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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 3181/2021 & CM APPL.9636/2021

TATA MOTORS LTD

..... Petitioner

Through: Dr. Abhishek Manu Singhvi, Mr. Rajiv Nayar & Mr. Gopal Jain, Senior Advocates with Ms. Nandini Gore, Mr Amit Bhandari, Ms. Natasha Sahrawat & Mr. Raghvendra Pratap Singh, Advocates.

versus

GOVT OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Ramesh Singh, Standing Counsel for Government of NCT of Delhi.

Mr. Chetan Sharma, Additional Solicitor General with Mr. Sameer Vashisht, Mr. Amit Gupta, Mr. Akshay Gadeock, Mr. Sahaj Garg, Mr. R. Venkat Prabhat & Mr. Manashwy Jha, Advocates for Respondent No. 2 Deputy Commissioner (OP-I) Government of NCT of Delhi.

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

**ORDER**

**10.03.2021**

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**CM APPL.9636/2021**

1. The hearing was conducted through video conferencing.
2. Issue Notice. Notice is accepted by Mr. Ramesh Singh Standing Counsel for Government of NCT of Delhi and Mr. Sameer Vashisht Advocate for Respondent No. 2 Deputy Commissioner (OP-I) Government of NCT of Delhi.

3. Arguments of Dr. Singhvi appearing for the Petitioner and Mr. Ramesh Singh learned Standing Counsel for Government of NCT of Delhi and Mr. Chetan Sharma learned ASG appearing for Respondent No. 2 the Deputy Commissioner (OP-I) Government of NCT of Delhi were heard for over an hour and a half.

4. Petitioner impugns order dated 01.03.2021 whereby, by way of an interim order, the listing of the petitioner's vehicle i.e. Tata Nexon EV has been suspended as an eligible Electric Vehicle from the list of eligible models for availing subsidy under the Delhi EV Policy and a Committee has been constituted to verify the claim of the complainants as well as the assertions made by the petitioner, prior to taking a final decision.

5. A Policy was promulgated by the Ministry of Heavy Industries and Public Enterprises, which was notified on 08.03.2019 laying down a Scheme for Faster Adoption and Manufacturing of Electric Vehicles in India Phase II (FAME India Phase II).

6. In terms of the notification, the Department of Heavy Industries had launched the Scheme for promotion of electric and hybrid vehicles in India.

7. As per the said notification, the Scheme was proposed to implement Demand Incentives, Establishment of network of Charging Stations and Administration of Scheme including Publicity, IEC (Information, Education & Communication) activities.

8. The Scheme provided that Demand Incentives shall be

available for consumers (buyers/end users) in the form of an upfront reduced purchase price of hybrid and electric vehicles to enable wider adoption, which would be reimbursed to the OEM by the Government of India.

9. As per the notification, particularly Clause 28 of the same, every vehicle model needed to satisfy the minimum technical eligibility criteria with regard to performance and efficiency of the vehicle which was to be notified separately and was also required to get an approval as per prescribed/standard test procedure at the recognized testing agencies as notified under Rule 126 of Central Motor Vehicle Rules, 1989 (CMVR for short) by the Ministry of Road Transport and Highways.

10. It is not in dispute that one of the recognized Testing Agency notified under Rule 126 of CMVR is the Automotive Research Association of India, Pune (hereinafter referred to as the ARAI).

11. The Government of NCT of Delhi notified the Delhi Electric Vehicles Policy 2020. Clause 4.6 of the said Policy stipulates that the Purchase Incentive shall be applicable only to electric four – wheelers with advanced batteries listed as being eligible under FAME India Phase – II (having fulfilled all the eligibility and testing conditions as specified under the scheme). The purchase incentive is to be provided to the registered owners of the first 1000 e-cars to be registered in Delhi after the issuance of this policy.

