

State Vs. Urmi Ghoshal

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Court : Kolkata

Decided On : May-08-2002

Reported in : AIR2002Cal192,(2003)2CALLT151(HC)

Judge : Ashok Kumar Mathur, C.J. and ;Jayanta Kumar Biswas, J.

Acts : [Constitution of India](#) - Articles 14, 19 and 226; ;[Motor Vehicles Act, 1939](#) - Sections 110 and 190(2); ;Central Motor Vehicles Rules, 1989 - Rules 115, 115(2), 116, 116(1) and 126; ;West Bengal Motor Vehicles Rules, 1989 - Rule 258

Appeal No. : M.A.T. No. 2392 of 2000, C.A.N. No. 6203 of 2000, W.P. Nos. 1797, 5014 and 13168(W) of 2000 and 2249

Appellant : State;snehasis Bhowmick and Dilip Kumar Sil;deputy Commissioner of Police

Respondent : Urmi Ghoshal;state;md. Noor Alam

Advocate for Def. : Dipankar Ghosal, ;R.L. Moitra and N.I. Khan, Advs. in M.A.T. No. 2392 of 2000

Advocate for Pet/Ap. : Chama Mukherjee, ;Pabitra Banerjee and ;Jayanta Padit, Advs. in W.P. No. 13168(W) of 2000, ;Dipankar Ghosal, Adv. in W.P. No. 2249(W) of 2000, ;P.K. Chatterjee and ;R. Chatterjee, Advs. in W.P. No. 17

Disposition : Appeal dismissed

Judgement :

A.K. Mathur, C.J.

1. Both the appeals and the connected public interest litigation and a writ petition involve common question of law, therefore, they are being disposed of by a common order.

2. The State has filed two appeals. The first appeal being MAT No. 2392 of 2000 (State v. Urmi Ghosal) has been filed against the order passed by the learned single Judge dated 26th June, 2000, whereby the writ Petition No. 5014 (W) of 2000 (Urmi Ghosal v. State) was allowed by setting aside the order of compounding. The second appeal being APOT No. 627 of 2000 (Deputy Commissioner of Police v. Md. Noor Alam) has been filed by the Deputy Commissioner of Police against the same order whereby W.P. No. 1797 of 2000 (Noor Alam v. State of West Bengal) was disposed of. The other two writ applications being W.P. No. 2249 (W) of 2001 and W.P. No. 13168 (W) of 2000 (Public interest litigation) have been filed by Snehasish Bhowmick and Dilip Kumar Sil.

3. For convenient disposal of the matters, the facts of MAT No. 2392 of 2000 are taken into consideration. This appeal arose out of the order of the learned single Judge wherein the writ petitioner's vehicle was seized by the appropriate police authority on the plea that the certificate of testing of emission control was not correct one as in spite of such test the vehicle was found to be polluting beyond the permissible limit. On such finding the police authorities initiated action against the petitioner and passed the order for compounding the offence of pollution and imposed a penalty of Rs. 750/-. This levy of penalty of Rs. 750/- as compounding fees was challenged by the petitioner by filing the present writ petition [W.P. No. 5014(W) of 2000]. It was submitted that since the vehicle possessed by the petitioner was tested by the authorized testing centre of the State and if it is found to be still polluting, then the fault lies in testing which is attributable to the testing centre and not to the petitioner. It was further alleged that if after the checking of the vehicle the police finds that the petitioner's vehicle's emission was still beyond the pollution limit under Rule 258(2) of the West Bengal Motor Vehicles Rules,

1989, then a chance should have been given to the writ petitioner for getting the vehicle checked and rectified, instead of forcing a compounding on the petitioner.

4. In the affidavit-in-opposition filed by the State, it was pointed out that the vehicle was checked by police machine mounted on jeep in the presence of petitioner on roadside and its emission was beyond permissible limit. The learned single Judge after considering the matter came to the conclusion that the seizure of document and direction to compound the offence was uncalled for without giving a chance to the petitioner under Rule 258(2) of the West Bengal Motor Vehicles Rules, 1989 and quashed the compounding and directed the authorities to give back the documents to the petitioner. The learned single Judge further directed that the petitioner should get his vehicles tested within a period of 7 days on receipt of the documents by an authorized testing centre as may be stipulated by the police and after the same being done, the petitioner would reproduce the vehicle within 14 days from the date of testing to the officer concerned who would then once again take steps in accordance with law. It was also directed that the petitioner should also carry the original documents relating to the vehicle to the police. Aggrieved against this order the State has filed this appeal.

