

05.07.2012

Present: CWP No. 1916 of 2009-D

Mr. S.C. Sharma, Advocate, for the petitioner.

Mr. Vivek Singh Thakur, Additional Advocate General, with Mr. Rajesh Mandhotra, Deputy Advocate General, for respondents No. 1 to 4 and 6.

Mr. Anil Chauhan, Advocate, for respondent No. 5.

Mr. B.C. Negi, Advocate, for respondent No. 7.

Mr. Adarsh Sharma, Advocate, for HRTC.

CWP No. 7784 of 2010-I

Mr. Naveen Awasthi, Advocate, vice Mr. Vikram Thakur, Advocate, for the petitioner.

Mr. Vivek Singh Thakur, Additional Advocate General, with Mr. Rajesh Mandhotra, Deputy Advocate General, for respondents No. 1, 2 and 4.

Mr. Anil Chauhan, Advocate, for respondent No. 3.

Mr. Adarsh Sharma, Advocate, for HRTC.

This Court, in this matter, has been dealing with the problem of vehicular traffic in Shimla, especially with regard to the implementation of the Shimla Roads Users and Pedestrians (Public Safety and Convenience) Act, 2007.

2. We were shocked to find that on 31<sup>st</sup> December, 2011, vehicles were parked on the sealed and restricted areas. Not only this, vehicles were also parked in the core area of Shimla town from Shimla Club to the Lift. There was, in fact, double parking on this road. On inquiry, we were told that some orders have been passed by the District Magistrate and the Superintendent of Police, Shimla, permitting the tourists to park their vehicles in these areas/roads.

3. Prima facie, we are of the view that any such permission was in total contravention of the aforesaid Act. All officials of the State are bound by the Constitution of India and the Laws framed thereunder. On a perusal of the Act, we find that under Section 18 of the Act, it is only the State Government, which may, in the public interest, relax any of the provisions of the Act for reasons to be recorded in writing for a period not exceeding seven days at a time. This power of relaxation is not even available to the State as far as the core Mall Road area is concerned. If the State does not have the power to relax the provisions for the core Mall Road area, we fail to understand how the District Magistrate or the Superintendent of Police could have relaxed the provisions of the Act and granted permission to the tourists to park their vehicles in the core Mall Road area.

4. It is expected that the officials, especially the District Magistrate and the Superintendent of Police, enforce the law. It is not expected that they should themselves start violating the law and encourage violations of the law. We, therefore, direct the District Magistrate, Shimla as well as the Superintendent of Police, Shimla, to be present in Court on 13<sup>th</sup> January, 2012, on which date they shall produce the entire record and shall also file written replies stating therein under what circumstances they had passed such orders and permitted the vehicles to be parked in sealed / restricted roads and the core Mall Road area.

A duly authenticated copy of this order be handed over the learned Additional Advocate General during the course of the day today.

Sd/-  
(Deepak Gupta)  
Judge

Sd/-  
(Sanjay Karol)  
Judge

January 06, 2012  
(rajni)

Authenticated Copy.

*[Handwritten Signature]*

Court Master No. 6/1/2012-  
High Court of Himachal Pradesh  
Shimla

Copy of Order/Judgment/Statement /passed/delivered/ recorded  
on 30-12-2011 by the Division Bench consisting of  
Hon'ble Mr. Justice Deepak Gupta, Judge.  
Hon'ble Mr. Justice Sanjay Karol, Judge.  
In CWP No. 7784/10. Titled as :-

Samiha Society registered under the Himachal Pradesh  
Societies Registration Act, 2006 (No.25 of 2006) through  
Amit, son of Sh. Daulat Ram, Resident of Aman Bhawan Sector -  
III New Shimla

.....Petitioner.

**Versus**

1. The State Of Himachal Pradesh through Chief Secretary to  
the Government of Himachal Pradesh Shimla-171002,  
Himachal Pradesh.
2. The Secretary Home to the Government of Himachal Pradesh  
Shimla-171002, Himachal Pradesh.
3. The State Environment Protection & Pollution Control  
Board, through its member Secretary, Paryavran Bhawan,  
BCS, New Shimla 171009, District Shimla, Himachal  
Pradesh.
4. The Department of Town & Country Planning (Himachal  
Pradesh) through its Director, Town Planning office  
Shimla-171001, District Shimla, Himachal Pradesh.

