

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

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No. 9980 of 2022

**Satyen Sharat
Vs.
State of West Bengal and others**

For the petitioner	:	Mr. Dilip Kumar Samanta, Mr. Biswapriya Samanta
For the State	:	Mr. Pantu Deb Roy, Mr. Pannalal Bandopadhyay
Hearing concluded on	:	20.06.2022
Judgment on	:	01.07.2022

Sabyasachi Bhattacharyya, J:-

1. The petitioners are bus operators on various routes between Purnea and Kishengunge. The said routes pass both within the jurisdiction of the States of Bihar and West Bengal. The present challenge has been preferred against a draft Notification dated May 16, 2014 and a final Reciprocal Transport Agreement dated February 22, 2016, both published in the Kolkata Gazette by the Principal Secretary, Transport Department, Government of West Bengal.
2. The petitioners' primary contention is that the said draft agreement, which ripened into the final Reciprocal Transport Agreement, are

violative of the provisions of Section 88 of the Motor Vehicles Act, 1988 (hereinafter referred to as, “the 1988 Act”). In respect of the *locus standi* of the petitioners to file the writ petition, the petitioners place reliance on a Special Bench judgment of this Court in *Prabhat Pan and others Vs. The State of West Bengal and others*, reported at *AIR 2015 Cal 112*, wherein it was held that the existing operator has a right to raise objection against the illegal, arbitrary grant of permit by the Transport Authority, more so, in respect of grants of permit which are affected by colourable exercise of power or otherwise violative of Article 14, of the Constitution of India.

3. Learned counsel for the petitioner further cites a Constitutional Bench judgment of the Supreme Court in *Tilokchand and Motichand and others Vs. H.B. Munshi and another*, reported at *(1969) 1 SCC 110*, which was rendered in the context of Article 32 of the Constitution, for the proposition that if the fundamental right of the petitioner, as guaranteed in the Constitution of India, is violated by not rendering equal protection of law, a writ petition is maintainable. It is argued that the same principle applies to Article 226 of the Constitution as well, in respect of the High Courts.
4. As regards the objection as to delay raised by the respondents, the petitioner places reliance on *Delhi Administration and others Vs. Madan Lal Nangia and others* [(2003) 10 SCC 321] in support of the proposition that the Limitation Act, 1963 does not apply in writ proceedings.

5. It is submitted that Section 88(7) of the 1988 Act, which was apparently relied on by the two States concerned in introducing 24 Inter-State Bus Routes alleging concurrence, confers no independent authority for introduction of inter-state routes without having any final agreement for such routes. As such, the initial action of both the states introducing 24 inter-state bus routes on the strength of concurrence under Section 88(7) is contended to be not in consonance with law and to vitiate all subsequent actions, including the final agreement, which are *non est* in the law and are liable to be set aside.
6. Learned counsel cites, in support of such proposition, the judgments of the Supreme Court in *Badrinath Vs. Government of Tamil Nadu and others* [(2000) 8 SCC 395], *Chairman-Cum-Managing Director, Coal India Limited and others Vs. Ananta Saha and others* [(2011) 5 SCC 142] and *State of Punjab Vs. Davinder Pal Singh Bhullar and others* [(2011) 14 SCC 770]. Learned counsel for the petitioners further cites the judgment of *State of Punjab Vs. Davinder Pal Singh Bhullar and others* [(2011) 14 SCC 770], where it was held that Law is an endless process of testing and retesting, as said by Justice Cardozo in his conclusion of the Judicial Process, ending in a constant rejection of the dross and retention of whatever is pure and sound.
7. On the facts, the petitioners contend that in the 1988 Transport Agreement, the inter-state route Purnea to Kishengung had been introduced with allotment of 11 permits in favour of Bihar and no permit in favour of West Bengal. The same had been introduced on

the ground that both the terminal point and starting point lie in the State of Bihar with coverage of 17 kilometers in the State of West Bengal, having corridor facility of over 16 kilometers for the operators of Bihar in terms of the Proviso to Section 88(1) of the 1988 Act. It is argued that the said ratio has been totally destroyed and given a go-bye while executing the inter-state agreement of 2016 and, in the routes like Purnea and Kishengunge, which satisfy the parameters of the 1988 Agreement, the reciprocal understanding arrived at in 1988 has been given a go-bye by allotting 10 permits in each of the three routes including the Purnea – Kishengunge route in favour of the State of West Bengal. Such allegation, it is argued, is disproportionate, irrational and unreasonable, for which the impugned draft agreement and final agreement are liable to be set aside.

