

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

**WPA No. 20632 of 2021
Sk Sajed Ali and others
Vs.
State of West Bengal and others**

With

**WPA No. 17069 of 2014
Burdwan District Bus
Association and others
Vs.
State of West Bengal and others**

With

**WPA No. 20611 of 2021
Sunil Kumar Mondal
Vs.
State of West Bengal and others**

With

**WPA No. 22916 of 2014
Alauddin Mondal and others
Vs.
State of West Bengal and others**

With

**WPA No. 24423 of 2014
Anil Chowdhury and others
Vs.
State of West Bengal and others**

With

**WPA No.2662 of 2022
Sk. Jahiruddin and others
Vs.
State of West Bengal and others**

With

WPA No. 28026 of 2013
+
CAN 1 of 2013(Old CAN 10911 of 2013)
Burdwan District Bus
Association and others
Vs.
State of West Bengal and others

With

WPA No. 2824 of 2022
Sk Amir Ali and others
Vs.
State of West Bengal and others

With

WPA No. 2826 of 2022
Narottam Majumdar and others
Vs.
State of West Bengal and others

With

WPA No. 33889 of 2013
Sekhar Chatterjee and others
Vs.
State of West Bengal and others

With

WPA No.4331 of 2022
Chandra Sekhar Maji and others
Vs.
State of West Bengal and others

For the petitioner
in WPA 20632 of 2021 : Mr. N. I. Khan,
Mr. Amlan Kumar Mukherjee

For the petitioner in
WPA 17069 of 2014,
WPA 33889 of 2013,
WPA 28026 of 2013,
WPA 2662 of 2022 and
WPA 4331 of 2022. : Mr. Sanat Kumar Roy,
Mr. Atanu Basu,
Mr. Abhishek Banerjee

For the petitioner in WPA 20611 of 2021	:	Mr. Dilip Kumar Samanta, Mr. Biswapriya Samanta
For the State in WPA 20611 of 2021	:	Mr. Santanu Kumar Mitra, Md. Mirza Kamruddin
For the State in WPA 2824 of 2022	:	Mr. Amal Kumar Sen, Mr. Lal Mohan Basu
For the State in WPA 20632 of 2021 and WPA 17069 of 2014	:	Mr. Amal Kumar Sen, Mr. Jaladhi Das
For the State in WPA 22916 of 2014	:	Mr. Pantu Deb Roy, Mr. Subrata Guha Biswas
For the state in WPA 2826 of 2022, WPA 2662 of 2022 and WPA 4331 of 2022	:	Mr. Srijan Nayak, Ms. Rituparna Maitra
For the added respondents in WPA 20632 of 2021	:	Mr. Arabinda Chatterjee, Mr. Arkadipta Sengupta
For the State	:	Mr. Amitesh Banerjee, Ms. Ipsita Banerjee
Hearing concluded on	:	29.08.2022
Judgment on	:	02.09.2022

Sabyasachi Bhattacharyya, J:-

1. All the writ petitions arise from connected set of facts. The parent Notification dated March 13, 2012, which directed a change of Bus

Terminal from Tinkonia in Burdwan to Nawabhat and Alisha, was published in the official gazette on April 12, 2012.

2. Subsequently, another notification was published by the District Magistrate, Burdwan on June 6, 2014, reiterating the 2012 Notification and declaring that the same would be strictly followed with effect from June 15, 2014. The said Notification, bearing no.2314/MV, was published, however, on October 31, 2014.
3. The District Magistrate again issued a notice on November 12, 2021 along with the Chairman of the Regional Transport Authority, Purba Bardhaman directing compliance of Notification No.2314/MV date June 6, 2014.
4. In compliance of the said Notification, the Burdwan District Bus Association, along with others, preferred a writ petition bearing WPA No.14171 of 2021 which was disposed of by a co-ordinate bench of this Court on September 14, 2021, directing the District Magistrate, Purba Bardhaman to consider the representation of the BDA date January 29, 2021.
5. Such order was complied with and upon a meeting being held in compliance therewith, the District Magistrate, Purba Bardhaman passed an order on October 28, 2021 directing the Notification No.2314/MV dated June 6, 2014, published on October 31, 2014, to be strictly followed. The Secretary, RTA was directed to issue a general notice to all concerned permit holders under his jurisdiction, that is, Purba Bardhaman to change or modify their termini from Burdwan to Nababhat bus stand or to Alisha bus stand, as the case may be, by November 30, 2021 from the Motor Vehicles Section, Purba Bardhaman.

