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M.C. MEHTA

v.

UNION OF INDIA AND ORS.

MARCH 26, 2001

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[DR. A.S. ANAND, CJ, B.N. KIRPAL AND V.N. KHARE, JJ.]

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Environmental law—Vehicular Pollution—Order dated 28th July 1998 passed by Supreme Court—Directions issued under order—Entire city bus fleet should be steadily converted to a single fuel mode of CNG by 31.3.2001—No eight year old buses should ply except on CNG or other clean fuel after 1st April 2000—Neither Government nor bus operators took diligent steps to comply with Court's order—Such inaction deprecated—Applications filed for extension of time—Held a blanket extension of time cannot be given—Order passed by Court should not be treated lightly—Compliance of order should be in letter and spirit—However, in public interest and with a view to mitigate sufferings of commuter public and school children some relaxations and exemptions given.

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Environmental law—Low sulphur diesel—Whether can be regarded as 'clean fuel'—Direction to Bhure Lal Committee to examine this question—Parties should submit their representation to committee—Committee to submit its report within one month to Supreme Court.

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 13029 of 1985.

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(Under Article 32 of the Constitution of India.)

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H.N. Salve, Solicitor General, (A.C.), R.N. Trivedi, K.N. Rawal, Additional Solicitor Generals, M.L. Verma, Raju Ramachandran, F.S. Nariman, T.R. Andhyujina, Gopal Subramaniam, Shanti Bhushan, Salman Khurshid, V.R. Reddy, K.K. Venugopal, S. Balakrishnan, U.U. Lalit, (A.C.), Ms. Aprajita Singh, Nikhil Sakhardande, (M.C. Mehta)-in-person, Ms. A. Subhashini, H.S. Anand, Percy Gandhi, R.N. Karanjawala, Mrs. Nandini Gore, Ms. Julie Buragohain, Manik Karanjawala, L.K. Pandey, Rajiv Sharma, Gopal Jain, Ms. Ruby Singh Ahuja, Sandeep Puri, Rajesh Kumar, A. Samad, Rakesh Kumar, Vinod Kumar, V.B. Saharya, Sri Narain, Ms. Anjali, Er. Anil Kumar Mittal,

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S. Wasim, A. Qadri, A.D.N. Rao, Bipul Kumar, D.S. Mehra, Ms. Suvira Lal,

Mrs. Niranjana Singh, Anil Katiyar, A.D.N. Rao, C. Radhakrishna, B.V. Balram Das, Prashant Bhushan, Sanjeev Kapoor, Sanjay Pathak, Vijay Panjwani, Sheil Sethi, R.C. Verma, Vivek Vishnoi, Ms. Kiran Kapoor, Rakesh K. Khanna, Ms. Pallavi Choudhary, Surya Kant, Sushil Dutta Salwan, Piyush Sharma, Pramod Dayal, Sunil Gupta, Jatin Zaveri, Harish J. Jhaveri, H.K. Puri, S.K. Puri, Rajesh Srivastava, Ujjwal Banerjee, Ms. Rani Chhabra, Ms. Meenaxi, M.S. Bakshi, Subramonium Prasad, S.N. Jha, Ms. Astha Tyagi, P.K. Sharma, Divyang K. Chhaya, Abhijat P. Medh, Avimukt Par, Ms. Kum Kum Sen, Ms. Indu Malhotra, Ms. Shyel Trehan, Raj Shekhar Rao, R.K. Maheshwari and Anil Srivastava for the appearing parties.

The following Order of the Court was delivered :

With a view to check rapid deterioration of air quality in Delhi, which was becoming a health hazard besides being an environmental enemy certain directions have been issued by this Court from time to time in the main Writ Petition.

On 28th July, 1998, some further directions were issued fixing a time schedule after taking note of the recommendations made by the Bhure Lal Committee. One of the important directions [direction (g)] issued on that date was to the effect that the entire 'city bus fleet was to be steadily converted to a single fuel mode of CNG by 31.3.2001'. Another direction [direction (f)] was to the effect that 'no eight year old buses were to ply except on CNG or other clean fuel after 1st April, 2000'.

Unfortunately, neither the Governmental authorities nor private bus operators acted seriously or diligently in taking steps for the purposes of complying with the aforesaid directions and this was inspite of the fact that we had issued a strong caution to all concerned in our order dated 28th July, 1998 that failure to comply with the aforesaid directions could render the concerned punishable for committing Contempt of Court.

