

Uttaranchal High Court

Uttaranchal Sikh Federation And ... vs State Of Uttaranchal And Ors. on 30 June, 2005

Equivalent citations: I (2006) ACC 306, AIR 2006 Utr 67

Author: C Joseph

Bench: C Joseph, R Tandan

JUDGMENT Cyriac Joseph, C.J.

1. The first petitioner in this writ petition is the Uttaranchal Sikh Federation, a society registered under the Societies Registration Act, 1980 and having its Central Office at 1/7, Haridwar Road, Dehradun. The second petitioner Mr. Gurdeep Singh "Toni" is the State President of Uttaranchal Sikh Federation. The third petitioner Smt. Neetu Singh is the President of the Women Wing of Uttaranchal Sikh Federation.

2. The petitioners have filed this writ petition praying for the following reliefs:

1. To issue a writ, order or direction in the nature of certiorari quashing the order/direction issued by the Transport Commissioner through its letter No. 1457/TR/LI-CENSE/03 dated 10-1-2003 so far use of headgear (Helmet) by the Sikh ladies while driving Two-wheelers is concerned or while sitting as pillion rider is concerned.

2. Issue any other writ, order or direction in the nature of Mandamus commanding the respondent Nos. 2 and 3 not to enforce the order of the Transport Commissioner dated 10-1-2003 so far use of headgear (Helmet) by the Sikh ladies while driving Two-wheelers is concerned or while sitting as pillion rider is concerned.

3 Issue any other writ, order or direction which the Hon'ble Court deems fit and proper in the circumstances of the case.

4. Award cost of the petition.

3. The impugned letter dated 10-1-2003 of the Transport Commissioner has been produced as Annexure 2 to the writ petition. In the said letter the Transport Commissioner invited the attention of the Director General of Police, Uttaranchal to certain aspects regarding the licensing and operation of vehicles. The Transport Commissioner requested the Director General of Police to direct the authorities under him to ensure that the rules and regulations mentioned in the letter are strictly observed by persons operating the vehicles. The grievance of the petitioners is only regarding the direction contained in Paragraph 2(5) of Annexure 2 letter which stated that, under Section 129 of the Motor Vehicles Act, 1988 every person driving or riding on two-wheelers should wear a protective headgear (helmet). The petitioners want the Sikh women to be exempted from wearing protective headgear (helmet) while driving or riding on two-wheelers.

4. Mr. K. P. Upadhyaya, learned Standing Counsel for the State of Uttaranchal submitted that under the Proviso to Rule 201 of U.P. Motor Vehicles Rules, 1998 as applicable to the State of Uttaranchal, every pillion rider of a motor cycle, scooter or moped is exempted from wearing a protective

headgear and, therefore, Sikh women are not required to wear a protective headgear while riding on a motor cycle, scooter or moped. According to the learned Standing Counsel, in Annexure 2 letter the Transport Commissioner omitted to mention the exemption under the Proviso to Rule 201 and to that extent the impugned direction is wrong. Therefore, it cannot be disputed that in view of the Proviso to Rule 201 of the U.P. Motor Vehicles Rules, 1998 as applicable to the State of Uttaranchal, Sikh women are not required to wear a protective headgear (helmet) while riding on a motor cycle, scooter or moped. However, they are required to wear a protective headgear while driving a motor cycle, scooter or moped.

