

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

(Division Bench: Shri N.K. Mody & Shri P.K. Jaiswal, JJ.)

**W.P. No.4435/2013**

Kishore Deepak Kodwani & another

v/s.

State of M.P. Through Chief Secretary & others

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Petitioner No.1 – Kishore Deepak Kodwani is present in person.

Petitioner No.2 – Shri Dinesh Rawat with Shri D. Dagaonkar, Advocate.

Respondents No.1,3 and 5 by Shri Manoj Dwivedi, Addl. Advocate General with Ms. Mini Ravindran, Dy. Govt. Advocate.

Respondent No.2 by Shri Abhishek Tugnawat, Advocate.

Respondent No.6 by Shri A.S. Kutumbale, learned Senior Advocate with Shri Anand Agrawal, Advocate.

Shri Anil Sharma, Superintendent of police, Headquarter, Indore and Smt. Anjana Tiwari, Addl. Superintendent of Police (Traffic), are present in person.

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O R D E R

(21.10.2013)

**Per N.K. MODY, J.**

By this Public Interest Litigation, the petitioners are mainly challenging the B.R.T.S. project (Bus Rapid Transport System) over the stretch from Niranjapur to Rajeev Gandhi Square, which is about 11.8 Kms. When the writ petition was filed project was in-complete. During pendency of the writ petition a prayer has been made by the respondents No.1,3 and 5 to permit them to start the dry run and trial run. The Division Bench of this Court considering the statement made by the learned Additional Advocate General granted permission for dry run and trial run by order dated 18.4.2013 and also observed that the Senior Officers of the Administration, Police, Traffic Police, Municipal Corporation along with the necessary staff shall constantly monitor the situation on the said road and shall submit the report

about the outcome of the dry run and the trial run and fixed the case for 13.5.2013. The statement made on 18.4.2013 read as under :-

*“To this prayer, learned Additional Advocate General has stated that before starting the trial run, a dry run has been proposed so that in case of any difficulty in operation of the buses is noticed, the same can be cured/rectified. He further submits that after the dry run trial run will be started from 26.4.2013 which will continue upto 25.5.2013 or so and the short comings if any are noticed in the trial run the same will be cured. And only on success of the trial run of the buses the regular operation of buses on the B.R.T.S. shall be commenced.”*

*“To this, learned Additional Advocate General submits that the respondents are well aware of their responsibilities and they shall take all necessary care and shall adopt proper safety measures so that there may not be any mishap. According to him the training of concerned employees who will be deployed for the purposes of the dry run, trial run and for final operation of the buses has already been started and as such the petitioner's apprehension is misconceived.”*

2. Thereafter, the matter was listed from time to time. On 16.7.2013 several irregularities, difficulties and problems arisen out of the implementation and function of the B.R.T.S. Project was pointed out by the petitioners vide IA.No.3672/2013. Considering the aforesaid, this Court found that the moment of traffic in the B.R.T.S. bus lane, which is comparative wide is about 3% only, much less than the narrowly lane for the ordinary private vehicle. It was also found that no notification has been issued under Section 115 of the Motor Vehicles Act, 1988. The trial run was commenced from 26.4.2013 to 25.5.2013. After success of the trial run, the respondents started trial commercial run, on the basis of order of the Collector, Indore dated 8.5.2013. The Division Bench of this Court by order dated 16.7.2013 observed that “no notification under Section 115 of the Act has been issued and order dated 8.5.2013 can be at the most an order under

proviso to Section 115 of the Act, which can remain in force for not more than one month.” The respondents without any compliance of Section 115 started plying *i-bus* on B.R.T.S. route. After 07.6.2013, there was no order by any authority to ply the aforesaid bus on B.R.T.S. Road. The Collector Indore, without any order permitted the *i-bus* to run over the B.R.T.S. route in violation to the provisions of Motor Vehicles Act, 1988 and Motor Vehicles Rules, 1994.

