

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-07-2018

CORAM:

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.17378 of 2018

And

W.M.P.No.20635 of 2018

State Transport Employees Federation (CITU),  
Represented by its General Secretary,  
No.52, Cooks Road,  
Otteri,  
Chennai-12.

..Petitioner

vs.

1. Government of Tamil Nadu,  
Represented by its Additional Principal Secretary,  
Transport Department,  
Fort St. George,  
Chennai-600 009.
2. State Express Transport Corporation Ltd.,  
Represented by its Managing Director,  
Thiruvalluvar Illam,  
Pallavan Salai,  
Chennai-2.
3. Metropolitan Transport Corporation Ltd.,  
Represented by its Managing Director,  
Thiruvalluvar Illam,  
Pallavan Salai,  
Chennai-2.
4. Tamil Nadu State Transport Corporation  
(Villupuram) Ltd.,  
Represented by its Managing Director,  
No.3/137, Salamedu,  
Villupuram.
5. Tamil Nadu State Transport Corporation  
(Salem) Ltd.,  
Represented by its Managing Director,  
No.12, Ramakrishna Salai,  
Salem-7.

6.Tamil Nadu State Transport Corporation  
(Coimbatore) Ltd.,  
Represented by its Managing Director,  
37, Mettupalayam Road,  
Coimbatore-43.

7.Tamil Nadu State Transport Corporation  
(Kumbakonam) Ltd.,  
Represented by its Managing Director,  
Railway Station Road,  
Kumbakonam.

8.Tamil Nadu State Transport Corporation  
(Madurai) Ltd.,  
Represented by its Managing Director,  
Bypass Road,  
Madurai-10.

9.Tamil Nadu State Transport Corporation  
(Thirunelveli) Ltd.,  
Represented by its Managing Director,  
No.23/2, Thoothukudi Road,  
Kattabomman Nagar,  
V.M.Chatram,  
Thirunelveli.

...Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for the issuance of a Writ of Mandamus, directing the respondents to operate all their public passenger transport services/stage carriages/road transport services along with a Conductor in addition to the Driver, in each route/bus/service without fail, as per the mandatory provisions contained in the Motor Vehicles Act, 1988, read with Rule 227 of the Tamil Nadu Motor Vehicles Rules, 1989, in order to ensure the safe operation of the buses and the safety of the passengers and public and also in order to avoid any accident and to ensure free, safe and alert and attentive driving work of the Driver, without any disturbance or distraction and without any additional burden, other than his driving work.

For petitioner : Mr.N.G.R.Prasad for  
Mr.V.Ajoy Khose

For Respondent-1 : Mr.D.Raghu,  
Government Advocate.

For Respondents-2to9 : Mr.S.Rajini Ramadass

## O R D E R

The lis on hand is to issue a Writ of Mandamus, directing the respondents to operate all their public passenger transport services/ stage carriages/road transport services along with the Conductor in addition to the Driver, in each route/bus/service without fail, as per the mandatory provisions contained in the Motor Vehicles Act, 1988, read with Rule 227 of the Tamil Nadu Motor Vehicles Rules, 1989, in order to ensure the safe operation of the buses and the safety of the passengers and public and also in order to avoid any accident and to ensure free, safe and alert and attentive driving work of the Driver, without any disturbance or distraction and without any additional burden, other than his driving work.

2. The proposition mooted out in the present writ petition by the writ petitioner is that a passenger carrier cannot be allowed to ply without any Conductor. The idea of the respondents in running the passenger carriers without employing a Conductor is in violation of the statutory provisions and detrimental to the interest of the passengers, who all are travelling in Public Transport Corporations.

3. The learned counsel, appearing on behalf of the writ petitioner-Union, states that all State Transport Corporations, respondents 2 to 9 to operate all their public passenger transport services/stage carriages along with the Conductor in addition to the driver in each route/bus/service without fail as per the mandatory provisions contained in the Motor Vehicles Act, 1988, read with Rule 227 of the Tamil Nadu Motor Vehicles Rules, 1989, in order to ensure the safe operation of the buses and the safety of the passengers and public at large.

4. The writ petitioner is the Trade Union registered under the Trade Unions Act. Nearly about 33,000 employees are the members of the writ petitioner-Union. Therefore, they are obligated to protect the interest of all the employees as well as to ensure the safety and security of the passengers also.

5. Operation of the passenger transport services was under the direct administration of the first respondent till 1972 to 1975. Thereafter, the operation of the passenger transport services in the State of Tamil Nadu was vested with the newly formed Transport Corporations. Before 2003, there were 20 State Transport Corporations functioning in the State of Tamil Nadu. In November 2003, some Corporations were amalgamated and were consolidated to 7 Corporations. Now once again by way of bifurcation, the eighth and ninth respondent Corporations are formed. Respondents 2 to 9 are the Government Companies wholly owned by the Government of Tamil Nadu. They are State Transport

Undertakings within the meaning of Section 2(42) of the Motor Vehicles Act, 1988. The operation of road transport service for carrying passengers or goods or both by road for hire or reward by respondents 2 to 9 are governed by the special provisions as contained in Chapter VI of the Motor Vehicles Act, 1988. The buses, being operated by respondents 2 to 9, are not only stage carriages, but also they are heavy passenger motor vehicles and public service vehicles. The 'Stage Carriage' is defined under Section 2(40) of the Motor Vehicles Act, which reads as under:-

"Stage Carriage means a motor vehicle constructed or adapted to carry more than six passengers including the drivers for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey."

