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HIGH COURT OF TRIPURA
AGARTALA

WP(C)(PIL) No.30/2021

Smt. Sudipa Nath

----Petitioner(s)

Versus

The Union of India & others

-----Respondent(s)

For Petitioner(s)

: Mr. Sanjib Kumar, Advocate,
Ms. R. Guha, Advocate,
Mr. Joyraj Borah, Advocate.

For Respondent(s)

: Mr. Debalay Bhattacharjee, G.A.,
Mr. Bidyut Majumder, Asstt. S.G.,
Mr. S. Saha, Advocate.

HON'BLE THE CHIEF JUSTICE MR. INDRAJIT MAHANTY
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

Order

21/12/2021
(Indrajit Mahanty, C.J.)

The present PIL has come to be filed by the petitioner seeking a direction to the State of Tripura to frame a comprehensive electric vehicle policy so as to ensure that the objective of environmental protection through promotion of non-carbon fuel based vehicles be achieved in an efficient and timely manner and in public interest. Further prayer has been made to all the respondents to effectively adopt the scheme for Faster Adoption and Manufacturing of Electric Vehicles in India Phase II (FAME India Phase II)

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issued by the Union of India on 8th March, 2019 and further a direction has been sought to the respondent No.5, i.e. the Central Institute of Road Transport to set aside the certification made by the respondent No.4 of the London Taxi Model Tx vehicle as a hybrid vehicle.

2. In the light of the aforesaid prayers, it is submitted on behalf of the petitioner that on 13.09.2018 an amendment has been made in the Motor Vehicles Rules, 1989 permitting import of certain limited number of vehicles under various categories by vehicle manufacturer directly or through their authorised representatives for the purpose of further sale or research or by the organisation/citizen for personal use, demonstration, testing, research or scientific use. The Union of India formulated a scheme for Faster Adoption and Manufacturing of Electric Vehicles in India Phase II (FAME India Phase II) on 08.03.2019 prior to which the Department of Heavy Industry had launched a scheme namely Faster Adoption and Manufacturing of Hybrid and Electric Vehicles in India (FAME India), for promotion of electric and hybrid vehicles which remains in force and extended till date apart from the amendments carried out in FAME II vide notification dated 08.03.2019. It is further submitted that the Union of India issued a standard operating procedure for the process of registration of

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vehicles imported by the vehicle manufacturers or through their authorised agents in India on 01.05.2019 and on 27.05.2021 the Union of India amended the Central Motor Vehicles Rules, 1989. It is further stated that the Minister of State for Heavy Industries, Shri Krishan Pal Gurjar made a statement in Parliament that 13 States have approved/notified dedicated EV policies to promote adoption of electric vehicles on 09.08.2021. It is important to take note of the fact that at least 13 States in the Union of India have already approved and notified dedicated electric vehicles (EV policies) to promote adoption of electric vehicles and State of Tripura is yet to approve or notify its EV policies for promotion and adoption of electric vehicles. The fact that electric vehicles need to be promoted in the interest of the environment as well as the climate change and its consequences, prayer is made for suitable directions in this regard.

3. The Union Government amended the Central Motor Vehicles Rules, 1989 on 27.05.2021 to include in Rule 81 the following proviso:

“Provided further that, for the Battery Operated Vehicles as defined in rule 2(u); the items given at Sl. No.4 of the below mentioned TABLE shall be exempted from the payment of fees for the purpose of issue or renewal of registration certificate and assignment of new registration mark.”

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4. Rule 2(u) of the Motor Vehicles Rules, 1989 defines a “Battery Operated Vehicle/Pure Electric Vehicles” as under:

“Rule 2(u) “Battery Operated Vehicle” means a vehicle adapted for use upon roads and powered exclusively by an electric motor whose traction energy is supplied exclusively by traction battery installed in the vehicle.”

(underlined for emphasis)

5. In this regard, it need be noted that there is no controversy at hand that promotion of alternate fuels to carbon based transport system is being encouraged by the Union of India and electric vehicles are being offered various incentives including subsidies in EV policies for various States. It appears that various States including Maharashtra, Gujarat, Odhisha and others have also exempted road tax and registration charges and various incentives have been declared under the said policies.

6. It is imperative to state here that both the Union as well as State Governments are duty bound to take such steps as to reduce pollution and the Hon’ble Supreme Court of India in the case of *Subhash Kumar v. State of Bihar* reported in (1991) 1 SCC 74 recognized the right to “enjoyment of pollution free water and air for full enjoyment of life” as a facet of Article 21

of the Constitution. It need not be reiterated that wherever environmental pollution occurs individuals are entitled to a remedy including removal of polluted water or air which may be detrimental to the quality of life.