3. Considering the aforesaid the Division Bench by order dated 16.7.2013 appointed 5 members expert committee to examine the B.R.T.S. Project, Indore and submit their report.

4. After a period of two months when the matter was listed on 13.9.2013, the learned Chairman of the said committee pointed out certain facts and, therefore, we directed the respondents to inform this Court on the following aspect of the matter :-

1. *How much amount has been spent in B.R.T.S. Project in construction of the route and also in plying the buses?*
2. *How much amount has been received from the Central Government for this project?*
3. *How much area in square meter and square feet is covered by B.R.T.S ?*
4. *How much area is left over for plying the private vehicles which includes two wheelers and four wheelers?*
5. *How many buses are being plied at the moment ?*
6. *How many two wheelers and four wheelers are in the city as per the record of RTA ?*
7. *Ratio of traffic in B.R.T.S route and rest of the road.*

5. On 27.9.2013 we heard the matter at length on the question of grant of interim relief to the petitioners and whether during pendency of the writ petition and final report from the Committee can the four wheeler vehicles be permitted to use the B.R.T.S. road or not ? After

hearing at length on 1.10.2013, we passed the following order :-

*"7. In the facts and circumstances of the case following directions are being issue :-*

*1. After inspection on experimental basis as a temporary measure in the interest of public at large and also keeping in view the wastage of public time, fuel which is being imported and prevention of pollution and also more than hundred buses are plying as city bus of respondent no.4 company, operation of notification dated 17.7.2013 is hereby stayed and the respondents are directed to permit traffic of four wheeler (only) on the B.R.T.S. route. Citizens of the city who travel on the route are requested to maintain the traffic in lane and not to overtake on B.R.T.S. route.*

*2. C.E.O. of respondent No.4 is directed to get the gist of all the complainants / suggestions received till so far, prepared under the guidance of Chairman of the committee constituted by this Court vide order dated 16.7.2013.*

*3. Supplementary gist of the complaints / suggestions received from today till to the last date of inviting the complaints / suggestions shall be got prepared by the C.E.O. of respondent No.4.*

*4. C.E.O. shall provide all the assistance to the Chairman of the Committee so that there should not be any financial constraint in complying the order passed by this Court for submitting the report.*

*5. In the meeting of the committee either Chief General Manager (T & RO), Madhya Pradesh & Chhatisgarh, Ministry of surface & Road Transport, Bhopal shall remain present, or shall appoint his nominee who can spare full time to participate in the meeting.*

*6. C.E.O. of respondent No.4 shall inform on affidavit as under :-*

*(i) Breakup of the amount received and spent till so far in B.R.T.S. Scheme.*

*(ii) The timings of i-buses and total round of all the buses, which has been taken in the last three months, ie., from 1<sup>st</sup> July, 2013 to 30<sup>th</sup> September, 2013.*

*(iii) Total receipt of fare.*

*(iv) Total monthly expenses including salary and fuel and number of employees employed."*

6. By the aforesaid order, we as a temporary measure in the interest of public at large and also keeping in view of the public time, fuel which is being imported and prevention of pollution and also to the fact that more than 100 buses are plying as city bus of

respondent No.4 Company, we stayed the operation of notification dated 17.7.2013 and directed the respondents to permit traffic of four wheelers (only on the B.R.T.S. Route) and also directed them to maintain the traffic in lane and not to permit any four wheeler to over – take on B.R.T.S. route.

7. As per statement made by Mr. Sandeep Soni, Chief Executive Officer of respondent No.4, the respondents came to know about the order dated 1.10.2013 through their respective learned counsel, but same has not been implemented till 3.10.2013 for want of certified copy of the order. During that period Collector, Indore, made number of statements, which have been reported in the local and National Newspapers. As per newspaper report, some of his statements are derogatory which shows that he has no respect or regard to the order of the Court. He being the Collector of the Indore town should not make such a casual statement when the matter is *sub-judice* in the Court. On 4<sup>th</sup> October, 2013, authorities started implementing the order. Within 3 days from the date of implementation of the order, IA.No.5761/2013 has been filed by the respondents No.3,5 and 6 supported with the affidavit of Rakesh Singh, Managing Director AICTSL, Indore. He is also Commissioner, Municipal Corporation, Indore.