5. The public interest litigation [W.P. No. 13168(W) of 2001] has been filed with the grievance that a writ of mandamus be issued directing that the act of the Police Sergeants and other authorized representatives under the Motor Vehicles Act, 1988 to compound an offence under Section 190(2) of the said Act and the offence alleged to have been committed under Section 200 of the Motor Vehicles Act, 1988 and thereby seizure of original document is highly illegal, arbitrary and excessive use of administrative machinery, the same being violative of Section 190 of the Motor Vehicles Act, 1988 and Rule 258 of the West Bengal Motor Vehicles Rules, 1989. It was also prayed that a restraint order should be issued against the authorities from seizing the original documents of motor vehicles plying on the road, issuing challans and levying penalty on vehicles carrying valid certificates issued by the authorized testing agent of the State. Similar is the prayer in the other writ petition [W.P. No. 2249 (W) of 2001]. Hence, all these cases are clubbed together for disposal.

6. The Motor Vehicles Act, 1988 (hereinafter referred to as the Act) came into force after the repeal of the [Motor Vehicles Act, 1939](#) and Section 190(2) of the said Act says that any person who drives or causes or allows to be driven in any public place a motor vehicle, which violates the standards prescribed in relation to road safety, control of noise and air pollution, shall be punishable for the first offence with a fine of one thousand rupees and for any second or subsequent offence with a fine of two thousand rupees. Section 190 reads as under :

'190. Using vehicle in unsafe condition. - (1) Any person who drives or causes or allows to be driven in any public place a motor vehicle or trailer while the vehicle or trailer has any defect, which such person knows of or could have discovered by the exercise of ordinary care and which is calculated to render the driving of the vehicle a source of danger to persons and vehicles using such place, shall be punishable with fine which may extend to two hundred and fifty rupees or, if as a result of such defect an accident is caused causing bodily injury or damage to property, with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

(2) Any person who drives or causes or allows to be driven, in any public place a motor vehicle, which violates the standards prescribed in relation to road safety, control of noise and air pollution, shall be punishable for the first offence with a fine of one thousand rupees and for any second or subsequent offence with fine of two thousand rupees.

(3) Any person who drives or causes or allows to be driven, in any public place a motor vehicle, which violates the provisions of this Act or the rules made thereunder relating to the carriage of goods which are of dangerous or hazardous nature to human life, shall be punishable for the first offence which may extend to three thousand rupees, or with imprisonment for a term which may extend to one year, or with both, and for any second or subsequent offence with fine which may extend to five thousand rupees, or with imprisonment for a term which may extend to three years, or with both.'

7. Section 110 gives the power to the Central Government to frame rules regulating the construction, equipment and maintenance of motor vehicles and

trailers with respect to following matters, namely :-

'110. Power of Central Government to make rules. - (1)

xx (g) the emission of smoke, visible vapour, sparks, ashes, grit or oil;

(h) the reduction of noise emitted by or cause by vehicles;
xx

8. The Central Government in pursuance of the power conferred under Section 110(g) and (h) framed the Rules known as 'The Central Motor Vehicles Rules, 1989'.

9. Rule 115 of the Central Motor Vehicles Rules, 1989 (hereinafter referred to as the Rules) lays down the standard with regard to emission of smoke vapour from motor vehicles. It says that the motor vehicle's engine capacity not exceeding 70 cc, manufactured prior to the first day of March, 1990, shall be maintained in such condition and shall be driven so as to comply with the standards prescribed in these rules. Rule 115 reads as under :

'115. Emission of smoke, vapour, etc. from motor vehicles. - (1) Every motor vehicle other than motor cycles or engine capacity not exceeding 70 cc, manufactured prior to the first day of March, 1990, shall be maintained in such condition and shall be so driven so as to comply with the standards prescribed in these rules.

