empower the State Government to provide for exceptions, further other than those in the first proviso, from the application / mandate of Section 129 of the MV Act.

15. The Supreme Court in ***Union of India Vs. Paliwal Electricals (P) Ltd.*** (1996) 3 SCC 407 in the context of the power of the Central Govt. under Rule 8 of the Central Excise Rules, 1944 to exempt any excisable

goods from the whole or any part of duty leviable on such goods held that the power of exemption granted by the Parliament to the Govt. is a potent weapon in the hands of the Govt. *inter alia* to achieve the various social and economic objectives and to be exercised in public interest, since the Parliament cannot constantly monitor the needs and the emerging trends and to engage itself in day-to-day requirements. It was further held that when the power conferred is absolute, there is no warrant for reading any limitation into it. It was yet further held that even in the absence of any guiding principle, while conferring such power the guiding factor has been the public interest.

16. Reference in this regard can also be made to ***Hindustan Paper Corpn. Ltd. Vs. Government of Kerala*** (1986) 3 SCC 398 where, while dealing with Section 6 of Kerala Forest Produce (Fixation of Selling Price) Act, 1978 enabling the Govt. to in public interest exempt the sale of any produce from the otherwise mandatory provisions of the Act, it was held that the Legislature which is burdened with the heavy legislative and other type of work is not able to find time to consider in detail, the hardships and difficulties that are likely to result by the enforcement of the statute concerned; it has therefore now become a well recognized and

constitutionally accepted legislative practice to incorporate provisions in the statutes conferring the power of exemption on the Governments. It was further held that such exemptions cannot ordinarily be granted secretly—a Notification would have to be issued and published in the gazette and in the ordinary course, it would be subject to the scrutiny by the Legislature.

17. We may record that Section 212 of the MV Act, not only requires the State Govt. to make the Rules after previous publication as aforesaid but also requires the Rules made by the State Govt. to be laid before each House of the Parliament.

18. We are therefore of the view that no limitation can be read into the power of the State Govt. under the Second Proviso to Section 129 to grant exemptions from the mandate of Section 129, save as are inherent in a proviso. We do not find the exercise of power under the Second proviso in the present case, to be doing any violence to the substantive part of Section 129.

19. Grant of exemption by the State Govt., in exercise of powers under the Second Proviso, to Sikh women from the mandate of Section 129, cannot be said to be contrary in any way or undermining the substantive part

of Section 129. Significantly, the exception carved out in favour of 'Sikh wearing a turban' is not in the substantive part of Section 129 but in the first proviso thereto. The First Proviso, though uses the words "a person who is a Sikh" but the said words are followed by words "if he is" and which is indicative of the reference therein being to a male only. Even otherwise, it is only Sikh men who are generally known to wear a turban. The Legislature thus cannot be said to have, by enacting the First Proviso to Section 129, taken away the power of the State Govt. under the Second Proviso to exempt Sikh women. Moreover, the power conferred on the State Govt. under the Second Proviso to Section 129 to grant exemption from the mandate of Section 129 is absolute, without any restrictions, as is borne out from the words "as it may think fit" therein. The scope and interpretation of a Second proviso is not dependent upon the First proviso and the Second proviso cannot be said to be taking colour from the First proviso – they are two independent provisos to the main Clause. We find at least a Division Bench of the High court of Bombay in ***Wangai Muhiu Maina Vs. Nagpur University, Nagpur*** MANU/MH/1583/1999 to have taken the same view. A Division Bench of this Court, in ***Star India P. Ltd. Vs. The Telecom Regulatory Authority of India*** 146 (2008) DLT 455, also held that where a

section or enactment contains two provisos and the second proviso is repugnant to the first, the second proviso must prevail for it stands last in the enactment and speaks the last intention of the makers. The same is the view of the Full Bench of the Punjab and Haryana High Court, expressed in ***Swaran Singh Vs. Guru Nanak University*** MANU/PH/0527/1989, where it was observed that the two provisos cover different fields and mere fact that what can be done under the Second proviso can be done also under the First proviso is no ground to assume that the second proviso is paramount in the field so as to stultify what is sought to be done under the first proviso.

20. The State Government, in ***S.R. Bhat*** supra was found to have provided an exception in conflict with the substantive part of Section 129. The judgment (supra) of the Karnataka High Court, turned the way it did for the reason that though Section 129 applies to persons driving or riding a 'motorcycle of any class or description', the State Government sought to restrict its application / mandate to a certain kind of motorcycles only and which was held to be not permissible. Such is not the position here.

21. That brings us to the third ground of challenge, i.e. of the amended Rule, arbitrarily discriminating between women who are of *Sikh* religion and other women.

