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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 6000/2015 & CM APPLs. 10885/2015 AND 19928/2015

ASSOCIATION OF RADIO TAXIS Petitioner

Through: Mr. Nidhesh Gupta, Senior Advocate
with Ms. Sonal Jain, Mr. Udayan Jain
and Ms. Heena Sharma, Advocates.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Manish Mohan, CGSC for
respondents No.1 and 2.
Mr. Naushad Ahmed Khan, Advocate
for GNCT of Delhi with SI Udai Singh,
Traffic/ H.Q.
Mr. P. Chidambaram,, Senior Advocate
and Mr. Sandeep Sethi, Senior
Advocate with Ms. Ruby Singh Ahuja,
Ms. Suman Yadav and Mr. Naman
Joshi, Advocates for respondent No.7.
Mr. Rajiv Nayar, Senior Advocate and
Mr. Dayan Krishnan, Senior Advocate
with Mr. Susmit Pushkar, Mr. Abhijeet
Swaroop and Mr. Ankur Khandelwal,
Advocates for respondents No.8 and 9.
Mr. Darpan Wadhwa, Advocate with
Mr. Akhil Sachar, Advocate for
respondent No.10.

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN**

ORDER
14.10.2015

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Present writ petition has been filed for enforcing the orders of the

Transport Department, Government of NCT of Delhi dated 08th December, 2014 and 01st January, 2015 as well as the Advisory of the Home Ministry dated 08th December, 2014 and orders dated 12th May, 2015 issued by Ministry of Communication and Information Technology, Government of India and orders dated 28th July, 1998 and 26th March, 2011 passed by the Supreme Court in W.P.(C) 13029/1985.

Issue notice.

Mr. Manish Mohan, learned counsel accepts notice on behalf of respondents No.1 and 2.

Mr. Naushad Ahmed Khan, learned counsel accepts notice on behalf of respondents No.3 to 6.

Ms. Ruby Singh Ahuja, learned counsel accepts notice on behalf of respondent No.7.

Mr. Susmit Pushkar, learned counsel accepts notice on behalf of respondent No.8 and 9.

Mr. Darpan Wadhwa, learned counsel accepts notice on behalf of respondent No.10.

Respondents No.1 to 10 are permitted to file their counter affidavits within a period of four weeks.

Rejoinder affidavit, if any, be filed before the next date of hearing.

Also issue notice to unserved respondents by registered post and dasti.

It is the case of the petitioner that respondents No.7 to 13 are running illegal and banned Radio Taxi Operations. Mr. Nidhesh Gupta, learned senior counsel for petitioner states that respondents No.7 to 13 are running their businesses in a contemptuous manner knowing fully well that respondents No.4 to 6 are not able to do anything against the financial might

and stealth of respondents No.7 to 13.

Mr. Naushad Ahmed Khan, learned counsel for Transport Department, Government of NCT of Delhi and Delhi Police supports the case of the petitioner.

Mr. Manish Mohan, learned counsel for Union of India points that Union of India has vide its letter dated 12th May, 2015 blocked access to internet websites of www.uber.com, www.taxiforsure.com, www.olacabs.com and angelbrokings.com.

Learned senior counsel for respondents No.7 to 10, state that they are purely technology companies which are not directly providing taxi service/cab rental in the transportation sector. They state that they are merely aggregators who are operating as intermediaries between the customers and the concerned taxi operators who are already registered with the Transportation Department. According to them, they do not require registration under the Radio Taxi Scheme-2006 as modified on 26th December, 2014 and 26th August, 2015 or any other scheme which might have been formulated by the Government.

Mr. Rajiv Nayar, learned senior counsel for respondents No.8 and 9 has today in Court handed over a copy of an Advisory issued by the Ministry of Road Transport and Highways, Union of India, dated 08th October, 2015. According to him, the said Advisory provides for comprehensive licensing, Compliance and Liability On-demand Information Technology based Transportation Aggregators operating within the jurisdiction of India. The same is taken on record.

