

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3660 OF 2017

Maharashtra S. T. Workers Congress
(INTUC)

Having its Office at

David J Sasoon Building,
First floor, 27/B, Bharucha Marg,
Kala Ghoda, Fort,
Mumbai – 400 023.

... Petitioner

Vs.

1. The State of Maharashtra
Through it's Principal Secretary
Home Dept. (Transport),
Mantralaya, Mumbai – 400 032

AND

Through it's Principal Secretary
(Labour), Mantralaya,
Mumbai – 400 032.

2. Maharashtra State Road Transport
Corporation, A Statutory Corporation,
Through its Managing Director.
Having its Head Office at
Vahatuk Bhavan, Mumbai Central,
Mumbai – 400 008.

... Respondents

.....

Ms. Seema K. Chopda a/w Mr. T. R. Yadav and Ms. Ishwari
Sabadra for the Petitioner.

Mr. B. V. Samant, AGP for Respondent No.1-State.

Mr. Y. P. Deshmukh for Respondent No.2.

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**CORAM : S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

DATE : OCTOBER 04, 2017.

ORAL JUDGMENT (PER S. C. DHARMADHIKARI, J.) :

1. In view of the earlier orders, Rule. Respondents waive service.

2. By consent, Rule is made returnable forthwith.

3. By this Petition under Article 226 of the Constitution of India, the petitioner Union is seeking the following relief:-

*“(a) Issue Writ of Mandamus or any other Writ/Direction/ Order in the nature of this Writ or any other Writ/Direction/Order and after verifying the legality and propriety of the said Circular dated 10.7.2015 which is at **Exhibit C** and Advertisement no.02 of 2017 (only in respect of posts of Driver cum Conductor) which is at **Exhibit D** and to quash and set aside the same;”*

4. The facts necessary to appreciate, the issues raised in the Writ Petition are set out herein below.

5. The petitioner claims to be a Trade Union registered under the Trade Unions Act, 1926 and functioning in the undertaking of the 2nd respondent-Maharashtra State Road Transport Corporation ("MSRTC" for short). It is espousing cause of certain percentage of employees since February, 2009.

6. The first respondent is the State of Maharashtra through the Department of Home (Transport) and Secretary (Labour), Mantralaya, Mumbai-32.

7. The second respondent MSRTC is a Corporation registered under the Road Transport Corporation Act, 1950 ("RTC Act" for short). The said Corporation provides passenger bus services and fulfills the duties set out in Section 18 of Chapter III of the RTC Act.

8. It is claimed by the petitioner that for providing cheaper, better and convenient transport services to the residents of the State, the MSRTC has been plying buses throughout the State on certain defined routes enabling the people to reach all corners of the State.

9. It is claimed that it is employing 1.7 lakhs employees. It is appointing the employees pursuant to the powers derived from the RTC Act and certain Rules and Regulations framed thereunder.

10. It has employed nearly 36,892 Drivers and 34,354 Conductors. It is claimed that there is not a single woman driver but there are 4,395 women conductors employed throughout the State. It is claimed that in the Manual of MSRTC, there are duty lists which have been prepared assigning specific duties to the employees. Annexures “A” and “B” to the Petition are copies of the duty list.

11. The Writ Petition concerns a circular dated 10th July, 2015 issued by MSRTC referring to a Resolution dated 28th February, 2014 of the Board of Directors. The Resolution incorporates a decision that MSRTC has decided to ply certain buses on specified routes without conductors. The MSRTC has resolved to create one singular post of Driver-cum-Conductor and recruitment will take

place on this post, which is now designated as Driver-cum-Conductor (Junior) instead of normal and ordinary pattern of having a Driver and a Conductor separately for each post. Annexure "C" is a copy of this circular. Then, reference is made to the terms and conditions based on which this decision will be implemented. The petitioner highlighted the role of a Conductor and a bus Driver. It is claimed that these are separate and distinct posts with different duties. The one who is expected to drive the vehicle safely and carry the passengers to their destination without causing any accident or injury, according to the petitioner, cannot be burdened with the duty of a Conductor. The buses are carrying senior citizens, ladies, children and it is but natural that a conductor is present so as to take care of any emergent situation or unforeseen or untoward incident. It is in such circumstances that the petitioner complains that the advertisement no.2 of 2017 inviting applications from eligible candidates so as to complete the recruitment to the above post will not be, firstly, in public interest and secondly, it will adversely affect the safety of the passengers.

12. Relying on the advertisement, copy of which is annexed at "D", it is stated that such a policy and which is now enunciated vide the Board resolution, the advertisement will be contrary to the RTC Act, the Motor Vehicles Act, 1988 ("MV Act" for short) and equally, the mandate of Article 14 of the Constitution of India.

13. In the grounds of this Petition, apart from raising the issue of legality and validity of this decision, it is claimed that if this decision is implemented, that would endanger the safety of passengers and put tremendous mental and physical pressure on a single employee. All the more, when he is expected to drive for hours together and carry passengers, sometimes, upto a distance of 300 to 500 kms. It is submitted that the advertisement also suffers from several other infirmities and pointed out in the grounds of this Petition including that there is no scope for recruitment of a woman driver when such policies are framed.

