

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.5957 of 2021

Vaishnavi Jayakumar

.. Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary
Transport Department
Fort St. George, Chennai.
2. The Metropolitan Transport Corporation Ltd.
Rep. by its Managing Director
No.2, Pallavan Illam
Pallavan Salai
Chennai 600 002.
3. State Commissioner for Persons with
Disabilities (Tamil Nadu)
Commissionerate for the Welfare of the
Differently abled
No.5, Kamarajar Salai
Lady Willingdon College Campus
Chennai 600 005.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorari calling for the records of the first respondent culminating in G.O.Ms.No.31 dated 24.02.2021 and quash the same.

For the Petitioner : Mr.A.Yogshwaran

For the Respondents : Mr.R.Shunmugasundaram
Advocate General
Assisted by
Mr.P.Muthukumar
State Government Pleader
for Respondents 1 & 3

& Mr.K.M.D.Muhilan, G.A,
assited by Alagu Gowtham GA

Mr.Kalyanaraman
For M/s. Aiyar and Dolia
for Respondent-2

Mr.T.Mohan
Amicus Curiae

ORDER
(Order of the Court was made by
the Hon'ble Chief Justice)

The writ petition has been filed challenging G.O.Ms.No.31 dated 24.02.2021 issued by the first respondent.

2. The challenge to G.O. has been made on the ground of violation of Section 41 of the Rights of Persons with Disabilities Act, 2016. It is also on the ground that when no direction has been given by the Apex Court to have only 10% of the government buses disabled friendly, G.O. indicates only 10% of the total number of Government buses to be low floor buses.

3. It is stated that all the government buses should conform to the provisions of the Act of 2016 and the Rules framed thereunder, apart from the Harmonised Guidelines issued by the Government of India. But, the respondents have decided to apply those provisions only to the extent of 10% of the government buses to be accessible for the differently abled persons. The G.O. dated 24.02.2021 thus offends the provisions of the Act of 2016 and the Rules of 2017, apart from the Harmonised Guidelines issued by the Government of India.

4. In view of the above, there was a need for the petitioner to prefer a writ petition to seek all the government buses to operate in compliance of the provisions of the Act of 2016 and Rules of 2017. In the absence of compliance of the provisions of the Act, more specifically Section 41 of the Act of 2016 and Rule 15 of the Rules of 2017, the decision of the first respondent in issuing G.O.Ms.No.31 dated 24.02.2021 is not sustainable and therefore, a direction may be given to the

respondents to bring all the government buses in conformity with Harmonised Guidelines and Space Standards for Barrier Free Built Environment for Persons with Disability and Elderly Persons, particularly in reference to Clause 11.7.1.2 regarding low floor buses.

5. Learned counsel for the petitioner has made a reference to the judgment of the Supreme Court in the case of *Rajive Raturi v. Union of India* [(2018) 2 SCC 413]. It is to submit that there is no direction by the Apex Court to manage only 10% of the Government owned public transport corporation to be in conformity with the provisions of the Act or Rules and the Guidelines. In fact, paragraph 34.7 of the said judgment mandates that all the government buses should be disabled friendly and in accordance with the Harmonised Guidelines.

6. In the instant case, the G.O. under challenge states that only 10% of the government transport buses are to be in conformity with the Act of 2016, Rules of 2017 and Harmonised Guidelines. Accordingly, a prayer is made not only to set aside the G.O., but to further direct the respondents to make strict compliance of the Act and Rules, apart from the Harmonised Guidelines issued by the Government of India.

7. Learned Advocate General submits that the G.O. under challenge was issued in the month of February, 2021. However, on account of the interim order, the buses could not be purchased by the State Government / Transport Corporation. Otherwise, the State Government has no intention to flout either the provisions of the Act of 2016 or the Rules of 2017. It would also follow the Harmonised Guidelines issued by the Government of India apart from other Guidelines.

8. According to learned Advocate General, a direction may be issued to safeguard the buses which were purchased prior to the enactment of Act of 2016 and Rules of 2017 and also the Harmonised Guidelines of the Government of India. Therefore, to that extent, the provisions of the Act and Rules, apart from the Harmonised Guidelines may not be made applicable.

9. It is stated that in the absence of umpteen number of buses, it has become very difficult for the passengers to travel from one place to another in the city of Chennai. Thus, Government intends to purchase 2213 buses. Therefore, a prayer is made to dispose of the writ petition, with appropriate direction, so that the State Government / Corporation would purchase the buses without any further delay.

10. We have considered the rival submissions and perused the records.

11. The writ petition was filed to challenge the G.O. dated 24.02.2021 said to have been issued in violation of Section 41 of the Act of 2016 and Rule 15 of the Rules of 2017, apart from the Harmonised Guidelines issued by the Government of India. It is even by taking a wrong interpretation of the judgment of the Apex Court in the case of Rajive Raturi supra.

12. The sum and substance of the prayer is to set aside the impugned G.O. and at the same time, to issue a direction to the State Government / Corporation to ply all the buses in compliance of the provisions of the Act of 2016 and Rules made thereunder, apart from the Harmonised Guidelines.

