

WP.Nos.923 of 2007 and 38224 of 2005

M.SATHYANARAYANAN, J.,  
and  
R.HEMALATHA, J.,

[Order of the Court was made by M.SATHYANARAYANAN, J.,  
through Video Conferencing]

This Court, in continuation and in conjunction with the earlier orders, is passing the following order.

2. In compliance of the order, Mr.K.Shanmugam, I.A.S., Chief Secretary to the Government of Tamil Nadu, Mr.C.Vijayarajkumar, the Secretary, Department for Welfare of Differently Abled Persons, Thiru.C.Samayamoorthy I.A.S, Transport Secretary, Thiru.Johny Tom Verghese, Director for the Welfare of Differently Abled, Mr.K.Elangovan, Managing Director (i/c), Metropolitan Transport Corporation, are present through video conference.

3. Mr.Vijay Narayan, learned Advocate General has drawn the attention of this Court to the affidavit of the Chief Secretary to the Government of Tamil Nadu dated 08.12.2020 and would submit that the Transport Department of Government of Tamil Nadu had "signed

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agreements with the KFW (German Development Bank) for the project of "Climate Friendly Modernization of Bus Services" to be operated in major cities of the State of Tamil Nadu" as a measure towards improving the performance and restructuring of all the State Transport undertakings, among other things....." and he would further add that there is procurement of upto 2213 diesel buses with BSVI standard for replacement of over aged buses, out of which atleast 10% of buses, to be procured, are low floor buses intended towards improving accessibility for the differentially abled persons, elderly persons, women and children.

4. It is also brought to the knowledge of this Court that almost all Transport Corporation are running under heavy loss and as such, the provision of low floor will also lead to the following difficulties and the same is enumerated in paragraph no.4 and it is relevant to extract the same:

- i. Cost of a low floor bus is double the cost of a conventional bus.*
- ii. There will be considerable drop in the Kilo Meter per litre (KMPL) which will increase the expenditure and add additional financial burden on the Government of Tamil Nadu Transport Department.*

*iii. The capacity of the volume of carrying passengers is less in low floor buses in comparison with that of the conventional buses. This will further add up additional financial burden on the Government of Tamil nadu Transport Department.*

5. The learned Advocate General would submit that in the light of the mandate of the Rights of Persons with Disabilities Act, 2016 (Central Act 49/2016) especially Section 41(1)(b), a solution shall be put in place, as to the full compliance of the said statutory provisions and Rules framed thereunder.

6. Mr. Jayaprakash Narayanan, learned Government Pleader would submit that the Secretary to the Government, Welfare of Differently abled Persons Department, Chennai 600 009, has also referred the deponent Status Report filed by the 5<sup>th</sup> respondent and also on behalf of the respondents 8, 9 and 10 and would submit that after discussion and deliberations, the solution / way out would be definitely found and prays for short accommodation.

7. Ms.Rita Chandrasekaran, learned standing counsel appearing for the 1<sup>st</sup> respondent / Metropolitan Transport Corporation has invited the attention of this Court to the affidavit filed by the Senior Deputy Manager (HRD) of the 1<sup>st</sup> respondent Corporation dated 12.10.2020 and would submit that totally 10 buses are plying in the dedicated routes for benefit of the people with special needs and the buses are lifted with hydraulic lift and it is placed near the front foot board of the respective buses and on account of the lack of patronage by the people for special need, low number of buses are operated.

8. Attention of this Court has also been invited to paragraph no.6 of the affidavit, wherein it is averred that ***"however the low floor buses are not conducive and feasible for the roads in the city of Chennai because of lack of proper infrastructure"***.

9. It is the further submission of the learned standing counsel appearing for the Metropolitan Transport Corporation that the State Government has also issued proposal for provision of lift mechanism with door facility in the buses for easy access to the persons with special needs while boarding and alighting under State innovation funds. The

State Planning Commission has also recommended for Rs.100 lakhs for implementation of the proposal in the MTC buses and the Government has also sanctioned a sum of Rs.25 lakhs for the financial year 2019-2020 and that apart, latest technology electrically operated Hydraulic lift mechanism is also fitted in two vehicles and the same have been installed in the rear foot board of the vehicle.

10. Mr.T.Mohan, learned Amicus Curiae and Mr.E.Om Prakash, learned Senior Counsel appearing for the petitioner have invited the attention of this Court to the earlier orders dated 06.04.2016, 28.06.2016 and 11.11.2016 and would submit that despite a positive direction and undertaking as to the full compliance of the order, the affidavit of the Chief Secretary to the Government of Tamil Nadu, the Secretary to Government, Welfare of Differently Abled person as well as the Secretary, Transport Corporation, would clearly disclose that the said orders have not been complied with in letter and spirit and only false and hollow promises / undertakings are being made and therefore prays for appropriate orders for implementation of the provisions of the said Act, failing which it is open to the Court to initiate appropriate proceedings for enforcement of the said orders of interim direction.

11. This Court has carefully considered the rival submissions and also perused the materials placed before it.

12. It is a well settled position of law that while making a challenge to the vires of the provisions of the Statute, the difficulty / hardship faced cannot be a ground to test the legality of a constitutional vires of the said Act. It appears from the affidavit filed today that certain practical difficulties are expressed for the enforcement / compliance of the provisions of the said Act and in the considered opinion of this Court, it cannot be taken as a satisfactory explanation and that apart, as rightly pointed out by Mr.E.Om Prakash, learned Senior Counsel and Mr.T.Mohan, learned Amicus Curiae that the above cited order of interim direction has also not been complied with, the Metropolitan Transport Corporation expresses difficulty in providing low floor buses, on account of lack of proper infrastructure for the roads in the City of Chennai and if it is so, it is for the Greater Chennai City Municipal Corporation to address the issue by laying quality roads. The provision of just 10 buses by the Metropolitan Transport Corporation, in the considered opinion of this Court, is absolutely inadequate and as already pointed out, it is not in

compliance of the provisions of the Statute, namely, Rights of Persons with Disabilities Act, 2016.

13. As long as provisions of Statute remain, the officials concerned are under obligation rather under mandate to strictly comply with the provisions of the Act and this Court, on an earlier occasion had taken note of the said provisions and passed various orders of interim directions and those directions have not been complied with fully. If this Court comes to the conclusion that there is a wilful disobedience of non compliance of the order of interim directions, the costs and consequences including the proceedings under the Contempt of Courts Act read with Rule 215 of the Constitution of India would follow and this Court hope and trust that such a situation may not arise, in the light of the submission made by the learned Advocate General that after deliberation and discussion with the officials concerned, steps would be definitely taken for strict implementation and compliance of the provisions of the Act. It is also to be noted at this juncture that officials need to be sensitised, as to the basic requirement of the persons with special needs and this Court hope and trust that the said issue would be addressed in an objective manner.

14. **Call on 26.02.2021** and the presence of Mr.K.Shanmugam, I.A.S., Chief Secretary to the Government of Tamil Nadu, Mr.C.Vijayarajkumar, the Secretary, Department for Welfare of Differently Abled Persons, Thiru.C.Samayamoorthy I.A.S, Transport Secretary, Thiru.Johny Tom Verghese, Director for the Welfare of Differently Abled, Mr.K.Elangovan, Managing Director (i/c), Metropolitan Transport Corporation, are dispensed with.

[M.S.N., J.] [R.H., J.]  
10.12.2020

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**Note:** Registry is directed to communicate the order copy to all the official respondents

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