The High Court of Madhya Pradesh Bench at Indore

Case Number	**W.A.No. 653/2021**
Parties Name	M.P. Bus Operator Association Vs. State of M.P.
Date of Order	**09/08/21**
Bench	**Division Bench:** Justice Sujoy Paul Justice Anil Verma
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	**YES**
Name of counsel for parties	Shri Manu Maheshwari, learned counsel for appellant. Shri Pushyamitra Bhargava, learnd A.A.G for respondents/ State.
Law laid down	**1. Administrative Order – source of power / enabling provision is not shown / reflected in the order** – the enabling provision can be brought to the notice of the Court by filing reply. If such reply is filed, that does not mean that a new reason is assigned by filing reply. Non-mentioning or wrong mentioning of enabling provision will not make the order vulnerable if otherwise power of authority can be traced from the relevant statute. **2. Disaster Management Act, 2005 – Section 20 –** at appellate stage it is argued that order is passed by incompetent authority, whereas it should have been passed only by a committee constituted under Section 20 of the Act – held – there was no pleading in this regard in the writ petition. It was a mixed question of facts and law as to which authority / committee has taken decision. As per Government procedure, many times the decisions are taken by competent body and communicated

	by inferior officer. In absence of pleading in the writ petition, interference declined. **3. Section 24 of Disaster Management Act, 2005** is wide enough to prevent the movement of vehicle from disaster affected areas. Act gives ample power to the authority to stop, control or regulate the vehicular movement taking into account the pandemic situation. **4. Statutory provision & administrative instructions** – administrative instruction can supplement the statutory provision but it cannot supplant it. In the event of conflict between the two, statutory provision will prevail. **5. Writ appeal** – if Writ Court has taken a plausible view, no interference is warranted.
Significant paragraph numbers	**16 to 30**

O R D E R
(09th August, 2021)

Sujoy Paul,J:-

The appellant-M.P. Bus Operator Association has filed this writ appeal in representative capacity against the order of learned Single Judge dated 29/06/2021 passed in W.P. No.8597/2021, whereby the Writ Court declined interference on the orders dated 18/03/2021, 01/03/2021, 31/03/2021 & 22/06/2021 whereby inter-state bus transportation between State of MP and Maharashtra was restricted during different periods.

2) Since all the orders are similarly worded, one such order dated 18/03/2021 (Page 72) is reproduced for ready reference:-

कार्यालय परिवहन आयुक्त मध्य प्रदेश, ग्वालियर

क्रमांक /1905/प्रशा./टीसी/21 ग्वालियर दिनांक 18/03/2021

प्रति,

1– क्षेत्रीय उप परिवहन आयुक्त,
..... (समस्त), मध्यप्रदेश
2– क्षेत्रीय/अतिरिक्त क्षेत्रीय/जिला परिवहन अधिकारी

..... (समस्त), मध्यप्रदेश

विषय :– कोरोना वायरस (covid-19) से बचाव को दृष्टिगत रखते हुये महाराष्ट्र राज्य एवं मध्य प्रदेश राज्य के बीच अन्तर्राज्जीय बस परिवहन सेवा को स्थगित रखने के संबंध में।

विषयान्तर्गत कोरोना वायरस (covid-19) के व्यापक संक्रमण पर प्रभावी रोकथाम को दृष्टिगत रखते हुये **लोकहित में** यह आवश्यक है कि, मध्य प्रदेश राज्य में महाराष्ट्र राज्य से आने तथा जाने वाले बस परिवहन संचालन को स्थगित किया जावे।

अतः अन्तर्राज्जीय अनुज्ञाओं एवं अखिल भारतीय पर्यटक अनुज्ञाओं से अच्छादित क्रमशः मध्य प्रदेश राज्य की समस्त यात्री बस वाहनों का महाराष्ट्र राज्य की सीमा मे प्रवेश तथा महाराष्ट्र राज्य की समस्त यात्री बस वाहनों का मध्य प्रदेश राज्य की सीमा में प्रवेश दिनांक 21 मार्च 2021 से 31 मार्च 2021 तक की अवधि के लिये स्थगित किया जाता है।

अपर परिवहन आयुक्त एवं सचिव
राज्य परिवहन प्राधिकार
मध्य प्रदेश

(Emphasis Supplied)

3) The parties are at loggerheads on the validity of said notification/orders. The State took a stand that orders are passed for disaster management whereas stand of appellant is that it is disastrous management on the part of the state. On this aspect, they fought the battle before the learned Single Judge, but by order dated 29/06/2021, learned Single Judge dismissed the writ petition by holding that the State is empowered under Section 24 of the Disaster Management Act, 2005 (Act of 2005) to issue such restrictions. The learned Single Judge also declined interference on the ground of alleged discrimination with railway and air traffic.

