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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.07.2019
PRONOUNCED ON : 27.08.2019
CORAM:

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.(MD)No.23309 of 2015
and
M.P.(MD)No.1 and 2 of 2015

Madurai Omni Bus Travels Owners Welfare
Association, (a registered society),
Through its President and Secretary,
6D, Shopping Complex,
Periyar Bus Stand,
Madurai - 625 001.

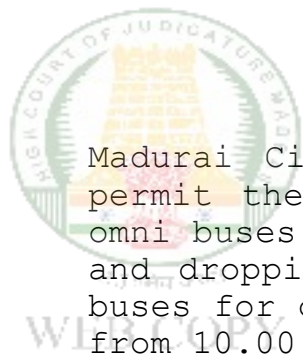
... Petitioner

/Vs./

- 1.The Secretary to Government of Tamil Nadu,
Transport Department,
Fort St.George,
Chennai - 600 009.
- 2.The District Collector,
Madurai.
- 3.The Commissioner of Police,
(Madurai City), Office of the Commissioner of Police,
South Chithirai Street,
Madurai.
- 4.The Joint Commissioner of Police, (Traffic),
Madurai City,
Office of the Commissioner of the Police,
Madurai.
- 5.Regional Transport Officer,
Regional Transport Office,
Madurai (Central),
Madurai.

... Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent's notification under Ref.No.Na.Ka.No.3157/2014/Amu,2, dated 28.11.2014 published in the Madurai District Gazette Special Release and quash the same with respect of the conditions restricting the movements of the Omni Buses in and around the Madurai City and suburb area of



Madurai City as illegal and further directing the respondents to permit the members of the petitioner Association to operate their omni buses by entering into Madurai city for the purposes of picking and dropping the passengers with their luggages and to take their buses for cleaning and attending repairs to Kochadai and Bypass area from 10.00 PM to early morning 08.00 a.m.

For Petitioner : Mr.V.Meenakshisundaram
For Respondents : Mrs.J.Padmavathy Devi
Special Government Pleader

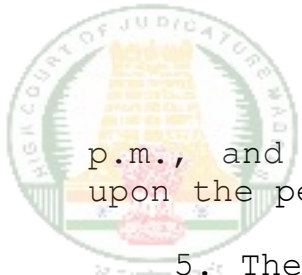
ORDER

The petitioner, the Madurai Omni Bus Owners Welfare Association, challenges Notification dated 28.11.2014 (in short 'impugned Notification) issued by the District Collector placing restrictions on the movement of omni buses in and around Madurai City and in the sub-urban areas of Madurai.

2. The submissions of Mr.Meenakshi Sundaram, learned counsel appearing for the petitioner are that the petitioner is a registered society formed for the welfare of omni bus owners. Initially, all buses were being operated from the Periyar Bus stand and thereafter, post setting up of a new bus stand exclusively for omni buses at Maatuthavani, the buses are being operated from the latter stand alone. However, the buses were being permitted to enter into the city with certain restrictions imposed on the time of entry and exit, thus enabling them to pick and set down/drop passengers at certain points within the city before finally concluding their journey at the bus stand.

3. The impugned Notification prohibits the entry of the omni buses into the city and they are thus unable to pick and drop the passengers from designated points within the city causing the passengers untold inconvenience and adversely affecting the petitioners' business interests as well. According to the petitioner, all its members hold valid All-India permits issued by the Transport authority and the restriction imposed under the impugned Notification impinges upon the permits held by them.

4. The petitioner points out that the passengers intend to visit Temples, hotels and other destinations within the city and it is thus imperative that the omni buses are permitted to provide services that would enable free movement of the passengers intra-city. The restrictions placed by virtue of the impugned Notification interferes with the rights of the members of the petitioner association in terms of Article 19(1)(g) of the Constitution of India and cannot be construed as a reasonable restriction upon the carriage of its business. In fact, the State is permitting goods carriers to enter the city of Madurai between the hours of 10.00



p.m., and 06.00 a.m., and the restriction imposed in this regard upon the petitioner is thus, also discriminatory.