.....Respondents.

**COPY OF ORDER/ JUDGMENT(S) RECORDED/ISSUES.  
IN THE HIGH COURT OF HIMACHAL PRADESH.**

ATTESTED

| Date       | Order    | <u>CWP No. 1916 of 2009-I</u>   |
|------------|----------|---|
|            |          | <u>a/w CWP No. 7784 of 2010-I</u>   |
| 30.12.2011 | Present: | <p data-bbox="781 233 1149 264"><u>CWP No. 1916 of 2009-D</u></p> <p data-bbox="781 275 1455 306">Mr. S.C. Sharma, Advocate, for the petitioner.</p> <p data-bbox="781 348 1604 453">Mr. Rajesh Mandhotra, Deputy Advocate General, with Mr. Ramesh Thakur, Assistant Advocate General, for respondents No. 1 to 4 and 6.</p> <p data-bbox="781 495 1528 527">Mr. Anil Chauhan, Advocate, for respondent No. 5.</p> <p data-bbox="781 569 1455 600">Mr. B.C. Negi, Advocate, for respondent No. 7.</p> <p data-bbox="781 642 1382 674">Mr. Adarsh Sharma, Advocate, for HRTC.</p> <p data-bbox="781 716 1604 789">Mr. Sandeep Sharma, Assistant Solicitor General of India, for the Union of India.</p> <p data-bbox="781 831 1133 863"><u>CWP No. 7784 of 2010-I</u></p> <p data-bbox="781 873 1122 905">None for the petitioner.</p> <p data-bbox="781 947 1604 1052">Mr. Rajesh Mandhotra, Deputy Advocate General, with Mr. Ramesh Thakur, Assistant Advocate General, for respondents No. 1, 2 and 4.</p> <p data-bbox="781 1094 1520 1125">Mr. Anil Chauhan, Advocate, for respondent No. 3.</p> <p data-bbox="781 1167 1373 1199">Mr. Adarsh Sharma, Advocate, for HRTC.</p> <p data-bbox="781 1241 1604 1314">Mr. Sandeep Sharma, Assistant Solicitor General of India, for the Union of India.</p> |
|            |          | <p data-bbox="773 1388 1604 1503">On 14<sup>th</sup> October, 2011, we had passed a detailed order giving various directions.</p>   |
|            |          | <p data-bbox="581 1577 829 1608"><u>Noise Pollution:</u></p>  |
|            |          | <p data-bbox="581 1661 1604 2070">2. We had issued a direction to the Principal Secretary (Home) and the Principal Secretary (Finance) to the Government of Himachal Pradesh to give approval for purchase of at least two noise meters in each of the districts. An affidavit has been filed that a sum of ₹ 50 lacs has been earmarked for purchase of noise meters and Alcohol Detection Analyzers. Since this amount is available, we,</p>  |

therefore, direct that the concerned equipment be purchased latest by 31<sup>st</sup> March, 2012.

3. We are constrained to observe that despite repeated judgments of the Apex Court, this Court and orders passed by us from time to time, no action has been taken to stop playing of music at high volumes, especially in the Community Halls, Marriage Halls etc. We are making it clear that this is the last warning we are giving to the officials concerned and in case, any violation come to our notice in future and the authorities remain silent, we shall initiate contempt proceedings against the officials concerned for not ensuring the compliance of the orders issued by the Apex Court as well as this Court from time to time.

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Pressure Horns/Multi Tone Horns:

4. With regard to pressure horns/multi tone horns, we had directed that there will be a complete prohibition against the use of pressure horns/multi tone horns and that if any such horn is found, they shall be destroyed at the spot. It was further directed that there should also be hoardings at all the entry points to the State of Himachal Pradesh informing the motorists that the use of pressure horns/multi tone horns is totally banned and use of the same shall entail heavy fines and penal action. An affidavit has been filed by all the Superintendents of Police that they are taking steps to destroy the pressure horns and to put up the hoardings. We direct that prominent hoardings be put up at all the entry points to the State of

Himachal Pradesh in compliance to the earlier orders of this Court latest by 31<sup>st</sup> January, 2012.

