

Smoke Affected Residents' Forum

vs

Municipal Corporation of Greater Mumbai and Others

Bombay High Court

18 December, 2002

Citations: 2003 (3) BomCR 323

Bench: C Thakker, S Bobde

JUDGMENT

C.K. Thakker, C.J.

1. Both these notices of motion have been taken out by the State of Maharashtra and Maharashtra Vahtuk Sena (Mahasangha) respectively, praying therein that time stipulated for phasing out/conversion of all transport vehicles by an order dated 17th October, 2001 *Smoke Affected Residents' Forum v. Municipal Corporation of Greater Bombay*, reported in 2002(2) Bom.C.R. 343, be extended for a period of five years. In the second notice of motion, a prayer is also made to join the applicant as party respondent or to allow it to intervene in the main matter.

2. It may be stated that a Division Bench of this Court by an order dated 17th October, 2001, issued certain directions. Paragraph 13 of the said order is relevant and reads as under (2002(2) Bom.C.R. at page No. 348):

"The last category is the category of transport vehicles. The committee has recommended that with effect from 1st January, 2001 all transport vehicles (except three-wheelers and BEST buses) over the age of 15 years shall be scrapped, unless converted to clean fuel. As regards the transport vehicles over 8 years of age, it has recommended that they shall be scrapped, unless converted to run on clean fuel, and the effective date recommended is 1st January, 2002. On the other hand, the State of Maharashtra has suggested 1st January, 2003 as the date for scrapping of transport vehicles more than 15 years old, and 1st January, 2005 as the effective date for scrapping of transport vehicles more than 8 years old. Mr. Cama, appearing on behalf of the Association, submitted that truck-owners were not in a position to make such a huge investment on the conversion of diesel engines to CNG/LPG. Moreover, purchase of a new vehicle would be wholly beyond the means of most of the truck owners, particularly when no substantial financial assistance has been promised by the State Government. Added to this, he submitted, the non-availability of CNG/LPG may further aggravate the situation. Having regard to all these aspects, even if such transport vehicles have to be phased out, a recommendation which he opposed, he submitted that sufficient time should be given to the truck-owners to convert their vehicles to run on clean fuel. We have seriously considered the request of Mr. Cama, and also taken into account the view of the State Government. Having regard to the facts and circumstances, we accept the submission of the State Government that

1st January, 2003 should be the date for phasing out of transport vehicles more than 15 years old, unless converted to run on clean fuel. We are of the view that such transport vehicles may be operated till the 31st December, 2002, but with effect from 1st January, 2003, all transport vehicles over the age of 15 years, with the exception of BEST buses, shall be phased out, unless converted to run on CNG/LPG. So far as the transport vehicles more than 8 years old are concerned, the State Government has suggested that the effective date of phase out should be 1st January, 2005. Mr. Rustomjee, appearing for the petitioner, strongly objected, and submitted that the phase out date should be much earlier than what is suggested by the State Government. We are of the view that such transport vehicles which are over the age of 8 years may be operated till 31st December, 2003, but with effect from 1st January, 2004, all transport vehicles over the age of 8 years, with the exception of BEST buses, shall be phased out, unless converted to run on CNG/LPG. These directions have to be complied by the State and its authorities. We further carefully that no vehicle registered outside Mumbai shall be registered in Mumbai which does not meet the age limits set out above or does not run on CNG/LPG. The Office of the Transport Commissioner shall also ensure that vehicles are not converted from transport to non-transport category in order to defeat the age limits set out above. The Office of the Transport Commissioner shall ensure that the phasing out of the above-mentioned vehicles is commenced in a phased manner from 1st March, 2002 onwards. The phasing out shall be done in such a manner that certain number of vehicles are phased out or converted every month so as to ensure that all the vehicles in question are completely phased out by the deadline fixed above. For this purpose, the Transport Commissioner shall frame a programme of phasing out with monthly/bi-monthly targets to be achieved."

3. From the above order, it is clear that after considering the rival contentions at the Bar, the Court partly accepted the submission on behalf of the State Government and granted time upto 1st January, 2003, for phasing out transport vehicles more than fifteen years old, unless converted to run on clean fuel. The Court also made it specifically clear that such transport vehicle be allowed to be operated till 31st December, 2002, but with effect from 1st January, 2003, all transport vehicles over the age of fifteen years, with the exception of BEST buses, shall be phased out, unless converted to run on CNG/LPG.

4. Regarding transport vehicles of more than eight years old, the Court directed that such transport vehicles be allowed to be operated till 31st December, 2003, but with effect from 1st January, 2004, all those vehicles, with the exception of BEST buses, shall be phased out, unless converted to run on CNG/LPG.

5. In the affidavit in support of the Notice of Motion No. 461 of 2002, certain difficulties have been highlighted by the State authorities as to how the exercise could not be undertaken. It was also stated that there are about 21000-22000 vehicles and if the order dated October 17, 2001 is implemented, irreparable hardship will be caused not only to the owners of the vehicles but also to public at large. It was also submitted that the State shall be taking appropriate steps for implementing the order of this Court, but since the deadline is about to come to an end, it is necessary in the larger public interest to extend the time for five years i.e. from 1st January, 2003 to 1st January, 2008.