6. On November 12, 2021, the District Magistrate, Purba Bardhaman and the Chairman, RTA, Purba Bardhaman issued a notice directing all permit holders to modify the termini of their respective permits accordingly in terms of the Notification dated June 6, 2014.
7. On November 16, 2021, the Secretary, RTA, Purba Bardhaman, vide memo no.1752/MVPBDN, directed the bus owners associations to comply with the Notification dated June 6, 2014.
8. The writ petitioners in most of the cases are long distance bus operators whose routes run through Burdwan Town, Purba Bardhaman who are aggrieved by the implementation of the Notification dated June 6, 2014. It is submitted by the said petitioners that whereas the RTA, Purba Bardhaman was to give one month's notice under Section 72(2)(xxii) of the Motor Vehicles Act, 1988 (for the sake of brevity, "the MV Act"), a much shorter notice was given in the instant case.
9. It is further contended by the writ petitioners that whereas the appropriate authority to take action under Sections 115 and 116 of the MV Act is the State, the District Magistrate issued such notification in the present case without having any authority to do so.
10. Moreover, the impugned notices dated November 12, 2021 and November 16, 2021, issued by the District Magistrate and the Secretary, RTA, Purba Bardhaman respectively, were not published in the Official Gazette as required under Sections 115 and 116 of the MV Act.
11. It is submitted that the respondent-Authorities curtailed the respective permits with regard to the routes of the long distance operators without

complying with the provisions of Sections 72, 86, 115, 116 and 212(2) of the MV Act.

- 12.** Learned counsel for the long distance operators also contends that the operators plying within Burdwan Town, particularly the added respondent in WPA No.20632 of 2021, are not valid permit holders.
- 13.** It is further argued that it is the State Government which may notify rules prohibiting picking up or setting down of passengers in stage carriages within the contemplation of Section 96(2)(xxi) of the MV Act.
- 14.** The respondent-Authorities argue that the District Magistrate, by notification in Official Gazette or erection of traffic sign, or both, can prohibit the use of specified places or places of specified nature or class in respect of picking up or setting down passengers in respect of public service vehicles or specified classes of such vehicles under Rule 182(1) of the West Bengal Motor Vehicles Rules, 1989 (hereinafter referred to as, “the MV Rules”).
- 15.** It is argued that Sections 115 and 116, read with Section 138(1) of the MV Act, confers rule-making power under Chapter VIII of the MV Act, as applicable in the present case. The District Magistrate, under the rule-making power of the State, is designated as an authority to function under Sections 115 and 116 in terms of the Rule 182 of the MV Rules.
- 16.** It is, thus, argued that the impugned notifications are perfectly within the ambit of law.
- 17.** The intra-Burdwan Town bus operators also argue that the writ petitions by the long distance operators have been preferred on the basis of surmise and conjecture. It is argued that a policy decision taken by the authorities

can only be challenged on certain specific grounds, as stipulated in Paragraph 65 of the judgment reported at (2008) 2 SCC 672 [*Delhi Development Authority and another Vs. Joint Action Committee, Allottee of SFS Flats and others*].

18. It is submitted that the relevant notifications of 2012 of 2014 refer to a report by experts from the IIT Kharagpur, who indicated the mode of regulating traffic for reducing the extreme congestion in the town of Burdwan. Accordingly, the said notifications were sought to be implemented, to which there cannot be any objection from any quarter.
19. It is further argued that the Sections quoted in the Notifications amply confer power on the authorities to take such action.
20. Since the District Magistrate is the concerned authority under Rule 182 of the MV Rules, it is argued that the Notification of 2014 and the notices for implementation of the same ought not to be reopened under Article 226 of the Constitution of the India. There has been a series of meetings between the stakeholders, upon which the decisions have been taken. As such, the same cannot be deviated from in public interest.
21. Inasmuch as the cited judgments are concerned, the ratio laid down by the Division Bench in the unreported judgment dated March 15, 2022 delivered in *MAT 1345 of 2021 (with IA No. 1 of 2021) [Sunil Kumar Mondal Vs. Burdwan District Bus Association and others]* does not have any direct bearing on the present issue, since the Division Bench adjourned the appeal *sine die* keeping the point of maintainability open with liberty to the parties to mention the matter before the Single Bench.