5. We further direct the authorities to ensure that our earlier judgments and orders with regard to the noise pollution are complied with in letter and spirit and all the concerned Superintendents of Police and the District Magistrates will file fresh affidavits in this regard by 31<sup>st</sup> March, 2012.

6. The Regional Transport Authorities shall also ensure that hoardings are put up at all the points where the vehicles are brought for issuance of fitness certificates under the Motor Vehicles Act that use of pressure horns/multi tone horns is totally prohibited.

Preparation of Data base:

7. In the earlier orders, we had clearly indicated that the authorities shall prepare a data base with the number of the vehicle, name of the driver of the vehicle, owner of the vehicle, etc. who were found violating the directions issued by this Court with regard to the use of pressure horns/multi tone horns, mobile phones, drunken driving etc. In this day and age, if the authorities do not take the benefit of computers, there is no point in talking about computerization. The authorities must develop a suitable computer programme, so that when there are violations of any of the provisions of the Motor Vehicles Act or any other law by the motorists, then an entry is made, which is reflected in the data base and is also reflected against the driver of the vehicle. The driver of

the vehicle may change, so it must have co-relation with the owner of the vehicle and the number of the vehicle also. We find that none of the affidavits deals with our detailed suggestions in this regard.

8. We, therefore, direct the Director General of Police to ensure that a meeting of all the concerned officials is held to ensure that in future, whenever any person is challaned, an entry is made in the data base and this will be reflected in future, so that when the person is challaned again, his name can be found reflected and his driving license can be suspended as per the provisions of the Motor Vehicles Act etc. Our earlier order dated 14<sup>th</sup> October, 2011 may also be brought to the notice of the Director General of Police.

HRTC Taxis:

9. Mr. H.K. Gupta, presently the Divisional Manager (Traffic), HRTC, Shimla, is present in Court. We have impressed upon him the need to ensure that the taxis being run in the restricted/sealed roads are properly run. He has informed us that now these taxis are being jointly run by the HRTC alongwith the private persons on a Private Public Partnership (PPP) mode.

10. Shimla, basically, is a pedestrian town but as the boundary of Shimla expanded, people have started residing in the suburbs of Shimla. Some of these people, especially the aged and the disabled persons, found it difficult to come to Shimla. As far as persons other than the disabled and the aged are concerned, there is no problem for them to catch taxis or commute by local buses from

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the bus stands to the suburbs. When this Court permitted the HRTC to run taxis on the restricted and sealed roads, the main reason behind this was that the senior citizens and disabled persons, who want to come to the core area of Shimla (which is only connected through the sealed/restricted roads) should have some means of transport. However, now, the HRTC has virtually turned this as a means of conveyance for all concerned.

11. We, therefore, direct the HRTC to ensure that in future the use of these taxis is primarily limited to senior citizens, i.e., people aged above 60 years or to small children below the age of 10 years and the disabled persons regardless of their age. It is only if after these people are accommodated and seats are vacant in the taxis can able bodied persons between the age of 10 to 60 use these taxis. First preference will have to be given to the senior citizens and the disabled persons.

12. We have received complaints and, in fact, we are even personally aware of the fact that sometimes, these taxis are jam packed with able bodies persons and the senior citizens and disabled persons are made to either wait for the next taxi or they have to walk to their homes. This will not be permitted and any violation thereof shall be viewed so seriously that we may even stop the use of such taxis in sealed/restricted areas.

13. Pursuant to our earlier directions, we issue further directions to the HRTC to ensure that hoardings or signboards of at

least 6 feet in height and 2 to 3 feet in breadth are put up at all the major starting and destination points of these taxis, wherein it shall be clearly stated that these taxis are meant only for senior citizens, disabled persons and small children, as per our orders and other able bodied persons shall be accommodated only if seats are vacant.

