

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Application No. 183 of 2016 (SZ)

Applicant(s)
Shri Vinay Shivanand Naik,
Mathikere, Karnataka.

Vs. Respondent(s)
State of Karnataka,
Through the Department of
Transport, Rep. by its
Chief Secretary, Bengaluru
and 5 others.

Legal Practitioners for Applicant(s)
M/s. Rohini Ravikumar,
Manu Kulkarni, Parimalam,
Mahesh Kumar, Balaji and
R6
Narashima Varman.

Legal Practitioners for Respondents
Mr. Devaraj Ashok for R1
Mrs. P. D. Surana, P. Kavitha &
P. D. Mukesh Kumar for R2, R3, R5 and
Mr. Thirunavukarasu for R4

Note of the Registry	Orders of the Tribunal
Order No. 6	<p>Date: 12th January, 2017</p> <p>On hearing the arguments of the learned counsel appearing for the applicant and on going through the records, we find that the following are necessary and proper parties and therefore there are necessarily to be impleaded for a proper resolution of the lis before the Tribunal.</p> <ol style="list-style-type: none">1. GAIL(INDIA) Limited, Rep. by its Managing Director, GAIL Bhawan, 16 Bhikaji Cama Place, R K Puram, New Delhi - 110022.2. Ministry of Petroleum & Natural Gas Rep. by its Secretary, Shastri Bhavan, New Delhi – 110001.

3. Ministry of Environment, Forest and Climate Change
Rep. by its Secretary,
Indira Paryavaran Bhavan,
Jorbagh Road,
New Delhi - 110 003.

4. Ministry of Road Transport and Highways
Rep. by its Secretary,
Parivahan Bhavan,
1, Parliament Street,
New Delhi - 110 001.

Hence the above parties are impleaded as additional respondents 7 to 10. The applicant is directed to take notice to them by Registered Post with acknowledgement due.

Learned counsel appearing for respondent Nos. 2, 3, 5 and 6 submitted that by virtue of the orders passed by the Tribunal on 16.08.2016 and 18.11.2016, they are bound to report to the Tribunal before proceeding to purchase new vehicles. The Hon'ble High Court of Karnataka on 05.05.2016 passed an order that before finalising the purchase of Diesel Engine buses by BMTTC, the court shall be taken into confidence. By order dated 16th August 2016, the Tribunal directed that the order will continue. By order dated 18.11.2016, it was again reiterated that before purchase of vehicles, KSRTC shall take the Tribunal into confidence.

The learned counsel appearing for respondents No. 2, 3, 5 and 6 argued that use of diesel of BS IV is equivalent to

CNG fuel and from the point of view of safety, it is better than CNG fuel. It was also argued that in all 3672, BS IV norms compliant buses are sought to be secured by 4 State Transport Corporations in the State for which tenders were floated. It was also argued that the BS IV norms buses are necessary to replace the old BS I, BS II and BS III norm buses. It was also submitted that the Apex committee of Atal Mission for Rejuvenation and Urban Transformation (AMRUT) approved the proposal to purchase 500 new buses as proposed and sanctioned the required funds and the funds will lapse if not utilised before 31.03.2017. It was also pointed out that the prayer in the application is only with regard to the buses plying in the city of Bengaluru and therefore there cannot be any objection for purchase of buses by the other corporations which are plying the buses outside the Bengaluru city especially when even as per the case of the appellant, CNG fuel is not available there. It was pointed out that out of 6197 buses available in the fleet of BMTC, 1648 buses are of BS IV norms, 3757 buses are of BS III norms, 781 buses are BS II norms and 11 buses are of BS I norms and once the new BS IV norm buses are purchased, BS I and BS II norm buses are to be replaced by BS IV norm buses.

Out of 500 buses permitted to be purchased by the Apex Committee of AMRUT, 150 buses are of 400 mm Floor

Height standard size premium segment AC buses and remaining 350 buses are of 650 mm Floor Height Mini Non AC buses. It was also submitted that no alternative AC buses in the Premium segment running on CNG fuel, are available in the market and hence only diesel buses are to be purchased. The remaining 350 buses of Mini size Non AC buses ply in Bengaluru rural connecting the Metro Railway Stations and other places where the roads are narrow and big sizes buses cannot be plyed.

Learned counsel also submitted that even **the Hon'ble Supreme Court in M.C. Mehta Vs. Union of India ((2002) 4 SCC 356)** though found that the analysis emphasizes the need for change to non liquid fuel like CNG or LPG so as to improve the air quality in this country, it was also found that the CNG vehicles are 15 times better than Euro II diesel vehicles and only Euro IV diesel vehicles are comparable to CNG vehicles and in such circumstances, permission be granted to purchase the BS IV norm buses. It was also submitted that the diesel buses to be purchased are for plying in the State outside the Bengaluru city and those buses would enter the city of Bengaluru only to drop and take the passengers from the Bus Stands.

Learned counsel appearing for the applicant submitted that though the Hon'ble High Court in May 2014 directed BMTC to prepare an action plan with regard to the use of

CNG vehicles, so far nothing has been done and if permission is to be granted to purchase diesel vehicles at this stage the application would become infructuous.

Learned counsel also argued that the quality of CNG Fuel now available in the market has improved compared with the CNG available at the time when **the Hon'ble Supreme Court considered the issue in M.C. Mehta Vs. Union of India ((2002) 4 SCC 356)** case and at present the efficiency of CNG fuel and the CNG vehicles cannot be compared to the Euro IV vehicles and they could only be compared to only Euro VI norm buses and in such circumstances, permission may be granted and even if permission is to be granted, necessary restriction be imposed.

On hearing the learned counsel and going through the records, we find that there cannot be any objection for purchase of the 150 high end premium diesel AC buses of Euro IV standard which are not available with CNG fuel. Similarly when the ambit of the prayer in the application is restricted to Bengaluru City, there cannot be any objection with regard to the purchase of buses for plying outside the Bengaluru city. Therefore the prayer of the respondents for permission to purchase Euro IV norm buses to ply outside the Bengaluru City can only be allowed. What remains is only with regard to 350 buses of 650 mm Floor Height Mini

Non AC buses. If these buses are not purchased the Central aid would lapse on 31.03.2017. Moreover the BS IV norm buses are sought to be purchased to replace the BS I, BS II and part of the BS III norm buses which are definitely causing more pollution. In such circumstances, it is not in the interest of justice to prohibit the BMTC from purchasing the BS IV norm buses.

The BMTC and other State Transport Corporations are permitted to purchase the BS IV stage buses as sought for. It is made clear that the permission granted shall not be taken a ground to contend later that they need not switch over to CNG buses, which is the question to be decided in the main application. Similarly before purchasing any additional buses, in addition to the BS IV norm buses now permitted, BMTC shall take the Tribunal into confidence and satisfy why the CNG vehicles are not being chosen.

It is also clarified that the BS IV norm buses to be purchased by the other corporations could be allowed to pass through the Bengaluru city only to drop and pick up the passengers from Bus Stand and they shall not be plyed exclusively in Bengaluru city.

It is seen that respondent No.1 though appeared did not file the reply till date. We direct respondent No.1 to file the reply within a period of 2 weeks as a last chance and if not

filed, the concerned Principal Secretary of the Transport Department shall be present before the Tribunal.

List the matter on 27.02.2017.

.....J.M.
(Justice M.S. Nambiar)

.....E.M.
(Shri P.S.Rao)