8. In the application for modification, it has been stated that “Project has been designed” looking to the needs of the public and the area available in the city of Indore. This type of project is quite successful as a useful mode of public transport in various cities of the world like Bogota (Colombia), Istanbul (Turkey), Guangshou BRT in

China, Jakarta, Seoul (South Korea), Milwaukee, Seattle (U.S.A.) and Times Square, New York (U.S.A.) etc. and in various cities of India like Janmarg, Ahmedabad, Surat, Rajkok, Vishakhapatnam, etc. Even in the city like Mumbai public transport contribute for around 85% of the passenger trips. The greatest advantage of public transport is that more people travel by a single vehicle as compared to private vehicles thus in the process having less pressure on the road thereby reducing the need for widening of roads in a span of couple of years. As it is seen that Indore is developing into a metro and with development the pressure on roads is increasing with hundreds of vehicles coming on roads if this continues then in few years the widening of road will become a necessity or it will create road havocs like frequent traffic jams accidents road rage, pollution, etc. Thus the B.R.T.S. Project is formulated to cater to the need of the hour. At present the B.R.T.S. project is in its initial stage and the operation of the commercial run is yet to start. At present the trial commercial run is conducted. Thus, full fledged commercial run shall only be started after the complete basic infrastructure is ready and the B.R.T.S. is officially inaugurated.

9. In Clause IV of para 4, it has been stated that the project started dry-runs on 19<sup>th</sup> of April. Later the free-trial runs started on 10<sup>th</sup> May. Commercial trial-run started on 12<sup>th</sup> June, 2013.

10. In the application / modification they stated that after order dated 1.10.2013 there are incidents including cyclist, pedestrian and two wheelers have entered the B.R.T.S. lane and traffic wardens and traffic police are finding it difficult to control these general moments,

which has resulted in following :-

*A) There is utter confusion and disarray in traffic system of the city leading to mismanagement.*

*B) There are accidents occurring on daily basis leading to property, damage and danger to human safety.*

*C) The corridor railing and traffic signals are damaged due to accidents.*

*D) The timing of i-bus is seriously jeopardized leading to anger amongst the travelers of i-bus, thus has seriously affect the i-bus operations. The total time taken by the i-bus to complete 11.5 Kms. was 35 minutes in off-peak hour and 1 hour 30 minutes in the peak hours and thus the ridership is decreasing.”*

With the aforesaid, they prayed for modification of order dated 10.10.2013.

11. The figures which we have stated in the order dated 1.10.2013 is not disputed by the learned counsel for the respondents. Learned Additional Advocate General heavily placed reliance on the judgment of the Delhi High Court dated 18.10.2012 passed in the case of **Nyaya Bhoomi v/s. GNCT of Delhi & Anr.**

12. In the case of **Nyaya Bhoomi (Supra)** the Government of NCT of Delhi started Bus Rapid Transport Corridor from Ambedkar Nagar to Delhi Gate out of which Ambedkar Nagar – Moolchand crossing has been made operational, which is about 5.6 Kms. In the aforesaid matter, earlier the interim order was passed by the Delhi High Court in favour of the petitioner and permitted the mixed traffic on the aforesaid route of 5.6 Kms. By interim order dated 15<sup>th</sup> March, 2012, the report was called from CRRl and NHAI. The final exhaustive report was filed on 10<sup>th</sup> July, 2012, i.e., less than a period of 4 months. As per CRRl report 100 people travelling on road in Delhi 50, use a public transport. As per Census data, in the year 2012, the

