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AVISHEK GOENKA

v.

UNION OF INDIA & ANR.

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

Writ Petition (Civil) No. 265 of 2011

AUGUST 3, 2012

[A.K. PATNAIK AND SWATANTER KUMAR, JJ.]

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Motor Vehicles Rules, 1989 – Rule 100 – By judgment dated 27th April, 2012 passed in writ petition (civil) no.265 of 2011, Supreme Court had prohibited the use of black films of any Visual Light Transmission (VLT) percentage or any other material upon the safety glasses, windscreens (front and rear) and side glasses of all vehicles throughout the country – Supreme Court took the view that Rule 100 does not permit use of any other material except the safety glass ‘manufactured as per the requirements of law’ – Applications for modification /clarification of the judgment dated 27th April 2012 – Held: Liable to be dismissed – 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 – Enforcement of law, if causes any inconvenience, is no ground for rendering a provision on the statute book to be unenforceable – Individual inconvenience cannot be a ground for giving the law a different interpretation – The expression ‘maintained’ used in r.100 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 – Suggestion given that the expression ‘we prohibit the use of black film of any VLT percentage or any other material upon safety glasses’ in Para 27 of the judgment

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dated 27th April 2012 should be substituted by 'we prohibit the use of black films of impermissible VLT percentage or any other material upon the safety glasses' would be in complete violation of the substantive part of the judgment – 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 –Consequential directions passed.

By judgment dated 27th April, 2012 passed in writ petition (civil) no.265 of 2011, this Court had prohibited the use of black films of any Visual Light Transmission (VLT) percentage or any other material upon the safety glasses, windscreens (front and rear) and side glasses of all vehicles throughout the country.

The applicants filed the instant IAs, seeking modification / clarification of the said judgment dated 27th April 2012 on various grounds: 1) that they were not parties to the writ petition and were not aware of the proceedings before this Court and so their submissions could not be considered by the Court; 2) that the use of films or even black films is permissible scientifically and in law; 3) that Rule 100(2) of the Motor Vehicle Rules, 1989 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; and 4) that para 27 of the judgment dated 27th April 2012 needs modification by substituting the words 'use of black films of any VLT percentage' by the words 'use of black films of impermissible VLT percentage'.

Dismissing the IAs, the Court

HELD: 1. In the main Writ Petition no.265 of 2011, and even in these applications, there was no challenge to Rule 100 of the Motor Vehicles Rules, 1989. This Court

A vide its judgment dated 27th April, 2012, had 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. The law so declared is binding on all and
must be enforced in terms thereof. Having interpreted the
B 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
C herein, is to be performed by this Court. [Para 11] [1135-
G-H; 1136-A-C]

Delhi Administration v. Gurdip Singh Uban and Ors.
(2000) 7 SCC 269 – referred to.

D 2. In these applications, some grounds were taken to
demonstrate that some other interpretation of the
provision was possible. These grounds, firstly, were not
grounds of law. They were primarily the grounds of
inconvenience. Enforcement of law, if causes any
E 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 counsel appearing for various
F applicants fairly conceded that they were not raising any
challenge to Rule 100 of the Rules. Once that position is
accepted, there is no reason to alter the interpretation
given to the said Rule in the judgment dated 27th April,
2012. [Para 12] [1136-C-E]

G 3. 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
H 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. [Para 13] [1136-F-H] A

4. 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. [Para 14] [1137-B-C] B C

5. 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 D E F G H

A 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
 B 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
 C purpose of enacting Rule 100 and would also hurt the
 safety requirements of a motor vehicle as required under
 the Act. [Para 15] [1137-C-H; 1138-A-B]

6. The suggestion given by the applicants that the
 expression 'we prohibit the use of black film of any VLT
 D percentage or any other material upon safety glasses' in
 Para 27 of the judgment dated 27th April 2012 should be
 substituted by 'we prohibit the use of black films of
 impermissible VLT percentage or any other material upon
 the safety glasses' would be in complete violation of the
 E substantive part of the judgment. 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
 F contemplate use of any other material except what is
 specified in the Explanation to Rule 100(1), then the use
 of any such material by implication cannot be permitted.
*Quando aliquid prohibetur ex directo, prohibetur et per
 obliquum.* If the plain language in para 27 is substituted,
 G it would render the entire judgment ineffective and
 contradictory in terms. [Para 17] [1138-F-H; 1139-A]

7.1. The manufacturer and distributors placed certain
 material, including some photographs and reports of the

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American Cancer Society, to show that mostly skin cancer is caused by too much exposure to ultra-violet rays. From these photographs, attempt was made to show that in the day time when the films are pasted upon the safety glasses, still the face and the body of the occupant of the car is visible from outside. It is also stated that certain amendments were proposed in the Code of Virginia relating to the use of sun shading and tinting films, on the motor vehicles. Relying upon the material relating to America, it was stated that there are large number of cancer cases in USA and the framers of the law have amended the provisions or are in the process of amending the provisions. To counter this, the petitioner has filed a detailed reply supported by various documents which shows that tinted glasses have been banned in a number of countries and it is not permissible to use such glasses on the windows of the vehicle. However, the controversy arising from the submissions founded on factual matrix does not call for any determination before this Court. The environment, atmosphere and geographical conditions of each country are different. 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. [Paras 18, 19 and 20] [1139-B-F; 1140-A-C]

7.2. 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. The interpretation of law is not founded on a single circumstance, particularly when such circumstance is so

A 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. Individual inconvenience cannot be a ground for giving the law a different interpretation. [Paras 21, 22] [1140-D-G]

Saurabh Chaudri & Ors. v. Union of India & Ors. AIR 2004 SC 361: 2003 (5) Suppl. SCR 152 – referred to.

