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IN THE HIGH COURT OF DELHI AT NEW DELHI

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{W. P.(CRL.) 878 OF 2007}

AND

CRL. M.A.17526/2010, R.P. NO.99/2008, CRL. M.A. 3713/2008, CRL. M.A. 59/2009, CRL. M.A.2839/2009, CRL. M.A. 14848/2009, CRL. M.A. 4741/2010, CRL. M.A. 13972/2010, CRL.M.A. 17353/2010, CRL. M.A. 17354/2010, CRL. M.A. 17527/2010, CRL. M.A. 17672/2010, CRL. M.A. 17673/2010, CRL. M.A. 17674/2010, CRL. M.A. 17675/2010, CRL. M.A. 17901/2010, CRL. M.A. 17902/2010, CRL. M.A. 18430/2010, CRL.M.A. 89/2011, CRL. M.A. 90/2011.

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Judgment reserved on: 25.02.2011
Judgment delivered on:03.03.2011

COURT ON ITS OWN MOTION

...PETITIONER

VERSUS

STATE OF NCT OF DELHI & ORS.

...RESPONDENTS

Counsel for the petitioner/applicants
& Govt. of NCT of Delhi.

Mr. V.P. Singh, Sr. Advocate with Mr. Parijat Sinha, Mr. Vikram and Mr. Anil Kumar Mishra, Advocates for applicants.

Mr. K.T.S.Tulsi, Sr. Advocate with Mr. N. Waziri, Standing Counsel (Civil), Mr. Sohabi Haider, Ms. Neha Kapoor & Ms. Zeenat Masodi, Ms. Priyanka Agarwal, Advocates for Govt. of NCT of Delhi with Mr. Ajay Chagti, Addl. Commissioner.

Mr. Pawan Sharma, Standing Counsel (Crl.), Govt. of NCT of Delhi.

Ms. Rani Chhabra, Adv. for Blue Line Bus Federation.

Ms. Meera Bhatia, Adv.

Mr. Sumeet Pushkarna, Standing Counsel for respondent/DTC.

Mr. Kailash Vasudev, Sr. Advocate/Amicus Curiae with Ms. Nisha Bhabha and Ms. Lakshita Sethi and Ms. Ekta Mehta, Advocates

Mr. Rajiv Nayer, Sr. Advocate with Ms. Seema Sundd, Ms. Abhiruchi Mengi, Ms. Shikha Bhardwaj, Ms. Nidhima Sarin and Ms. Ritika Ahuja, Advocates for R-7.

Mr. Rajiv Dutta, Sr. Advocate with Mr. Sandeep Narain, Advocate on behalf of Ashok Leyland

Mr. Neeraj Chaudhari, CGSC with Mr. Mohit Auluck, Mr. Khalid Arshad, Mr. Akshay Chandra, Advocates for UOI/R-1.

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

Prologue:

1. On 9th July, 2007 a front page news appeared in all major newspapers (Delhi Editions) including The Times of India, Hindustan Times, The Statesman, The Hindu, The Indian Express and Pioneer. All these newspapers had reported that a 14 years old boy on way to Sunday morning game of cricket had become the 61th victim, in that year, of the notorious Blue Line fleet and third in the past eight days due to the rash and negligent driving of a blue line bus. This 14 years old boy was crushed to death while getting out of the bus as the driver had speeded up the vehicle before that boy named Karan could get off. The boy lost the balance and fell under the wheels. With this not only a young life was lost, the dreams of his parents were also buried with that death. This was not the first incident of this nature where the blue line bus had snatched away the precious

life of an innocent person because of such ignoble and despicable incidents repeatedly and regularly, within short intervals. The newspapers, thus, underscored the terror let-loose on the roads of Delhi by the blue line buses.

2. Exactly a decade ago, the Supreme Court had dealt with the question of Control and Regulation of Traffic in NCR and NCT of Delhi as uncontrolled and unregulated traffic had been causing such ruckus. This cognizance of the fast speeding menace was taken on the application filed by Mr. M.C. Mehta, in public interest, and in the order passed by the Supreme Court in ***M.C. Mehta Vs. Union of India***, (1997) 8 SCC 770, the Supreme Court had categorically observed that such an issue would evidently come within the ambit of Article 21 of the Constitution. It is clear from the reading of following lines contained in para 14 of the said order:-

“14. It is needless for us to add that the entire scope of this matter and particularly this aspect to which this order relates, namely, the control and regulation of traffic in NCR and NCT, Delhi is a matter of paramount public safety and, therefore, is evidently within the ambit of Article 21 of the Constitution.....”

3. Guided by the aforesaid position of law and alarmed by the havoc which the blue line busses were creating, the aforesaid front page news item covered by the leading newspapers jolted the conscience of this Court and a Division Bench of this Court (comprising of Hon’ble Mr. Justice Mukul Mudgal and Hon’ble Mr. Justice P.K. Bhasin) took *suo moto* notice of such repeated fatal accidents being caused by the blue line buses. Taking on record the news item appearing in all these newspapers, the issue was treated as in Public Interest and the Division Bench in the said order noted

that the persistent threat to life by the blue line buses, light commercial vehicles like the vehicles being used by the Call Centres, RTVs and other heavy commercial vehicles like trucks is evident to any road user in the capital. These vehicles have also been noticed to be indulging in reckless driving posing a constant threat to the life of the commuters. This has assumed such an alarming proportions that not only it is a threat to the life of the common man who uses the public transport but it also affects the control and regulation of traffic in the NCT of Delhi and other road users and commuters which is violative of Article 21 of the Constitution of India. The Court felt deeply concerned with the fact that inspite of a public outcry in face of persistent and fatal defaults by the blue line buses, no effective deterrent action appears to have been taken to curb the menace to the pedestrians and commuters, posed by these blue line buses, the above mentioned light commercial vehicles and heavy commercial vehicles like trucks, and the terror on the roads to all the road users continues unabated. Extensively extracting the directions which were given by the Supreme Court in **M.C. Mehta** (supra), *inter alia*, mandating that these vehicles were to be fitted with suitable speed-control devices to ensure that they do not exceed the speed-limit of 40 kmph, the Division Bench expressed its anguish by taking note of the harsh reality that hardly any blue line bus drivers were driving below 40kmph and in fact that it was being construed as the minimum speed limit. The Court thus issued notice to the NCT of Delhi as well as Ministry of Transport, Government of India and directed the NCT of Delhi to file an affidavit on the following aspects:-

“(a) Is the guideline of maximum speed of 40kms per hour being observed by the blue line buses? If not, what action is taken against such offenders?

(b) What action is taken against a bus involved in a fatal accident and what further action is taken against a driver involved in a fatal accident?

(c) How many of the blue line buses running today are owned by the family members and relatives of the Delhi Police personnel?

(d) What action has been taken against the buses involved in fatal accidents since January, 2005?

(e) The Administration should show cause why this Court should not immediately order the replacement of these blue line vehicles by a safer mode of public transport.

(f) What action has been taken to mobilize the needed support and assistance of the responsible members of the public so that the inadequacy in the infrastructural and police personnel is not an impediment in the enforcement of the law and the directions given by the Hon'ble Supreme Court in **M.C. Mehta Vs. Union of India** (1997) 8 SCC 770 and **M.C. Mehta Vs. Union of India** (1998) 1 SCC 676?"

4. Mr. Kailash Vasudev, Sr. Advocate was also appointed as Amicus Curiae by the same order, for assisting the Court in this matter. On subsequent dates, various other parties including certain NGOs, certain individual persons, the Environment Pollution (Prevention & Control) Authority, the Federation of Delhi Bus Operators, CRRI, IIT, DTC, NDMC and CPWD were impleaded. Suggestions from these NGOs and public spirited persons were solicited to tackle the problem.

History of this PIL:

5. Mr. Vasudeva gave various suggestions and on 31st July, 2007, the suggestions given by the learned Amicus Curiae were handed over to these persons including Delhi Government. They were asked to file their response and give their own suggestions. At the same

time, the Govt. of NCT of Delhi and other respondents were directed to give response to the following specific issues framed by the Court:-

“(1) What is the time limit for the withdrawal of the blue line buses from the city?”

(2) How many diesel private cars are added to the city every month?

(3) What is the level of pollution/emission caused by one private diesel car in comparison to the pollution/emission caused by the diesel bus?

(4) Why should not the grant of more permits on crowded routes be considered so as to ease the over-crowding of buses.

(5) What action has been taken against the buses involved in fatal accidents and the figures of cancellation of permits of such buses involved in total fatal accidents be furnished and the average period for which a bus involved in a fatal accident is impounded be brought on record?

(6) How many more traffic police personnel are required so as to meet with the problem of increased traffic in the city?

(7) What steps have been taken to fix more cameras on the crossings to record the movement of the traffic and traffic violations?

(8) What is the present requirement of the public transport vehicle in the light of the Hon’ble Supreme Court’s directions indicated by the Environment Pollution (Prevention & Control) Authority to be of 10,000 vehicles in 1998. The 1998 direction by the Hon’ble Supreme Court to be of 10,000 buses is required to be brought to the current level by proportionally calculating the increase in the amount of transport vehicles involved?

(9) What immediate steps for immediate augmentation of the public transport vehicles are being taken so as to comply with the directions given by the Supreme Court of having 10,000 vehicles as of 1998 to begin with and the projected enhancement after taking into account the passage of one decade subsequently?

(10) How many installation of pelican signals apart from providing more foot over bridges and pedestrian crossing at highly populated roads are being considered?

(11) The response to the feasibility of permitting superior public transport facilities at higher charges including air conditioned public transport vehicles for citizens who would like to avail the public transport at charges higher than blue line and DTC buses should be indicated.

(12) While augmenting the fleet of public transport buses the various modes including the battery operated busses shall also be considered.”

6. We have taken note of the aforesaid aspects to highlight various issues which are raised and dealt with in this public interest petition. However, when proceeding further, we are going to keep aside (so far as this order is concerned) other issues and would be confining ourselves to the issue raised in the various CMs filed by different parties. It relates to the withdrawal of the blue line buses from the city; the validity of Cluster Scheme introduced by the Court; the requirement of public transport vehicles in the city and making provision for adequate public transport keeping in view the requisite requirement of public transport to cater the need of this city. It is because of the reason that these are the issues which have arisen in the applications on which arguments were heard by us and, therefore, these are the issues which need to be focused in this order.

Central Theme of this PIL:

7. Two important points need to be emphasized at this stage; (i) it was felt not only by the Court but by the official respondents as well as NGOs and other public spirited persons that blue line buses are a

menace to this city and needed to be erased from the public transport system, (ii) the Government was directed to formulate a proper policy and provide better public transport system in this city including adequate number of public transport buses.

8. It would be also be relevant to point out at this stage that vide its letter dated 19th July, 2007, the Environment Pollution (Prevention & Control) Authority had sent a copy of the report prepared by the said Authority and submitted to the Supreme Court on the need to augment and restructure public transport system. In this report, the existing status of public transport system was critically commented upon. Among other things it was also pointed out that the buses operate under different arrangements and licensing systems issued by the State Transport Authority for different types of bus system which include:-

1. Permits for stage carriage: Buses that ply under this scheme form the spine of the city bus service. These operate on routes specified by the State Transport Authorities and are available round the clock. This service is provided by the state owned Delhi Transport Corporation (DTC) and the private bus operators who are licensed by the State Transport Authority.
2. Permits for buses under contract carriage: These buses are not part of the city bus service but operate on the basis of private arrangements and operate point to point as chartered services catering to niche groups like office goers, school children on fixed routes and time. Though these buses cater to significant travel demand they are not part of the regular city bus service.
3. Buses on tourist permit
4. Buses operating under inter-state bus permits. These buses ply on inter-state routes and can cover a maximum distance of 16 km within the city.

9. The report recommended that the buses plying under the Stage Carriage Permit are an important part of the city bus service and should be the immediate focus of improvement. This report had also given the figures of buses plying under the Stage Carriage and Contract Carriage Permit. The report had emphasised that in **M.C. Mehta** case (supra), the Supreme Court in its directives issued in 1998 had assessed the requirement of 10,000 Stage Carriage buses by the year 2011 in the city which order had been floated as the City was short of approximately 4000 buses. It was, *inter alia*, due to the reason that State investment in purchase of new DTC buses had been stagnated after the initial fleet expansion. The report had also assessed the role of buses in transporting the people in the city as per which 60% of the traveling demand in the city was met by the buses. It was also noted that Delhi Metro Rail Corporation (DMRC) network of 65.1 km transports over half a million commuters daily. The DTC was carrying 2.5 million people and the private buses were ferrying 6.2 million per day. This total number of passengers carried out by all buses as well as Metro was roughly 9.2 million each day. Other passengers trips were through the modes of cars, taxies, two wheelers, three wheelers and non-motorized vehicles, rickshaw etc.

10. What is important here is that the buses carried 73% of the city people in 2003 and Metro roughly 4% of the city's people. About 20% of the city commuters use other means of transport.

11. The report also analysed and addressed the management imperatives of the buses in Delhi. On the one hand, it had commented about the administrative inefficiency operative losses

and poor cost recovery of the State owned agency namely DTC, at the same time, it was commented, on the other hand, that private bus operators were totally unorganized and incapable of providing efficient and quality and most importantly safe service. Following comments were made about the private operators:-

“This completely unplanned privatization has over time attracted small time investors, which today run and operate the city bus service of this mega capital city. It is even difficult to estimate the actual numbers of private bus operators because records maintained by the state transport agency do not provide full details on the identity of the bus owner or operator. The buses also work under a complicated lease and contract system, which means that their registration and ownership passes over many hands.

However, a careful assessment of this highly ‘imperfect’ and ‘inadequate’ data indicates that there are numerous operators who own only one bus. It appears that approximately 80 per cent of the 3999 odd individual private buses in the city are owned by single-bus owners.”

