

14
*

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on : 05.04.2011

WP(C) No.7400/2010 & CM No.14662/2010

FEDERATION OF DELHI BUS OPERATORS & ORS. .. PETITIONERS

-VERSUS-

LT. GOVERNOR OF DELHI & ORS.. .. RESPONDENTS

Advocates who appeared in this case:

For the Petitioner : Mrs. Rani Chhabra, Advocate

For the Respondents: Mr. Najmi Waziri, Standing Counsel, GNCTD
with Ms. Neha Kapoor, Advocate

CORAM :-

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR JUSTICE RAJIV SHAKDHER

- | | | |
|----|--|-----|
| 1. | Whether the Reporters of local papers may be allowed to see the judgment ? | Yes |
| 2. | To be referred to Reporters or not ? | Yes |
| 3. | Whether the judgment should be reported in the Digest ? | Yes |

SANJAY KISHAN KAUL, J (ORAL)

The petitioner's association is of bus operators who are operating the blue line buses in Delhi. The petitioners are aggrieved by the impugned notification dated 27.10.2010 issued in exercise of powers conferred under section 115 read with clause 41 of section 2 of the Motor Vehicles Act, 1988 (in short, the 'Act') prohibiting the entry, plying and idle parking of blueline buses/ private stage carriage buses plying on roads falling in NDMC area as per the details set out in the annexure. The said notification,

however, permits all such operators to be eligible to apply for alternate routes.

We may at the threshold state that the mode and manner of plying of blueline buses has been receiving the attention of this court in WP(Crl.) No.878/2007 entitled Court on its own motion Vs. State of Delhi, on account of the extraordinary large number of accidents and loss of lives caused by the reckless and negligent driving of blueline buses. Final directions have been issued in that writ petition on 03.03.2011. It is not disputed before us that in terms of those directions, the blueline buses having valid permits would continue to operate till their permits expire in the year 2012.

Learned counsel for the petitioners fairly states that the grievance, if any, against that order could be redressed only by filing a Special Leave Petition. She, however, submits that her challenge to a notification in question still survives as assuming that the blue line buses whose permits are to be phased out by 2012, in the interregnum, cannot be prohibited from plying on routes in the NDMC area, notwithstanding the fact that they have been offered alternate routes. In a nutshell, the plea is that they should be allowed to ply buses on routes which were originally available to them. In other words by this notification NDMC areas cannot be excluded from their routes.

In order to appreciate the aforesaid submission, it is necessary to reproduce section 115 of the said Act, which reads as under :-

“115. Power to restrict the use of vehicles. – The State Government or any authority authorised in this behalf by the State Government, if satisfied that it is necessary in the interest of public safety or convenience, or because of the nature of any road or bridge, may, by notification in the Official Gazette, prohibit or restrict, subject to such exceptions and conditions as may be specified in the notification, the driving of motor vehicles or of any specified class or description of motor vehicles or the use of trailers either generally in a specified area or on a specified road and when any such prohibition or restriction is imposed, shall cause appropriate traffic signs to be placed or erected under section 116 at suitable places :
Provided that where any prohibition or restriction under this section is to remain in force for not more than one month, notification thereof in the Official Gazette shall not be necessary but such local publicity in the circumstances may permit shall be given of such prohibition or restriction.” (emphasis is ours)

Similarly, the impugned notification dated 27.10.2010 being relevant is extracted hereinbelow:

“Whereas the spate of fatal accidents involving private stage carriage (blue/white) buses had invited severe public concern and criticism on the way these buses are operating notwithstanding stringent permit conditions for ensuring road safety.

Whereas the Division Bench of Hon’ble High Court of Delhi took suo-moto notice of the repeated fatal accidents being caused by the stage carriage (blue/white) buses and initiated criminal writ-

petition bearing no.878/2007 in the matter of Court on its own Motion. In its order dated July 10,2007, the Hon'ble High Court of Delhi inter alia show caused to the Government of NCT of Delhi as to why this Court should not immediately order the replacement of blueline/whiteline buses by safer mode of public transport.