14. Upon being served with this Petition, an affidavit-in-reply is filed by the MSRTC. This affidavit, affirmed on 16th August, 2017,

is by the Chief Personnel Officer. Apart from questioning the *locus* of the petitioner to maintain such a Petition and by urging that no aggrieved employee has come forward, there is no apprehension of the existing employees being adversely affected, nor there service conditions altered, the petitioner Union, according to the deponent, does not command any support and which is proclaimed in the Petition. Secondly, it is contended that these are not matters of public interest but directly concerning the services of the employees and therefore, such a Petition is not maintainable. Thirdly, in matters of this nature and particularly policy decisions, a Union has no *locus* or vested right to object or question them.

15. Without prejudice to this contention, it is submitted that the decision is a policy matter. In matters of policy, there are limited powers of intervention conferred in this Court under Article 226 of the Constitution of India. It is urged that there is no pleading, much less, proof of any violation of law or of any Constitutional right, arbitrariness, discrimination and *mala fides*. It is only on these parameters policy decisions have to be tested in writ

jurisdiction by this Court. In writ jurisdiction, this Court does not exercise a power of appeal. It cannot question the wisdom of a policy decision, nor can it frame a different policy because that would be better and wiser in its opinion. In other words, in policy matters, this Court would not be able to substitute its views with that of the authorities including experts. Hence, the Petition is devoid of merits and must be dismissed.

16. It is also submitted that there is enormous delay in questioning the policy decision taken way back in February, 2014, a circular of 2015, by the instant Petition. The petitioner Union made a representation on 21st January, 2017 on the eve of the advertisement with a view to forestall any recruitment. That is the real motive and purpose and which should enable this Court to dismiss the Writ Petition.

17. Then, the petitioner Union is accused of not coming to this Court with clean hands. The petitioner has not disclosed a crucial fact that in earlier advertisements too, the post of Driver (Junior) was included. One of the requirement was that he should possess a Conductor Badge. The advertisement no. 1 of 2015 for direct

recruitment to the post of Driver (Junior), in terms of Clause (6), had stated that there are number of buses which would be plying without conductors. Therefore, in addition to possessing a driving license so as to be able to drive a heavy motor vehicle, the applicant must possess a Conductor Badge. Hence, it is not for the first time that such an advertisement is inserted.

18. In paragraphs 8 and 9 of the affidavit, the following statements are made :

8. I say that, the R-2 Corporation has been running to the knowledge of the petitioner conductor-less Buses more popularly known as "SHIVNERI" on Dadar-Pune, Nashik-Pune and Pune-Aurangabad routes for last many years and the same has proved hugely successful and preferred mode of travel for public and Corporation has never received any serious complaints of the nature imagined by the petitioner in the petition. The apprehensions of the petitioner have no basis and is merely imaginary without supporting facts and thus does not merit consideration more so in view of the successful running of conductor-less buses by the R-2 for last many years. I humbly submit that, based on wild imagination and baseless apprehension of the petitioner Union, this Court ought not to interfere with policy decision of the Board taken in view of advancement of technology related to issuance of tickets, door locking systems and other controls and the financial health of the R-2. I say that, Petitioner has not alleged any malafide against the Board much less substantiated it, therefore also decision does not call for interference in exercise of writ jurisdiction of this Hon'ble Court.

9. I say that, the post of Driver-cum-conductor is specially created with a view to address among other problem of Buses remaining stationary in Depot and trips being canceled for want of either conductor or driver at times. This was noticed to cause much inconvenience to the public who would have to wait longer for the next bus/trip and also loss of revenue to the R-2. Therefore, to deal with such situations Drivers with Badge of Conductor are specially being recruited so that absence of one need not result in Trip being canceled. Further, I say that, the routes of which Driver-cum-Conductor buses would ply are not static or fixed at present and would be determined by the Traffic department of the R-2 depending on requirement and considering safety, convenience and other factors.”

19. Then, it is urged that the issue of reservation for handicapped does not arise in this Petition and there are suitable posts identified for recruiting the handicapped persons and the mandate of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is fulfilled by the Corporation.

20. Then it is stated that a false statement is made that there would be no woman applicant for a single post, in as much as 445 applications from women have been received, out of which 202 women have appeared for written examination held on 2nd July, 2017. The MSRTC has made further progress in pursuance of the

advertisement in the sense that now an written examination and driving test remains to be conducted. After the results of such test, there would be a medical examination so as to judge the fitness of the candidates. It is clarified that there is a specific reservation for women in this advertisement and certain weightage is also given for their performance in the written test and the driving test.

21. Thus, it is stated that the advertisement has been issued to subserve larger public interest. There is a shortage of drivers in the MSRTC, particularly the 6 divisions in Konkan region. Hence, this Court should not grant any interim stay.

22. Finally, the attention of this Court is invited to Sections 119, 122 and 131 of the Motor Vehicles Act, 1988, so also the proviso to Section 124 thereof, to contend that due care has been taken of the safety and convenience of the passengers in framing such policy as is impugned in the present Petition. Therefore, it is submitted that there is no merit in this Petition and it be dismissed.