12. The report thus suggested proper planning for modern bus technologies and information management systems and gave recommendations in the following manner:-

“6. Planning for modern bus technologies and information management systems.

It is important for the city to procure buses, which are generation-next. These buses must be modern, fuel and emission efficient and have conveniences that will attract car owners to switch, including air conditioning systems and GPRS tracking systems.

It must be understood that CNG buses which will now be procured for use will be in operation for the next 10 to 15 years. Therefore, efforts must be made so that these buses provide advanced emission control as well as greater in-built safety and reliability. In addition, the bus systems should be integrated with modern tools of tracking system is being successfully tried in the city of indore, where the city bus company is operating buses with centralized tracking and current information system.”

13. The report concluded with certain recommendations, illustrating the same as under:-

“8.Recommendations and directives sought from the Hon’ble Court.

What is evident is:

- a. The city added roughly 1000 new personal vehicles each day last year and during the same, period it added only 65 buses over the entire year on the roads.
- b. Each DTC bus transports roughly 1000 people each and each private bus carries roughly 1600 people each day. In comparison a car or two-wheeler carry only 1 to 1.5 people each day.
- c. Clearly, this mismatch will lead to increased numbers of private vehicles on the road, which then adds to pollution and congestion.

Therefore, even as the city rightly plans for mass transportation by metro and other mass transit systems, it desperately needs to upgrade the number of buses on its roads.

Firstly, it needs to become compliant of the 1998 Supreme Court directive for 1000 buses. It needs to fill the gap of 4000 missing buses immediately.

Secondly, it needs to increase the number, set in 1998 for 2001 population, by adding buses beyond the ordered 10,000 on its roads. Keeping in mind the population increase in the city, it would be important to have an additional 6,000 buses on the roads within the next 2 years.

However, these buses must be technological modern; run on clean fuel, they should run efficiently with revamped management systems and should use modern management and technological tools for better performance. In addition, the attempt should be to run the buses, as far as possible, on dedicated bus ways which will increase speed and efficiency.

The following directives of the Delhi Government are sought;

1. To become compliant with the July 1998 Supreme Court directive by adding 4,000 buses to the city bus fleet by end 2008.
2. To add another 6,000 buses by end 2009.

3. To restructure the institutional and management systems of the bus service so that it is both efficient and effective by end 2008.
4. To ensure that the buses that are added to the fleet are technologically modern, run on CNG with efficient emission control systems and provide convenient and preferred travel for commuters.
5. To review and rework current tax policies related to the transportation so as to provide incentives for public transportation and maintain an effective differential in favour of buses as against personal transport.
6. To ensure that the buses on the roads are effectively integrated with other public and mass transportation systems like the metro, rail and proposed light rail systems.
7. To ensure that as far as possible, the buses are provided with dedicated bus-ways, which will increase their efficiency and speed."

14. The Government of NCT of Delhi also filed its response/Counter affidavit on 30th July, 2007 addressing various concerns which were enlisted by this Court vide its aforesaid orders. The Government also enumerated the steps which were being taken and were proposed to be taken for tackling those issues. Again we are not touching other aspects for the reasons pointed out above. However, what needs to be emphasized is that the Government accepted the fact that the accident caused by the blue line buses, in which many innocent people lost their lives, was receiving proper attention at its hands. The Court was informed that a permit condition was made in June, 2004 according to which if any transport vehicle committed two fatal accidents, the permit of the same was liable to be cancelled. However, because of increase in these accidents, the State Transport Authority decided to initiate cancellation proceedings in case of fatal accidents referred by the Delhi Traffic Police where particularly speed device was found to be tampered, removed or non-functional. This

affidavit further stated that meetings which had taken by the Chief Minister on 6th July, 2007 and 9th July, 2007 wherein serious note of such menace was taken and the requisite action plan drawn. We would like to reproduce this part of the affidavit in extenso:-

“That the Government of NCT of Delhi has also taken a serious note of the continuing incidents of fatal accidents recently involving these Private Stage Carriage Buses. The matter was reviewed at the highest level for analyzing the causes and for taking appropriate corrective steps for saving the innocent lives while maintaining an efficient and adequate public transport service. In a meeting taken by the Hon’ble Chief Minister, Govt. of BNCT of Delhi on 6.7.2007, it was concluded that the existing arrangement of small scale operators with individual permits issued by the STA was leading to number of irregularities which were not congenial to road safety. Some of these are like the illegal transfer of permits, profit maximization becoming the sole motive for operating the service, avoidance of expenditure on maintenance and safety equipments and engagement of drivers without sufficient experience of bus driving in a large city like Delhi to save up on the operational costs, tampering with speed governors, over speeding, overtaking, un-scheduled stoppages, non-adherence to fixed working hours, etc. all these were largely contributing to rash and negligent driving on the roads. The enforcement actions taken have not resulted in desired deterrence. In wake of the recurring incident of fatal accidents this month the Chief Minister had directed that the Transport Department and Traffic Police must jointly launch a drive against the Private Stage Carriages buses operating in violation of the permit conditions. Parallely a road map was also prepared on the long term measures to improve the public transport system in Delhi to make it befitting a world class city. In the subsequent meeting taken by the Hon’ble the Chief Minister on 9.7.2007 a specific action plan was drawn up for tackling the situation keeping in view the larger public interest. The main action points under this plan are as follows:-

- i. **Private stage carriage bus operation with small-scale/individual operators shall be gradually phased out.**

- ii. **The private sector participation through cooperative bodies and cooperatives shall be encouraged and promoted.**
- iii. Govt. of NCT of Delhi shall immediately invite an Expression of interest from companies and cooperatives with capacity to operate at least 100 buses; for grant of Stage Carriage permits on completely vacant and partially vacant bus routes.
- iv. The existing permit holders of Private Stage Carriages (Blue-line) buses in their own business interest, shall be considered for the grant of stage carriage permits only if they reorganize themselves into a cooperative society or company and get the same registered under the relevant statute.
- v. **The permits of private stage carriages which have expired/will be expiring on completion of five years, shall not be renewed and temporary permits for 4 months shall be issued in lieu thereof, if the permit holder is interested to continue the operation until the new scheme is implemented.**
- vi. 643 Stage Carriages permits were deposited for replacement of vehicles till 6.7.2007., but the permit holders have failed to induct the new vehicles on these permits and thus their permits shall be cancelled forthwith.
- vii. The private stage Carriages blue-line buses completed/completing 10 years on Stage Carriages permits after 6.7.2007 shall be replaced on the condition that the induction of another bus on the Stage Carriages shall be allowed to operate till the currency/validity of the permit (i.e. 5 years) and shall carry no guarantee for renewal of permit or grant of fresh permit.
- viii. An intensive drive should be launched by Enforcement Agencies (Transport and Traffic Police) to ensure strict compliance of permit conditions by Private Stage Carriage Buses.
- ix. DTC shall augment its fleet further to meet at least 60% of the daily requirement of stage carriage buses in Delhi.
- x. School operation by DTC shall be gradually reduced in consultation with the schools so that

the school managements make alternative arrangements.”

15. A clear decision was thus taken to phase out Private Stage Carriage buses with small-scale/individual operators (i.e. blue line buses) and to introduce private sector participation through cooperative bodies and cooperatives. It was also decided that after the expiry of existing permit of five years period of these buses, the same would not be renewed. Instead temporary permits of four months would be issued in lieu thereof till the new scheme is implemented. It was also for the reason that operation of these buses could not be discontinued abruptly keeping in view the need of number of buses. For this reason, it was stated that the permits on temporary basis, for four months, each shall be issued in the mean time.

16. As far as this aspect of the matter with which we concerned here, it thereafter proceeded with, on the aforesaid lines. This Court, on the one hand, passed the order extending the period for augmenting the bus services in Delhi upto 10,000 buses by the end of March, 2009 and on the other hand, directed that the permit should not be extended beyond a period of four months at a time.

17. We would also like to point out at this stage that while the court was seized of this problem, the accident of hit and run by blue line buses continued unabated. On 7th October, 2007 in a gruesome accident, seven persons including five women and one infant lost their lives being run over by a deviant blue line bus. This prompted the Court to have another emergent look at the operation of the blue line vehicles and matter was taken up on 8th October, 2007 on being

mentioned by the learned Amicus Curiae and the relevant portion thereof which is very material for this, order is reproduced:-

“Accordingly, we are issuing notice to the Blue Line Operators Association and the Delhi Administration to show cause as to why:-

- (a) The scheme for the replacement of blue line vehicles be not made available to the Court not later than four weeks from today
- (b) Why the vehicles involved in any accident involving an injury or a fatality be not impounded under the orders of this court and be only released after this court is satisfied about the future safety of the citizens.
- (c) Why interim compensation under the Fatal Accidents Act, 1855/The Motor Vehicles Act, 1988 not be directed to be deposited in the event of an accident involving an injury or a death prior to the release of such vehicles.
- (d) Why the extension of four months’ each permitted by earlier orders of this Court be not withdrawn.

We make it clear that if an urgent response to the formulation of the replacement scheme for the blue line vehicles is not indicated on the next date of hearing, the court will consider asking some organization such as IIT Delhi or the RITES to frame a scheme urgently for the consideration of the court.

Before the next date of hearing, the Delhi Administration as well as Blue Line Operators Association shall also file a reply to the pleas of the learned Amicus Curiae who had asked for the following directions to be issued:-

1. The extension granted to the Government by the Court to frame a scheme be withdrawn and a scheme be framed by this Hon’ble Court.
2. That all buses plying under the Stage Carriage Permits be directed to deposit a sum of ₹ 10 lakhs as security for disbursement in case of a fatal accident.
3. That all vehicles involved in serious accidents be impounded and released after a detailed inspection to be conducted over two weeks at the Burari facility. The inspection be carried out jointly with the ARAI.
4. That in case of a fatal accident the owner, the driver and the conductor be remanded to custody forthwith.
5. That Traffic Warden be appointed forthwith under the scheme to be approved by this Hon’ble Court.

6. That all personnel (Motor Vehicle Inspectors etc.) who grant a fitness certificate to a bus must be called upon to explain the circumstances leading to an accident immediately after an accident.
7. All buses involved in fatal accidents must not be allowed to ply and the permit granted must be cancelled in the public interest.
In so far as the fatal accidents are concerned, the State and the Blue Line Operators Association shall indicate as to out of the fatal accidents of this year, how many drivers are back on the roads driving public transport vehicles. The Blue Line owners shall also file list of each driver attached to each bus with the authorities.”

18. One thing clearly emerges from above, viz the Government had decided to phase out the blue line buses and prepared the scheme for replacement thereof and this move was not only approved by this Court but was rather inspired by this Court as well the Supreme Court. By the aforesaid order this Court rather necessitated the Government to formulate replacement scheme for the blue line vehicles at the earliest and not to slog over the matter. In response to this order, status report was filed by the Government on 11th October, 2007 and it was stated that the scheme for replacement of blue line buses shall be filed on or before November 7, 2007. Even the blue line operator association was called upon to give its point of view with regard to the formulation of scheme. After taking extension of time the scheme was eventually prepared and submitted to this Court. Response of the Amicus Curiae and other parties to the said petition was also invited.

19. This scheme primarily relates to the operation of buses in clusters as would be discussed in detail at the proper stage. This

scheme was under the process of finalization. On the other hand, this Court was simultaneously persuading, prompting and coaxing the Government of NCT of Delhi as well as DTC to increase the fleet of DTC buses. In fact, for this purpose, M/s Ashok Layland and TATA Motors who were to supply the buses to DTC were impleaded as parties and information elicited from these two manufacturers from time to time about the feasibility of supply of number of buses by specified dates. Counsel for the Govt. of NCT of Delhi has been making statement (s) before the Court on different dates in respect of orders placed with the aforesaid two manufacturers for supply of buses. It would be of immense importance to point out at this stage itself that the city Government as well as DTC had taken decision for purchase of low floor High Capacity Buses. While this was going on, the Court, in the interregnum was passing orders permitting the State to extend the temporary permits for four months at a stretch.

20. With this backdrop, we have reached the stage where issues involved are to be stated and answered. However, one aspect which has bearing on the subject matter also needs to be taken cognizance of at this stage.

21. During the pendency of this Petition certain Writs have been filed by blue line operators in their individual capacities. One of the grievances made in the said petitions is that private buses are being even from the Cluster for which bids are yet to be finalised. In these writ petitions with lead matter W.P. (C) 931/2010 titled **Ram Chander Vs. Govt. of NCT of Delhi & Ors.** the learned Single Judge passed orders dated 26th May, 2010 giving following directions:-

“It is accordingly directed that till such time, the successful bidders in the four clusters induct their new

buses pursuant to the award to them of the tender, such of the temporary permits of the petitioners which have expired during the pendency of these petitions, or are going to expire in future, shall be kept renewed on a purely temporary basis subject to the following conditions:-

(a) That the petitioners will replace the 10 year old buses with completely new buses,

(b) That the permits of the stage carriage holders will be renewed purely on temporary basis and will continue only till such time that the successful bidders in the four clusters, in which the petitioners are operating buses, are able to induct new buses in these routes.”

22. The learned Single Judge was conscious of this writ petition and, therefore, clarified that renewal of the permits would be any further orders that can be passed by the Division in this petition. This was so stated in para 11 in the following terms:-

“Upon receipt of such affidavit, the Transport Department will temporarily renew the permits of such persons whose permits have already expired and whose permits are likely to expire hereafter till such time that the successful bidders are identified for the four clusters that have been advertised. It is further clarified that the renewal of these permits will be subject to any further orders passed by the Division Bench of this Court in Writ Petition (Crl.) No. 878 of 2007. One of the conditions of such permits would be that the petitioners must substitute the existing buses with completely new buses and further, they will either surrender their permit or shift to a different route, as per the option exercised by them, simultaneous with the successful bidder in the concerned cluster inducting new buses in those routes.”