In rejoinder, Mr. Naushad Ahmed Khan, learned counsel clarifies that the Advisory dated 08th October, 2015 issued by the Ministry of Road

Transport and Highways still postulates a registration and a licence from the State Government.

This Court in the case of *ANI Technologies Pvt. Ltd. vs. Government of NCT of Delhi & Ors., W.P.(C) 6668/2015* while issuing notice seeking quashing of the order dated 01st January, 2015, whereby the aggregator's representation challenging the ban was rejected, has observed as under:-

“19. Prima facie, this Court is of the view that the Supreme Court order dated 28th July, 1998 in M.C. Mehta (supra) wherein it had directed replacement of all pre 1990 autos and taxis with new vehicles on clean fuels has been reiterated on 26th March, 2001 that means, subsequent to the orders dated 28th July, 1998 and 29th April, 1999 relied upon by Mr. D.S. Narula, learned senior counsel and Mr. Khalid Arshad, learned counsel for the petitioner. In fact, in the order dated 26th March, 2001, the Supreme Court had not only directed that after 01st April, 2001, no commercial vehicle will be registered in Delhi which does not conform to the order dated 28th July, 1998, but also ordered that no other commercial vehicle shall ply in Delhi unless converted to Single Fuel Mode of CNG w.e.f. 01st April, 2001. The relevant portion of the orders dated 28th July, 1998 and 26th March, 2001 is reproduced hereinbelow:-

A. Order dated 28th July, 1998

“2.....The Committee headed by Shri Bhure Lal has also proposed the following measures within the time-frame in its action taken report filed in the Court.

	<i>Time-frame</i>
xxxx xxxx xxxx	
(D) <u>Replacement of all pre-1990 autos and taxis with new vehicles on clean fuels.</u>	<u>31.3.2000</u>
(E) <u>Financial incentives for replacement of all post-</u>	<u>31.3.2001</u>

1990 autos and taxis with
new vehicles on clean fuels.

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We approve the directions given and the time-frame fixed by Shri Bhure Lal Committee. The time-frame, as fixed by that committee and today by this Court, in consultation with learned Counsels for the parties, shall be strictly adhered to by all the authorities.....”

B. Order dated 26th March, 2001

“12.....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 :

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(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.

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(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.”

(emphasis supplied)

20. Further, the reasoning and logic given by the Division Bench of this Court in **Vijendra Kumar** (supra) which was followed in **W.P.(C) 5532/2007, Sunil Bansal Vs. Bharat Petroleum Corporation & Anr.** decided on 29th October, 2007 was set aside by the Supreme Court in **Bharat Petroleum Corporation Limited vs. Sunil Bansal & Ors., (2009) 10 SCC 446.**

21. In fact, today, Delhi is regarded as one of the most polluted cities in the world. Tuberculosis and respiratory diseases like Asthma and Bronchitis have assumed alarming proportions. A Time Magazine article enclosed along with the impleadment application states that New Delhi has been ranked as the world's worst polluted city by the World Health Organization and that its air quality is far worse than what was previously thought. According to the article, Delhi's rapidly growing vehicle numbers are posing a major threat. The relevant portion of the article is reproduced hereinbelow:-

“New Delhi has already been ranked the world's worst polluted city by the World Health Organization, but a new study by U.S. and Indian scientists shows that the city's air quality is far worse than previously thought.

American scientist Joshua Apte, working with partners from the University of California, Berkeley and Delhi's Indian Institute of Technology, roamed the streets of the Indian capital in an autorickshaw laden with air pollution monitors. He found that average pollution levels were up to eight times higher on city roads, the Associated Press reports.....

Its rapidly growing vehicle numbers, expected to hit 400 million by 2030, are posing a major threat that the government is well aware of.....

But far more drastic measures will be required to make a meaningful dent in Delhi's air pollution levels, which, according to the latest WHO Ambient Air Pollution Database, are at just under 300 micrograms per cubic meter. The world's second most polluted city, Karachi, clocks in at a little over 250, while the major Chinese cities of Beijing and Shanghai, internationally notorious for their pollution, clock in a relatively fresh 120 to 80 respectively.”