14. We have also found that these taxis are being run at a high speed especially after this private partnership was entered into. We direct Mr. Gupta to work out a schedule and the number of trips of the taxis should be clearly mentioned and, thereafter, on the notice board, which we have indicated to be set up, above the timings of the taxis on various routes shall be clearly depicted and it also be made clear to the taxi operators and the drivers of the taxis that they should not violate the speed limits, which in the restricted areas, is only 20 kilometer per hour.

15. While fixing the schedule of the taxis, it shall be ensured that not more than one taxi is parked on the sealed/restricted road at one given time. Keeping in view the fact that the destination points are in the sealed/restricted areas, which are meant primarily for use of pedestrians, the schedule shall be got approved from the District Magistrate and the Superintendent of Police, who, while approving the schedule, shall ensure that only that many number of taxis are permitted as are necessary to meet the requirements of the disabled persons and senior citizens and these taxis are not plied as an alternative measure of transport. In case, there is any problem

with regard to the number of trips on account of the Private Public Partnership, the present number of trips shall continue till the termination of the contract and, thereafter, only those many number of trips will be allowed as permitted by the District Magistrate and the Superintendent of Police. The final approval to the number of trips shall be given by this Court.

16. The HRTC shall also ensure that proper tickets are issued to all the passengers by use of Electronic Ticketing Machine (ETM). It shall also be ensured that there is no over loading in these taxis.

17. Taxis are transport vehicles and it shall be ensured that only those drivers are engaged to drive these taxis, who have a valid driving license to drive a transport vehicle of the category required.

18. The operator of taxis shall, within two days of the engagement of the driver, supply a copy of the driving license and complete details and particulars of the driver to the Superintendent of Police and the District Magistrate, Shimla, who shall maintain proper record of the same. All drivers of taxis shall wear a proper uniform, which shall be prescribed by the District Magistrate and the Superintendent of Police. They shall also wear a name plate, showing their name, so that the driver can be identified.

Ambulances on the Mall Road:

19. We have perused the affidavit filed by the District

Magistrate and the Superintendent of Police, Shimla. Though, a meeting has been held, but no concrete suggestions have been put forward by the two officials. We, therefore, direct as follows:

1. *That the over all operational control of the ambulances/ dead body vans shall vest in one authority. The District Magistrate and the Superintendent of Police shall hold a meeting and shall decide whether the control should vest with the Home Guards, Red Cross Society or any other authority, which they may deem fit and proper as if finally approved by this Court.*
2. *At least one toll free number shall be provided and the ambulances shall be deputed only through that number and not through the owners or through persons who have provided the ambulances. A register shall be maintained giving the details of the name and address of the passenger; the hospital /clinic to which the patient was taken and the telephone number from which the call was received.*
3. *The District Magistrate and the Superintendent of Police shall identify four or five spots in and around Shimla, where these ambulances can be parked in different groups. To give an example, if four or five ambulances can be parked*

*near Boileauganj or Chakkar or Summer Hill, these can serve the residents of Totu, Boileauganj, Summer Hill, Advanced Studies etc. This would ensure that the ambulance reaches the patient as fast as possible and the patients are taken to the hospital / clinic at the earliest. Under no circumstance will these ambulances be permitted to be parked at the residences/offices of the persons, who are operating these ambulances.*

- 4. The ambulances are transport vehicles and it shall be ensured that only those drivers are engaged to drive these ambulances, who have a valid driving license to drive a transport vehicle of the category required.*
- 5. The operator of the ambulances shall, within two days of the engagement of the driver, supply a copy of the driving license and complete details and particulars of the driver to the Superintendent of Police and the District Magistrate, Shimla, who shall maintain proper record of the same. All drivers of the ambulances shall wear a proper uniform, which shall be prescribed by the District Magistrate and the Superintendent of Police. They shall also wear a name plate, showing their name, so that the driver can be identified.*
- 6. The ambulances shall come to the sealed /*

*restricted roads of Shimla town only for the purpose of carrying patients to the hospitals / clinics. The ambulances run by private organizations / individuals shall only be brought on the sealed road for the purpose of bringing patients to the hospitals / clinics and for no other purpose. In case of more than one violation of these rules, the permit to ply the ambulances shall be withdrawn.*

