



IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 4154/2022

Reserved on: 17.11.2022

Decided on: 16.12.2022

Ramesh Kamal

.....Petitioner

Versus

State of H.P. and anr.

.....Respondents

Coram:

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

The Hon'ble Ms. Justice Virender Singh, Judge.

*Whether approved for reporting?*¹ Yes

For the Petitioner: Mr. Ajay Sharma, Senior Advocate with Mr. Athrav Sharma, Advocate.

For the Respondents: Mr. Ashok Sharma, A.G. with Mr. Rajinder Dogra, Sr. Addl.A.G., Mr. Shiv Pal Manhans, Mr. Vinod Thakur, Addl.A.Gs. Mr. Bhupinder Thakur, Dy.A.G. & Mr. Rajat Chauhan, Law Officer, for respondents No.1 &2. Mr. Shyam Singh Chauhan, Advocate, for respondent No.3.

Justice Tarlok Singh Chauhan, Judge

On 7.6.2022, the Principal Secretary (Transport) to the Government of Himachal Pradesh addressed a communication to the Managing Director, Himachal Road Transport Corporation (HRTC), Shimla with regard to approval of the government to allow 50% concession to

¹ Whether reporters of the local papers may be allowed to see the judgment? Yes.

women passengers in fare in HRTC ordinary buses w.e.f. 1.7.2022 for Intra-State routes with certain conditions, text whereof reads as under:-

"I am directed to refer to your letter(s) No. HO:5(CP)/18/2014- Concessional Facility to Various Category-Vol-II dated 23-04-2022, 12-05-2022 and 21-05-2022 on the subject cited above and to convey the approval of the Government to allow 50% concession to women passengers in fare in HRTC ordinary buses w.e.f 1.7.2022 for Intra-State routes, subject to following:-

1. That 50% concession in Himachal Pradesh area fare to women passengers would be admissible in HRTC ordinary Intra-State buses only. Also this concession will not be applicable for Inter-State buses. Intra-State bus routes means, the buses plying on the routes which originates and terminates in Himachal Pradesh without covering other State areas.

2. That the said concession will not be admissible in buses plying on Inter-State routes.

3. That no other concession will be admissible to women passengers availing, 50% discount-in fare.

You are, therefore requested to take further necessary action in the matter accordingly, under intimation to this department."

2 The petitioner, who is a private transport operator, aggrieved by the aforesaid communication/notification of the State, has filed the instant petition for grant of the following substantive reliefs:

- a) That impugned letter dated 07.06.2022, Annexure P-5, issued by respondents may very kindly be quashed and set aside with directions to the respondents not to go create a class out of similarly situated persons' class;
- b) That respondent-HRTC may very kindly be directed to come with fair offer of paying SRT having not been paid since 2012 onwards and in the event of failure, directions may kindly be given to the authorities in whom powers are vested as per provisions of the Act and Rules, to impound their buses for non-payment of SRT as is being done with respect to the buses of the members of the petitioner Sangh;
- c) That impugned act of the respondent-HRTC in issuing letter dated 14.01.2016 by overstepping the jurisdiction vested in them in charging additional money per ticket from passengers contrary to the provisions of the motor Vehicles Act may very kindly be quashed and set aside and so also the letter dated 14.01.2016 and respondent-HRTC may kindly be burdened with special costs for issuing letter dated 14.01.2016 contrary to the powers vested in them;
- d) That impugned act of the respondents in issuing promotional schemes of Green Cards, Smart Cards and Sammaan Cards etc. etc. may very kindly be quashed and set aside with directions to the respondents to immediately and forthwith to withdraw the same being contrary to the provisions of the Act and Rules and so also the judgment passed by this Court.”

3 Before proceeding any further, it needs to be noticed that the instant petition was initially filed on behalf

of Himachal Niji Bus Operators' Sangh and after hearing arguments, the judgment was reserved on 1.9.2022, however while dictating the judgment, particulars of the petitioner and its locus standi was found to be more than wanting and, therefore, the matter was listed for re-hearing.