12. On a complaint received from one private

individual/respondent no. 3, the Deputy Commissioner (OP-I) has passed the impugned order delisting the Tata Nexon EV, vehicle manufactured by the petitioner from the list of eligible category of vehicles for grant of purchase incentives.

13. As per the petitioner, petitioner had submitted a prototype of the vehicle for testing to ARAI. A Certificate of compliance to the Central Motor Vehicle Rules was issued by ARAI on 14.01.2020.

14. The certificate *inter alia* states that parameter for minimum range as per the eligibility criteria laid down by CMVR is 140 kilometres per charge. It certifies that the result of the vehicle of the petitioner was 312 kilometres per charge (vide ARAI test report number ARAI/AED/20192020/4400016170/CT/1676 dated 10<sup>th</sup> January, 2020). ARAI has further certified that the vehicle of the petitioner meets the requirement of CMVR.

15. It is noted in the impugned order that a complaint was received from respondent no.3 that though the vehicle model is specified to provide 312 kilometres range in a single charge, the customer was never provided a range more than 200 kilometres.

16. Show-cause notice was issued, which was responded to by the petitioner and the impugned order has been passed. The show cause notice records that the vehicle eligibility criteria specifies the minimum range as 140 km. It further states that while the vehicle model is specified to provide 312 km range in a single charge, the vehicle owned by the said customer has never provided a range a

more than 200 km.

17. The impugned order after noticing the submissions of the parties rejects the contention of the petitioner that the eligibility condition for the specified category of vehicle in the EV Policy was minimum 140 kilometres per charge, which was admittedly met.

18. The impugned order holds held that the submission is based on a complete misreading of the eligibility criteria as the range of 140 kilometres has to be read in a proper, sensible and a fair manner particularly keeping in mind the objective of the EV Policy itself. The order records that the stipulation of 140 kilometres would stand satisfied only when a vehicle claiming performance range of 140 kilometres actually delivers performance of 140 kilometres, subject to minor variation. It could not include a vehicle which claims performance of much higher range.

19. The impugned order has further noted that the model of the petitioner claims performance range of 312 kilometres but was having a performance range of 200 kilometres. As per the impugned order such an approach would lead to absurd result and would also make a complete mockery of the whole Subsidy Policy.

20. The order further holds that Government cannot support sale of vehicles of a company which is not honest qua the capacity/capability/representation made by such manufacturer vis-à-vis their vehicles and does not take any concrete steps to redress the grievance of general public.

21. The order also notices one another complaint from social media wherein there was an adverse tweet on the range of this car.

22. The impugned order thereafter directs that it has been decided to verify the claim of the complainants as well as assertions made by Tata Motors Ltd. and to take a final decision in the matter, constitutes a Committee with the following members:

- i. Representative of Transport Department*
- ii. Representative of DIMTS*
- iii. Representative of Tata Motors Ltd.*
- iv. Representative of any reputed organization*

23. The order further records that the order for constitution of the Committee with names of the persons to be included in the Committee would be issued separately.

24. The impugned order further directs that pending the report of the Committee and final decision in the matter, with the need to avoid and prevent any adverse fallout on the EV Policy itself, it was necessary/imperative to suspend the listing of the subject EV i.e. Tata Nexon EV as an eligible EV from the list of eligible models for availing subsidy under the Delhi EV Policy.

25. Learned Senior Counsel for the petitioner submits that the claim made by the petitioner is based on the assessment report given by ARAI which had certified the range as per CMVR as 312 kilometres per charge and held that the vehicle meets the requirement.

26. Learned Senior counsel submits that as the eligibility criteria of 140 kilometres was met, there was no necessity of ARAI to give any

result except to say that the vehicle meets the requirement, but it gave the range, which was then mentioned by the Petitioner in its documentations.

27. Learned Senior Counsel further contends that testing is always done by ARAI in ideal test conditions, which are different from the actual road conditions and there is bound to be variation between the test results of ideal conditions and test results of city or highway driving conditions.

