

Smoke Affected Residents Forum

v.

Municipal Corporation of Greater Mumbai and others

Writ Petition No. 1762 of 1999

dd. 10-04-2002

C.K. Thakker, CJ. & S.RADHAKRISHNAN, J.

Judgment:

1. In all the above Notices of Motion except Notice of Motion No.128 of 2002 and Writ Petition No.838 of 2002, the basic challenge is to the order passed by this Court on 17th October, 2001 in Writ Petition No.1762 of 1999 wherein there is a direction directing that w.e.f. 1st March, 2002 all taxis over the age of 15 years shall be phased out unless converted to run on CNG / LPG by that date. In the said order it is also provided that all taxis of Premier 137-D Model shall also be phased out by this date i.e. 1st March, 2002 unless converted to run on CNG/LPG.
2. Notice of Motion No.128 of 2002 filed on behalf of the Maharashtra Rickshaw Chalak Sena challenges the aforesaid order 17th October, 2001 with regard to directions that w.e.f. 1st March, 2002 all three wheelers over the age of 10 years shall be phased out unless converted to run on CNG/LPG by that date. A similar challenge is made with regard to three wheelers in Writ Petition No.832 of 2002.
3. We have heard the learned Counsel for all the affected parties as well as the Petitioners and other supporting NGOs, the learned Government Pleader and also the counsel for and on behalf of various Oil Companies at length with regard to the aforesaid directions issued on 17th October, 2001, by this Court.
4. Brief background of the matter is that this Court by its order dated 15th December, 1999 in the above Writ Petition No.1762 of 1999, after recording the fact of high vehicular pollution being caused in the city of Mumbai had issued certain directions by way of remedial measures in the said order. By the said order this Court had also appointed a Committee consisting of the then Transport Commissioner Mr.V.M.Lal, representative of the Maharashtra Pollution Control

Board, representative of the Bombay Environmental Action Group, Dr.P.S.Pasricha, former Joint Commissioner of Police (Mumbai), representative of Ministry of Environment and Forest, Government of India, not below the rank of Joint secretary and a representative of CLEAN AIR Mrs. Khajotia. The said Committee was directed to examine and recommend measures to reduce the vehicular pollution in Greater Mumbai and as such various issues were formulated referred to the said Committee. The said Committee, after a number of sittings and hearings finally prepared a report in April 2000. As far as the present Notices of Motion and the above Writ Petition No.832 of 2000 are concerned, the relevant issues which were referred to the said Committee are as under:

“(b) Usage of alternative fuel such as NG/reformulated gasoline, tc. administrative & Regulatory measures that would be required for getting up additional pumps for dispensing CNG.

(c) Desirability & feasibility of converting the existing buses/taxis to CNG.

(f) Desirability & feasibility of phasing out of vehicles (private cars, trucks, buses, taxis, auto rickshaws and two wheelers) over a certain age limit.”

5. This Court by its order dated 17th October, 2001 after an extensive hearing of all the parties on the aforesaid three issues and after considering the report of the said Lal Committee submitted in April 2000 gave the above directions which are impugned by these Notices of Motion. As pointed out hereinabove there are three challenges viz.

(a) phasing out of all taxis of more than 15 years of old unless the same are converted to CNG/LPG by 1st March, 2002,

(b) All taxis of Premier 137 D Model were directed to be phased out by 1st March, 2002 unless converted to run on CNG/LPG and

(c) all vehicles described as “three wheelers” which are of more than 10 years old also were directed to be phased out unless converted to run on CNG/LPG by 1st March, 2002. Mr. Cama, the learned Counsel appearing on behalf of the Taxi Owners Association in Notice of Motion NO.46 of 2002, at the outset, contended that as far as the taxis which are more than 15 years old, he submitted, that almost all taxis have already been converted into CNG or otherwise have already been scrapped, hence the challenge did not subsist. His main argument was with regard to phasing out Premier 137-D Model taxis by the aforesaid order by 1st March, 2002, which Mr.Cama contended was totally unreasonable and harsh. He pleaded that as far as taxis of Premier 137-D Model are concerned which are more than 8 years old that they should be given time upto 31st December, 2002 to convert into cleaner fuel and as far as taxis which are less than 8 years old in the said category of 137-D, there is no need to convert them into CNG at all and that they should be allowed to ply subject to the pollution norms set by the transport authorities. According to Mr. Cama there are about 14717 Premier 137-D Model taxis running in the city Mumbai and they were initially manufactured in the year 1989 and manufacturing continued up to 1999. He has also referred to a chart annexed to the affidavit in support of the said Notice of Motion indicating various number of 137-D model taxis which were supplied during the years 1989 to 1999. Mr. Cama contended that if all those taxis were completely phased out a large