4 It was then on 9.11.2022 that the learned counsel for the petitioner stated that the instant petition be treated as the one filed on behalf of Ramesh Kamal, who himself is a transporter and not on behalf of Himachal Niji Bus Operators' Sangh, hence, the change in the cause title.

5 It is averred that the State Government vide notification dated 22.7.2020 issued directions to the State Transport Authority under sub-section (1) of Section 67 of the Motor Vehicles Act, regarding fixation of fare rates of stage carriage bus services in the State of Himachal Pradesh. These were applicable to the ordinary buses including mini buses and fare per passenger per kilometer was fixed –

(i) roads in plains 140 paise

(ii) roads in hills 219 paise.

6 It is further averred that the concessional passes issued by the respondent-Corporation in furtherance to the letter dated 14.5.2016 (Annexure P-7) in the shape of charging money from the passengers is highly illegal, unjust,

unfair and arbitrary. It is claimed that the action of the respondents is in violation of legitimate expectation inasmuch as the petitioner legitimately expected the respondents to act as per scheme of the Motor Vehicles Act, whereas they have violated the Act with impunity.

7 Lastly, it is averred that the action of the respondents is otherwise not sustainable as it is in teeth of the judgment rendered by one of us (Justice Tarlok Singh Chauhan) in Single Bench in **CWP No. 7295/2012, titled as *Ajay Parihar vs. State of Himachal Pradesh*** and further in violation of judgment of Division Bench of this Court, in which one us (Justice Tarlok Singh Chauhan) was the member, in **CWP No. 1997/2015, titled *Niji Bus Operator Kalyan Sabha vs. State of H.P. & ors., decided on 28.5.2015*** as upheld by the Hon'ble Supreme Court in judgment dated 24.4.2017 in **SLP (C) No.29095-29102/2015**.

8 The State of H.P. and the Director, Transport, who have been arrayed as respondents No. 1 and 2 respectively, have contested the petition by filing joint reply.

9 In the preliminary submissions, it has been averred that the respondent-Corporation has been constituted under the provisions of Road Transport

Corporation Act, 1950 enacted by the Union of India. The Corporation is under obligation to provide transportation facility to the people of the State living in far-flung areas regardless of the commercial considerations. It is averred that Section 34 of the Road Transport Corporation Act, empowers the State Government to issue directions to the Corporation, which the Corporation is obliged to comply with in letter and spirit.

10 It is further averred that on the eve of 75th Statehood celebration (Himachal Divas) at Chamba on 15.4.2022, Hon'ble Chief Minister of the State announced 50% concession in fare to the women passengers in HRTC buses by enhancing the existing provision of 25% concession in bus fare, that was given to the women passengers w.e.f. 17.8.2015, to 50% concession. It is on the basis of such announcement that the impugned notification has been issued.

11 It is averred that by granting 50% concession to women passengers in the fare, financial burden would be to the tune of Rs.59.69 crores and the same is being compensated by the State Government. The Board of Directors, in its 151st meeting held on 18.6.2022 vide item No. 151.4, approved the proposal of granting 50% concession

in fare to women passengers in HRTC ordinary intra-State buses.

12 The long and short of the reply is that action of the State is in the larger public interest as against individual interest and does not, in any way, offend any constitutional provision or any of the statutory provisions. It has been admitted that the Corporation is defaulter of payment of State Road Tax to the tune of Rs. 221 crores and not Rs.10,000-20,000 crores as alleged by the petitioner.

13 Lastly, it is averred that notification in question has not been issued under Section 67(1) of the Motor Vehicles Act, but has been issued under Section 34 of the Motor Vehicles Act coupled with the provisions of the State Transport Act.

14 Respondent No.3-HRTC has filed a separate reply, wherein specific reference has been made to the provisions of Section 34 of the State Transport Act, 1950 to urge the action of the State in granting the aforesaid 50% concession in fare to the women passengers under this provision.

15 Even though the petitioner has filed the rejoinder(s) to the replies filed by the respondents, but the same noticeably is/are only reiteration of the averments made

in the writ petition and denial of the averments as contained in the respective replies.

