

GAHC010116492024



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

Case No. : WP(C)/3039/2024

MUSRIFUR RAHMAN
SON OF SYED JALILUR RAHMAN, RESIDENT OF HOUSE NO.3, BYE LANE
1, NABAJYOTI NAGAR, PANJABARI, KAMRUP METRO ASSAM, PIN- 781037

VERSUS

STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM, TRANSPORT DEPARTMENT, DISPUR, GUWAHATI-6

2:THE REGIONAL TRANSPORT AUTHORITY
REPRESENTED BY THE DISTRICT TRANSPORT OFFICER AND SECRETARY
KAMRUP METRO
BETKUCHI GUWAHATI-40

3:DISTRICT TRANSPORT OFFICER AND SECRETARY
REGIONAL TRANSPORT AUTHORITY
KAMRUP METRO
BETKUCHI GUWAHATI-40

4:DISTRICT TRANSPORT OFFICER (DTO)
KAMRUP METRO
BETKUCHI GUWAHATI-40

5:SRI NITU CHETIA
ENFORCEMENT INSPECTOR
DISTRICT TRANSPORT OFFICER
KAMRUP METRO
BETKUCHI
GUWAHATI-4

Advocate for the Petitioner : MR. A SARMAH

Advocate for the Respondent : SC, TRANSPORT DEPARTMENT, ASSAM

Linked Case : **WP(C)/3025/2024**

UDIPTA SAIKIA
SON OF LOLIT CHANDRA SAIKIA
RESIDENT OF NEAR RAILWAY STATION
SANTIPUR
MORANHAT
CHARAIDEO
ASSAM
PIN- 786670

VERSUS

STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM
TRANSPORT DEPARTMENT
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GUWAHATI-40

4:DISTRICT TRANSPORT OFFICER (DTO)
KAMRUP METRO
BETKUCHI GUWAHATI-40

5:SRI BIKRAMADITYA GOGOI
ENFORCEMENT INSPECTOR DISTRICT TRANSPORT OFFICE
KAMRUP METRO
BETKHUCHI
GUWAHATI-40

Advocate for : MR. A SARMAH
Advocate for : SC
TRANSPORT DEPARTMENT
ASSAM appearing for STATE OF ASSAM AND 4 ORS

Linked Case : **WP(C)/3048/2024**

NRIPEN CH DAS
SON OF PRAFULLA CHANDRA DAS
RESIDENT OF DHARAPUR
AZARA
IN THE DISTRICT OF KAMRUP (METRO)
ASSAM PIN- 781017

VERSUS

STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM
TRANSPORT DEPARTMENT
DISPUR
GUWAHATI-6

2:THE REGIONAL TRANSPORT AUTHORITY
REPRESENTED BY THE DISTRICT TRANSPORT OFFICER AND SECRETARY
KAMRUP
METRO
BETKUCHI
GUWAHATI-40

3:DISTRICT TRANSPORT OFFICER AND SECRETARY
REGIONAL TRANSPORT AUTHORITY
KAMRUP METRO
BETKUCHI
GUWAHATI-40

4:DISTRICT TRANSPORT OFFICER (DTO)
KAMRUP METRO
BETKUCHI
GUWAHATI-40

5:SRI HIMANGSHU KUMAR DAS
DISTRICT TRANSPORT OFFICER
KAMRUP METRO
BETKUCHI
GUWAHATI-40

6:SRI BIKRAMADITYA GOGOI
ENFORCEMENT INSPECTOR
OFFICER OF THE DISTRICT TRANSPORT OFFICER
KAMRUP METRO
BETKUCHI
GUWAHATI-40

Advocate for : MR. A SARMAH
Advocate for : SC
TRANSPORT DEPARTMENT
ASSAM appearing for STATE OF ASSAM AND 5 ORS

Linked Case : **WP(C)/3028/2024**

RAJESH RAM PHOOKAN
S/O- PRABIN RAM PHOOKAN
R/O- HOUSE NO. 35
BYE LANE NO. 03
SWARAJ NAGAR
SARUMOTORIA
ASSAM SACHIVALAYA
P.S. DISPUR
KAMRUP (METRO)
ASSAM
PIN- 781006.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM
TRANSPORT DEPARTMENT
DISPUR
GUWAHATI-6.

2:THE REGIONAL TRANSPORT AUTHORITY
REPRESENTED BY THE DISTRICT TRANSPORT OFFICER AND SECRETARY
KAMRUP(M)
BETKUCHI
GUWAHATI-40.

3:DISTRICT TRANSPORT OFFICER AND SECRETARY
REGIONAL TRANSPORT AUTHORITY
KAMRUP METRO
BETKUCHI
GUWAHATI-40.

4:DISTRICT TRANSPORT OFFICER (DTO)

KAMRUP METRO
BETKUCHI
GUWAHATI-40.
5:HIMANGSHU KUMAR DAS

DISTRICT TRANSPORT OFFICER
KAMRUP METRO
BETKUCHI
GUWAHATI-40.

Advocate for : MR. A SARMAH
Advocate for : SC
TRANSPORT DEPARTMENT
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

Date : 14.06.2024

Heard Mr. A. Sarmah, learned counsel for the petitioners, Ms. M. D. Borah, learned counsel for the Transport Department and Mr. P. Mahanta, learned counsel for the private respondents.

2. The petitioners are aggrieved with the challans issued to them by the Enforcement Wing of the Transport Department, wherein fines had been imposed for violating the terms and conditions of their diesel bus permits, while running their buses.

