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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 2nd March, 2020

+ W.P.(C) 1782/2020 and CM No. 6193/2020

STA OPERATORS EKTA MANCH AND ORS..... Petitioners

Through: Ms. Rani Chhabra, Adv.

versus

GOVERNMENT OF NCT OF DELHI AND ORS..... Respondents

Through: Mr. Ramesh Singh, Standing Counsel-
GNCTD with Mr. Ishan Agrawal and Ms. Bhawna
Kataria, Advs. for R-1 to 3

Ms. Avnish Ahlawat, Standing Counsel with Mr.
N.K. Singh and Mr. Himank Ahuja, Mr.
Manashwy Jha for Mr. Manish Vashisht, Standing
Counsel(DTC) for R-4

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

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02.03.2020

D.N. PATEL, CHIEF JUSTICE (ORAL)

W.P.(C) 1782/2020

1. This writ petition has been preferred with the following prayers:

*“a) to pass an order, direction and/or any other
appropriate writ declaring the action of the respondents
allowing free ride to the women passengers in DTC and Cluster*

Buses illegal, arbitrary unjustified Irrational and Is In violation of fundamental rights of the members of the petitioners Association guaranteed under Article 14 and 19 of the Constitution; and

b) to pass an order, direction and/or any other appropriate writ In the nature of Prohibition prohibiting the respondents allowing free ride to the women passenger In DTC and Cluster Buses being plied In NCT of Delhi; and

c) to pass an order/direction and/or any other writ In the nature of Certiorari quashing the Regulation/Notification Issued by respondents as Illegal beyond the powers conferred under State Road Transport Act; and

d) pass such other or further order/s as Your Lordships may deem fit and proper In the facts and circumstances of the case.”

2. Having heard learned counsel for both the sides and looking to the facts and circumstances of the case, it appears that the respondent no.1 has issued a notification dated 28th October, 2019 in exercise of the powers conferred by Clause (d) of sub-section 2 of Section 45 and clause (d) of sub-section (1) of Section 19 of the Road Transport Corporation Act, 1950 to be read with Delhi Road Transport (Amendment) Act, 1971, whereby Delhi Transport Corporation (Free and Concessional Passes) Regulations, 1985 have been amended to the effect that after para (vi) of Serial No. 3 of Delhi Transport Corporation (Free and Concessional Passes) Regulations, 1985, the following have been inserted :

“(vii) Female passengers to travel free in DTC buses (both AC and Non-AC) by issuance of “Single Journey Free Travel Pass”. However, they will have the option to purchase ticket for the journey.”

3. This notification has been brought into force with effect from 29th October, 2019.

4. Learned counsel appearing for the petitioner submitted that because of the aforesaid notification and the amendment in the Regulations, 1985, the petitioners are losing their business and consequently facing financial loss. It is also submitted by learned counsel for the petitioners that such type of single journey free travel pass, only to the female passengers is also violative of Article 14 of the Constitution of India.

5. Learned counsel for the respondent no.1 placed before this court copies of decision no. 2738 dated 29th August, 2019, notification dated 4th September, 2019 alongwith a schedule, communication dated 13th September, 2019 issued by finance (Budget) Department, Government of NCT of Delhi, order dated 28th October, 2019 and 29th October, 2019, allowing free travel to female passengers in DTC as well as in cluster buses, the same are taken on record.

6. We are not in agreement with the arguments canvassed by learned counsel for the petitioners especially looking to Article 15 of the constitution of India. For ready reference, Article 15 of the Constitution of India reads as under :

“15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and palaces of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

(3) Nothing in this article shall prevent the State from making any special provision for women and children

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.”

(Emphasis supplied)

7. In view of the aforesaid provisions of the Constitution, there can be special provisions for women and children.

8. Moreover, looking to the powers conferred under Section 45 of the Road Transport Corporations Act, 1950, to be read with Delhi Road Transport (Amendment) Act, 1971, the respondent no.1 has all the power, jurisdiction and authority to enact Delhi Transport Corporation (Free and Concessional Passes) Regulations, 1985.

9. By virtue of aforesaid power, jurisdiction and authority vested in respondent no.1, read with the provisions of Section 28 and Section 29 of Government of National Capital Territory of Delhi Act, 1991, the respondent no.1 has already taken approval from Hon'ble Lieutenant Governor on 2nd September, 2019, under the Delhi Appropriation (No.3) Act, 2019. The necessary funds has also been allocated to facilitate female passengers to travel free in DTC and cluster buses (both ACs and Non-ACs) on the basis of issuance of "Single Journey Free Travel Pass" by the conductor of DTC and cluster buses. Thereafter an order dated 28th October, 2019 was passed with the approval of Hon'ble Minister (Transport), Government of NCT of Delhi. Accordingly, a notification was issued by Government of NCT of Delhi for DTC buses on 28th October, 2019 which is at page no. 60 (Annexure P-4 to the memo of this writ petition). All these actions of the respondent authoriteis cannot be said to be in violation of the provisions of the Constitution of India, especially looking to Article 15 thereof.

10. The notification dated 28th October, 2019 issued by respondent no.1 cannot be held unconstitutional merely on the ground that the same is causing financial loss to the petitioners. Moreover, it is a policy decision of the respondent no.1 to give free travel to the female passengers in DTC buses and cluster buses. It happens in a State that the State authorities give variety of concessions on the basis of policies floated by them. For example, if the State Government is giving food grains at concessional price to the Below Poverty Line card holders, it cannot be termed as loss of business or financial loss to the grocery shop owners dealing in food grains, and therefore cannot be declared as unconstitutional. On the contrary, it is the duty of the State to provide food, clothing, shelter and such type of other facilities at a concessional rate to those who are in need thereof, looking to

the budgetary provisions and the priority of the work to be done by the State. Even if such type of beneficiary schemes are causing loss to the other persons, it does not mean that the policy decision of the State is unconstitutional.

11. In view of the aforesaid facts, reasons and provisions of the law, we see no reason to entertain this writ petition and the same is therefore dismissed with no order as to costs.

CM No. 6193/2020

1. In view of the final order passed in the writ petition, this application is also stands disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J.

MARCH 02, 2020/kr