A number of applications have now been filed and requests made at the bar seeking extension of deadline to convert the entire city bus fleet to single fuel mode of CNG beyond 31st March, 2001. The Court has, on each date of hearing, been making it abundantly clear that the question of allowing buses, other than those which run on CNG to ply after 31st March, 2001 did not arise. The Court made it clear to the administration as also to all other concerned that they had failed to show sufficient earnestness for implement-

A ing the order dated 28th July, 1998 in the matter of conversion of the commercial vehicles operating in Delhi into CNG fuel mode, ignoring interest of health of citizens and the Court could not overlook their lapses. The extensions have now been sought finding that the deadline of 31st March, 2001 was fast approaching.

B In the applications filed for extension of time, difficulties being faced by the transporters because of the non-availability of CNG conversion kits free from all defects; conversion of CNG at reasonable prices; lack of stabilisation of CNG technology in respect of public transport as also the non-availability of CNG and CNG cylinders have been pointed out. There is
C however, no satisfactory explanation offered either by the administration or the private transporters as to why they were sleeping over all this time and did not point out the difficulties earlier.

We are conscious of the fact that due to lack of effective action taken by the private bus operators as also the governmental authorities, with effect
D from 1.4.2001 inconvenience is likely to be caused to the commuting public including the school children who use the city buses, but, this "urban chaos", (to use the expression used by the Administration) which may arise as a result of not extending the deadline fixed by this Court, however, is a creation of the administration and the private operators and they have to thank themselves for it. They are accountable to the commuting public for creating this
E situation. The administration does admit its 'lapses' but the learned Additional Solicitor General has time and again submitted that for their lapses, "let the commuting public not suffer". It appears to be an argument of despair.

Out of a total fleet of 12,000 - 14,000 buses which operate locally in
F Delhi, the DTC has a fleet of about 2,000 buses. About 6,000 buses operate on contract carriage system. Approximately 6,200 buses run on Stage Carriage Permit. These stage carriage buses operate locally in Delhi, either under the DTC KM. Scheme or under the permit scheme.

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
G 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
H 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, as 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 or 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 Court's 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.

The DTC and some other private operators, though belatedly, have now taken steps and placed orders for CNG buses. Some of the schools, which own their own buses, have placed orders for CNG buses or conversion of their existing buses to CNG mode. Most of the schools are hiring buses from the DTC and other private operators. Some other private operators have also taken steps to convert their buses to CNG mode either by placing orders for new CNG buses or by conversion to CNG mode.

In the affidavit filed by Mr. V.K. Bhatia on 22nd March, 2001 on behalf

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A of the DTC, it has been stated that currently 860 buses, both CNG and diesel, are being plied on school duties. It is further stated in the affidavit that these buses, apart from performing school duties in the morning and in the evening, are also, deployed on the general route duties from the nearby depots or terminals. It is also stated in the affidavit that in addition to 860 buses on school duties, 160 spare buses are kept ready for deployment in case of replacement if the need arises. The affidavit discloses that orders have been placed by DTC for 1880 CNG buses and that order for another 120 buses is likely to be given shortly.

C In so far as contract carriage permit holders are concerned, we are informed that they have about 6000 buses in operation. According to their learned counsel, out of the said number of buses, 3100 buses run as school buses within Delhi under contract with different schools. About 1400 buses run as contract carriage to and from Delhi and within Delhi. Approximately 1000 buses have all India tourist permits and they ply inter-State. Approximately, 500 buses are 27 seaters and air-conditioned, which are solely used for the benefits of tourists to visit tourist spots in and around Delhi. On their behalf their learned counsel has stated that these contract carriage permits holders have already placed orders for about 1000 new CNG buses.

E After hearing learned counsel for the parties seeking extension of the March 31, 2001 deadline, we are of the opinion that a blanket extension of deadline cannot be given as that would amount to putting premium on the lapses and inaction of the administration and the private transport operators. Orders of this Court cannot be treated lightly. They are meant to be complied with in letter and in spirit. We, therefore, categorically decline to give any blanket extension of our directions (g) and (f) as contained in the order dated F 28th July, 1998. However, in public interest and with a view to mitigate the sufferings of the commuter public in general and the school children, in particular, we make the following relaxations or exemptions :

G 1. Those schools which have as on 31st March, 2001 placed firm orders for replacement or conversion of the school buses *owned* by them to CNG mode, but, who have not so far obtained such buses running on CNG mode, are permitted to run their existing buses, *equal* to the number of buses for which conversion orders have been placed, provided such buses are not more than eight year old, upto 30th September, 2001. Those schools who are entitled to and wish to avail of this concession, shall before 31.3.2001 file H affidavits in this Court giving details of the buses owned by them and the

particulars of the orders placed by them for new CNG buses or for conversion of the existing buses to CNG mode. They will keep on replacing the existing buses with CNG buses as and when made available during this period.