6. Sections 3 to 28 under Chapter II deals with the compulsory and mandatory conditions for possession of valid driving license for drivers to operate the motor vehicles and also deals with the conditions for grant of various kinds of driving licenses and the procedures. Sections 29 to 38 deals with the mandatory conditions for possession of valid conductor license to act as a conductor in a motor vehicle and the conditions and eligibility for grant and revocation/ suspension of conductor license. Similarly, the Act and the Rules framed and notified by the Government of Tamil Nadu prescribes various duties and responsibilities of both driver and conductor. The Act and Rules provide for working hours, rest intervals and other conditions of service for the drivers. So also the duties and responsibilities of passengers while travelling in road transport service/ public passenger transport services.

7. Only persons, who possessed the minimum educational qualification of S.S.L.C., pass, the minimum age, physical fitness, first aid certificate issued by the authorised institution and public badge is entitled to get appointment to the post of conductor in the State Transport Corporations. Persons holding a valid conductor license as contemplated under the Act alone are entitled to be appointed as conductor. The statutory duties of a conductor in a stage carriage while on duty are prescribed in Rules 78 to 84 and in Rules 261 and 263 of the Rules. The conductor is responsible for due observance of the provisions of the Act while he is on duty. He is responsible for maintaining the bus in a clean and sanitary condition. He is responsible to see that passengers are not allowed to be carried in the bus in which he is working as conductor beyond the permissible seating capacity. He is responsible to see that if any goods are allowed to be carried in his bus, the same do not cause any inconvenience to the passengers and do not cause any danger to them. He is responsible for operating the bus and

reaching the destination on time without allowing the driver either to loiter or delaying the journey. Similarly, in case of accident or break down, it is the duty of the conductor to arrange for the alternate conveyance of the passengers to reach their destination through other vehicles and if he is not able to arrange for any other vehicle for their alternate travel, he has to refund the proportionate fare amount to the passengers to facilitate the passengers to complete their journey. The conductor has to ensure that nothing was placed in the vehicle by any passengers which may obstruct the entry and exit of the passengers. He is responsible for the safety of the passengers and their luggage and goods.

8. The conductor has got his responsible duties also. He has to look after the passengers in all respects and assist them during the emergency circumstances, including providing of medical aids. Even during the traffic congestion, the conductor has to help the driver to move the bus safely, so also while taking reverse. The conductor must ensure that the driver is driving the vehicle carefully with all care, caution and alert and without any diversion or sleep. The petitioner-Union have narrated the entire duties and responsibilities of a conductor while running the stage carriages.

9. The main contention raised on behalf of the writ petitioner-Union is that Rule 227 of the Tamil Nadu Motor Vehicles Rules, makes it mandatory for compulsory posting and presence of a conductor in a stage carriage, in addition to the driver, which is extracted as under:-

"227. Stage carriage to carry conductor:- No stage carriage shall be used in a public place unless it carries in addition to the driver, a conductor.

228. Conduct of passenger in public service vehicle.- If at any time, a passenger in a public service vehicle -

- (i) behaves in a disorderly manner; or
- (ii) uses abusive language; or
- (iii) smokes; or
- (iv) spits in the vehicle or spits outside the vehicle in the execution of his duties; or
- (v) obstructs the drivers or the conductor of the vehicle in the execution of his duties; or

(vi) refuses or is unable to pay the fare or travels without a valid ticket or without being in possession of a valid ticket for the journey to be performed in the case of a stage carriage; or

- (vii) interferes without due cause with

the conductor or the driver of the vehicle;  
or (viii) refuses to show any ticket on demand by any authorised person in the case of a stage carriage; or

(ix) is reasonably suspected to be suffering from any contagious or infectious disease; or

(x) distributes printed or similar matter of any description or distributes any article for the purpose of advertising; or

(xi) commits or abets any offence under the Act,

the driver and conductor if any, may require such passenger to alight from vehicle forthwith and may stop the vehicle and keep it standing until the passenger has alighted. Such passenger will not be entitled to the refund or any fare paid for his journey and any passenger failing to comply forthwith with such a requirement may be forcibly removed by the conductor or the driver and shall be guilty of an offence."

10. Regarding the said Rule, it is contended that a conductor is playing a major and significant role in the safe, smooth and hassle and accident free operation of the stage carriage buses being operated by the respondent-Corporations. A similar attempt of running the stage carriage buses without conductor was earlier undertaken by the erstwhile J.J. Corporation and the entire efforts failed and subsequently, the said Corporation was merged with the second respondent-Corporation.

11. The dispute was raised against employing persons as driver cum conductor in the second respondent-Corporation by a Union affiliated to our Federation in Nagercoil and it was referred by the Government in G.O.(D) No.647, Labour and Employment Department, dated 29.4.2005 for adjudication to the Labour Court Tirunelveli. The said reference was taken as I.D. No.64 of 2005. The Labour Court, Tirunelveli passed an Award dated 18.7.2011 in the said dispute and held that the demand of our local Union that same person shall not be allowed to work both as a driver and conductor as justified, prohibited and injuncted the second respondent-Corporation from employing a single person to act both as a driver and conductor. The said Award was not put to challenge and it has reached a finality. Till june 2018, most of the buses, being operated by respondents 2 to 9, were old buses and they were being operated even long beyond their legally permissible life time. On 3.7.2018, the Government of Tamil Nadu introduced around 550 new buses of different kind and with different facilities and allotted and

handed over those new buses depending upon their requirement to the respondent-Corporations 2 to 9.

