

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO. 35 OF 2017

Dominica Dabreo & Anr.	.. Petitioners
versus	
State of Maharashtra & Ors.	.. Respondents

Mr. Ravindra Lokhande for the Petitioners.
Mr. P. G. Sawant – AGP for State – Respondent No. 1.
Mr. Yashodeep Deshmukh for Respondent Nos. 2 and 3.
Mr. A. G. Damle – Senior Advocate with Mr. Rajesh Datar for Respondent Nos. 4 and 5.

**CORAM: DR. MANJULA CHELLUR, CJ. &
M.S. SONAK, J.**

DATE : 07 NOVEMBER 2017

P.C.:

1] Heard Mr. Lokhande for the petitioner. Mr. Sawant, AGP for the State, Mr. Deshmukh, for respondent nos. 2 and 3 and Mr. Damle, learned Senior Advocate with Mr. Datar for respondent nos. 4 and 5.

2] This public interest litigation seeks relief of restoration of bus service by the Maharashtra State Road Transport Corporation (MSRTC) upon 25 routes covering remote villages at Vasai (East), Palghar, Mumbai. The petitioner no. 1 is a Teacher and Ex Chair Person of Bassein Catholic Co-op. Bank Ltd. The petitioner no. 2 is a student studying in Std. VII, also resident of Bhuigaon, Vasai (East). The petitioners state that the bus routes which were operational for the last over 50 years have since been discontinued by the MSRTC for no valid reasons. They submit that such discontinuance will very seriously affect

the residents of Rangaon, Girji, Buigaon, Kalamb, Rajodi, Nala, Gaas and Umrade, Nagle, Shilottar, Kolande and other villages from Vasai East. The petitioner no. 2 submits that he along with almost 70 other students may have to walk for almost 6 kms. in order to access St. Anthony Convent High School, Koliwada, Vasai, where they study. The petitioners submit that there is no alternate public transport in the form of buses, autos or taxis at Kalamb, Rajodi, Rangaon of Vasai East. They point out that most of these villages have a significant Adivasi population as well. On such basis, the petitioners seek directions to MSRTC to restore bus operations on 25 routes to the villages like Bhuigaon, Girji, Rangaon, Kalam, Rajodi, Nagle, Shilottar, Kolande and other villages from Vasai East.

3] On 24th March 2017, we made the following order :

“1. Having regard to the immediate hardship and inconvenience, especially to the students and the population living in the villages concerned, we direct the respondents-authorities to secure instructions and place on record in this regard by next date of hearing.

2. Petitioners' Counsel is permitted to serve the respondent-Municipal Corporation intimating the next date of hearing.

3. Stand over to 29 March 2017.”

4] The respondent nos. 2 and 3 filed affidavit in reply, in which, they state that between 2012 to 2014, the Vasai Virar City Municipal Corporation (City Corporation) undertook to provide transportation facility within 10 to 20 kms. from the Municipal limits spread over around 80 routes / schedules. As per the request of the City Corporation, MSRTC, in a phased manner, commenced withdrawal of their services upon such routes / schedules so that, both MSRTC as well as the Corporation can

provide effective service, without any wastages arising out of overlap. The affidavit also points out that the City Corporation is entrusted only in retaining some profit making 52 routes but not some 21 routes, where no profits may be possible. Therefore, MSRTC has continued with the 21 routes whilst simultaneously persuading City Corporation to take over the said routes. MSRTC furnished a deadline upto 1st April 2017 to the City Corporation to take over all the routes failing which, MSRTC, will be constrained to withdraw its operations on 21 routes. The affidavit also pointed out that the City Corporation was operating on 52 routes with the assistance of private service provider.