(2) On and from the date of commencement of this sub-rule, every motor vehicle shall comply with the following standards :-

(a) Idling CO (Carbon Monoxide) emission limit for all four-wheeled petrol-driven vehicles shall not exceed 3 percent by volume;

(b) Idling CO emission limit for all two and three wheeled petrol-driven vehicles shall not exceed 4.5 percent by volume;

(c) Smoke density for all dicsel-driven vehicles shall be as follows :

Table

Method of test

Maximum smoke

Density

Light absorption

Bosch units

Hartidge units

(a) For vehicle other than agricultural Tractors

(i) Full load at 60 to 70% of maximum engine rated rpm declared by theManufacturer.

3.25

5.2

75

Or

Free acceleration only for Naturally aspirated engine

2.45

--

65

(b) For agricultural tractors 80% load corresponding maximumpower developed in PTO Performance Tests

3.25

5.2

75

(3) On and from the date of commencement of this sub-rule, all petrol-driven vehicles shall be so manufactured that they comply with the mass emission standards as specified at annexure 'I'. The breakdown of the operating cycle used for the test shall be as specified at annexure 'II', and the reference fuel for all such tests shall be specified in annexure 'III' to these rules.

(4) On and from the date of commencement of this sub-rule, all diesel-driven vehicles shall be so manufactured that they comply with the following based on exhaust gas capacity as specified at annexure 'IV' to these rules.

(5) On and from the date of commencement of this sub-rule, all petrol-driven vehicles shall be so manufactured that they comply with the following levels of emission when tested as per test cycle specified in annexure 'V'.

Mass of Carbon

Mass of

Mass of Nitrogen

Monoxide (CO)

Hydrocarbons(HC)

Oxides (NO)

Maximum grams

Maximum grams

Maximum grams

per KWH

per KWH

per KWH

14%

3.5

18

Provided the standards for exhaust gas emissions applicable to agricultural tractors shall be noted separately.

(6) Each motor vehicle manufactured on and after the dates specified in Sub-rules (2), (3), (4) and (5), shall be certified by the manufacturers to be conforming to the standards specified in the said sub-sections, and further certify that the components liable to effect the emission of gaseous pollutants are so designed, constructed and assembled as to enable the vehicle, in normal use, despite the vibration to which it may be subjected, to comply with the provisions of the said sub-rule.

(7) After the expiry of a period of one year from the date on which the motor vehicle was first registered, every such vehicle shall carry a valid 'Pollution under control' certificate issued by an agency authorized for this purpose by the State Government. The validity of the certificate shall be for six months or any lesser period as may be specified by the State Government from time to time and the certificate shall always be carried in the vehicle and produced on demand by the officer referred to in Sub-rule (1) of Rule 116.

(8) The certificate issued under Sub-rule (7) shall, while it remains effective be valid throughout India.

[illegible][illegible][illegible]

10. Rule 116 also lays down test for smoke emission and Carbon Monoxide level for vehicles. This Rule 116 was substituted by amendment on 26th March, 1993, which reads as under :

'116. Test for smoke emission level and Carbon Monoxide level for vehicles. - (1) Notwithstanding anything contained in Sub-rule (7) of Rule 115 any officer not below the rank of Sub-Inspector of Police or the Inspector of Motor Vehicles who has reason to believe that a motor vehicle is not complying with the provisions of Sub-rule (2) or Sub-rule (7) of Rule 115, may in writing direct the driver or any person in charge of the vehicle to submit the vehicle for conducting the test to measure the standards of emission in any one of the authorized testing stations, and produce the certificate to an authority at the address mentioned in the written direction within 7 days from the date of conducting the check.

(2) The driver or any person in charge of the vehicle shall upon such direction by the officer referred to in Sub-rule (1) submit the vehicle for testing for compliance of the provisions of Sub-rule (2) of Rule 115, at any authorized testing stations.

(3) The measurement for compliance of the provisions of Sub-rule (2) of Rule 115 shall be done with a meter of the type approved by any agency referred to in Rule 126 of the principal rules or by the National Environment Engineering Research Institute, Nagpur 440 001:

Provided that such a testing agency shall follow ISO or ECE Standards and procedures for approved of measuring meters. (4) If the result of the tests indicate that the motor vehicle complies with the provisions of Sub-rule (2) of Rule 115, the driver or any person in charge of the vehicle shall produce the certificate to the authority specified in Sub-rule (1) within the stipulated time-limit.