- 22.** The judgment of the Supreme Court reported at (2013) 5 SCC 427 [*Rajasthan State Industrial Development and Investment Corporation Vs. Subhash Sindhi Cooperative Housing Society, Jaipur and others*], does not have any direct relevance in the context of the present matters. In the said judgment, any notice, circular, guidelines, etc. which run contrary to statutory laws were held not to be enforceable within the zone of consideration of Articles 226 and 32 of the Constitution of India. However, in the present case, there is no such statutory violation to attract the jurisdiction of this Court under Article 226 of the Constitution of India.
- 23.** The co-ordinate Bench in *New Punjab Calcutta Transport Co. (Private) Ltd. Vs. Commissioner of Police, Calcutta*, reported at 66 CWN 1029i, stipulates that Section 74 of the MV Act does not touch on the fundamental rights of the petitioners to carry on business and the satisfaction enjoined therein is not arbitrary in nature. Such restrictions, it was held, cannot be imposed merely at the whim of authorities but may only be done either in the interest of public safety or convenience or regard being had to the nature of any road or bridge. In the present case, public interest and safety were taken into consideration while passing the Notifications-in-question. As such, the principle laid down in the said judgment validates the stand of the respondent-authorities.
- 24.** In *T.B. Ibrahim Vs. The Regional Transport Authority, Tanjore*, reported at AIR 1953 SC 79, the Supreme Court observed that there is no fundamental right in a citizen to carry on business wherever he chooses and his right must be subject to any reasonable restriction imposed by the executive authority in the interest of public convenience. For the convenience of the

travelling public, the Transport Authority resolved to alter the starting places and termini of all public service vehicles (other than motor cabs) in a particular specified locality from specified bus stands. Keeping in view the element of public convenience, such decisions of the authorities were upheld by the Five-Judge Bench of the Supreme Court in the said case.

- 25.** Inasmuch as *State of Orissa and another Vs. Radheyshyam Meher and others* reported at (1995) 1 SCC 652 is concerned, the Supreme Court specifically held that in the absence of any rule or regulation to the contrary, the power of the State cannot be abridged on the basis of an individual interest of a certain trader, even to the extent of restricting the State's capacity to advance larger public good. Applying the said principle in the present case, the District Magistrate, under the authority of the State Government as contemplated in Sections 115 and 116 read with Section 138(1) of the MV Act, acted well within his jurisdiction in passing the impugned Regulations.
- 26.** Upon a consideration of the arguments of the parties, certain Sections stand out as of particular importance in the present adjudication.
- 27.** Section 72(2)(xxii) of the MV Act contemplates the attachment of conditions to permits issued for stage carriages by the concerned Regional Transport Authority (RTA) in case of individual permit holders.
- 28.** Section 86 of the said Act speaks about cancellation and suspension of such individual permits and provides the procedure for the same.
- 29.** Sections 115 and 116, MV Act, on the other hand, deal with the power to restrict the use of vehicles and to erect traffic signs in public places

respectively, by the State Government or any authority authorised in this behalf by the State Government.

- 30.** Section 138 relates to the rule-making power of the State Government for the purpose of carrying into effect the provisions of Chapter VIII of the MV Act.
- 31.** Section 96, again, confers rule-making power on the State Government for giving effect to the provisions of Chapter V.
- 32.** It may be noted that Chapter VIII deals with control of traffic and includes within its fold Sections 115 and 116.
- 33.** On the other hand, Chapter V of the MV Act deals with control of transport vehicles and includes Sections 72 and 86, which have been cited in connection with the present case.
- 34.** It is evident from the materials of the present case that the impugned notices dated November 12 and November 16 of 2021 were both issued pursuant to the Gazette Notification dated June 6, 2014, which was to take effect from June 15, 2014, although the same was published in the Gazette on October 31, 2014. Notification No. 2314/MV dated June 6, 2014 merely reiterates the parent Notification dated March 13, 2012 published in the Official Gazette on April 12, 2012.
- 35.** The plinth of both the Gazette Notifications was the shifting of bus terminal from Tinkonia to Nababhat and Alisha respectively and the shifting of buses consequentially by classifying the stage carriages into those plying on long distance routes traversing Burdwan Town and the intra-Burdwan Town stage carriages.