Whereas the Government of National Capital Territory of Delhi had assured the Hon'ble High Court of Delhi that a decision had been taken to phase out the private stage carriage (blueline/whiteline) buses.

Whereas the Department vide order No.F.AS/STA/2007/6744-10668 Dated 07.09.2007 informed each private stage carriage (blueline/whiteline) bus permit holder about the phase out of vehicles.

Whereas these buses have been operating on temporary permits after expiry of the 5 year permits with the approval of Hon'ble High Court of Delhi.

Whereas in order to ensure public safety during Commonwealth Games, 2010 and also to regulate traffic and congestion on Delhi roads, the Government had restricted the operation of Private Stage Carriage (Blueline/whiteline) buses on routes falling in NDMC area by stopping / curtailing operation on such routes as per annexure I & II w.e.f. 26th September, 2010 and the restriction was further extended upto 25.10.2010.

Details of the routes referred above were published on the website transport.delhigovt.nic.in and also pasted on the Notice Board of STA Branch.

Whereas the above decision of the Government was appreciated by all concerned.

Whereas no sooner was the restriction removed, repeat of rash driving and fatal accident again came to the notice of the Government.

Whereas the Hon'ble High Court of Delhi, while referring to the fatal accidents being caused by the Blueline/Whiteline buses, was constrained to state in WP(Crl.) No.878/2007 vide order dated 10th July, 2007 as under :

"This has assumed such 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. This has been so held by the Hon'ble Supreme Court in M.C. Mehta Vs. Union of India and Ors. (1997) 8 SCC 770....".

Now, therefore, in order to ensure public safety and convenience of the common man and in exercise of the powers conferred by section 115 read with clause (41) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988), the Government of National Capital Territory of Delhi, on being satisfied that it is necessary to regulate the movement of Blueline/Whiteline private stage carriage buses and in the interest of public safety and convenience of the all road users in Delhi / New Delhi areas, hereby, prohibits the entry, plying and idle parking of Blueline/Whiteline private stage carriage buses on roads / areas falling in the NDMC area as per details in Anneuxre I & II. All such operators would however be eligible to apply for alternate routs.

By order and in the name of
The Lieutenant Governor of the National
Capital Territory of Delhi
Sd/-
(R.K. Verma)
Secretary-cum-Commissioner (Tpt.)"

A perusal of the aforesaid notification shows that after the Division Bench took sue motu cognizance of the problem arising from plying of blueline buses, the matter received the attention of the Govt. of NCT of Delhi. To ensure public safety, regulation of traffic and consequent de-congestion of roads in Delhi – the Government of NCT, first experimented with idea of regulating access of petitioners to NDMC routes during the Commonwealth Games, 2010 (in short 'Games'). Thus the operation of these buses was restricted on certain routes falling in the NDMC area for a specified period of time. In the aftermath of Games the restriction was lifted. But no sooner was this done there was a repetitive cycle of rash driving and accidents which were to the notice of the Govt of NCT.

It is in these circumstances, the Govt of NCT was satisfied that it was necessary to regulate the movement of the blue/ white line buses in the interest of public safety and convenience of all road users in Delhi and New Delhi areas by prohibiting the entry, plying and idle parking of the private stage carriage buses on roads falling in NDMC area.

Learned counsel for the petitioners submits that the aforesaid notification is invalid as section 115 does not envisage prohibiting any particular bus from plying in any area. It is submitted that what is envisaged is that there may be such a ban in respect of a specified class or description of motor vehicles. In other words, vehicles as a class be it buses or trucks may be prohibited from

plying certain routes either during specified time or even in respect of certain areas (such as NDMC area) but it cannot be that from amongst a class of vehicles, say busses in this case, in certain areas during specified time or for that matter, all buses may be prohibited the blue/ white line buses are singled out for prohibition. The submission thus veers around to the issue, in context of the impugned notification, to blue/ white line bus not falling within the scope of expression “any specified class” or “description of motor vehicles” mentioned in Section 115 of the M.V. Act.