23. From the record, it appears that a brief hearing was held earlier and after the affidavit-in-reply of the MSRTC was received and filed in the registry. At that brief hearing, this Court noted the arguments of the petitioner's counsel. The Court also noted the fact that the recruitment process is going on. About 8,000 posts have been advertised. Around 20,000 candidates have qualified themselves in written test and a driving test is to commence. In the order dated 7th September, 2017, this Court made the following *prima facie* observations:

- “1. The petitioner, who claims to be a Trade Union registered under the Trade Unions Act, 1926, has questioned the advertisement issued by the respondent no.2-Corporation for inviting application to the posts of Driver-cum-Conductor. The respondent – Corporation advertised around 8000 posts. It is submitted that the recruitment process is already commenced. Around 20000 candidates got themselves qualified in written test and driving test is going on from today.*
- 2. Learned counsel appearing for the petitioner raises, inter alia, following issues :*
 - (a) The post of Driver-cum-Conductor is not covered under the provisions of Motor Vehicles Act, 1988, nor under any statutory Rules or Regulations. The State has not approved the decision of the Board.*
 - (b) Creation of such posts would endanger safety of the passenger in case the Bus is driven by driver alone*

without there being any conductor.

(c) The Motor Vehicles Act, 1988 defines “Driver” and “Conductor” independently. Their duties are separately defined and it would not be appropriate to club their duties and expect driver to discharge duties of conductor while driving the Bus.

- 3. On behalf of the respondent-Corporation, affidavit-in-reply is filed. Learned counsel for the respondent-Corporation, on instructions, submits that on specific routes the Corporation desires to utilize services of these persons who would be appointed as Driver-cum-Conductor. The Corporation expects reduction in expenses on appointment of such persons. Their services will be utilized on routes where conductor's role is minimal or the presence of conductor is not at all required. Counsel has given one such example of Shivneri Bus services.*
- 4. The learned AGP has presented an note signed by the Desk Officer, in support of the decision taken by the Corporation, dated 6/9/2017, which is taken on record and marked “X” for identification. So far the State has preferred not to file any reply in spite of order passed on 14/7/2017.*
- 5. We direct the Principal Secretary, Transport Department, Mantralaya, Mumbai to call for a meeting of responsible officers, including members of Administration of the Corporation on the issue involved. The State shall file a short reply on the issue. Liberty to the Corporation to file additional reply.*
- 6. From the material placed on record and submissions advanced, it is not clear as to how the Corporation would be going to utilize the services of Driver-cum-Conductor. The issue as to whether such posts could be created and recruitment process could be initiated is also raised in this petition. The respondents have raised*

the issue of locus of the petitioner. Being a Working President of the Petitioner-Union, he himself has not joined duties. The petition is affirmed by Mr. Mukesh Tigote, working as President of the petitioner, who claims to be a Trade Union registered under the Trade Unions Act, 1926 but is unrecognized Union. The Counsel for the Corporation submits that Mr. Mukesh Tigote has not resumed his duties after his deputation period was over. Learned counsel for the petitioner to take instructions on this issue.

- 7. Learned counsel appearing for the Corporation submits that no interim order needs to be passed at his stage as driving test of around 100 persons on daily basis has started from today itself. As there are 20000 candidates, who would undergo driving test, it may take 3 to 4 months for completing such test and thereafter their written and practical marks would be clubbed and a final merit list would be prepared. The selected candidates thereafter will be undergoing further process, including submission of medical fitness certificate etc.*
- 8. Accepting the statement made by the learned Counsel appearing for the Corporation, we grant further time and adjourn the hearing of this petition.*
- 9. On request, stand over to 25/9/2017 at 3.00 p.m.*
- 10. Learned Government Pleader to address the Court on the next date.”*

24. In pursuance of this order and the observations therein, the State's affidavit-in-reply has been filed.

25. The State Government, apart from adopting the statements in the affidavit of MSRTC, directly concerned with the policy matter, stated on oath that it has examined this policy minutely. A meeting was convened which was presided over by the Principal Secretary (Transport) on 18th September, 2017. The Government officials as also the Vice Chairman and Managing Director of MSRTC and the Chief Personnel Officer of MSRTC were present and this Court's views were taken into consideration. The MSRTC apprised the Government that there is a definite intent in taking this policy decision. It is not that the Maharashtra State is the only State which is adopting such a policy. The States of Telangana and Karnataka have also advertised and recruited persons for such post, namely, Driver-cum-Conductor. It has not been pointed out that the passenger safety is compromised necessarily because of such an advertisement or recruitment. Further, the relevant provisions of the MV Act were noticed at such a meeting and the deponent of the State's affidavit says that they contain no express bar or prohibition against the recruitment of Driver-cum-Conductor. A copy of the minutes of this meeting has been annexed to the affidavit.