5. According to Mr. V.K. Kohli, Senior Advocate who appeared for the petitioners, Sikh women stand exempted from wearing a protective headgear while driving a motor cycle of any class in view of Rule 3 of the Motor Vehicles (Protective Headgears) Rules, 1980. The said Rules were made by the Central Government in exercise of the powers conferred by Section 85-A of the Motor Vehicles Act, 1939 read with Section 22 of the General Clauses Act, 1897. Section 85-A of the Motor Vehicles Act, 1939 provided that every person driving or riding (otherwise than in a side car) on a motor cycle or any class shall, while in a public place, wear a protective headgear of such description as may be specified by the Central Government by Rules made by it in this behalf and that different descriptions of headgears may be specified in such rules in relation to different circumstances or different class of motor cycles. However, as per the first proviso to Section 85A, the provisions of the said section 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. As per the second proviso to Section 85A, the Central Government may, by such Rules, provide for such exceptions as it may think fit. According to Rule 3 of the Motor Vehicles (Protective Headgears) Rules, 1980 framed by the Central Government, the provisions of Section 85-A of the Motor Vehicles Act, 1939 shall not apply to a woman who is a Sikh. Though the Motor Vehicles Act, 1939 has been repealed by Section 217 of the Motor Vehicles Act, 1988, Mr. Kohli contended that, notwithstanding the repeal of Motor Vehicles Act, 1939, the Motor Vehicles (Protective Headgears) Rules, 1980 remains in force and are applicable even now in view of Sub-section (2) of Section 217 of the Motor Vehicles Act, 1988. He further contended that in view of Rule 3 of the Motor Vehicles (Protective Headgears) Rules 1980, Sikh women stand exempted from wearing headgears while driving or riding on two-wheelers.

6. It cannot be disputed that if the Motor Vehicles (Protective Headgears) Rules, 1980 still remain in force and are operative even now, a woman who is Sikh stands exempted from the operation of Section 85-A of the Motor Vehicles Act, 1939, which requires every person driving or riding on a motor cycle of any class shall, while in a public place, wear a protective headgear. But no such exemption from the operation of Section 85-A of the Motor Vehicles Act, 1939 is necessary now, because the said Act has been repealed and Section 85-A of the said Act is not operative now. The Transport Commissioner has not requested the Director General of Police to enforce Section 85-A of the Motor Vehicles Act, 1939. The request in Annexure 2 letter is to enforce the provisions contained in Section 129 of the Motor Vehicles Act, 1988. Therefore, the real question is whether the Sikh women stand exempted from the requirement under Section 129 of the Motor Vehicles Act, 1988 to wear a protective headgear while driving a motor cycle in a public place. The petitioners claim such exemption for Sikh women on the basis of Rule 3 of Motor Vehicles (Protective Headgears) Rules, 1980. But the said Rule 3 exempts Sikh women only from the operation of Section 85-A of the Motor

Vehicles Act, 1939. It does not exempt Sikh women from the operation of Section 129 of the Motor Vehicles Act, 1988. Hence even assuming that the Motor Vehicles (Protective Headgears) Rules 1980 are still in force and operative, Rule 3 of the said Rules cannot grant any protection to the Sikh women from the operation of Section 12 of the Motor Vehicles Act 1988.

7. Mr. Kohli submitted that according to Sub-section (2) of Section 217 of the Motor Vehicles Act, 1988, notwithstanding the repeal of the Motor Vehicles Act, 1939, any rule issued under the repealed Motor Vehicles Act, 1939 and in force immediately before the commencement of the Motor Vehicles Act, 1988, shall so far as it is not inconsistent with the provisions of the Motor Vehicles Act, 1988 be deemed to have been issued under the corresponding provisions of the Motor Vehicles Act, 1939. The contention of the learned Counsel is that since the Motor Vehicles (Protective Headgears) Rules, 1980 were issued under the repealed Motor Vehicles Act, 1939 and since the said Rules were in force immediately before the commencement of the Motor Vehicles Act, 1988, the said Rules shall be deemed to have been issued under the corresponding provision of the Motor Vehicles Act, 1988. Section 129 of the Motor Vehicles Act, 1988 is the provision corresponding to Section 85-A of the Motor Vehicles Act, 1939. Hence it is contended that Rule 3 of the Motor Vehicles (Protective Headgears) Rules 1980 shall be deemed to have exempted Sikh women from the application of Section 129 of the Motor Vehicles Act 1939. In our view, the above contention is devoid of merit. The Rules issued under the repealed Act can be deemed to have been issued under the corresponding provisions of the new Act only so far as they are not inconsistent with the provisions of the new Act. This is clear from a plain reading of Sub-section 2(a) of Section 217 of the Motor Vehicles Act, 1988 which is extracted below:

217(2) Notwithstanding the repeal by Sub-section (1) of the repealed enactments:

(a) any notification, rule, regulation, order or notice issued, or any appointment or declaration made, or exemption granted or any confiscation made, or any penalty or fine imposed, any forfeiture, cancellation or any other thing done or any other action taken under the repealed enactments, and in force immediately before such commencement shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been issued, made, granted, done or taken under the corresponding provision of this Act.