8. Use of black films 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, the following orders are passed: a) All the applications filed for clarification and modification are dismissed; b) 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. It is reiterated 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 and c) 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. [Para 24] [1141-D-F; 1142-A-B]

Case Law Reference:

(2000) 7 SCC 269

referred to

Para 3

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2003 (5) Suppl. SCR 152 referred to **Para 21** A

CIVIL ORIGINAL JURISDICTION : I.A. Nos. 4, 5, 6-8, 9-11, 12, 13, 14 and 15.

IN

Writ Petition (Civil) No. 265 of 2011. B

Under Article 32 of Constitution of India.

Petitioner-In-Person.

Gaurab Banerjee, ASG, Soli J. Sorabjee, Rajesh Kumar, R.K. Srivastava, T.A. Khan, D.S. Mahra, S.A. Haseeb, R.K. Rathore, S.S. Rawat, Sunita Sharma, Debesh Panda, Nitish Gupta, Kedar Nath Tripathy, A.N. Haksar, Ranjan Kumar Pandey, Vijay Sondhi, Sanjay Kumar, Wasim Beg, Promod Nair, Mohit Bakshi, Dheeraj Nair, P.P. Hegde, Charu Ambwani, Prashant Kumar, AP & J Chambers, Manu Nair, Anuj Berry, Tanuj Bhushan (for Suresh A. Shroff & Co.), Gopal Jain, Nandini gore, Debmalya Banerjee, Abhishek Roy, Mahak Bhalla, R.N. Karanjawala, Manik Karanjawala, S. Nayyar (for Karanjawala & Co.), for the Respondents. C D E

The Judgment of the Court was delivered by

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

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 permission to file application for impleadment and application for modification by the Registrar of this Court vide his Order dated 16th May, 2012. G

3. The learned Registrar vide the impugned order noticed H

A 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
 B 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
 C 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
 D 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
 of the judgment of this Court dated 27th April, 2012, without
 E 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
 F 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.

G 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
 H 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 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 of 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

- A 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
- B 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
- C 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

D 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,

E 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.

F 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

G 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

H 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.

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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.

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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

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- A 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 material except what is specified

in the Explanation to Rule 100(1), then the use of any such material by implication cannot be permitted. Quando aliquid prohibetur ex directo, prohibetur et per obliquum. If we substitute the plain language in para 27, it would render the entire judgment ineffective and contradictory in terms. Having already held that no material, including the films, can be used on the safety glasses, there is no occasion for us to accept this contention as well.

18. The manufacturer and distributors have placed certain material before us, including some photographs and reports of the American Cancer Society, to show that mostly skin cancer is caused by too much exposure to ultra-violet rays. From these photographs, attempt is made to show that in the day time when the films are pasted upon the safety glasses, still the face and the body of the occupant of the car is visible from outside. It is also stated that certain amendments were proposed in the Code of Virginia relating to the use of sun shading and tinting films, on the motor vehicles. Relying upon the material relating to America, it is stated that there are large number of cancer cases in USA and the framers of the law have amended the provisions or are in the process of amending the provisions. This itself shows that it is a case of change in law and not one of improper interpretation, which is not the function of this Court.

19. To counter this, the petitioner has filed a detailed reply supported by various documents. This shows that tinted glasses have been banned in a number of countries and it is not permissible to use such glasses on the windows of the vehicle. Annexure A1 and A3 have been placed on record in relation to New South Wales, Australia, Afghanistan and some other countries. He has also placed on record a complete research article on the cancer scenario in India with future perspective which has specifically compared India as a developing country with developed countries like USA and has found that cancer is much less in India despite the fact that most of the Indian population is exposed to ultra-violet rays for the

A larger part of the day for earning their livelihood for their daily works, business and other activities.

B 20. This controversy arising from the submissions founded on factual matrix does not, in our opinion, call for any determination before this Court. As already noticed, the Court has interpreted Rule 100 as it exists on the statute book. The environment, atmosphere and geographical conditions of each country are different. 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.

D 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].

G 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.

H 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

- A 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
- B be compelled to take appropriate action under the provisions of the Contempt of Courts Act, 1971 without any further notice to the said officers.
- C 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.
- D (5) Copies of this judgment be sent to all concerned by the Registry including the Chief Secretaries of the respective States forthwith.

B.B.B.

IA's dismissed.