23. Though, DTC has not acquired 10,000/11,000 buses so far and the Cluster Scheme has not reached the stage of full implementation though, tender process is at advanced stage, the Government still feels that time has come to eliminate all blue line buses from the roads in this city. According to it, sufficient public transport system is in place to cater to the needs of commuting public. On this premise, it has filed Criminal Misc. Appl. No. 17526/2010 seeking vacation of the stay order dated 26th May, 2010 passed in Writ Petition (C)

931/2010, 1167/2010 and 1874/2010. The Blue Line Operator Association/Union has opposed the prayer made in this application. This Association has also challenged the validity and propriety of the Cluster Scheme by filing Misc. Application for intervention and for transfer of the certain Writ Petitions pending before the Division Bench. They have also opposed the introduction of Cluster Scheme.

24. In this backdrop, we had heard the arguments on two issues which arise for adjudication:-

(i) Whether the Cluster Scheme floated by the Government of NCT of Delhi is legal and valid?

(ii) Whether stay order dated 26th May, 2010 passed in Writ Petition (C) 931/2010, 1167/2010 and 1874/2010 needs to be vacated? Incidental issue would be: whether there is sufficient public transport system available in the city and, therefore, permits of blue line buses need not be renewed further?

Validity of Cluster Scheme:

25. The genesis and *raison detre* for formulating the Scheme is the order of this Court in these proceedings. As noted above, vide its orders dated 11th October, 2007, after considering the Status Report filed by the Principal Secretary/Commissioner (Transport), Govt. of NCT of Delhi, this Court directed that the Scheme for replacement of blue line buses be prepared and filed by specified date. The Transport Department, Govt. of NCT of Delhi had entrusted the task of providing the required consultancy for formulating the detailed Scheme, preparation of bid document and bid evaluation to DIMTS (Delhi Integrated Multi-Model Transit System), a company incorporated by the Government of NCT of Delhi. DIMTS submitted the report titled “**Report on Methodology for operations of**

Privately Owned Stage Carriage Buses in Delhi” on October 31, 2007. The report was examined in Transport Department in consultation with Planning, Finance and law Departments of Govt. of NCT of Delhi and thereafter the matter was placed before the Council of Ministers, Govt. of NCT of Delhi for consideration. The report was further examined/considered by the Council of Ministers in the meeting held on November 13, 2007 and it was accepted with certain observations/modifications. A copy of this report and the modification suggested thereto has been placed on record. In the Status Report filed by the Government on 15th November, 2007 a brief resume of the Scheme is given. The Scheme provides for private stage carriage buses through corporate entities to replace the existing blue line buses run by the individual private operators. It is explained in this affidavit that the choice of private carriage buses through corporate entities was made keeping in view various factors. Since this report highlights those considerations and give the over view of the Scheme, we are reproducing the relevant portion of the said Status Report hereunder:-

“Main features of the scheme submitted by DIMTS along with modifications as per the decisions of council of Ministers, GNCTD which shall now form part of the said scheme, are as follows:

Problems of Existing System

1. Several defects in the existing system are – accidents and traffic violations involving the safety of citizens, undesirable driving practices, undesirable contractual practices, undesirable vehicle choices and maintenance, waiting anxiety and unsafe passenger behavior, lack of adequate service on un-remunerative routes, inability to realize network benefits, increased congestion and environmental costs, predation by

incumbents or cartelization, subletting of the buses/permits etc.

Elements of Reform Model

2. Reform of the private stage carriage system, needs to address the issue of reducing accidents and traffic violations. For this the need to address driver negligence is paramount and any new scheme needs specific provisions in this area. Such as, on-road, competition which is the largest systemic contributor to unsafe driving and accidents would need to be controlled. A system for monitoring service compliance would also be required. This is proposed to be achieved through inexpensive modern location technology and associated intelligent transportation systems ITS. In addition, the reformed model envisages: driver verification and certification, reduction in waiting anxiety by introduction of passenger information system (PIS) on the bus and at bus stops.

Implication for Stakeholders

3. To address the problems identified and to adopt the solutions proposed, it is suggested-
 - (i) A new scheme for corporatization of private stage carriage service under an integrated management for provision of urban bus transport in Delhi should progressively replace the existing blue line scheme of individual operators with a limited number of operators.
 - (ii) Neutrality of the management agency will be important for the integrity of the process, as the oversight agency (Integrated Mechanism) will be responsible for monitoring and analyzing the data to ensure adherence to performance parameters and levy fines and award bonuses as specified.

Objectives of the scheme

4. The objectives of the scheme are to provide for operations of privately owned stage carriage buses in Delhi keeping in view the following characteristics:-
- a) Safety in all its aspects.
 - b) Universality, i.e. availability of service on all scheduled routes.
 - c) Cost effectiveness, so as to minimize the user tariff and economically self-sufficient operations to the extent possible alongwith continuous improvement of the service
 - d) Integrated character, punctuality and passenger comfort to attract existing private transport users to the public transport.

Integrated mechanism

5. There shall be an Integrated Mechanism and it has been decided to appoint the DIMTS as the Integrated Mechanism. The contractual agreement shall be signed between the integrated mechanism and the operators. There shall be three agreements regarding advertisements, off-board passes and performance standards. The integrated mechanism shall also enter into an agreement with the government and the DTC about their respective roles and responsibilities on mutually agreed terms and conditions. While securing compliance with the contractual obligations shall vest in the integrated mechanism, it shall be without prejudice to the statutory role and responsibilities of the Government and the STA.

Route Structure

6. All the existing bus routes will be covered by the scheme in a phased manner. The existing routes will be clustered into a bunch of routes. Each cluster will have the following characteristics:-
- (a) Routes that have a substantial number of contiguous sections that are common may be in the same cluster.
 - (b) Each cluster may require a minimum of 200 buses to service at peak hours.

- (c) The clusters would contain a mix of viable and non-viable routes.

Ownership

7. Each of these route clusters will be serviced by a single private operator and DTC to minimize on-road competition. The selection of the private operator will be through competitive bidding. Each of the private operators will be of corporate entity as also cooperative society of SC/ST. Each entity will have to meet a prequalification test, where specific pre-qualification criteria such as financial strength and operational experience will be defined. The competitive bids shall be invited on the basis of best financial offers. Prospective operators may be allowed to bid for more than one cluster, but within one cluster there shall not be more than one private operator alongwith the DTC. They may be permitted to induct existing stage carriage buses into their fleet subject to being CNG propelled, mechanically and physically fit in every respect, and preferably being not more than three years old. The buses so inducted shall be compliant with the provisions of the Motor Vehicles Act and Rules. They may also require to be refurbished as per the proposed service specifications (In terms of GPS, PIS etc.). In drawing up the specifics of the bid document, it shall be ensured that the various clauses of the bid document are not only compliant with the provisions of the Motor Vehicles Act but also in consonance with various directions of the Hon'ble Supreme Court and the Hon'ble High Court of Delhi. The bid against each cluster will be carried out in such a manner that it is completed by June 30, 2009. The principles, and terms and conditions of the revenue sharing model (between the Government, the integrated mechanism, and the operators. Shall be formulated and finalized in the bid document.

Obligation of Integrated Mechanism

8. The private operator will be required to provide a scheduled bus service based on a Unified Time Table and collect fares as decided by the Government. The operator will have to meet a number of contract conditions that relate to:

- The quality and specification of buses
- The qualification and experience of drivers and conductors.
- Adherence to performance parameters.”

26. This scheme also provides for minute and detailed specifications of the buses which the bus operator will be required to arrange, the eligibility criteria and standards required of drivers and other bus crew, unified time-table on which the buses shall run, ticketing system, other off-board revenue, management of off-board revenue, fares and revenue, performance management, penalties for non performance, relative performance bonus, bus stops and depots, legal obligation and implementation schedule. We are not reproducing that part which is not be relevant for our discussion but would like to take note of the following performance parameters, bus stops and depots provided therein which is of relevance for this case:-

“Performance Parameters

The bus operator will be required to meet pre-specified performance parameters. This will be measurable and quantitative to the extent possible and would be in addition to statutory permit conditions. In addition to basic permit conditions specified by STA these parameters will include in the contractual agreement, inter alia, the following:

- (a) Safety, as measured by parameters such as

- I. Accident rates and type of accident
 - II. Adherence to Speed Limits, measured by location data.
 - III. Stopping at specified stops, and the time of stoppage to be monitored with the help of the location control system.
 - IV. Adherence to credentials and qualifications of drivers.
- (b) Regularity, based on the number of completed trips
- (c) Punctuality, measured by adherence to the time-table.
This will be monitored by the use of location data.
- (d) Absence of operational infractions such as
- I. Improper stopping at bus stops
 - II. Picking up and discharging of passengers at points other than stops
 - III. Unreasonable delay
 - IV. Un-authorised overtaking of buses on the route.
- (e) Bus maintenance, measured by incidents of mechanical failure in operation and absence of pre-specified infractions, e.g.:
- I. Defective lights
 - II. Lack of route displays
 - III. Broken seats and windows
- (f) Cleanliness of buses, based on inspections and passenger surveys.

Bus Stops and Depots

The Government of the NCT of Delhi will endeavour to facilitate the creation of required infrastructure such as

bus depots, bus terminals, bus queue shelters, etc. and make available use by the private bus operators on terms and conditions negotiated and finalized separately. Each important bus stop will be progressively provided with equipment that will permit communication with the control centre and display real-time information with regard to operation of relevant buses. This will address the waiting anxiety of passengers and improve safety by reducing the incentive to stand on the road to look out for buses as well as reduce overcrowding.”

27. We would also like to point out that implementation schedule of this scheme was also given as per which entire thing was to be introduced and completed by June, 2009. Simultaneously, the Court was informed that the Government intended to phase out the bulk of blue line buses by June, 2009. The learned Amicus Curiae had filed response to this report on 29th November, 2007 **commenting on some of the aspect of the scheme and pointing out certain aspects which the scheme does not provide for.** To put in nut shell, the response to this report is that a holistic approach to deal with the issue of providing public transport system in the city is needed and in the process related issues of streamlining traffic, regulating the constructions on road, proper town planning system, future projection of buses and population etc. need to be addressed and the measures should be taken. On this basis, following suggestions are given by the Amicus Curiae:-

“i. Placing more buses on Delhi roads by revamping the DTC as has been done in cities like Mumbai and Indore by *inter alia* following the pattern of the Delhi Metro Rail Corporation Ltd.

- ii. Restructure the corporations scheme by inviting tenders including global tenders from interested parties for running their own fleet of buses.
- iii. Develop better technology to ensure passenger safety and convenience.
- iv. Direct the Govt. of NCT of Delhi to have a permanent cell for Road and Infrastructure Planning in the Nation Capital Region in the State Transport Authority.
- v. On the inability of the Govt. of NCT of Delhi to provide additional buses after phasing out blue line buses, the kilometer Scheme should be introduced.
- vi. Expert advice should be obtained from global players as also like the Bombay Electricity Supply & Transport Undertaking for running the public transport system in the National Capital Region.”

28. We may point out at this stage that this response was filed in November 2007 and thereafter various orders were passed from time to time impressing upon the Government to speed up the process of acquisition of new and more buses by DTC and the DTC even has increased its fleet over a period of time though it has not been able to achieve the target of acquisition of 11,000 buses. However, in so far as introduction of Cluster Scheme is concerned, we may put on record that at the time of arguments the learned Amicus Curiae supported the Scheme. His submission was that expert bodies had, after due application of mind, come to the conclusion that such a scheme would be feasible for the city of Delhi and there was no reason to tinker with the same. Moreso, when it was the policy decision taken by the Government keeping in mind all relevant parameters. He, however, highlighted and made a passionate plea that if the public transport system was to be totally streamline and so as to achieve the world class standards, much more was needed to be done at Government's level. The

submissions made on this aspects are not relevant for the issue we are discussing at present, however, as we intend to give certain directions while closing this order, those suggestions are pointed out and necessary directions were issued in that part of the order.

29. Coming to the objections of the blue line operators and their Association (s), the basic premise of the attack is that this Cluster Scheme is in violation of the provisions of Motor Vehicles Act. The broad submission in this behalf was that if this Scheme violates the statutory provision, mere fact that it was prompted of the orders of this Court would not save such a scheme. Developing this argument it was submitted that the eligibility criteria provided in Cluster 1 was in the teeth of the provisions of Motor Vehicles Act. This eligibility criteria reads as under:-

“4.2.1.The Applicants eligible for participating at the Qualification Stage shall be any one of the following:-

Type 1: A Business Entity; or

Type 2: A Co-operative Society of Scheduled Castes or Scheduled Tribes (SC/ST) registered in Delhi under Delhi Co-operative Societies Act, 2003 on or before Application Due Date, where all members of such Co-operative society belong either to the scheduled castes and/or the scheduled tribes; or

Type 3: A Business Entity promoted by stage carriage bus operators with

(a) The shareholders, holding a minimum of twenty-five (25) and a maximum of thirty-five (35) Permits issued by the State Transport Authority, Delhi valid on March 31, 2007, and

(b) Where such shareholders commit to hold a minimum equity stake of 51% in the aggregate shareholding of the business entity to be formed under the Indian companies Act, 1956; or

Type 4: A combination of a maximum of five (5) members, comprising one Lead Member who is a Type 1/Type 2 entity with other members who are

type 1/Type 2/partnership Firm/registered Co-operative Society/ individual entity and shall hereinafter be referred as "Consortium".

The Applicants under the category of Type 4, in the event of being declared the Successful Bidder, would be required to incorporate a Special Purpose Company as a public limited company in accordance with the provisions of the Indian Companies Act, 1956.