4) Shri Manu Maheshwari, learned counsel for the appellant submits that a conjoint reading of all the impugned orders makes it clear that no enabling provision or source of power is mentioned in

the said orders. In absence thereof, the reason cannot be furnished by way of filing counter affidavit. Reliance is placed on a constitution bench judgment reported in ***(1978) 1 SCC 405 (Mohinder Singh Gill vs. Chief Election Commissioner)*** which was recently followed by this bench in ***WA No.478/2021 (Sanjay Jain vs. State of M.P.)***. The next contention is that the Govt. of India Guideline dated 23/03/2021 makes it clear that the State is authorized to 'regulate travel' and 'regulation', by no stretch of imagination can be equated with 'restriction'. The reliance is placed on Clause-12, 14 & 19 of these Guidelines dated 23/03/2021. Emphasis is laid on Clause-19, wherein it is mentioned that there shall be no restriction on inter-State and intra-State movement of persons and goods, which reads as under:-

> "19. There shall be no restriction on inter-State and intra-State movement of persons and goods including those for cross land-border trade under Treaties with neighbouring countries. No separate permission/approval/e-permit will be required for such movements."
>
> ***(Emphasis Supplied)***

5) The ancillary argument of Shri Maheshwari is that such restriction infringes fundamental right of the petitioner enshrined in Article 19(1)(g) of the Constitution of India. There is no reasonable classification or object sought to be achieved by putting restriction on vehicular transport only whereas through railways and air movement sizable number of passengers are traveling from Maharashtra to Madhya Pradesh on regular basis. For example, it is contended that one train carries about 1500 passengers, whereas an aircraft depending upon its size and capacity, carries approximately 160-220 passengers. Thus, in absence of any reasonable classification, the ban on the movement of vehicular transport is bad-in-law. The govt. guideline nowhere permits the State to stop complete movement of buses.

6) The competence of authority in issuing the orders impugned is also assailed by contending that Section 20 of the Disaster

Management Act, 2005 makes it clear that it is only State Executive Committee which can exercise this power and issue consequential orders. At best, it can be delegated to a sub-committee by the State Executive Committee in exercise of power under Section 21 of the said Act. The impugned orders show that the same were issued by respondent No.3/Joint Transport Commissioner and Secretary, State Transport Authority, Madhya Pradesh. Thus, impugned orders are passed by an incompetent authority. Furthermore, it is submitted that a plain reading of Section 24 shows that complete ban on transport movement is impermissible. The regulation can be done "from and within" the vulnerable area. The movement of buses is still permissible from Maharashtra to Gujarat. It is only State of Madhya Pradesh which has imposed such a ban. To bolster this, reliance is placed on a document (Annexure P/10) which shows movement of transport between Ahmedabad and Mumbai.

7) In a situation like this, when almost every institution including schools are open, it is not justifiable to stop the bus transport indefinitely.

8) The order of Writ Court is assailed by contending that certain judgments, which were cited and mentioned in para-3 of impugned order have not been considered by learned writ Court. By taking this Court to those judgments, Shri Manu Maheshwari, learned counsel for the appellant submits that as per the constitution bench judgment of Supreme Court in ***AIR 1951 SC 118*** (***Chintaman Rao vs. State of M.P)***, the purpose of an action is important in order to examine the question of classification and discrimination and in order to see whether it takes care of the object sought to be achieved. The judgment of ***AIR 1954 SC 728 (Saghir Ahmad vs. State of U.P. & Ors.)*** is relied upon to contend that the fundamental rights flowing from Article 19 of the Constitution cannot be taken away by placing an unreasonable restriction. ***(2012) 5 SCC 1*** (***Ramlila Maidan***