8. The respondents contend that the petitioners have no *locus standi* to file the writ petition as an existing operator, being a rival in trade with the other operators plying their vehicles over the impugned routes. By placing reliance on *Mithilesh Garg and others Vs. Union of India and others* [AIR 1992 SC 443], learned counsel for the respondents submits that, just because the plying of other vehicles in such routes is affecting the interest of the petitioners on financial grounds, existing operators including the petitioners have no right to challenge such ground of permit.

9. It is further argued that the writ petition should be dismissed for non-joinder of the other existing operators, who are necessary parties to the writ petition.
10. The draft notification dated May 16, 2014 and the final Reciprocal Transport Agreement dated February 22, 2016, it is argued, had been duly notified in the Kolkata Gazette. No person came forward to make any objection within 30 days from the publication of the draft notification in terms Section 88(5) of the 1988 Act, nor did anybody file any objection or make any complaint against the final notification.
11. After the lapse of so many years, the writ petitioner ought not to be permitted to file the writ petition against the 2014 and 2016 notifications, it is argued.
12. On such ground as well, the writ petition is contended to be liable to be dismissed.
13. The respondents also rely on a Full Bench judgment of this court rendered in *Prabhat Pan Vs. State of West Bengal*, reported at (2015) 2 CHN (Cal) 185. It is contended that the judgments cited by the petitioners are not germane in the context of the present proceeding.
14. The cardinal issue in the present writ petition is, whether the draft agreement of 2014 and final agreement of 2016, both of which were duly notified in the Kolkata Gazette, ought to be struck down, being in contravention of Section 88 of the 1988 Act. The said provision is set out hereinbelow:

“Section 88: Validation of permits for use outside region in which granted.—

(1) Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned:

Provided that a goods carriage permit, granted by the Regional Transport Authority of any one region, for any area in any other region or regions within the same State shall be valid in that area without the counter-signature of the Regional Transport Authority of the other region or of each of the other regions concerned:

Provided further that where both the starting point and the terminal point of a route are situate within the same State, but part of such route lies in any other State and the length of such part does not exceed sixteen kilometres, the permit shall be valid in the other State in respect of that part of the route which is in that other State notwithstanding that such permit has not been countersigned by the State Transport authority or the Regional Transport Authority of that other State:

Provided also that—

(a) where a motor vehicle covered by a permit granted in one State is to be used for the purposes of defence in any other State, such vehicle shall display a certificate, in such form, and issued by such Authority, as the Central Government may, by notification in the Official Gazette, specify, to the effect that the vehicle shall be used for the period specified therein exclusively for the purposes of defence; and

(b) any such permit shall be valid in that other State notwithstanding that such permit has not been countersigned by the State Transport Authority or the Regional Transport Authority of that other State.

(2) Notwithstanding anything contained in sub-section (1), a permit granted or countersigned by a State Transport Authority shall be valid in the whole State or in such regions within the State as may be specified in the permit.

(3) A Regional Transport Authority when countersigning the permit may attach to the permit any condition which it might have imposed if it had granted the permit and may likewise vary any condition attached to the permit by the authority by which the permit was granted.

(4) The provisions of this Chapter relating to the grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of countersignatures of permits:

Provided that it shall not be necessary to follow the procedure laid down in section 80 for the grant of countersignatures of permits, where the permits granted in any one State are required to be countersigned by the State Transport Authority of another State or by the Regional Transport Authority concerned as a result of any agreement arrived at between the States after complying with the requirements of sub-section (5).