Further, in the event of Type 2 Applicant being declared as the Successful Bidder for the Project, it would be required to amend its bye-laws in conformity with the bye-laws, as prescribed under Section 11 of Delhi Co-operative Societies Act, 2003."

30. The qualification stage is defined, in the scheme, as under:-

"Qualification Stage" refers to the first stage of the Bidding Process, which involves qualification of the Applicants for the second stage".

31. Business entity specified in Type 1 is assigned the following meaning under the scheme:-

"Business Entity" shall mean either of the following:

(i) a company incorporated under the Companies Act, 1956, but excluding companies covered under Section 617 of the Companies Act, 1956; or

(ii) an entity incorporated outside India under equivalent law."

32. According to the learned counsel appearing for blue line operators, para 2.2.1 of the Cluster 1 Scheme indicates that the mind of the Government wherein it is stated that it has come to the conclusion that operation of buses through individual operators is not congenial for maintaining an efficient, reliable and safe bus service. With this aim in mind, confining the eligibility criteria to the business entity namely companies or the Co-operative Societies of Scheduled Casts or Scheduled Tribes, individuals were excluded from

participation which were anathema and contrary to the spirit of the Motor Vehicles Act, the learned Counsels submitted in this behalf that the very purpose of enacting Motor Vehicles Act in the year 1988 was to encourage individual private carriage and that too, an individual. Heavy reliance on a judgment of Supreme Court in the case of ***Mithlesh Garg and Others Vs. Union of India And Others***, (1992) 1 SCC 168 was placed wherein the Supreme Court took note of the Statement of Objects and Reasons appended to this Act while repelling earlier Motor Vehicles Act, 1939 wherein it was stressed that this legislation was enacted to take care of the greater flow of passenger and freight with the least impediments so that islands of isolation are not created leading to regional or local imbalances and Act specifically provides for “liberalized schemes for grant of stage carriage permits on non-nationalised routes, all-India Tourist permits and also national permits for goods carriages....”. Following passages from this judgment were specifically read out:-

The Parliament in its wisdom has completely effaced the above features. The scheme envisaged under Section 47 and 57 of the old Act has been completely done away with by the Act. The right of existing-operators to file objections and the provision to impose limit on the number of permits have been taken away. There is no similar provision to that of Section 47 and Section 57 under the Act. The Statement of Objects and Reasons of the Act shows that the purpose of bringing in the Act was to liberalize the grant of permits. Section 71(1) of the Act provides that while considering an application for a stage carriage permit the Regional Transport Authority shall have regard to the objects of the Act. Section 80(2), which is the harbinger of Liberalisation, provides that a Regional Transport Authority shall not ordinarily refuse to grant an application for permit of any kind made at any time under the Act. There is no provision under the Act like that of Section 47(3) of the old Act and as such no limit for the grant of permits can be fixed under the Act. There is, however, a provision under Section 71(3)(a) of the Act under which a limit can be fixed

for the grant of permits in respect of the routes which are within a town having population of more than five lakhs.”

X X X X X

“It is thus a guaranteed right of every citizen whether rich or poor to take up and carry on, if he so wishes, the motor transport business. It is only the State which can impose reasonable restrictions within the ambit of Article 19(6) of the Constitution of India. Section 47(3) and 57 of the old Act were some of the restrictions which were imposed by the State on the enjoyment of the right under Article 19(1)(g) so far as the motor transport business was concerned. The said restrictions have been taken away and the provisions of Section 47(3) and 57 of the old Act have been repealed from the Statute Book. The Act provides liberal policy for the grant of permits to those who intend to enter the motor transport business. The provisions of the Act are in conformity with Article 19(1)(g) of the Constitution of India. The petitioners are asking this Court to do what the Parliament has undone. When the State has chosen not to impose any restriction under Article 19(6) of the Constitution of India in respect of motor transport business and has left the citizens to enjoy their right under Article 19(1)(g) there can be no cause for complaint by the petitioners.”

33. The learned counsel also referred to the following provisions of Motor Vehicles Act:-

Section 2(40)

(40) “stage carriage” means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey.

Section 2 (7)

(7) “contract carriage” means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum –

- (a) on a time basis, whether or not with reference to any route or distance; or
- (b) from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes
 - (i) a maxicab; and
 - (ii) a motorcab notwithstanding that separate fares are charged for its passengers;

Section 81

81. Duration and renewal of permits. - (1) A permit other than a temporary permit issued under section 87 or a special permit issued under subsection (8) of section 88 shall be effective 53[from the date of issuance or renewal thereof] for a period of five years.

Provided that where the permit is countersigned under sub-section (1) of section 88, such countersignature shall remain effective without renewal for such period so as to synchronise with the validity of the primary permit.

(2) A permit may be renewed on in application made not less than 15 days before the date of its expiry.

(3) Notwithstanding anything contained in sub-section (2), the Regional Transport Authority or the State Transport Authority, as the case may be, may entertain an application for the renewal of a permit after the last date specified in that sub-section if it is satisfied that the applicant was prevented by good and sufficient cause from making an application within the time specified.

(4)The Regional Transport Authority or the State Transport Authority, as the case may be, may reject an application for the renewal of a permit on one or more of the following grounds, namely :-

(a) the financial condition of the applicant as evidenced by insolvency, or decrees for payment of debts remaining unsatisfied for a period of thirty days, prior to the date of consideration of the application ;

(b) the applicant had been punished twice or more for any of the following offences within twelve months reckoned from fifteen days prior to the date of consideration of the application committed as a result of the operation of a stage carriage service by the applicant, namely :-

(i) plying any vehicle -

(1) without payment of tax due on such vehicle ;

(2) without payment of tax during the grace period allowed for payment of such tax and then stop the plying of such vehicle ;

(3) on any unauthorised route ;

(ii) making unauthorised trips:

Provided that in computing the number of punishments for the purpose of clause (b), any punishment stayed by the order of an appellate authority shall not be taken into account :

Provided further that no application under this sub-section shall be rejected unless an opportunity of being heard is given to the applicant.

(5) Where a permit has been renewed under this section after the expiry of the period thereof, such renewal shall have effect from the date of such expiry irrespective of whether or not a temporary permit has been granted under clause (d) of section 87, and where a temporary permit has been granted, the fee paid in respect of such temporary permit shall be refunded.

34. Submission based on the aforesaid provisions was that the bus operators were entitled to permit for a period of 5 years and not of four months. Reliance was also placed on a judgment of Supreme Court in the case of ***Uttar Pradesh State road Transport Corporation Vs. Assistant Commissioner of Police (Traffic), Delhi***, (2009) 3 SCC 634.

35. Referring to the provisions of Section 71 of the Act, it was also argued that requirements of this provision, while introducing the Cluster Scheme, were not fulfilled which mandated passing of necessary law by an executive action without which Scheme could not be introduced. At the end, it was argued that in this very petition court had passed orders from time to time for private GPS,

speed governors, etc and the Government had also provided BRT system to avoid road accidents. It was submitted that with these measures taken, road accidents had sharply fallen down and, therefore, no meaningful purpose was served in removing the blue line buses and introducing the Cluster Scheme thereby impinging upon the rights of these blue line operators who were small time people and invested hard earned money in purchasing these buses.

36. We have bestowed our serious consideration and cogitated deeply on this issue. Before we come to the nuances of these legal submissions, we would like to make a preliminary remark that under the scheme of the Constitution, the government has the power to frame its policies for purposes of good governance. Article 162 of the Constitution envisages such power with the State Government.

37. It would also be necessary at this stage to point out the schemes which were formulated by the Delhi Government from time to time in the arena of public transport. The Government has formulated and implemented policies for permitting private sector operation in public transport. These policies have been passed on public requirement and in public interest. The steps taken in this behalf since 1992 need to be recapitulated in brief. In that year major scheme which was advertised was “ Scheme for Private Bus Service in Delhi Under Stage Carriage Permits”. These Stage Carriages were known as Redline Buses owing to the prescribed colour code. In 1992 alone there were 134 Redline accidents, leading to the colour code of the buses being changed to blue – hence the Blueline buses. 3000 permits were issued U/s 72 of the Motor

Vehicles Act, 1988 against 10,000 applications. The Scheme restricted the total number of buses per individual to five and per company to ten and allowed the prospective permit holders to remain outside the preview of the Motor Transport Workers Act, 1961 which denies the working conditions of the drivers employed by owners employing five or more motors transport workers. There were 3304 operators who served 3849 buses. Over the years the Blueline buses increased their routes while D.T.C. fleet of buses dwindled to 500 in 1996 resulting in only 4500 on 15.6.1998 buses being available in the city.

38. Between 1998 and August 2000 the Government of NCT of Delhi notified the nationalisation of all routes in the region (which was struck down by the Courts) followed by an attempt to attract private entities – the Global level notice of August 2000 and the National level notice of October 2002. None of these elicited much response.

39. The economics of operations between the DTC and Blueline fleets showed significant dichotomies. In June '97 the DTC fleet operated 2590 buses which travelled 109.40 lakh vehicle kilometres. The Blueline buses claimed to serve 50 lakh passengers per day and covered 855000 vehicle kilometres per day with a consolidated fleet of 3800 buses. However the share of accidents and traffic offences falling to the lot of Blueline buses was significantly higher.

SHARE OF BUSES IN TOTAL TRAFFIC FATALITIES

	Traffic Fatalities	All City buses	DTC Buses	Non DTC buses	Share of all buses	Share of DTC in bus

						fatalities
1998	2182	193	76	717	9%	39%
1999	2342	117	57	60	5%	49%
2000	2014	153	37	116	8%	24%
2001	1842	86	26	60	5%	30%
2002	1696	59	29	30	3%	49%
2003	1801	110	40	70	6%	36%
2004	1977	167	57	110	8%	34%
2005	2049	221	64	157	11%	39%

(source Delhi Traffic Police)

OFFENCES COMMITTED BY DTC AND BLUE LINE BUSES

	2004	2005	2006
DTC	3904	4815	4612
Blue Line	69282	59536	48750
Ratio	17.7	12.4	10.6

40. Private Stage Carriages (now Blueline buses) were inducted in 1992 to sub-serve the public interest. They were found errant. The Government, finding it necessary and in the public interest has now changed the policy and criteria under which the permits are to be granted to the Private Stage Carriages. The alarming rate at which accidents were caused by the faulty operation of these blueline buses shook the conscious of this Court when *suo moto* notice was taken of the situation in public interest and the journey in that direction started with the present petition.

41. The genesis of the present litigation has already been traced out. To recapitulate, it needs to be emphasized that it is this court which took *suo moto* notice of the menace spread on the roads of this city by these blue line buses crushing innocent people

underneath at alarming rate. It has assumed the shape of an unchecked monster on the roads which had no sympathy for children, aged persons or disabled. All such innocent people without any discrimination or favour were becoming victims when this Court stepped in. During the proceedings, a view was taken “enough is enough” and it was absolutely essential in public interest and in the interest of the people of this city to erase the blue line buses from the scene. This measure was taken as a last resort when it was found that further steps taken to control the havoc were not yielding any results, or atleast desired results. Way back on 31st July, 2007, an order was passed indicating phase out of the blue line buses from the city and on the suggestions given by the learned Amicus Curiae and Government of NCT of Delhi was respondent to those suggestions. The Government was required to formulate a proper policy and better public transport system in the city including adequate number of public transport buses. Thereafter, the matter proceeded in this direction; albeit other incidental issues were also taken care of from time to time including action to be taken against the arraying buses. However one thing was loud and clear. These blue line buses had to be withdrawn. They were permitted to ply only because it was found that there were no sufficient number of buses on the roads to take care of the load of the commuters. It was for this reasons that the directions were given to renew the permits of these blue line buses on four monthly bases instead of five years tenure.

42. The Government of NCT of Delhi, thereafter, worked in this direction and on the one hand steps were taken to augment the DTC buses and on the other hand, indepth studies were undertaken by

the expert committees to provide a solution by resorting to alternate methods of public transport.

43. It is a paramount consideration and has to be kept in mind that Courts have a role to play in the promotion of the ultimate social purpose of “establishing, maintaining and perfecting the conditions necessary for community life to perform its role in the complete development of man”, as it is said that ‘life is not mere animal existence’. The importance of administration of justice as a fundamental community principle and as an index of the civilizational ascent and content of social organization, is reflected in the constitutional directive set out in Clause (1) of Article 38. Further, the provision of Article 39 (b) which obliges the State to direct its policy towards securing that the control of the material resources of the community are so distributed as best to serve the common good. The concept of common good has both political and constitutional roots. Measures which promote the well being of the people are understood as matters of common good.

44. It is not the function of the Government to keep citizens from falling into error. It is the function of the citizens to keep the Government from falling into error. [**American Communication Association Vs. Charles T. Douds**, -{1949} 339 US 382]. Courts interfere in governmental matters, in the interest of good governance. [**Lakshmi Das Ranchood Das Vs. State of Bombay**, AIR 1952 Bombay]. In order, therefore, that governance is integrated with administration of justice, the rights, interests, needs and concerns of citizens must find an appropriate mechanism or instrument for securing the above said integration. The participatory

role of the Court is further subject to the fine balanced working of separation of powers, and the importance of primary discharge of constitutional duties and functions by the respective Institutions of governance. Within this over arching curve, the Courts can declare on the rights and interests of the needy sections of the community, innovate on the contents of such rights,[**U.P.S.E.B. Vs. Hari Shankar** (1979) 1 SCR 355], articulate the judicial supervision of their enforcement, and define and lay down rules or procedures for the judicial participation and supervision. When questions of failures, deficiencies, lapses or illegalities in governance are brought to challenge, it becomes the duty of the judicial department to deal with those questions. The role of the Courts in these instances will always be guided by the concern towards remedying the infringement of the rights of the weaker section of the community. The principles relevant to rule of law and administration of justice will also inform the Courts in dealing with issues of injury to public interest or infringement of public welfare.