The Motor Vehicles (Protective Headgears) Rules, 1980 are inconsistent with the provisions of Section 129 of the Motor Vehicles Act, 1939 and the said Rules cannot be deemed to have been issued under Section 129 of the Motor Vehicles Act, 1939. Section 129 of the Motor Vehicles Act, 1988 is extracted hereunder:

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 section 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.

Rule 3 of the Motor Vehicles (Protective Headgears) Rules, 1980 also is extracted hereunder:

3. Exception in the case of Sikh women.-- The provisions of Section 85-A of the Motor Vehicles Act, 1939 (4 of 1939) shall not apply to a woman who is a Sikh.

According to Section 129 of the Motor Vehicles Act, 1988, every person driving or riding 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 provision 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. Hence the provision of Section 129 applies to a person who is a Sikh if he is not wearing a turban. Admittedly Sikh women do not wear turban and, therefore, the above mentioned provision in Section 129 of the Motor Vehicles Act, 1988 applies to Sikh women also. But, Rule 3 of the Motor Vehicles (Protective Headgears) Rules, 1980 exempts Sikh women from wearing protective headgear while driving or riding on a motor cycle. Therefore, the provision contained in Rule 3 of the Motor Vehicles (Protective Headgears) Rules, 1980 is inconsistent with the provisions contained in Section 129 of the Motor Vehicles Act, 1988. Consequently, Rule 3 of the Motor Vehicles (Protective Headgears) Rules, 1980 cannot be deemed to have been issued under Section 129 of the Motor Vehicles Act, 1988 and the Sikh women cannot claim any protection from the application of Section 129 of the Motor Vehicles Act 1988 on the basis of Rule 3 of the Motor Vehicles (Protective Headgears) Rules, 1980.

8. In this connection, learned Standing Counsel for the State of Uttaranchal pointed out that under the second proviso to Section 85-A of the Motor Vehicles Act, 1939, the Central Government was given power to make Rules providing for such exceptions as it may think fit, but in the corresponding section in the new Act i.e. Section 129 of the Motor Vehicles Act, 1988, no power has been given to the Central Government to make any rules providing for exceptions to the provisions contained in the said section. On the other hand, as per the second proviso to Section 129 such power has been conferred only on the State Government. Learned Standing Counsel contended that when the Central Government has no power to make rules providing for exceptions to the provision of Section 129, the Motor Vehicles (Protective Headgears) Rules, 1980 issued by the Central Government under Section 85-A of the Motor Vehicles Act, 1939 cannot be deemed to have been issued under Section 129 of the Motor Vehicles Act, 1988. We find force in the above contention of the learned Standing Counsel and we accept the same.

9. Learned Counsel for the petitioners invited our attention to Section 27 of the Motor Vehicles Act, 1988, particularly Clause (q) therein. Section 27(q) of the Motor Vehicles Act, 1988 reads as follows:

27. Power of Central Government to make rules. The Central Government may make rules

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(q) any other matter which is, or has to be, prescribed by the Central Government.

According to Section 27(q), the Central Government may make Rules regarding "any other matter which is, or has to be, prescribed by the Central Government". The contention of the learned Counsel is that under Section 27(q), the Central Government is competent to make rules providing for exception to the provisions of Section 129. The contention is wrong and unacceptable. Clauses (a) to (p) of Section 27 confer power on the Central Government to make rules regarding the specific matters mentioned therein. The matter dealt with in Section 129 is not covered by Clauses (a) to (p) of Section 27. Even under Clause (q) Central Government can exercise the power to make rules only regarding a "matter which is, or has to be, prescribed by the Central Government." Any exception to the provisions of Section 129 is not a matter which is, or has to be, prescribed by the Central Government. It is a matter which is, or has to be, prescribed by the State Government. In fact, the State Government has already made the rules regarding that matter by issuing the U.P. Motor Vehicles Rules, 1998. Hence the Motor Vehicles (Protective Headgears) Rules, 1980 cannot be deemed to have been issued under the provisions of the Motor Vehicles Act, 1988 and the said Rules are no more in force.