13. Learned Advocate General has not contested the prayer made by learned counsel for the petitioner, as otherwise, the State is duty bound to comply the provisions of the Act of 2016 and Rules of 2017 made thereunder and the purchase of new buses would be in conformity with the provisions of law. The only clarification sought by learned Advocate General is regarding the buses purchased prior to the enactment of Act of 2016 and Rules of 2017.

14. In the light of the aforesaid, it would be appropriate to refer to Section 41 of the Act of 2015, Rule 15 of the Rules of 2017 and Clause 11.7.1.2 of the Harmonised Guidelines and also paragraph 34.7 of the decision of the Apex Court in Rajive Raturi supra, which read as under:
Section 41:

"Access to transport. -

(1) The appropriate Government shall take suitable measures to provide, -

(a) facilities for persons with disabilities at bus stops, railway stations and airports conforming to the accessibility standards relating to parking spaces, toilets, ticketing counters and ticketing machines;

(b) access to all modes of transport that conform the design standards, including retrofitting old modes of transport, wherever technically feasible and safe for persons with disabilities, economically viable and without entailing major structural changes in design;

(c) accessible roads to address mobility necessary for persons with disabilities.

(2) The appropriate Government shall develop schemes programmes to promote the personal mobility of persons with disabilities at affordable cost to provide for, -

(a) incentives and concessions;

(b) retrofitting of vehicles; and

(c) personal mobility assistance."

Rule 15:

"Rules for accessibility. -

(1) Every establishment shall comply with the following standards relating to physical environment, transport and information and communication technology, namely:-

(a) standard for public buildings as specified in the Harmonised Guidelines and Space Standards for Barrier Free Built Environment for Persons with Disabilities and Elderly Persons as issued by the Government of India, Ministry of Urban Development in March, 2016;

(b) standard for Bus Body Code for transportation system as specified in the notification of the Government of India in the Ministry of Road Transport and Highways, vide number G.S.R. 895(E), dated the 20th September, 2016;

(c) Information and Communication Technology -

(i) website standard as specified in the guidelines for Indian Government websites, as adopted by Department of Administrative Reforms and Public Grievances, Government of India;

(ii) documents to be placed on websites shall be in Electronic Publication (ePUB) or Optical Character Reader (OCR) based pdf format:

Provided that the standard of accessibility in respect of other services and facilities shall be specified by the Central Government within a period of six months from the date of notification of these rules.

(2) The respective Ministries and Departments shall ensure compliance of the standards of accessibility specified under this rule through the concerned domain regulators or otherwise."

Clause 11.7.1.2:

"Accessible buses

Accessible buses should have the following features:

- Bus doors should be at least 1200 mm wide;
- Should be low floor;
- Have handrail and footlight installed; and
- Have apparatus such as a hydraulic lift or pull-out/foldable ramp (Figure 11-7) installed in the doorway for mobility aided users/prams
- Wheelchair spaces
 - Space for a wheelchair should be provided in an appropriate position, without preventing other passengers from getting on and off

- (Figure 11-8);
- The location of that space should be as indicated, inside and outside the bus, using the standard symbol for wheelchair accessibility; and
 - Wheel stoppers and wheelchair safety belts should be provided."

Paragraph 34.7 of the decision in Rajive Raturi supra:

"34.7. Here again, Section 41 of the Disabilities Act, 2016 provides for comprehensive accessibility in all modes of transport including but not limited to the bus transport. Therefore, it becomes the duty of the Union, States as well as Union Territories to ensure that all government buses are disabled friendly in accordance with the Harmonised Guidelines. Likewise, the respondents are duty-bound to see that private buses also become disabled friendly. Thus, we direct the Government to lay down the plan giving the dates by which the aforesaid task shall be undertaken, keeping in view the directions which are sought by the petitioner in this behalf and the same shall be filed within three months."

15. As per the provisions and Harmonised Guidelines issued by the Government of India extracted above, the State Government / Transport Corporation would be at liberty to purchase the buses in conformity with the aforesaid and while doing so, they would also take care of the direction given by the Apex Court in the case of Rajive Raturi supra. If any deviation is permitted by the Apex Court or any additional direction is given, then it goes without saying that it would also be taken note of by the respondents while purchasing the buses.

16. With the aforesaid, the writ petition is disposed of causing interference with G.O.Ms.No.31 dated 24.02.2021 only to the extent that it offends any of the provisions of the Act or Rules or the Harmonised Guidelines issued by the Government of India and directing the respondents to ply all the Government buses, in conformity with the provisions of the Act and Rules and the Harmonised Guidelines quoted above and in the light of the judgment of the Apex Court in the case of Rajive Raturi supra. There will be no order as to costs.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

kpl

To:

1. The Secretary
Transport Department
Fort St. George, Chennai.
2. The Managing Director
Metropolitan Transport Corporation Ltd.
No.2, Pallavan Illam
Pallavan Salai, Chennai 600 002.
3. State Commissioner for Persons with Disabilities (Tamil Nadu)
Commissionerate for the Welfare of the Differently abled
No.5, Kamarajar Salai
Lady Willingdon College Campus
Chennai 600 005.

+1cc to Mr.Jayesh-B.Dolia, Advocate, S.R.No.43851

W.P.No.5957 of 2021

PL(CO)
SB(29/07/2022)