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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

PUBLIC INTEREST LITIGATION NO. 70 OF 2017

with

CIVIL APPLICATION NO.94 OF 2017

C.A. B.B. Shetty and Ors.

... Petitioners/Applicants.

V/s.

The Municipal Commissioner, BMC and Ors. ... Respondents.

Mr. V.P. Patil for the Petitioners/Applicants.

Mr. Pradeep M. Patil for the Respondent No.1.

Mr. Aseem Naphade a/w. Ms. Kavita Anchan, Mr. Kunal Chedha i/b.

M.V. Kini & Co. for the Respondent No.2.

Mr. Manish M. Pabale, AGP for the Respondent Nos. 3 to 5.

***CORAM : A.S. Oka and
M.S. Sonak, JJ.***

DATED : 11 December, 2017.

P.C. :-

Heard the learned Counsel appearing for the Petitioners.

The substantive prayers in this Petition read thus :-

“ (a) That this Hon'ble Court be pleaded to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writ, direction or order under Article 226 of the Constitution of India directing

Respondents to restore AC Bus service which is stopped by BEST Undertaking from 17th April 2017.

(b) That this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of mandamus or any other appropriate write direction or order under Article 226 of the Constitution of India directing Respondents to restore AC Bus Service of AS-4 from Oshiwara to Backbay Depot and back in the following pattern to reduce the loss as well as to run the bus profitably viz.

1. AS-4 AC bus service from 7.30 AM morning to 9.30 AM with the frequency of 20 Minutes with time punctuality which is presently is not there.

2. AS-4 AC Bus from Oshiwara to Backbay Depot and back without Conductor wherein the Driver can issue tickets.

3. Returning the AC Bus from Backbay Depot from 5 to 7 in the evening with 20 minute frequency and that too without the use of Conductor.

4. Restore six AC Volvo Buses provided by free of cost to Oshiwara Depot which are remaining idle now with free maintenance by Volvo.

(b) That this Hon'ble Court be pleased to direct BEST Undertaking to restore all AC bus services which were in force prior to 17 April 2017.

(c) That this Hon'ble Court be pleased to direct the State Government to dissolve the BEST Undertaking of BMC under Section 452 of the Maharashtra Municipal Corporations Act, 1949.

(d) That this Hon'ble Court be pleased to direct the State Government to appoint Officer or Officers to exercise powers and perform functions and duties of BEST Undertaking under Section 452A of the Maharashtra Municipal Corporations Act, 1949.”

2. As far as prayers (c) and (d) are concerned, in any event the same cannot be granted as the provisions of the Maharashtra Municipal Corporations Act, 1949 are not applicable to the Brihanmumbai Electric Supply and Transport Undertaking (for short BEST Undertaking).

3. The grievance of the Petitioners is about the decision taken by BEST Undertaking to stop air conditioned Bus service from Oshiwara to Backbay Depot. Prayer (b) seeks a Writ of mandamus enjoining the BEST Undertaking to run AC Buses at a particular intervals during the time specified therein. The submission of the learned Counsel appearing for the Petitioners is that a facility which was available has been illegally withdrawn. He submits that the professionals like lawyers, senior citizens as well women will not be able to travel unless BEST Undertaking provides AC Bus Service from Oshiwara to Backbay Depot.

4. The present Petition has been filed by the First Petitioner, who is a Chartered Accountant, the Second Petitioner

who is a businessman having his office at City Lights, Nepeansea Road at Mumbai, third Petitioner who is a resident of four Bungalow, Lokhandwala Road, Andheri, Mumbai, who is in service and the fourth Petitioner, who is again a resident of Oshiwara, Andheri, who is in service.