28. Learned Senior Counsel submits that the brochure issued by the Petitioner specifically notes as under: -

***“Range of your EV***

*The Nexon EV can drive about 312 km when the high voltage battery is 100 per cent charged (ARAI certified).*

*However, in certain situations like driving at high speed or when the air conditioner/heater is ON, the distance to empty can reduce significantly, as the high voltage battery consumes more electricity.”*

29. Learned Senior Counsel submits that the Tata Nexon is the highest selling EV in the country and has recorded 65% sales of all electric vehicles (EVs) sold in India after it was certified in the year 2020. It has also won ‘the first ever Green Car of the year’ award by ICOTY.

30. Learned Senior Counsel for the petitioner submits that in case the impugned order is not stayed, it would not only hamper the sales of the vehicles of the petitioner, but would also permanently damage

the reputation of the petitioner. He submits that the officer without any conclusive material to show that the vehicle does not meet the requisite parameters, has passed the impugned order suspending the listing of the subject EV as an eligible vehicle.

31. Learned Senior Counsel further contends that when petitioner meets the eligibility condition and has also been accorded the benefit of the Subsidy Policy, the benefit cannot be taken away unless either the policy is withdrawn or petitioner is found to have breached the eligibility conditions of the policy.

32. Learned Senior counsel further submits that the officer has attempted to *put the cart before the horse*. While suspending the listing, the officer has constituted a Committee to verify the claim of the complainants. He further contends nowhere in the order or the complaint it is alleged that the petitioner's vehicle does not meet the eligibility conditions set out in the Policy.

33. Both learned ASG appearing for the Respondent No. 2 Deputy Commissioner (OP-I) Government of NCT of Delhi Respondent No. 2 as well as Mr. Ramesh Singh, Standing Counsel for Government of NCT of Delhi appearing for Respondent No. 1, have not contended that the vehicle does not meet the basic eligibility criteria of 140 kilometres per charge.

34. Mr Sharma, learned ASG submits that in the matter of grant of subsidy, the Courts would not normally interfere. It is submitted that grant of subsidy is a discretion which vests with the Government and



both, the grant of subsidy and withdrawal thereof is purely within the domain of Government and Writ Court would not direct the Government to grant a subsidy which is a largess granted under the discretion of the Government.

35. It is further contended that the decision to suspend the listing of the subject EV has been taken keeping in view the objective of the scheme for large scale faster adoption and manufacturing of hybrid and electric vehicles.

36. It is submitted that petitioner had made a false claim that their vehicles achieves a range of 312 kilometres per charge whereas as per the complaint received, the range is far less than 312 kilometres and is approximately 200 kilometres per charge.

37. Reliance is placed on the decision of the Supreme Court in *Indian Oil Corporation Ltd. & Anr. Vs. Kerala State Road Trading Corporation & Ors.*, (2018) 12 SCC 518 to contend that grant of subsidy is a matter of privilege to be extended by the Government and cannot be claimed as of right and such policy decisions are not amenable to judicial review.

38. Further reliance is placed on the judgment of the Supreme Court in *State of Rajasthan & Anr. vs. J.K. Udaipur Udyog Ltd. & Anr.*, (2004) 7 SCC 673 to contend that a recipient of concession has no legally enforceable right against the Government to grant of a concession except to enjoy the benefits of the concession during the period of its grant.

39. Further reliance is placed on the decision of the Supreme Court in *State of UP & Ors. vs. Ram Sukhi Devi*, (2005) 9 SCC 733 to contend that interim orders which practically give final relief, should not be passed.

40. Mr. Ramesh Singh, learned Standing Counsel for Government of NCT of Delhi contended that what was submitted to ARAI for testing was a prototype and what is being manufactured seems to be different from prototype. He submits that the certificate which has been granted by ARAI is for the limited purpose of registration and does not preclude the Government from subsequently withdrawing the listing in case the parameters are found to be not met and does not prevent the Government from doing a quality surveillance to ensure compliance with the representation made by the manufacturers.

