

GAHC010142992023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3819/2023

TUSHAR KANTI PAUL AND 9 ORS.
S/O- LATE RAKESH CHANDRA PAUL,
R/O- CAPTAIN BISWAS LANE, HOSPITAL ROAD,
P.O AND P.S - SILCHAR,
DIST- CACHAR, ASSAM, PIN-788004

2: SAJAL KANTI PAUL
S/O- SUBODH CHANDRA PAUL

R/O- VILLAGE KALIPUR
KAILASHAHAR
UNAKOTI
STATE- TRIPURA
PIN-799279

3: SANDIP DEB
S/O- SUKHENDU KUMAR DEB

R/O- RAJBARI
NEAR MOTOR STAND
RAJBARI NORTH
STATE- TRIPURA
PIN-799253

4: MANJU RANI DEB
D/O- SUKHENDU KUMAR DEB
R/O- SHANICHARA
CHURAIBARI
DHARMANAGAR
NORTH TRIPURA

STATE- TRIPURA
PIN-799262

5: BISHWAJIT NATH
S/O- LATE BISHU CHANDRA NATH
R/O- MIDDLE NAYAPARA

DHARMANAGAR
NORTH TRIPURA

STATE- TRIPURA
PIN-799250

6: ANKITA DUTTA
D/O- AJAL DUTTA

R/O- WARD NO -3. HAILAKANDI TOWN

DIST- HAILAKANDI
ASSAM
PIN-788151

7: SANJIB DEBNATH
S/O- LATE DHIRENDRA CHANDRA DEB

R/O- LANE NO-4

PUBLIC SCHOOL ROAD

P.S- SILCHAR

DIST- CACHAR
ASSAM
PIN-788005

8: ANOWAR HUSSAIN
S/O- ANG BACHIT KHAN

R/O- VILLAGE SINGARIYA PART -I

P.S- NILAMBAZAR

DIST- KARIMGANJ
ASSAM
PIN-788722

9: KAJAL KANTI PAUL
D/O- SUBODH CHANDRA PAUL
R/O- LONGLIRPARA
KAILASHAHAR
UNAKOTI

STATE- TRIPURA
PIN-799277

10: KAMRUL ISLAM LASKAR
S/O- ABDUL JABBAR LASKAR

R/O- VILLAGE ALAMBAG

P.O- DIGAR SRIKONA

P.S- SILCHAR

DIST- CACHAR.
PIN-78802

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE SECRETARY TO THE GOVT OF ASSAM, DISPUR, GUWAHATI,
PIN-781006

2:THE COMMISSIONER OF TRANSPORT

GOVT. OF ASSAM
PARIBAHAN BHAWAN
JAWAHAR NAGAR
KHANAPARA
GUWAHATI-22.

3:THE STATE TRANSPORT AUTHORITY
ASSAM
REP. BY ITS SECRETARY
PARIVAHAN BHAVAN
KHANAPARA GUWAHATI -22

4:THE DEPUTY COMMISSIONER
AND CHAIRMAN
REGIONAL TRANSPORT AUTHORITY

KARIMGANJ

PIN-788710

5:THE DISTRICT TRANSPORT OFFICER
STEAMER GHAT ROAD
KARIMGANJ

PIN-78871

Advocate for the Petitioner : MR. T DEURI

Advocate for the Respondent : SC, TRANSPORT

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 11-10-2023

Heard Mr. T. Deuri, learned counsel appearing for the writ petitioners. Also heard Ms. S. Baruah, learned Govt. Advocate, Assam appearing for the respondent Nos. 1 and 4 as well as Ms. M.D. Bora, learned standing counsel, Transport Department, Assam appearing for the respondent Nos. 2, 3 and 5.

The writ petitioners herein are the bus owners. Their buses are operating in inter-state route between the States of Assam and Tripura. Aggrieved by the notification dated 02-03-2023, issued by the District Commissioner-cum-Chairman, RTO, Karimganj, i.e. respondent No. 4 providing that all inter-state buses including ASTC undertaking buses would run/ ply through Karimganj by-pass with immediate effect, the instant writ petition has been filed, *inter alia*, contending that the impugned notification imposes certain restriction as regards the plying of buses and the same has been issued in a most arbitrary and illegal manner, thus causing serious injury to the interest of the bus owners.

Mr. Deuri submits that the impugned notification, apart from being illegal, is also liable to be declared as *non-est* in the eyes of law since the same has not been notified in the official gazette.

This Court, after taking note of the fact that the notification dated 02-03-2023 had been issued by the respondent No. 4 in exercise of power under Section 115 of the Motor Vehicles Act, 1988, had passed order dated 06-10-2023 requiring the learned departmental counsel to obtain instruction as to whether, the notification dated 02-03-2023 has been published in the official gazette. Today when the matter is called up, Ms. S. Baruah, learned Govt. Advocate, Assam has produced a copy of the written instruction dated 10-10-2023 issued by the Addl. District Commissioner, Karimganj, which goes to show that the impugned notification dated 02-03-2023 had not been notified in the official gazette. Similar is the reflection in the written instruction dated 10-10-2023 issued to the learned standing counsel, Transport Department, Assam by the In-charge, DTO and Secretary of the RTA, Karimganj.

There is no doubt or dispute about the fact that the impugned notification dated 02-03-2023 has been issued in exercise of powers conferred under Section 115 of the MV Act.

Section 115 of the MV Act, 1988 reads as follows:-

“115. Power to restrict the use of vehicles.—The State Government or any authority authorised in this behalf by the State Government, if satisfied that it is necessary in the interest of public safety or convenience, or because of the nature of any road or bridge, may by notification in the Official Gazette, prohibit or restrict, subject to such exceptions and conditions as may be specified in the notification, the driving of motor vehicles or of any specified class or description of motor vehicles or the use of trailers either generally in a specified area or on a specified road and when any such prohibition or restriction is imposed, shall cause appropriate traffic signs to be placed or erected under section 116 at suitable places:

Provided that where any prohibition or restriction under this section is to remain in force for not more than one month, notification thereof in the Official

Gazette shall not be necessary, but such local publicity as the circumstances may permit, shall be given of such prohibition or restriction.”

By the impugned notification dated 02-03-2023, the restriction of plying of buses on certain roads has been imposed for an indefinite period.

From a plain reading Section 115 of the Act of 1988, it is apparent that if a notification issued under the said provision has to remain in force for a period more than 01 month, then the same ought to be notified in the official gazette. As such, it is apparent that in the event of failure to do so, by operation of law, the notification issued under Section 115 would lose its force on the expiry of one month from the date of its issuance.

In the present case, it is the admitted position of fact that the notification dated 02-03-2023 issued under Section 115 of the MV Act, 1988 was not notified in the official gazette. Therefore, it is self evident that the impugned notification had lost its force on the expiry of one month from the date of issuance of the same. If that be so, the notification dated 02-03-2023 cannot be deemed to remain in force after expiry of one month, which in the present case would be w.e.f. 02-04-2023. Therefore, by clarifying that the notification dated 02-03-2023 has spent its force on the expiry of the period of one month from the date of its issuance, this writ petition stands closed.

Liberty is, however, granted to the concerned authorities to issue fresh notification, in accordance with law, if so advised. In the event, any fresh notification is issued and/ or published, it will also be open for the petitioners to assail the same by filing appropriate proceeding since the issue raised in the writ petition has not been decided on merit.

By retaining copies of the written instructions obtained by the learned departmental counsel, this writ petition stands disposed of.

JUDGE

GS

Comparing Assistant