number of families will be ruined. He also submitted that to convert such diesel taxis into CNG/LPG it would be very expensive inasmuch as the same has to be initially converted into a petrol engine and thereafter converted into CNG engine. He also submitted that quite a few owners have borrowed money from Nationalised Banks and that they would not be able to repay if the said taxis were totally scrapped as per the above order. Mr. Cama's main contention is that the above order was totally unreasonable, unjust and harsh inasmuch as there is no such restriction with regard to petrol driven taxis which are less than 8 years old, whereas with regard to 137-D Model taxis, they have been totally phased out and scrapped unless converted to cleaner fuel. Mr. Cama also contended that those directions are contrary to the provisions of Motor Vehicles Act and the Rules framed thereunder.

6. Mr. Chaudhary, who is appearing for the Taxi Owners Association in Notice of Motion No.51 of 2002 also adopted the same arguments of Mr. Cama and highlighted that a large number of such taxi owners are from a very poor section of the society and if the above harsh order were to be implemented, they would lose their livelihood. He also contended that under the enhanced concept of personal liberty under Article 21 of the Constitution of India even right to livelihood is included and that the said taxi owners would lose their right to livelihood if the harsh order were to be implemented. Mr. Chaudhary also contended that there could be no phasing out of 137-D taxis which are of less than 8 years are concerned, and also that as far as the said class of taxis of more than 8 years, some period ought to be given for owners to convert the same into cleaner fuel.

7. Mr. Hegde appearing for another Taxi Owners Association also adopted the same arguments.

8. Mr. L.H. Patil appearing in Notice of Motion No.33 of 2002 also adopted the above contentions of Mr. Cama, Mr. Hegde and contended that the above order would seriously prejudice right to livelihood of a large number of taxi drivers, owners and their families. He also contended that complete phasing out of Premier 137-D was totally a harsh order and this Court should allow the said class of taxis of less than 8 years old to ply without converting into CNG/LPG, but taxis which are of more than 8 years old should be allowed to be converted into cleaner fuel within a prescribed time.

9. Mr. Aspi Chinoy, the learned Counsel supporting the said order of 17th October, 2001 submitted that this Court after a detailed hearing of all the parties at length and after considering the said "Lal Committee" Report of April 2000 has passed the order on 17th October, 2001 and that this Court ought not to review the same inasmuch as the said order does not suffer from any palpable error. He also pointed out that in Mumbai the vehicular pollution level is so high that in most of the areas the pollution level is almost four to five times in excess than the safe limits prescribed. He also brought to our notice that due to the aforesaid high pollution almost 40% of the inhabitants in Mumbai are suffering from a number of respiratory diseases including asthma and bronchitis, including 70% of taxi and auto-rikshaw drivers. He also emphasised that the children are the most vulnerable and referred to a report of the survey conducted by Dr. Kamat wherein it was found that most of the children in Mumbai had a stunted growth of lungs due to high level of pollution, compared to children from Madras. He also referred to various directions issued by the Apex Court while dealing with the same problem in the National Capital

Region of New Delhi and in the light of the Constitutional mandate of Articles 21, 47 and 48A, he emphasised that it is high time that the serious ecological degradation is put to an end or at least reduced. He also finally submitted that certain financial assistance may be provided and also State Government may be asked to waive sales tax and reduce the rate of interest for the loan to be provided to the taxi and three wheeler owners so as to enable them to buy a new vehicle.

10. Mr. Rustomji who is appearing on behalf of the BEAG also reiterated and contended that the order passed on 17th October, 2001 by this Court was after exhaustive hearings and as such, this Court ought not to interfere with the same and that there is no patent error for interference. He also pointed out that as far as the first order of 15th December, 1999 is concerned whereby the aforesaid Lal Committee was appointed by this Court, the said order was upheld by the Supreme Court. He also brought to our notice that from the affidavit filed on behalf of the Ministry of Petroleum that there is sufficient availability of CNG and what is required was only proper allocation. In that context he referred to the Apex Court directions on a similar state of affairs in New Delhi wherein the Apex Court has observed as under in its order dated 18th October, 2001 in the case of M.C. Mehta vs. Union of India and others as under: " According to the affidavit filed by the Union of India and Indraprastha Gas Limited it transpires that there is no shortage of CNG per se. The difficulty appears to be in the manner of allocating enough gas to meet the transport requirements of Delhi on priority basis. It is for the Government of NCT of Delhi and Union Government to sit together and resolve the difficulty so that the orders of this Court are implemented in letter and spirit. The effort of the two governments should be to see that orders by this Court, which have been made in the interest of public health, are implemented and not to derail those orders by inventing new bogies and bottlenecks in the name of demand and supply of CNG."