(5) If the results Indicate that the motor vehicle does not comply with the provisions of Sub-rule (2) of Rule 115, the driver or any person in charge of the vehicle shall rectify the defects so as to comply with the provisions of the Sub-rule (2) of Rule 115 within a period of 7 days and submit the vehicle to any authorized testing station for re-check and produce the certificate so obtained from the authorized testing station to the authority referred to in Sub-rule (1).

(6) If the certificate referred to in Sub-rule (1) is not produced within the stipulated period of 7 days or if the vehicle fails to comply with the provisions of Sub-rule (2) of Rule 115 within a period of 7 days, the owner of the vehicle shall be liable for the penalty prescribed under Sub-section 190 of the Act.

(7) If the driver or any person in charge of the vehicle referred to in Sub-rule (1) does not produce the said certificate within the said period of 7 days, such vehicle shall be deemed to have contravened the provisions of the Sub-rule (2) of Rule 115 and the checking officer shall report the matter to the registering authority.

(8) The registering authority shall on receipt of the report referred to in Sub-rule (7), for reasons to be recorded in writing, suspend the certificate of registration of the vehicle until such time the certificate is produced before the registering authority to the effect that the vehicle complies with the provisions of Sub-rule (2) of Rule 115.

(9) On such suspension of the certificate of registration of the vehicle, any permit granted in respect of the vehicle under Chapter V or under Chapter VI of the Motor Vehicles Act 1988 (59 of 1988) shall be deemed to have been suspended until a fresh 'Pollution under control' certificate is obtained.'

11. In this case we are not concerned with the noise pollution, therefore, we need not refer to the provisions of the rules bearing on the subject with regard to sound pollution.

12. It may be relevant here to mention that the police authorities took the action against the petitioner in this case under Rule 258 of the West Bengal Motor Vehicles Rules, 1989. Rule 258 also lays down the emission standard for motor vehicles. It may be mentioned at the very outset that Rule 258 appears to be beyond the power of the State of West Bengal, because Section 110 of the Act, as quoted above, only empowers the Central Government to frame rules with regard to air and sound pollution under Section 110(g) and (h) of the Act. Therefore, apparently it appears that Rule 258 framed by the State of West Bengal is beyond its competence.

13. Learned counsel for the State has frankly conceded this position and has produced a letter from the Government showing that the Government has decided to repeal Sub-rules (2), (3) and (4) of Rule 258 of the West Bengal Motor Vehicles Rules, 1989 as the provision of the Central Motor Vehicles Rules, 1989 has laid down the necessary provisions on the subject. It has further mentioned that Rule 258 of the West Bengal Motor Vehicles Rules, 1989 is being repealed subject to usual formalities. Copy of the letter dated 12th April, 2002 by the Joint Secretary to the Government of West Bengal to the Government Pleader, Calcutta High Court, be kept on record.

14. The matter has been argued at length before us that when the said procedure has been laid down under the Central Rules with regard to the checking of the air pollution resulting from the emission of the smoke from the vehicle then that procedure should have been followed and not that the police authority should check the vehicle on the road by their own machine mounted on jeep and suddenly force the incumbent to go for compounding the offence on the road. It is submitted that despite the vehicle being tested by the authorized checking stations and a certificate being issued that the vehicle is free from pollution, still the vehicles are stopped by the traffic police and they are being tested by their own machine mounted on the vehicle and force the public at large to compound the offence resulting thereby the worthlessness of the certificate issued by the authorized checking stations.

15. When the matter came up before us for hearing and time was sought by the Government, an interim order was passed by this Court by its order dated 9th February, 2001, which reads as under :

'Mr. Ukil, the learned Government Pleader, submits that he has moved for the amendment of Rule 258 of the West Bengal Motor Vehicles Rules, 1989. He may be given some time so that proper notification may be brought up and placed before this Court.

Meanwhile, till the matter is disposed of finally, for interim measures, it is directed that as and when a driver holds a valid certificate from the authorized dealer to check the pollution and the police finds that the vehicle is still emitting smoke

above the prescribed standard, in that case, the police shall give their observations to the petitioner/party concerned and give them one week time to get the vehicle properly checked and bring it within the pollution control limit. If the petitioner/ party concerned fails to produce the certificate that the vehicle is within the pollution control limit, it will be open to the police to proceed in accordance with law. In order to see, if the owner/driver fails to produce the pollution control limit, it will be for the police officer to seize either his driving licence or tax token and, thereafter, the police officer will issue a certificate to that effect to the party concerned. As and when the certificate is produced by the party that the vehicle is not polluting, he shall appear before the police officer with the vehicle and certificate, and upon satisfaction, he will get the driving licence or the tax token released back by the police officer. At the time of seizing of the driving licence/tax token, the police officer shall inform the party where he has to present himself with his motor vehicle for rechecking.