16 We have heard the learned counsel for the parties and have also gone through the material placed on record.

17 At the outset, it needs to be noticed that grant of concession by the government to certain categories of persons is not their right and the same flows out of a policy decision, which the executive is free to take and various factors go into the decision making. The converse would also be true that since these concessions are applicable only to the respondent-Corporation, the same cannot be made applicable to private transport operators nor can the private transport operators seek reimbursement of the same on the analogy that the State Government, as per reply filed by it, has already safeguarded the financial interest of the respondent-Corporation.

18 Here, it shall be apt to refer to the judgment rendered by the Hon'ble Supreme Court in ***Balco Employees Union (Regd.) Vs. Union of India and Ors. AIR 2002 SC 350***, more particularly, observations made in paras 91 and 92, which read as under:

"91.Conclusion:

In a democracy it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the Court.

92. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the Courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is the Parliament and not the Courts. Here the policy was tested and the Motion defeated in the Lok Sabha on 1st March, 2001. Judicial interference by way of PIL is available if there is injury to public because of dereliction of Constitutional or statutory obligations on the part of the government. Here it is not so and in the sphere of economic policy or reform the Court is not the appropriate forum. Every matter of public interest or curiosity cannot be the subject matter of PIL. Courts are not intended to and nor should they conduct the administration of the country. Courts will interfere only if there is a clear violation of Constitutional or statutory provisions or non-compliance by the State with its Constitutional or statutory duties. None of these contingencies arise in this present case. In the case of a policy decision on economic matters, the courts should

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be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the Court is satisfied that there is illegality in the decision itself."

19 Even otherwise, the decision to grant a certain concessions or a certain benefit and the conditions for their grant are a matter for the administrator(s) alone and the court(s) should not interfere in the matter on the premise that it was of the opinion that some of the conditions imposed may not be justified. This was so held by the Hon'ble Supreme Court in ***Union of India Vs. Shankar Lal Soni JT 2010(4) SC 70.***

20 Our Constitution permits application of equality clause by grant of additional protection to the disadvantaged class so as to bring them on equal platform with other advantaged class of people. Such a class, which requires the benefit of additional protection, thus, cannot be discriminated. The concessions, as doled out by the State, are applicable only to the female passengers; that too subject to certain conditions as is evident from the notification dated 7.6.2022 (Annexure P-5).

21 Even though the petitioner has raised various grounds, however the sum and substance thereof is that

because of the aforesaid notification, the petitioner and similarly situated operators are losing their benefits and consequently facing financial losses. It is also submitted by the learned counsel for the petitioner that such type of concession only to female passengers is violative of article 14 of the Constitution of India.

22 At the outset, we need to take a look at Article 15 of the Constitution of India, which reads as under:-

"15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and palaces of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public (3) Nothing in this article shall prevent the State from making any special provision for women and children (4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."

23 A perusal of the aforesaid provision would clearly go to show that such provisions can be made by the government especially for women and children.

24 A perusal of the notification dated 7.6.2022 would go to indicate that the same has been issued in exercise of executive powers conferred upon the government under article 162 of the Constitution of India. Till and so long the notification does not violate any provisions of law, the same cannot be struck down, more particularly, bearing in mind and taking into consideration spirit of article 15 of the Constitution of India. In such circumstances, the notification dated 7.6.2022 cannot be held to be unconstitutional merely on the ground that the same is causing financial loss to the petitioner particularly when it is a policy decision of the government to give conditional travel to the female passengers in HRTC buses.

25 It happens in a State that the State authorities give variety of concessions on the basis of policies floated by them like distribution of food grains at concessional price to the below poverty line card holders. This cannot be termed as loss of business or financial loss to the grocery shop owners dealing in food grains, and therefore cannot be declared as unconstitutional. Rather, it is the duty of the

State to provide food, clothing, shelter and such type of other facilities at a concessional rate to those who are in need thereof, but do not have requisite finances. Obviously, such type of beneficiary schemes do cause loss to the other persons, but that does not mean that the policy decision of the State is unconstitutional. Therefore, private players according to the petitioner being parallel player(s) is suffering a dent in the business cannot be a sole ground for quashing the impugned notification.