22. We may at the outset notice that Section 129 of the MV Act by the First proviso thereto and to which there is no challenge, itself exempts Sikhs wearing a turban from wearing helmet. We have wondered whether not the legislature itself has thereby classified persons riding a motorcycle, by religion. Of course, one possible argument and which has been accepted by the High Court of Madhya Pradesh (See ***Girish Uskaikar Vs. Chief Secretary*** MANU/MH/0954/2001) is that the exception in favour of Sikhs wearing turban contained in the First proviso is not on religious grounds but out of necessity i.e. owing to it being impossible / inconvenient to wear a helmet over a turban or for the reason of the turban itself serving the same purpose as helmet. However we are unable to accept the said reasoning. The same does not take into account the reason for wearing the turban and which is but a religious one. Else, no exemption from the recourse of a law can be claimed / sought on the ground of it being inconvenient to a particular person, owing to his religion, to abide therewith. If the same were to be permissible, all desiring to be exempted from the applicability of any law would create such circumstances as would make it inconvenient to them to abide thereby. Moreover, the exemption contained in the First proviso is not for all persons wearing a turban but only for persons professing Sikh

religion wearing a turban inasmuch as in the case of Sikhs it is their religion which requires them to wear a turban. Thus, the exception provided for under the First proviso to Section 129 of the MV Act is clearly on religious grounds. Once it is so, we are unable to gauge as to how the decision of the State Government to, in exercise of powers under the Second proviso, grant exemption to others also on religious grounds, can be challenged.

23. Article 15(1) of the Constitution of India prohibits the State from discriminating "against any citizen" on the ground only of religion. We have wondered whether in the facts of the present case, where, though the State had proposed to treat all women at par by making the provision of Section 129 of the MV Act applicable to all of them, on the objection of the *Sikh* community, the *Sikh* women were left out of such compulsory application of Section 129 of the MV Act. In our opinion, the State in the said circumstances, cannot be said to be "discriminating against Sikh women" on the ground of religion.

24. Chief Justice Patanjali Sastri as far back as in ***Kathi Raning Rawat Vs. The State of Saurashtra*** AIR 1952 SC 123 held (and with which others on the bench did not disagree) that all legislative differentiation is not necessarily discriminatory; in fact the word "discrimination" does not occur

in Article 14 and the expression "discriminate against" used in Article 15(1) means, to make an adverse distinction with regard to – distinguishes unfavourably from others. Thus, while religion may furnish a legitimate basis for classification for the purpose of Article 14, Article 15(1) forbids a classification in the ground only of religion. Therefore, to show that right under Article 15(1) has been violated, it must be shown that there is discrimination and not merely distinction and that the discrimination is based on the ground of religion. As aforesaid, the expression 'discriminate against' means to make an adverse distinction with regard to-distinguish unfavourably from others. Discrimination thus involves an element of unfavourable bias and it is in that sense that the expression has to be understood. We, in Rule 115(2), are unable to see any element of hostility towards *Sikh* women.

25. Here, it is not as if Sikh women, by the rule aforesaid are barred from wearing a helmet. Rule 115(2) expressly provides that it shall be optional for them. When the statute / rule has not taken away any right or privilege of or has not imposed any prohibition on, a class of persons while doing so for others and rather leaves it optional for that class to do or not to do what the rest have been mandated to do, in our view no question of any

arbitrariness or discrimination arises, specially when the said class has been so treated differently on its own asking. Undoubtedly the mandate of law for wearing a helmet is a matter of public policy. The same is not only in the interest of the person to whom the mandate is issued but also for the benefit of others on the road who may accidently be causative of injury to head of a person driving / riding a motorcycle and which may be fatal, exposing them to claims for compensation. The collective society has thus deemed it appropriate to, rather than leave it to the discretion of individuals, mandate it in the larger interest of the society. The challenge to such mandate, on the grounds of the same being violative of fundamental right under Articles 19(1)(d) and 21 and beyond the Rule making power of the State Government (under the then Section 91(2)(i) of the M.V. Act, 1939 and which is equivalent to Section 138(2)(i) of the M.V. Act, 1988) has already been negatived in ***Ajay Canu Vs. Union of India*** (1988) 4 SCC 156. However, equality is but one of the facet of our constitution which also recognizes liberty and fraternity as principles of life. Equality without liberty would denude the individual of its identity and without fraternity, liberty and equality would not nurture. When liberty sought by the Sikhs to follow their religion is weighed qua equality, the exemption granted to Sikh women on

religious grounds as has been granted to Sikh men who following their religion sport a turban, cannot be faulted with.

26. Mention at this stage may be made of the judgment of Division Bench of High Court Madhya Pradesh ***Rajneesh Kapoor Vs. Union of India*** AIR 2007 MP 204 penned by Justice Dipak Misra where one of the contentions was that Section 129 (supra) was discriminatory for the reason of not applying to Sikhs. The said contention was negatived *inter alia* on the ground that Section 129 is in tune with Articles 25 and 26 of the Constitution and does not invite the wrath of Article 14 (the judgment also contains an elaborate exposition on the need for wearing a helmet).

