

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

WRIT PETITION(S) (CIVIL) NO(S). 295/2012

S.RAJASEEKARAN

Petitioner(s)

VERSUS

UNION OF INDIA AND ORS. & ORS.

Respondent(s)

([ISSUE OF IMPLEMENTATION OF SECTION 136A OF THE MOTOR VEHICLES ACT, 1988 IS LISTED UNDER THIS ITEM])

[MR. GAURAV AGRAWAL, SENIOR ADVOCATE IS AMICUS CURIAE [REPORT OF THE STEERING COMMITTEE]]

(IA No. 202442/2023 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 83948/2024 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 58244/2023 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 33035/2021 - CLARIFICATION/DIRECTION, IA No. 152077/2023 - CLARIFICATION/DIRECTION, IA No. 71387/2023 - CLARIFICATION/DIRECTION, IA No. 36568/2024 - EXEMPTION FROM FILING O.T., IA No. 71331/2023 - INTERVENTION APPLICATION, IA No. 64319/2024 - PERMISSION TO ADD FURTHER ADDITIONAL PRAYERS IN THE APPLICATION FOR DIRECTION, IA No. 24141/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 191344/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 36566/2024 - PERMISSION TO FILE APPLICATION FOR DIRECTION, IA No. 127111/2024 - PERMISSION TO FILE APPLICATION FOR DIRECTION, IA No. 119142/2024 - PERMISSION TO FILE APPLICATION FOR DIRECTION, IA No. 77921/2024 - PERMISSION TO FILE APPLICATION FOR DIRECTION, IA No. 76249/2024 - PERMISSION TO FILE APPLICATION FOR DIRECTION, IA No. 43519/2024 - PERMISSION TO FILE APPLICATION FOR DIRECTION AND IA No. 127506/2024 - PERMISSION TO FILE APPLICATION FOR DIRECTION)

Date : 02-09-2024 These matters were called on for hearing today.

CORAM :

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HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

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UPON hearing the counsel the Court made the following
O R D E R

1. We have heard Shri Gaurav Agrawal, learned Senior Advocate appointed as Amicus Curiae, Shri Vikramjit Banerjee, learned ASG and Shri Kishan Chand Jain, learned counsel.

2. The issue is of implementation of Section 136A of the Motor Vehicles Act, 1988 (for short, "the 1988 Act") which was brought on the statute book with effect from 1st April, 2021. Section 136A of the 1988 Act reads thus:

"136-A. Electronic monitoring and enforcement of road safety.—(1) The State Government shall ensure electronic monitoring and enforcement of road safety in the manner provided under sub-section (2) on national highways, state highways, roads or in any urban city within a State which has a population up to such limits as may be prescribed by the Central Government.

(2) The Central Government shall make rules for the

electronic monitoring and enforcement of road safety including speed cameras, closed-circuit television cameras, speed guns, body wearable cameras and such other technology.

Explanation.—For the purpose of this section the expression “body wearable camera” means a mobile audio and video capture device worn on the body or uniform of a person authorised by the State Government.”

3. According to us, Section 136A of the 1988 Act is a very innovative provision which will help all the State Governments in ensuring that road discipline is maintained and the provisions of the 1988 Act and the Rules framed thereunder are scrupulously followed. If Section 136A is implemented, the State machinery will easily get the data and information of the vehicles and individuals which are offending the provisions of the 1988 Act and the Rules framed thereunder, so that those who are violating the provisions can be prosecuted. Today, violators can be hauled up only if the violations are noticed by the Police. Road discipline and implementation of 1988 Act and the Rules framed thereunder have direct nexus with the road safety.

4. Now, Rule 167A has been incorporated in the Central Motor Vehicle Rules, 1989 (for short, “the 1989 Rules”) by virtue of Central Motor Vehicles (Seventeenth Amendment) Rules, 2021. Rule 167A reads thus:

“167-A. Electronic Monitoring and Enforcement of Road Safety.—(1) The electronic enforcement device used for issuance of a challan shall have an approval certificate signed by a designated authority of the State Government certifying that the device is accurate and operating properly and the approval certificate shall be renewed on a yearly basis.