26. In paragraph nos. 7 and 8 of this affidavit this is what is stated:-

- “7. I say that, minutes of the said meeting dated 18/09/2017 were prepared and a copy whereof is annexed herewith and marked as **Exhibit-C**, for ready reference. It is found that, the number of passengers per employee is less in Maharashtra as compared to neighbouring States like Karnataka and Andhra-Pradesh and also the number of employees per Vehicle is higher in the State of Maharashtra compared to that of Karnataka and Andhra-Pradesh. Also, the strength of drivers and conductors in total employee strength is around 67% in the Corporation and expenditure on staff being 40 to 42% of the entire expenditure incurred by the Corporation, which is running in losses, the decision to create such a post of Driver-cum-Conductor is justified in the interest of financial health of the Corporation to reduce its operational costs and losses. The Corporation has further assured that services of such persons would be utilized only on schedules with limited number of stops, Long distance i.e. above 250 Kms, Medium Long Distance i.e. 150-250 Kms, Air-conditioned Buses like Shivneri/ Shivshaahi, Hirkani (Semi-luxury), Raatrani (Night-Service) and Midi-buses plying at hill stations.*
- 8. The Respondents submit that a perusal of the aims and objects of the Motor Vehicles Act clearly shows that the law has been amended from time to time in order to keep up with the changing times, the changes in road transport technology, pattern of passenger and freight movements, development of the road movements, development of road network in the country etc. the idea being to have an act which should be workable in the fast changing world. It is therefore submitted that the Motor Vehicles Act, is an inclusive act and provides for incorporation of changes*

according to changing times. In the backdrop of the aforesaid, it is submitted that the State has the power to recruit candidates to the post of driver cum conductor and there is no express bar in respect of the same. A perusal of Section 124 of the Motor Vehicles Act, clearly shows that the same provides that after a passenger enters in a stage carrier he / she will pay his fare to the conductor or the driver who performs the functions of a conductor and obtain from such driver or conductor, as the case may be a ticket for his journey. This itself clearly shows that the parliament also took into account that given the changing circumstances, the possibility of appointment for driver cum conductor could not be ruled out. Similar provision has also been made in Section 178 of the Motor Vehicles Act which pertains to penalty for travelling without pass or ticket or in case of dereliction of duty on the part of the conductor and refusal to ply contract carriage. Sub Section (2) of Section 178 provides for a fine in case the conductor of a stage carriage, or the driver of a stage carriage performing functions of a conductor in such a stage carriage fails to perform any of the duties assigned to him. It is therefore clear that there is no specific bar against the Respondents from appointment of driver cum conductor. Hence, the present Writ Petition is not maintainable and the same deserves to be dismissed by this Hon'ble Court.”

27. For above reasons, the State would submit that the Writ Petition has no merit and must be dismissed.

28. This matter was placed before us yesterday and Ms. Chopda appearing for the petitioner tendered a rejoinder affidavit of the petitioner. In the rejoinder affidavit, apart from meeting the preliminary objection and particularly on the *locus* of the

petitioner, it is alleged that there is an incorrect statement made equally by the State. The document which was tendered to this Court and which contains a statement that like Andhra-Pradesh and Karnataka, western countries have the practice of only Driver-cum-Conductor, does not appear to be accurate. The respondent MSRTC would require sanction/permission from the State for this exercise is creating of a post. This is a new post and which could not have been created without specific approval of the Government. In that regard, Section 34 of the RTC Act has been relied upon and equally Section 45 thereof. It is claimed that as per general service rules and regulations, one Driver and one Conductor is required and appointed on each bus to ply them. There are different duty lists and the duties have to be performed in compliance with various provisions and Rules of the MV Act. Thus, creation of a singular post and recruiting employees on such post for performing both duties is deviation from the normal service regulations and that would require express permission from the State Government. The mandate of the MV Act and Rules therefore, would have to be followed.

29. Then it is alleged that inquiries were made with the counterparts in the States of Karnataka, Telangana and Andhra-Pradesh and it has been informed that the Andhra-Pradesh State Road Transport Corporation has not created the post of Driver-cum-Conductor till date and the proposal of the Telangana State Road Transport Corporation for creation of such post is pending approval of the State Government. The Petitioner was further informed that on long distance routes the practice followed by these Corporations is that if a distance which is to be covered is 300 kms. or more, then, two Drivers are deputed. The practice of deploying additional Driver has been justified and it is submitted that even the bus fare of the MSRTC buses results in depletion of the revenue and creating a financial crunch. In the circumstances, it is incorrect to state that because there are other Road Transport Corporations following similar practice that would justify the policy framed by the MSRTC.

30. It is on the above material that we have heard the arguments of the counsel.

31. Ms. Chopda appearing for the petitioner would submit that the Petition does not question the wisdom of a policy decision. It questions the policy decision because it is clearly arbitrary, irrational and discriminatory. The policy cannot be termed as legal and valid as well. According to her, there is no question of an express prohibition or bar enacted in a statute and in the matters of present nature. The petitioner Union is highlighting not the interest and personal to the employees of the MSRTC. It is highlighting the concern of such employees who are presently working with the Corporation as well as those who would be newly joining it. It is contended that bearing in mind the population of the State of Maharashtra, the situation is peculiar and not comparable with the other States. The Corporation has to ply huge number of buses to carry the passenger load. Since there is a competition with private bus operators on certain routes, the Corporation has decided to purchase new vehicles and which are modern and technologically advanced. Such vehicles are driven with great speed on the busy routes in the State. The Driver is under continuous tension and pressure. If the driver driving such vehicle is expected also to act as Conductor, that would result in