5. The petitioner relies upon a decision of the Division Bench at the Principal Seat of this Court in the case of *Mini Bus Owners Association vs. State of Tamil Nadu and others* (2004 Writ Law Reported 3). The Bench concludes in the aforesaid case, that the restrictions imposed upon Omni buses plying to and from Chennai city are unreasonable to the extent to which they prevent the omni buses for entering into the city to facilitate pick and drop of the passengers. In concluding so, the Division Bench has taken into account the inconvenience caused to the passengers and has quashed the GO, permitting the omni buses to enter Chennai city, making it clear however, that the buses shall not be permanently parked on the road sides.

6. A legal argument put forth by the petitioner is that the All-India permit held by the members permits the vehicles to ply in the entire State of Tamil Nadu except prohibited areas. Thus, the restriction imposed by the impugned Notification is clearly contrary to the permit condition itself. The petitioner compares the permits issued by the Respondent authority to those issued by the State Transport Authority in Arunachal Pradesh which contain a condition to the effect that the Authority may, after giving notice of not less than one month, vary the conditions of the permit or attach to the permit further conditions, to point out that such a condition does not find place in the former permit, issued by Tamil Nadu. Thus, according to them, there is no statutory authority in terms of which the impugned Notification has been issued and the same is hence liable to be quashed.

7. Mrs.J.Padmavathy Devi, learned Special Government Pleader defends the impugned Notification, and has filed a counter dated 27.06.2019 and a reply dated 27.06.2019 along with a compilation of documents.

8. The impugned Notification states that the omni buses, both inward and outward bound, are to enter into Madurai City to pick and set down passengers at the approved Omni Bus stand at Mattuthavani only. No Omni buses are to be allowed to pick and set down passengers and their luggage within Madurai city or at places adjoining the city.

9. Similarly Omni buses bound to various places through Madurai are bound to use Madurai-Uthangudi-Kappalur Ring Road and the four way track on the outside of the town limits. If necessary, the buses may enter the approved bus stand to pick and set down passengers. But in any event, the buses shall not be allowed to



10. The course of routes have been notified as follows:

(i) The buses coming from Srivilliputtur, Virudhunagar, Aruppukottai, Manamadurai, Sivagangai (via) Madurai are allowed to use Kappalur - Uthangudi Ring Road and if necessary may touch the approved bus stand for Omni buses to pick up and set down passengers.

(ii) Omni buses bound from Madurai to Chennai, Trichy, Tanjur are bound to use Uthangudi, Othakadai four way road. The vehicles must start from Omni Bus stand only and refrain absolutely from operating within Madurai City.

(iii) The Omni buses from Theni, Dindigul (via) Madurai are bound to use four way track, Samayanallur, Fathima College, Thathaneri Bridge, Palam station Road, Gogale road, Ambedkar street, District court, may touch Omni bus stand and return (via) District court, Thallaakulam, Goripalayam, A.V.Palam, Yannaikkal, New bridge, Palam station road, Thathaneri Bridge, Fathima college, Samayanallur four way track. If necessary the buses may touch approved Omni bus stand to pick up and set down passengers. In any way they should not enter into city limits or operated through Madurai city.

11. The Notification provides that violation of the above conditions would constitute violation of permit conditions and has been published by the 2nd respondent in the Madurai District Gazette on 09.12.2014 (Number 9).

12. To the preliminary submission of the petitioner members to the effect that they were not heard and neither were their interests taken into account prior to passing of the Notification, a copy of Police Memo dated 19.07.2014 announcing the proposed route change and conditions is placed on file. This Announcement calls for a meeting of the Respondent authorities along with members of the petitioner association and the discussions therein are minuted and endorsed by all members of the petitioner association. Proceedings dated 01.10.2014 and 17.11.2014 of the District Collector are also placed on record to establish compliance with the principles of natural justice by the authorities prior to issuance of the impugned Notification.

13. The learned counsel for the petitioner association brushes aside the aforesaid proceedings stating that they are empty formalities and that no effective opportunity, in fact, was granted to its members prior to the passing of the impugned Notification. They would also state that the minutes of the meeting have been signed by junior staff members who had no idea of the proceedings or the repercussions thereof, in the least.