7. *Even in case of other ambulances run by the government agencies including the ambulances run under the Atal Yojna, other than carrying patients only Doctors required for emergency duty shall be taken through the sealed / restricted areas. If the ambulance is moving from one place to another place not for carriage of patients or to take a Doctor for emergency duties, it shall not enter the sealed / restricted areas at all and shall only enter those restricted areas where it is necessary to do. We are again reiterating that the ambulances shall not be used to ferry Doctors or other officials unless they are required for emergency duties.*

8. *We have received one complaint that some ambulances are having taxi number plates. The District Magistrate and the Superintendent of Police shall verify this fact and shall inform this Court by the next date as to how such taxis have been*

*given permission to run as ambulances. It shall be the duty of the District Magistrate and the Superintendent of Police to ensure that the ambulances and the dead body vans are used strictly for the purpose for which they are meant for and not for any other purpose.*

**Army Vehicles:**

20. The provisions of the Shimla Roads Users and Pedestrians (Public Safety and Convenience) Act, 2007, are applicable to the Army vehicles and the personal vehicles owned by the Army officials also. Therefore, even their vehicles will require to obtain permission under this Act.

21. Mr. Sandeep Sharma, learned Assistant Solicitor General of India, submits that a lot of Army establishments are situated on sealed/restricted roads and, therefore, they may be exempted from the provisions of this Act. We are unable to accept this contention. The Army officials are also the citizens of India like all other citizens. They also have to go to office like any other government official and if they choose not to walk from their Messes/Residences to the Army Training Command and want to use vehicles, then if they are using the sealed/restricted roads, they may only do so after taking permits under the Act. The officials granting such permissions shall obviously take into consideration the requirement of the Army officials and grant them these permits as per their requirements.

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22. We had mentioned this in our earlier order also and we are again reiterating this time that Army vehicles are being plied on sealed and restricted roads in a highly illegal manner. Even in the morning hours, on the sealed road from H.P. Vidhan Sabha to the AG Office, the Army vehicles ply with impunity. It is for the Superintendent of Police and the District Magistrate, Shimla, to ensure that the Army vehicles also ply in accordance with the provisions of the Shimla Roads Users and Pedestrians (Public Safety and Convenience) Act, 2007.

23. Shimla is a pedestrian city and the roads are meant for persons who walk on foot. While granting permissions in Shimla under the Shimla Roads Users and Pedestrians (Public Safety and Convenience) Act, 2007, the authorities must ensure that the spirit of the Act and the inherent historical aspect of the city, being a pedestrian city, is kept in mind and permits to ply on sealed/restricted roads are not granted just for the asking. These permits must have relevance with the residence of the road user, his office/place of working etc. The practice of granting permits for all sealed/restricted roads should be curbed out to the maximum extent. These restrictions should apply to all concerned from highest to the lowest. The law is equal for all. We also make it clear that the provisions of this Act will apply to all equally regardless of their status in society. The permits should be granted on the basis of need and this alone should be the primary consideration except for high dignitaries for whom the Act itself provides certain

different criteria.

Unauthorized lights on vehicles:

24. The Secretary, Regional Transport Authority, has, in his affidavit, also indicated the prescribed standard under the Motor Vehicles Act with regard to the automobiles lamps to be used in motor vehicles. It shall be his duty to ensure that any vehicle being plied with using the lights, which do not comply the notification dated 13.12.2004, are challaned and the lights are removed from such vehicles.

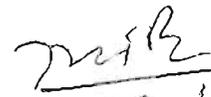
25. Learned Deputy Advocate General shall ensure that a copy of this order is supplied to all the District Magistrates and the Superintendents of Police.

26. List on 6<sup>th</sup> January, 2012, and then on 13<sup>th</sup> April, 2012. Liberty is reserved to the petitioner to file any application to bring on record any documents.

Copy Dasti.

Sd/-  
Deepak Gupta, J.

Sd/-  
Sanjay Karol, J.

  
04/01/2012

December 30, 2011  
(rajni)