severe adverse consequences on the safety and convenience of the passengers. Apart from the fact that it would be a dual duty, the Driver will not be able to concentrate on his essential function. It would be expected by the passengers that he should assist them in emergencies and other matters where they require his assistance for either alighting or boarding the vehicle. The Driver is not expected to get down at every stoppage or halt and assist the passengers by either issuing ticket or checking it. In such circumstances, it is too much to expect from a Driver and the ordinary and normal practice could not have been deviated in such a hasty fashion. She has submitted that even when such policy decisions are taken, there is a wide consultation. It is not that there has to be necessarily a consensus or concurrence but the existing employees, the Unions and representative bodies ought to have been consulted. Similarly, there is no indication that the experts in the field have been consulted by the MSRTC. Merely because such a policy as is framed is implemented and has been working does not mean that the same is beyond any questioning, including by a Court of law. Once such matters and serious in nature have been raised for consideration of this Court, then, it is

contended that the Petition be entertained and necessary orders and directions be issued.

32. On the other hand, Mr. Samant and Mr. Deshmukh the advocates appearing for the State as also the MSRTC would submit that the petitioner is questioning a policy decision. That decision has already been taken. There is not a single averment in the Petition that the policy decision contravenes any particular statutory provision or any Constitutional Provision. A general and vague statement is made in the grounds of the Petition that such a policy, as is enunciated, framed and under implementation, contravenes the provisions of the RTC Act. Our attention has been invited to the RTC Act to submit that the Act does not contemplate that while fulfilling the duties, and particularly in Section 18, and exercising powers under Section 19, the Corporation is, in any way, fettered from recruiting such persons as are required. Section 34 falls in Chapter V titled as 'Miscellaneous'. Section 34 refers to the general powers of the State Government to give directions. The State Government may, in its discretion, after consultation with a Corporation established by such Government, give to the

Corporation (MSRTC) general instructions to be followed by the Corporation and such instructions may include directions relating to the recruitment, conditions of service and training of its employees, wages to be paid to the employees, reserves to be maintained by it and disposal of its profits or stocks. Sub-section (2) of Section 34 says that in the exercise of its powers and performance of its duties under the RTC Act, the Corporation shall not depart from any general instructions issued under Sub-section (1) except with the previous permission of the State Government. Learned counsel for the MSRTC would submit that no direction and particularly relating to the recruitment, conditions of service issued by the State have been brought on record. Similarly, which general instruction has been issued in exercise of powers conferred by Sub-section (1) and which is departed from has not been brought on record. Secondly, it is argued that all Directors and all officers and employees of the Corporation, whether appointed by the State Government or corporate, shall be deemed, when acting or purporting to act in pursuance of any of the provisions of the Act or of any law, as public servants, but by Section 44, it is the State Government which can notify in the

Official Gazette the Rules to give effect to the provisions of the RTC Act. Sub-section (2) of Section 44 sets out the matters in relation to which the Rules can be framed. By Section 45, there is a power conferred in the Corporation to make Regulations. The Regulations, not inconsistent with the RTC Act and the Rules issued thereunder, for the administration of the affairs of the Corporation, can always be made. It is not as if there is no Regulation or any guiding instruction, or if there is one, that is violated or breached. There is no such averment in the Petition, much less with reference to any specific Regulation and Rule or statutory provision. Hence, the first contention is that the policy does not violate the RTC Act. Secondly, the MV Act and the Rules of 1989 framed thereunder have also not been violated. There is a reference made to Chapter VIII of the MV Act and particularly the titled thereof "Control of Traffic". It is stated that, in that Chapter, Section 124 appears which says that no person shall enter or remain in any stage carriage for the purposes of travelling therein unless he has with him a proper pass or ticket. The proviso to this, according to the MSRTC's advocate, supports his argument that there is no prohibition in any law so as to disable the MSRTC to

make appointment of a single person or direct its Drivers to perform a dual duty in certain situation.

33. Besides this lack of prohibition, the MSRTC has not been informed of a single incident endangering the safety of travelling passengers or causing inconvenience to them of such magnitude as would force it to withdraw its policy decision. There is not a single incident brought to the notice of this Court in the entire Petition, including the rejoinder, of this nature. Rather it is submitted that the decision to appoint a Driver-cum-Conductor on specified routes in certain category of vehicles is under implementation. For a long time it has been implemented in certain buses which are operative under the name “Shivneri” and certain other buses which are plying on long routes. It is in these circumstances the MSRTC would submit that the Writ Petition is lacking in *bona fides* and must be dismissed.

34. The State's advocate has also adopted these contentions.

35. For properly appreciating these contentions, we must make a reference to the circular preceding this advertisement. The

annexures “A” and “B” to the Petition need not be set out in details for they pertain to the duties of the Drivers and Conductors. None disputes that there are specific duties to be performed, and which may be distinct in nature, by a Driver and a Conductor.

36. However, the standing order no. 1215 dated 10th July, 2015 has been issued by the MSRTC on the subject of recruitment to the post of Driver-cum-Conductor (Junior). That is a post which has been added to the Schedules and appearing in the MSRTC (Recruitment, Promotion, Seniority and Re-designation) Manual. This is a general policy and referable to the Regulations and the Rules. The said order refers to the Board decision dated 28th February, 2014 whereby the Corporation was authorized by the Board to create a post of Driver-cum-Conductor (Junior). That is in pursuance of a policy to operate specific number of vehicles and buses without a Conductor. The terms and conditions based on which such a recruitment is permitted are then set out. The general standing order no. 503 and the Schedule thereunder is then referred and what the document carries is the name and

designation of the post, the pay-scale, the manner of recruitment and the eligibility criteria. From a perusal of these documents, we do not find that the MSRTC was, in any manner, acting contrary to the RTC Act.

