

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

% *Order delivered on: 11th March, 2016*

+ **O.M.P. (T) (COMM.) 5/2016 & I.A. No.1705/2016**

DEPARTMENT OF TRANSPORT GOVERNMENT OF NCT OF
DELHI Petitioner

Through Mr.Gourab Banerji, Sr.Adv. with
Mr.Amiet Andlay, Ms.Harsha Peechara
& Mr.Sahil Tagotra, Adv.

versus

STAR BUS SERVICES PVT. LTD. Respondent

Through Mr.Paras Kuhad, Sr. Adv. with
Mr.Somiran Sharma, Mr.Manu
Aggarwal, Mr.Biju P. Raman, Mr.Jitin
Chaturvedi & Ms.Swati Vijayvargiya,
Adv.

+ **ARB. A. 31/2015, I.A. Nos.11998/2015 & 22086/2015**

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CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The petitioner has filed the petition being O.M.P. (T) (COMM.) No.5/2016 under Section 12 read with Section 14 of the Arbitration and Conciliation Act, 1996 seeking to terminate the mandate of Mr.M.K.S. Menon, Advocate, to conduct the arbitration proceedings between the parties as the Sole Arbitrator and appoint a substitute arbitrator, preferably a retired Judge of this Court to adjudicate upon the disputes between the parties.
2. Prior to that, the same very petitioner has filed an appeal being Arb. A. No.31/2015, under Section 37(2)(b) of the Act against the orders dated 9th March, 2015, 9th April, 2015, 14th April, 2015 and 9th May, 2015 passed by the above said Arbitral Tribunal, wherein on 16th December, 2015 the learned Predecessor Court had passed certain directions to the respondent. The extract of the said order reads as under:-

“Having considered the contentions of the learned counsel, the Court is of the view that the respondents argument that the contract is unworkable is untenable, because the respondent knew fully well what the contract entailed and willingly entered into it without any coercion. The Cluster-bus Scheme is supposed to provide public bus services in terms of the Agreement. The Court does not find its terms excessive or otherwise unreasonable. The intention of the appellant to now induct semi-low floor buses can neither be considered as a change in policy nor an abandonment by the appellant of its policy to induct low floor buses in certain parts of Delhi.

The one basic principle which must guide the Court is that there is always a presumption that Governmental action is reasonable and in public interest and it is for the party

challenging its validity to show that is wanting in reasonableness or is not in form with public interest.

This burden is a heavy one and it has to be discharged to the satisfaction of the Court by proper and adequate material. The Agreement is comprehensive and akin to a complete code in itself. It provides, in detail, the manner in which the induction of buses is to be undertaken, it prescribes the remuneration for each kilometre run by the Cluster buses. The Concessionaire has been running buses on the roads of Delhi for the last five years, it is bound by the terms of the Agreement and its complaints are without basis.

Indeed, a proposition of law is no longer *res integra* that individual interest or, for that matter, smaller public interest must yield to the larger public interest. Inconvenience of some should be bypassed for a larger interest or cause of the society.

The respondent has to induct fresh buses in Delhi for the provision of mass public transport. It is not in dispute that as per the initial Letter of Intent in 2010, the respondent had desired to purchase 80 buses after already having inducted the 120 buses in 2011. Of the 80 buses which the respondent has to now induct, orders for 30 buses were placed by them through a communication on or about 26th June, 2013 to Tata Motors to the effect that they would be purchasing another 30 buses. Later, however, they placed an order for only 10 buses. The respondent has made part payments towards the purchase of these 10 buses which are to be inducted by them by 31st January, 2016. Based on the earlier communication from the respondents, Tata Motors has already manufactured 30 buses and they have asked the respondent to take delivery of all the 30 buses instead of only the 10 buses for which they have made payments. The list of buses manufactured by Tata Motors and available for induction is indicated in the appellant's rejoinder. The vehicle numbers are also duly indicated therein. Accordingly, the Court directs that the remaining 20 buses, which are available with Tata Motors and ready for delivery also be inducted by 15th February, 2016.

Because adequate bus space was not made available to the respondent, the induction penalty prima facie could not have been levied upon it. Therefore, the deduction of Rs.87 lakhs, for the moment, is unjustified. Although there is no challenge to the deduction of the said amount of Rs. 87 lakhs as induction penalty, the Court finds it appropriate to direct that the said amount be paid directly to Tata Motors on behalf of the respondent. This entire amount shall be payable immediately and shall be appropriated towards payment for the delivery of new buses. This payment shall, however, be without prejudice to the appellant's rights to claim the said deductions and to further make induction penalty deductions in future.

The Court would note that the Contract does not specify whether space for parking of buses is to be provided to a Concessionaire. The Court would bear in mind that the GNCTD, which has to cater to an ever burgeoning population and incessantly increasing demands for more public mass transport service, the availability of land is shrinking rapidly. The land available to the government in Delhi is at a premium has to be used extremely prudently; the usage is further limited by the user prescribed in the Master Plan. Under these circumstances, the appellant's inability to provide land for parking of all buses in one yard is understandable. Insofar as there is neither a stipulation that only one parking yard be used for the respondent's entire fleet of buses nor a specific place has been mentioned in the agreement, the Court sees no reason why parking facilities for the buses cannot be separated. Consequently, the respondent's contention that the parking space now provided by the appellant in North Delhi is unworkable is untenable. All-the-more-so because the respondent has already been offered reimbursement for losses which may be incurred due to extra dead-mileage, i.e., over and above the permissible dead-mileage allowance. In view of this submission, the respondent's apprehension regarding extra expenses in running of the buses is fully taken care of.