3. The petitioners' counsel submits that though the fines imposed upon the petitioners appear to have been made due to violation of the terms and conditions of the bus permit, the same has actually been done due to the fact that the petitioners along with many other bus owners, had put a challenge to the decision of the State respondents, to run electric buses by offroading the buses that were running on diesel. He submits that the said case was registered as WP(C) 550/2024 and this Court, vide order dated 07.02.2024, had put a stay on the offroading of the buses that were being run on diesel. Further in the

order dated 07.02.2024, this Court had also held that the pendency of WP(C) 550/2024 would not be a bar for the State respondents, to consider the modification of the permit of those 200 numbers of buses after hearing the bus holders, strictly under the provisions of Motor Vehicles Act, 1988 and the Rules framed thereunder.

4. The petitioners' counsel submits that it is because of the challenge made by the petitioners to the scheme made by the State respondents to run electric buses by offroading diesel buses, that the respondents are now imposing fines for running the diesel buses of the petitioners. He also submits that the buses that have been caught violating the terms and conditions of the bus permit, are being parked in places where the responsibility and safety of the buses is not being taken up by the respondent authorities. He accordingly submits the respondents cannot be allowed to seize the vehicles of the petitioners, just because the terms and conditions of the permit have been violated and parking them in unsecured areas.

4. The petitioners' counsel accordingly prays that the respondents should be directed to release the vehicles of the petitioners and to withdraw the fines imposed upon them.

6. Ms. M. D. Borah, learned counsel for the Transport Department and Mr. P. Mahanta, learned counsel for the private respondents submit that all the cases pertain only to imposition of fines by way of challans, due to the buses of the petitioners not complying with the terms and conditions of the bus permits. As such, the matter only pertains to payment of fines. They submit that the petitioners should not be allowed to challenge challans for violations of the terms and conditions of the bus permits in writ proceedings, when there is an alternative remedy available to the petitioners. They submit that the petitioner

can always file an appeal in the Grievance Redressal System portal of the Ministry of Road Transport and Highways.

7. I have heard the learned counsels for the parties.

8. WP(C) 3039/2024 pertains to the challan for picking up passengers from unauthorized bus stops, wherein the petitioner has been fined Rs. 10,000/-. The bus number involved is AS01MC0522.

In WP(C) 3025/2024, the bus number involved is AS01LC4637 and a fine of Rs. 10,000/- has been imposed, as the bus was found carrying passengers with both the doors open.

In WP(C) 3048/2024, the bus number involved is AS01LC2492 The traffic challan is in relation to a fine of Rs.10,000/-, for carrying passengers while running with both the doors open.

In WP(C) 3028/2024, the bus number involved is AS01JC7686, wherein a fine of Rs.10,000/- has been imposed for carrying passengers with both the doors open, besides picking up passengers at unauthorized stoppage points.

9. The terms and conditions of the petitioners' bus permits are to the following effect:-

“(1) The Bus will strictly follow the Route as per Permit

(2) Route No., Routes, details and Permit Route Number to be prominently displayed on front, back and left side of the City Buses as notified vide Notification No.CT-STA/14/2017 Dated Guwahati the 14th Feb. 2020.

***(3)** Door of the City Buses must be closed at the time of running.*

***(4)** The Door will be open only at the Bus Stoppages. The Bus would not move out of the parking slot/Bus lay bay. Until both the doors are closed.*

- (6) Time Card has to be maintained by the Associations.*
- 5) Rear Door shall be used to ingress and Front Side Door is kept for Exit from the Bus*
- (7) The Buses will be allowed to wait only for one minute at a stop.*
- (8) GPS device must Be Installed and activated in the Bus.*
- (9) Police Whatsapp Complain No must be displayed on the back side of the City Buses.*
- (10) Ticket must be issued to the Passengers.*
- (11) The Behavior of Driver/Conductor/Staff of the City Buses should be Polite and helpful.*
- (12) Left side Overtaking is totally prohibited one Bus will not overtake another Bus running on the same route*
- (13) Uniform must be worn by the staff of the City Buses. (14) Seat Belt use is Mandatory for the Driver of the City Buses.*
- (15) Smoking by the staff and passengers is totally prohibited inside the City Buses.*
- (16) Over Loading of Passenger is prohibited.*
- (17) Driving dangerously and Excessive Speed is Un-Lawful.*
- (18) Unauthorized Parking of the City Buses is Un-Lawful.*
- (19) Noise and Air Pollution is an offence.*
- (20) Blowing Horn near notified areas i.e. School, College, Hospital, Educational Institute, etc, is prohibited.*
- (21) Driving under influence of Alcohol by the staff is strictly prohibited.*

(22) In no case the Buses will divert from the route allowed in the Permit.

() Violation of any of the above condition will result in suspension/cancellation of Permit.”*

10. A perusal of the challans clearly show that the penalties imposed are relatable to violation of the terms and conditions of the bus permit. Doors of the buses can be opened only at Bus Stops. As such, picking up passengers by opening doors at places other than bus stop is a violation of the terms and condition No. 4 of the bus permit. Though the petitioner has tried to make out a case that the challenge made to the scheme for offroading diesel buses by the State Government was the reason for issuance of the challans to the petitioners, this Court is of the view that the said issue raised by the petitioners pertains to disputed questions of fact and as such, cannot be decided by a writ court. Factual disputes requiring recording of evidence may have to be decided before a Civil Court. Further, as there is an alternative remedy available, which can be availed of by the petitioners, by filing an appeal before the Grievance Redressal System in the portal opened by the Ministry of Road Transport Department and Highways, this Court is of the view that the petitioners would have to avail the alternative remedy available. To deal with challans involving disputed questions of facts in a writ proceeding is not appropriate.

11. In view of the reasons stated above, these writ petitions stand dismissed, as there is an alternative remedy available.

JUDGE

Comparing Assistant