Explanation.—(1) For the purpose of this rule, “electronic enforcement device” means a speed

camera, closed-circuit television camera, speed gun, body wearable camera, dashboard camera, Automatic Number Plate Recognition (ANPR), weigh in machine (WIM) and any such other technology specified by the State Government.

(2) Body wearable camera may be worn by police officer, transport official or any other official authorised by the State Government and such officer or official shall notify to the offender that he is being recorded by the body camera and similarly, dashboard camera may be placed on the dashboard of any police vehicle or in any other vehicle as authorised by the State Government for enforcing the traffic rules and such officer or official shall notify to the offender that he is being recorded by the dashboard camera.

(2) State Governments shall ensure that appropriate electronic enforcement devices are placed at high-risk and high-density corridors on National Highways and State Highways, and at critical junctions at least in major cities with more than one million population (as per data available based on Million Plus Urban Agglomerations or Cities: census of India 2011 or as per the latest census) including the 132 cities as specified in the table below, and the electronic enforcement device shall be placed in such a manner so as not to cause any obstruction, line - of-sight issues or interruption in traffic flow-

TABLE

List of 132 Non-attainment/ Million plus cities in India under National Clean Air Programme (NCAP)

State/Union Territory	S.No.	City
Andhra Pradesh (13)	1.	Guntur
	2.	Kurnool
	3.	Nellore
	4.	Vijayawada
	5.	Vishakhapatnam
	6.	Anantapur
	7.	Chitoor
	8.	Eluru
	9.	Kadapa
	10.	Ongole
	11.	Rajahmundry
	12.	Srikakulam
	13.	Vizianagaram
Assam (05)	14.	Guwahati
	15.	Nagaon
	16.	Nalbari

	17.	Sibsagar
	18.	Silchar
Bihar (03)	19.	Patna
	20.	Gaya
	21.	Muzaffarpur
Chandigarh (01)	22.	Chandigarh
Chhattisgarh (03)	23.	Bhilai
	24.	Korba
	25.	Raipur
Delhi (01)	26.	Delhi
Gujarat (04)	27.	Surat
	28.	Ahmedabad
	29.	Vadodara
	30.	Rajkot*
Himachal Pradesh (7)	31.	Baddi
	32.	DamtaI
	33.	Kala Amb
	34.	Nalagarh
	35.	Paonta Sahib
	36.	Parwanoo
	37.	Sunder Nagar
Jammu and Kashmir (2)	38.	Jammu
	39.	Srinagar
Jharkhand (03)	40.	Dhanbad
	41.	Jamshedpur*
	42.	Ranchi*
Karnataka (04)	43.	Bangalore
	44.	Devanagere
	45.	Gulburga
	46.	Hubli-Dharwad
Madhya Pradesh (07)	47.	Bhopal
	48.	Dewas
	49.	Indore
	50.	Sagar
	51.	Ujjain
	52.	Gwalior
	53.	Jabalpur*
	54.	Akola
	55.	Amravati
	56.	Aurangabad

Maharashtra (19)	57.	Badlapur
	58.	Chandrapur
	59.	Jalgaon
	60.	Jalna
	61.	Kolhapur
	62.	Latur
	63.	Mumbai
	64.	Nagpur
	65.	Nashik
	66.	Navi Mumbai
	67.	Pune
	68.	Sangli
	69.	Solapur
	70.	Ulhasnagar
71.	Thane	
72.	Vasai-Virar*	
Meghalaya (01)	73.	Byrnihat
Nagaland (02)	74.	Dimapur
	75.	Kohima