45. Distinction exists between individual rights, claims or needs and group or collective rights or concerns of the community as a whole. It is also to be borne in mind that the representative governance and political participation are expected to deliver to the needs and requirements of citizens. [**Samantha Vs. State of Andhra Pradesh**, (1997) 8 SCC 191] This process of delivery is also expected to conform to maintaining social balances, cohesions between individual and group freedoms.

46. Where the causes and impact of litigation may not be confined to individuals or to mere individual interactions, and the issue or matter arising for adjudication have community implications or have impacts upon groups, sections or classes of the community, the adversarial dimensions of the legal services delivery, are not seen as appropriate.[**Charan Lal Sahu Vs. Union of India** (1990) 1 SCC 613]. Two facets of administration of justice become noticeable. One the mere remedial, problem solving role; the ordering and intervening role which involves participation in constitutional implementations. This participatory role serves the ends of realization of constitutional guarantees, assurances and the discharge of constitutional directives and obligations.

47. Influenced by these considerations, the Court had stepped in the present matter in larger public interest. Directions were given to the Government of NCT of Delhi to evolve a scheme. Unlike those situations where sometimes there is difference in the perspective of the judiciary on the one hand and the executive on the other hand, leading to friction at times, happily, in the present case, the Government of NCT of Delhi also rose to occasion accepting the fact that the blue line buses had failed this city and time had come to find the alternate. Such reality or commonality of the thought process of the judiciary and the executive in the present case has to be commended. In this scenario, when we are concerned with the welfare of the society in general, this public interest and the rights of the society would outweigh the individual rights.

48. Working in tandem and at the same time discharging its own executive function as it is the executive which is well equipped with necessary paraphernalia to study the nitty-gritty and nuances of the problem and take remedial steps, the Govt. of NCT of Delhi has introduced the Cluster system. Therefore, unless it is found that this scheme infringes some statutory or constitutional rights of the blue line bus operators, it is not the function of this court to sit over the judgment of the executive and substitute the same with some other scheme.

49. Mere scope or room for disagreement or scope for alternate choices for governmental action may not be reasons for intervention. It can be stated that the judicial review powers of the courts themselves envisage the authority of judicial intervention in securing good and accountable governance. Institutions of Justice have a role of structured involvement in the said process of promotion of social justice in all its comprehensions. In the instant case, when on the one hand there is a sense of unanimity among all, including the public at large, barring the bus operators obsessed by their own self interest, one thing becomes apparent, blue line buses are not to operate on the road of this city. That, coupled with the observations made above, regarding public good which this move would sub serve in contrast with the private interest of the blue line bus operators, we proceed to consider legal arguments raised by the counsel appearing for these bus operators.

50. At the outset we may observe that the judgment of the Supreme court in the case of **Mithlesh Garg**, (supra) would not be

of any assistance to these blue line operators (hereinafter referred to as the 'objectors'). No doubt in the said case the Supreme Court emphasized the *raison d'être* and the objective with which the Motor Vehicle Act, 1988 was enacted replacing earlier of 1939. No doubt, the purpose of the new Act is to provide for liberalized scheme for grant of stage carriage permits. This new Act gives right to the citizens to take up and carry on the motor transport business. However, it would not automatically follow therefrom that the Executive, within the framework of this very Act has no power to frame any scheme which sub serves common good, welfare of the public at large and there safety concerns.

51. The very presence of blue line buses on the road gives a baleful look because of their brazen behaviour. This need not even be belaboured. Suffice is to say that their reputation is besmirched beyond repairs. If it is found that a particular scheme (in the instant case blue line bus scheme) has not served any purpose, nay it has rather proved notorious and is in conflict with public welfare, the executive can frame the scheme to do away this evil and having regard to the ground realities. In fact, the mandate and spirit of **M.C.Mehta** (supra), which is also a judgment of the Supreme Court, is precisely this:-

“3.In our opinion, the provisions of the Motor Vehicles Act, 1988, in addition to the provisions of the existing laws, for example, the Police Act and the Code of Criminal Procedure, confer ample powers on the authorities to take the necessary steps to control and regulate road traffic and to suspend/cancel the registration or permits of a motor vehicle if it poses a threat or hazard to public safety. It need hardly be added that the claim of any right by an individual or even the few persons cannot override and must be subordinate to the

larger public interest and this is how all provisions conferring any individual right have to be construed....”

52. The right under Article 19 (1) (g) would be subject to restrictions, particularly those which protect the right to life and the liberty of citizens to move freely within their city. Article 21 is all pervading in balancing of fundamental rights. The scheme for phasing out of Blue line buses is indeed a scheme directly within the ambit and would enjoy the protection of Article 21 of the Constitution of India.

53. One has to be mindful of the fact that the aforesaid observations of the Supreme Court in **M.C. Mehta** case (supra) were regarding regulation of road traffic and public safety were in the contest of this city specifically. Sensing the sensitivity of the problem in Delhi when the Supreme Court made specific pertinent and focused observations holding that authorities had ample power to take the necessary steps even to suspend/cancel the registration or permits of a motor vehicle, if it poses a threat or hazard to public safety. This dicta of the Supreme Court would prevail over the general observations made by the Supreme Court in **Mithelash Garg** (supra).

54. It is settled law that the right to life is the paramount right. It is above all over rights as may be available to a citizen. Correspondingly, it is the paramount duty of the State to protect the life of its citizens, especially from wanton killing by reckless driving of Blue line buses on the roads of Delhi. All statutes and provisions of law on the basis of which the Blue line bus operators claim any

right or interest seeking extension of permits to ply their buses in Delhi, will have to be viewed from the perspective of public security and safety. All statutes would have to be read in consonance with Article 21. The fundamental right to life takes precedence over all statutory rights. The right to livelihood of the blue line bus operators, numbering a few hundred, would have to be subservient to the larger public interest of safety to other road users. That was the specific consideration in mind when the Supreme Court passed orders in **M.C. Mehta** (supra) and in the instant case we find it proper to adhere to the same.

55. We do not find that Cluster Scheme violates the provisions of Motor Vehicles Act. In this scheme four types of eligible bidders are conceived in the Cluster Scheme. Under Section 71 of the Motor Vehicles Act cooperatives of SC/STs are to be given preference. In proviso (iv) of Section 71 (3) (d) the word 'or' has to be read disjunctively. It is open to the Government to give preference to any of the classes mentioned in the said proviso. Accordingly in the Request for Qualifications and Proposal Document (RFQ) a Cooperative society of SC/ST is shown as a standalone type entity. A general Cooperative Society would be eligible if it came as a combination of a Lead Member who is a Type I/Type II entity. Scheme further shows that for the Type III bidders i.e. for a business entity promoted by state carriage bus operators (i) the requirement of net worth and (ii) the aggregate net cash accruals of the last two years is not mandatory. In order to encourage this group of bidders, the government has made a special concession for them in as much as they would be required merely to give a commitment towards a

minimum authorized, subscribed and paid-up capital, i.e. a mere undertaking by them to meet the prescribed requirements would suffice. The ratio of buses between DTC and private operators would be 60:40. It is also informed that advertisements have also been issued in newspapers on 7th January 2001 for bids for Clusters nos. 6,7,8 and 9.

56. As per the Government it has been a conscious endeavour to weed out the element of competition in the operation of buses in the new scheme, since it was the element of competition that goaded the blue line bus operators to drive fast and recklessly, which led to many fatalities. In the Cluster Scheme there will be no competition by or for the private cluster operator since the model of business is without risk for them. All revenue risk would be for the government. The cluster operator would get a specified amount for the services provided per kilometer. The cash collection point i.e. the conductor, will be employed by the government. The Performance Guarantee from the private operator, would be available to the government till the end of the Scheme. Strict performance measurements are stipulated in clause 3 of the cluster agreement. In addition to the penalties that would be leviable under provisions of the Motor Vehicles Act, stiff penalties would also be visited upon the private operators for non-adherence to performance specifications, i.e. for not meeting the bus-time schedules. For example there are penalties for poor performance i.e. if one bus trip is missed by the private bus operator then he would have to pay a penalty of 150% of the amount that would have been otherwise payable to him for the trip which was missed. Similarly, there are incentives for good performance.

57. It would be of interest to mention that in the subsequent bids for Cluster numbers 2,3,4 and 5, a group of blue line bus operators has come forward as a Type 3 eligible bidder and has been successfully awarded one of the Clusters.

58. In the instant case, we have already reproduced the main features of the scheme. The Cluster Scheme was discussed and approved by the Council of Ministers of the NCT of Delhi by way of a Cabinet decision. The Cluster Scheme essentially *corporatizes* the running of private Stage carriages on notified routes and imposes obligations and duties on the entity which would now be running stage carriages. One salutary purpose of the Scheme is to eliminate '....this on road competition is the largest systematic contributor to unsafe driving and accidents'.

59. The Cluster Scheme being a policy of the government does not militate against public interest or against the scheme of the Act. The framers of the scheme, expert in their field, have taken into all relevant consideration namely problems of existing system, element of reform orders and the objectives with which new scheme is introduced. The characteristics which are kept in mind are:

- (i) Safety in all its aspects.
- (ii) Universality, i.e. availability of service on all scheduled routes.
- (iii) Cost effectiveness, so as to minimize the user tariff and economically self-sufficient operations to the extent possible alongwith continuous improvement of the service.
- (iv) Integrated character, punctuality and passenger comfort to attract existing private transport users to the public transport.

60. The scheme which is envisaged talks of integrated mechanism, route structure, ownership, obligation of the integrated mechanism, performance parameters, including the steps which the bus operators in the scheme would adopt in so far as safety measures, regularity, punctuality, bus maintenance are concerned.

61. As already remarked above, it is settled law that on the decisions of authority in regard to a policy matter, courts will not ordinarily interfere. However, Courts do not abdicate their right to scrutinise whether the policy has been formulated keeping in mind all relevant facts and whether it is beyond the pale of discriminations or unreasonableness on the basis of the material on record. Unless the policy or action is inconsistent with the Constitution and the laws are arbitrary or irrational or there is abuse of power the Courts will not interfere with such matters.

62. In the case of ***Raj Shikshan Prasarak Mandal Vs. State of Maharashtra and Others*** (2001) 10, SCC 75 the Apex Court held as under:-

“3.The grievance of the appellant is that on consideration of all relevant materials, the appropriate authorities having accorded permission for shifting of the school from Mallapur to Ardhapur and the same having been cancelled because of issuance of contempt notice by the High Court, the appropriate authorities having exercised their jurisdiction vested in law and having focused their attention to the relevant materials, the impugned order of cancellation is not in accordance with law. It is undisputed that the order of cancellation emanated because of issuance of a notice under the contempt proceeding. **The shifting of the school from one place to the other or having an ashram school at one place is not governed by any statutory rules and it is in fact a policy decision of the Government. So long as the**

government decision is not actuated with any malice or is not the outcome of an arbitrary and whimsical act, the same should not be interfered with by a court of law under Article 226 of the Constitution of India. This being the position and on the relevant materials, the appropriate authority having considered the interest of the public at large and having allowed the shifting of the school from Mallapur to Ardhahpur, the same could not have been cancelled on the pretext that the High Court issued a notice of contempt in the matter. In that view of the matter, the order of cancellation has to be set aside and we accordingly quash the same. Since the parents of the students studying in the ashram school at Mallapur had made a grievance, the appropriate authority may reconsider their grievance and, if it is found that they are justified in their grievance, may pass appropriate orders with regard to the prayer for cancellation of the permission granted. This may be done within a period of three months from today and until final orders in that respect are passed, the school which is now functioning at Mallapur should be allowed to continue at Mallapur. The appropriate authority should also consider the question whether the recognition granted should be allowed to continue or not. The appeal stand disposed of accordingly.”

63. The Supreme Court in the case of ***Indian Charge Chrome Ltd. and Another Vs. Union of India and others***, (2006) 12 SCC 331:-

“Then the question is whether there is anything in the process of decision making by the State Government that makes the decision itself vitiated. What is contended is that the Chahar Committee had recommended that the distribution be made among the various applicants and that OMC was not eligible for getting a lease of any extent. It was when that recommendation was put up that the concerned Minister made a noting indicating a sudden turn around, recommending consideration of the question whether the lands or the area available with the State, should also be divided among the private operators and whether it would not be in the interests of a just and equitable distribution of the ore and the protection of the environment, to have the area in a bloc for being exploited by OMC. It is true that the earlier stand of the Government was that leases could be granted

to private players including industries established in the State for captive mining. But, when the recommendation of the Chahar Committee was put up before him for his final view, it was open to the Minister concerned to go through the report and record his views thereon. In fact, Chahar Committee report itself had indicated some of these aspects, though it had overridden them and made recommendations for grant of leases to the various applicants in the light of the directions of this Court and the High Court. If a Minister, on going through the report, feels that the aspects highlighted in the report themselves would justify the retaining of the resources with the State so as to ensure a just distribution of the mineral among the needy and for protection of the environment, in the absence of any other material, it could not be said that the recommendation of the Minister was not bona fide or that it was tainted in any manner by mala fides. It is interesting to note that Mr. Chahar himself as Secretary of the Ministry concerned thereafter highlighted the aspects pointed out by the Minister and recommended in his capacity as Secretary of the concerned Ministry that it would be appropriate to retain the area for being exploited by the Government controlled corporation. The file shows that this noting of the Minister in the light of the recommendation of the Secretary to the Ministry was considered by the Cabinet and the Cabinet approved the noting of the Minister or the course recommended therein to exploit the mineral through OMC and not to divide the balance area left with the Government among various private entrepreneurs. The decision was reiterated by the Cabinet and a request was made by the State Government to the Central Government for approval of this proposal. **There is nothing to show that the noting of the Minister was tainted in any manner or that the subsequent cabinet decision was vitiated for any reason that could be gone into by the Court. In a sense, counsel for OMC and the State of Orissa are right in submitting that it was really a policy decision and the role of this Court in respect of such a policy decision and its scrutiny was limited and within the scope of that limited scrutiny, there was no justification in interfering with the decision of the Government.** Of course, as we have indicated earlier, it is for the Central Government to give its approval or not to give its approval to the proposal of the State Government. The Central Government is yet to take a decision. Since, we have not reached that stage, we are also not called upon to pronounce on it at this stage.

