

Government of Himachal Pradesh
"Department of Home"
....

From

The Principal Secretary (Home) to the
Government of Himachal Pradesh.

To

1. The Director, Transport, Himachal Pradesh.
2. All District Superintendent of Police,
in Himachal Pradesh.

Dated: Shimla-2, the

18/9/2012

Subject:

**In pursuance of the direction of the Hon'ble Supreme
Court of India in Writ Petition (Civil) No. 265 of 2012
titled as Avishek Goenaka reg. -Instructions thereof**

Sir,


P-287
I am directed to say that the Hon'ble Supreme Court of India vide order dated 03-08-2012 in WP (Civil)No. 265 of 2011 has inter-alia prohibited the use of black films of any Visual Light Transmission (VLT) percentage or any other material upon the safety glasses, windscreens(front & rear) and side glasses of all vehicles throughout the country w.e.f. 4th May,2012 .

2. The judgment given in the said WP casts duty on the police and other authorized persons to challan the vehicles and also remove the black films from the offending vehicles. Hence films of all vehicles and other than those exempted are required to be removed. A copy of the said order has been hosted on the Website (www.himachal.nic.in-Home-A) of Home Department where the same is accessible.

3. You are, therefore, requested to ensure compliance of the directions contained therein.

Yours faithfully,

Encl.As above,

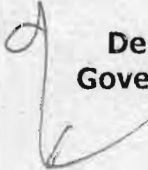

**Deputy Secretary (Home) to the
Government of Himachal Pradesh.**

Endst. No As above Dated Shimla-171002.

18/9/2012

Copy is forwarded to the following for information and necessary action to:-

1. All Administrative Secretaries to the Government of HP in relation to all the Govt. and other vehicles.
2. All Heads of Department, Himachal Pradesh for similar necessary action.
3. The Director General of Police, HP w.r.t. his letter No. Law-III(109)(Supreme Court)WP(C) No.265/11-21091 dated 13-08-2012 for similar necessary action under intimation to this Department please.

P-289

**Deputy Secretary (Home) to the
Government of Himachal Pradesh.**

18.9

From : Assistant Registrar, PIL (W)

TO :

Dy. No. 5-2274473 HA
 Dated: 14/8/12
 17/8

1. The Chief Secretary,
State of Andhra Pradesh,
Government of Andhra Pradesh,
Hyderabad- 500001.
2. The Chief Secretary,
State of Arunachal Pradesh,
Government of Arunachal Pradesh,
Secretariat,
Itanagar- 791111.
3. The Chief Secretary,
State of Assam,
Government of Assam,
Block C, 3rd Floor,
Secretariat,
Dispur, Guwahati- 781006.
4. The Chief Secretary,
State of Bihar,
Government of Bihar,
Old Secretariat,
Patna- 800015.
5. The Chief Secretary,
State of Chhattisgarh,
Government of Chhattisgarh,
DKS Bhavan, Room No.207,
Mantralaya, State Government Secretariat,
Raipur-429001.
6. The Chief Secretary,
Government of NCT of Delhi,
Government of NCT of Delhi,
New Secretariat Building, I.P. Estate
New Delhi-110002.
7. The Chief Secretary,
State of Goa,
Secretariat,
Porvoriam, Goa-403001.
8. The Chief Secretary,
State of Gujarat,
Government of Gujarat,
3rd Floor, New Sachivalaya Complex,
Gandhinagar-382010

W
 13-8-12
 Secy (Home)
 Secy (Tpt)

Sec (Home)
 14/8/12

DSH
 14/8
 16/8/12

Sh. H.R.

Please send a copy to DSP/HR,
 with a request to ensure
 compliance of the directions
 passed by the Hon'ble Supreme
 Court.
 14/8/12

14.08
 501A

Government of Haryana,
Secretariat, Sector- 7,
Chandigarh 160 001.