41. Learned counsel further contends that Clause 7 of the operational guidelines for delivery of Demand Incentives under the Delhi Electric Vehicle Policy, 2020 dated 23.10.2020, empowers the Government to depute its representatives to visit the premises/office/centre/workplace of the OEM for the purposes of inspection and verification purposes and pass such orders or issue directions in relation thereto.

42. *Prima facie*, none of the submissions raised by learned ASG or Mr. Ramesh Singh learned standing counsel are sustainable for the reason that the Policy and the Central Motor Vehicle Rules, which would have statutory force, admittedly prescribe the eligibility criteria for grant of listing as 140 kilometres per charge.

43. Clause 4.6 of the Delhi Electric Vehicles Policy 2020 stipulates that the Purchase Incentive shall be applicable only to electric four – wheelers with advanced batteries listed as being eligible under FAME India Phase – II (having fulfilled all the eligibility and testing conditions as specified under the scheme).

44. Clause 28 of the FAME India Phase – II Policy stipulates that *“Each vehicle model needs to satisfy minimum technical eligibility criteria with regard to performance and efficiency of vehicles to be notified separately and get it type approved as per prescribed / standard test procedure at the recognised testing agencies as notified under the Rule 126 of Central Motor Vehicle Rules by the Ministry of Road Transport and Highways.....”*

45. One of the testing agencies specified under Rule 126 of Motor Vehicle Rules is ARAI. ARAI has given a certificate that the vehicle submitted for testing meets the requirement of 312 kilometres per charge. Further it has certified that the test vehicle meets eligibility criteria for performance and efficiency parameters for its category. It has further certified that it is eligible for demand incentive under FAME-India Scheme Phase – II.

46. It is this certification which has been made the basis by the petitioner for making his application for listing. At all places wherever this range is mentioned, the petitioner has qualified the same by stating ‘ARAI certified’.

47. It is not in dispute that the qualification range of the vehicle is

140 kilometres per charge. The impugned order also records that the minimum range is 140 kilometres.

48. The impugned order records that the range of 140 kilometres has to be read in a proper, sensible and a fair manner keeping in mind the objective of EV Policy itself. Nothing has been pointed out in the impugned order or by learned Counsels for respondents as to what would be a proper, sensible and a fair reading of the range, except the reading of the range itself i.e. 140 kilometres. The parameters stipulated by the Motor Vehicle Rules do not put any qualifying conditions on the range of 140 kilometres.

49. Further, the impugned order also records that the complaint which was received stated that the performance range achieved is 200 kilometres per charge. This is far greater than the specified range of 140 kilometres per charge.

50. It is common knowledge that performance of a vehicle would depend on the driving conditions *inter alia* the driving capabilities of the driver and the road & traffic conditions.

51. Taken from any angle, neither the complaint nor the impugned order states that the minimum range of 140 kilometres was not met.

52. Further, it may be seen that in addition to testing of a prototype under Rule 126; Rule 126A and 126B of the Central Motor Vehicles Rules mandate testing of vehicles drawn from the production line to ensure compliance with the Act and the Rules.

53. It is not the case of the respondents that Rule 126A and 126B have not been complied with by ARAI. So the submission of Mr. Ramesh Singh learned standing counsel that only a prototype was tested and the certification is based solely on a prototype is prima facie not sustainable.

54. The impugned order itself shows that there was no test report or material before the officer which suggested that the minimum criterion as specified in the Central Motor Vehicle Rules or in the Policy was not met.

55. Nothing has been pointed out to show that the Petitioner has contravened any of the conditions of the Delhi Electric Vehicles Policy, 2020 of the FAME India Phase – II policy.

56. The impugned order rather constitutes a Committee of representatives from four organizations including the petitioner to verify the claim of the claimants as well as the assertion made by the petitioner. This goes on to show that there was no concrete material before the officer, when the impugned order was passed. The impugned order has been passed without any verification.