5] Upon taking into consideration the statements in the affidavit filed on behalf of respondent nos. 2 and 3, we made an order on 31st March 2017 directing MSRTC to continue operations on 21 routes referred to in Exhibit 'A' until the next date of hearing. We also directed the State Government to intervene in the matter and persuade the City Corporation to realise its obligations to the members of the public, in terms of their agreement to take over all the 80 routes. It was made clear that in case, there is any unreasonable resistance on the part of the City Corporation in complying with the terms of its agreement subject to which the City Corporation was permitted to operate 80 routes, this Court, may have to consider making appropriate orders, including orders that administration of the City Corporation be taken over by the State Government consistent with the statutory provisions in this regard.

6] On 20th April 2017 we were informed that the City Corporation of MSRTC have resolved the issues between themselves in so far as 21 routes in question are concerned. Therefore, on 20th April 2017, we made the following order:

“1. Both the respondents-Corporations now seem to have reconciled with the problem of public so far as twenty one routes in question. Though the Maharashtra State Road Transport Corporation (MSRTC) was running twenty one routes in question, they did not seriously pursue the matter with the Municipal Corporation who undertook to run all the eighty routes but excluded running twenty one routes for the last three years. Now they are coming with the space problem to park the buses which run on twenty one routes. How they resolve the problem between the respondents inter se must be resolved without leaving the public in lurch. If there is shortage of space, they can work out whether the MSRTC can lend their spaces for parking the buses, otherwise the MSRTC can choose which routes they intend to run out of eighty routes.

2. We direct the respondents to place on record undertakings by way of affidavits by next date of hearing, how they intend to resolve the problem of public so far as twenty one routes are concerned.

3. Stand over to 4 May 2017.”

7] On 4th May 2017 and 21st June 2017 affidavits cum undertaking were filed on behalf of MSRTC and City Corporation indicating the manner in which the issue has been resolved.

8] Mr. Aziz Shaikh, the Deputy Commissioner-cum-Transport Manager, of the City Corporation, in the affidavit cum undertaking dated 3rd May 2017 has stated as follows :

“4. I say that since Respondent nos. 2 and 3 have not finalized offering of space within the ST Stands / Depots for parking of the buses of the Corporation as stated in the affidavit in reply and since Respondent Nos. 2 & 3 have declared to withdraw bus service from the routes which are subject matter of the PIL, I undertake on behalf of the Corporation that the Corporation shall make all possible endeavour to provide City bus service through its

Transport undertaking on the said 21 routes subject matter of PIL as far as possible within a period of Twelve Weeks from today by making its own arrangement for parking of buses on the aforesaid 21 routes for boarding and alighting of the passengers. I say that taking into the account the traffic congestion near concerned Railway Stations, the Corporation may not be able to provide bus terminals for boarding or alighting of passengers adjacent to Railway Stations, however, the Corporation would provide Bus Stops at the nearest space available at the Railway Station. I therefore pray that Respondent Nos. 2 & 3 be directed to provide Bus service on the routes subject matter of the PIL for the aforesaid period of Twelve Weeks so as to avoid inconvenience to the public at large."

9] On 31st July 2017, Mr. Aziz Shaikh, Deputy Municipal Commissioner-cum-Transport Manager of the City Corporation filed an additional affidavit. The contents of paragraphs 1, 2 and 3 of the said affidavit read as follows:

"1. I say that in pursuance of Order dated 20th April, 2017, I have filed Affidavit cum Undertaking dated 3rd May, 2017 thereby pointing out all the true and correct facts and also giving an Undertaking on behalf of Municipal Corporation that the Municipal Corporation shall make all possible endeavour to provide City Bus Service through its Transport Undertaking on the 21 routes subject matter of PIL as far as possible within a period of 12 weeks from date by making its own arrangement for parking of buses for boarding and alighting of passengers. I have also stated that taking into account traffic congestion near concerned Railway Stations, the Municipal Corporation may not be able to provide Bus Terminals for boarding and alighting of passengers adjacent to Railway Stations, however, the Municipal Corporation would provide Bus Stops at the nearest space available with the Municipal Corporation at such Railway Stations.