Incident vs. Home Secretary & Ors.) is relied upon to submit that before issuing the orders impugned, no exercise has been taken. No data collected and mechanically on the basis of likelihood or apprehension, the vehicular movement is stopped. This runs contrary to the judgment of ***Ramlila Maidan Incident (supra).***

9) The judgment of Supreme Court in ***(2014) 8 SCC 682 Subramaniam Swamy vs. Director, Central Bureau of Investigation and Anr.)*** is relied upon to raise same point that for putting a restriction, there must be some nexus with the object sought to be achieved. Otherwise, it infringes the fundamental rights guaranteed under Article 14 & 19 of Constitution.

10) On the other hand, Shri Pushyamitra Bhargav, learned AAG submits that the appellant has challenged the impugned orders before the learned writ Court mainly on four points:-

1. On the point of competence of the authority.
2. On the point of discrimination,
3. Alleging breach of fundamental right
4. Arbitrariness because the State has not undertaken any exercise to collect data before stopping vehicular movement.

11) Learned AAG submits that merely because in the impugned order, the enabling provision is not mentioned, the impugned order will not become vulnerable in view of ***N.Mani Vs. Sangeetha Theatre and Others reported in 2004 12 SCC 278 (para 9).***

12) Learned AAG further submits that the question of discrimination is dealt with by learned Single Judge in sufficient details in para 7 and 8 of the impugned order, which finding is in consonance with the law.

13) By placing reliance on article 19 (6) of the Constitution of India and on the same para of ***Subramanian Swamy*** (supra) on which learned counsel for the appellant placed reliance, learned AAG

submits that the reason behind issuing the impugned orders has a nexus with the objects sought to be achieved and therefore, it cannot be said to be *de-horse* the enabling provision or *ultra vires* the provision. He placed reliance on the number of Corona patients in neighbouring states to show that number of Corona patients in Maharashtra is alarmingly high in comparison to the other state. This necessitated the issuance of impugned orders. The impugned orders were rightly issued in consonance with the guideline dated 23.03.2021 and section 24 of the Disaster Management Act, 2005. Learned AAG placed reliance on clause 9, 10,11 and 12 of the same guideline to bolster his submission that Covid appropriate behaviour was required to be ensured by the State Government. Thus, in exercise of its executive power flowing from the said guideline and section 24, the Government has issued the impugned orders.

14) The parties confined their arguments to the extent indicated above.

15) We have bestowed our anxious consideration on rival contentions and perused the record.

16) Before dealing with the rival contention, it is apposite to mention relevant portion of section 24 of the Disaster Management Act, 2005 :-

> "24. **Powers and functions of State Executive Committee in the event of threatening disaster situation**.—For the purpose of, assisting and protecting the community affected by disaster or providing relief to such community or, **preventing** or combating disruption or dealing with the effects of any threatening disaster situation, the State Executive Committee may-
> (a) **control and restrict**, vehicular traffic to, **from or within,** the vulnerable or affected area; (b) control and restrict the entry of any person into, his movement within and departure from, a vulnerable or affected area; "
>
> (emphasis supplied)

17) The following clauses of guideline dated 23.03.2021 are relevant.

"**COVID appropriate behavior:-**

9. State/UT Governments shall take all necessary measures to promote COVID-19 appropriate behavior, strict enforcement of wearing of face masks, hand hygiene and social distancing must be ensured.

10. Wearing of face masks is an essential preventive measure. In order to enforce this core requirement, State and UTs may consider administrative actions, including imposition of appropriate fines, on persons not wearing face masks in pubic and work spaces.

11. Observance of social distancing in crowded places, especially in markets, weekly bazaars and public transport is also critical for containing the spread of the infection. SOP issued by Ministry of Health and Family Welfare (MoHFW) to regulate crowds in market places, shall be strictly enforced by States and Uts.

12. SOPs for regulating travel in aircrafts, trains and metro rails are already in place, which shall be strictly enforced. State and UTs shall issue necessary guidelines for regulating travel in other modes of public transport, e.g buses, boats etc and ensure that these are strictly complied with.

.....