12. The grievances of the writ petitioner-Union are that after introduction of new buses, the respondent-Corporations 2 to 9 have started operating the new buses in some routes with only driver and without any conductor. Therefore, the actions of the respondents 2 to 9 in allowing the stage carriage buses to ply without a conductor is contrary and in violation of Rule 227 of the Tamil Nadu Motor Vehicles Rules and the same would affect the safety of the buses as well as the passengers, who are travelling in Public Transport Corporations. This apart, the work efficiency of the drivers also will be affected. Rule 227 of the Tamil Nadu Motor Vehicle Rules, has made that no stage carriage shall be operated without a conductor in addition to the driver as mandatory and when operation of the buses without a conductor is an offence punishable, the action of the respondents in operating selective new buses as a beginning without conductors is illegal. The above ill actions of the respondents would not only alter the conditions of the drivers but also would affect the conditions of the service of the conductors, who are already employed and serving in the respondent-Corporations 2 to 9. The serving conductors would lose their work and wages and ultimately it would lead to their retrenchment and non-employment under the guise of cost cutting measure or rationalisation, the respondents cannot alter the conditions of service without giving a notice under Section 9A of the Industrial Disputes Act, 1947 and also in contravention of the Motor Vehicles Rules.

13. The Union has issued a strike notice on 5.6.2018 and the same has been taken up for conciliation by the Special Deputy Commissioner of Labour, Chennai and conciliation meeting was held on 14.6.2018 and all the respondent-Corporations were directed to maintain status quo. However, in spite of the advice given by the Conciliation Officer in accordance with the statutory injunction as contemplated under Section 33 of the Industrial Disputes Act, without getting permission from the Conciliation Officer, the respondents have altered the conditions of service of the drivers and conductors adversely and to their detriment. Thus, the actions of the respondents are void and non-est and inoperative in law.

14. The respondents state that there are eight Transport Corporations in Tamil Nadu registered under the Companies Act, 1956. There are 21,555 buses being operated by eight State Transport Undertakings as stage carriage permit under Motor Vehicles Act, 1988. The type of operation of the buses are as under:-

| S.No. | Type of Operation | No. of buses as on 31.5.2018 |
|-------|-------------------|------------------------------|
| 1.    | Town              | 10085                        |
| 2.    | Moff              | 7820                         |
| 3.    | Ghat              | 501                          |
| 4.    | Express           | 1084                         |
| 5.    | Spare             | 2065                         |
|       | Total             | 21555                        |

15. Nearly about 1.75 crore passengers are being carried per day by State Transport Undertaking buses. Most of the passengers are using Moffusil/Express buses for their long distance travel. As per the mandatory provision of Motor Vehicles Act read with Rule 227 of the Tamil Nadu Motor Vehicles Rules, "no stage carriage shall be used in a public place unless it carries in addition to the driver, a conductor". However, Rule 38 of the Tamil Nadu Motor Vehicles Rules, 1988 also fixed the responsibility of driver of stage carriage on which there is no conductor as "the driver of a public service vehicle on which there is no conductor shall, as far as may be, perform the duties and functions of the conductor prescribed under Chapter III of the Rules. The State Transport Undertakings operate buses for the interest of the travelling public with utmost care. However, now a days, travelling public prefer to board buses operating as "Point to Point" services so that their travel time is considerably saved. The present trend among the travelling public, some of the State Transport Undertakings has begun operating some brand new buses built as per AI052 bus body code certified by ARAI, Pune as "Point to Point" services. That is a bus which departs from one destination will reach the end destination without any stops in the enroute. This type of "Point to Point" services being operated from one end to other end need not deploy conductors as this type of buses will not stop in the enroute to board or alight passengers. The driver of the bus will drive from one end to other end without stopping in the enroute. However, the service of the conductor is completed at the boarding point itself as the tickets are issued by a qualified conductor at the boarding point.

16. Rule 38 of the Tamil Nadu Motor Vehicle Rules, 1989 stipulates the responsibility of the driver of a stage carriage on which there is no conductor, the driver of a public service vehicle on which there is no conductor shall, as far as may, perform the duties and functions of the conductor prescribed under Chapter III of the Rules. The said Rule 38 of the Tamil Nadu Motor Vehicles Rules, 1989, is framed in consonance with Sections 124 and 178 of the Motor Vehicles Act, 1988. Even taking into consideration, the pleadings made on behalf of the

petitioner-Union, Rule 38 speaks about the performance of a job as of the conductor by the driver in certain circumstances. Thus, Rule 227 cannot be read in isolation. All the provisions of the Rules are to be read harmoniously for the purpose of achieving its objects and the purpose. Thus, considering the singular provision, namely, Rule 227 of the Tamil Nadu Motor Vehicle Rules, will not of any avail in respect of the claim made by the writ petitioner-Union in the present writ petition.