14. After a careful consideration of this point, I am inclined to agree with the State since, at the end of the day and in such matters, it is for the authorities to take a decision that is in the best interests of the city as a whole, as long as the proper procedure in this regard is seen to have been followed. As far as



procedure for setting up of the Mattuthavani Bus stand is itself concerned, that proper procedure has been followed is not under dispute, and the petitioners have neither averred this in the writ petition nor have raised this in the course of hearing.

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15. The impugned Notification refers to an approval granted by the Madurai Corporation on 11.11.2014 in respect of setting up of the new stand for omni buses at Mattuthavani, duly notified and communicated to the State Transport Authorities. Thus, it is clear that a policy decision was taken by the State for setting up of a separate stand for omni buses. The new stand at Mattuthavani is stated to comprise of an area of 37,868 sq.mts., and has been commissioned after following proper procedure in this regard. The procedure followed has not been questioned and rightly so. The satisfaction of the authorities in regard to the changes proposed is also apparent. Thus, and at best, the view points of the members of the petitioner association can only be called for and heard and this is seen to have been done in the present case.

16. The Bombay High Court in the case of *Zakir Hussain and others vs. State of Maharashtra and another* [I (2001) ACC 219] has held that the question of natural justice and opportunity when it comes to an issue concerning public interest such as in the present case, cannot be appreciated or applied very strictly. The relevant portion of the judgment is extracted below in support of my conclusion on this point.

'.....

19. The impugned Notification, in our opinion, cannot be declared mala fide merely because the Collector did not invite objections by issuing proclamation before issuing the impugned Notification in question. The contention of the learned counsel for the petitioners, in this regard, cannot be accepted firstly on the ground that there is no such requirement under Section 115 of the Act. The only requirement under Section 115 of the Act is whether there is a requisite material or circumstances exist before the Competent Authority to reach the necessary satisfaction in order to issue prohibitory order in the interest of public safety or convenience. In the instant case, undoubtedly there were 44 complaints received by the Collector in respect of the 3 roads in question as well as the report of the Superintendent of Police. In the circumstances of the case, therefore, it cannot be said that there was no material available before the Collector to reach the necessary satisfaction contemplated under Section 115 of the Act. On the other hand, the action of respondent No. 2, in view of the facts and circumstances of the present case, appears to be bona fide and is as per the scheme of the Section 115 of the Act. It will be



to farfetched to hold that as the Division Bench of this Court set aside the earlier Notification, the Collector this time has acted with mala fide intention and issued the impugned Notification. In the circumstances, therefore, the contention of the petitioners in respect of mala fides cannot be accepted and must fail.

17. A Division Bench of this Court in the case of Tamil Nadu Omni Bus Owners Association, rep., by President L.T.Chellasamy, No.11/5, Gandhi Irwin Road, Egmore, Chennai 600 008 vs. State of Tamil Nadu, represented by its Secretary to Government Housing and Urban Development (U.D.3.1.) Department, Fort St.George, Chennai 600 009 and others [2004 Writ L.R.3] also had occasion to consider a challenge to a similar Notification and sets out the proper procedure to be followed by the authorities [as extracted below]. After a detailed analysis, the Bench finds that the procedure in that case was not proper or not in line with the Regulations and quashes the Notification impugned therein. The Bench states thus:

7. In exercise of powers under Section 96 (xxi), the Government is empowered to make rules prohibiting the picking up or setting down of passengers by stage or contract carriages at specified places or in specified areas or at places other than duly notified stands or halting places and requiring the driver of a stage carriage to stop and remain stationary for a reasonable time when so required by a passenger desiring to board or alight from the vehicle at a notified halting place. By virtue of the said power, the Tamil Nadu Motor Vehicles Rules, 1989 were made. Rule 245 contemplates a detailed procedure for provision of public stands for public service vehicles. The said rule applies only in a case where the local authority apply to the Regional Transport Authority for approval of any scheme for construction of a public stand for any class of public service vehicles. A detailed procedure for processing the application and the notification by the Regional Transport Authority concerned are set out in the Rule. An almost similar Rule 268 of the Madras Motor Vehicles Rules came up for consideration before a Constitution Bench of the Apex Court in "T. B. IBRAHIM, PROPRIETOR, BUS STAND, TANJORE v. THE REGIONAL TRANSPORT AUTHORITY, TANJORE (AIR 1953 SC 79). The Apex Court has held that "a duly notified stand must be one which is notified by the Transport Authority and by none other." This principle of law was again reiterated by a subsequent Constitution Bench of the Apex Court in " MUNICIPAL BOARD, PUSHKAR v. STATE TRANSPORT AUTHORITY, RAJASTHAN AND OTHERS (AIR 1965 SC 458)".