7. The petitioner in the writ petition by way of illustration pointed out that respondent No.5, CIRT has erroneously certified London Taxi Tx vehicle as hybrid “instead of electric vehicle”. It is asserted that such certification is contrary to the statutory rules governing the subject when such a vehicle has been globally accepted as an “electric vehicle”. The petitioner has stated that the said example illustrates that such an erroneous action on the part of respondent No.5 has a direct bearing on the adoption of such changing technologies in India and, therefore, adversely affects the successful implementation of various scheme floated by the Central Government for promotion of electric vehicles. The petitioner further submitted that upon inquiry the respondent No.4 while deciding the certification applications for electric vehicles, illustration London Taxi Model Tx relied upon AIS 102 (Part 2) standards, the Automotive Industry Standard Committee (AISC) constituted by the erstwhile Ministry of Surface Transport while the same does not seek to define what is an “electric

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vehicle” and what is a “hybrid vehicle”. In this respect, while AIS 102 (Part

2) stipulates as follows:

“1.0 SCOPE

This standard is applicable to hybrid electric vehicles of M and N category of vehicles as defined in AIS-053, whose GVW exceeds 3500 kg.”

8. On a plain reading of the aforesaid stipulation it identifies that the scope and application of the entire standard commences only once a vehicle is classified as a hybrid electric vehicle and AIS-053 provides the definitions. Relevant extracts of the definition in AIS-053 are as follows:

“ 3.13 “Battery operated Vehicle (Two Wheeler)” means a vehicle adapted for use upon roads and powered exclusively by an electric motor whose traction energy is supplied exclusively by traction battery installed in the vehicle.”

9. The definition of “Battery Operated Vehicle” is verbatim similar with the definition provided in Rule 2(u) of the Motor Vehicles Rules, 1989. It is important to take note of the fact that the AIS-053 defines a hybrid vehicle as under:

“Hybrid Electric Vehicles (HEV)” means vehicle in which “power train” comprises a combination of two different drive train types:

- an internal combustion engine, and
- one (or several) electric drive train(s)”

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10. It further need be noted that Annexure-C to AIS-049 defines “Pure electric vehicle” to mean “vehicle powered by an electric power train only”. It is asserted that the London Taxi Model Tx is driven by an electric drive train only and traction energy is supplied exclusively by the traction battery which operates the electric motor. It is stated that the said vehicle comes along with a small 1.5 litre “Range Extender generator” which it is asserted can only be used to charge the battery when required in an emergent situation so that the vehicle is not left stranded due to lack of any public charging infrastructure for charging of the battery. It is further asserted that the 1.5 litre Range Extender generator cannot and does not provide traction energy to the motor for propulsion of the vehicle in question.

It is further averred that certain erroneous decisions of the CIRT i.e. respondent No.5 certifying the London Taxi Model Tx as a hybrid vehicle and not as an electric vehicle to disentitle this vehicle from receiving any benefit of such classification and prayer has been made seeking a direction to the CIRT, respondent No.5 to correctly apply the definition for battery operated vehicle as contained in the Motor Vehicles Rules and in AIS-053 and Annexure-C to AIS-049 which defines “Pure electric vehicle” since this would also be in consonance with the customs tariff classification,

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i.e. tariff entry No.8703-80 “other vehicles, vehicles with only electric motor for propulsion”.

11. Consequently, we dispose of the writ petition with the following directions:

(i) The respondent-State of Tripura is directed to take urgent steps in public interest to implement and adopt necessary steps under the scheme of FAME India Phase II issued by the Union of India on 08.03.2019 and frame a comprehensive electric vehicle policy for the State of Tripura in order to achieve the objective of environmental protection through promotion of non-carbon fuel based vehicles in an efficient and timely manner.

(ii) The respondent No.5, the Central Institute of Road Transport, is directed to forthwith reconsider the certification process for electric vehicles so that it is in tune with Rule 2(u) of the Motor Vehicles Rules, 1989, AIS-053 and Annexure-C to AIS-049 and further reconsider the certification of London Taxi Model Tx with Range Extender generator from hybrid to electric/battery operated vehicle if the said vehicle is propelled exclusively by battery operated electric motor as claimed by the

petitioner and communicate its decision taken to the petitioner by a reasoned order within two weeks from today.

12. With the aforesaid directions, the PIL stands disposed of.

Pending application(s), if any, also stands disposed of.

(S.G. CHATTOPADHYAY), J

(INDRAJIT MAHANTY), CJ

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