17. The primary duty of conductors under Sections 78 and 79 of the Tamil Nadu Motor Vehicles Act, 1989 is to issue tickets to the passengers by collecting suitable fare. In case of services being operated as "Non Stop-Point to Point" services, conductors are not required in the moving buses as tickets are given to the passengers by stand conductors posted at the starting point itself. Hence, the averments of the petitioner-Union in the affidavit that the conductors are not utilised in the buses is incorrect. All the passengers are allowed to sit on any seat as no seat numbers are designated to each ticket. The main advantage to the travelling public using "Non Stop-Point to Point" services are time saving, comfortable journey and convenient travel. Considering the comfort and demand from travelling public, Tamil Nadu State Transport Corporation Coimbatore has already commenced this type of "Non Stop-Point to Point" services in the route Erode to Coimbatore from 31.3.2002 and which was also ratified by Government vide G.O.Ms.No.196, dated 16.9.2001. Subsequent to the introduction of "Non Stop-Point to Point" services in the route Erode to Coimbatore by Tamil Nadu State Transport Corporation Coimbatore, on written request to Transport Commissioner, the State Transport Authority, Chepauk, Chennai, vide Government Letter No.80592/Po.Va7/02-4 dated 28.10.2003, the Transport Commissioner in turn vide their letter No.49175/11/2003, dated 29.12.2003 recommended for amendment in the Rule 227 to exempt State Transport Undertakings to operate "conductor-less" buses under the following reasons:-

(i) Operation of three buses of six singles per day in the route Erode to Coimbatore from 31.3.2002;

(ii) The subject was approved by Board of Directors in their 86<sup>th</sup> Board Meeting;

(iii) The Transport Department, Government of Tamil Nadu also granted approval vide G.O.(Ms.) No.196, Transport (A) Department, dated 16.9.2001;

(iv) The public also invited this type of "Non Stop-Point to Point" services.

18. As proposed by the State Transport Corporations based on the demand from the public, now operate 256 "conductor-less" buses as "Non Stop-Point to Point" services. The Transport Corporations now operate this type of services on demand basis.

The neighbouring States, namely, Andhra Pradesh, Karnataka and Maharashtra operate this type of services. The advantages in operating End to End, Non Stop-Point to Point services are narrated as under:-

(a) The tickets are issued by the Stand conductors at one point before the commencement of the journey;

(b) The drivers posted in Non Stop-Point to Point Services, vested only with driving and no stress/temptation while driving as these services do not stop enroute;

(c) Passengers boarded in these services feel free while travelling as these services will reach their destinations well in advance thereby reducing their travelling time;

(d) Passengers can get tickets through advance reservation before the commencement of their journey;

(e) In all these type of services, bell switch has been provided in front and rear foot board so that in case of emergencies, the passengers can use the bell switch to stop the bus;

(f) GPS (Global Positioning System) will be introduced in future. So that the movement of the bus can be closely monitored. If any breakdown or any other traffic jam in the enroute, it can be monitored using the GPS System from the control room;

(g) Now a days communication system has developed to an unimaginable level. So immediate follow up action can be resorted to in case of emergency;

(h) Transport Corporations operate mobile breakdown vans in all major routes. Immediate remedial action can be taken in case of emergency situations;

(i) Transport Corporations has formed special squad consisting of Checking Inspector to closely monitor the movement of the buses;

(j) Sufficient number of bus maintenance depots are located in the enroute of major routes, so that these Non Stop-Point to Point Services could be taken care in case of emergencies that may arise.

19. The respondents contend that despite the recent fare revision, Transport Corporations are facing severe financial constraints due to frequent hike in diesel price and recent wage revision of employees and these kinds of services to help to improve revenue efficiency also. In order to cope up with the cost of operation, the Transport Corporations proposed conductor-less Non Stop-Point to Point services to reduce the expenditure which is inevitable in bus operation and also to provide easy and comfortable transport to the End to End travelling public. On account of introduction of conductor-less buses, the Transport Corporations have not retrenched or terminated any conductor. The service conditions of the employees are not altered, since there is no addition or deletion of any duty to the drivers/conductors. No additional

work is allotted to the drivers, instead the drivers have lesser work load, since these services only start and stop in origin and destination places respectively. The responses to these Point to Point Services have been tremendous as almost all the services are running to full capacity and there has been much demand among the travelling public who stand to benefit the most.

20. At the outset, it is contended that the interest of the public at large has been taken into account and in an improving technology and developments, it is necessary for the respondents to improve the system of running Public Transport Corporations.

21. The learned counsel, appearing on behalf of the writ petitioner-Union, Mr.N.G.R.Prasad, contended that the policy now introduced by the respondent-Transport Corporation is directly in violation of Rule 227 of the Tamil Nadu Motor Vehicles Rules, 1989. The duties and responsibilities of a conductor of a bus has been well enumerated in Rule 78 of the said Rules. Therefore, such duties and responsibilities prescribed under Section 78 of the Act, cannot be performed by the driver and in such an event, the driver will not be in a position to perform the duties and responsibilities attached to the post of driver. Thus, there is a possibility of dangerous situation and the very safety of the passengers are in peril. Therefore, the bus can never be operated without a conductor as the duties and responsibilities of a conductor and a driver are distinct and independent.

22. Citing the Government Order issued in G.O.Ms.No.448, Home (Transport VII) Department, dated 21.3.1995, the learned counsel for the writ petitioner-Union contended that the exemption was granted as per the provisions of Rule 227 of the Tamil Nadu Motor Vehicles Rules, 1989 and in respect of the erstwhile Dr.J.Jayalalitha Transport Corporation subject to the condition that two drivers should be posted in stage carriages and that the second driver should possess a conductor license and he should discharge the duties contemplated under Rules 78 and 79 of the Tamil Nadu Motor Vehicle Rules, 1989 and they shall pay the prescribed fee of Rs.100/- per vehicle for the grant of exemption as stipulated under S.No.49 of Rule 279 of the Tamil Nadu Motor Vehicle Rules, 1989.