8. In view of the above authoritative pronouncements of the Apex Court, it is now well settled that in terms of



Rule 245 of the Rules, the Local Authority must firstly apply to the Regional Transport Authority for approval of a scheme for construction of the bus stand. The Regional Transport Authority concerned shall approve the scheme. After construction, the Regional Transport Authority concerned must notify the bus stand. Though in the impugned order, the Government only directed the CMDA to allot three acres of land near Koyambedu Wholesale Market complex for operation of Omni buses, by the direction that the Omni buses should not be parked or operated in Chennai city other than Koyambedu Market complex, the earmarked place shall be considered only for use of Omni buses as a public stand. Insofar as the establishment of CMBT, the Regional Transport Authority has rightly notified the bus stand as a "Special Class Bus Stand" in his proceedings dated 15.11.2002. Insofar as the bus stand for Omni buses, we find no request from the Member-Secretary, CMDA to Regional Transport Authority for approval of scheme for construction of bus stand and a notification by the Regional Transport Authority viz., the Joint Transport Commissioner-cum-Regional Transport Authority, Ayanavaram, Chennai.

9. After the impugned Government Order was passed, it appears that the Transport Commissioner in his letter dated 11.9.2002 called for a meeting to be held on 18.9.2002, wherein the President and Secretary of Tamil Nadu Omni Bus Owners Association as well as one Thiru M. Panneerselvam, Proprietor of Omni bus also participated. The petitioners had objected to the total restrictions imposed on Omni buses to enter into Chennai city. No final decision was taken in the said meeting and the meeting was adjourned to 7.10.2002. Thereafter, no such meeting was held, but the Regional Transport Authority, Chennai city had only notified the "CMBT" as "Special Class Bus Stand" in his proceedings dated 15.11.2002.

10. From the above proceedings, we are convinced that the Local authority had never made application to the Regional Transport Authority for approval of scheme for construction of bus stand for Omni buses and the bus stand was not notified under Rule 245 of the Rules. Rule 370 much relied upon by the respondents, relates only to the restriction of speed, weights etc. The said rule does not relate to either approval of construction of a bus stand or the notification by the Regional Transport Authority. In the absence of compliance of Rule 245 the establishment of a bus stand for Omni buses in the Koyambedu Market complex is illegal as the same is not in conformity with Rule 245 of the Rules. For the above



reasons, we have no hesitation to hold that the impugned Government Order and the subsequent proceedings directing the Omni bus operators only to pick up and dropout the passengers from the Koyambedu Wholesale Market complex is illegal.

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18. Upon an appreciation of the pronouncements as above, it seems to me that it would suffice that the petitioners be well aware of the proceedings and deliberations leading to the issuance of the Notification in question. This aspect appears clear from the facts and materials on record in the present case. The respondents have placed on record various proceedings commencing from September 2014 issued by the public authorities discussing steps necessary for assessment of and setting in place safety measures for traffic. Proceedings dated 01.10.2014, 17.11.2014 and paper publication on 16.01.2015 show that the issue of road safety and measures being contemplated in that regard was within public domain and discussion. In any event, one cannot put too fine a point on the aspect of natural justice or grant of opportunity in cases such as these and I am thus of the considered view that the opportunity extended to the petitioners in this case is adequate.

