

112

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1762 OF 1999.

Smoke Affected Residents' ForumPetitioners

VERSUS

Municipal Corporation of

Greater Bombay & Ors.Respondents

Mr.Pillai for Petitioners

Mr.C.U.Singh with Mrs.N.V.Sanglikar for Municipal
Corporation of Greater Bombay

Mr.R.M.Sawant, Government Pleader, for State

Mr.Shiraz Rustomjee 1/by M/s.Hariani & Co. for
Bombay Environmental Action Group

Mr.V.K.Ramabhadran with Ms.S.Priya 1/by

Mr.P.C.Kaushik for Respondents 4 and 17

Mr.J.K.Mistry 1/by M/s.Crawford Bayley & Co.

for Respondent No.12

Mr.D.D.Madon with Mr.Gurav Joshi

for Respondent No.14

Mr.S.A.Bhalwal for Mahanagar Gas Ltd.

Mr.J.P.Cama with Ms.Kher 1/by Mr.Anil Kumar

for Taximens' Association

Mr.P.D.Ghandy with Mr.L.A.Ruben 1/by M/s.Gagrat &

Co. for Respondent No.23.

118

CORAM: B.P.SINGH, C.J., AND
SMT. RANJANA DESAI, J.
DATE: 17TH OCTOBER, 2001.

ORDER (Per B.P. SINGH, C.J.):-

1. The instant Writ Petition has been filed in public interest by the Smoke Affected Residents' Forum seeking appropriate directions from this Court with a view to control and reduce auto emission from motor vehicles plying in the City of Mumbai. The inaction of the authorities has exposed 14 million inhabitants of this Metropolis to the menace of auto emission, which has caused incalculable damage to the health of the inhabitants of Mumbai on account of oxides of Nitrogen, respirable suspended particulates and carbon monoxide (CO), causing serious environmental pollution. In the Petition, the Petitioners have averred facts substantiating their allegations and justifying directions prayed for in the Writ Petition. Several prayers have been made in the Writ Petition, some of them dealing with directions regarding consumption of unleaded petrol, reduction of sulphur content in diesel oil, issuance of P.U.C. certificate, vehicles conforming to EURO-I norm and EURO-II norm, etc. It is also prayed that all commercial road transport vehicles, which are

119

more than 15 years old, be phased out, and some restrictions be placed on commercial transport vehicles, whether registered in Mumbai City or outside, but which ply in Mumbai. Similar directions are sought in regard to three-wheeler and two-wheeler motor vehicles. It is also prayed that no motor vehicle such as cars, including taxis, trucks, buses, two- and three-wheelers, be registered, unless they conform to EURO-II norm after the 1st August, 2000.

2. In the Writ Petition, orders and directions have been issued from time to time. The first significant order was passed on the 17th September, 1999, which noticed that auto emission had reached dangerous levels, and was causing incalculable damage to the health of residents of the city. Reference was made to the views of some of the leading doctors and eminent cardiologists who have averred that up to 40% of the inhabitants of Mumbai suffer from numerous respiratory diseases and illnesses such as asthma, bronchitis, etc. These are on account of the air pollution in Mumbai. Some data was also provided to highlight the adverse effect on the constables and taxi drivers. Children are most vulnerable to air pollution, and the studies conducted by Dr. Kamat showed that the

children in Mumbai have marked stunted development of lungs when compared to children in Madras. This Court also noticed the directions issued by the Apex Court dealing with the same problem in the National Capital Region in the light of the mandate of Articles, 21, 47 and 48A of the Constitution of India. The order also notices that the Governor of Maharashtra had convened a High Level Meeting to address the issue of Environment Protection in Mumbai, and pursuant to the decision taken in that meeting, the Central Pollution Control Board prepared a Draft Action Plan for Control of Pollution in Mumbai and its neighbouring areas. The Preamble of the Draft Action Plan recognised the unprecedented growth during the last 50 years, which was not without ecological degradation, lowering of living standards and shortfalls in basic infrastructure as well as civic amenities and the problem being further compounded due to unabated migration into the city. It recognised that to sustain the development and population in the region, urgent steps are required to be taken by raising the level of enforcement through systematic implementation of action plan over a period of time. This Court asked for certain particulars from the authorities with regard to the number of old vehicles being plied in Mumbai, the quality and

nature of fuel being available, the outlets presently available for supply of such fuel and the requirement of the number of outlets. However, the Court was pleased to issue two directions forthwith, which are as follows:-

(i) No private (non-commercial) vehicle, which does not conform to India 2000 norms, as per Government of India Notification dated 28th August, 1997, shall be registered in Mumbai with effect from 1st January, 2000

and

(ii) No private (non-commercial) vehicle, not conforming to EUPD II norms, shall be registered in Mumbai with effect from 1st January, 2001.