(5) Every proposal to enter into an agreement between the States to fix the number of permits which is proposed to be granted or countersigned in respect of each route or area, shall be published by each of the State Governments concerned in the Official Gazette and in any one or more of the newspapers in regional language circulating in the area or route proposed to be covered by the agreement together with a notice of the date before which representations in connection therewith may be submitted,

and the date not being less than thirty days from the date of publication in the Official Gazette, on which, and the authority by which, and the time and place at which, the proposal and any representation received in connection therewith will be considered.

(6) Every agreement arrived at between the States shall, in so far as it relates to the grant of countersignature of permits, be published by each of the State Governments concerned in the Official Gazette and in any one or more of the newspapers in the regional language circulating in the area or route covered by the agreement and the State Transport Authority of the State and the Regional Transport Authority concerned shall give effect to it.

(7) Notwithstanding anything contained in sub-section (1), a Regional Transport Authority of one region may issue a temporary permit under section 87 to be valid in another region or State with the concurrence, given generally or for the particular occasion, of the Regional Transport Authority of that other region or of the State Transport Authority of that other State, as the case may be.

(8) Notwithstanding anything contained in sub-section (1), but subject to any rules that may be made under this Act by the Central Government, the Regional Transport Authority of any one region or, as the case may be, the State Transport Authority may, for the convenience of the public, 1[grant a special permit to any public service vehicle including any vehicle covered] by a permit issued under section 72 (including a reserve stage carriage) or under section 74 or under sub-section (9) of this section for carrying a passenger or passengers for hire or reward under a contract, express or implied, for the use of the vehicle as a whole without stopping to pick up or set down along the line of route passengers not included in the contract, and in every case where such special permit is granted, the Regional Transport Authority shall assign to the vehicle, for display thereon, a special distinguishing mark in the form and manner specified by the Central Government and such special permit shall be valid in any other region or State without the countersignature of the Regional Transport Authority of the other region or of the State Transport Authority of the other State, as the case may be.

(9) Notwithstanding anything contained in sub-section (1) but subject to any rules that may be made by the Central Government under sub-section (14), any State Transport Authority may, for the purpose of promoting tourism, grant permits in respect of tourist vehicles valid for the whole of India, or in such contiguous States not being less than three in number including the State in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application and the provisions of sections 73, 74, 80, 81, 82, 83, 84, 85, 86 2[clause (d) of sub-section (1) of section 87 and section 89] shall, as far as may be, apply in relation to such permits. 2[clause (d) of sub-section (1) of section 87 and section 89] shall, as far as may be, apply in relation to such permits.

*[***]*

(11) The following shall be conditions of every permit granted under sub-section (9), namely:—

- (i) every motor vehicle in respect of which such permit is granted shall conform to such description, requirement regarding the seating capacity, standards of comforts, amenities and other*

matters, as the Central Government may specify in this behalf;

- (ii) every such motor vehicle shall be driven by a person having such qualifications and satisfying such conditions as may be specified by the Central Government; and*
- (iii) such other conditions as may be prescribed by the Central Government.*

(12) Notwithstanding anything contained in sub-section (1), but, subject to the rule that may be made by the Central Government under sub-section (14), the appropriate authority may, for the purpose of encouraging long distance inter-State road transport, grant in a State, national permits in respect of goods carriages and the provisions of sections 69, 77, 79, 80, 81, 82, 83, 84, 85, 86, 4[clause (d) of sub-section (1) of section 87 and section 89] shall, as far as may be, apply to or in relation to the grant of national permits. 1[clause (d) of sub-section (1) of section 87 and section 89] shall, as far as may be, apply to or in relation to the grant of national permits.

*[***]*

(14) (a) The Central Government may make rules for carrying out the provisions of this section.