16. In this background we have to examine what is the scope of the police authorities to check the vehicle and force the citizens to compound the offences notwithstanding that they have already obtained certificate from the authorized agents that the emission from the vehicle is within the permissible limit. The State Government has already conceded that Rule 258 of the West Bengal Motor Vehicles Rules, 1989 is beyond the competence of the State of West Bengal because power has been conferred on the Central Government and the Central Government has already framed Rules. Therefore, we have to examine the matter with reference to Rule 116 of the Central Motor Vehicles Rules, 1989 which has a direct bearing on the subject. Rule 116 clearly lays down that any Officer not below the rank of Sub-Inspector of Police or the Inspector of Motor Vehicles who has reason to believe that a motor vehicle is polluting the air he can direct the driver or the person in charge of the vehicle to submit the vehicle for testing to measure the standard of emission at any one of the authorized testing stations and produce the certificate to an authority at the address mentioned in the written direction within 7 days from the date of conducting check. Thereafter it will be incumbent on the driver or the person in charge of the vehicle to get the vehicle tested at any authorized testing stations in terms of the provisions of Rule 115(2) of the Act. If the result of the test indicates that the vehicle complies with the

provisions of Rule 115(2) then the driver or the person in charge of the vehicle shall produce a certificate to the authority specified in Sub-rule (1) of Rule 116 within the stipulated time limit. If the vehicle is found to be not complying with the norms laid down in Rule 115(2) then the driver or the person in charge of the vehicle shall rectify the defect within a period of 7 days and submit the vehicle back to the authorized testing station for re-checking and produce the certificate so obtained from the authorized testing station to the authorities referred to in Rule 116(1). If the certificate is produced within the stipulated period then no action is required to be taken and if the vehicle fails to comply with the norms within the said period of 7 days then the owner of the vehicle shall be liable for penalty prescribed under Section 190(2). Therefore, as per the scheme of things if the vehicle which is found to be polluting has not been rectified by the driver or the person in charge of the vehicle then in that case the authorities who are competent under the Act can impose a fine under Section 190(2). This procedure has to be followed and the authorities are under obligation to follow the aforesaid procedure before imposing the fine and they cannot force the citizens to compound. That is not the intent of the law. Since rule framing authority in exercise of power has laid down certain procedure the authorities who are In charge have to comply with that procedure only and none else. As per this procedure if the vehicle is found to be polluting, an opportunity has to be given to the driver or the person in charge of the vehicle to get his vehicle rectified and submit it for testing by the concerned authorized testing station and obtain a certificate that the vehicle is now within the pollution limit. It is only in case of a failure to comply with such direction that it will entail a penalty under Section 190(2) of the Act.

17. Under Rule 116(7) another rigorous step has been laid down that if the driver or the person in charge does not produce the certificate within the period of 7 days then the authorities shall report the matter to the Registering Authority and the Registering Authority shall on receipt of the report referred to in Rule 116(7) for reasons to be recorded in writing, suspend the certificate of registration Authority to the effect that the vehicle complies with the provisions of Sub-Rule (2) of Rule 115. As a result of suspension of certificate of Registration of the vehicle, any permit granted in respect of the vehicle under Chapter V or under Chapter VI of the Motor Vehicles Act, 1988 shall be deemed to have been suspended until a

fresh 'Pollution under Control' certificate is obtained. Therefore, the rule framing authority visualized all contingencies and laid down penalty for non-compliance of the provisions. The police or motor vehicle authorities who are the checking authorities have to go by these rules and these rules alone and they cannot evolve their own procedure or act under Rule 258 of the West Bengal Motor Vehicles Rules, 1989 which is beyond the legislative competence of the Government of West Bengal.