resident population of Delhi is around 18.2 million. Add to it to a floating population of about 0.1 million. As against the national average of 27.8%, 93.18% of the population living in Delhi is urbanized. As per report of CRRl in Ambedkar Nagar to Moolchand in the updirection 7167 persons travelled in buses and during peak hour as against 3108 passengers travelled in cars, two-wheelers and out of SMVs, i.e., of a total number of 10,275 passengers, 7167 travelled in buses. It has been observed in the order that the corresponding figures for the down direction would be 3137 passengers travelling by buses and 6326 using other modes of transportation (a reason for mismatch for the two directions is that the city bound traffic is in the UP Direction). The over all data would reveal that through out the day 49% passengers travelled by buses and remainder by other vehicles. The Division Bench of the Delhi High Court considering the various aspect of the matter and also to the fact that as has been reflected in master plan Delhi – 2021, the Delhi administration is planning to increase the length of the road, network and road space through out widening construction of fly overs, metros etc and number of suggestions given by CRRl in its report, the Division Bench by giving number of directions dismissed the writ petition on merits. No documents has been find to prove that there is any plan by Delhi Administration to expand the B.R.T.S. Corridor.

13. During pendency of writ petition, interim order was passed by the Delhi High Court and permitted all the four wheelers to use the B.R.T.S. corridor. Against the said order an SLP was filed and the same was dismissed by the Hon'ble Supreme Court.

14. We cannot compare the geographical area and topography of Delhi which is having well amenities and facilities, wide roads as well as number of fly overs and number of options to the citizens of Delhi either to use public transport bus or may travel in metro. We also cannot compare the road of Delhi with the road of Indore. Stretch of 5.5 Kms over which B.R.T.S. Corridor is going on is densely populated area and heart of the Indore town and some of the places and roads are very narrow and, therefore, we passed the order on 01.10.2013.

15. During the course of arguments Mr. Sandeep Soni, C.E.O. of respondent No.4 denied about the interim order passed by the Delhi High Court when we gave the order and the order passed by the Hon'ble Supreme Court, he admitted that there was interim relief by the Delhi High court in the aforesaid writ petition.

16. Here, the report of the expert committee, which we have constituted on 16.7.2013 is awaited. Till today there is no much progress in the report because the last date for suggestion was 7.9.2013. The Commissioner, Municipal Corporation as well as C.E.O. of respondent No.4 instead of expediting the matter which is pending before the expert committee rushed to file this application within a period of 3-4 days from the date of passing of the order. He also submitted that number of directions were made by this Court, but the same has not been complied and Annexure A/1 has been filed by Mr. Sandeep Soni on behalf of the respondents No.3,4 and 6 on 11.10.2013.

17. On the other hand, the petitioner No.1 submitted that authorities

be directed to file comprehensive affidavit about the directions made by this Court on 13.9.2013 and 01.10.2013.

18. Smt. Anjana Tiwari, Additional Superintendent of Police (Traffic) has submitted that main congestion of the traffic is between GPO to LIG, which is about 3 Kms of stretch out of total B.R.T.S. corridor. In the aforesaid stretch prior to order dated 1.10.2013, 30 police personnels have been posted and after 01.10.2013 the department posted around 45 traffic police personnels. Prior to 01.10.2013 private traffic personnels were 26 in numbers and after 01.10.2013 the number has been increased to 36. She also submitted that permissible speed limit of the 4-wheeler in the city is 40 Kms per hour. She further submits that if sufficient number of traffic police are deployed and if they efficiently do their traffic duty then there won't be any problem over the B.R.T.S. corridor. She also submits that the main problem is during peak hours, ie., 9.00 AM to 12.00 AM in the morning and 5.00 PM to 8.30 PM in the evening.

