

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

Present:

Ahmed Ali M. Shaikh, CJ
and Yousuf Ali Sayeed, J

Constitutional Petition No. D-7529 of 2018

Muzzamil Mumtaz Meo.....Petitioner

Versus

Province of Sindh and others.....Respondents

Constitutional Petition No. D-4320 of 2019

All Pakistan CNG Association & another.....Petitioners

Versus

Province of Sindh and others.....Respondents

Constitutional Petition No. D-280 of 2019

Muhammad Asif Minhas.....Petitioner

Versus

Province of Sindh and others.....Respondents

Constitutional Petition No. D-4803 of 2019

All Sindh Van Owners Association.....Petitioner

Versus

Province of Sindh and others.....Respondents

Constitutional Petition No. D-4921 of 2019

Muhammad Aslam & another.....Petitioners

Versus

Province of Sindh and others.....Respondents

Muzzamil Mumtaz Meo, Petitioner in person in C.P. No. D-7529 of 2018. Lala Asad Mangi, Advocate, for the Petitioner in C.P. No. D-280 of 2019. Syed Shayan Ahmed, Advocate for the Petitioner in C.P. Nos. D-4320, D-4803 & D-4921 of 2019.

Asim Iqbal and Farmanullah Khan, Advocate for OGRA, in all the Petitions

Muhammad Ali Waris, Advocate for HDIP.

Hussain Bohra, Assistant Attorney General

Chaudhry Muhammad Rafique Rajorvi, Additional Advocate General, Sindh.

Date of hearing : 09.02.2022.

ORDER

YOUSUF ALI SAYEED, J. - The captioned Petitions under Article 199 of the Constitution pertain to the deployment of Compressed Natural Gas (“**CNG**”) cylinders in vehicles used for public transportation, in the wake of Notification No.SO (T-II)4-03/3979/2011 dated 08.05.2015 and FP (T&MD)/2015 dated 07.08.2015 (collectively, the “**Subject Notifications**”) issued by the Provincial Government, imposing a ban on such use to the extent of commercial/public service vehicles and school and college vans, in the following terms:

“Karachi, dated the 8th May-2015
Off. No.021-99211017 Fax No.021-99211298
E.mail. secretarytransportsindh@gmail.com

NOTIFICATION

NO.S.O(T-II)4-03/3979/2011: In Pursuance of the decision of the Hon’ble High Court of Sindh, passed in Constitution Petition No.D-3979 and in exercise of the powers conferred under section 45 read with section 78 of the Provincial Motor Vehicle Ordinance, 1965, the Government of Sindh are pleased to impose complete ban on the use of Compressed Natural Gas (CNG) in inter-city public service vehicles (excluding the taxi cabs and three wheelers auto rickshaws) in the Province of Sindh with immediate effect.

2. The imposition of ban is in the larger interest of public safety and convenience and save the precious lives and property lost in frequent accidents caused due to use of CNG.

3. The period of three months from the date of issuance of this notification, is hereby allowed to existing CNG public service vehicles for conversion of vehicles from CNG back to Petrol/Diesel.

4. Any person fails to comply the instructions contained in this notification shall be dealt with in accordance with the provisions of the Motor Vehicles Ordinance, 1965 and rules made there under.

Sd/=
 (TUAHA AHMED FARUQUI)
 SECRETARY TO GOVERNMENT OF SINDH”

“ADDENDUM

NO. SO (T-II)4-03/3979/2011: In partial modification of this departments notification of even number dated: 8.5.2015, after the letter “CNG” wherever appearing, the letters “LPG” and after the words “public service vehicles” wherever appearing, the words “School & College vehicles” are hereby added with immediate effect.

Sd/=
 (TUAHA AHMED FARUQUI)
 SECRETARY TO GOVERNMENT OF SINDH

NO.SO (T-II)4-03/3979/2011 Karachi dated the 7th August, 2015”

2. However, the Petitions address the subject from different standpoints, for while C.P. Nos. D-7529/18 seeks strict implementation of the curbs placed on the deployment of CNG cylinders, coupled with action against the officials found to be complicit or delinquent in curtailing the practice, the remaining Petitions approach the matter from the opposite end of the spectrum, seeking instead to forestall the implementation of such curbs, with C.P Nos. D-4320, D-4803 and D-4921 of 2019 also impugning the vires of the Subject Notifications while seeking a declaration that the ban thereby imposed is unreasonable, disproportionate and constitutes a violation of fundamental rights.

3. At the outset, in response to a query posed as to the rationale for the Subject Notifications, the focal person of the Transport Department submitted that the same had been prompted by a spate of tragic mishaps where CNG cylinders fitted in vehicles had exploded, resulting in death and destruction, which necessitated the implementation of appropriate measures to curb their deployment in public transport vehicles so as to safeguard the public interest. It was also pointed out that such a step had been taken for that very purpose in pursuance of the proceedings in Constitution Petition No.D-3979 before the Circuit Bench of this Court at Hyderabad.