Learned counsel for the respondents, on the other hand, submits that blue/ white line buses are a class by themselves. This submission is based on a dual plea. The first is that the High Court taking suo-motu cognizance in WP(Crl.) 878/2007 and framing the questions qua blue/ white line buses that they thus recognized as a class by itself. Secondly, pursuant thereto, the empirical data has come to the attention of the Govt of NCT requiring it issue the impugned notification.

It is submitted that a perusal of the judgment delivered on 03.03.2011 in WP(Crl.) 878/2007 would give the historical background in which the court issued the directions for phasing out blue line/ white line buses in Delhi. An alternate model introduced by the respondent, i.e., ‘cluster scheme’ has received a seal of approval of this court and hence would have to be taken to be in public interest at this juncture. Furthermore a perusal of the said judgment would show that the intent to phase out blue line/ white line buses has been within the knowledge of the operators; a

decision which has once again received the imprimatur of the court.

Learned counsel for respondents also drew our attention to the judgment of the Supreme Court in *M C Mehta Vs. Union of India & Ors. (1997) 8 SCC 770*, wherein in paragraph no.3, the provisions of the said Act read with the provisions of other existing laws like Police Act and Code of Criminal Procedure have been held wide enough to confer ample power on the authorities concerned to take necessary steps to control and regulate road traffic and to suspend /cancel the registration or permit of a motor vehicle if it poses a threat or hazard to public safety.

On the other hand, learned counsel for the petitioners has referred to the judgment in *Uttar Pradesh State Road Transport Corporation Vs. Assistant Commissioner of Police (2009) 3 SCC 634* to contend that the right to ply a vehicle in terms of the provisions of the said Act or Rules framed thereunder is a statutory right and that no direction can be issued in contravention of the conditions of the permit, which would entail in effect suspension/ cancellation or curtailment of the permit.

On examination of the issues, we find that what is sought to be restricted is the plying of vehicles, in a particular area, by according an alternate routes to the blueline/ white line bus operators. The prohibition is in respect of only blueline /whiteline buses only. Thus the controversy really centres around the issue as to whether the blueline/whiteline buses can be said to be a 'class' by themselves. If it is so only then the impugned notification

would fall within the ambit of the provisions of Section 115 of the said Act.

We find that there is hardly any doubt about such a class being in existence. The fact that this High Court took cognizance qua only this class of vehicles is apparent from the orders passed in WP(Crl.) 878/2007. In fact, suo-motu cognizance was taken in the matter arising from repeated reports about death caused by such vehicles. A decision was thus taken to phase out such vehicles, which has received the imprimatur of this court.

The expression used in section 115 of the said Act is “any specified class or description of a motor vehicle”, thus both “class” and “description” of a motor vehicle are capable of being prohibited or restricted. All buses may be motor vehicles of one description or the other but blue line/white line buses are certainly a “class” by themselves. We thus are not persuaded to hold that the impugned notification is ultra vires the provisions of section 115 of the said Act.

A reading of the impugned notification also shows the thought process, which was behind the issuance of the notification. The notification itself sketches out the brief history. The interim measure during Commonwealth Games, 2010 proved to be very fruitful and the removal of that measure once again caused problems compelling the State Government to permanently ban plying of blue line buses in the NDMC area.

We are thus unable to accept the plea that the impugned notification is issued in the absence of any material or is ultra vires

the power conferred upon the State under section 115 of the said Act.

Learned counsel for the respondents has explained that the rationale for banning the plying of these blue line/ white line buses in the NDMC area; which is that most routes pass through the NDMC area increasing the density of traffic to unmanageable levels.

The petitioners, in our view, do not have an inalienable right to ply their buses on a particular route or in a particular area. The petitioners are being issued alternate permits to ply on other routes. A policy decision has been taken by the State Government based on an empirical data and such a policy decision cannot be said to be arbitrary or illegal. The court does not have the necessary wherewithal into the niceties of such like matters which impinge of issues of policy.

We see no reasons to exercise powers under Article 226 of the Constitution of India. The writ petition is accordingly dismissed with costs of Rs.10,000/- to be paid to the respondents within 15 days.

SANJAY KISHAN KAUL, J.

APRIL 05, 2011
yg

RAJIV SHAKDHER, J.