(emphasis supplied)

22. *The effect of the quality of diesel that is available in the city has also been adversely commented upon by the Supreme Court in its various orders. For instance, in the order dated 29th April, 1999 in the case of **M.C. Mehta vs. Union of India & Ors.**, the Supreme Court has pointed out that, “...Bhure Lal Committee, which was constituted by an order of this Court on 7th January, 1998, has been submitting its Reports from time-to-time and in the Report submitted to this Court on April 1, 1999 it was pointed out that the private (non-commercial) vehicles comprise 90% of the total number of vehicles plying in the NCR. The Report also indicated that more than 90% of Nitrogen Oxide (NOx) and respirable particulate matter (RSPM) from vehicles exhaust over Delhi is due to diesel emissions which is a serious health hazard.....” (emphasis supplied). The Supreme Court in **M.C. Mehta Vs. Union of India & Ors., 2002 (2) SCR 963** has also pointed out as under:-*

“.....In the September, 2001 issue of 'Parivesh' a magazine published by the Central Pollution Control Board relating to air pollution and human health, dealing with diesel exhaust particles and its health effects, it was stated at page 34 of the said issue as follows:

"The popularity of the diesel engine in heavy duty application in trucking, rail road, marine transport. DG sets and construction industry is due to both its fuel efficiency and long service relative to the gasoline engine. Compared with gasoline engine, diesel emissions are lower in carbon monoxide (CO), hydrocarbon (HC) and carbon dioxide (CO₂), but higher in oxides of nitrogen (NOX) and particulate matter (PM). Diesel exhaust is a complex mixture of both particulate and gaseous phase. Diesel exhaust has particulate with mass median diameter of 0.05 to 1.00 micrometer, a size rendering them easily respirable and capable of depositing in the airways and alveoli. The particles consist of a carbonaceous core with a large surface area to which various hydrocarbons are absorbed, including carcinogenic polycyclic aromatic hydrocarbons (PAHS) and Nitro-PAHs that have elicited the

most concern with respect to human health. The gaseous phase contains various products of combustion and hydrocarbons including some of the PAHS present in the particle phase. Once emitted components of diesel exhaust undergo atmospheric transformation in ways that may be relevant to human health. For example, nitro-PAHS, created by the reaction of directly emitted PAHs with hydroxyl radicals in the atmosphere can be more potent mutagens and carcinogens and more bio-available than their precursors. A study undertaken by a Swedish Consultancy, Ecotraffic (Peter Anlvik and Ake Branberg, 1999) shows that the cancer potency of diesel vehicles is more than two times than that of petrol vehicles in India. But if only the most harmful of the exhaust emissions, that is particulate emission is considered the carcinogenic effect of one new diesel car is equivalent to 24 petrol cars and 84 new CNG cars on the road."

In the same issue, particulars are given with regard to major air pollution related diseases in India which are as follows:-

(1) Acute Respiratory disease:

12% of Deaths; 13% of NBD. Largest fraction in the world Indian ARI in children alone under 5 is responsible for more than 2% of entire GBD.

(2) Chronic Obstructive Pulmonary Disease (COPD): 1.5% of Deaths; 0.9% of NBD

(3) Lung Cancer 0.4% of Deaths; 0.1% NBD

(4) Asthma: 0.2% of Deaths; 0.5% of NBD

(5) Tuberculosis; 8% of Deaths; 5% of NBD; Largest in the world

(6) Perinatal: 6% of Deaths; 7.5% of NBD; Largest in the world

(7) Cardio Vascular Disease: 17% of Deaths; 5% of NBD

(8) Blindness:

0% of Deaths; 1% of NBD; Largest in the world NBD/GBD: National/Global Burden of Disease"

From the aforesaid extracts from the publication of the Central Pollution Control Board, it is evident that there was need to control air pollution, and one of the measures was to reduce the use of diesel. It was with this object in view that the Bhure Lal Committee recommended the use of CNG which was accepted by all the parties including the Union of India when orders were passed to that effect in July, 1998....."