Orissa (07)	76.	Angul
	77.	Balasore
	78.	Bhubaneswar
	79.	Cuttack
	80.	Rourkela
	81.	Talcher
	82.	Kalinga Nagar
Punjab (09)	83.	DeraBassi
	84.	Gobindgarh
	85.	Jalandhar
	86.	Khanna
	87.	Ludhiana
	88.	NayaNangal
	89.	Pathankot/Dera Baba
	90.	Patiala
	91.	Amritsar
	92.	Alwar

Rajasthan (05)	93.	Jaipur
	94.	Jodhpur
	95.	Kota
	96.	Udaipur
Tamilnadu (04)	97.	Thoothukudi
	98.	Trichy
	99.	Madurai
	100.	Chennai*
Telangana (04)	101.	Hyderabad
	102.	Nalgonda
	103.	Patancheruvu
	104.	Sangareddy
Uttar Pradesh (17)	105.	Agra
	106.	Allahabad
	107.	Anpara
	108.	Bareily
	109.	Firozabad
	110.	Gajraula
	111.	Ghaziabad
	112.	Jhansi
	113.	Kanpur
	114.	Khurja
	115.	Lucknow
	116.	Moradabad
	117.	Noida
	118.	Raebareli
	119.	Varanasi
	120.	Gorakhpur
	121.	Meerut*
Uttarakhand (03)	122.	Kashipur
	123.	Rishikesh
	124.	Dehradun
West Bengal (07)	125.	Kolkata
	126.	Asansol
	127.	Barrackpore
	128.	Durgapur
	129.	Haldia

	130.	Howrah
	131.	Raniganj
Haryana (1)	132.	Faridabad*
*Million plus cities but not part of non-attainment cities		

(3) For sub-rules (1) and (2), the footage from an electronic enforcement device having electronic stamp for location, date and time, can be used to issue challan for the following offences, namely–

- (i) not driving within the prescribed speed limit (Sections 112 and 183);
- (ii) stopping or parking vehicle at an unauthorised location (Section 122);
- (iii) not undertaking Safety measures for drivers and pillion riders (Section 128);
- (iv) not wearing protective headgear or helmet (Section 129);
- (v) jumping a red light, violating a stop sign, using of handheld communications devices while driving, passing or overtaking other vehicles in a manner contrary to law, driving against the authorised flow of traffic, driving in any manner that falls far below what would be expected of a competent and careful driver and where it would be obvious to a competent and careful driver that driving in that manner would be dangerous (Section 184);
- (vi) driving vehicle exceeding permissible weight (sub-section (1) of Section 194);
- (vii) driving without safety belt (Section 194-B);
- (viii) contravention of Rule 6 (pertaining to lane driving) of the Motor Vehicles (Driving) Regulations, 2017 (Section 177-A);
- (ix) Goods carriage carrying passengers (Section 66);
- (x) contravention of Rule 36 (pertaining to Registration plates) of the Motor Vehicles (Driving) Regulations, 2017 (Section 177-A);
- (xi) driving vehicle with load that extends beyond the sides of body or to the front or to the rear or in height beyond the permissible limit (sub-section (1-A) of Section 194);
- (xii) failure to provide free passage to emergency vehicle (Section 194-E).

(4)(a) State Governments shall ensure that appropriate warning signs are conspicuously placed before the stretches monitored by electronic enforcement device, notifying the public that such device is in use and the concerned authorities shall ensure that physical markings, physical stop lines and pedestrian crossing are clearly marked on the road.

(b) Appropriate fixed and dynamic speed limit signs may also be used to notify the speed limits on the road sections during adverse weather conditions, such as rain, hail, foggy weather etc. as well as for indicating any obstruction ahead in the route.

(5)(a) Body wearable cameras shall be explicitly used by the law enforcement officers, such as police and transport officials, while managing the traffic or carrying out any enforcement drive and such devices shall be used to record the proceedings of an event, which can be used in the court as an evidence against the offending driver or person and also ensure that the law enforcement official has acted as per the provisions of law while penalising the offending driver or person.

(b) Both the video and audio functions of the body camera shall be activated only when the law enforcement official is on duty and the official shall notify the subjects that they are being recorded by the body camera.