37. The RTC Act is an Act to provide for the incorporation and regulation of Road Transport Corporations. The creation of the statutory Transport Corporation was contemplated and for that purpose, a comprehensive legislation was enacted. Therefore, this Act has been enacted and it is divided into six chapters. As far as Chapter I is concerned, it contains preliminary provisions, including definitions. Chapter II contains Sections 3 to 17 enabling establishment of Road Transport Corporations in the States, their incorporation, management through the Board of Directors, the disqualification for being chosen as, or for being a Director of a Corporation, the resignation of office of the Chairman or a Director, their removal, filling up of vacancies, temporary association of persons with a Board for particular purposes, meetings of Board, power to appoint committees and delegate functions and authenticate orders and other instruments. Section

14 in this Chapter empowers the Officers and servants of the Corporation to appoint, in addition to its having a Managing Director, a Chief Accounts Officer and a financial Adviser appointed by the State Government, a Secretary and such other officers and employees as it considers necessary for the efficient performance of its functions. Sub-section (3) of Section 14 sets out that the conditions of appointment and service and scales of pay of the officers and employees of a Corporation shall, as respects the officers and employees enumerated in Clause (b) of Sub-section (3) of Section 14, be determined by Regulations made under the RTC Act. This is subject to the provisions of Section 34. The other provisions in Chapter II therefore, need not be referred and equally, Chapter II-A. The powers and duties of Corporation are then to be found in Chapter III and particularly in Section 18. The general duty of a Corporation is to exercise its powers as progressively as to provide or secure or promote the provision of an efficient, adequate, economical and properly co-ordinated system of road transport services in the State or part of the State for which it is established and in any extended area. The proviso to Section 18 need not be referred. By Section 19, certain powers

are conferred in the Corporation and which are subject to the provisions of RTC Act. The Corporation shall have power *inter alia* to operate road transport services in the State and in the extended area, to provide for any ancillary service, to provide for its employees suitable conditions of service, including fair wages, establishment of provident fund, living accommodation, places for rest and recreation and other amenities. It shall also possess a power to do anything for the purpose of advancing the skill of persons employed or the efficiency of the equipment or of the manner in which that equipment is operated, including the provision by the Corporation, and the assistance by the Corporation to others for the provision of facilities for training, education and research. Thus, it can prepare schemes and it can also implement them to facilitate the proper carrying on of its business. In furtherance of such a comprehensive power, the Corporation vide the other provisions of the Act and contained in Chapter V, has power to make Regulations. The Regulations can take care of the matters, particularly in Sub-section (2) of Section 45 and that would include the conditions of appointment and service and the scales of pay of officers and (other employees of

the Corporation other than the Managing Director, the Chief Accounts Officer and the Financial Adviser). Thus, with the previous sanction of the State Government and by notification in the Official Gazette, the power to make Regulations can be exercised not inconsistent with the RTC Act and the Rules thereunder, for the administration of the affairs of the Corporation.

38. We have not been shown any Regulation presently in force and which would disable the MSRTC from making a policy and particularly issuing a circular which is in the nature of annexure “C” to the Petition. Meaning thereby, creation of the post of Driver-cum-Conductor (Junior) is not shown to be contrary to any existing Regulation, Rule or Provision of the RTC Act. We have not been shown, as rightly contended by the advocate for the MSRTC, any direction issued by the State Government in terms of Sub-section (1) of Section 34 on the point. There is, thus, no violation of the provisions of the RTC Act. We would find rather, from the materials placed before us and the uncontroverted statements on affidavit of both, the MSRTC and the State, a conscious decision

taken with due application of mind and to improve the passenger service and to carry the passengers in the existing vehicles and the newly purchased ones efficiently and smoothly.

39. If on long distance routes the passengers are already issued tickets at the entry point and the tickets are up to the last bus halt and destination, then, for issuance of tickets at least, the Corporation deemed it fit to do away with the services of a Conductor. Secondly, the buses being modern and equipped with such technology as would not be requiring any intervention by any other employee, that it decided to do away with the services of a Conductor. The Driver-cum-Conductor means driving the vehicle and whenever and wherever required, assisting the passengers or take care of the collection of fares and ensure that only those who possess valid tickets board the buses. These are the minimal duties that are expected to be performed by the Driver-cum-Conductor and he must concentrate, therefore, on driving the vehicle and carry passengers safely to their destination. The Corporation has not done away with the services of Conductors as a whole. The Corporation has only chosen

specific routes and enunciated them with clarity. All the more, there are undertakings given by the Corporation and equally the State Government on affidavit. Each of these statements, which we have reproduced above, are accepted as undertakings given to this Court. We have no hesitation, therefore, in concluding that the MSRTC and the State has not acted contrary to the provisions of the RTC Act, 1950. Thus, a policy decision consistent with the duties entrusted to the Corporation has been taken.