26 As regards the respondent-Corporation being in arrears or in default of certain taxes, it would be noticed that total financial burden on account of implementation of 50% fare discount scheme to the women passengers works out to be Rs. 59.69 crores and the same has been compensated by the State Government.

27 As regards the contention of the petitioner that the impugned notification violates the judgment passed by this court in *Niji Bus Operator Kalyan Sabha* (supra), we again do not find any merit in the same as the instant is not a case relating to fixing of tariff, but is a case pertaining to implementation of a policy decision taken by the government. The indirect consequence of upholding the policy may be the

same, but yet that itself cannot be a ground to strike down the policy decision of the State.

28 It also needs to be noticed that this is not for the first time that the concessional schemes have been introduced by the State Government and it is also not a case, where the Government of Himachal Pradesh is alone in the country, which has been extending concessional schemes only to women and school going children, which was never objected to by the petitioner despite the same having been introduced way back in the year 2016. Even otherwise, grant of concessional fare in favour of the women and children is in consonance with the spirit of article 15 of the Constitution of India.

29 The Constitution of India makes specific provisions for protective discrimination in favour of the women under Article 15(3) thereof. The object of Article 15(3) is to strengthen and improve the statute of women and the inserting of article 15(3) is a recognition of the fact that for centuries, women of India have been socially and economically handicapped.

30 A rule granting special allowance to the women Principals working in a wing of Punjab Educational Services was challenged on the ground that their male counter parts

were not given the same benefit although both performed identical duties and were part of the same service. The validity of the rule was challenge under Article 16(2). Punjab and Haryana High Court rejected the contention holding that the rule is saved under Article 15(3). It was further held that Article 15(3) could be invoked for construing and determining the scope of Article 16(2). It was held that if a particular provision squarely falls within the ambit of Article 15(3). It cannot be struck down because it may amount to discrimination solely on the basis of sex. It was reiterated that Articles 14, 15 and 16 being the constituents of a single code of constitutional guarantees 'supplementing each other' clause (3) of Article 15 can be invoked for construing and determining scope of Article 16(2). But, it was further held "only such special provisions in favour of women can be made under Article 15(3) which are reasonable and do not altogether obliterate or render illusory the constitutional guarantee enshrined in Article 16(2)". **(refer: *Shamsher Singh vs. State of Punjab*, AIR 1970 P&H 372).**

31 Any law making special provisions for women and children under Article 15(3) cannot be challenged on the ground of contravention of Article 14 **(refer: *Yusuf vs. State of Bombay*, AIR 1954 SC 321)**

32 What was the purpose and intent of insertion of clause 3 of the Article 15 of the Constitution has been elaborately considered and dealt with by the Hon'ble Supreme Court in **Govt. of A.P. vs. P.B. Vijaykumar, AIR 1995 SC 1648** in paras 3 to 8 thereof, which read as under:-

3. Does sub-rule (2) of Rule 22-A violate Articles 14 or 16(4)? Article 14 which provides that the State shall not deny to any person equality before the law, has been the subject matter of interpretation in a number of cases before this Court as well as the High Courts. Application of this principle of equality has often proved more difficult in practice than was anticipated. It has, however, been commonly accepted that the equality clause requires that only persons who are in like circumstances should be treated equally. Where persons or groups of persons are not situated equally, to treat them as equals would itself be violative of Article 14. As a necessary fall out of this principle, classification among different groups of persons and differentiation between such classes is permissible provided (1) the classification is founded on intelligible differential between the groups and (2) such differentia have a rational nexus with the objects sought to be achieved by the statute. Article 15, however, prohibits differentiation between classes on certain grounds. It prohibits the State from discriminating against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Clause (3) of Article 15 provides that nothing in this Article shall prevent the State from making any special provision for women and

children. In other words, while Article 15(1) would prevent a State from making any discriminatory law (inter alia) on the ground of sex alone, the State, by virtue of Article 15(3), is permitted, despite Article 15(1), to make special provisions for women, thus clearly carving out a permissible departure from the rigours of Article 15(1).