- 36.** As rightly contended by the respondent-authorities, the said classification was based on intelligible differentia and cannot be said to have violated Article 14 of the Constitution of India. The authorities had ample power within the contemplation of the MV Act and the Rules, to take necessary measures for controlling and regulating the traffic congestion in Burdwan Town in particular and Purba Bardhaman District in general.
- 37.** The Notifications under consideration in the instant case were clearly issued within the contemplation of Sections 115 and 116 of the MV Act. Gazette Notifications were issued in 2012 and subsequently 2014 and published in the Official Gazette by the District Magistrate, Purba Bardhaman exercising his power to restrict use of vehicles in public places and to bring to public notice such prohibitions or restrictions.
- 38.** Section 138(1) of the MV Act confers rule-making power on the State Government for any exercise under Chapter VIII of the MV Act, which includes Sections 115 and 116. Rule 182 of the MV Rules authorises the District Magistrate in districts and the Commissioner of Police in Kolkata, as the case may be, as the designated authority to function under Sections 115 and 116 of the MV Act.
- 39.** Hence, the District Magistrate acted well within his authority in publishing the impugned Gazette Notifications.
- 40.** Inasmuch as Section 96(1) is concerned, the same relates to Chapter V, which has no direct conflict with Chapter VIII of the Act. Chapter V, as discussed earlier, speaks about control of transport vehicles whereas Chapter VIII deals with control of traffic, which supplement each other and do not have any conflict *inter se*.

41. Sections 72 and 86 both relate to attaching conditions or cancellation and suspension of permits in respect of individual permit-holders for stage carriages and do not cover general policy decisions, as in the present case.
42. Hence, the said provisions are not applicable in the instant matter at all, thus negating the argument of the long distance operators that the said provisions were not complied with by the authorities.
43. Inasmuch as Section 212(2) of the MV Act is concerned, the same contains the general provision that all rules made under the MV Act shall be made upon publication in the Official Gazette. The said provision is not attracted in view of due compliance of Sections 115 and 116 of the MV Act read with Rule 182 of the MV Rules, which are applicable in the present case.
44. Inasmuch as the impugned Notifications and notices are concerned, those affect individual bus operators collaterally and indirectly at the most, but do not pertain directly to alteration of conditions of permits of individual operators.
45. Inasmuch as the cited judgment of *Delhi Development Authority* (supra) is concerned, the specific parameters of interference by the writ court with policy decisions have been laid down in paragraph 65 thereof as follows:
 - (a) if it is unconstitutional;
 - (b) if it is *de hors* the provisions of the act and the regulations;
 - (c) if the delegatee has acted beyond its power of delegation;
 - (d) if the executive power is contrary to the statutory or a larger policy.
46. The present case, as is evident from the materials-on-record, does not come within the purview of any of such parameters.

- 47.** Insofar as the impugned Notifications are concerned, the same were issued by the respondent-Authorities for alleviating the serious traffic congestion in Burdwan town and its vicinity, in the District of Purba Bardhaman, with which this Court finds no fault either in law or on facts.
- 48.** Hence, the aforesaid writ petitions bearing WPA No. 20632 of 2021, WPA No. 17069 of 2014, WPA No. 20611 of 2021, WPA No. 22916 of 2014, WPA No. 24423 of 2014, WPA No.2662 of 2022, WPA No. 28026 of 2013 with CAN 1 of 2013(Old CAN 10911 of 2013), WPA No. 2824 of 2022, WPA No. 2826 of 2022, WPA No. 33889 of 2013, WPA No.4331 of 2022 are disposed of upholding the Gazette Notification no.2314/MV dated June 6, 2014, published in the Official Gazette on October 31, 2014, along with the impugned notices dated November 12 and November 16 of 2021 issued by the District Magistrate and the RTA, Purba Bardhaman.
- 49.** There will be no order as to costs.
- 50.** Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)