18. In the present case the police has mounted a polluting testing machine on vehicle for testing the vehicle on roads and on finding the emission from the vehicle beyond the permissible limit they have issued a slip for compounding the offences by realizing certain amount on the spot. Therefore, we have to answer this problem which has arisen that whether such action taken by the authorities of the State Government can be brought within the scope of Rule 116 or not. It is understandable that the State has taken a positive step for checking the vehicle by testing the vehicle on the road by their own machine, but if the driver or person in charge of the vehicle who has already got his vehicle tested from the authorized testing agents of the Government and it is found that it is within the permissible limit of pollution and produces a certificate before the checking authority then in that case what should be done. Since the State Government has already authorized certain checking agents and when these agents issue a certificate after testing the vehicle to the owner or the person in charge of the vehicle, he may reasonably feel assured that the vehicle is not polluting and that shows a prima facie presumption in favour of the owner or the person in charge of the vehicle that the vehicle is not polluting. But this presumption is rebuttable if it is found at the time of spot checking by the checking authorities by their own machine that the vehicle is still not within the pollution limit then it is not proper for the checking authorities to immediately saddle the owner or the person in charge of the vehicle with a compounding slip, that is not conceived in the scheme of the Rules. In case the checking authorities after checking by its own machine find that the vehicle is polluting and it is not within the norms laid down under Rule 115(2) then they can give a slip to the owner or the person in charge of the vehicle and ask him to get his vehicle rectified within one week and then submit the same for re-checking either by their own machine or by the authorized checking agency and in the event

the checking authority or their agents find that the vehicle is not polluting then no step is needed to be taken in the matter. It is only in the event the owner or the person in charge of the vehicle, who has been given an opportunity to get the vehicle rectified and if he fails to do so then that can result in a penalty under Section 190(2) of the Act. It is not given to the Sub-Inspector of Police or Motor vehicle Inspector to check the vehicle and if it is found emitting pollution suddenly to serve the owners or person in charge of the vehicle with compounding slip and recover money and impose penalty in terms of Section 190(2) of the Act. If it is found that the vehicle is polluting then the authorities are under, obligation to give one week's time to the owner or the person in charge of the vehicle to get the same repaired and bring the emission within the permissible limit. Therefore, in case when a person holds a certificate from the authorized testing agents of the Government that the vehicle is within the permissible pollution limit and still it is found by the checking authority that it is not within the permissible limit of pollution then they can give him a notice of 7 days' to get the vehicle rectified and submit a report from the authorized testing agents of the Government to the effect that the vehicle is within the permissible limit of pollution or the incumbent can be asked to submit the vehicle before the checking authority for being tested by their own machine. But the authorities as per the scheme of the Act and the rules cannot take upon themselves to check the vehicle and serve with a compounding slip and recover a penalty on spot, this is not conceivable under the law. If it is done, it is in violation of the rules and the checking authorities will be acting beyond their power. In this connection our attention was invited to a decision of Delhi High Court in the case of State v. R.P. Sharma reported in 1997 CrI.L.J. 1256. In this case a view has been taken by the Division Bench of the Delhi High Court that the vehicle can be challaned under Rule 115 without following procedure under Rule 116 for conducting test to measure the standard of emission. With great respect, it seems that the attention of the Division Bench perhaps has not been invited to the provisions of Rule 116(6) which clearly lays down that before proceeding to levy a penalty under Section 190(2) by the authorities, the incumbent should be given some days' notice to get the vehicle rectified and if he falls to comply then alone a penalty under Section 190(2) can be levied.

19. However, in view of the above discussions, we are of the opinion that Rule 258 of the West Bengal Motor Vehicles Rules, 1989 cannot be implemented as it is beyond the competence of the State and the State has already informed the Court that they have decided to repeal this Rule. Therefore, no action under Rule 258 of the West Bengal Motor Vehicles Rules, 1989 can be taken and in case the vehicle is found polluting then the procedure laid down under Rule 116 should be followed strictly. The Director General of Police is directed to issue necessary instructions to all the subordinates who are in charge of the traffic to strictly comply with the provisions of the Motor Vehicles Act, 1988 and the Central Motor Vehicles Rules, 1989. The appeals filed by the State and the Deputy Commissioner of Police thus fail and the same are dismissed. The public interest litigation, and the writ petition filed by the petitioners are accordingly disposed of.

J.K. Biswas, J.

20. I agree.

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