11. Mr. Rustomji, however, stated that as far as the Premier 137-D taxis which are of less than 8 years are concerned he felt that certain time may be given to enable them to convert but not ply till then. He also submitted that as far as three wheelers are concerned which are of more than 10 years, those who have already applied for conversion upto 31st March, 2002 may be permitted to convert the same in a time bound period. Otherwise, he submitted, that this Court ought not to interfere with the order passed by this Court on 17th October, 2001.

12. Mr. Sawant, the learned Government Pleader appearing for the State of Maharashtra submitted that the State Government has made available a scheme of financial assistance to enable affected individuals to buy new taxis and auto rickshaws as set out in affidavit dated 27th March, 2002 filed by the Deputy Secretary, Government of Maharashtra, Home Department (Transport), which reads as under :

".....the financial incentives being made available by the State Government to the taxis and auto rickshaws:

(i) Sales Tax has been brought down from 13% 14% on CNG Kits.

(ii) Under the Seed Capital Scheme, which is a scheme available for educated unemployed, as contained in Government Resolution, Industries, Energy and Labour Department bearing No.

EPP2001/CR/7742/Industries 18, dated 25th January, 2002, benefits are made available to the taxis and auto rickshaws for conversion to CNG/LPG or buying new vehicles.

Under the said scheme, 15% of the amount would be contributed by the State Government for which the beneficiary would have to pay interest at 10%, which would be payable after 6 months of the sanction. The rest of the amount the beneficiary would get from the approved the interest determined by the said banks. To avail of the said loan from the bank, the beneficiary would have to pay 10% of the amount.”

13. Having considered all the facts and circumstances and after giving a deep consideration to the same, we do not find that there is anything unjust, unfair and harsh in making the classification with regard to Premier 137-D model taxis and phasing them out entirely. In that context it would be relevant to note that the aforesaid Committee appointed by this Court known as "Lal Committee" in its report in paragraph 5.24 has very categorically mentioned "Since the 137-D diesel engine fitted on taxis during last 7 years is of a very poor quality, such taxis also need to be converted." This Court also in its order dated 17th October, 2001 after a detailed analysis has specifically directed that all taxis of Premier 137-D model shall also be phased out by 1st March, 2002 unless converted to run on CNG/LPG. The main reason is that the aforesaid model 137-D appears to emit a very high level of smoke and pollutants and in fact later even the State of Maharashtra had prohibited 137D model to be fitted into taxis. In view of the high emission of smoke and pollutants from the said engine, the said expert Committee had categorically recommended that they should be phased out. This Court after a detailed hearing given to all the parties had concurred and directed that those 137-D taxis should be phased out by 1st March, 2002 or converted to CNG/LPG. Therefore, we do not find anything unreasonable, harsh or erroneous in the above order. The only question is that there are a large number of taxis of 137 D engines which may be less than eight years old and as such a plea was made that a short period may be granted to enable them to convert into a cleaner fuel.

14. As far as the contention of the learned Counsel Mr. Cama, Mr. Mehta and Mr. Patil that the vehicles concerned meet the requirements of pollution control prescribed as per the provisions of Motor Vehicles Act and the rules framed there under as such the vehicles ought to be allowed to ply and not phased out and that this Courts directions cannot override the provisions of Motor Vehicles Act and the rules framed there under, it would be relevant to note the following observations of the Honble Supreme Court in M.C. Mehta Vs. Union of India & Ors. in Writ Petition (Civil) No.13029 of 1985 " On behalf of the Stage Carriage Permit transport operators, Mr.K.K. Venugopal, learned senior counsel, submitted that all their existing buses are meeting emission norms for diesel vehicles as prescribed under the Motor Vehicles Act and, therefore, they cannot be denied their right to ply their buses even if they do not conform to the directions issued by this Court on 28th July, 1998 since they were not heard before fixing the time schedule on 28th July, 1998 (as they were not parties to the writ petition). In other words what is sought to be challenged on behalf of these operators is the correctness of the order passed on 28th July, 1998 at this belated stage. It is not possible to accept that all these years, these private operators were "unaware" of the directions issued by this Court on 28th July, 1998. We are not impressed with the argument of Mr. Venugopal.