10. The Chief Secretary,
State of Himachal Pradesh,
Government of Himachal Pradesh,
Secretariat,
Shimla 171001.
11. The Chief Secretary,
State of Jammu & Kashmir,
Government of Jammu & Kashmir,
Civil Secretariat, Sonwar,
Srinagar - 190001.
12. The Chief Secretary,
State of Jharkhand,
Government of Jharkhand,
Secretariat,
Ranchi 834001.
13. The Chief Secretary,
State of Karnataka,
Government of Karnataka,
Vidhana Soudha,
Bangalore 560001.
14. The Chief Secretary,
State of Kerala,
Government of Kerala,
Secretariat, Thiruvanthapuram.
15. The Chief Secretary,
State of Madhya Pradesh,
Government of Madhya Pradesh,
Vallabh Bhavan,
Bhopal : 462003.
16. The Chief Secretary,
State of Maharashtra,
Government of Maharashtra,
Room No.518, 5th Floor,
Main Building Mantralaya,
Mumbai 400032.
17. The Chief Secretary,
State of Manipur,
Room No. 171, South Block,
Secretariat,
Imphal-795001

Government of Meghalaya,
Main Secretariat Building
Shiilong 793001

19. The Chief Secretary,
State of Mizoram,
Government of Mizoram,
Civil Secretariat, Block-C,
Aizwal- 796001.
20. The Chief Secretary,
State of Nagaland,
Government of Nagaland,
Secretariat, Kohima 797001.
21. The Chief Secretary,
State of Orissa,
Genral Admn. Dept.
Orissa Secretariat, Bhubaneshwar 751001
22. The Chief Secretary,
State of Punjab,
Government of Punjab,
Punjab Civil Secretariat,
Chandigarh 160001.
23. The Chief Secretary,
State of Rajasthan,
Government of Rajasthan,
Secretariat,
Jaipur (Rajasthan)
24. The Chief Secretary,
State of Sikkim,
Tashiling Secretariat,
Gangtok 737101.
25. The Chief Secretary,
State of Tamil Nadu,
Government of Tamil Nadu,
Secretariat,
Chennai 600009.
26. The Chief Secretary,
State of Tripura,
Government of Tripura,
Civil Secretariat,
Agartala 799001.

28. The Chief Secretary,
State of Uttar Pradesh,
Government of Uttar Pradesh
Lal Bahadur Shastri Bhavan,
UP Secretariat,
Lucknow 226001
29. The Chief Secretary,
State of West Bengal,
Government of West Bengal,
Writers' Building,
Kolkata-700001.
30. The Administrator
Union Territory of Andaman & Nicobar,
Andaman & Nicobar Administration,
Secretariat, Port Blair,
Andaman & Nicobar Islands 744101.
31. The Administrator
Union Territory of Chandigarh,
4th Floor, UT Secretariat/ Mini Secretariat,
Sector 9, Chandigarh 160001.
32. The Administrator
Union Territory of Dadra & Nagar Haveli,
Administrator's office, Secretariat,
Silvassa 396230.
33. The Administrator
Union Territory of Daman & Diu,
Administrator's office, Secretariat,
Daman & Diu Administration,
Fort Area, Moti Daman 396220.
34. The Administrator
Union Territory of Lakshadweep,
Lakshadweep Administration,
Secretariat, Kavaratti 682555.
35. The Chief Secretary,
Union Territory of Puducherry
Government of Puducherry
Chief Secretariat Building,
No.1, Beach Road, Puducherry 605001

IN

WRIT PETITION (CIVIL) NO.265 OF 2011
(Under Article 32 of the Constitution of India)

Avishek Goenka

... Petitioner

Versus

Union of India & Anr.

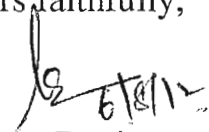
... Respondents

Sir/Madam,

I am directed to forward herewith for your information, compliance and necessary action a certified copy of the Judgment dated 03.08.2012 passed in the matter above-mentioned.

Please acknowledge receipt.

Yours faithfully,


Assistant Registrar

Encl.-As above.

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

783284

IA NOS. 4, 5, IA NOS. 6-8, IA. NOS. 9-11, 12, 13, 14 AND 15

IN

WRIT PETITION (CIVIL) NO.265 OF 2011

Avishek Goenka

... Appellant

Versus

Union of India & Anr.

... Respondents

J U D G M E N T

Swatanter Kumar, J.

Certified to be true copy

6/8/12
Assistant Registrar (Judl.)