(b) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (i) the authorisation fee payable of the issue of a permit referred to in sub-sections (9) and (12);*
- (ii) the fixation of the laden weight of the motor vehicle;*
- (iii) the distinguishing particulars or marks to be carried or exhibited in or on the motor vehicle;*
- (iv) the colour or colours in which the motor vehicle is to be painted;*
- (v) such other matters as the appropriate authority shall consider in granting a national permit.”*

- 15.** In the present case, the yardsticks mentioned in sub-section (5) of Section 88 have been complied with in view of the agreement between the States of West Bengal and Bihar having been duly published in the Official Gazette. Such administrative act carries with it a presumption of correctness, as contemplated in Section 114(e) of the Evidence Act. In the absence of any rebuttal evidence, there is no justification or scope of coming to the conclusion that the same was not duly signed between the two states. Moreover, the petitioners

have failed to make out any case which vitiates the said agreement on the ground of violation of sub-section (5) of Section 88.

16. Insofar as sub-section (7) of Section 88 is concerned, it has been clearly stipulated that, notwithstanding anything contained in sub-section (1), a Regional Transport Authority of one region may issue a temporary permit under section 87 to be valid in another region or State with the concurrence, given generally or for the particular occasion, of the Regional Transport Authority of that other region or of the State Transport Authority of that other State, as the case may be.
17. Section 87 of the 1988 Act, on the other hand, deals with temporary permits and stipulates the purposes for which a Regional Transport Authority and the State Transport Authority may, without following the procedure laid down in Section 80, grant permits, to be effective for a limited period to authorize the use of a transport vehicle temporarily.
18. There is nothing in Section 87 or Section 88 of the 1988 Act which is contravened by the impugned action of the two States-in-question.
19. Section 88(7) begins with a non-obstante clause and, as such, operates independent of sub-section (1) of Section 88.
20. Section 88(1), on the other hand, stipulates that a permit granted by the Regional Transport Authority of any region shall not be valid in any other region unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless

countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned.

- 21.** The second proviso to sub-section (1) provides that, where both the starting point and the terminal point of a route are situated within the same state but part of the route lies in any other State and the length of such part does not exceed 16 kilometers, the permit shall be valid in the other State notwithstanding that such permit has not been countersigned by the State Transport Authority or the Regional Transport Authority of the other State.
- 22.** The petitioners have not made out any case that the agreements, both draft and final, which are impugned herein, were not countersigned by the two states-in-question.
- 23.** Insofar as the number of permits granted for West Bengal and Bihar respectively, it is entirely within the domain of the administration of the respective States to decide on such question. An existing operator in one of the routes between the two States does not have any right under Article 14 of the Constitution of India, which can be said to be contravened by issuance of other permits by the authorities concerned in due process of law. In the present case, as such, the contention of the petitioners that their right to equality as guaranteed by the Constitution of India has been violated has no legs to stand upon.
- 24.** The petitioners, moreover, have failed to make out any case of contravention of any of their rights regarding plying of their own vehicles on the said routes. As rightly submitted by the respondents,

by placing reliance on the observations of the Apex Court, the mere financial difficulties which may be faced by the petitioners due to grant of permits to others cannot be a consideration for vitiating the agreements between the States.

- 25.** In fact, in the present case, even taking into account the judgments cited by the petitioners, the ratio as laid down in the said judgments does not have any validity in the context of the present case. The general propositions laid down by the Supreme Court in the reported judgments cannot be contested. However, there is no question of any rejection or retention of something which is “dross or not pure and sound” as held by Justice Cardozo and quoted in *Davinder Pal Singh Bhullar* (supra).
- 26.** Hence, the petitioners having failed to make out any case to establish that the impugned agreements were vitiated in any manner and in view of the States of West Bengal and Bihar having duly entered into the said agreement, both of which, draft and final, were duly published in Official Gazettes, there is no scope or justification of interfering with the said agreements. Since no cause of action has been substantiated by the petitioners, the writ petition fails.
- 27.** That apart, the unreasonable delay of about eight years in challenging the draft notification and six years in respect of the final notification of 2016, despite the petitioners having continued to ply their vehicles on the routes-in-question, has not been explained in any satisfactory manner whatsoever for the purpose of even entertaining the writ petition at the behest of the petitioners.

- 28.** On the above grounds, WPA No.9980 of 2022 is dismissed on contest.
- 29.** There will be no order as to costs.
- 30.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)