19. Shri Kodwani, petitioner No.1 and Shri Rawat, learned counsel for the petitioner No.2 have submitted that the administration is knowingly not complying with the order passed on 01.10.2013 and wrong publication has been made in the news papers that mix lane of B.R.T.S. corridor is not safe. He submitted that the newspaper which are annexed are for the period from 4.10.2013 to 6.10.2013 and during those period the authorities instead of proper compliance of the order were trying to collect the material to file an application for modification of order. It is also submitted that from 7.10.2013 to 10.10.2013, no accident was reported. He submits that total 22 bus

stops are there and minimum 44 wardens should be deployed. In respect of accident dated 6.10.2013 he submitted that total four accidents were recorded out of which in one FIR was 'Adamcheck' which means that no action in the aforesaid FIR is required. He in respect of major accident submitted that one minor boy aged 16 years after consuming liquor driving the vehicle, no proper checking are being done by the traffic police and due to the aforesaid reason accident occurred on 16.10.2013. He further submitted that no action plan has been prepared by the Collector, Indore, regarding smooth traffic over the road in question and there is no need to vacate the interim order dated 01.10.2013. Administration should wait for the enquiry report of the expert committee and on the basis of the aforesaid report if anything is required then the respondents may file appropriate application. At this stage, he submitted that the application is premature and prays for its rejection.

20. Before proceeding further, it is made clear that this Court wants that B.R.T.S. *i-buses* should function successfully as for development of the city, it is necessary to promote public transport, but only for 16 *i-buses*, which at present are functioning B.R.T.S. route cannot be left unoccupied when there is heavy pressure of traffic on the said route. It will not be out of place to mention that for promoting public transport of the said route other infrastructure is also necessary. Suppose a person having two-wheeler or four-wheeler has to come from Bombay Hospital to this Court then, he has to come on his own vehicle from his house up to the bus stand of the B.R.T.S. where, he has to park his own vehicle and to avail the bus by which

he has to come up to 'Palasia' and then again he has to ride in another transport to come to the Court which is completely impracticable. However, all these aspects has to be examined by the committee, which has been constituted by this Court.

21. After considering the arguments of the learned counsel for both the parties following directions are being issued :-

*"1. In the B.R.T.S. route the speed limit should not be more than **40 Kms/Hr.***

*2. No two wheeler should be allowed to be driven in the B.R.T.S. route and if found he be punished with a fine of Rs.500/- on the spot.*

*3. 15 meter before the Bus Stop there should be **Zebra** Crossing where each of the vehicle completely stopped before proceeding further. At that place there should be speed beaker on each of the Bus stop so as to avoid accident with the passengers who are travelling in the i-bus, as they are required to cross the B.R.T.S. road.*

*4. For enforcement at the place of **Zebra** crossing there should be inspector who should note down the number of vehicles disobeying the rules, so that they can be penalized.*

*5. **Overtaking** should not be permitted and if any Car breaks the Rules, then, he should be fined with Rs.500/-.*

*6. On each of the square there should be proper arrangement of electronic signals, so that the passengers travelling from Bus route can take right or left turn conveniently."*

22. We direct the learned Revenue Commissioner, Indore that he shall hold a meeting with the Senior Officers of the Indore City along with the Collector, Indore and Officers of respondents No.4 and 6 to prepare an action plan regarding implementation of order dated 01.10.2013 and also passed today with a further direction to deploy sufficient number of traffic police personnels over the corridor in question and shall submit the report in that regard on affidavit.

23. We also direct the Collector, Indore, not to make any casual statement in the news papers which may affect the order passed on 01.10.2013 because the matter is *sub-judice*. He is also directed to file his detailed affidavit about the statements made by him after 01.10.2013, which were published in all the local and national news paper from 01.10.2013 till 11.10.2013 and what action he has taken after 1.10.2013. The Commissioner Municipal Corporation, Indore is also directed to file his affidavit along with the relevant information as directed earlier on or before the next date of hearing.

24. At present no case for review / modification of the order dated 01.10.2013 as prayed by the respondents no.3,4 and 6 is made out. The aforesaid respondents are directed to submit all the particulars as directed on 13.9.2013 and 01.10.2013 on or before the next date of hearing. At present, the application has no merit. IA.No.5761/2013 is accordingly dismissed with a liberty to file a fresh application, if any, exigency arise after filing of the report by the expert committee.

**(N.K. MODY)**  
**JUDGE**

**(P.K. JAISWAL)**  
**JUDGE**

ss/-