64. In **Ram Singh Vijay Pal Singh and others Vs. State of U.P.**

and others, (2007) 6 SCC 44, the Apex Court held as under:-

“Mr. Dinesh Dwivedi, learned senior counsel for the appellant has next submitted that the writ petitioners were earlier carrying on business from their own premises in Purana Galla Mandi in the city of Pilibhit and they shifted to Nawin Mandi Sthal, where the Mandi Samiti had made construction of shops and godowns, etc. which is at considerable distance from the city and which lacked basic infrastructure, on the assurance given by the Mandi Parishad that the business premises would be sold to them on hire-purchase basis. Learned counsel has submitted that after having shifted to the Nawin Mandi Sthal which caused considerable inconvenience to the traders, it is not open to the respondents to contend that the business premises would be given to them by the Mandi Samiti on lease or rental basis. In this connection it may be pointed out that the writ petitioners have not filed any document whatsoever to show that either it was held out or any assurance was given by the respondents that the business premises would be sold to the petitioners on hire-purchase basis or otherwise. In fact, there is not a single piece of paper on record to substantiate the allegation made by the writ petitioners. Whether the shops, godowns and sheds of the Mandi Samiti, which have been allotted to the writ petitioners, should be given to them on lease or should be sold to them on hire-purchase basis, is purely a matter of policy as the property belongs to the Mandi Samiti or the Mandi Parishad. It is for the Mandi Samiti or the Mandi Parishad to take a policy decision in this regard and the Court cannot examine the correctness or otherwise of the said policy except in a very narrow compass.

In *Netai Bag v. State of West Bengal* AIR 2000 SC 3313, this Court held as under in para 20 of the reports:

20. The Government is entitled to make pragmatic adjustments and policy decision which may be necessary or called for under the prevalent peculiar circumstances. The court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or wiser or more scientific or logical. In

State of M.P. v. [1987] 1SCR1 it was held that the policy decision can be interfered with by the court only if such decision is shown to be patently arbitrary, discriminatory or malafide. In the matter of different modes, under the rule of general application made under the M.P. Excise Act, the Court found that the four different modes, namely, tender, auction, fixed licence fee or such other manner were alternative to one another and any one of them could be resorted to....

65. In the well known case of **BALCO Employees Union Vs. Union of India**, 2002 (2) SCC, a three Judge Bench summarized the law on the point as under:

“In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the Court. It is neither within the domain of the Courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the Courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the Courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. In matters relating to economic issues, the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within limits of authority. For testing the correctness of a policy, the appropriate forum is the Parliament and not the Courts....”

66. In ***Federation of Railway Officers Association and others***
Vs. ***Union of India***, (2003) 4 SCC 289 held as under:-

“In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise Court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of the power, the Court will not interfere with such matters.”

67. Thus we agree with Mr. Waziri that public transport has to keep abreast of the times, both in terms of technology of the vehicles and sophisticated business models. The old system of operation by single owned stage carriage permit holders/blueline bus operators is no more feasible, advisable or permissible. We must bear in mind the sound advice in the elegy by Alfred Lord Tennyson in *The Passing of King Arthur*:-

“The old order changeth, yielding place to
new and the Lord fulfils himself in many ways
lest one custom should corrupt the world.”

68. Once we consider the entire gamut of the issue in the aforesaid perspective, we are unable to agree with the submission that such a scheme would violate the provisions of Section 71 of the Act. Private Stage Carriage Permits fall in Chapter V of Control of Transport Vehicles of the Motor Vehicles Act, 1988. These permits are granted by Regional Transport Authority on an application made to it under Section 70 of the Act which reads as under:-

“70. Application for stage carriage permit –

(1) An application for a permit in respect of a stage carriage (in this Chapter referred to as a stage carriage permit) or as a reserve stage carriage shall, as far as may be, contain the following particulars, namely:-

- (a) the route or routes or the area or areas to which the application relates;
- (b) the type and seating capacity of each such vehicle;
- (c) the minimum and maximum number of daily trips proposed to be provided and the time-table of the normal trips.

Explanation.- For the purposes of this section, section 72, section 80 and section 102, “trip” means a single journey from one point to another, and every return journey shall be deemed to be a separate trip;

- (d) the number of vehicles intended to be kept in reserve to maintain the service and to provide for special occasions;
- (e) the arrangements intended to be made for the housing, maintenance and repair of the vehicles, for the comfort and convenience of passengers and for the storage and safe custody of luggage;
- (f) such other matters as may be prescribed.

(2) An application referred to in sub-section (1) shall be accompanied by such documents as may be prescribed.”

69. Section 71 prescribes the procedure for the Regional Transport Authority in considering the application for stage carriage permits. Section 71 (2)(d) *inter alia* provides that the RTA shall in considering an application have regard to the following matters namely

“(iii) such other matters as may be prescribed by the State Government”.

The Cluster Scheme is formulated under the aforesaid power conferred upon the Government.

70. In ***Pancham Chand Vs. State of Himachal Pradesh*** – (2008) 7 SCC 117), it has been held that the M.V. Act is a self contained code

and that the control by the State must be exercised strictly in terms of article 162 of the Constitution of India. Having regard to the nature and the manner of the control specified therein it may lay down a policy. It says (Para 18)

“18. The Act is a self-contained code. All the authorities mentioned therein are statutory authorities. They are bound by the provisions of the Act. ***They must act within the four corners thereof. The State, although, has a general control but such control must be exercised strictly in terms of the Article 162 of the Constitution of India. Having regard to the nature and the manner of the control specified therein, it may lay down a policy.*** Statutory authorities any Minister including the Chief Minister to act in derogation of the statutory provisions. ***The Constitution of India does not envisage functioning of the Government through the Chief Minister alone. It speaks of a Council of Ministers. The duties or functions of the Council of Ministers are ordinarily governed by the provisions contained in the Rules of Business framed under Article 166 of the Constitution of India. All governmental orders must comply with the requirements of a statute as also the constitutional provisions.*** Our Constitution envisages a rule of law and not rule of men. It recognises that, howsoever high one may be, he is under law and the Constitution. All the constitutional functionaries must, therefore, function within the constitutional limits.”

(Emphasis supplied)

71. In ***Jaintia Hills Truck Owners Association Vs. Shailang Area Coal Dealers*** - AIR 2009 SC 3041, it was held that:-

“The provisions of the Act mandate that the unladen weight and laden weight must be determined. Indisputably, weighing devices had to be provided for the said purpose. ***It is true that for the said purpose Rules may have to be framed. It is, however, a well settled principle of law that even in a case where the statute***

provides for certain things to be done, subject to Rules, any action taken without framing the Rules would not render any action invalid. If a statute is workable even without framing of the Rules, the same has to be given effect to. The law itself except in certain situations does not envisage vacuum.” ***(Emphasis supplied)***

72. We are of the view that the Cluster Scheme protects the interests of the Scheduled Castes/Scheduled Tribes. To conclude, we hold that the scheme as introduced does not suffer from any illegality, infirmity and is in larger public interest. There is no reason to cull the same. It, thus, finds our approval.

Renewal of the permits of blue line buses:

73. Once we have given our opinion qua the Cluster Scheme, natural fall-out is that with the introduction of the scheme blue line buses are to be given red signal i.e. they have to go off the road. However, the operators want renewal of permit on the premise that the aforesaid scheme yet to take off and buses yet to be inducted under this Scheme. It is also their case that the blue line buses were to be phased on achieving the target of 10,000/11,000 buses representing public transport on Delhi roads. This has not been achieved, argued the learned counsel for these operators and, therefore, the directions which are given to the Government to renew the permits should continue. In fact, some of the counsels on their behalf have argued for grant of five years permits as per the scheme of the Motor Vehicles Act, 1988. Dilating this argument, it is submitted that the Apex Court as back as in July, 1998 passed order directing that in Delhi there must be 10,000 buses upto April 2010 and thereafter the ratio between the public and private transport

fixed was 60.40. 60% is to be plied through public service which is being provided by DTC and 40% to be provided by private operators. It is further pointed out that on 23th August, 2007 this Court directed that there must be 11,000 buses to meet the need of the traveling public in Delhi and also directed the State Transport Authority not to renew the permits of the private operators and they be granted temporary permits. Thereafter this Court had been monitoring the augmenting of fleet of buses by DTC and had been extending the grant of temporary permits to the private operators repeatedly on application filed by the State Government. Mr. D.M. Sapolia, Principal Secretary-cum- Commissioner, Transport submitted Status Report and in penultimate para 25 of the Status Report it was stated as follows:-

“It is pertinent to mention that each cluster of routes shall be bid out separately so as to synchronize with the induction/supply of buses as per the phase out schedule mentioned at paragraph 22. Thus the phasing out of bulk of the existing blue line buses and induction of buses by the corporate/cooperative entities is intended to be completed by June 30, 2009.”

74. It is further argued that the stand of the State Government always remained that to synchronize phasing out plan with the induction/supply of buses therefore the permits which were granted to the private operators are required to continue till the buses are inducted under the cluster scheme. It is an admitted fact that the target of 11,000 buses was fixed for Delhi routes accordingly Transport Department notified unified time table and stop for 11000 Buses. So far DTC is in a position to make 6500 buses. Still there is a short fall of 4400 buses which are to be inducted through cluster

scheme and admitted position is that no bus under the cluster scheme has been added and still there is a vacuum and void of 4400 buses without any alternative. The Federation of the Blue Line Operators about 2300 in number had been operating till December, 2010. Though there is short fall of more than 1700 buses, the Authority has wrongfully stopped renewing/extending permits of the private operators.

75. Reliance is also placed on the order dated 26th May, 2010 by the Learned Single Judge of this Court in Writ Petition 931/2010 directing that the respondents would substitute the existing buses with the simultaneous induction of buses under the cluster scheme. Prayer of the government for vacation of this order is opposed on the ground that the State Government had filed an application for direction or modification of the said order not in the same court nor an appeal was filed but an application is filed before this Division Bench for modification of the order of the said Ld. Single Judge. The said application is not maintainable in view of the fact that the order has not been challenged before the Division Bench and the said order has already attained finality. It is also submitted that the prayer made in the said application is contrary to the stand by the State Government in the earlier proceedings in this matter before this Court.

76. In nutshell, the argument is bolstered on the premise that there are no adequate number of buses and the position which was noted in this case as well as in the orders dated 26th May, 2010 by the learned Single Judge in Writ Petition 931/2010 remains valid even today and for paucity of adequate number of buses which the

government has failed to supply and there being no change in circumstances the permits should be renewed.

77. Mr. Vasudev, learned Amicus Curiae, though has argued in support of the validity of the Cluster Scheme, joined issue with the Government on this aspect. He submitted that it has been the consistent stand of the government that it was in the process of having 11,000 buses available on the roads. There has also been delay in the implementation of the cluster scheme which replaces the 40% ratio of 60:40 as specified in M. C Mehta which also fails to be complied with in the event of Blueline buses being phased out. Thus, his plea was that the policy of the government phasing out of Blueline buses should be accompanied by induction of an appropriate number of buses in the ratio accepted by the Government as recommended by DIMTS. It is vital that appropriate number of buses be deployed on the routes to ensure that public transport services are available to all parts of the city.

78. Mr. Tulsi, learned Sr. Counsel as well as Mr. Waziri, Standing Counsel appearing for the Govt. of NCT of Delhi have, on the other hand, argued that there is sufficient change in the scenario and the things have improved remarkably. According to them, the directions for 10,000/11,000 buses on roads given by the Court was keeping in view the overall public transport system. Such a direction was not sacrosanct since there are other mode of public transport now available and particularly when Metro Rail capacity has been appreciably augmented, the overall scenario of the availability of public transport establishes that adequate public transporting system is available to cater the needs of the people of this city and time is

right for phasing out blue line buses. In this behalf following figures are given by the Government in its CM Appl. 17526/2010 which is filed for vacation of orders dated 26th May, 2010 passed by the learned Single Judge:-

“..... In the last few years DTC has issued orders for 3775 buses in a phased manner out of which 3495 buses have been received and order for remaining 280 buses is under process. DTC has a fleet of about 6180 buses.

Apart from buses owned by DTC, 120 Metro owned buses and about 1000 light passenger buses are operating as stage carriage buses. The number of blue line buses, which mostly operate on temporary stage carriage permits is about 2300 as of September, 2010.

In the recent years, there has been considerable improvement in the private investment in the field of contract carriage buses, both intrastate and interstate. In this category almost 8200 CNG buses were operating as in October, 2010.

The carrying capacity of Delhi Metro has been considerably enhanced and as of date its daily ridership comes to 1.4 million passengers. Delhi Metro is further in the process of adding two coaches to most of its trains which would take daily ridership to the tune of 2 million passengers per day by next year”

79. It is thus pointed out that in the year 2006 there were 3444 buses of DTC which number has gone upto 6237 buses in the year 2010. It is also stated that ridership in DTC buses, during this period has gone up by three times because of low floor state of art big capacity buses introduced/acquired by the DTC. It is also mentioned that in the year 2006, Metro commuting capacity was 0.5 million which has been increased to 1.5 million. This facilities together with other modes of transport is sufficient to take care of the ridership requirement.