6. An affidavit in reply is filed on behalf of the original petitioner contending, inter alia, that the State is not at all serious in implementing the order passed by the Court. It was submitted that the order was passed before more than one year. It has not been challenged and the order has become final. It is also stated that certain directions were issued, keeping in mind the

report submitted by the Expert Committee in April, 2000. Though, even at that time, the petitioner objected to grant of such a long time, the Court took into account public interest, public convenience and difficulties likely to arise, if lesser time was granted. The State was thus directed to take appropriate proceedings by giving sufficient time, but nothing has been done by the State authorities. It was also submitted that the casual approach adopted by the State becomes apparent as virtually at the eleventh hour, an application is made praying therein that five years time be extended. Thus, according to the petitioner, the State is not serious at all in implementing the order of the Court. It was also submitted that in the affidavit in support of notice of motion, there is no whisper about the steps taken by the State authorities in implementing or enforcing the order, though more than one year has passed. The petitioner has also mentioned that it has drawn the attention of the authorities by a communication dated November 12, 2002, to take appropriate steps so that an order passed by the Court in October, 2001 be implemented and at the same time it would be possible for the owners of private transport vehicles either to phase out their vehicles or to get them converted into CNG/LPG.

7. A scheme which has been undertaken by the Government of Delhi has also been brought to the notice of the Additional Chief Secretary. Certain suggestions were made. It was pointed out that the State exchequer had received over Rs. 7 crores since December, 1999, by way of fines on polluting vehicles. It was finally stated that considering the urgency of the matter and deadline of 31st December, 2002, immediate actions were required to be taken. According to the petitioner, no heed was paid by the State authorities.

8. In the affidavit in reply, it is also stated as to how the State Government was making public statements regarding infrastructure development in the city and the amount to be spent. If it is so, it is obligatory on the State authorities to implement the order of the Court.

9. The applicant in Notice of Motion No. 528 of 2002 has also submitted that more time be granted so that the order of the Court may be implemented.

10. We have heard the learned Counsel for the parties. From the facts stated hereinabove, it is abundantly clear that the order was passed before more than one year. At that time, the Court took into account the report submitted by the Expert Committee as well as rival submissions made by the learned Counsel for the parties. After taking into account the circumstances in their entirety, the Court felt that with regard to the private transport vehicles of fifteen years or more, a direction was necessary to phase them out, unless converted into CNG/LPG on or before 31st December, 2002. It appears that the State has not taken steps to implement the order. At least in the affidavit in reply in support of the Notice of Motion No. 461 of 2002, no particulars have been set out as to what the authorities did for more than one year. Prima facie, therefore, Mr. Rustomjee is right in contending that the State authority has not taken the order passed by the Court seriously. It is also not disputed even by the State authorities that the order had become final and was required to be implemented. Prima facie, we are also impressed by the argument of Mr. Rustomjee that by requesting the Court to grant extension of five years at a time which was not granted even at the time when the order was made, the State has not taken the matter with the seriousness which it demanded. At the same time, however, when there are more than 20,000 such vehicles and virtually at the last moment but before the period expires, the State has approached this Court, if we reject the prayer, it may have adverse effect on public at large, when they are dealing in transportation of essential commodities also.

11. Mr. Rustomjee submitted that in such circumstances, if this Court thinks fit, it may grant some time but by imposing some conditions. For that, our attention was invited by the learned Counsel to paragraph 45 of the decision of the Supreme Court in N.C. Mehta v. Union of India and others, . :

"Even though the time for phasing out diesel buses had expired but in view of the situation created by the Government of not co-operating or complying with the Court's order, a different formula has to be worked out so as to cause as little inconvenience to the travelling public as possible, while at the same time punishing the wrongdoer. Directions are, therefore, to be issued regarding the lifting of 1500 buses plus phasing out of 800 buses per month. The permits to be given are to be time-bound and the continued operation of the diesel buses till they are replaced would require them to pay Rs. 500 per bus per day for 30 days of operation and thereafter Rs. 1000 per day and the same is to be deposited with the Director of Transport, Delhi."

12. We have considered the above submission seriously. But keeping in mind the fact that in that case the time had expired and in the present case the time is still not over and the State Government has stated that it would be implementing the order but some more time be granted, which is also the prayer of the applicant, Maharashtra Vahtuk Sena (Mahasangha), in Notice of Motion No. 528 of 2002, in our opinion, ends of justice would be met if we extend time of three months to the State Government.

13. For the foregoing reasons, in our opinion, both the notices of motion deserve to be disposed of and are accordingly disposed of by granting extension of three months i.e. upto 31st March, 2003. Rest of the directions in order dated 17th October, 2001 will remain as they are. Prayer of applicant of Notice of Motion No. 528 of 2002 to intervene in the main petition is allowed.

14. Both the notices of motion are disposed of accordingly. In the facts and circumstances, no order as to costs.