

HIGH COURT OF MADHYA PRADESH,
BENCH AT INDORE
WRIT PETITION NO.8597/2021

M.P Bus Operator Association

vs.

State of M.P & others

29.06.2021: (INDORE):

Shri Manu Maheshwari, learned counsel for the petitioner.

Shri Aditya Garg, learned Govt. Advocate for the State.

Heard finally through video conferencing.

ORDER

Petitioner / M.P Bus Operator Association has filed the present petition being aggrieved by the orders dated 21.03.2021, 31.3.2021 and 22.06.2021 issued by respondent No.3 whereby the inter-State bus transportation between State of Madhya Pradesh and Maharashtra has been restricted from 21.03.2021 to 31.03.2021 and thereafter up to 15.04.2021 and again extended up to 30.06.2021 due to covid -19 pandemic .

2. The petitioner is an association registered under the Madhya Pradesh Society Registrickaran Adhiniyam, 1973 having its registered office at C-14, Vikas Tower, Navlakha, Indore. The society has authorized its President Mr.Arun Gupta to file the present petition by way of resolution dated 05.04.2021. The members of the petitioner/association are having permit to ply inter-State transport passengers buses . In the second phase of covid-19 the government has restricted various commercial activities in order to control the spread of covid virus. Since large number of covid cases were reported in the State of Maharashtra, therefore, the State Transport Department of M.P. has decided to stop operating buses from the territory of Madhya Pradesh to the territory of Maharashtra and vice versa. According to the petitioner, the Central Government, Ministry of Home Affairs vide order dated 23.03.2021 has issued guidelines to the States and UTs for

issuing necessary norms for regulating travel in other modes of public transport like buses etc. and to ensure that same are strictly complied with. All the activities are permitted outside the containment zones and SOPs have been prescribed for various activities including movement of passengers, rail, air travel, metro train, schools etc. It is further submitted that there is no restriction on the movement of passengers by way of air service and trains between these two States, therefore, the Government of M.P. cannot discriminate with the petitioner by way of banning the inter-State bus service facility between these two States which is in gross violation of Article 19(1)(g) of the Constitution of India. The members of the association are having fundamental right to practice any profession or to carry on any occupation, trade or business which cannot be restricted by the State Govt. It is further submitted that the State has a right under Article 19(6) of the Constitution to put a reasonable restriction on the fundamental right but that should not be arbitrary or excessive in nature. The movement of public between Madhya Pradesh and Maharashtra is permissible through air, train, cab, taxi and through private vehicles but movement only through buses are restricted without any valid justification. The members of the petitioner are ready to follow any conditions to be put by the State Govt. for operating the buses in order to prevent spread of corona virus. They will not permit any passenger to travel in the buses without negative RT-PCR report, therefore, with certain restrictions the petitioner be permitted to ply buses between these two States.

3. In support of the above contentions Mr. Manu Maheshwari, learned counsel for the petitioner has placed reliance over the judgments passed by the Apex Court in the case of **Chintaman Rao vs. State of M.P- AIR 1951 SC 118; Saghir Ahmad vs. State of U.P & others- AIR 1954 SC 728; Subramanian Swamy vs. Director, Central Bureau of Investigation and another- (2014) 8 SCC 682 & Narinder S.Chadha and others vs. Municipal Corporation of Greater Mumbai and others – (2014) 15 SCC 689.**

4. The respondents have filed the reply by submitting that in the second wave of the covid-19 most of the cases came in the State of Maharashtra and being a neighboring State of M.P, in order to protect the inhabitants of M.P, the State Govt. has restricted the transportation of public by way of buses. The State Govt. has passed the order looking to the public health in exercise of the powers conferred u/s 24 of the Disaster Management Act, 2005 (for short '**the Act of 2005**'). The transportation of the buses cannot be compared with the transportation by trains and airways because trains and airways are under the jurisdiction and control of the Central Govt. and the State Transport is within the jurisdiction of M.P State.