57. The officer may be empowered to have an inspection carried out of the vehicle to ascertain the claims made by the complainant or the assertions made by the manufacturer. However, such an inspection cannot replace a Test carried out by the Statutory Testing Agency, which has to follow very strict parameters laid down under the CMVR. A Committee constituted for an inspection cannot

substitute the Statutory Testing Agency specified under the Central Motor Vehicle Rules and the decision of such an inspection Committee cannot override the decision of the Statutory Testing Agency.

58. The report of such an inspection Committee can at best be used by the officer for taking further steps like directing a fresh examination by the Statutory Testing Agency but cannot form the basis of rejecting the certification of the Statutory Testing Agency.

59. The judgments in *Indian Oil Corporation Ltd. & Anr. Vs. Kerala State Road Trading Corporation & Ors.*, (*supra*) and *State of Rajasthan & Anr. vs. J.K. Udaipur Udyog Ltd. & Anr.*, (*supra*), relied on by learned ASG are not applicable to the facts of the present case.

60. Subject case is not a case where the Government is deciding to do away with the Policy for grant of subsidy or to withdraw a concession. This is the case where the Policy for grant of subsidy is very much in place and petitioner has been found entitled to the benefits of the Policy as having met all the requisite criterion and has also been granted the benefit. The benefit of the Subsidy Policy is sought to be withdrawn merely on an allegation, which even as per the impugned order, is still to be verified.

61. Petitioner was granted the benefits of the Policy based on the report of a Statutory Testing Agency and no material to the contrary has been produced either before the officer who passed the impugned order or before this Court.

62. Reliance placed by learned ASG on the decision in *State of UP & Ors. vs. Ram Sukhi Devi (supra)* is misplaced inasmuch as the grant of an interim protection at this stage would not tantamount to granting a final relief to the petitioner. Further, interim relief which is required to meet the needs of justice can be granted specially when it does not create settled rights in favour of the parties.

63. By the Impugned order, respondent No. 2 has, without there being any material to substantiate the allegations, directed de-listing of the vehicle of the petitioner as an eligible vehicle. The impugned order is contrary to the policy of the government and rather defeats the very purpose of the scheme of the Policy of Faster Adoption and Manufacturing of Hybrid and Electric Vehicles. Admittedly the vehicle of the petitioner meets the criteria laid down by the policy and has also been so certified by the Statutory Testing Agency ARAI.

64. *Prima facie*, I am of the view that Petitioner has been able to show a strong prima facie case in its favour and in favour of grant of an interim relief. Balance of convenience is also in favour of the grant of an interim relief and in case the impugned order is not stayed, grave prejudice and irreparable loss and injury is likely to be caused not only to the petitioner but also to the very Policy of the Government. Furthermore, the impugned order also makes very serious aspersions on the petitioner, which have not substantiated by any concrete material being brought before the concerned officer.

65. Let reply be filed within two weeks from today. Rejoinder thereto be filed within two weeks thereafter.

66. List on 13.04.2021.

67. In the meantime, operation of the impugned order dated 01.03.2021 is stayed to the extent that it directs suspension of the listing of the subject EV i.e. Tata Nexon EV as an eligible EV from the list of eligible models from availing subsidy under the Delhi EV Policy.

**W.P.(C) 3181/2021**

68. Issue Notice. Notice is accepted by Mr. Ramesh Singh Standing Counsel for Government of NCT of Delhi and Mr. Sameer Vashisht Advocate for Respondent No. 2 Deputy Commissioner (OP-I) Government of NCT of Delhi. Notice shall issue to Respondent No. 3 returnable on 13.04.2021.

69. Let Counter Affidavit be filed within two weeks. Rejoinder thereto be filed within two weeks thereafter.

70. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

**SANJEEV SACHDEVA, J**

**MARCH 10, 2021**

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