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WP No.29914 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2023

CORAM

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Writ Petition No.29914 of 2022

and

Sub Application No.774 of 2022

Vaishnavi Jayakumar

...

Petitioner

versus

1.The State of Tamil Nadu

Rep. by its Secretary

Transport Department

Fort St. George Chennai.

2.The Institute of Road Transport

Rep. by its Director, 100 Feet Road,

Taramani Chennai-600 113.

3.M.K.Divyadeshna

4.T.S.Santhakumari

5.Kavitha P.

6.Sudha Ramalingam

...

Respondents

(respondents 3 to 6 impleaded vide order dated 12.12.2022 in WMP Nos.32459, 32462, 32493 and 32496 of 2022)



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Prayer: Writ Petition under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records of the 2nd respondent culminating in tender bearing IRT Tender No.16/SF-Fully Built Bus/CP/IRT/2022 issued on 10.10.2022 and quash the same in so far as it relates to the procurement of 1107 Type I Buses of floor height 900 mm.

For the Petitioner : Mr.A.Yogeshwaran

For the Respondents : Mr.P.S.Raman,
Senior Counsel,
for Mr.C.Gowtharaj, for R-2

Mr.J.Ravindran,
Additional Advocate-General
assisted by Mr.P.Muthukumar,
State Government Pleader
for the first respondent

Mr.R.Bharadwajaramasubramaniam,
for respondents 5 and 6

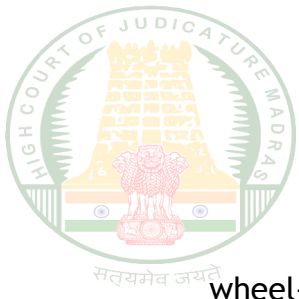
Mr.M.V.Swaroop,
for respondents 3 and 4

ORDER

(Made by The Hon'ble Acting Chief Justice and Justice D.Bharatha Chakravarthy)

A. The Writ Petition :

The writ petition is filed challenging the tender floated by the respondents viz., the State of Tamil Nadu and the Institute of Road Transport, Chennai, for procurement of 1107 Type I Buses of floor height 900 mm. The pro bono publico is espousing the cause of differently-abled persons who are using



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wheel-chair, as also, senior citizens and other persons with difficulties, who cannot use the public transport if these high floor buses are permitted to be procured.

B. The Case of the Petitioners:

2. It is the case of the petitioners that the matter of access to transportation for the differently-abled is under consideration for quite a long period of time and ultimately, the Hon'ble Supreme Court in ***Rajive Rathuri vs. Union of India, 2018(2) SCC 413***, considered the matter in detail and in paragraph 34.7, held “*all the Government buses should be disabled friendly and in accordance with the harmonised guidelines*”. The *Harmonised Guidelines and Standards for Universal Accessibility in India, 2021*, framed by the Ministry of Housing and Urban affairs, Government of India, clearly stipulates that buses should be of low floor. This apart, there has been earlier orders of this Court in respect of State of Tamil Nadu itself. By order dated 05.07.2022 in WP No.29914 of 2022 etc, this Court, after considering the directions of the Hon'ble Supreme Court in ***Rajive Rathuri***, quashed the earlier G.O.Ms.No.31 dated 24.02.2021, holding that a total number of 10% of the buses shall be disabled friendly and directed the respondents to ply all the



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Government buses in conformity with the provisions of the Act and Rules and the harmonised guidelines in the light of the judgment of the Apex Court in the case of *Rajive Rathuri*.

3. Further, there was also one more round of litigation as early as in the year 2005 in WP No.38224 of 2005 and from then on, even though repeated directions have been given to purchase low floor buses and make the public transport accessible to persons who are differently-abled, the factual position on date is that there are no low floor buses at all plying in the city of Chennai. Therefore, when the State is obliged to convert all its buses compliant of the above directions, it goes without saying that the new buses which are to be procured should be of low floor only. Apart from the writ petitioner, several other interested parties had also filed applications to implead and the same were allowed and they all supported the case of the writ petitioner.