.....2011

SUPREME COURT OF INDIA

1. The applications for impleadment and intervention are allowed subject to just exceptions. All applications for placing documents on record are also allowed.

2. I.A. No. 5 of 2012 has been filed by the Dealers and Distributors of tinted films in Writ Petition (Civil) No. 265 of 2011 under Order XVIII, Rule 5 of the Supreme Court Rules, 1966 against the dismissal of two interim applications, i.e., seeking

modification by the Registrar of this Court vide his Order dated 16th May, 2012.

3. The learned Registrar vide the impugned order noticed that application for impleadment was not maintainable inasmuch as the writ petition in which the application was filed has already been disposed of. In regard to the application for modification, according to the applicants, the petitioner suppressed various aspects of the matter and misled the court in passing the order and the same order was therefore, liable to be modified. Dealing with this contention, the learned Registrar, while referring to the judgment of this Court in *Delhi Administration v. Gurdip Singh Uban and Ors.* [(2000) 7 SCC 269] held that the application, in fact, was an application for review and not for modification. Thus, he declined to receive the application and registered the same in accordance with the Rules of the Supreme Court.

4. We hardly find any error of law in the Order of the Registrar under appeal, but we consider it entirely unnecessary to deliberate upon this issue in any further detail, since, we have permitted the applicants to address the Court on merits of the application. Keeping in view the fact that a number of other

applications have been filed for clarification and modification

the judgment of this Court dated 27th April, 2012, without commenting upon the merit or otherwise of the present appeal, we would deal only with the application for modification or clarification filed by these applicants along with others.

5. I.A. No. 15 has been filed by the International Window Film Association. I.A. No. 4 has been filed on behalf of Vipul Gambhir.

6. An unnumbered I.A. of 2012 is filed by 3M India Ltd. Another unnumbered I.A. has been filed on behalf of the dealers and distributors of the tinted films.

7. I.A. No. 3 of 2012, an application on behalf of the petitioner to appear in person, is allowed.

8. I.A. No. 7 of 2012 has been filed on behalf of M/s. Garware Polyester Ltd. I.A. No. 10 of 2012 is an application filed by M/s. Car Owners and Consumer Association.

9. Another unnumbered I.A. has been filed on behalf of M/s. Gras Impex Pvt. Ltd. All these applications have been filed by various applicants seeking clarification and/or modification of

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2. The judgment given in the said WP casts duty on the police and other authorized persons to challan the vehicles and also remove the black films from the offending vehicles. Hence films of all vehicles and other than those exempted are required to be removed. A copy of the said order has been hosted on the Website (www.himachal.nic.in-Home-A) of Home Department where the same is accessible.

3. You are, therefore, requested to ensure compliance of the directions contained therein.

Yours faithfully,

Encl.As above,

**Deputy Secretary (Home) to the
Government of Himachal Pradesh.**

Endst. No As above

Dated Shimla-171002.

18/9/2012

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**Deputy Secretary (Home) to the
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the judgment of this Court dated 27th April, 2012 on various grounds.

10. The petitioner has filed I.A. No. 11 of 2012 by way of a common reply to the grounds taken in all these applications and has also placed certain documents on record. The various applicants above-named have sought modification/clarification of the judgment of this Court dated 27th April, 2012 principally and with emphasis on the following grounds :

- 1) That the applicants were not parties to the writ petition and were not aware of the proceedings before this Court. Thus, their submissions could not be considered by the Court, hence the judgment of the Court requires modification.
- 2) The applicants have placed material and reports on record that the use of films or even black films is permissible scientifically and in law.
- 3) It is contended that Rule 100(2) uses the expression 'maintained' which implies that safety glasses, including the wind screen, can be maintained with requisite VLT percentage even by use of black films.
- 4) Lastly, it is contended that para 27 of the judgment needs modification by substituting the words 'use of black films of

any VLT percentage by the words 'use of black films or impermissible VLT percentage'.