23. Referring the said Government Order, the learned counsel for the writ petitioner-Union urged this Court by stating that even during that point of time, there was no total exemption granted. In addition to one driver another driver was permitted in the stage carriages and the second driver should possess the conductor license. Thus even in such circumstances, conductor was posted in a bus in a stage carriage. Therefore, the total exemption of the Rule is impermissible and in violation of the Statute itself.

24. The very policy now mooted out by the respondent-Corporations is in violation of the objectives stipulated in the Motor Vehicles Act. In the event of implementing the impugned policy, then the very spirit and the object of the Act will be violated and therefore, the present writ petition deserves to be allowed.

25. The learned counsel appearing on behalf of the respondent-Corporations opposed the contentions of the learned counsel for the writ petitioner-Union in entirety. Relying on the counter statement, the learned counsel for the respondent-Corporations contended that it is not as if the services of the conductor are not at all utilised. The counsel emphasised that the services of the conductors are used even in "Non Stop Point to Point Services". The tickets are issued by the stand conductor at one point before the commencement of the journey. The drivers posted in "Non Stop-Point to Point Services", vested only with driving and no stress/temptation while driving as these services do not stop enroute. The passengers can get tickets through advance reservation before the commencement of their journey and the services will be more convenient and hassle free for the passengers and the travelling time will be saved which will be of much benefit to the passengers who wants to reach their destination without any undue delay.

26. In all these type of services, bell switch has been provided in front and rear foot board so that in case of emergencies, the passengers can use the bell switch to stop the bus. GPS (Global Positioning System) will be introduced in future, so that the movement of the bus can be closely monitored. If any breakdown or any other traffic jam in the enroute, it can be monitored using the GPS System from the control room. Relying on the fastest development of communication system in our Great Nation, the learned counsel for the respondent-Corporations states that the entire movement of these services will be monitored and facilities are provided in the bus itself. A mobile breakdown vans in all major routes are under operation. Immediate remedial actions also can be taken in case of emergency situations. This apart, a special squad consisting of Checking Inspectors are deployed to closely monitor the movement of the buses. Sufficient number of bus maintenance depots are located in the enroute of major routes. Thus, all these technological advancements and improvements in the policy are made only for the welfare of the passengers who are travelling in the respondent-Corporations and to improve the Public Transport System in all means. The very object of the Motor Vehicles Act, is to ensure that the technological advancements are adopted to suit the current day society. Such technological advancements and improved systems of transports can never be questioned by the Trade Unions.

27. The learned counsel for the respondent-Corporations further contended that the writ petitioner-Union has no locus standi to file the present writ petition in view of the fact that the very service conditions of the members of the writ petitioner-Union has not been altered or modified. There is no proposal for retrenchment of conductors or to alter their service conditions. Therefore, the writ petitioner-Union is not an aggrieved person and the present writ petition is to be dismissed as not maintainable.

28. Though the respective counsels appearing for the writ petitioner-Union and the respondents have not referred some of the provisions of the Act, this Court is bound to look into the provisions, which are all important as far as the facts and the circumstances of the present writ petition is concerned. Section 124 of the Motor Vehicles Act, reads as under:-

"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."

Section 178 of the Motor Vehicles Act, reads as under:-

"178. Penalty for travelling without pass or ticket and for dereliction of duty on the part of conductor and refusal to ply contract carriage, etc -

(1) Whoever travels in a stage carriage without having a proper pass or ticket with him or being in or having alighted from a stage carriage fails or

refuses to present for examination or to deliver up his pass or ticket immediately on a requisition being made therefore, shall be punishable with fine which may extend to five hundred rupees.

Explanation. - In this section, "pass" and "ticket" have the meanings respectively assigned to them in section 124.

(2) If the conductor of a stage carriage, or the driver of a stage carriage performing the functions of a conductor in such stage carriage, whose duty is -

(a) to supply a ticket to a person travelling in a stage carriage on payment of fare by such person, either wilfully or negligently, -

(i) fails or refuses to accept the fare when tendered, or

(ii) fails or refuses to supply a ticket, or

(iii) supplies an invalid ticket, or

(iv) supplies a ticket of a lesser value, or

(b) to check any pass or ticket, either wilfully or negligently fails or refuses to do so, he shall be punishable with fine which may extend to five hundred rupees.

(3) If the holder of a permit or the driver of a contract carriage refuses, in contravention of the provisions of this Act or rules made thereunder, to ply the contract carriage or to carry the passengers, he shall, -

(a) in the case of two-wheeled or three-wheeled motor vehicles, be punishable with fine which may extend to fifty rupees; and

(b) in any other case, be punishable with fine which may extend to two hundred rupees."

29. The above two sections viz., Sections 124 and 178 enumerate that "after a passenger enters in a stage carrier, he/she will pay his/her 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/her journey". The above provision unambiguously portrays that the Parliament also took note of the given and the changing circumstances and the possibility of appointment of driver/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 conductor and refusal to ply contract carriage. Section 178 to sub-clause (2) provides for a fine in case the conductor of a stage carriage or the driver of a stage carriage performing the functions of a conductor in such stage carriage fails to perform any of the duties assigned to him. Thus, it is clear that there is no specific bar against the respondents from appointment of driver cum conductor.