10. It is true that under the second proviso to Section 129 of the Motor Vehicles Act, 1988, the State Government is competent to make rules providing for such exemptions as it may think fit. Merely because there is a provision under Section 129 of the Motor Vehicles Act, 1988 empowering the State Government to make rules providing for exception to the provision of Section 129, it does not mean that Rule 3 of the Motor Vehicles (Protective Headgears) Rules, 1980 issued under Section 85-A of the Motor Vehicles Act, 1939 providing for exception to the provisions of the said Section 85-A, can be deemed to be valid and operative even now. Any provision contained in the Motor Vehicles (Protective Headgears) Rules, 1980, which is inconsistent with the provisions contained in Section 129 of the Motor Vehicles Act, 1988 cannot be operative or applicable after the commencement of Motor Vehicles Act, 1988. No person can be given exemption from the application of Section 129 of the Motor Vehicles Act, 1988 otherwise than by the Rules made by the State Government under the second proviso in Section 129. In fact the U.P. Motor Vehicles Rules, 1998 have been issued by the Government of U.P. in exercise of the powers conferred by the Motor Vehicles Act, 1988. Those Rules are admittedly applicable to the State of Uttaranchal. Rule 201 of the U.P. Motor Vehicles Rules, 1998 reads thus:

201. Protective headgear -- Wearing of -- (1) Every person while driving or riding a motor cycle, a scooter or moped shall wear a protective headgear conforming to the specification given in Sub-rule (2) below:

(2) Each protective headgear shall --

(i) be of specifications of Bureau of Indian Standards;

(ii) be permanently and legibly labelled in such manner that level or levels can be read easily without removing padding or any other permanent material description such as :

(a) manufacturer's name or identification;

(b) size;

(c) month and year of manufacture; and

(d) the mark of the Bureau of Indian Standards.

(iii) have minimum three adhesive type retroreflective red colour strips of the size of 2 centimetres multiplied by 15 centimetres affixed horizontally on bank of the headgear which will illuminate during the night:

Provided that Sub-rule (1) of this rule shall not apply to

(a) every pillion rider of a motor cycle, scooter or moped,

(b) any person wearing a turban while driving a motor cycle, scooter or a mopod in a public place.

According to Sub-rule (1) of Rule 201, every person while driving or riding a motor cycle, scooter or moped shall wear a protective headgear. However, as per the Proviso to Rule 201, Sub-rule (1) of the said Rule shall not apply to (a) every pillion rider of every motor cycle, scooter or moped; and (b) any person wearing a turban while driving a motor cycle, scooter or moped in a public place. Thus, as per Rule 201, all persons including Sikh women are exempted from wearing a protective headgear while riding on a motor cycle, scooter or moped. Only persons who are wearing turban are exempted from wearing a protective headgear while driving a motor cycle, scooter or moped. Since Sikh women admittedly do not wear turban, they are bound to wear protective headgear in compliance with Section 129 of the Motor Vehicles Act, 1988 and Rule 201 of the U.P. Motor Vehicles Rules 1998.

11. Since the petitioners have not challenged the validity of any of the provisions contained in Section 129 of the Motor Vehicles Act, 1988 and Rule 201 of the U.P. Motor Vehicles Rules, 1998, we are not called upon to consider the validity of those provisions insofar as they require the Sikh Women to wear a protective headgear while driving a motor cycle, scooter or moped.