The services which the Concessionaire has undertaken to provide are public bus services. The infractions which have

been specified in Annexure-J cannot be trifled with. It is the duty of the Concessionaire to obey the strict stipulations of the contract regarding the safety and security of the bus passengers. There is an overwhelming public interest in the services undertaken by the respondent. The Court is of the view that the deductions for infractions which have been disallowed by the learned Arbitrator, towards breach of the terms of the Concession Agreement by the respondents are unjustified. In effect, the impugned order permits the respondent to provide public service buses without any 'saloon lights', indicators and proper safety standards. Minor accidents too have been disregarded.

Nobody likes to travel in the dark or dimly lit public buses. The respondent's trifling with public interest, passenger safety, orderly bus services and public health cannot be sustained. Circumstances which lend to the harassment of women and other vulnerable passengers have to be urgently removed from the public domain. Unfortunate tragedies like the *Nirbhaya* case must never happen again. The private bus concerned in that case did not have 'saloon lights' and otherwise had dark window panes. Such inadequate and unsafe modes of public transport cannot be tolerated and must be constantly curbed and rectified.

Therefore a government scheme which advances the safety and security of bus passengers and augments the provision of safe, orderly and efficient bus services through the due enforcement of Annexure J of the Agreement cannot be tinkered with.

In the National Capital Territory of Delhi, where incidents of physical violence against women and incidents of road rage are reported on a daily basis, especially in the domain of public transportation, to put an embargo against deductions for lack of lighting in buses and disregarding minor accidents is wholly unjustified. It is also incomprehensible how a bus could be deployed for public service, without headlights, tail lights or indicator lights. This virtually equips the respondent to ply

buses in Delhi wholly unmindful of the safety of the general public. The order cannot be sustained.

The manner in which nearly 90% of the penalty clauses have been enjoined by the impugned order cannot be sustained because it negates all measures to ensure the safety of bus passengers and the general road traffic. For the proper plying of buses in the roads of Delhi, certain standards for road-worthiness and safety measures are to be maintained and a certain discipline is to be followed. The temporary negation of the aforesaid clauses which permit infractions by the respondent would lend to unbridled lawlessness in plying of buses in Delhi. This could well be a return to the problems associated with the much despised 'Red Line' and 'Blue Line' bus services which were run by private operators. Those buses were removed from the streets of Delhi after a huge public outcry. Indeed, on their removal, the Supreme Court has stamped its imprimatur.

The Court would also bear in mind that the provision of efficient bus service in Delhi is an absolute necessity to meet the ever increasing demand of the commuting population, both within the city and from the neighbouring towns and the NCR. An efficient bus service would well lead to a reduction in the number of private vehicles in the city which is already struggling under the oppression of highly polluted air, traffic congestion, loss of valuable time in commuting and rising stress levels of all concerned. The consequent complications regarding health of the residents and visitors to the city cannot be ignored.

In these circumstances, the impugned order cannot be sustained. Hence, it is set aside. The number of buses, as indicated hereinabove, shall be inducted by the respondent: of the 30 buses, 10 of them shall be inducted by the respondent by 31.1.2015 and 20 by 15.2.2015. The respondent shall also ensure that all 120 buses already inducted by them are repaired and pressed into public service by 31.1.2016.

List for compliance on 5th February, 2016.”

3. The said order could not be complied with by the respondent, rather it filed the Special Leave Petition challenging the said order before the Supreme Court. The said Special Leave Petition was also dismissed. The respondent has its own justification for non-compliance.

4. Learned counsel for the parties made their submissions from time to time in Arb. A. No.31/2015 and the same was adjourned for remaining arguments on 23rd March, 2016. It was also informed by both sides that they have terminated the contract. In the meanwhile OMP(T) (Comm) 5/2016 has been filed which is listed today for consideration.

5. With the consent of the parties, the date fixed on 23rd March, 2016 is preponed and the said appeal is also taken up today.

6. After small submissions on behalf of both the parties, without prejudice, they agreed that both the matters be disposed of and the mandate of the arbitration proceedings of the Arbitrator earlier appointed be terminated, as the parties are agreeable for appointment of an independent sole Arbitrator by this Court to adjudicate the disputes between the parties. Accordingly, with the consent of the parties, the following directions are passed:-

- (i) The mandate of the arbitration proceedings of the Arbitrator earlier appointed is terminated; all personal allegations against the learned Arbitrator are withdrawn. The O.M.P. (T) (COMM.) No.5/2016 is dismissed as withdrawn in view of the consent of the parties.
- (ii) Hon'ble Mr. Justice R.C. Lahoti, Former Chief Justice of India (Mob. No.9868858999) is appointed by this Court as sole Arbitrator to adjudicate the disputes arising between the parties. The aspect of directions dated 16th December, 2015 passed by this Court in Arb.A.

No. 31/2015 would also be considered by Hon'ble Arbitral Tribunal as per its own merits. The respondent would be entitled to raise its defence before the learned sole Arbitrator.

- (iii) It is agreed that the petitioner will collect the record from the earlier Arbitrator and shall submit the same before the learned sole Arbitrator. Both the parties would be entitled to file their respective claims and counter-claims and their rival contentions about effect of termination of the contract before the learned Arbitrator. If necessary both the parties would also be entitled to amend the pleadings in view of the subsequent events in the matter between the parties.
- (iv) The Arbitrator shall ensure the compliance of the provisions of Arbitration and Conciliation (Amendment) Act, 2015 before commencing the arbitration.
7. Both the matters are accordingly disposed of. Pending applications also stand disposed of.
8. Copy of this order be given *dasti* to the learned counsel for the parties and a copy thereof be communicated to the learned Arbitrator forthwith.

(MANMOHAN SINGH)
JUDGE

MARCH 11, 2016