80. To begin with, we may state that argument of these bus operators that permit has to be given, as per Section 81 of the Motor Vehicles Act, for a period of five years and no less is meaningless and bereft of any merit. There is a provision for temporary permit contained in Section 87 of the Act which reads as under:-

“87. Temporary permits.

(1) A Regional Transport Authority and the State Transport Authority may without following the procedure laid down in section 80, grant permits to be effective for a limited period which shall, not in any case exceed four months, to authorise the use of a transport vehicle temporarily-

- (a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or
- (b) for the purposes of a seasonal business, or
- (c) to meet a particular temporary need, or
- (d) pending decision on an application for the renewal of a permit, and may attach to any such permit such condition as it may think fit:

Provided that a Regional Transport Authority or, as the case may be, State Transport Authority may, in the case of goods carriages, under the circumstances of an exceptional nature, and for reasons to be recorded in writing, grant a permit for a period exceeding four months, but not exceeding one year.

(2) Notwithstanding anything contained in sub-section (1), a temporary permit may be granted thereunder in respect of any route or area where-

- (i) no permit could be issued under section 72 or section 74 or section 76 or section 79 in respect of that route or area by reason of an order of a Court or other competent authority restraining the issue of the same, for a period not exceeding the period for which the issue of the permit has been so restrained;
- (ii) as a result of the suspension by a Court or other competent authority of the permit of any vehicle in respect of that route or area,

there is no transport vehicle of the same class with a valid permit in respect of that route or area, or there is no adequate number of such vehicles in respect of that route or area, for a period not exceeding the period of such suspension:

Provided that the number of transport vehicles in respect of which temporary permits are so granted shall not exceed the number of vehicles in respect of which the issue of the permits have been restrained or, as the case may be, the permit has been suspended.”

81. Keeping in view this very provision in mind, directions to the Government was given by this Court more than three years ago that temporary permit shall be renewed for a period of four month at a time. Again, as pointed out above, this was a stop gap arrangement. Since the passing of those orders, permits are renewed for a period of four months from time to time. This order of the court was never challenged by these operators earlier. When the issue of phasing out has cropped up for discussion and the blue line buses are facing extinction, such an argument predicated on Section 81 of the Act is sought to be raised.

82. We are also not in agreement with the arguments of these operators based on the legitimate expectation. It is stated at the cost of repetition that way back in 2007 these blue line operators knew the fate they are going to meet in near future. They could get lease of life from time to time as the Government was not equipped to take care of the needs of the city in so far as public transport is concerned. They got the renewal, in the interregnum on four monthly basis and in this backdrop these operators cannot raise the plea of legitimate expectation for seeking the renewal of permits for a period of three years or five years. In so far as new buses inducted

by these bus operators are concerned, it was done at their risk and cost. In fact, while seeking renewal these bus operators had filed the affidavit accepting this condition and specifically stated so in the standard format affidavit, contents of which are reproduced as under:-

“That I have been abiding all permit conditions and undertake to comply with all orders/directions, existing or will be issued in future by the Government/court. I also undertake to be responsible for all the consequences and losses. If anything is due to the proposed replacement and abide by all the existing provisions of the Motor Vehicle Act, 1988/CMV Rules 1989/DMV Rules 1993 and STA Resolutions/directions/notification and amendments made therein future.

That Government/STA/Court will decide any state that the vehicle which are not single fuel mode CNG will not be allowed to ply on contract carriage interstate diesel permit then I shall not make any claim for the continuation of this permit and surrender the same in the permanent mode.

That I undertake that I am inducting another vehicle under replacement of my permit No..... at my own business risk and responsibility and shall not claim the renewal/grant of fresh permit, after completion of validity period of the said permit, which is expiring on.....”

83. The only question is as to whether adequate transport system is available as on today which would take care the needs of the public of the city without putting them to unnecessary inconvenience.

84. The contentions of the respective parties pointed out above, would reveal that whereas on the one hand the Government maintains that there are adequate public transport system is available to cater to the needs of the residents of this city, the blue line bus operators maintain that is not so. The argument of blue line

operator is primarily founded on the fact that Supreme Court in **M.C. Mehta** case (supra) had observed the need of 10,000 buses and this Court in this very case had felt that there should be minimum 11,000 buses and notwithstanding these figures fixed by the Courts themselves, the Government has not been able to achieve this target so far. The retort of the Government to this argument is that these figures are not sacrosanct which were indicated in the orders of the Courts keeping in view the ridership. Once we take into consideration the total ridership and are able to find that there is sufficient paraphernalia to take care of the ridership, such argument of blue line operators should not hold the ground.

85. We would like to disant before giving our conclusion. It would, in the first place, be relevant to sum up the aspects touching upon the availability of public transport in this city on as on today. They need to be impressed upon. These are:-

- (i) There are 6237 DTC buses available in the year 2010 as compared to 3444 DTC buses in the year 2006;
- (ii) The new buses inducted by the DTC are low floor state of art big capacity buses and each bus can accommodate much more passengers than the old DTC buses on roads in the year 2006. Therefore, the number of buses as such, would not be the correct barometer when significantly high capacious new buses are inducted.

(iii) In the year 2006, commuting capacity of Metro Rail was 0.5 million which has been increased to 1.5 million in the year 2010 and as on today it is commuting 1.7 to 1.8 million passengers per day. It is expected to go upto about 2.9 million per day by the end of 2011. The Government claims that this capacity would tantamount the fleet of 6500 buses.

(iv) In addition, there are feeder bus service for “last Mile Connectivity” to the Delhi Metro Station and “Gramin Sewa” to provide public transport to rural and congestive areas or unauthorized colonies where bus service cannot reach because of narrow streets.

(v) In November, 2007 when the Cluster Scheme was introduced, the number of blue line buses operating in Delhi was approximately 3700 while the number of DTC buses was about 3500. Now just the DTC buses themselves number about 6300, including the modern low-floor buses.

(vi) Most importantly, as of December, 10,2010 merely 2041 Stage Carriage Buses (Blueline Buses) had valid permits. Out of this 1571 permits have already expired. An additional 142 have expired in February, 2011 taking the number of expired permits to 1731.

(vii) The buses whose permits have expired in the meantime and have not been renewed and therefore these buses are off the road. Thus as on today, most of the blue line buses have decimated and only 328 blue line buses are visible on Delhi roads. Notwithstanding the same no difficulties are faced by the commuters in this city who are using public transport. This fact alone would cling the issue and confirmed the position taken by the respondent that sufficient public transport system is available to take care of the ridership requirements.

86. It is in this scenario, the direction of the Court to have minimum fleet of 11,000 DTC buses on the roads of this city is to be appreciated. In this behalf we have to remind ourselves that we are focusing on entirely different issue, viz in the absence of 11,000 buses on the roads, can the blue line operators demand, as a matter of right, extension of their permits. Answer to this would be in the negative once we find that there is no requirement of blue line buses now and the public transport system is in a position to take care of the needs. After all, in October, 2007 itself it was made clear that the blue line buses are to be withdrawn from the city. These buses were, however, allowed to continue not because on the ground that their existence on the roads were found justified but because of the reason that sudden withdrawal of so many number of buses in the year 2007 would have caused inconvenience and harm to the commuters as DTC buses available at that time were much less in number and Metro Rail had not spread its wings far and wide by that time. The extension of permits was thus, allowed to these blue line

operators as a necessary evil when no other alternative was available. Having regard to the complete change in scenario, as taken note of above, when it is felt that time has come that this city should bid final farewell to these blue line buses, there is no reason to pass an order for extension of their permits. After all, phasing out these blue line buses is not a cataclysmic event. Its roots go back to the year 2008.

87. For all these reasons, we do not subscribe to the contention of the learned counsel for the blue line operators that the Government should approach the learned Single Judge in Writ Petition No. 931/2010 for variation/vacation of order dated 26.5.2010. While passing the order, the learned Single Judge was conscious of the pendency of this writ petition and categorically observed that the said order shall be subject to the final orders which would be passed in this matter by the Division Bench.

88. In so far as providing 11000 buses on road is concerned, we make it clear that it would still be the obligation of the Government to do so, *more so*, to achieve 60 : 40 ratio. On the implementation of the Cluster Scheme, this would be achieved. The Government is directed to implement the entire cluster scheme in a time bound manner. Subject to the above, the prayer made by the Government in CM 17526/2010 for vacation of order dated 26th May, 2010 is allowed and all the applications filed by the blue line bus operators and others are hereby dismissed. However, the buses with existing permits shall be allowed to ply till the expiry of those permits.

89. We also recommend the Government to look into the possibility of utilizing all the blue line buses in a meaningful way.

However, what can be the mode and manner thereof is to be left to the Government. We are bolstered in this observation by the suggestion which was mooted by Mr. Tulsi himself during the hearing of this case.

Epilogue:

90. The completeness in this order would not achieve unless some comments are made about the public transport system including status of the buses plying on the roads of this city.

91. Issue of safety in public transport system cannot be confined to blue line buses. No doubt, blue line buses proved a menace and totally non-feasible and therefore face a total wipe off from the roads. However, much is required to be done to achieve the safety norms. Often termed the 'killer fleet' for numerous accidents and deaths, the private bus service has been under fire for quite some time. Enormous influx of light and heavy vehicular traffic with tremendous increase in population of Delhi has made the roads of Delhi increasingly dangerous to human life. Where a common man; a cyclist; a motor cyclist or a pedestrian is often knocked down by the DTC, blue line bus or other heavy vehicles plying on the roads of Delhi, there the richer section of the society meets with fatal accidents as a result of rash and neglectful driving. Statistics showed blue line buses were challaned for defiance of rules of lane driving, wrong overtaking, without speed governance and sudden stopping in the middle of the road and at places where there is no bus stand. Numerous blue line vehicles were impounded for violations. These statistics only show a drop in the ocean in traffic offences and

accidents involving two-wheelers, cyclists, light motor vehicles and other heavy motor vehicles. This pathetic state of affairs and continuously growing danger to human lives on roads of Delhi has been a matter of judicial concern for a number of years now.

92. Regardless of such specific orders of the Court over the years, there has been lack of will in implementation of such directions. Despite the fact that roads of Delhi are being made better, it has not helped to considerably check or reduce the traffic offences. The control of traffic in NCR and NCT, Delhi, is a matter of paramount public safety and, therefore, is evidently within the ambit of Article 21 of the Constitution.

93. The concern of the Courts for loss of human life, governmental property has been reflected in its various judgments. Whatever be the reason and excuse but fact of the matter is that the multi-dimensional progress is not being aligned by the progressive checks and balances in regard to adherence to traffic regulations and maintenance of proper vehicular discipline.

94. Jumping of red lights, overtaking from the wrong side, driving the vehicles at high/excessive speed, wrong-lane driving, smoking while driving(although it is depicted in every buses NO SMOKING but drivers & conductors are the one who smokes at the first instance), blowing of pressure/musical horns, creating undesirable sounds, sudden stopping and parking of buses on the main roads even if the bus-bay was available, racing between buses of the DTC and private operators and inter se private bus operators for making more money, driving of two-wheelers without helmets, driving of two-

wheelers like snake i.e. overtaking from right, then left and again right that too at a high speed, using of sirens and using of black films which completely stop or substantially obstruct visibility inside the cars, are a few amongst many of the commonly committed traffic offences. These offences not only endanger the life of the common man driving or walking on the roads but also are the source of major heinous crimes, particularly against women and children. It is the obligation of the State to control and prevent commission of traffic offences primarily to make the traffic of Delhi better organized and to prevent fatal or other accidents which adversely affect the Society at large.

95. Disturbed by such a scenario, Mr. Kailash Vasudev, learned Amicus Curiae made a passionate plea to this Court to address these concerns as well. We may emphasize that one major cause for this imbroglio is the absence of a planned transport system keeping in mind the future requirements.

96. The courts while taking judicial notice of road accidents by BlueLine Buses which were affecting all sections of society and while monitoring the same have issued writs for implementing a safe transport system and extending adequate protection to citizens. He suggested for setting up of a permanent planning cell and during the course of the hearing attention of this Court was invited to para 14 of which reads as under:-

“As per present advice, within the National Capital Region there is no cohesive central planning unit to work in tandem with various Corporations for streamlining traffic or for regulating the constructions on roads, which would lead to chaotic times on the road. Noticing the fact that

the Govt. of NCT of Delhi is unable to provide adequate transport connectivity, the Delhi Metro Rail Corporation (DMRC) has commenced its own bus system. 119 buses have been inducted into the Metro Feeder Services through open tenders. These buses will be run under very stringent operating conditions. The Metro Link Service has been formulated in cooperation with the Government of NCT Delhi and the State Transport Authority.”

97. At the hearing, the learned Senior Counsel for the NCT made a statement that planning of these facilities and other engineering factors in the NCT of Delhi were in the jurisdiction of the Unified Traffic and Transportation Infrastructure (Planning and Engineering) Centre (briefly UTTIPEC). However, reaction of Mr. Vasudeva was that as per its website (www.uttipeec.nic.in) the UTTIPEC was set up on 31st July 2008 under regulations framed under Section 57 of the Delhi Development Act, 1957. The constitution, aims and objectives of the UTTIPEC have been set out in the said notification. He submitted that the issue of the required bus fleet has not been taken up by the UTTIPEC. The projects hitherto approved by the UTTIPEC have been put on its website and do not advert to any such issue.

98. Specific reference is invited in this behalf to areas e.g. Dwarka, G.T.Karnal Road, Delhi Gurgaon Road, Vikaspuri, Mayur Vihar and the like, where the road lengths and density of population have increased substantially and commercial establishments like BPOs and other service providers who work long shifts have been established. This will reduce the number of BPO vehicles being used and provide safe transport to lady employees and senior citizens.