C. The Case of the State:

4. It is submitted on behalf of the respondents that even though orders were earlier passed, the fact remains that none of the buses plying in the State of Tamil Nadu is low floor. There are some practical difficulties such as



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road conditions, inundation during rainy seasons, the longer length of low floor buses, higher cost, lack of competition in procurement inasmuch as only two manufacturers alone manufacture and supply low floor buses, maneuvering space in the roads; lack of proper platform in the bus stops enabling them to get-in etc. and therefore, it is pleaded that the State, after taking into consideration the directions given in the earlier judgments, is now procuring buses by way of three tenders. By the present tender impugned in the writ petition, 1107 high floor buses are sought to be procured. At the same time, by two other tenders, 242 low floor diesel buses and 100 low floor electric buses are being purchased. Therefore, taking into consideration of total procurement of 1449 buses, almost 23.6% of the buses will be low floor. Therefore, the same satisfies the earlier directions of this Court.

5. In support of their contentions, the respondents also relied upon the judgment of the Hon'ble Supreme Court in ***SLP Nos.19062 & 19063/2018 in Government of NCT of Delhi and others vs. Nipun Kumar Malhotra and others***, the Hon'ble Supreme Court itself considered the directions in ***Rajive Rathuri*** and held that though there is a legitimate expectation that all the buses should be low floor buses, the Court also has to keep in mind the



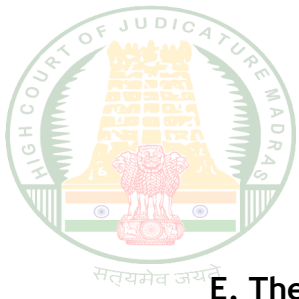
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practical difficulties that may be faced by the State Governments, including their difficulties in procuring such buses, permitted the Government of Delhi to purchase 500 standard floor buses as an interim measure. Therefore, they would plead that they may be permitted to go ahead with the procurement of the buses.

D. The Rebuttal:

6. Per contra, rejoinders/affidavits were filed by the writ petitioner and the impleaded parties, bringing to the notice of the Court that while considering the percentage, even to calculate 10%, the entire fleet operating within the Chennai city and in the respective metropolitan cities have to be considered, and not the percentage with respect to the procurement alone should be considered. It is also pleaded that except the low floor buses, no other solution proved to be effective. The lift system which was sought to be used in the high floor buses is admitted to be a failure by both sides. Besides, with the kind of crowd in the metropolitan cities, it is impossible to operate such lifts to enable the wheel-chair bound commuters to get inside the bus.



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E. The Proceedings before this Court:

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7. During the course of arguments, both sides agree on the basic principles that the differently-abled also have a right to access the public transport and the State has to improve the road conditions, bus stops and all other facilities so as to make the public transport system more and more accessible. The only question remained was to how best to resolve the impasse of accommodating the above long term interest on the one hand and dealing with the practical difficulties on the other. As a matter of fact, this Court conducted repeated long winding hearings.

F. Resolving the Impasse:

8. We heard Mr.A.Yogeshwaran, who submitted in detail about the legal position, the dire needs of differently abled persons and about the practical aspects of the matter. We also heard Mr.P.S.Raman, learned Senior Counsel, for the second respondent and Mr.J.Ravindran, learned Additional Advocate-General, appearing for the first respondent. Learned counsel M/s. Bharadwaj, Ramasubramaniam, M.V.Swaroop for the impleading parties also enlightened this Court about the need for low floor buses. This Court also made a sojourn into pragmatism by directing ply one low floor bus in some of the routes,



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including the routes in which CMRL work is going on and in some difficult routes with narrow roads and sharp turnings. The parties to this litigation along with their counsel undertook the journey. This apart, Dr.Chelliah, learned Senior Counsel, Mr.Ravi Anandapadmanabhan, learned Senior Counsel, Mr.Elephant Rajendran learned counsel, at the request of this Court, also traveled in the bus, and all of them submitted that their written reports. This apart, this Court even interacted with the driver of the bus who drove the low floor bus.