12. Learned Counsel for the petitioners relied on some observations made by the Hon'ble Supreme Court in the judgment dated 27-9-2004 in Civil Appeal No. 3700 of 1999 reported in AIR 2005 SC 1386 Chandigarh Administration v. Namit Kumar. A copy of the said judgment has been produced by the petitioners as Annexure-4. The said appeal arose from certain orders passed by the Punjab and Haryana High Court while dealing with a Public interest Litigation. One of the impugned orders related to use of helmets. In that context the Hon'ble Supreme Court observed as follows paras 14 & 15 of AIR:

One of the directions which has been assailed by several appellants relates to direction No. 14 regarding use of helmets. The exemption has only been extended to Sikh women while driving. All others including women are required to wear helmets. Stand of the appellants is that such direction is contrary to several statutory prescriptions. Particular reference has been made to Section 85A of the Motor Vehicles Act, 1939 (in short the 'old Act') and Section 129 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "New Act"). It appears that Clause 3 of the Motor Vehicles (Protective Headgears) Rules, 1980 exempts Sikh women from wearing helmets. Reliance is also placed on Rule 193 of the Punjab Motor Vehicles Rules, 1989 and Rule 193 of the Chandigarh Motor Vehicles Rules, 1990 to contend that Sikh women are exempt from wearing the helmets, and, therefore, the High Court could not have given the direction contrary to the suggestion.

It appears that the Rules were not brought to the notice of the High Court. We, therefore, direct that if any exemption is granted to any person including Sikh women from any of the Motor Vehicles Rules relating to different States or areas or under any statutory Rule the same shall operate notwithstanding the directions of the High Court that all persons including women shall wear helmets.

Based on the above observation of the Hon'ble Supreme Court, the learned Counsel for the petitioners contended that the Motor Vehicles (Protective Headgears) Rules, 1980 are still operative even after the commencement of the Motor Vehicles Act, 1988. The reasoning of the learned Counsel is that unless the Hon'ble Supreme Court was of the view that the said Rules are still in force and operative, the Hon'ble Supreme Court would not have made the above observations regarding Rule 3 of the said Rules. However, there is no merit in the contention. The above observation of the Hon'ble Supreme Court does not have any such effect or implication. The Supreme Court has not held that, notwithstanding the commencement of the Motor Vehicles Act, 1988, the Motor Vehicles (Protective Headgears) Rules, 1980 are in force and operative. Such a question was not considered or decided by the Hon'ble Supreme Court.

13. Rule 498-A of the Andhra Pradesh Motor Vehicles Rules, 1964 provided as follows:

No person shall drive a motor-cycle or a scooter in a public place unless such driver wears a crash helmet:

Provided that nothing in this rule shall apply to person professing Sikh religion and wears a turban.

In exercise of his powers under Section 21(1) of the Hyderabad City Police Act, the Commissioner of Police, Hyderabad and Secunderbad issued a Notification dated 8-7-1986, inter alia, directing that in order to ensure adequate safety of two wheeler riders, wearing of protective helmets is made compulsory for riders of motor cycles and scooters, as envisaged by Rule 498-A of the Andhra Pradesh Motor Vehicles Rules, 1964 with effect from 1-8-1986. A writ petition was filed in the Andhra Pradesh High Court challenging the validity of the said Notification as also Rule 498-A on the ground that the same was violative of the fundamental rights of the petitioner as guaranteed under Article 19(1)(d) and Article 21 of the Constitution of India. It was also contended that as Section 85-A of the Motor Vehicles Act, 1939 was yet to be enforced, Rule 498-A was illegal and ultra

vires the Motor Vehicles Act. It was further contended that wearing of helmets prevented the free flow of breeze to the head and would result in giddiness and affect sight and hearing. The petitioner even filed an affidavit of Dr. Prabhakar Korada wherein it was, inter alia, stated that continuous wearing of helmets could raise the pressure leading to irritation, confusion, headaches, giddiness, falling of hair etc. The High Court overruled the contention of the petitioner that the said Notification and the provision of Rule 498-A of the Andhra Pradesh Motor Vehicles Rules, 1964 were violative of Articles 19(1)(d) and Article 21 of the Constitution of India and that they were illegal or ultra vires the provisions of the Motor Vehicles Act, 1988. Relying upon medical opinion of some reputed Neuro-Surgeons, the High Court came to the conclusion that wearing of helmet would not cause any ailment whatsoever as contended by the petitioner. The High Court dismissed the writ petition upholding the validity of the provision of Rule 498-A of the Andhra Pradesh Motor Vehicles Rules and the impugned Notification. Against the judgment of the High Court, Special Leave Petition (Civil) No. 1252 of 1998 was filed in the Hon'ble Supreme Court of India. The said Special Leave Petition was dismissed by the Hon'ble Supreme Court as per the judgment *Ajay Canu v. Union of India*. While dismissing the Special Leave Petition, the Hon'ble Supreme Court held as follows:

13. The next attack to Rule 498-A and to the impugned notification is based on the fundamental right of a citizen. It is submitted that the compulsion for the wearing of a helmet by the driver of a two-wheeler vehicles is an infringement of the freedom of movement of such a driver, as guaranteed by Article 19(1)(d) of the Constitution, and that such compulsion by Rule 498-A interfering with the freedom of movement, not having been made in accordance with the procedure established by law, is also violative of Article 21 of the Constitution. The contention does not at all commend itself to us. Rule 498-A ensures protection and safety to the head of the driver of a two-wheeler vehicle in case of an accident. There can be no doubt that Rule 498-A is framed for the benefit, welfare and the safe journey by a person in a two-wheeler vehicle. It aims at prevention of any accident being fatal to the driver of a two-wheeler vehicle causing annoyance to the public and obstruction to the free flow of traffic for the time being. It is difficult to accept the contention of the petitioner that the compulsion for putting on a headgear or helmet by the driver, as provided by Rule 498-A, restricts or curtails the freedom of movement. On the contrary, in our opinion, it helps the driver of a two wheeler vehicle to drive the vehicle in exercise of his freedom of movement without being subjected to a constant apprehension of a fatal head injury, if any accident takes place. We do not think that there is any fundamental right against any act aimed at doing some public good. Even assuming that the impugned rule has put a restriction on the exercise of a fundamental right under Article 19(1)(d), such restriction being in the interest of general public, is a reasonable restriction protected by Article 19(5) of the Constitution. As Rule 498-A has been framed in accordance with the procedure established by law, that is, in exercise of the rule making power conferred on the State Government under Section 91 of the Act, as discussed above, the question of infringement of Article 21 of the Constitution does of arise. The contention of the petitioner that Rule 498-A and the impugned notification dated July 8, 1996 issued by the Commissioner of Police in exercise of his powers under Section 21(1) of the Hyderabad City Police Act, infringe the fundamental right of the petitioner under Article 19(1)(d) and Article 21 of the Constitution, is devoid of merit and is rejected.



14. As to the contention of the petitioner that the wearing of the helmet causes some ailments, we do not think that there is any merit in the contention, particularly in view of the medical opinion of some Neuro-Surgeons of repute, as referred to by the High Court in its judgment. The contention has not also been seriously pressed before us. The High Court was, therefore, perfectly justified in rejecting the contention.

We derive support from the above judgment of the Hon'ble Supreme Court to hold that the provision contained in Section 129 of the Motor Vehicles Act, 1988 requiring every person driving or riding on a motor cycle of any class or description to wear protective headgear, is aimed at doing public good and that such a restriction is in the interest of the general public. The said provision is for the benefit, welfare and safe journey of persons driving or riding on two wheeler vehicles. It aims at prevention of any fatal accident to the driver and the pillion rider of a two wheeler vehicle causing annoyance to the public and obstruction to the free flow of traffic. Hence we do not find any justification for exempting Sikh women driving two wheeler vehicles from the application of Section 129 of the Motor Vehicles Act, 1988. Though the pillion riders on motor cycles, scooters or moped stand exempted from wearing a protective headgear under Rule 201 of U.P. Motor Vehicles Rules, 1998, we refrain from making any comment on the validity or desirability of such exemption, as such an issue does not arise in this case.

14. In the light of the discussion above and in view of Rule 201 of the U.P. Motor Vehicles Rules 1998 as applicable to the State of Uttaranchal, the writ petition is partly allowed holding that Sikh women are not required to wear a protective headgear while riding on a motor cycle, scooter or moped. But the writ petition is dismissed in respect of the prayer against the requirement that Sikh women should wear protective headgear while driving a motor cycle, scooter or moped.