19. On the merits of the challenge itself, the respondents point out that the restrictions have been placed in the light of the compulsions of road safety and the safety and security of vehicular and pedestrian traffic. In a well drafted affidavit, filed on 27th June 2019, the Deputy Commissioner of Police (traffic) sets out the ground realities of traffic in the city of Madurai highlighting both the concerns as well as the corresponding measures taken by the authorities to address the concerns and contain traffic violations to ensure, as far as possible, the safety of pedestrians and vehicular traffic.

20. Pursuant to an interim order granted by this Court on 22.12.2015, the Omni buses have been permitted to enter and exit the city between the hours of 10.00 p.m., and 06.00 a.m. A team comprising Motor Vehicle Inspectors and Police Personnel are stated to have conducted a spot inspection at strategic points in the city on the 14th & 21st June, 2019. Based on the spot inspections conducted, the respondents state that seven (7) violations by omni buses of the entry and egress times were noted. Details of several more violations and fines imposed in such instances have also been placed on record. According to them, such violations are the norm rather than the exception, and it is for this reason and in the interests of public safety that the Notification has been issued.

21. According to the respondents, if the request of the petitioner to ply the buses during the night hours were accepted, it would cause severe inconvenience and hardship as well as traffic concerns at junctions such as the Kattabomman Statute, Goripalayam Junction, Outpost Junction and Kalavasal Junction, where according



to them, passengers vehicle units of between 1,500 to 6,000 ply during peak hours, that is, between 07.00 p.m., to 11.00 p.m. It is only on account of this public concern that reasonable restrictions have been imposed on the plying of the vehicles.

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22. Moreover, the Omni buses are stated to be longer and wider than the town buses, or the inter-state buses used by the TamilNadu State Transport Corporation and the respondents have also detailed variations in length, height and width of the State-run buses viz-a-viz the private omni buses. This point is put forth to emphasize that permitting the omni buses to ply within the city and stop at specific points to facilitate pick and drop of passengers would result in traffic snarls and inconvenience to the commuting public apart from a serious threat to their safety.

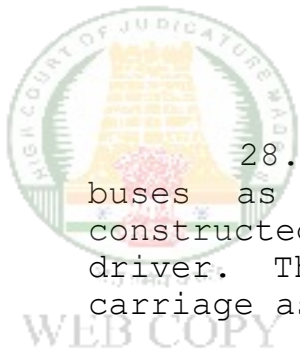
23. The respondents point out that on account of increased dimensions of the omni buses, despite the special rear-view mirrors that are provided for the drivers, there are certain blind spots and the driver is unable to have a complete and safe view of the rear. This is a serious cause for concern, if the omni buses were permitted to ply intra-city during peak traffic hours.

24. Worldover, the respondents argue, omni buses are permitted to ply only inter-city and commuters and travellers are dependent on other modes of transport for transit, intra-city. There is no cause for the any deviation from this global practice in the present case. The respondents also point out that the members of the petitioner Association ply shuttle buses to facilitate the transfer of passengers from different parts of the city to the Mattuthavani Bus stand. Thus, they have already put in place a system to ensure safe and efficient transport of the passengers from different points of the city to the bus stand and the restrictions placed by the impugned Notification does not in fact prejudice them in any way at all.

25. The respondents rely upon the provisions of Section 115 of the Motor Vehicles Act 1988 (in short and henceforth 'Act') that permit the imposition of reasonable restrictions, bearing in mind changing traffic requirements and the admitted explosion in the number of pedestrians and vehicles plying on the roads. In fine, according to them, the restrictions imposed in the present case are reasonable and in public safety and may not be interfered with.

26. The decision of the Division Bench relied on by the petitioner is distinguished saying that Madurai is a much smaller city with far narrower roads than Chennai and thus, the observations and conclusions of the Division Bench would not be applicable to the present factual situation.

<https://hcservices.ecourts.gov.in/hcservices/> 27. In the present case, the rival contentions advanced by both sides and perused the facts, law and case-law cited carefully.



28. The vehicles in question are, unquestioningly, omnibuses as defined in Section 2(29) meaning, a motor vehicle constructed or adapted to carry more than six persons excluding the driver. The journey undertaken is, admittedly, a contract for carriage as defined in Section 2(7) of the Act, as follows:

'a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum - (a) on a time basis, whether or not with reference to any route or distance; or (b) from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes - (i) a maxicab; and (ii) a motorcab notwithstanding that separate fares are charged for its passengers.'