30. This Court is of an opinion that when the writ petitioner-Union have referred Rule 227 of the Tamil Nadu Motor Vehicles Rules, this Court has to go into the provisions of the Motor Vehicles Act, which will prevail over the Rules. When the Act provides certain provisions by taking note of the future developments, which may taken place, then the Constitutional Courts are bound to look into the issues in a pragmatic and practical manner. Constructive interpretation of these provisions are certainly mandatory. A mere interpretation may not be sufficient and the ambition, vision and the future care taken by the Parliament, while enacting such laws are also to be considered by the Constitutional Courts. It is not necessary for each and every developmental activities are undertaken by our Great Nation, then an amendment is to be effected. When the Act provides scope for such developmental activities, more specifically in Public Transport Corporations, constructive interpretation is just and necessary to meet out the circumstances and allow such developments to happen in the interest of public at large.

31. The writ petitioner-Union have relied upon Rule 227 of the Tamil Nadu Motor Vehicles Rules. Rule 227 stipulates that "no stage carriage shall be used in a public place unless it carries in addition to the driver, a conductor". This Court is of an opinion that the Tamil Nadu Motor Vehicles Rules in normal circumstances prescribes that no stage carriage shall be used in a public place unless it carries in addition to the driver and a conductor. However, this cannot be construed as a total prohibition or this Rule should be interpreted as detrimental to the development and technological advancement of our Great Nation and for the welfare of the people at large. When the benefits of such "point to point" services are for the welfare of the public at large, who are all travelling in Public Transport Corporations, then the same is to be considered as of paramount importance. Undoubtedly, Rule 227 is a criteria prescribed that a stage carriage should carry conductor in addition to the driver. However, Section 124 of the Motor Vehicles Act, clearly says that after a passenger enters in a stage carriage, he/she will pay his/her 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/her journey.

32. Section 178 sub-clause (2) also provides for a fine in case the conductor of a stage carriage or the driver of a stage carriage performing the functions of a conductor in such stage carriage, fails to perform any of the duties assigned to him. The abovesaid two provisions of the Motor Vehicles Act, unambiguously enumerates that there is no bar for the respondents from appointment of driver-cum-conductor. There is no prohibition under the provisions of the Act. The vision at the time of enactment of the Motor Vehicles Act by the Parliament is to be appreciated in view of the fact that a conductor-less bus was also an idea mooted out when the Act was enacted in the year 1988. The various circumstances arisen on account of various factors were considered by the Parliament while enumerating the provisions under Sections 124 and 178 of the Motor Vehicles Act. Thus, this Court is of an undoubted opinion that the provisions of the Motor Vehicles Act will prevail over the Tamil Nadu Motor Vehicles Rules. If the Tamil Nadu Motor Vehicles Rules are repugnant and inconsistent with the spirit of Sections 124 and 178 of the Motor Vehicles Act, 1988, then the Motor Vehicles Act, which is the Central Act alone should prevail and the Rules framed by the State to the extent of repugnancy or inconsistency is to be declared as inoperative. Thus the spirit, objectives and the purpose of the Motor Vehicles Act, will prevail over the Rules framed thereon and this Court has to consider that the similar services of "point to point" services without any conductor is in existence in the States of Andhra Pradesh, Telungana, Karnataka and Maharashtra.

33. As contended by the learned counsel for the respondent-Corporation, this Court is of an opinion that the writ petitioner-Union can adjudicate the disputes in the event of any alteration or modifications in the service conditions of the conductors. It is well assured by the respondent-Corporations that they are not going to retrench any conductor on account of the implementation of the improved transport systems in the State. There is no proposal to alter or modify the existing service conditions of those conductors. Their services will be utilised as per the Rules in force. The modern and improved transporting system will be introduced without affecting the service conditions of the existing employees. Further more such improved systems are going to be implemented in a phased manner and as of now limited number of routes are identified for the purpose of implementing the "point to point" services. Therefore, it is not as if the respondent-Corporations are intended to convert the entire transport services as "point to point" and that is not the case at all. Contrarily, they are implementing the technological and other advanced systems in the

transport Corporations in a phased manner, so as to provide better services to the public at large.

34. Thus any such policy implemented by the State/its Corporations can never be construed as violative of the objectives of the Motor Vehicles Act. Sections 124 and 178 of the Motor Vehicles Act, categorically provide scope for the driver performing the duties of the conductor. The Parliament, at the time of enacting the Motor Vehicles Act, had a vision of these circumstances and taken note of the future developments in the event of technological advancements. Thus, the Statutes are to be interpreted for the improvement of the society and for the welfare of the citizens of this Great Nation. In an improved transporting system introduced for the welfare of the people at large can never be construed as violative of the Statute. The Act and the Rules are enacted only for the welfare and to provide betterment for the citizens of this Great Nation.

35. The very object of the Motor Vehicles Act is to regulate the Motor Vehicle System in our country without affecting the improvements and the developments to be made in Public Transport Systems. Such being the object of the Act, the very contention that the writ petitioner-Union are affected, can never be considered at all. Thus, this Court is of an opinion that the writ petitioner-Union can never be construed as an aggrieved person in the eye of law. The service conditions of the members of the writ petitioner-Union are not affected. It is now assured even before this Court that there is no alterations or modifications in the service conditions of the conductors, who are already in service. Under these circumstances, the claim of the writ petitioner-Union to stop certain policies introduced by the respondent-Corporations for the welfare of the passengers who are all travelling in Public Transport Systems can never be stalled nor tampered with. All such technological advancements are to be appreciated and the betterment in transport systems would provide better services to the passengers who are all opting to travel in the Public Transport Systems.