5. Shri Garg, learned GA appearing for the State has submitted that impugned restriction is temporary in nature and after the things are normalized the government is bound to lift the ban, but as on today there is a forecast of third wave of **covid delta plus** coming up in the State of Maharashtra, therefore, the government may extend the period of ban which is going to expire tomorrow i.e. on 30.06.2021. It is further submitted that any tough decision taken in the public interest the interest of individuals are bound to be overlooked. The members of the petitioner society are not only restricted to do their business but other trade and business are being totally shut down like theaters, gym, restaurant, tourism etc. In order to provide essential items, the government is relaxing the restrictions. The petitioner's members are restricted to operate the buses only to Maharashtra State where the large number of cases of covid are reported but they are free to operate the buses in other States, hence there is no complete restriction on the right of trade and business, hence the petition kindly be dismissed.

6. In rejoinder Shri Manu Maheshwari, learned counsel submits that the impugned order has not been issued u/s 24 of the Act of 2005, and only after filing of this petition the respondents came up with the plea that the impugned order has been issued under section 24 of the Act of 2005. The petitioner has filed the list of the trains and flights operating between Madhya Pradesh and Maharashtra in which there is

no such restriction by the Central Govt. and submit that the petitioner be also permitted to ply the buses between Maharashtra and Madhya Pradesh and vice versa. It is further submitted that Government of Maharashtra has not imposed such restriction on transportation of passenger buses. Even the railways and airways are not demanding covid report from the passengers and only on the basis of self-declaration they are permitting public to travel to any part of the country. The petitioner's members are also ready to abide by all the conditions which are being followed by the rail and airways operators.

I have heard the learned counsel for the parties and perused the record.

7. It is not in dispute that the second wave of covid -19 started from the State of Maharashtra and being a neighboring State there is a frequent movement of public between M.P and Maharashtra by all means of transport. Accordingly to the petitioner there is no restriction on transportation by railways and airways. The railways and airways are under the domain of the Central Government and on which the State Government cannot put any restriction. The transportation by stage carriages is under the control of the State Government, therefore, the State Govt. is competent to put restriction or conditions in which there is no discrimination by the State Government .

8. Even otherwise, in transportation through airways and railways the entry and exit points of passengers are fixed and known from where the passengers can be checked about their health conditions but it is not possible in the transportation by buses. The buses can be stopped anywhere and collect the passengers which is not possible in the railways and airways, therefore, both are different classes of transportation. The State Government has put restriction only for the limited period subject to the reduction of cases of covid. There is no permanent restriction for transportation through buses from Madhya Pradesh to Maharashtra and vice versa. The Government is reviewing the situation after the interval of 10-15 days and extending the

restriction for limited period. Except Maharashtra the petitioners are permitted to ply the buses in other part of the country, therefore, there is no 100% restriction on the right of trade and business. In the larger public interest, the individual interest is bound to suffer.

9. So far as the applicability of section 24 of the Act of 2005 is concerned, the government has decided to enact a law on disaster management to provide for requisite institutional mechanisms for drawing up and monitoring the implementation of the disaster management plans, ensuring measures by various wings of Government for prevention and mitigating effects of disasters and for undertaking a holistic, coordinated and prompt response to any disaster situation. Section 2(d) defines the word 'disaster' and 2(e) defines 'disaster management' which means a continuous and integrated process of planning, organizing, coordinating and implementing measures which are necessary or expedient for prevention of danger or threat of any disaster or mitigation or reduction of risk of any disaster. Section 14 authorizes the State Govt. to establish State Disaster Management Authority for the State by way of notification. Section 24(1) gives power to the Central Govt. or the State Govt. to take such steps as are required or warranted by the form of any threatening disaster situation or disaster, therefore, in exercise of the aforesaid powers the State Govt. has decided to restrict or minimize the movement from Maharashtra to Madhya Pradesh. In normal situation the action of the State Government can be examined in respect of putting restriction on any trade and business but in the case of disaster or pandemic where the loss of life or human suffering or damages are in large scale then the Central Government or the State Government is empowered to put any restriction in the larger public interest in exercise of power under section 24 of the Act of 2005. Section 72 gives overriding effect to the provisions of the Act of 2005 over the other Act. The High Court in exercise of powers under Article 226 of the Constitution of India should not interfere in the policy decisions

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taken by the State Government looking to the interest of public at large.

10. It is expected from the State Government that further extension or restriction of movement of public by inter-State transportation by buses shall not be in mechanical manner but after assessing the facts and figures of covid -19 cases in the State of Maharashtra.

11. In view of the foregoing discussion, the petition is disposed of.

(VIVEK RUSIA)
JUDGE

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