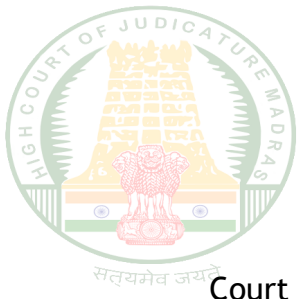
9. Based on the written reports and the oral submissions made thereafter, the cumulative feedback which is received by this Court is that the plying of low floor buses is very much feasible. There may be some difficulties in some junctions regarding maneuvering; in some bus stops in the differently abled persons may not be able to make ingress into the bus; and in some routes during rainy seasons due to inundation and due to unscientific speed-breakers etc., there will be difficulties. But over all, the feedback of all the learned counsel, including the learned Senior Counsel appearing for the State is that the low floor buses are very much pliable and all the other factors cannot be put against but only need to be improved.



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10. Keeping that in mind, when we further enquired, it is assured by Mr.P.S.Raman, learned Senior Counsel and Mr.J.Ravindran, learned Additional Advocate-General that these low floor buses will be deployed as widely as possible in all the possible routes, taking into consideration the on-field requirements of the differently-abled persons. This apart, on our request, it is also assured on behalf of the State that already a mobile application, which is developed by the metropolitan transport Corporation is in operation, in which suitable features will be added by showing the movement of these buses so that even before heading to the bus stop, the differently-abled persons will know at what time and in which route, these low floor buses are running on real time basis.

11. This apart, Mr.P.S.Raman and Mr.J.Ravindran would submit that it is also the endeavour of the State Government to make the entire fleet as low floor. However, it has also to be noted that so far, i.e. up to the year 2023, the number of low floor buses is zero. Therefore, when the Government is making a good beginning by purchasing substantial number of low floor buses, it should be encouraged and further, Mr.P.S.Raman and Mr.J.Ravindran left it to this

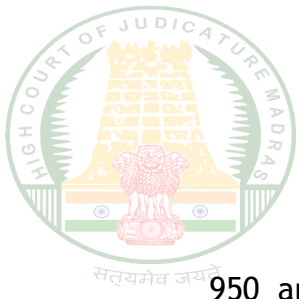


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Court to increase the number low floor buses. They would submit that apart from the above practical difficulties, the costs of the bus both procurement cost and operational costs is also high and therefore, suddenly, in the current exercise, if the direction is issued to procure only low floor buses, that would cause severe strain and make it impracticable for the state to implement both financially and otherwise.

12. Learned counsel for the writ petitioner and the impleading parties, though in-principle opposed to purchasing any new high floor vehicle, would at the same time, consider the practical and pragmatic difficulties and would resign to the more important fact that a beginning has to be made and that something is better than nothing. In that view of the matter, when the learned Senior Counsel and the learned Additional Advocate-General had made a solemn undertaking that the State will ensure substantial increase the percentage in the ensuing acquisitions of new fleet and pleaded that even in the present tenders, this Court can further increase the number of low floor buses, we thought it fit to consider the practical difficulties and the order of the Hon'ble Supreme Court in **Government of NCT, Delhi** (supra), and proposed that instead of 1107 high floor buses, the Government shall reduce the same to



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950 and the balance 157 bus shall be of low floor and be simultaneously procured, in addition to the 342 low floor buses already being procured by separate tenders. The same was accepted by the learned counsel appearing on behalf of the State and considering the fact that for the first time a considerable number of low floor buses are being procured, there was no serious objection on behalf of the learned counsel appearing on behalf of the petitioner and other impleading parties also.

G. The Order:

13. Therefore, these writ petitions are disposed of with the following directions:

(i) The respondents can proceed ahead with the impugned tender IRT Tender No.16/SR-Fully Built Bus/CP/IRT/2022 dated 10.10.2022, but however, shall only procure 950 buses of Type I Buses of floor height 900 mm;

(ii) Within two weeks from the date of receipt of a copy of this order, they shall also issue a fresh tender to procure 157 low floor buses and



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the said tender shall also be processed simultaneously;

(iii) The procurement of the 342 low floor buses both electric and diesel shall also be processed and expedited, so that the said fleet are also in place simultaneously with these high floor buses;