36. Though the petitioner-Union made a submission that as per Rule 227 of the Tamil Nadu Motor Vehicles Rules, the respondents are bound to engage a conductor in every bus, they have not established or brought to the notice of this Court in respect of any serious incident endangering the safety of travelling passengers or causing inconvenience to them of such magnitude as would force it to withdraw the policy decision taken by the respondents to operate the stage carriage buses without conductor from "point to point" services. There is not a single incident brought to the notice of this Court that such a policy will affect the passengers and the public at large. Contrarily, already the policy has been implemented in respect of the Transport Corporation at Coimbatore and running smoothly.

This being the factum of the case, this Court has to consider the developmental activities and the improvements in the Public Transport Corporations which is imminent. The buses are now built with modern facilities and the new brand buses are built as per AIS 052. Bus Code may be certified by Automotive Research Association of India (ARAI). Therefore, the facilities are available in the bus so as to operate the same without any hindrance and without the support of the conductors. If on the long distances routes, the passengers are already issued tickets at the entry point and the tickets are upto 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 and 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. It is pertinent to note that the respondent Corporations 2 to 9 have not done away with the services of conductors as a whole. Contrarily, the Transport Corporations have now chosen the viable routes.

37. Under these circumstances, it is only an apprehension of the petitioner-Union that the 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 the deployment of driver cum conductor on certain specific routes, there is no hardship or major incident of any happenings had been reported. Thus, this Court cannot consider such general statements and vague assertions, so as to interfere with the policy decision of the respondents to provide advance transport facilities in the interest of the public at large and to save the travellers time and further to save the unnecessary expenditures in the Transport Corporations. The Motor Vehicles 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). Section 2 Clause (42) defines the term "State Transport Undertaking". Section 2 Clause (40) defines the term "Stage Carriage". 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 dependants.

38. 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, attention of this Court 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 the traffic signs. There is also a provision which enacts a prohibition against travelling without pass or ticket. Section 124 stipulates 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. Sub Clause (b) to Section 124 states that "ticket" includes a single ticket, a return ticket or a season ticket.

39. 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. Thus, 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 license 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.

40. The Hon'ble Supreme Court of India in the case of Centre For Public Interest Litigation vs. Union of India and Others [in WP(C) No.382 of 2014 decided on 8.4.2016], held that the various policy decisions are taken at a point of time considering the various technological options, policy objectives and regulatory frame work. As highlighted above, there have been technological developments in telecommunication are taking place at abnormal pace. Various policy decision taken at one point of time may, therefore, require a re-look necessitating modifications and changes therein and the circumstances may even mandate change of existing policy altogether by substituting with new policy

decision depending upon the such technological advancements coupled by commercial and economic considerations. It can be supported by the fact that first Telecom Policy was announced in the year 1994, which was replaced by revised Policy of 1999 and thereafter in the year 2004 and again substituted by Telecom Policy of 2012.

41. Such a policy decision, when not found to be arbitrary or based on irrelevant considerations or mala fide or against any statutory provisions, does not call for any interference by the Courts in exercise of power of judicial review. This principle of law is ingrained in stone which is stated and restated time and again by this Court on numerous occasions. In *Jal Mahal Resorts (P) Ltd. v. K.P. Sharma*[3], the Court underlined the principle in the following manner:

"116. From this, it is clear that although the courts are expected very often to enter into the technical and administrative aspects of the matter, it has its own limitations and in consonance with the theory and principle of separation of powers, reliance at least to some extent to the decisions of the State authorities, specially if it is based on the opinion of the experts reflected from the project report prepared by the technocrats, accepted by the entire hierarchy of the State administration, acknowledged, accepted and approved by one Government after the other, will have to be given due credence and weightage. In spite of this if the court chooses to overrule the correctness of such administrative decision and merits of the view of the entire body including the administrative, technical and financial experts by taking note of hair splitting submissions at the instance of a PIL petitioner without any evidence in support thereof, the PIL petitioners shall have to be put to strict proof and cannot be allowed to function as an extraordinary and extra-judicial ombudsmen questioning the entire exercise undertaken by an extensive body which include administrators, technocrats and financial experts. In our considered view, this might lead to a friction if not collision among the three organs of the State and would affect the principle of governance ingrained in the theory of separation of powers. In fact, this Court in *M.P. Oil*

Extraction v. State of M.P., (1997) 7 SCC 592 at p. 611 has unequivocally observed that:

42. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the court will not interfere with such matters." Limits of the judicial review were again reiterated, pointing out the same position by the Courts in England, in the case of G. Sundarrajan v. Union of India[6] in the following manner:

"15.1. Lord MacNaughten in Vacher & Sons Ltd. v. London Society of Compositors (1913 AC 107 : (1911-13) All ER Rep 241 (HL) has stated:

"... Some people may think the policy of the Act unwise and even dangerous to the community. ... But a judicial tribunal has nothing to do with the policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. The duty of the court, and its only duty, is to expound the language of the Act in accordance with the settled rules of construction." 15.2. In Council of Civil Service Unions v. Minister for the Civil Service (1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL), it was held that it is not for the courts to determine whether a particular policy or particular decision taken in fulfilment of that policy are fair. They are concerned only with the manner in which those decisions have been taken, if that manner is unfair, the decision will be tainted with what Lord Diplock labels as "procedural impropriety".

