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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 03<sup>rd</sup> AUGUST, 2022

IN THE MATTER OF:

+ **W.P.(C) 6242/2022 & CM APPL. 32536/2022**

BABA ALEXANDER

..... Petitioner

Through: Mr. Robin Raju, Advocate

versus

DELHI TRANSPORT CORPORATION & ANR ..... Respondents

Through: Mr. Manish Vashisht, Senior Advocate with Mr. Rikky Gupta, Standing Counsel, DTC along with Ms. Ananya Singh, Advocates for R-1

Mr. Sameer Vashisht, ASC (Civil), GNCTD with Ms. Sanjana Nangia, Ms. Shreya Gupta, Advocates for R-2

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

### **JUDGMENT**

1. The instant PIL has been filed by the Petitioner challenging the decision of the Respondent No.1/DTC to withdraw DTC buses from certain schools and further seeks a writ of Mandamus to direct the Respondent No.1 to reconsider its decision and continue the DTC bus service to schools for carrying children to school from their residences and *vice versa*.
2. The Petitioner states that he is a native of Kerala. A copy of the

Aadhaar Card of the Petitioner has been filed with the present petition which shows that he is a resident of Kerala. It is stated that the Petitioner is the founder Secretary of National Child Development Council (NCDC), an NGO. Though the Petitioner states that he resides in Delhi, there is nothing on record to demonstrate that he is a resident of Delhi. Be that as it may, this Court, at the moment, is not inclined to go into the locus of the Petitioner or interest of the Petitioner in continuation of DTC buses for carrying children to school and back to their residences. It is stated by the Petitioner that withdrawal of buses by DTC will have certain adverse consequences. He states that if school buses are withdrawn, the parents would be forced to take the children to school in their individual cars thereby increasing vehicular pollution. He further states that no impact assessment has been made by the DTC before withdrawing the school buses. He states that the withdrawal of buses by DTC would put a lot of pressure on the schools to make alternate arrangements and would also make the children prone to accidents.

3. DTC has filed its counter affidavit. In the counter affidavit, it is stated that due to spurt in the population of Delhi, DTC is unable to manage the situation and it is not in a position to lease its buses to schools. It is stated that buses are given to schools on the basis of lease agreements entered into between the DTC and the Schools. It is further stated that withdrawal of buses are primarily from affluent schools which are otherwise capable of making alternate arrangements for providing buses to take children to school and bring them back from school to their residences. It is also stated that in view of the current position, the provision of diverting DTC buses to act as school buses is causing hardship to the public at large as it affects normal bus service for about four hours a day. It is further stated that only after

proper and due deliberations, the DTC decided to withdraw its buses which were functioning as school buses.

4. A perusal of the material on record shows that the DTC entered into agreements with various schools for providing buses to act as school buses. The material supplied to the Court indicates that about 70 schools have entered into agreement with DTC and that these schools are primarily private schools. There appears to be some merit in the stand of taken by the DTC that withdrawal of buses are primarily from affluent schools which are otherwise capable of making alternate arrangements, like engaging private buses for the purpose of transporting students to and fro.

5. It is trite law that High Court, while exercising its power under Article 226 of the Constitution of India, cannot sit as an Appellate authority over a policy decision of the Government unless that decision is completely unjust, arbitrary and unreasonable. The Courts should generally be slow in interfering with the matters of Government policy. It is also well settled that to ascertain unreasonableness and arbitrariness it is not necessary to enter upon any exercise for ascertaining the wisdom of the policy decision of the State Government. It is not for the Court to take a decision as to whether a better or more comprehensive policy decision could have been taken or not. It is equally immaterial if it can be demonstrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down (refer: Krishnan Kakkanth v. Govt. of Kerala, (1997) 9 SCC 495; Sher Singh v. Union of India, (1995) 6 SCC

515; State of Punjab v. Ram Lubhaya Bagga, (1998) 4 SCC 117; Union of India v. Dinesh Engg. Corpn., (2001) 8 SCC 491).

6. The Apex Court in State of M.P. v. Narmada Bachao Andolan, (2011) 7 SCC 639, has observed as under:

*“36. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power.*

*37. Thus, it emerges to be a settled legal proposition that the Government has the power and competence to change the policy on the basis of ground realities. A public policy cannot be challenged through PIL where the State Government is competent to frame the policy and there is no need for anyone to raise any grievance even if the policy is changed. The public policy can only be challenged where it offends some constitutional or statutory provisions.”*

(emphasis supplied)

7. Similarly, in Brij Mohan Lal v. Union of India, (2012) 6 SCC 502, the Apex Court has observed as under:

*“96. It is a settled principle of law that matters relating to framing and implementation of policy primarily fall in the domain of the Government. It is an established requirement of good governance that the Government should frame policies which are fair and beneficial to the public at large. The Government enjoys freedom in relation to framing of policies. It is for the Government to adopt any particular policy as it may deem fit and proper and the law gives it liberty and freedom in*

*framing the same. Normally, the Courts would decline to exercise the power of judicial review in relation to such matters. But this general rule is not free from exceptions. The Courts have repeatedly taken the view that they would not refuse to adjudicate upon policy matters if the policy decisions are arbitrary, capricious or mala fide.*

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***99. It is also a settled cannon of law that the Government has the authority and power to not only frame its policies, but also to change the same. The power of the Government, regarding how the policy should be shaped or implemented and what should be its scope, is very wide, subject to it not being arbitrary or unreasonable. In other words, the State may formulate or reformulate its policies to attain its obligations of governance or to achieve its objects, but the freedom so granted is subject to basic Constitutional limitations and is not so absolute in its terms that it would permit even arbitrary actions."***

(emphasis supplied)

8. On the basis of the material on record, this Court is unable to persuade itself that the policy of the DTC warrants the interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India. The reasons given in the counter affidavit filed by the DTC are that the buses from schools have been withdrawn because the DTC is finding it difficult to cater to the needs of the population which is increasing by leaps and bounds and to save the public at large from the hardships and difficulties that are caused to them due to non-availability of buses. This Court is also of the view that the schools from which the buses have been withdrawn are

capable of making alternate arrangements.

9. With these observations, the present petition is dismissed along with the pending application(s), if any.

10. It is always open to the DTC to review its decision as and when it feels that there are enough buses with it to be given to schools for the purpose of carrying children from their residences to schools and *vice versa*.

11. Though this Court finds that the present petition is a frivolous petition, however, this Court is not inclined to impose costs on the Petitioner.

**SATISH CHANDRA SHARMA, CJ**

**SUBRAMONIUM PRASAD, J**

**AUGUST 03, 2022**

*Rahul*

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