2. I say that Respondent Nos. 4 & 5 have been served with a copy of Affidavit cum Undertaking dated 22nd June, 2017 filed on behalf of Respondent Nos. 2 & 3. I deny the contents of the said Affidavit cum Undertaking in toto. I reserve my right to deal with contents of the said Affidavit cum Undertaking at appropriate time.

3. *I say that in pursuance of the Affidavit cum Undertaking dated 3rd May, 2017 filed by Respondent Nos. 4 & 5, Respondent Nos. 4 & 5 shall make arrangement of providing City Bus Service on the 21 routes till 28th August 2017 and will physically start City Bus Service on the 21 routes, subject matter of the above PIL with effect from 01st September, 2017."*

10] Mr. Sanjay Herwade, Additional Municipal Commissioner of the City Corporation has filed yet another affidavit on 5th October 2017, in which, he pointed out certain difficulties at the ground level.

11] Mr. Ajit Gaikwad, has filed affidavit on behalf of MSRTC, which is quite important for the issues raised in the present public interest litigation. Paragraphs 2, 3 and 4 of the said affidavit, read as follows :

"2) I humbly state that, there is a clear, unequivocal and unconditional undertaking furnished by the Respondent No. 5 Municipal Corporation in its Affidavit dated 4/5/2017 filed by the Deputy Commissioner cum Transport Manager, to the effect that the Municipal Corporation undertakes to start, within a period of 12 weeks, its bus service on the 21 routes which are subject matter of present PIL. I state that, this Hon'ble Court may kindly consider to bind the Municipal Corporation to its said statement and implement the same within the specified time and consequentially free the Respondent Nos. 2 and 3 from running its bus service on said routes which it continues to do more particularly in view of the ad-interim Order dated 31/03/2017, whereby, these Respondents were directed not to discontinue its existing bus service till further Orders of this Hon'ble Court in present proceedings.

3) I say that, in public interest so as to cause least inconvenience to the public at large and with a view to be of some help to the City Corporation to take the additional load of providing bus service on the 21 routes which are subject matter of present PIL, for the time being, the MSRTC is ready and willing to undertake running of bus service on 21 alternate routes / schedules as listed in the Exhibit 1 annexed hereto. On the routes

mentioned in the said Exhibit, the MSRTC is ready and willing to run 21 bus schedules.

4) In view of the above undertaking being furnished by the Respondent Nos. 2 and 3 herein and further in view of the Undertaking already given by the Respondent No. 5 Municipal Corporation, it is humbly submitted that, the concern of the petitioner and public could be met fully and further the present Respondents submit themselves to the Orders of this Hon'ble Court as it deems fit."

12] The affidavit on behalf of MSRTC makes reference to Exhibit '1', which indicates alternate route / schedules on which the MSRTC has expressed its readiness and willingness to operate the 21 post schedules.

13] We accept the various undertakings given by and on behalf of MSRTC and the City Corporation as undertakings to this Court. We also direct both the parties to comply with their own undertakings, so that, public interest does not suffer. We are satisfied that if MSRTC and the City Corporation comply with the undertakings given to this Court, the issue raised in the public interest litigation will stand substantially redressed.

14] Learned counsel for the petitioners did try to make some submissions with regard to timings of the buses or the structure of bus stops. However, in a petition of this nature, we are afraid we cannot enter into such great details of the operations of bus service by MSRTC and the City Corporation. The undertakings furnished by and on behalf of the City Corporation and the MSRTC, in the facts and circumstances of the present case, to a great extent take care of the grievance of the commuting public and most particularly the school students. After some

initial hesitancy, both, the City Corporation as well as MSRTC have reconciled their differences and furnished undertakings which will substantially redress the issues raised in this petition. We therefore record our appreciation at these two institutions not treating this public interest litigations as some sort of adversarial litigation. We however hope and expect these two institutions to faithfully comply with the undertakings furnished to this Court, both in letter and spirit so that, there is minimum inconvenience to the commuting public and most particularly, the students of the area concerned.

15] With the aforesaid directions, we dispose of the present PIL.

16] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

CHIEF JUSTICE

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