4. Furthermore, it was also highlighted that the Oil & Gas Regulatory Authority (“**OGRA**”) had recommended that a complete ban be imposed on use of CNG / LPG as fuel in public service vehicles/vans, and had requested all Provincial Governments as well as the Inspector General Motorway Police to start a crackdown against all public Service Vehicles having CNG cylinders installed inside the passengers compartments in order to safeguard against the loss of life that could otherwise ensue in the event of an accident. Our attention was drawn to the letter of OGRA dated 17.07.2019, which reads as follows:

“No.OGRA-CNG-18(4)/19
July 17,2019

Syed Javed Iqbal Bokhari
Secretary Transport,
Chairman, Punjab Provincial Transport Authority,
Transport House, 11-A Egerton Road,
Lahore.

Subject: **RECOMMENDATIONS FOR COMPLETE BAN ON USE OF CNG/LPG AS FUEL IN PUBLIC SERVICE VEHICLES/VANS**

Dear Sir,

I am directed to refer to your letter No.PTA-TAI-CNG-2018/19 dated 12-06-2019 & 19-6-2019 and concur with the concerns of the Transport Department regarding fire accidents /incidents in PSVs specially in Hiace vans (vintage/new) owing inability to check and verify each and every PSV operating on intra and intercity routes. In order to ensure safety of passengers and to avoid unpleasant incidents / accidents, this Authority hereby conveys its concurrence to the proposal made in the letter regarding ban of CNG/LPG as fuel and installation of gas cylinders (CNG/LPG) in all public service vehicles (PSVs) and thus request the Punjab Provincial Transport Authority (PPTA) to rigorously enforce its law (Rue 199 of MV Rules, 1969) and immediately ensure removal of CNG cylinders from inside of all PSVs plying on roads along with cancellation of route permits, if found in violation. MVEs/RTAs not to validate/declare fitness if the CNG cylinder (which is also a fuel tank as per MV Rules 1969) is installed inside as PSV. The school vans which are private vehicles in no case be allowed using CNG as fuel and cylinders installed therein to ensure safety of innocent children. OGRAs Enforcement Department letter No. OGRA-23(152)/2011-Enf dated 26-9-2013 also stands withdrawn being in conflict with MV rules 1969.

2. All Provincial Government as well as IG Motorways Police are therefore also requested to start crackdown against all PSVs having CNG cylinders installed inside the passenger's compartments with a view to saving previous lives of innocent passengers travelling in such PSVs.

3. This issue with the approval of the Authority.

*Joint Executive Director (CNG)
For & on behalf of
Oil and Gas regulatory Authority (OGRA), Islamabad*

5. On the point of enforcement of curbs on CNG cylinders, it was submitted that, subject to such Order(s) as may be made by this Court, whilst the Subject Notifications remained in the field the same would be implemented in letter and spirit.

6. In this backdrop, learned counsel for the Petitioner in C.P Nos. D-4320, D-4803 and D-4921 of 2019 candidly conceded that the Subject Notifications had been justified on such score at the time of their issuance, but sought to contend that the quality of CNG cylinders had improved significantly since then, making them far safer than before so as to significantly reduce the risk of any mishap. It was argued that OGRA had itself also notified certain specification for CNG cylinders, hence the usage of CNG cylinders compliant with that standard ought to at least be permitted under proper regulation rather than being subjected to a blanket ban. As such, he sought to reorient the scope of challenge against the Subject Notifications so as to question the rationale for continuation of the curbs imposed, rather than challenging their validity.

7. We have heard and considered the arguments advanced for and against the Impugned Notifications.

8. It merits consideration at the outset that the Petitioner No.1 in C.P. No. D-4320/19 is an association purporting to represent CNG station owners across Pakistan, whereas the Petitioner No.2 in that matter is an association purporting to be representative of like parties in the Province of Sindh. In either case, neither those associations nor their members are the focus of the Impugned Notifications, hence lack *locus standi* in the matter. Be that as it may, since there are other Petitioners who have come forward professing to be transporters, we have proceeded to examine the matter to their extent.

9. It is evident from a plain reading of the Subject Notifications that the same do not prevent any person from engaging in the business of transport or plying a vehicle in pursuance of such business, but merely imposes a restriction on the use of a particular type of fuel in the interests of public safety, which, needless to say, appears to have been a prudent and reasonable measure. Indeed, it was conceded by learned counsel for the Petitioner in C.P Nos. D-4320, D-4803 and D-4921 of 2019, quite fairly, that such an action had been justified at the relevant time. Even otherwise, no fundamental right arises as to the use of a particular type of fuel and the interests of the Petitioners to such use remains subservient to that of safety of the larger public, which is paramount. Even if it is accepted for the sake of argument that since the time of issuance of the Impugned Notifications there have been advancements in quality to a point where CNG cylinders of a particular specification can be safely deployed in public transport vehicles, the decision lies in the domain of the competent authority.

10. The Petitions thus stand dismissed accordingly.

JUDGE

CHIEF JUSTICE

Karachi.
Dated: