



## OVERCOMING POLITICAL OPPOSITION: COMPRESSED NATURAL GAS MANDATES IN DELHI (A)

### INTRODUCTION

In 1985, M.C. Mehta, a lawyer and head of his own environmental NGO, filed a public interest litigation (PIL) in the Supreme Court of India to enforce the 1981 Air (Prevention and Control of Pollution) Act in the environs of India's National Capital Region (NCR). In 1988, World Bank experts had advised the Indian government that given the extent to which air pollution in the National Capital Region came from an increasingly large fleet of passenger vehicles, an effective policy would be to mandate relatively clean compressed natural gas (CNG) in public transportation vehicles. The government actively considered a series of policies in this vein but failed to implement any of them. By the early 1990s, New Delhi was the fourth-most polluted city in the world.<sup>i</sup> By June 1998, the sub-particulate matter concentration in Delhi's air was three times higher than the standards set by the responsible agency, the Central Pollution Control Board, at 140 g/m. Those who spent more time outdoors, particularly pedestrians and the poor, were the most adversely affected.<sup>ii</sup> By a range of both normative and positive policy criteria, the CNG mandate appeared highly desirable. But would the mandate become policy?

### POLITICAL INTERESTS AND INSTITUTIONS IN DELHI

A key cause of Delhi's problems with pollution was its layout. New Delhi, designed between 1912 and 1930, was one of the first cities built at the scale of the motor car.<sup>iii</sup> In 2001, the Delhi urban agglomeration was a multi-centered, rapidly growing sprawl housing 15.5 million residents driving 3.4 million motor vehicles, more than Mumbai, Kolkata and Chennai combined.<sup>iv</sup> Many of Delhi's residents depended heavily on public transport, with the bus stops drawing crowds of commuters at specific times during the daily rush hour. While Delhi's residents, if organized, could pressure the Delhi state government, currently run by the Congress (I), Delhi's five seats in the national legislature afforded them less influence on the national

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Professor Saumitra Jha prepared this case as the basis for class discussion rather than to illustrate either effective or ineffective handling of an administrative situation.

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government, led by the Bharatiya Janata Party (BJP), which exercised significant power on local issues in the capital.

The taxi, auto-rickshaw and bus operators that provided the backbone of Delhi's public transportation system were also likely to be deeply affected by any mandate. There were 49,747 taxis, mainly run in small fleets. The number of auto-rickshaws had been limited to 55,000, mainly individually operated.<sup>v</sup> To address a history of strikes, Delhi's bus system had been partially privatized in 1992. Private operators in total owned around 10,000 to 12,000 buses,<sup>vi</sup> but individual companies were banned from operating more than a fleet of 10 buses. To avoid labor regulations on companies with more than five workers, the lion's share of private buses were run by single bus operators.<sup>vii</sup> With ticket and meter prices regulated, passing the costs of CNG conversion to commuters would be difficult. Each group had its own union.

The main companies that would be affected by a CNG mandate included the suppliers of the fuel itself as well as the manufacturers of the CNG conversion kits. The manufacturers of the conversion kits—Ashok Leyland and Telco—also made non-CNG vehicles. Similarly, the main private firms that provided CNG also provided gasoline. The main CNG suppliers were the Oil and National Gas Corporation (ONGC), the Indo-Burma Petroleum Company and Gas Authority of India Limited (GAIL), all government-owned utilities run by salaried employees.

With the skies blackening over Delhi and other Indian cities, the Indian Parliament had passed a number of pieces of legislation and a number of committees had reported their recommendations, but none had been implemented.<sup>viii</sup>

### **SWITCHING THE VENUE: THE MC MEHTA ENVIRONMENTAL FOUNDATION AND PUBLIC INTEREST LITIGATION**

Mahesh Chander Mehta was born in 1946 in Dhangri, a village in the district of Rajouri in what was then known as the Princely State of Kashmir, a state historically known for the beauty of its environment. After completing school in Rajouri, Mehta attended Jammu University, where he received a post-graduate degree in political science and law. At age 24, he ran for parliament, though failed to secure a seat.<sup>ix</sup> Beginning his practice in Jammu, Mehta moved to Delhi in 1983 to present cases to the Indian Supreme Court. He began focusing on environmental issues in 1984, with a landmark case that successfully banned polluting units from the proximity of the Taj Mahal. Rather than argue on emotive grounds, Mehta sought to emphasize the value of the Taj as an irreplaceable tourist destination and economic resource. As he argued, the "revenues of the Taj could build 100 refineries, but . . . even 100 refineries could never build the Taj."<sup>x</sup> Mehta sought and successfully won an endorsement from the Supreme Court that the guarantees in Article 21 of the Indian Constitution of life and liberty also implied a right to a healthy environment.<sup>xi</sup> Other judgments followed, with Mehta applying the reasoning of economic efficiency to environmental law. In a case involving gas leaks in Delhi, Mehta pushed for an interpretation based upon the doctrine of strict liability for those involved in hazardous activity. A Supreme Court judgment on groundwater pollution in Rajasthan established precedent for the 'polluter pays' principle—that polluters should pay the costs of mitigating any externalities.<sup>xii</sup>

Mehta depended on a device in Indian law known as Public Interest Litigation (PIL). Unlike the United States, where such forms of litigation required building a “class” of harmed individuals in order to bring a lawsuit, Indian courts, like those of South Africa, Hungary, and a growing number of other countries, had lenient standards for legal standing in cases perceived to be in the public’s interest.<sup>xiii</sup> While Mehta could avoid the cost of building and organizing a class of harmed individuals to pursue the lawsuit against the Indian government, he also would not receive attorney’s fees or damages from a winning judgment in the case. The NGO, housed in cramped quarters in South Delhi, had to depend on donations to fund its activities.

## THE SUPREME COURT ACTS

In 1998, in response to Mehta’s public interest litigation, the Supreme Court mandated that all buses, taxis and auto-rickshaws in Delhi must be switched to clean fuels, most prominently CNG, by 31st March 2001.

## DISCUSSION QUESTIONS

1. Which interests are likely to become active on the issue of CNG mandates? What is their predicted influence?
2. Will the government comply with and enforce the Supreme Court’s decision?

<sup>i</sup> Ruth Greenspan Bell, Kuldeep Mathur, Urvashi Narain, and David Simpson, “Clearing the Air: How Delhi Broke the Logjam on Air Quality Reforms,” *Environment: Science and Policy for Sustainable Development* 2004, 46 (3), pp.22–39.

<sup>ii</sup> Naresh Kumar and Andrew Foster, “Air quality Interventions and Spatial Dynamics of Air Pollution in Delhi and Its Surroundings,” *International Journal of Environment and Waste Management*, 2009, 4 (1/2), p p . 85–111.

<sup>iii</sup> Norma Evenson, *The Indian Metropolis: A View Toward the West*, Yale University Press, 1989.

<sup>iv</sup> Sanjay Singh, “Review of Urban Transportation in India,” *Journal of Public Transportation*, 8:1, 2005.

<sup>v</sup> Ibid.

<sup>vi</sup> The Delhi Transport Corporation, a public utility, ran around 2,000 buses of which 800 had been switched to CNG. See T.K. Rajalakshmi and V. Venkatesan, “Commuter Crisis,” *Frontline*, 18:8, April 14-27, 2001.

<sup>vii</sup> Sanjeev Sahai, “Bus System Reform in Delhi,” *DIMTS*, 2009.

<sup>viii</sup> Urvashi Narain and Ruth Greenspan Bell, “Who Changed Delhi’s Air? The Role of the Court and the Executive in Environmental Policymaking,” *Resources for the Future Discussion Paper* 05-48, December 2005.

<sup>ix</sup> Rick Westhead, “Battling for India’s Environment,” *The Star*, February 8, 2010.

<sup>x</sup> Mahesh C. Mehta, *In the Public Interest*, Prakriti Publications, 2009, p. 19; Robert Klonoff, “In the Public Interest: A Review,” *Environmental Law*, 39:4.

<sup>xi</sup> Robert Klonoff, *op. cit.*

<sup>xii</sup> Ibid.

<sup>xiii</sup> Siri Gloppen, “Public Interest Litigation: Social Rights and Social Policy,” working paper presented at the World Bank conference, New Frontiers in Social Policy, 2005.