Strict Adherence to the prescribed SOPs:-

14. All activities have been permitted outside Containment Zones and SOPs have been prescribed for various activities. These includes: movement by passenger trains; air travel; metro trains' schools; higher educational institutions; hotels and restaurants; shopping malls, multiplexes and entertainment parks; yoga centres and gymnasiums; exhibitions, assemblies and congregations etc.

.....

Local Restrictions:-

.....

19. There shall be no restrictions on inter-state and intra-state movement of persons and goods including those for cross land-borders trade under Treaties with neighbourting countries. No separate permission/approval/e-permit will be required for such movement. "

(emphasis supplied)

18) The first contention of petitioner was regarding non-mentioning of the source of power in the impugned order. For this purpose,

judgment of constitution bench in ***Mohinder Singh Gill*** (supra) was relied upon.

19) In ***Mohinder Singh Gill*** (supra), the Apex Court clearly held that the validity of an order of a statutory authority is to be judged on the basis of reasons assigned therein and it cannot be supplemented by filling a counter affidavit in the Court. All the impugned orders are based on singular reason and said reasons were not changed, modified or supplemented by filling reply. The reason is Covid-19 related pandemic because of which restrictions were directed to be imposed. ***Mohinder Singh Gill*** (supra), in our opinion, is not an authority on the question whether enabling provision should find place in the impugned order and whether in absence thereof, the source of power can be shown by filling counter reply. On the contrary, there are catena of judgments, holding that if the authority is equipped with an enabling provision, non-quoting of provision or quoting of wrong provision will not denude him from exercising the statutory power. ***(See:- AIR 1977 SC 854 (P. Radhakrishan Naidu and Ors Vs. Government of Andra Pradesh and Ors.), (2001) 3 SCC 482 (B.S.E Brokers Forum Vs. Securities and Exchange Board of India and Ors), (2003) 6 SCC 545 (Chandra Singh and Ors Vs. State of Rajasthan and Anr), (2004) 1 SCC 453 (Challamane Huchha Gowda Vs. M.r. Tirumala and Anr), (2006) 5 SCC 789 (K.K. Parmar and Ors Vs. H.C of Gujarat))***

20) Learned AAG also cited judgment of the Apex Court in ***N.Mani*** (supra) which is in the same line. In view of common string of principle laid down in these judgments, the first contention of learned counsel for the appellant must fail.

21) The next contention is based on the aspect of competency of the authority. The order impugned shows that it is issued by respondent no.3. The order is silent whether it is based on a decision of a committee under section 22 or not. On a specific query from the

bench, learned counsel for the appellant fairly submitted that in the writ petition, there was no pleading in relation of aspect of competence in as much as it it is argued before us that no committee constituted under section 20 of the Act of 2005 has issued the impugned orders. In absence of any such pleading and foundation, at appellate stage, no interference is warranted. In our considered view, in the writ petition the appellant/petitioner should have pleaded the aspect of competence with accuracy and precision. In that case, the respondent/State would have been in a position to address the question of competence. By perusal of impugned order alone it cannot be said with certainty that it was not issued pursuant to decision taken by the competent committee. It is not unknown government practice where decisions are taken by competent authority/committee and it is communicated by any other officer. The officer communicating the decision may not be competent to take such decision. Thus, it was a mixed question of facts and law which should have been specifically pleaded in the writ petition.

22) The power exercised under section 24 is assailed on the basis of a judgment of the Apex Court which relates to interpretation of section 144 of the Cr.P.C. Interestingly, in para 225 of the said judgment of ***Ramlila Maidan*** (supra), the Apex Court emphasized about the existence of actual likelihood or tendency for the purpose of invoking section 144 of the Cr.P.C.

23) This is trite that the judgments of the Apex Court are not Euclid's theorem. The judgments must be considered in the facts situation of the case and on the basis of the statute which governs the field. Section 144 of Cr.P.C indisputably, has no application in so far present matter is concerned.

24) Section 24 of Act of 2005 is differently worded. The expression used is for the purpose ..... “preventing or combating, disruption or dealing with the effects of any threatening the disaster situations.....”.