The directions issued by us were not in any adversarial litigation. Besides our order was, and it was conceded by Mr. Venugopal, an order in rem and not an order in personam.

All private operators, who operate their buses in Delhi are bound by these orders, which were made to safeguard the health of the citizens, being a facet of Article 21 and had been publicised from time to time both in the electronic as well as print media. That apart, the Bhure Lal Committee had been set up under the Environment Protection Act and it was directed by this Court that the Committee could give directions towards effective implementation of the safeguards of Environment Protection Act, more particularly in matters aimed at preventing air-pollution.

Directions issued by the Bhure Lal Committee have, thus, legal sanctions and when accepted and incorporated by this Court become a part of its order, binding on all parties.

Besides, directions given for safeguarding health of the people, a right provided and protected by Article 21 of the Constitution, would override provisions of every statute including the Motor Vehicles Act, if they militate against the constitutional mandate of Article 21. We must, however, hasten to add that norms fixed under Motor Vehicles Act are in addition to and not in derogation of the requirements of Environment Protection Act.

If the owners of the Stage Carriage buses chose to ignore the directions issued by this Court on 28th July, 1998, they did so at their own peril. We wish to re-emphasise that those of the private bus operators, who have chosen not to comply with the Courts orders and have not taken any steps for conversion of the vehicles to the CNG mode are not entitled to any indulgence from this Court. They must thank themselves for the situation in which they find themselves."

15. Similar to Bhure Lal Committee before the Apex Court, Lal Committee before this Court has made the necessary recommendations. As has been held by the Apex Court in the above case, here also the directions have been given for safeguarding the health of the people of city of Mumbai, a right provided and protected by Article 21 of the Constitution of India, which directions may even override the provisions of Motor Vehicles Act, if they militate against the Constitutional mandate under Article 21. It may be also noted that that norms prescribed under Motor Vehicles Act are in addition to and not in derogation of Environment Protection Act. Therefore, various directions issued by this Court from time to time regarding phasing out and / or conversion into CNG/LPG are clearly protected under Article 21 of the Constitution of India, and they cannot be faulted as contended by the learned Counsel.

16. As far as the first issue regarding phasing out of all taxis having petrol engines of more than 15 years of age unless the same are converted to CNG/LPG by 1st March, 2002 is concerned, it does not subsist and the earlier order dated 17th October, 2001 shall stand.

17. We also do not find any substance in the challenge that only 137-D model taxis have been singled out and discriminated. As pointed above the said 137-D model taxis form a separate class and found to be having highly polluting engines, such singling out has a nexus with the object of preventing grave damage to environment . Even the argument that such phasing out would be harsh and unreasonable cannot be sustained, as the same has been made to protect the

precious environment and all the more the State of Maharashtra has already formulated a scheme of financial assistance as per affidavit dated 27th March, 2002. In view of the above, even the challenge under Article 21 of the Constitution of India, regarding the right to earn livelihood would not survive.

18. We cannot also lose sight of the well known principle known as "Precautionary Principle" in environmental pollution matters, as the failure to adopt the same at the right time will endanger the health of the entire population of city of Mumbai very seriously, therefore, the above directions for phasing out and / or conversion into cleaner fuel became absolutely necessary.

19. In this context the following observations of the Honble Supreme Court in its order in M.C. Mehta Vs. Union of India & Ors. dated 5th April, 2002, in a similar vehicular pollution matter at New Delhi would be very relevant:-

"Article 39(e), 47 and 48A by themselves and collectively cast a duty on the State to secure the health of the people, improve public health and protect and improve the environment . It was by reason of the lack of effort on the part of the enforcement agencies, notwithstanding adequate laws being in place, that this Court has been concerned with the state of air pollution in the capital of this country. Lack of concern or effort on the part of various governmental agencies had resulted in spiralling pollution levels. The quality of air was steadily decreasing and no effective steps were being taken by the administration in this behalf."

"One of the principles underlying environmental law is that of sustainable development. This principle requires such development to take place which is ecologically sustainable. The two essential features of sustainable development are the precautionary principle and the polluter pays principle.

The "precautionary principle" was elucidated thus by this Court in Vellore Citizens Welfare Forum Vs. Union of India and Others, (1996) 5 SCC 647, inter alia, as follows "The State Government and the statutory authorities must anticipate, prevent and attack the causes of necessity conform to the Constitutional principles as well as over-riding statutory duties act upon the Government under the EPA. The "auto policy" must, therefore, focus upon measures to "...Anticipate, prevent and attack..." the cause of environmental degradation in this field."