27. We are also of the view that it is not for this Court to adjudicate whether or not the Sikh religion comes in the way of the women wearing helmets. The persons professing the said religion asserted so and the Government which under the statute has been empowered to grant the exemption found it to be so. It is not for this Court to interfere. As far as we have otherwise been able to understand, the Sikh religion forbids both men and women professing the said religion from wearing any head covering, other than a turban. It was so recognized by the Supreme Court of Canada also in ***Central Alberta Dairy Pool Vs. Alberta (Human Rights***

Commission) MANU/SCCN/0121/1990. Not only so, it is to be presumed that legislature and the Government exercising power of delegated legislation have understood and correctly appreciated the needs of their own people and the law framed is directed to problems made manifest by experience, and exceptions have been made on adequate grounds. We find a Division Bench of the High Court of Madras also, in ***R. Muthukrishnan Vs. The Secretary to Home Department, Govt. of Tamil Nadu*** MANU/TN/9018/2007 to have held that it is not for the Court to determine the question whether wearing of helmet should be mandatory or optional, if it is unconformable for some persons or affects the hairdos of a lady.

28. Article 14 forbids class legislation. It is designed to prevent any person or class of persons from being singled out as a special subject for discrimination and hostile legislation. It however does not take from the power to classify. It does not forbid a reasonable classification - for the purposes of legislation, provided that classification is founded on intelligible differentia and that differentia has a rational relation to the object of the statute. As far back as in ***Moti Das Vs. S. P. Sahi, The Special Officer In-charge of Hindu Religion Trusts*** AIR 1959 SC 942, it was held that classification may be based on religion. In that case it was held that

exclusion of Sikh Religious Trusts from the application of Bihar Hindu Religious Trusts Act, 1950 did not offend Article 14 as the organization of Sikh Religious Trusts was essentially different from the organization of Hindu Religious Trusts and the legislature was of the opinion that the Sikh Religious Trusts did not require the protection which the Hindu Religious Trusts did. Applying the same analogy, we are of the opinion that the Government in exercise of its power under the second proviso to Section 129 was entitled to determine which religious community cannot be compelled to wear helmets. The legislature and the government are not debarred from recognizing the existence of different religious laws prevailing in the country. Even if the persons belonging to two different religions have the same practice / taboo, the legislature and the government are entitled to determine, as to persons belonging to which religion are ripe for social reform and in choosing them for the reform and thereform it cannot be said that the Parliament / Government is discriminating. Article 25(2) of the Constitution prescribes that the freedom to profess, practice and propagate religion guaranteed by Article 25(1) is subject to the making of laws providing for social welfare and reform. An illuminating discussion on the subject is to be found in the judgment of Chenappa Reddy J. speaking

for the Full Bench of the Andhra Pradesh High Court in ***Gogireddy Sambireddy vs Gogireddy Jayamma*** AIR 1972 AP 156, while dealing with the challenge, to Section 494 I.P.C. read with Sections 11 and 17 of the Hindu Marriage Act making bigamy an offence, on the ground of the same being violative of Article 15(1) of the Constitution for the reason of exposing Hindus and not Muslims thereto. It was held that though it is true that the Republic of India as established by the Constitution is secular in character but that did not mean that Parliament and legislature are debarred from recognising the existence of different systems of personal law prevailing in the country.

29. Though the contention raised by the petitioners, that exemption granted to Sikh women is in disregard of their safety cannot be ignored / belittled but the same has to be weighed *vis-a-vis* other considerations as had arisen while issuing the Notification aforesaid. The respondent GNCTD is found to have, in exercise of its rule making power and the power under the second provisio to Section 129, after weighing the said rival contentions, reached a conclusion that presently it is not feasible to make it mandatory for Sikh women also to wear helmets / protective headgear. The said decision is found to be in the legislative domain of the respondent GNCTD

and to have been made in accordance with law and neither the Courts nor the petitioners can substitute their own opinion for the same. The Supreme Court in ***Pannalal Bansilal Patil Vs. State of Andhra Pradesh*** (1996) 2 SCC 498 held that a uniform law, though is highly desirable, enactment thereof in one go perhaps may be counter productive to unity and integrity of the nation and in a democracy governed by rule of law, gradual progressive change and order should be brought about. It was further held that making law or amendment to a law is a slow process and the legislature attempts to remedy where the need is felt most acute. To the same effect are paras 17 and 18 of ***Javed Vs. State of Haryana*** (2003) 8 SCC 369.

30. Though we find a Division Bench of the Uttaranchal High Court to have in ***Uttaranchal Sikh Federation Vs. State of Uttaranchal*** AIR 2006 Utt 67 broached the same subject but the petition was disposed of in view of the concession made that Sikh women riding pillion of a motorcycle being not required to wear a helmet and by not considering the challenge to the requirement in Uttaranchal of Sikh women driving a motorcycle to wear a helmet on the ground that there was no challenge in the petition to Section 129 of the MV Act which required so.

31. We therefore do not find any merit in these petitions and dismiss the same but reiterating our hope that all the concerned agencies will make efforts to build public opinion or devise other modes and ways to ensure protection from head injuries also to Sikh women driving or riding pillion on motorcycle.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

NOVEMBER 26, 2014
'pp/gsr' **..**
(Corrected and released on 10th December, 2014).