40. Then, what we have on record is the advertisement, copy of which is at annexure “D”. From a perusal thereof, we find that the advertisement itself indicates the Constitutional reservations and the reservations for women. In fact, the advertisement indicates the number of posts created in the Divisions throughout the State and thereafter, the manner of recruitment, the eligibility criteria, the educational qualifications, age and how the recruitment would take place. A written test and a driving test is also stipulated so as to take care of the convenience and safety of the passengers. Thus, it is not the case of the petitioner that the advertisement, in any way, contravenes the provisions of law or contains such terms and

conditions or stipulations which would be contrary to the interest of the passengers or endangering their safety and convenience. The representation, copy of which is annexed at annexure “E”, preceding the Petition would indicate that the petitioner Union may or may not have any *locus* to complain, but surely it has not brought to the notice of the Corporation any instance or example of the passengers being inconvenienced or their safety being compromised. It is only an apprehension of the petitioner that having a Driver-cum-Conductor may increase the pressure and tension on a single employee, resulting in lapse of concentration and accidents because of the same. However, after deployment of Driver-cum-Conductor (Junior) on certain specific routes, such as “Shivneri” from the date of the policy decision and in furtherance of the earlier advertisement, not a single major incident having taken place or an mishap of that nature has been brought with specific details.

41. We therefore, cannot, on some general statements and vague assertions, interfere with a policy decision. During the course of arguments, Ms. Chopda has referred to certain

provisions of the Motor Vehicles Act, 1988 and the Rules framed thereunder.

42. Once again, that statute of the Parliament is to consolidate and amend the law relating to motor vehicles. Thus, the law which was pre-existing, has been extensively amended over a passage of time. Now, the Motor Vehicles Act, 1988 is in force. The term “public service vehicle” has been defined in Section 2 Clause (35). We have also a definition of the term 'State transport undertaking' appearing in Section 2 Clause (42). We also have a definition of the term 'stage carriage' appearing in Section 2 Clause (40). There are then several chapters in the statute containing extensive provisions on licensing of drivers of motor vehicles, licensing of Conductors of stage carriages, registration of motor vehicles, control of transport vehicles, special provisions relating to State transport undertakings found in Chapter VI, construction, equipment and maintenance of motor vehicles, control of traffic and motor vehicles temporarily leaving or visiting India. Then, we have chapters so as to deal with insurance of motor vehicles against third party risks, no fault liability in certain

cases and setting up of claims tribunals so as to award just compensation to the victims of accidents/their dependents.

43. All that we are able to infer from these provisions is that there is, in this law, a chapter dealing with licensing of Conductors of stage carriages. There is therefore, a post like Conductor contemplated and that could not be necessarily equated with a Driver. However, something more would be required to interfere with a policy decision. In that regard, our attention has been invited to certain provisions and which are to be found in Chapter VIII titled as "Control of traffic". There are several provisions which would distinguish the limits of speed, limits of weight and limitations on use, power to weigh the vehicles, power to restrict use of vehicles, erect traffic signs, parking places and halting stations, driving regulations and certain duties, namely, to obey traffic signs. There is also a provision which enacts a prohibition against travelling without pass or ticket. Section 124 of the MV Act reads thus:-

“124. Prohibition against travelling without pass or ticket.-

No person shall enter or remain in any stage carriage for the purposes of travelling therein unless he has with him a proper pass or ticket:

Provided that where arrangements for the supply of tickets are made in the stage carriage by which a person has to travel, a person may enter such stage carriage but as soon as may be after his entry therein, he shall make the payment of his fare to the conductor or the driver who performs the functions of a conductor and obtain from such conductor or driver, as the case may be, a ticket for his journey.

Explanation.- In this section,-

(a) “pass” means a duty privilege or courtesy pass entitling the person to whom it is given to travel in a stage carriage gratuitously and includes a pass issued on payment for travel in a stage carriage for the period specified therein;

(b) “ticket” includes a single ticket, a return ticket or a season ticket.”

44. A bare perusal of the section and particularly of the proviso would indicate that the Motor Vehicles Act, 1988 does not rule out a person Driving a State Transport vehicle and at the same time performing the functions of a Conductor. Therefore, these provisions enable boarding of a stage carriage or remaining therein with a proper pass or ticket. That ticket has to be purchased by paying fare to the Conductor or to the Driver who

performs functions of a Conductor. Therefore, the duty to provide a ticket after boarding or entering a bus is contemplated. Then there are provisions for safety measures for drivers and pillion riders, wearing of protective headgear, duty to produce licence and certificate of registration and by Section 131, the Driver has to perform the duty to take certain precautions at unguarded railway crossings. He has to stop the vehicle in certain cases and also to provide information. Besides this, we have not been shown any provision which would prohibit the MSRTC in this Case from issuing a circular of the nature issued or from making the impugned policy.