(emphasis supplied)

23. *This Court is of the view that growth and development must take place in accordance with the principle of sustainable development. The fact that five other App based companies like Meru and Mega cabs are offering similar facilities as the petitioner, but are using taxis which run on CNG, prima facie shows that principle of sustainable development is achievable.*

24. *Also, one of the essential features of sustainable development is the precautionary principle. The precautionary principle was elucidated by the Supreme Court in **M.C. Mehta Vs. Union of India & Ors., 2002 (2) SCR 963**, wherein it has been held as under:-*

*"The "precautionary principle" was elucidated thus by this court in **Vellore Citizens' Welfare Forum v. Union of India and Ors., [1996] 5 SCC 647**, inter alia as follows:*

(1) the State Government and the statutory authorities must anticipate, prevent and attack the causes of environmental degradation.

(2) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(3) *The "onus of proof" is on the actor or the developer to show that his action is environmentally benign.*

(4) *It cannot be gainsaid that permission to use automobiles has environmental implications, and thus any "auto policy" framed by the Government must, therefore, of necessity conform to the Constitutional principles as well as overriding statutory duties cast upon the Government under the EPA.*

(5) *The "auto policy" must, therefore,*

(a) focus upon measures to "...Anticipate, prevent and attack..." the cause of environmental degradation in this field.

(b) In the absence of adequate information, lean in favour of environmental protection by refusing rather than permitting activities likely to be detrimental.

(c) 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.

(d) 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."

(emphasis supplied)

25. *It is pertinent to mention that under the Motor Vehicles (All India Permit For Tourist Transport Operators) Rules, 1993 there is no uniform standard which diesel taxis have to conform to for obtaining All-India permit. For instance, the diesel taxis which seek All-India permit within the National Capital Region have to conform to mass emission standards Bharat Stage-IV. But, if a diesel vehicle operator was to apply for an all-India*

permit, say, in Rajasthan or Uttar Pradesh, he would not have to conform to such a standard. Since it is the case of interveners that a large number of diesel taxis having all-India permits issued in neighbouring states are carrying out point-to-point transportation within the National Capital Region, the fear of adverse impact on the environment seems genuine.

26. *Consequently, this Court feels that it should err on the side of caution and should not stay the ban imposed by the State Government.*

27. *Moreover, as there has been delay of six months in filing the present writ petition and during this period the impugned ban order and the Supreme Court orders with regard to ban on diesel taxis has been violated with impunity by the petitioner, this Court is prima facie of the view that the petitioner believes that it is not bound by the law. In the opinion of this Court, a ban order has to be respected till it is stayed or set aside by a Court of competent jurisdiction.*

28. *Consequently, CM Appl. 12160/2015 is dismissed and respondents No.1 and 2 are directed to enforce the impugned order dated 1st January, 2015 qua All-India Tourist Permit taxis operating on diesel on point-to-point basis within the National Capital of Delhi.*

(emphasis supplied)

This Court is of the view that since respondents No.8 to 13 are similarly placed as petitioner in W.P.(C) 6668/2015, in the interregnum, the interim order dated 29th July, 2015 should equally apply to the said respondents and the members of the petitioner association. Ordered accordingly.

At this stage, Mr. Nayar learned senior counsel for respondents No.8 and 9 and Mr. Darpan Wadhwa, learned counsel for respondent No.10

voluntarily state that they will shift their vehicles operating on point to point basis within the National Capital Territory of Delhi to CNG fuel mode, provided they are given time till 01st March, 2016.

The statements made by learned counsel for respondents No.8 to 10 are accepted by this Court and the said respondents are held bound by the same. Respondents No.8 to 10 are directed to file the affidavits within a period of two weeks placing on record a monthly schedule according to which they intend to phase out the diesel vehicles on or before 01st March, 2016.

Respondents No.7 to 13 shall also suggest to this Court a mechanism by which statements, assurances and undertakings given by the said respondents can be verified by the Transport Department and by the Delhi Police.

List the matter on 03rd December, 2015 at the end of the Board.

MANMOHAN, J

OCTOBER 14, 2015

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