(6) All challans issued under Rule 167 in electronic form using auto-generation of challan through the electronic monitoring and enforcement system shall be accompanied with the following information, namely:-

(i) clear photographic evidence highlighting the offence and the license plate of the vehicle;

(ii) measurement from the electronic enforcement device;

(iii) date, time and place of the offence;

(iv) notice specifying the provision of Act that has been violated;

(v) certificate as per sub-section (4) of Section 65-B of the Indian Evidence Act 1872 (1 of 1872), which,-

(a) identifies the electronic record and describes the manner in which it was produced;

(b) gives such particulars of any device

involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) signed by the officer authorised in this behalf by the State Government.

(7) Challans, under sub-rules (1) and (2), shall be issued in the name of the registered owner of the vehicle and must be accompanied with a notice of offence in electronic form viz SMS or e-mail or in physical form.

(8) (a) The payment of the challan shall be made within the time period specified in the sub-rules (5), (6) and (7) of Rule 167.

(b) The payment of e-challan can be made electronically on an online portal specified by the State Government or using cash or card at Traffic Police Stations or at designated places or the e-payment gateway of the e-challan system as specified by States.

(9) The notice of offence shall be sent within fifteen days of the occurrence of the offence and the electronic record collected by way of electronic monitoring should be stored till the disposal of challan and in the case where the electronic record relates to an offence, should be stored till the conclusion of proceedings initiated, including appeals.

(10) In case the owner of the vehicle was not driving the vehicle at the time of offence, he may claim innocence before the police officer or any officer authorised by the State Government, by providing appropriate proof that he was not the driver at the time of the offence, or that another person was the driver at the time of the offence."

5. 132 cities have been notified under the 1989 Rules in terms of sub-Rule (2) of Rule 167A.

6. Our attention is invited to a concept paper prepared on the modalities of implementation of nation-wide rollout of effective e-

enforcement under Section 136A of the 1988 Act. If at all, we wait till all the recommendations made in the concept paper are implemented, the provisions of Section 136A of the 1988 Act and Rule 167A of the 1989 Rules will not be implemented for few more years. For a period of three years or more, the provision of Section 136A has remained only on paper. We, therefore, direct that the Governments of all the Union Territories as well as the States shall immediately take steps to implement the provisions of Section 136A of the 1988 Act in terms of Rule 167A of the 1989 Rules which we have quoted above. After making the choice of electronic enforcement devices to be used for issuance of challans, the Governments of the Union Territories and the States shall ensure that compliance is made with sub-Rule (3) of Rule 167A of the 1989 Rules by issuing challans on the basis of the footage from the electronic enforcement device. Compliance will have to be made with other sub-Rules of Rule 167A including Rule 4(a). We may note here that devices must be used only for the purposes of sub-Rule (3) and not for keeping individuals under surveillance. We direct the Ministry of Road Transport and Highways to forward copies of this order to all concerned Governments of the Union Territories and the States to enable them to act upon it.

7. There is already a Committee appointed by this Court, namely the Supreme Court Committee on Road Safety. The issue of implementation of Section 136A of the 1988 Act and Rule 167A of the 1989 Rules can be always monitored by the said Committee after considering the views of all the stakeholders.

8. A copy of this order shall be forwarded by the Registry to the Supreme Court Committee on Road Safety to enable the Committee to take necessary action.

9. For the time being, we direct the State Governments of Delhi, Karnataka, Kerala, Maharashtra, Tamil Nadu and West Bengal, to report to this Court the steps taken to implement Section 136A of the 1988 Act read with Rule 167A of the 1989 Rules. The reports shall be submitted by the aforesaid State Governments to the learned Amicus Curiae by 6th December, 2024. This Court will consider the said reports on 13th December, 2024 and issue directions to the other State Governments for the same purpose.

(ASHISH KONDLE)
COURT MASTER (SH)

(AVGV RAMU)
COURT MASTER (NSH)