3. . By Order dated 15th December, 1999, the Court issued certain directions to the State and its authorities, and also appointed a Committee consisting of Mr.V.M.Lal, Transport Commissioner, as its Chairperson and Convener of the Committee, Dr.P.S.Pasricha, former Joint Commissioner of Police, Mumbai, and a representative each from the Maharashtra Pollution Control Board, Bombay Environmental Action Group, Ministry of Environment

122

and Forests, Government of India, not below the rank of Joint Secretary, and Clean Air (Mrs. Khajotia). The Terms of Reference of the Committee were to examine, consider and recommend measures to reduce vehicular pollution in Greater Mumbai, including but not limited to the issues enumerated in this order. Clauses (b), (c) and (f) are relevant for our purposes, which are as follows:-

"(b) Usage of alternative fuel such as CNG/reformulated gasoline, etc. Administrative & Regulatory measures that would be required for setting 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, autorickshaws & two wheelers) over a certain age limit.

4. At this stage, we may observe that this Court is very much concerned about the availability of CNG and the sufficiency of the number of outlets

122
123

for supply of CNG in Greater Mumbai and particularly in South Mumbai. This Court devoted a lot of time on this issue with a view to see to it that sufficient number of CNG outlets were provided. Notice was issued to Mahanagar Gas Ltd. and also the oil companies with a view to give them necessary directions. In fact, with the assistance of the Counsel appearing for the several Respondents, even suitable sites were identified, and directions issued to the authorities to take immediate steps to provide CNG outlets in sufficient numbers. We cannot say that we have achieved significant progress in this regard, but the process has been set in motion, and we do hope that the State and its authorities as well as the oil companies and gas companies concerned will take appropriate steps to set up more CNG outlets all over Greater Mumbai, so that when large number of vehicles convert to CNG or LPG, they should have no difficulty in getting supply of CNG/LPG anywhere in Greater Mumbai. Unfortunately, the official red-tape and the need for obtaining sanctions and permissions from several authorities do cause inordinate delay. It is high time that the procedure is simplified by the authorities.

By Order dated 22nd December, 2000, the Court revived the Committee, which was earlier, constituted consisting of the representatives of Government of Maharashtra, Public Works Department, Bombay Municipal Corporation, MMRDA, Transport Commissioner, Mahanagar Gas Ltd., Collector and other concerned authorities to identify the plots at suitable locations, finalise the terms and conditions and approve the allotment of the plots to Mahanagar Gas Ltd. The Committee chaired by the Transport Commissioner which was disbanded after the submission of its report was revived, and it was directed to identify the plots and suitable locations and finalise the terms and conditions and approve the allotment of the plots to Mahanagar Gas Ltd. The Committee was also directed to generally look into all matters relating to or incidental to the opening of CNG outlets, as that would reduce the burden of this Court and this Court will have the benefit of expert opinion of a representative body, making it simpler for this Court to take a decision in such matters, wherever necessary.

5. The Committee appointed by this Court by Order dated 15th December, 1999 with Mr. V.M. Lal, Transport Commissioner, as the Chairperson, made its report to this Court, and has made its

recommendations on various issues. Copies of the report were made available to the Respondents, and the Respondents have been heard. An affidavit has also been filed on behalf of the State of Maharashtra in April, 2001 substantially accepting the recommendations of the Committee, but with a few suggestions here and there. We are presently concerned with the phasing out of vehicles in the light of the recommendations of the Committee. We are primarily concerned with taxis plying in Greater Mumbai, the three-wheelers commonly known as 'auto-rickshaws' and other transport vehicles. So far as private cars and two-wheelers are concerned, after some discussion, we do not consider it necessary, at this stage, to issue any direction. Of course, certain directions have been issued by this Court such as requirement of P.U.C. Certificate, etc., which apply to these vehicles, but we are of the considered view that it is not appropriate, at this stage, to pass any direction for phasing out these vehicles. With regard to the BEST buses, we consider it in public interest, for the present, not to direct phasing out of the fleet of buses of BEST, though, as a matter of policy, BEST should also start thinking in terms of converting its fleet of buses to CNG/LPG. It is noticed that the buses of BEST are well-maintained, and on account of better

maintenance, do not contribute to the atmospheric pollution to the extent some other heavy commercial vehicles which are not properly maintained contribute. We, however, make it clear that at a later stage, if necessary, this Court may issue directions even with regard to private cars, two-wheelers and BEST buses.

f. So far as the taxis are concerned, the Committee has recommended that all taxis above the age of 15 years must be converted to CNG or any other clean fuel (which means CNG or LPG as and when occurring throughout its report). It is also recommended that all diesel taxis above the age of 8 years should be converted to run on clean fuel.