45. We have thus found that there is no substance in the contentions and which have been broadly summarized in this Court's earlier order. Thus, the post of Driver-cum-Conductor is not covered under the provisions of the MV Act, nor under any statutory Rules or Regulations, was the primary contention. We have scanned the provisions of the RTC Act as also the MV Act with the assistance of the counsel appearing for the parties. We have not been shown any provision which does not contemplate

or expressly rules out such a post as is advertised, namely, “Driver-cum-Conductor”. We have also not been shown any prohibition in either statute. Further, argument that the State Government has not approved the decision of the Board is also not sound in law. We have found that such an argument to be legally unsound. It cannot be accepted in the light of the provisions of the RTC Act or the Rules or Regulations framed thereunder. There is nothing therein that would require prior permission of the State Government to create a post as is advertised through the impugned circular and advertisement. There are powers conferred in the Corporation to make Regulations and once these Regulations have been made in exercise of the power conferred by Section 45 of the RTC Act and in the manner set out therein, then, for creation of specific posts and advertising them so also making recruitment thereto, the Corporation is not required to approach the Government again and again, nor is it required to seek a prior approval or permission of the State Government to fill up the posts created by the MSRTC. The second argument that creation of such post would endanger safety of the passengers is not supported by any material. There is no illustration or instance

cited of any inconvenience or accident which would endanger safety of the passengers. On the other hand, the system and policy has been operating for some time. The Corporation has denied the allegations and placed on record not only the broad features but details of the policy. It has stated that the policy is not going to operate throughout the State. On our specific query, the advocate for the MSRTC, on taking instructions, has handed over a clarification of the policy and which would reveal that the policy has been implemented in Pune, Nagpur, Nashik and Aurangabad Division presently. The routes are also set out and for instance, a bus plying from Pune to Nashik will have a Driver-cum-Conductor. It is further stated on instructions that this policy is not static nor incapable of being reviewed, reformed, altered. A periodical assessment and review will be taken after every six months and if necessary, changes and alterations will be made. In the forefront would be the safety and convenience of passengers. Thereafter, it would be ensured that there is no extra burden, pressure or force on the employee such as a Driver. The policy as is being implemented presently and the same will not be implemented during night travel even on the routes which have been

enunciated in the clarification placed on record, takes care of the Petitioner's apprehension. We take this clarification on record and mark it as "X-1" for identification. The statements made in this document are also accepted as undertakings to this Court.

46. We do not find, therefore, that there is any compromise with the safety and convenience of the passengers.

47. We have not been shown any provision, apart from the definition of the term 'Driver-cum-Conductor' and the classification of Conductors/Drivers in the MV Act, which carves out a prohibition against creation of a single post of Driver-cum-Conductor and plying a bus by him exclusively. Therefore, even the contention that there being separate duties defined for both, the Driver and the Conductor, in the MV Act, clubbing the same would contravene the provisions of the Act, has no merit. There has to be an express prohibition or a prohibition which could be inferred from a reading of all the provisions of the MV Act harmoniously and together. Additionally, the statements/undertakings to this Court protect the interest of the stakeholders.

In night travel buses there will be additional hand (a Driver) so that passengers safety is not compromised.

48. In the circumstances, this is a case where the principles laid down in the decision of the Hon'ble Supreme Court in the case of ***Krishnan Kakkanth vs Government of Kerala and others*** reported in ***AIR 1997 SC 128*** would squarely apply. In paragraph 34, the Hon'ble Supreme Court has made the following pertinent observations:-

“34. To ascertain unreasonableness and arbitrariness in the context of Article 14 of the Constitution, it is not necessary to enter upon any exercise for finding out the wisdom in the policy decision of the State Government. It is immaterial if a better or more comprehensive policy decision could have been taken. It is equally immaterial if it can be demonstrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken. Unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down. It should be borne in mind that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, Court should avoid “embarking or uncharted ocean of public policy.””

49. These are therefore, the guiding and binding principles. The Hon'ble Supreme Court holds that unless the policy of the Government is unconstitutional, contrary to the statutory provisions, arbitrary, irrational or an abuse of power, this Court will not interfere with it. The Government policy decision also has to be capricious and discriminatory and only then can it be said to be violative of the mandate of Article 14 of the Constitution of India.

50. Having tested the impugned policy decision on this touchstone, we do not find that a serious infirmity therein warranting our interference in writ jurisdiction, all the more, when we have obtained clarifications and undertakings on the policy and which would have to be abided by during the course of its implementation and enforcement. We have ensured that these undertakings are to the Court. In the event of deliberate breach or violation thereof or non-adherence thereto, in addition to inviting consequences in contempt, this Court would then not hesitate to take such steps as are permissible in law. Once we have ensured a overall protection of the vital interest of passengers on these lines,

then all the more, we are disinclined to interfere in our writ jurisdiction. Rule is therefore discharged. The Petition is dismissed. There will be no order as to costs.

51. In the passing, we may clarify that since, on merits, we do not find any legal or constitutional infirmity in the policy decision, we have not examined the legality and validity of the objection to the maintainability of the Petition at the instance of a Union. That does not mean that this objection is without any merit. All the more, when anybody approaching this Court and seeking a writ of mandamus, must prove a pre-established or pre-existing legal right which can be enforced by such a writ. In absence of such right, the writ cannot be issued. However, in the facts and circumstances of the present case, we have gone by the broader challenge and considered it. All contentions, therefore, on the preliminary objections are kept open for decision in an appropriate case.

(SMT. BHARATI H. DANGRE, J.)

(S. C. DHARMADHIKARI, J.)