4. Article 16(2) provides that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State. The ambit of Article 16(2) is more limited in scope than Article 15(1) because it is confined to employment or office under the State. Article 15(1), on the other hand, covers the entire range of State activities. At the same time, the prohibited grounds of discrimination under Article 16(2) are somewhat wider than those under Article 15(2) because Article 16(2) prohibits discrimination on the additional grounds of descent and residence apart from religion, race, caste, sex and place of birth. For our purposes, however, both Articles 15(1) and 16(2) contain prohibition of discrimination on the ground of sex.

5. The respondent before us has submitted that if Article 16(2) is read with Article 16(4) it is clear that reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State is expressly permitted. But there is no such express provision in relation to reservation of appointments or posts in favour of women under Article 16. Therefore, the respondent contends that the State cannot make any reservation in favour of women in

relation to appointments or posts under the State. According to the respondent this would amount to discrimination on the ground of sex in public employment or appointment to posts under the State and would violate Article 16(2).

6. This argument ignores Article 15(3). The interrelation between Articles 14, 15 and 16 has been considered in a number of cases by this Court. Article 15 deals with every kind of State action in relation to the citizens of this country. Every sphere of activity of the State is controlled by Article 15(1). There is, therefore, no reason to exclude from the ambit of Article 15(1) employment under the State. At the same time Article 15(3) permits special provisions for women. Both Articles 15(1) and 15(3) go together. In addition to Article 15(1) Article 16(1), however, places certain additional prohibitions in respect of a specific area of state activity viz. employment under the State. These are in addition to the grounds of prohibition enumerated under Article 15(1) which are also included under Article 16(2). There are, however, certain specific provisions in connection with employment under the State under Article 16. Article 16(3) permits the State to prescribe a requirement of residence within the State or Union Territory by parliamentary legislation; while Article 16(4) permits reservation of posts in favour of backward classes. Article 16(5) permits a law which may require a person to profess a particular religion or may require him to belong to a particular religious denomination, if he is the incumbent of an office in connection with the affairs of the religious or denominational institution. Therefore, the prohibition against discrimination on the grounds set out in Article 16(2) in respect of any

employment or office under the State is qualified by clauses 3, 4 and 5 of Article 16. Therefore, in dealing with employment under the State, it has to bear in mind both Articles 15 and 16 - the former being a more general provision and the latter, a more specific provision. Since Article 16 does not touch upon any special provision for women being made by the State, it cannot in any manner derogate from the power conferred upon the State in this connection under Article 15(3). This power conferred by Article 15(3) is wide enough to cover the entire range of State activity including employment under the State.

7. The insertion of clause (3) of Article 15 in relation to women is a recognition of the fact that for centuries, women of this country have been socially and economically handicapped. As a result, they are unable to participate in the socio-economic activities of the nation on a footing of equality. It is in order to eliminate this socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women that Article 15(3) is placed in Article 15. Its object is to strengthen and improve the status of women. An important limb of this concept of gender equality is creating job opportunities for women. To say that under Article 15(3), job opportunities for women cannot be created would be to cut at the very root of the underlying inspiration behind this Article. Making special provisions for women in respect of employment or posts under the State is an integral part of Article 15(3). This power conferred under Article 15(3), is not whittled down in any manner by Article 16.

8. What then is meant by "any special provision for women" in Article 15(3)? This "special provision", which the State may make to improve women's participation in all activities under the supervision and control of the State can be in the form of either affirmative action or reservation. It is interesting to note that the same phraseology finds a place in Article 15(4) which deals with any special provision for the advancement of any socially or educationally backward class of citizens or Scheduled Castes or Scheduled Tribes. Article 15 as originally enacted did not contain Article 15(4). It was inserted by the Constitution First Amendment Act, 1951 as a result of the decision in the Case of *The State of Madras v. Champakam Dorairajan* (1951 SCR 525) setting aside reservation of seats in educational institutions on the basis of caste and community. This Court observed that the Government's order was violative of Article 15 or Article 29(2). It said:-

"Seeing, however, that clause (4) was inserted in Article 16, the omission of such an express provision from Article 29 cannot but be regarded as significant."