The law makers were conscious of the fact that in order to achieve the object and scheme of the Disaster Management Act, the authorities must be equipped to take necessary action for preventing from disaster. Thus, it is not necessary that only when the disaster actually affects the people, such a power can be exercised. Section 24 aforesaid permits 'control' and 'restriction' of vehicular traffic to, *from* or *within* vulnerable area or affected area. The language employed in sub-clause (a) is wide enough to restrict traffic movement *from* vulnerable or pandemic affected area.

25) The data supplied by learned AAG shows that number of COVID patients in Maharashtra is alarmingly high in comparison to the patients in other states. The data of last seven days of Covid patients is as under :-

	मध्यप्रदेश	महाराष्ट्र	गुजरात	छत्तीसगढ	राजस्थान	उत्तरप्रदेश
4 अगस्त	10	7242	27	135	18	31
3 अगस्त	18	6600	21	142	11	37
2 अगस्त	22	2959	27	236	27	61
1 अगस्त	17	6479	23	214	10	62
31 जुलाई	17	4869	22	102	17	24
30 जुलाई	28	6005	17	125	28	35
29 जुलाई	18	6126	15	130	17	60
योग	130	44280	152	1084	128	310

Thus, the question is whether the State was justified and competent under the guidelines and the Act to impose complete ban.

26) The argument of learned counsel for the appellant is mainly based on the guidelines dated 31.03.2021, which contains clause 19. Heavy reliance was placed on clause 12 also, in which the word “regulating” is used. Thus, on the basis of judgments of the Apex Court wherein the word “regulation” is interpreted, the learned counsel for the appellant strenuously contended that under the garb of “regulation” the complete ban on the transport movement is

impermissible. The argument on first blush appears to be attractive but lost much of its shine when examine in the teeth of statutory provision namely section 24 of the Act, 2005. Section 24 (a) and (b) leaves no room for any doubt that it gives ample power to "Control and Restrict vehicular traffic". In our view, the statutory provision is wide enough to impose complete ban or completely control or restrict the vehicular movement. The guidelines dated 31.03.2021 is issued in executive fiat. This is settled that no executive instructions can prevail over the statutory provision. The administrative instructions can supplement the statutory provisions but it cannot be supplant it. Thus, the clauses of the executive instructions/guidelines dated 31.03.2021 are even otherwise of no assistance to the appellant. ***(See: (1991) 2 SCC 708 (Ex.Capt. K.Balasubramanian and Ors Vs. State of Tamil Nadu and Anr), (2001) 3 SCC 117 (H.F Sangati Vs. Registrar General, High Court of Karnataka and Ors))***

27) So far question of discrimination is concerned, the learned single Judge has given its finding as under:-

> "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 MP and Maharashtra by all means of transport. Accordingly, to the petitioner there is no restrictions 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 restrictions. The transport by stage carriages is under the control of the State Government, therefore, the State Govt. is competent to put restrictions of 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 restrictions only for the limited period subject to the reduction of cases of Covid. There is no permanent restrictions 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 restrictions for limited period. Except Maharashtra the petitioners are permitted to ply the buses in other part of the country, therefore, there is no 100% restrictions on the right of trade and business. In the larger public interest, the individuals interest is bound to suffer."
>
> (emphasis supplied)

28) The learned Single Judge has considered the question of discrimination in sufficient details. We are in agreement with the view taken by the learned Single Judge. The learned Single Judge has taken a plausible view which does not warrant interference by this bench. **(See: (2016) 3 SCC 340 (Management of Narendra and Company Pvt. Ltd. Vs. Workment of Narendra and Co.)).** The writ court rightly declined interference on the policy decision of the government.

29) The learned Single Judge in para 10 of the judgment has taken care of the appellant's grievance and therefore, directed Government to be vigilant and pass the orders with due application of mind.

30) The other judgments cited by learned counsel for the appellant are related with matters where constitutional validity of a statutory provision was called in question. Indisputably, in this case, no enabling provision was under challenge. Thus, provisions are to be read as such.

31) The appellant could not establish that impugned orders are illegal, irrational or outcome of any procedural impropriety. The prohibition on vehicular movement falls within the ambit of reasonable restriction as per Article 19(6) of the Constitution. Hence, we find no reason to interfere in this writ appeal.

32) The writ appeal stands **dismissed**.

(Sujoy Paul)
Judge

(Anil Verma)
Judge

soumya/sourabh