It has further recommended that with effect from 1st January, 2001, all transport vehicles (except BEST buses and three-wheelers) over the age of 15 years shall be scrapped, unless converted to clean fuel.

So far as three-wheelers are concerned, the Committee has recommended that with effect from 1st January, 2001, all three-wheelers above the age of 10 years should be converted to CNG or any other

127

clean fuel, and further, with effect from 1st January, 2002, all three-wheelers above the age of 8 years should run on clean fuel.

It has also recommended that with effect from 1st January, 2001, all three-wheelers registered in Mumbai Metropolitan region and above the age of 10 years shall be scrapped, unless converted to clean fuel.

It has also recommended that with effect from 1st January, 2002, all transport vehicles over 8 years of age, and plying in Mumbai City (except BEST buses) should be scrapped, unless converted to clean fuel. The above stipulated age of 8 years would be subject to modification, if any, and as per the age prescribed under Section 59 of the Motor Vehicles Act, 1988.

7. We may, at this stage, notice that after the report was received, copies of the report were made available to the parties, including the Government of Maharashtra, and the Government of Maharashtra filed its affidavit dated 20th April, 2001 on the recommendation of the Committee, and thereafter, the matter was heard. We were informed at one stage that some matters were being agitated before the

Supreme Court of India, and that appropriate directions were expected from the Apex Court even with regard to clean fuel. We are, however, informed that the Supreme Court has not passed any order with regard to clean fuel, and the matter is still pending before the Apex Court. We shall, therefore, proceed on the basis on which the Committee has proceeded namely, that clean fuel means CNG or LPG.

8. We shall first take up the recommendation with regard to taxis. The Committee recommended that all taxis above the age of 15 years must be converted to clean fuel, and all diesel taxis above the age of 8 years should be converted to clean fuel with effect from 1st January, 2002. These taxis also come within the category of transport vehicles (except three-wheelers and BEST buses). The Committee has recommended that the transport vehicles over the age of 15 years shall be scrapped, unless converted to clean fuel with effect from 1st January, 2001.

9. We may, at this stage, notice that large number of taxis plying in Greater Mumbai have already been converted to CNG, so we have been informed by Mr. Cama, learned Counsel appearing on

behalf of their union, but many more are yet to be converted, and the process is an on-going process. So far as the State Government is concerned, it has accepted the recommendations of the Committee. It has submitted that since the technology is new, and CNG is not adequately available at all places, time may be given for replacement of existing engines by CNG engines or EURO II compliant engines in a phased manner up to 31st May, 2004. Similarly, with regard to phasing out of old vehicles, unless converted to run on clean fuel, the State Government, while accepting the recommendation, has submitted that taking into consideration the inadequate supply of CNG at present, the said recommendation may be brought into force with effect from 1st January, 2002 and 1st January, 2003.

10. Mr. Rustomjee submitted that the vehicles will have to be classified into two categories, viz., those which are 15 years old and those which are 8 years old. He has also submitted that such categorisation is applicable to three-wheelers and other transport vehicles. The Committee has also classified vehicles into two categories, vehicles which are more than 15 years old and those which are more than 8 years old but less than 15 years old. The Committee has recommended that taxis more than

15 years old be phased out with effect from 1st January, 2001, unless converted to clean fuel. However, since the matter could not be heard earlier, and the parties were given an opportunity to file their response to the report of the Committee, we have also heard the parties as to the date from which the recommendations should be made effective. The Government in its affidavit has suggested that the date of phase out of taxis more than 15 years old should be 1st June, 2002. Mr. Rustomjee suggested that the effective date should be January or March, 2002. Having considered all aspects of the matter, we are of the view that with effect from March 1, 2002, all taxis over the age of 15 years shall be phased out, unless converted to run on CNG/LPG. All taxis of Premier 1370 model shall also be phased out by this date, unless converted to run on CNG/LPG.

11. With regard to taxis more than 8 years old but less than 15 years old, the Committee recommended that the date of phase out should be 1st January, 2002. On the other hand, the stand of the Government is that the date of phase out should be 1st January, 2003. Counsel for the Petitioners suggested an earlier date for the phase out, but having regard to all relevant circumstances,

including the availability of CNG/LPG, we direct that with effect from 1st January, 2003, all taxis over the age of 8 years shall be phased out, unless converted to run on CNG/LPG.