The object of the First Amendment was to bring Articles 15 and 29 in line with Article 16(4). After the introduction of Article 15(4), reservation of seats in educational institutions has been upheld in the case of *M.R. Balaji & Ors. v. State of Mysore* (1963 Supp. (1) SCR 439) and a number of other cases which need not be referred to here. Under Article 15(4) orders reserving seats for Scheduled Castes, Scheduled Tribes and Backward Classes in Engineering, Medical and other Technical colleges, have been upheld. Under Article 15(4), therefore reservations are permissible for the advancement of any backward class of citizens or of

Scheduled Castes or Scheduled Tribes. Since Article 15(3) contains an identical special provision for women, Article 15(3) would also include the power to make reservations for women. In fact, in the case of Indra Sawhney & Ors. v. Union of India & Ors. (1992 Supp. (3) SCC 217) this Court (in paragraph 846) rejected the contention that Article 15(4) which deals with a special provision, envisages programmes of positive action while Article 16(4) is a provision warranting programmes of positive discrimination. This Court observed:-

"We are afraid we may not be able to fit these provisions into this kind of compartmentalisation in the context and scheme of our constitutional provisions. By now, it is well settled that reservations in educational institutions and other walks of life can be provided under Article 15(4) just as reservations can be provided in services under Article 16(4). If so, it would not be correct to confine Article 15(4) to programmes of positive action alone. Article 15(4) is wider than Article 16(4) in as much as several kinds of positive action programmes can also be evolved and implemented thereunder (in addition to reservations) to improve the conditions of SEBCs, Scheduled Castes and Scheduled Tribes, whereas Article 16(4) speaks only of one type of remedial measure, namely, reservation of appointments/posts."

This Court has, therefore, clearly considered the scope of Article 15(4) as wider than Article 16(4) covering within it several kinds of positive action programmes in addition to reservations. It has, however, added a word of caution by reiterating M.R.Balaji (supra) to the effect that a special provision contemplated by Article

15(4) like reservation of posts and appointments contemplated by Article 16(4), must be within reasonable limits. These limits of reservation have been broadly fixed at 50% at the maximum. The same reasoning would apply to Article 15(3) which is worded similarly”.

33 At this stage, we may note that the Government of Delhi had issued a somewhat similar notification entitling female passengers to travel free in DTC buses (both AC and Non-AC) by issuance of “single journey free travel pass”, which was assailed before a Division Bench of Delhi High Court by filing petition being **W.P. (C) No. 1782/2020, titled as as Sta Operators Ekta Manch vs. Government of NCT of Delhi** and the same was not even entertained and dismissed by observing as under:

5. Learned counsel for the respondent no.1 placed before this court copies of decision no. 2738 dated 29th August, 2019, notification dated 4th September, 2019 alongwith a schedule, communication dated 13th September, 2019 issued by finance (Budget) Department, Government of NCT of Delhi, order dated 28th October, 2019 and 29th October, 2019, allowing free travel to female passengers in DTC as well as in cluster buses, the same are taken on record.

6. We are not in agreement with the arguments canvassed by learned counsel for the petitioners especially looking to Article 15 of the constitution of

India. For ready reference, Article 15 of the Constitution of India reads as under :

"15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and palaces of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public (3) Nothing in this article shall prevent the State from making any special provision for women and children (4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes." (Emphasis supplied)

7. In view of the aforesaid provisions of the Constitution, there can be special provisions for women and children.

8. Moreover, looking to the powers conferred under Section 45 of the Road Transport Corporations Act, 1950, to be read with Delhi Road Transport (Amendment) Act, 1971, the respondent no.1 has all the power, jurisdiction and authority to enact Delhi Transport Corporation (Free and Concessional Passes) Regulations, 1985.