5. There is a reply filed by the BEST Undertaking. The reasons for stopping the service have been set out in the reply. Paragraphs 11 and 12 of the said reply read thus :-

“11. I say and submit that for the bus services between Thane and Mumbai alone, as per the March – 2017 statistics the daily expenses for operation of 653 trips is aggregating to Rs. 20,94,587/- whereas, the daily collection by way of passenger tickets/passes, is aggregating to only Rs.12,78,029/-. I say that there is a daily shortfall/loss of Rs.8,16,558/- between these 2 places itself even on non-AC bus operation. As like Thane for the bus services between Navi Mumbai and Mumbai, the daily expenses for operation of 1176 trips is aggregating to Rs.44,00,559/-, whereas, the daily collection by way of passenger tickets/passes, is aggregating to only Rs.26,14,527/-. I say that there is a daily shortfall/loss of Rs.17,86,032/- between these 2 places on non-AC bus operation. Further there is aggregate expenses of Rs.21,37,836/- on Mira-Bhayander services, and daily earnings are Rs.12,98,317/-, hence, there is aggregate loss of Rs.8,39,519/- per day.

12. I say and submit that for AC Bus operation, the

daily expenses per day for 172 number of AC buses was Rs.42,63,794/- whereas, the average daily collection by way of passenger tickets/passes was aggregating to Rs.6,75,924/-, as such, the daily loss for AC bus operation was aggregating to Rs.35,87,870/-. I submit that there was a heavy loss by virtue of AC bus operation and the operation was absolutely uneconomical. I submit that there are very few passengers available for AC buses inspite of the fact that -

- (a) Large scale publicity for AC bus services
- (b) Introducing distance based bus passes
- (c) Re-scheduling as per passenger requirements
- (d) 50% Reduction in the AC bus fare to increase the patronage
- (e) Introducing off peak bus passes with 50% concession scheme to increase patronage during non-peak period.
- (f) Operating the buses according to flow of traffic i.e. from North to South Mumbai in morning hours and vice-versa in the evening.
- (g) Operating AC buses on various other routes.
- (h) Half fare for minors in AC buses, which was initially not available.
- (i) Daily/Monthly passes thereby, passenger can change over to other routes and have multiple journeys/any number of times, at bare minimum cost.

I say that inspite of all such measures, only 13 to 15% passengers were available i.e. to say, against the bus capacity of 45 passengers, on an average, there were only 9 to 10 passengers per trip/per bus which is absolutely insufficient. Continuing with the same would be against the prudent thinking.

I say that the present AC bus carrying capacity of Respondent No.2 undertaking is 45. It is evident from the figures above that not more than 9-10 passengers were patronizing these services per trip. At a carrying capacity of 45, these figures were absolutely non-viable. Therefore, Respondent No.2 Undertaking had decided to suspend the AC bus route services. Respondent No.2 Undertaking is however contemplating the procurement of AC buses with smaller carrying capacity, say 21-25 so that the patronage can become more viable.”
(underline supplied)

6. The view of the BEST Undertaking on the basis of losses suffered in the operation of AC buses is that operation of AC buses on the route in question is absolutely uneconomical. It is stated that against the bus capacity of 45 passengers, on an average there are only 9 to 10 passengers per trip per bus. On the basis of the facts and figures set out in the aforesaid affidavit, it is stated that the service was found to be non-viable.

7. Apart from the fact that the decision of the BEST Undertaking to stop AC Bus service on the subject route appears to have been taken after consideration of relevant facts, it is not the function of a Writ Court to decide on which route BEST Undertaking should ply AC buses. It is ultimately for the BEST Undertaking to take a decision after consideration of relevant factors.

8. In any event, as indicated in the affidavit of the BEST Undertaking, it is stated that the said Undertaking is taking all

possible measures to improve its financial condition. It is also stated that in the event of more patronage of the passengers, the said Undertaking may consider to operate the AC Bus Services.

9. Therefore, the decision taken to discontinue AC bus service is not final and is subject to a change. In the event, if the financial condition of BEST Undertaking improves and there is more patronage from the passengers, then the BEST Undertaking can always restart the AC bus services.

10. Therefore, we decline to entertain this PIL and the same is disposed of. However, it will be always open to the Petitioners and other citizens to make a representation.

11. In view of disposal of the Petition, the Civil Application does not survive and the same is disposed of.

(M.S. Sonak, J.)

(A.S. Oka, J.)