12. Next comes the category of vehicles described as "three-wheelers". The Committee has recommended that those three-wheelers which are more than 10 years old should be converted to run on CNG or any other clean fuel. It has recommended that with effect from 1st January, 2002, all three-wheelers above the age of 8 years should run on clean fuel. The Government of Maharashtra, on the other hand, has suggested the date 1st June, 2002 for three-wheelers which are more than 10 years old, and 1st January, 2003 for three-wheelers which are more than 8 years old. Having considered all aspects of the matter, we direct that with effect from March 1, 2002, all three-wheelers over the age of 10 years shall be phased out, unless converted to run on CNG/LPG.

With effect from January 1, 2003, all three-wheelers over the age of 8 years shall be phased out, unless converted to run on CNG/LPG.

13. The last category is the category of transport vehicles. The Committee has recommended that with effect from 1st January, 2001 all transport vehicles (except three-wheelers and BEST buses) over the age of 15 years shall be scrapped, unless converted to clean fuel. As regards the transport vehicles over 8 years of age, it has recommended that they shall be scrapped, unless converted to run on clean fuel, and the effective date recommended is 1st January, 2002. On the other hand, the State of Maharashtra has suggested 1st January, 2003 as the date for scrapping of transport vehicles more than 15 years old, and 1st January, 2005 as the effective date for scrapping of transport vehicles more than 8 years old. Mr. Cama, appearing on behalf of the Association, submitted that truck-owners were not in a position to make such a huge investment on the conversion of diesel engines to CNG/LPG. Moreover, purchase of a new vehicle would be wholly beyond the means of most of the truck owners, particularly when no substantial financial assistance has been promised by the State Government. Added to this, he submitted, the non-availability of CNG/LPG may further aggravate the situation. Having regard to all these aspects, even if such transport vehicles have to be phased out, a recommendation which he opposed, he submitted

that sufficient time should be given to the truck-owners to convert their vehicles to run on clean fuel. We have seriously considered the request of Mr. Cama, and also taken into account the view of the State Government. Having regard to the facts and circumstances, we accept the submission of the State Government that 1st January, 2003 should be the date for phasing out of transport vehicles more than 15 years old, unless converted to run on clean fuel. We are of the view that such transport vehicles may be operated till the 31st December, 2002, but with effect from 1st January, 2003, all transport vehicles over the age of 15 years, with the exception of BEST buses, shall be phased out, unless converted to run on CNG/LPG. So far as the transport vehicles more than 8 years old are concerned, the State Government has suggested that the effective date of phase out should be 1st January, 2005. Mr. Rusotmjee, appearing for the petitioner, strongly objected, and submitted that the phase out date should be much earlier than what is suggested by the State Government. We are of the view that such transport vehicles which are over the age of 8 years may be operated till 31st December, 2003, but with effect from 1st January, 2004, all transport vehicles over the age of 8 years, with the exception of BEST buses, shall be phased out, unless

converted to run on CNG/LPG. These directions have to be complied by the State and its authorities. We further clarify that no vehicle registered outside Mumbai shall be registered in Mumbai which does not meet the age limits set out above or does not run on CNG/LPG. The Office of Transport Commissioner shall also ensure that vehicles are not converted from transport to non-transport category in order to defeat the age limits set out above. The Office of the Transport Commissioner shall ensure that the phasing out of the above-mentioned vehicles is commenced in a phased manner from 1st March, 2002 onwards. The phasing out shall be done in such a manner that certain number of vehicles are phased out or converted every month so as to ensure that all the vehicles in question are completely phased out by the deadline fixed above. For this purpose, the Transport Commissioner shall frame a programme of phasing out with monthly/bi-monthly targets to be achieved.

14. The Municipal Corporation of Greater Mumbai shall also consider setting up of a scrap yard where the old vehicles may be dumped, and shall also frame a policy for disposal of such scrap material. We direct the Transport Commissioner and the Municipal

Corporation of Greater Mumbai to state before us on affidavit the steps which they propose to take pursuant to our above directions within six weeks.

15. The Office of the Transport Commissioner, the Police authorities and all other concerned authorities shall ensure that the time-frame in this order is strictly adhered to. The State of Maharashtra shall ensure that the directions in this order and those that may be passed hereafter from time to time are brought to the notice of the public through the print and electronic media.