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2. DTC has placed orders for 1880 buses. Some of the CNG buses have already been received by them and are on their fleet. We permit the DTC to run 1880 existing buses including the existing CNG buses which are not more than eight year old till 30th September, 2001. This, however, is subject to the condition that out of these 1880 buses, a full compliment of buses for the schools, namely 860 buses plus the requisite spare buses shall be deployed for school duty. As and when new CNG buses are received by DTC, the existing buses shall be replaced.

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3. It is represented on behalf of contract carriage operators of inter-State and tourist buses that the applicants were under the *bona fide* impression that the expression "*city bus fleet*" in direction (g) of the order dated 28th July, 1998 was not meant to take within its ambit buses owned by such tour operators as they run mostly on inter-State routes as luxury coaches. Even if that be so, their case would certainly be covered by condition (f) of the order dated 28th July, 1998, which provided that no eight year old buses were to ply except on CNG or other clean fuel after 1st April, 2001. Even if, it was *bona fide* believed that these buses were not to be converted to single fuel mode of CNG, they could not in any case ply except on CNG or *other clean fuel*, such buses which were not more than 8 years old. Diesel, especially of the type available in India, is not regarded as a *clean fuel* whereas unleaded petrol with low Benzene content is considered as clean fuel. These bus operators definitely need to comply with the directions given by us on 28th July, 1998 and it is for them to switch over to CNG or other clean fuel.

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4. Out of the 6000 contract carriage buses, about 3100 also ply as school buses. We direct that owners of such contract carriage buses, who have already taken steps for replacement of their buses by CNG buses or conversion to CNG mode, shall file affidavits giving particulars of the existing buses and details of the orders placed for replacement or conversion to CNG mode before 31st of March, 2001. They shall be permitted to ply their existing buses, *equal* to the number of existing buses for which steps have been taken to convert or replace to CNG mode, provided the existing buses are not more than 8 years old. Such buses shall be permitted to ply till 30th September, 2001.

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A 5. If any other bus operators, including stage carriage permit holders, have placed or shall place by 31st March, 2001 firm orders for CNG buses or for conversion to CNG mode, they shall also be permitted to operate *equal* number of their existing buses, which are not more than eight year old till 30th September, 2001, under the control and direction of the transport department subject to their filing undertakings in this Court by way of affidavits giving details of the buses owned by them, orders placed for conversion/new CNG buses by 31st March, 2001.

C 6. Owners of other commercial vehicles, including autos, who have placed firm orders for new CNG vehicles or for conversion to CNG mode shall also give details on affidavits by 31st March, 2001 about their existing vehicles, as also details of the orders placed by them for new CNG vehicles or for conversion to CNG mode. On these affidavits being filed, they shall also be permitted to operate an *equal* number of existing commercial vehicles, provided the vehicles are not more than eight year old, till 30th September, 2001.

D 7. We are of the view that tourists should not be put to avoidable inconvenience. After taking note of the fact that the number of buses owned by operators having All India Tourist Permit is limited, we permit the operators of All India Tourist Permits to ply their existing buses (both air-conditioned and others), which are not eight year old, till 30th September, 2001. They shall, however, give details of such buses and also file an undertaking before 31.3.2001, agreeing to replace their fleet to ply either on CNG or *other clean fuel* by 30th September, 2001.

F 8. We direct that after 1st April, 2001, no commercial vehicle will be *registered* in Delhi which does not conform to the order dated 28th July, 1998.

9. The transport department shall take steps to ensure that there is no misuse or abuse of the relaxations given by us above.

G 10. We, reiterate that except for the relaxation given above, no other commercial vehicles shall ply in Delhi unless converted to single fuel mode of CNG with effect from 1st April, 2001.

H During the course of arguments, it was contended before us that low sulphur diesel should be regarded as a *clean fuel* and buses be permitted to

run on that. It was submitted that in some other countries ultra low sulphur diesel which has sulphur content of not more 0.001 per cent is now available. We direct the Bhure Lal Committee to examine this question and permit the parties to submit their written representations to the Committee in that behalf. The Committee may submit a report to this Court in that behalf as also indicate as to which fuel can be regarded as "clean fuel", which does not cause pollution or is otherwise injurious to health. Let the report be submitted within one month.

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Matter is still pending.