This Court in M.P. Oil Extraction v. State of M.P. (1997) 7 SCC 592 held that unless the policy framed is absolutely capricious, unreasonable and arbitrary and based on mere ipse dixit of the executive authority or is invalid in constitutional or statutory mandate, court's interference is not called for.

43. In the case of Badshah vs. Urmila Badshah Godse [(2014) 1 SCC 188 : (2014) 1 SCC (Civ) 51 : 2013 SCC OnLine SC 946 at page 197], the Hon'ble Supreme Court held as follows:-

"16. The law regulates relationships between people. It prescribes patterns of

behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law."

44. In the case of Rajesh Francis vs. Preethi Roslin [2012 SCC OnLine Ker 31632 : (2012) 2 KLJ 660 : 2012 AIR CC 2262 at page 671], the Kerala High Court held as follows:-

"Statutes have to be interpreted by the courts conscious of this fundamental duty of all citizens. The provision of law will have to be given contextual relevance and significance in the present age. Updation of words in statute enacted in a bygone era can be achieved by innovative interpretation relevant to the times. If it is possible to harmonise the expression "access" in the Indian Evidence Act enacted in 1872 in such a manner as to accommodate the great advantage and benefit of scientific and technological development in the modern era, such interpretation has definitely got to be preferred."

45. This Court is of an opinion that a conjoined reading of the provisions of the Motor Vehicles Act, more specifically, Sections 124 and 178 of the Motor Vehicles Act and reading of Rules 38 and 227 of the Tamil Nadu Motor Vehicles Rules, this Court is of an opinion that the vision set out in the Central Act, namely, Motor Vehicles Act, reveals that there is no prohibition in appointing a driver cum conductor in certain specified circumstances and in view of the developing technology

and the needs of our Great Nation, the facilities to be provided for the public at large are certainly to be improved and efficient transport facilities are imminent. Providing such advanced facilities for the welfare and the convenience of the passengers at large, in the field of transport is certainly a constitutional perspective. Thus, by adopting the principles of constructive interpretation, this Court is of an opinion that the vision, object and purpose of the enactment of the Parliament should prevail over the Rules and the procedures framed. Thus, Rule 227 of the Tamil Nadu Motor Vehicles Rules is repugnant and inconsistent with the spirit of Sections 124 and 178 of the provisions of the Motor Vehicles Act, 1988 to the extent of the appointment of driver cum conductor in certain circumstances, whenever advanced buses are built in by the Corporations to cater to the needs of the passengers in the prevailing circumstances.

46. Under these circumstances, this Court cannot come to the conclusion that a bus cannot ply without the assistance of a conductor. Even in the present case, the respondent-Corporations have clarified that the post of conductor has not been dispensed with at all. However, they say that a conductor is performing his duties in the starting station and in the ending station. This apart, online bookings of tickets are also provided to the passengers by these Transport Corporations. Thus online bookings are also fastly developing and popular amongst the frequent travellers. In respect of other Corporations where there is no online booking facilities are available, then a conductor is available in the starting station to issue tickets. Thus, the passenger can purchase the ticket from the conductor in the starting station and once they get inside the bus and the doors are locked by the driver, then there is no need of a conductor inside the bus or his services inside the bus. In view of the fact that this type of services are introduced mostly for "point to point" services.

47. Thus, this Court has tested the policy decision on this touchstone and do not find any serious infirmity, warranting interference of this Court under the writ jurisdiction. Thus, the relief, as such, sought for in the writ petition deserves no consideration as the same is devoid of merits.

48. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Svn

To

- 1.The Additional Principal Secretary,  
Government of Tamil Nadu,  
Transport Department,  
Fort St. George,  
Chennai-600 009.
- 2.The Managing Director,  
State Express Transport Corporation Ltd.,  
Thiruvalluvar Illam,  
Pallavan Salai,  
Chennai-2.
- 3.The Managing Director,  
Metropolitan Transport Corporation Ltd.,  
Thiruvalluvar Illam,  
Pallavan Salai,  
Chennai-2.
- 4.The Managing Director,  
Tamil Nadu State Transport Corporation  
(Villupuram) Ltd.,  
No.3/137, Salamedu,  
Villupuram.
- 5.The Managing Director,  
Tamil Nadu State Transport Corporation  
(Salem) Ltd.,  
No.12, Ramakrishna Salai,  
Salem-7.
- 6.The Managing Director,  
Tamil Nadu State Transport Corporation  
(Coimbatore) Ltd.,  
37, Mettupalayam Road,  
Coimbatore-43.
- 7.The Managing Director,  
Tamil Nadu State Transport Corporation  
(Kumbakonam) Ltd.,  
Railway Station Road,  
Kumbakonam.

8.The Managing Director,  
Tamil Nadu State Transport Corporation  
(Madurai) Ltd.,  
Bypass Road,  
Madurai-10.

9.The Managing Director,  
Tamil Nadu State Transport Corporation  
(Thirunelveli) Ltd.,  
No.23/2, Thoothukudi Road,  
Kattabomman Nagar,  
V.M.Chatram,  
Thirunelveli.

+1cc to Mr.V.Ajoykhose, Advocate, S.R.No.49892

+1cc to Mr.S.Rajeni Ramadass, Advocate, S.R.No.50569

W.P.No.17378 of 2018

BM 27/07/2018



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