29. The power/entitlement of the State to have issued the impugned Notification has to be tested in the light of Section 115 of the Act, extracted below:

'115. Power to restrict the use of vehicles. - The State Government or any authority authorised in this behalf by the State Government, if satisfied that it is necessary in the interest of public safety or convenience, or because of the nature of any road or bridge, may, by notification in the Official Gazette, prohibit or restrict, subject to such exceptions and conditions as may be specified in the notification, the driving of motor vehicles or of any specified class or description of motor vehicles or the use of trailers either generally in a specified area or on a specified road and when any such prohibition or restriction is imposed, shall cause appropriate traffic signs to be placed or erected under section 116 at suitable places:

Provided that where any prohibition or restriction under this section is to remain in force for not more than one month, notification thereof in the Official Gazette shall not be necessary but such local publicity in the circumstances may permit shall be given of such prohibition or restriction.

<https://hcservices.ecourts.gov.in/hcservices/>
30. The concept of a smart city, one that takes into account the safety and convenience of all sections of the society, is gaining ground in India. For this project to be successful, one of



the major factors is strict implementation of road safety measures, of course, balancing the same with convenience of passengers (both pedestrian and vehicular) as well and business and commercial interests of service providers.

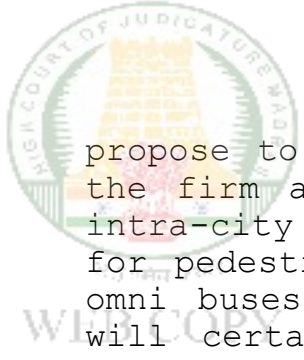
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31. Madurai is a smaller city when compared to other South Indian cities, and also a beautiful, bustling one. The main attraction of the city is as a Temple town. The roads are crowded and narrow. The setting up of the Mattuthavani Bus Stand is to facilitate a common stop/stand where all inter-city buses may stand and operate. It is not in dispute that each member of the petitioner organisation has been allotted sufficient space, both for administrative purposes as well as for the vehicles to stand, therein. The stand also provides for sufficient space for passengers to wait with luggage, parking bays for the omni buses and wide enough roads and pathways for ingress and egress of the Omni buses. Not only should full use be made of this stand, but there is no other place in the city which would serve this purpose as comprehensively as this stand does. I see the impugned Notification as being in alignment with Government Policy for the development of smart cities.

32. The proceedings of the authorities dated 19.07.2014, Nil.09.2014 and 01.10.2014 have been placed on record to evidence that the setting-up of the stand has been done in a proper manner after following all rules and regulations in this regard. There is thus no flaw in the procedure followed by the authorities in this regard and none is alleged except the plea regarding the violation of the principles of natural justice that I have already rejected.

33. What remains is to evaluate the convenience of the passengers for pick and drop facilities intra-city. Certainly, this cannot be ignored. However, I am of the considered view that servicing the requirements of a small section of the public constituting passengers cannot be at the cost of the inconvenience and safety of the larger section of the society, comprising residents of the city itself. It is common knowledge that the Omni buses, thundering down the small and narrow roads in their bid to service the contract passengers, cause hardship and inconvenience as well as pose a threat to members of the general public and other vehicles on these roads. Omni buses are designed for inter-state conveyance and, in my considered view, have no place/role within the confines of a city such as Madurai.

34. Much has been stated about the dimension of the buses itself and the 'blind spots' whereby a driver of an Omni bus is unable to see certain sections of the road on account of the design and construction of the vehicles itself. The state has also placed on record comparative statistics of the State run Omni buses to establish that the dimensions of their buses are smaller and the vehicles, much sleeker. The petitioner, in response to the aforesaid allegations, has stated that measures have been taken to upgrade the design of the vehicle and eliminate the blind spots. I do not



propose to enter into a discussion in this regard, since, I am of the firm and considered view that Omni buses must keep away from intra-city roads in order to ensure a proper system of road safety for pedestrian and vehicles and vehicle management. Permitting the omni buses to stop and pick passengers enroute, within the city, will certainly cause substantial hardship to traffic as well as pedestrians, since such impulsive and unscheduled stops interrupt the free and safe movement of traffic.