99. He further argued that the Government has not given any specific cogent data or information on the future requirements of buses in the NCT. In the affidavit filed on 25th January 2011 (after concluding of the hearing) reference has been made to the recommendation of the Transport Department based on the recommendations made by the group so appointed which states:

“INITIATIVES UNDERTAKEN IN TRANSPORT SECTOR

1. Augmentation of city bus fleet and Reforms in private sector bus operations.

.....

The Government of NCT of Delhi has decided to phase out the existing private stage carriage (blue line) buses run by the individual operators and to replace them with new buses to be operated through corporate entities. Further, as per the directions of the Hon’ble Delhi High Court, the stage carriage fleet is to be augmented to 11,000. The DTC has already augmented its fleet to 6300 buses. Details regarding the reforms in private sector have already been submitted to the Hon’ble Court from time to time.”

100. In this set of recommendations furnished by the NCT of Delhi no plans for the future deployment of buses have been addressed. He, thus, urged that it is necessary for the Government to give specific and detailed information about the body nominated for the purposes of planning transport amenities in the NCT. The UTTIPEC does not appear to have taken this aspect. Its website does not include this as an agenda.

101. Absence of city buses in large number of colonies and areas are a cause of concern and often lead to unsafe conditions for the citizenry. This is moreso as even after the vehicles in the Clusters of

Routes come into operation the need for a planned transport system will remain and so will the requirement of public transport. It is admitted that to provide transport to the travelling public, even the DMRC has sought to create its own Metro Links Services on Feeder Routes to Metro Stations. The authorities must address this need in the changing transport systems, road lengths, change in population demography and urban development which have been adverted to in detail in the Economic Surveys for Delhi starting 1999-2000 and onward.

102. The learned Amicus Curiae also submitted that in order to have a complete and effective control and regulation of the traffic in Delhi and to eliminate/reduce untoward accidents, it was necessary to take other measures as well. To bring his point home, he referred to Chapter Eight in the book titled **“Traffic, Why We Drive The Way We Do (And What It Says About Us)”** authored by *Tom Vanderbilt*. This book describes the traffic situation in the important cities of the world. Chapter Eight is devoted to Delhi Traffic which is captioned “How Traffic Explains the World: On Driving With a Local Accent”. The catch line of this Chapter is:

**“Good Brakes, Good Horn, Good Luck”
Plunging into the Maelstrom of Delhi Traffic.**

103. In a most interesting manner, with an extraordinary neck for looking at everyday life, the writer has explained the traffic situation in this city. Some of the extracts from this narrative would explain the situation on Delhi roads:-

“By day, the mayhem is revealed as true chaos. Delhi’s streets play host to a bewildering stream of zigzagging green-and-yellow auto-rickshaws, speeding cabs, weaving bicyclists, slow-moving oxen-drawn

carts, multi-passengered motorcycles conveying helmetless children and sari-clad women who struggle to keep their clothing from getting tangled in the chain, and heaving buses, which are often forced out of the bus-only lane because it is filled with cyclists and pedestrians, who are themselves in the lane because there tends to be no sidewalk, or “footpath”, as they say in Delhi.

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In the roundabouts of New Delhi, the traffic whizzes and weaves defiantly past faded safety signs bearing blunt messages like OBEY TRAFFIC RULES, AVOID BLOOD POOL AND DON'T DREAM OTHERWISE YOU'LL SCREAM. These signs are as morbidly whimsical as they are common, leading one to suspect that somewhere, lurking in Delhi's Public Works Department, is a desk-bound bureaucrat with the soul of a poet.

xxx

I heard that particularly Indian phrase—“rash and negligent driving”—often while in Delhi, but after a few days I started to lose sight of how that could differ from the norm. **Delhi drivers have a chronic tendency to stray between lanes, most alarmingly those flowing in the opposite direction. The only signal used with regularity is the horn.** Instead of working brake lights (or indeed any lights), many trucks have the phrase KEEP DISTANCE painted on the back, a subtle reminder to the driver behind: *I may stop at any moment.* Some taxis, on the other hand, bear the inscription KEEP DISTRNACE. POWER BRAKE. This means: *I may come to a stop faster than you expect.*

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After spending some time in the city, one vacillates between thinking Delhi drivers (and pedestrians) are either the best or worst in the world – the best because they're so adept at maneuvering in tight spaces and tricky situations, or the worst because they put themselves there to begin with. “That is why we have a negative connotation to the phrase **‘defensive driving is defending yourself from all the**

vagaries, including the negligence contribution on the part of the other road user”.

xxx

In one clip, a driver is rear-ended when he stops his car suddenly in the middle of a busy road. Why did he stop? So he could buckle his seat belt and not be *challaned*, or fined, by a traffic cop posted on the side of the road. In another, a bus illegally halts far from the marked curbside bus stop, making harried passengers weave through several traffic streams simply to board the bus. It soon become clear that one reason the number of violations is so high is that many drivers are forced to violate the rules in reaction to another driver violating the rules: The bus lane is filled with pedestrians or bicycles (who, in fairness, have nowhere else to go), so the bus cannot travel in the bus lane; thus begins a cascade of violations across the traffic stream.

Corruption begins at street level. The traffic cop is its foot soldier, the agent of bad traffic. He pulls over motorists for phantom violations, reducing not only traffic flow but the incentive for any driver to follow the law. Some argue that corrupt cops increase the incentive to follow the law because these cops are that much more on the lookout for excuses to issue a fine, but this presumes they are actually pulling people over for legitimate reasons. As one of the average person's primary interfaces with the legal system, the traffic cop becomes a symbol of the legitimacy of the regime. And what about the traffic he's directing? Corruption casts its shadow there as well.

To return to the frenetic streets of Delhi : My impression was that many drivers did not seem to be particularly qualified for a license. There's a good reason for this. A study conducted by a team of researchers for the U.S. National Bureau of Economic Research looked at the process of getting a driver's license in Delhi. The group tracked 822 individuals in three groups: a "bonus" group, whose members would get a financial reward if they could obtain a license in the fastest time legally possible; a "lesson" group, whose members were given free driving lessons before they attempted to get the license; and a "comparison" group, which was given no special instructions.

The researchers found that those who wanted the license soonest—that is, the members of the bonus group—got it more often, and faster, than people in the other groups. The reason, it turned out, was that like many drivers in Delhi, they used an “agent” to speed the process. But when the researchers later gave all the survey participants a driving test, 69 percent of the bonus group failed, compared to just 11 percent of the drivers who had taken lessons. But learning to drive properly clearly did not pay off. The people who had the best driving skills were 29 per cent less likely to get a license than the people with the worst driving skills. Corruption did indeed grease the wheels, but at the expense of the quality of those behind the wheel. “Corruption”, the authors wrote, “appears to substitute for actual driving skill.”

This study provides a hint about how the norms discussed in the previous sections evolve and flourish. The scores of new drivers who land on Delhi streets each month learn the norms of a system made up of the collective experience of all the previous drivers who bribed their way through the Regional Transport Office. No small wonder this traffic system isn’t market by scrupulous attention to formal rules. In the writer Pawan Varma’s description of what motivates corruption in India, it is not hard to see a metaphor for the country’s traffic behavior: “In a cut-throat world, to finesse an obstacle. The premium is on pragmatism and agility, the capacity to seize an opportunity when it comes, and to profit when possible. What matters is not fixity of principle but clarity of purpose.”

xxx

The vexing, intertwined nature of this dilemma is reflected in a piece of Hindi slang I learned while in Delhi “jugad”. The word has a shifting palette of meanings, mostly arrayed around the central idea of “creative improvisation”: It can refer, on the one hand, to the jury-rigged vehicles one finds in India, especially in rural areas. Lacking money for a car, say, a farmer will craft a functioning vehicle out of an old motorcycle, a car axle, and a diesel engine. That this *jugad* vehicle might not be safe, at least when it’s sharing the road with newer cars, is one of the clear kinds of traffic risks that come with lack of money.

But *jugad* is also used as a kind of surrogate for “bribe”; here it refers to doing whatever needs to be done to get something accomplished. The case of the Delhi drivers who acquired licenses quickly is a form of judged in practice. Would-be drivers know that corrupt bureaucrats respond more to money than driving skills. Is this kind of corruption, which has a ripple effect that translates into the myriad traffic violations that occur in Delhi every day- and studies suggest that the more traffic laws are violated, the more casualties there will be – purely an effect of lack of resources? Or is it, as many would argue, precisely the sort of thing that holds up the development of a country? If GDP and traffic fatalities are somewhat related, and GDP and corruption are somewhat related, and traffic fatalities and corruption seem to be the most clearly related, then fighting corruption may be the best way to lower traffic fatalities and rise GDP.”

104. Mr. Vasudev, is right in his submission that erasing of blue line buses from the scene would not curb the menace. The suggestions given by learned Amicus Curiae and noted above, need due attention at the hands of executive, framers of the policy.

105. In addition, we are of the view that following guidelines be also kept in mind:-

- I. Under the Rules, a Driver has to be a trained person and is expected to pass the test held by the competent authority. However, the Rules and the Act are silent with regard to educational qualification of the Drivers. In the present days, one cannot lose site of the fact that the Drivers are expected to deal with the public, which consists of well-to-do persons, poorer sections of society, elderly persons, young boys and ladies. Their behaviour towards the public is a matter of concern. Lack of basic qualifications can lead to unexpected behaviour and in some cases even undesirable behaviour. Besides the fact that a Driver essentially must satisfy with technical qualifications

and fulfilment of test, it is necessary that they should have minimum basic education as well.

- II. Drivers of all the buses including the Drivers employed by various Government Departments, who are driving cars or buses of various authorities, should undergo training courses and/or refresher courses. Delhi Traffic Police has created one Road Safety cell, which focuses on the education of the road users-particularly the commercial group. Different training schemes have been prepared for training of the drivers. In addition to the institute of DTC, there are three institutes in Delhi i.e. at Sarai Kale Khan, Loni and at Burari, which impart training to the drivers. All these institutes should hold regular training and/or refresher courses, which should will be attended to by all drivers employed by various Government organisations, Govt. of NCT of Delhi and its various departments and all the drivers, who are driving the buses under the permits of the State Transport Authority.
- III. The drivers should be kept on probation for a specified period and his mannerism and driving should be closely watched by the Supervisory staff of DTC/STA/concerned officers and record should be maintained as to how many traffic offences, he commits during that period. This all should be made the basis for extension of probation and/or confirmation, as the case may be. But if his case is found to be totally unsatisfactory and he is found to be an offending driver, the competent authority should take a definite action in this regard.
- IV. It should be ensured that not more than 2 or 3 buses should reach at a bus stand at one point of time. This time table should be circulated for information of all concerned including the traffic police and other enforcing agencies and should be adhered to strictly. Those, who are found indulging in violation of this condition, should be dealt with in accordance with law including challaning such vehicles for disobedience of this condition.
- V. The State Transport Corporation should ensure that the private bus operators should carry the photograph of the person to whom the license has been granted.

This direction is necessary for the reason that it was argued before the Court that the licenses are being sold and the buses are being operated by the persons other than the persons, who were awarded the license as the licenses are being sold by indirect process after taking huge money. It will be obligatory upon every driver to carry the permission of the State Transport Authority, which would have the photograph of the person to whom the license for the route has been granted.

- VI. Constables posted on the roads are not really performing their duties in a disciplined manner. It is expected of the higher and supervisory staff of the police including the traffic police to deploy the staff in a manner so to achieve the object of proper control of traffic and prevention of traffic offences **as they did during the CWG.**
- VII. Working hours of the drivers be fixed and authorities should not permit the drivers to drive beyond the prescribed hours, particularly in the buses running in Delhi. This should be seriously taken into consideration because there are many instances where drivers are “flying” buses more than 18 hrs per day.
- VIII. The Delhi Transport Corporation should continue to make proper bus stands with proper bus-bays wherever it is possible. The bus stands so made shall be disabled-friendly and no encroachers be permitted on these bus stands i.e. **no person be permitted to occupy any space of the bus stand or immediately adjacent to the bus stands for keeping a water trolley or other raidees etc. Delhi police should remove all other persons who are illegally engaged into the roadside commercial activities, so that groups do not gather on a busy road.**



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- IX. The STA should ensure that the buses running under its permit do not have any person other than a conductor and a driver in a bus and this shall also be a condition of the permit. It should also ensure that no person including the conductor shall be on the stairs of a bus or hang outside the door of a bus. It is also for

the authorities to ensure that overloaded buses are not permitted to ply on the roads of Delhi. Further the private bus operators, even in cluster scheme, should not be permitted to employ/depute young boys or any other person, who, as commonly noticed and even argued vehemently before us, beat the sides of the buses with their hands and keep on whistling, which generates annoying loud noise and distract other drivers. The traffic police and the STA is expected to take appropriate action against the defaulting bus operators/persons in accordance with law. Default in adherence to this condition shall also be treated as violation of provisions of Section 179 of the Act.

106. We know that this is an arduous task and needs assiduous efforts. That is what is expected of any Government which believes in good governance to achieve. We hope that concomitant with the induction of buses through Cluster Scheme, all the aforesaid suggestions including those given by the learned Amicus Curiae would be kept in mind and positive action taken thereupon.

107. It is a time to part with this order. However, we deem it our duty to acknowledge the valuable contribution of Mr. Kailash Vasudeva, learned Sr. Advocate who was appointed as Amicus Curiae and Mr. A.J. Bhambhani, Advocate who ably assisted him. The efforts made by these counsels have been of great help to this Court and are to be commended. Mr. Vasudeva and Mr. Bhambhani have truly played the role which is expected of Amicus Curiae (friends of the Court) and we place on record our deep appreciation for their contribution.

(A.K. SIKRI)
JUDGE

(SURESH KAIT)
JUDGE

MARCH 3, 2011_{skb}