"In the absence of adequate information, lean in favour of environmental protection by refusing rather than permitting activities likely to be detrimental. Adopt the "precautionary principle" and thereby ensure that unless an activity is proved to be environmentally benign in real and practical terms, it is to be presumed to be environmentally harmful. Make informed recommendations which balance the needs of transportation with the need to protect the environment and reverse the large scale degradation that has resulted over the years, priority being given to the environment over economic issues".

"Norms for emission and norms for the fuel have existed for over the last two decades - and the state of the environment is dismal despite the existence of these norms. The emission norms

stipulated by the Government have failed to check air pollution, which has grown to dangerous levels across the country.

Therefore, to recommend that the role of the Government be limited to specifying norms is a clear abdication of the constitutional and statutory duty cast upon the Government to protect and preserve the environment, and is in the teeth of the "precautionary principle".

"The increase in respiratory diseases specially amongst the children should normally be a cause of concern for any responsible government. The precautionary principle enshrined in the concept of sustainable development would have expected the government and the health authorities to take appropriate action and arrest the air pollution. However, children do not agitate or hold rallies and, therefore, their sound is not heard and the only concern of the Government now appears to be is to protect the financial health of the polluters, including the oil companies who by present international desirable standards produce low quality petrol and diesel at the cost of public health."

"The statistics show that the continuing air pollution is having a more devastating effect on the people, than what was caused by the Bhopal gas tragedy. In that case, the nation, including the Union of India, was rightly agitated and sought action and compensation from the multinational company, who was held to be responsible for the same. Here, in the case of CNG, the shoe is on the other foot because the government is not facilitating measures for clean air and water including the supply of CNG or another clean unadulterated fuel. It is due to the lack of proper concern on the part of the governmental authorities that people are suffering from respiratory and other diseases. The Bhopal gas tragedy was a one time event which, hopefully, will not be repeated, but here, with not enough concern or action being undertaken by the Union of India, far greater tragedies in the form of degradation of public health are taking place every day."

Under these circumstances, it becomes the duty of this Court to direct such steps being taken are necessary for cleaning the air so that the future generations do not suffer from ill-health."

20. Having regard to all the above facts and circumstances of the case, we direct that all the 137-D Model Premier Taxis be phased out, but the owners may be given time to convert their 137-D Model Premier taxis, upto 31st May, 2002.

Accordingly we direct that no 137-D Model Premier Taxis shall ply in the City of Mumbai at all, unless converted into cleaner fuel CNG/LPG and in the event it is found that they were to be plying in the city of Mumbai they shall be impounded immediately and their registration be cancelled forthwith.

21. As far as the third issue is concerned, three wheelers which are of more than 10 years old, it appears that about 4000 three wheelers have already been converted into CNG and another 3000 have already registered for conversion. We make it clear that all the owners of three wheelers of more than 10 years who are desirous of getting converted into CNG/LPG they shall register with the Transport Authorities for conversion into cleaner fuel of CNG/LPG on or before 30th April, 2002 failing which such three wheelers of more than 10 years shall be scrapped and phased out and they shall not be allowed to ply in the city of Mumbai. All those three wheelers

who have already applied to convert or those who will apply for conversion into CNG/LPG on or before 30th April, 2002 shall be allowed to ply up to 30th June, 2002 by which time they ought to get their vehicles converted into CNG/LPG. If they fail to get converted by that date they shall not ply the vehicles on the roads in the city of Mumbai after 30th June, 2002 till the same are converted and the outer limit for said conversion is up to 31st August, 2002. Three wheelers can enter into the city beyond Sion and Mahim, only for the purpose of conversion into CNG/LPG and not for commercial purpose of carrying passengers or goods. All the above Notices of Motion in Writ Petition No.1762 of 1999 and the Writ Petition No.832 of 2002 stands disposed of in the above terms.

22. At the request of the learned Counsel for the Taxi Owners Association, 137-D Premier Model taxis will be allowed to ply up to 30th April, 2002 but not thereafter. It is also made clear that there will be no further extension in this regard.

23. The Regional Transport Authorities shall accept the affidavit of the owner of the taxi with regard to purchase of the petrol engine before granting conversion permission.

24. The Transport Commissioner shall file compliance and progress report with regard to the above order on or before 12th June, 2002. The Writ Petition No.1762 of 1999 is adjourned to 12th June, 2002.

25. Personal Assistant to issue an ordinary copy of the order to the parties. Parties to act on an ordinary copy of the order duly authenticated by the Associate of this Court.

26. Issuance of certified copy is expedited.