35. One more thing. The petitioner has touched upon the fact that the permits extended to State-run Omni buses are 'stage carrier permits' which enable them to travel and make stops intra-city whereas the Omni buses run by private agencies are issued only as 'contract carriage' permits. As a result, the latter can run only point to point without any stops enroute whereas the former can ply intra-city as well. This is discriminatory and also, as rightly contended by the petitioner, violative of Article 19(1)(g) of the Constitution of India.

36. Evidently, Omni buses running inter-city whether private or State should be bound by the same terms of carriage seeing as the service they offer is one and the same. This observation is dehors the aspect of pricing that is left to the discretion of the service providers. Thus, and to this end both private and State run Omni buses running on contract carriage will ensure adherence to the impugned Notification, which is upheld, conforming to the routes stipulated in the impugned Notification only.

37. Town buses that run intra-city are always available to carry passenger traffic from different points in the city to the Omni bus stand at Mattuthavani. In addition, private Omnibus operators I am told, run shuttles between the bus stand and various points in the city as a service to their passengers and as a measure of augmentation of their business.

38. The invocation of Section 115 of the Act, as extracted above, are seen to proper and appropriate in this case, in the light of the discussion, observations and facts as noticed and appreciated by me above. I also draw support from the observations of the Division bench of the Bombay High Court in the case of *Zakir Hussain* (supra), extracted below:

...17. It is no doubt true that under Article 19(1)(d), the petitioners have a right to move freely throughout the territory of India as well as to practice any profession or carry on any occupation, trade or business in view of Article 19(1)(g). However, it cannot be claimed that right to exercise the freedoms given and guaranteed by the Constitution in the abovereferred Articles should be unfettered by any restriction. Therefore, it cannot be said that the right is absolute one and cannot be subjected to reasonable restriction contemplated under Clause (6) of Article 19. The reasonableness of restriction has to be determined in an



objective manner and from the stand point of the interest of the general public and not from the point of view of the person upon whom the restrictions are Imposed. While considering the aspect of validity of restriction and judging reasonableness of law, it is necessary to consider the surrounding circumstances and it is necessary to find out whether it is for furthering the social interest.

18. On the backdrop of the abovereferred principles, it will be appropriate to consider the facts and circumstances of the present case. In the instant case, it is not in dispute that there were as many as 44 complaints submitted to the Collector-the respondent No. 2 by the citizens of city of Akola in respect of nuisance/inconvenience caused by the Luxury Buses/heavy vehicles using the three roads in question. Similarly, these complaints also raised the aspect of safety of the citizens. It is also not in dispute that the Superintendent of Police has submitted his report dated 28-4-2000 to the Collector-respondent No. 2. This report demonstrates the number of accidents which had taken place on these roads. The respondent No. 2 being a public servant is expected to discharge his statutory duties in the interest of the public at large. It is also not in dispute that Section 115 of the Act, in fact, gives power to the Collector / Competent Authority to prohibit or restrict entry of the Motor Vehicles on road or roads in the interest of public at large. However, he has to exercise this power only on being satisfied on the basis of the material available before him that it is necessary to do so in the interest of public safety or convenience. In the instant case, in view of the above referred facts and circumstances, the impugned Notification dated 5th May, 2000 issued by respondent No. 2, in our opinion, is undoubtedly in the public interest and stands the test of reasonableness and can be construed as reasonable restriction on the fundamental rights given by Article 19 (1)(d) and (g). The same is, therefore, not violative of Article 19(1)(d) and (g) of the Constitution of India.