11. We must notice at the very threshold that in the main Writ Petition no. 265 of 2011 and even in the present applications, there is no challenge to Rule 100 of the Motor Vehicles Rules, 1989 (for short, 'the Rules'). This Court vide its judgment dated 27th April, 2012, has interpreted the said Rule *de hors* the other factors. Once this Court interprets a provision of law, the law so declared would be the law of the land in terms of Article 141 of the Constitution of India. The law so declared is binding on all and must be enforced in terms thereof. Having interpreted the Rule to mean that it is the safety glasses alone with requisite VLT that can be fixed in a vehicle, it is not for this Court to change the language of the said Rule. It would, primarily, be a legislative function and no role herein, is to be performed by this Court.

12. In the applications before us, as already noticed, some grounds have been taken to demonstrate that some other interpretation of the provision was possible. These grounds, firstly, are not grounds of law. They are primarily the grounds of inconvenience. Enforcement of law, if causes any inconvenience, is no ground for rendering a provision on the statute book to be

unenforceable. The challenge to the legislative act can be raised on very limited grounds and certainly not the ones raised in the present application. In fact, all the learned counsel appearing for various applicants fairly conceded that they were not raising any challenge to Rule 100 of the Rules. Once that position is accepted, we see no reason to alter the interpretation given by us to the said Rule in our judgment dated 27th April, 2012.

13. Still, we will proceed to discuss the contentions raised. The judgment dated 27th April, 2012 was passed in a Public Interest Litigation and the orders passed by this Court would be operative *in rem*. It was neither expected of the Court nor is it the requirement of law that the Court should have issued notice to every shopkeeper selling the films, every distributor distributing the films and every manufacturer manufacturing the films. But, in any case, this was a widely covered matter by the Press. It was incumbent upon the applicants to approach the Court, if they wanted to be heard at that stage. The writ petition was instituted on 6th May, 2011 and the judgment in the case was pronounced after hearing all concerned, including the Union Government, on 27th April, 2012, nearly after a year. Hence, this

ground raised by the applicants requires noticing only for being rejected.

14. Not only the present judgment but even the previous judgments of this Court, in the cases referred to in the judgment dated 27th April, 2012, in some detail have never permitted use of films on the glasses. What the Court permitted was tinted glasses with requisite VLT. Thus, the view of this Court has been consistent and does not require any clarification or modification.

15. Equally, without substance and merit is the submission that the expression 'maintained' used in Rule 100 would imply that subsequent to manufacturing, the car can be maintained by use of films with requisite VLT of 70 per cent and 50 per cent respectively. In the judgment, after discussing the scheme of the Act, the Rules framed thereunder and Rule 100 read in conjunction with Indian Standard No.2553 Part II of 1992, this court took the view that the Rule does not permit use of any other material except the safety glass 'manufactured as per the requirements of law'. Rule 100 categorically states that 'safety glass' is the glass which is to be manufactured as per the specification and requirements of explanation to Rule 100(1). It is only the safety glasses alone that can be used by the

manufacturer of the vehicle. The requisite VLT has to be 70 per cent and 50 per cent of the screen and side windows respectively, without external aid of any kind of material, including the films pasted on the safety glasses. The use of film on the glass would change the very concept and requirements of safety glass in accordance with law. The expression 'maintained' has to be construed to say that, what is required to be manufactured in accordance with law should be continued to be maintained as such. 'Maintenance' has to be construed *ejusdem generis* to manufacture and cannot be interpreted in a manner that alterations to motor vehicles in violation of the specific rules have been impliedly permitted under the language of the Rule itself. The basic features and requirements of safety glass are not subject to any alteration. If the interpretation given by the applicants is accepted, it would frustrate the very purpose of enacting Rule 100 and would also hurt the safety requirements of a motor vehicle as required under the Act. Number of Rules have been discussed in the judgment dated 27th April, 2012 to demonstrate that these Rules are required to be strictly construed otherwise they would lead to disastrous results and would frustrate the very purpose of enacting such law.

16. Now, we may come to the last contention that para 27 of the judgment needs modification as noticed above. Para 27 of the judgment reads as under:

“27. For the reasons afore-stated, we prohibit the use of black films of any VLT percentage or any other material upon the safety glasses, windscreens (front and rear) and side glasses of all vehicles throughout the country. The Home Secretary, Director General/Commissioner of Police of the respective States/Centre shall ensure compliance with this direction. The directions contained in this judgment shall become operative and enforceable with effect from 4th May, 2012.”