(iv) The respondents and the respective transport corporations in the city of Chennai and other cities shall, with due application of mind, by forming a committee of officials, one from the Transport Department, one from the Institute of Road Transport, one from the respective Metropolitan Transport Corporation and one representative from the differently-abled organisations, shall, with due consultations of experts, decide upon the routes in which these low floor buses shall be plied, their timings, etc. taking into account the utmost benefit to the most



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number of differently-abled persons as the primary objective;

(v) In respect of each metropolitan city of Chennai, Coimbatore, Trichy, Madurai etc. mobile applications shall also be developed which, in real time, should indicate the movement of these low floor buses for the differently-abled persons to come to the bus stop and board the buses by properly planning their time;

(vi) As directed by this Court in the earlier directions, the respective Municipal Corporations shall strive to continuously improve the quality of the roads, their maneuvering capacity and shall scientifically lay the bumps/speed breakers enabling the smooth running of these low floor buses;

(vii) The bus stops should be scientifically designed to suit the requirements of the differently-abled and henceforth, any development



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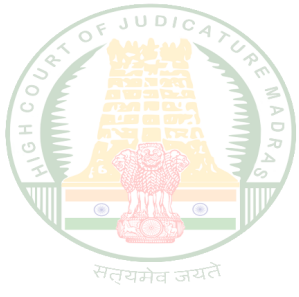
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or reconstruction or repairing or improvement in any of the bus stops should include and focus in making it differently-abled friendly, with due facility for the wheel chair to go into the low floor bus, directly from the platform;

(viii) Special training should be imparted to the drivers and conductors of these low floor buses, firstly to be patient enough to stop the bus and assist the persons who are differently-abled/wheel chair bound commuters to get in and alight from the buses from their appropriate destinations;

(xi) It is made clear that the permission to purchase the high floor buses is granted by this order only as an exception and all endeavour should be made to purchase only low floor buses in the ensuing years, in respect of the fleet which are to be run within the cities and its suburbs;

(x) A copy of these directions could be widely circulated to all the automobile manufacturers and



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to such organisations, to create awareness that there will be market only for the low floor buses in future, so that there will be more and more players in the field, so as to supply low floor buses, as per the requirements of the State.

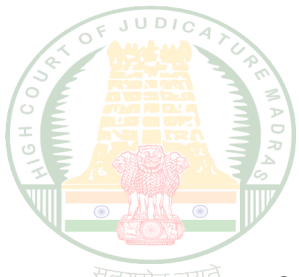
14. There will be no order as to costs. Consequently, WMP No.29308 of 2022 is closed.

15. Sub application No.774 of 2022 filed to accept the cause title as respondent in Contempt Diary No.127446/2022 is closed in view of the order passed in the writ petition.

16. WMP No.11520 of 2023 to reopen the proceedings in the writ petition is closed.

Hk. The Epilogue:

17. We place on record our appreciation to the petitioner and the impleaded parties as well as Mr.Yogeswaran, learned counsel for the petitioner,



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Mr.P.S.Raman, learned Senior Counsel, Mr.J.Ravindran, learned Additional Advocate-General, Mr.Bharatwaj, Mr.Swaroop, learned counsel; Dr.Chelliah, learned Senior Counsel, Mr.Ravi Anandapadmanabhan, learned Senior Counsel, Mr.Elephant Rajendran, learned counsel for their valuable services in not only placing the legal position before this Court but in approaching the issue in a pragmatic manner to take the first step ahead to make public transport in the city of Chennai and other cities disabled friendly.

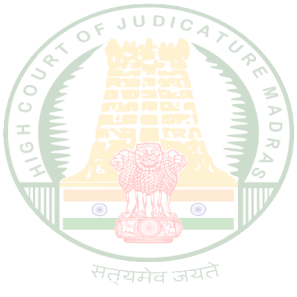
After all, the world is theirs too!!

(T.R., ACJ.) (D.B.C., J.)
18.04.2023

Index : Yes/No
Neutral Citation : Yes/No
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To

- 1.The Secretary
Transport Department
Fort St. George Chennai.
- 2.The Institute of Road Transport
Rep. by its Director, 100 Feet Road,
Taramani Chennai-600 113.



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T.RAJA, ACJ,
and
D.BHARATHA CHAKRAVARTHY, J.
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