19. The impugned Notification, in our opinion, cannot be declared mala fide merely because the Collector did not invite objections by issuing proclamation before issuing the impugned Notification in question. The contention of the learned counsel for the petitioners, in this regard, cannot be accepted firstly on the ground that there is no such requirement under Section 115 of the Act. The only requirement under Section 115 of the Act is whether there is a requisite material or circumstances exist before the Competent Authority to reach the necessary satisfaction



in order to issue prohibitory order in the interest of public safety or convenience. In the instant case, undoubtedly there were 44 complaints received by the Collector in respect of the 3 roads in question as well as the report of the Superintendent of Police. In the circumstances of the case, therefore, it cannot be said that there was no material available before the Collector to reach the necessary satisfaction contemplated under Section 11 of the Act. On the other hand, the action of respondent No. 2, in view of the facts and circumstances of the present case, appears to be bona fide and is as per the scheme of the Section 115 of the Act. It will be to farfetched to hold that as the Division Bench of this Court set aside the earlier Notification, the Collector this time has acted with mala fide intention and issued the impugned Notification. In the circumstances, therefore, the contention of the petitioners in respect of mala fides cannot be accepted and must fail.

20. The perusal of the judgment of the Division Bench in W. P. No. 4139/99 would show that the impugned Notification in the said writ petition so quashed and set aside, was on the ground that there was no material whatsoever before the Collector then which could warrant exercise of power contemplated under Section 115 of the Act. It was, therefore, held that the satisfaction which was reached by the Collector, cannot be sustained since the same was based on non existing norms. In the instant case, for the reasons stated hereinabove, the situation is otherwise. There are as many as 44 complaints received by the Collector as well as the report of the Superintendent of Police. It is, therefore, undoubtedly clear that this is not a case where the power is exercised by the Collector without any material on record in this regard. The Competent Authority is the best Judge of the situation and circumstances and is expected to exercise the power under Section 115 of the Act in the interest of public safety or convenience etc. The jurisdiction of the Court, in such situation, can be extended only to find out whether there was material available before the Competent Authority in order to reach the requisite satisfaction contemplated under Section 115 of the Act for issuing prohibitory order or Notification. In our opinion, jurisdiction cannot be extended to find out adequacy or inadequacy of the material which warrants such exercise by the Competent Authority, which should to be left to the Competent Authority to act in the situation as per the Scheme of the Section. In the circumstances, therefore, the contention of the petitioners that the impugned



Notification suffers from non-application of mind, cannot be accepted and must fail.

21. It is, however, true that if the purpose is served by banning entry of the motor vehicles during the peak traffic hours, the Competent Authority no doubt is required to do so. However, as we have already stated hereinbefore that the Competent Authority being the best Judge of the situation and circumstances, is expected to act accordingly. In the instant case, on the basis of the complaints and report of the Superintendent of Police, if the Competent Authority thought it fit to prohibit the plying of the Private Luxury Buses on the roads in question, it cannot be said to be unfounded merely because on some other roads, the entry is prohibited by the Collector, of the heavy vehicles during the peak hours only.

39. In conclusion, the arrangement being what I have noted at paragraphs 35 to 37 above, appears to me to be perfectly equitable, one which, in my considered view, strikes the right balance between public, pedestrian and vehicular safety as well as convenience of passengers on the one hand and trade and business interests, on the other. In the light of the discussions as aforesaid, I dismiss this writ petition summarising my conclusions as below:

- (i) Impugned Notification dated 17.11.2014 is upheld;
- (ii) All Omni buses, both Private and State-run, whether run on 'contract' or 'stage carriage' permits shall ply strictly in compliance with the route stipulated in the impugned Notification only.
- (iii) Interim order dated 22.12.2015 stands vacated forthwith.

No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Secretary to Government of Tamil Nadu,
Transport Department,

Esplanade, Chennai - 600 009.



2. The District Collector, Madurai.

3. The Commissioner of Police,
(Madurai City), Office of the Commissioner of Police,
South Chithirai Street, Madurai.

4. The Joint Commissioner of Police, (Traffic),
Madurai City, Office of the Commissioner of the Police,
Madurai.

5. Regional Transport Officer,
Regional Transport Office, Madurai (Central), Madurai.

+1 CC to Mr.D.NALLATHAMBI, Advocate (SR-83768[F] dated 28/08/2019)

+1 CC to SPL GP (SR-83753[F] dated 28/08/2019)

order made in
W.P.(MD)No.23309 of 2015
Dated:27.08.2019

sm

MK (09.09.2019) 16P 8C