17. According to the applicant, the expression ‘we prohibit the use of black film of any VLT percentage or any other material upon safety glasses’ should be substituted by ‘we prohibit the use of black films of impermissible VLT percentage or any other material upon the safety glasses’. The suggestion of the applicants would be in complete violation of the substantive part of the judgment. We have already noticed that it is not the extent of VLT percentage of films which is objectionable under the Rules but it is the very use of black films or any other material, which is impermissible to be used on the safety glasses. Once the prescribed specifications do not contemplate use of any other

amount. The level of tolerance and likelihood of exposure to a disease through sun rays or otherwise are subjective matters incapable of being examined objectively in judicial sense. The Courts are neither required to venture upon such determination nor would it be advisable.

21. It cannot be disputed and is a matter of common knowledge that there are a large number of preventive measures that can be taken by a person who needs to protect himself from the ultra-violet rays. Use of creams, sun-shed and other amenities would be beneficial for the individual alleged to be intolerable to sun rays. It does not require change of a permanent character in the motor vehicle, that too, in utter violation of the provisions of the statute. Suffice it to note that the reliance placed upon the literature before us is misconceived and misdirected. The interpretation of law is not founded on a single circumstance, particularly when such circumstance is so very individualistic. The Court is not expected to go into individual cases while dealing with interpretation of law. It is a settled canon of interpretative jurisprudence that hardship of few cannot be the basis for determining the validity of any statute. The law must be

interpreted and applied on its plain language. (Ref. *Saurabh Chaudri & Ors. v. Union of India & Ors.* [AIR 2004 SC 361]).

22. In IA 4, a similar request is made. We are not dealing with individual cases and individual inconvenience cannot be a ground for giving the law a different interpretation.

23. The petitioner argued with some vehemence that despite a clear direction of this Court, the appellate authority has utterly failed in enforcing the law. According to him, in majority of the vehicles in the NCT Delhi and the surrounding districts of UP, like Ghaziabad, Noida as well as towns of Haryana surrounding Delhi, law is violated with impunity. All safety glasses are posted either with Jet black films or light coloured films. He has referred to two instances, one of rape in Ghaziabad and the other of kidnapping, where the cars involved in the commission of the crime had black films. He has also stated that as per the press reports, the vehicles which are involved in hit and run cases are also vehicles with black films posted on the safety glasses.

24. We are really not emphasizing on the security threat to the society at large by use of black films but it is a clear violation of law. In terms of Rule 100, no material including films of any VLT

can be pasted on the safety glasses of the car and this law is required to be enforced without demur and delay. Thus, we pass the following orders :

- 1) All the applications filed for clarification and modification are dismissed, however, without any order as to costs.
- 2) All the Director Generals of Police/Commissioners of Police are hereby again directed to ensure complete compliance of the judgment of this Court in its true spirit and substance. They shall not permit pasting of any material, including films of any VLT, on the safety glasses of any vehicle.
- 3) We reiterate that the police authorities shall not only challan the offenders but ensure that the black or any other films or material pasted on the safety glasses are removed forthwith.
- 4) We make it clear at this stage that we would not initiate any proceedings against the Director Generals of Police/Commissioners of Police of the respective States/Union Territories but issue a clear warning that in the event of non-compliance of the judgment of this Court now, and upon it being brought to the notice of this Court,

the Court shall be compelled to take appropriate action under the provisions of the Contempt of Courts Act, 1971 without any further notice to the said officers.

We do express a pious hope that the high responsible officers of the police cadre like Director General/Commissioner of Police would not permit such a situation to arise and would now ensure compliance of the judgment without default, demur and delay.

- 5) Copies of this judgment be sent to all concerned by the Registry including the Chief Secretaries of the respective States forthwith.

.....J.
(A.K. Patnaik)

IA

.....J.
(Swatanter Kumar)

New Delhi
August 3, 2012

Government of Himachal Pradesh
"Department of Home"
....

From

The Principal Secretary (Home) to the
Government of Himachal Pradesh.

To

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2. All District Superintendent of Police,
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Dated: Shimla-2, the

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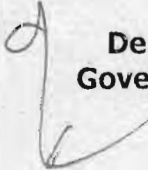

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