9. By virtue of aforesaid power, jurisdiction and authority vested in respondent no.1, read with the provisions of Section 28 and Section 29 of Government of National Capital Territory of Delhi Act, 1991, the respondent no.1 has already taken approval from Hon'ble Lieutenant Governor on 2nd September, 2019,

under the Delhi Appropriation (No.3) Act, 2019. The necessary funds has also been allocated to facilitate female passengers to travel free in DTC and cluster buses (both ACs and Non-ACs) on the basis of issuance of "Single Journey Free Travel Pass" by the conductor of DTC and cluster buses. Thereafter an order dated 28th October, 2019 was passed with the approval of Hon'ble Minister (Transport), Government of NCT of Delhi. Accordingly, a notification was issued by Government of NCT of Delhi for DTC buses on 28th October, 2019 which is at page no. 60 (Annexure P-4 to the memo of this writ petition). All these actions of the respondent authoriteis cannot be said to be in violation of the provisions of the Constitution of India, especially looking to Article 15 thereof.

10. The notification dated 28th October, 2019 issued by respondent no.1 cannot be held unconstitutional merely on the ground that the same is causing financial loss to the petitioners. Moreover, it is a policy decision of the respondent no.1 to give free travel to the female passengers in DTC buses and cluster buses. It happens in a State that the State authorities give variety of concessions on the basis of policies floated by them. For example, if the State Government is giving food grains at concessional price to the Below Poverty Line card holders, it cannot be termed as loss of business or financial loss to the grocery shop owners dealing in food grains, and therefore cannot be declared as unconstitutional. On the contrary, it is the duty of the State to provide food, clothing, shelter and such type of other facilities at a concessional rate to those who are in need thereof, looking to the budgetary provisions and the priority of the work to be done by the State. Even if

such type of beneficiary schemes are causing loss to the other persons, it does not mean that the policy decision of the State is unconstitutional.

11. In view of the aforesaid facts, reasons and provisions of the law, we see no reason to entertain this writ petition and the same is therefore dismissed with no order as to costs.

34 The scheme for free bus ride or concessional fares to female and children is not new in the country. Such scheme, as noticed above, was launched by the government of Delhi, sponsoring the female passengers to travel free in DTC buses (both AC and Non-AC) by issuance of "single journey free travel pass. Similar scheme was doled out by the Government of Punjab, wherein free bus travel for women in all non-AC interstate buses was introduced w.e.f. 1.4.2021 and even the State of Tamil Nadu followed such scheme, which was made operative from 2022.

35 According to the respondents-State, mobility has always been an important factor for socio-economic development access to safe, cheap and reliable mode of travel, which is essential for women to engage in any economic activity. Realizing this, the Government of Himachal Pradesh decided to provide 50% concession to women

passengers in public transport intra-State service and the objectives of the scheme read as under:-

- i. Achieve social inclusion of women by facilitating greater mobility.
- ii. Enable women to use public transport and improving their access to a range of important necessities such as education and healthcare.
- iii. Enhance the self esteem and personal independence of women which will have a positive impact on the entire family.
- iv. Facilitate and achieve wish women's participation in all fields.
- v. Encourage women to get better job away from their homes.

36 We can also foresee some of the benefits can be achieved from the introduction of the scheme.

37 It is well known that girls, more especially in the rural areas, drop out the schools because their parents are not in a position to incur the expense of their seats and, therefore, even if a small portion of budget of running families is cut down, that can allow these girls to study, pursue their career or travel for their needs, hence financial burden will not hinder their growth in social inclusion with better opportunities and education while ensuring empowerment of women in the society; better safety of women with more

female riders because the free tickets are bound to lead more female passengers travelling in public transports and this in turn would create an atmosphere of safety, security amongst the women travellers; availability of medical assistance and care because of concessional fare the women now would be in a position to travel to places where there are better medical facilities.

38 The judgment rendered by the Delhi High Court in ***Sta Operators Ekta Manch's*** case (supra) appears to have attained finality and we have not been convinced enough to take a different view.

39 In view of the aforesaid discussions, we find no merit in the instant petition and the same is accordingly dismissed, so also the pending application(s), if any, leaving the parties to their own costs.

(Tarlok Singh Chauhan)
Judge

(Virender Singh)
Judge

16th December, 2022.
(Pankaj)