

AD. 8.
July 4, 2022.
MNS.

WPA No. 12968 of 2022

Sk. Abdul Kalam and others
Vs.
The State of West Bengal and others

Mr. N. I. Khan,
Mr. Amlan Kumar Mukherjee

...for the petitioners.

Mr. Amal Kumar Sen,
Mr. Lal Mohan Basu

...for the State.

Learned counsel for the petitioners contends that the order of the District Magistrate, Purba Medinipur, dated May 19, 2022, annexed to the present writ petition, was passed without complying strictly with the direction passed by a co-ordinate Bench of this Court in a previous writ petition. It is submitted that the co-ordinate Bench, while disposing of WPA 1329 of 2022 on February 10, 2022, has specifically directed that the District Magistrate was to consider and dispose of the representation made by the petitioners within six weeks from that date by way of a reasoned order, upon hearing all concerned parties, including the petitioners and in accordance with the relevant Statute and Regulations.

It is submitted that the said representation was against the purported decision of the authorities to

shift the bus stand, which was the subject matter of such decision.

By the said order, the District Magistrate directed the change of the bus stand to take effect from Tamluk Town (near Tamralipta Municipality Office) to Central Bus Stand near Tamluk Railway Station.

However, in terms of Section 80 of the Motor Vehicles Act, 1988 (1988 Act), the petitioners and all operators on the route-in-question, have to apply for variation of the conditions of their permit, insofar as the curtailment of the route is concerned.

As per the language of Section 80(3), proviso, it is stipulated that in case of variation or extension, at least a month's time shall be required. However, in the instant case, no time has been granted to the operators to have their permits altered in consonance with the change of bus stand.

It is further contended that Rule 182 of the West Bengal Motor Vehicles Rules, 1989 (Rules 1989) stipulates that the District Magistrate or Commissioner of Police, Kolkata, as the case may be, by notification in the Official Gazette, can alter the use of any specified place or any place of a specified nature or class. In the present case, there was no Official Gazette Notification, prior to which the District Magistrate, in the impugned order itself, directed the Officer-in-Charge, Tamluk Police Station to provide

all sorts of police assistance during shifting of bus stand with the direction for no entry of vehicles from the relevant area.

It is further submitted that the said order of the District Magistrate was *de hors* the extant Statute and Regulations, hence in derogation of the specific direction of the co-ordinate Bench.

Learned counsel appearing for the respondent authorities submits that Section 80 of the 1988 Act has no manner of application in the present case, since the variation-in-question in the route has not been brought about on an application made by the operators, but it is the decision of the delegated authority, in this case, the District Magistrate, by which such alteration has been brought about. As such, the mere procedural requirement will be for the operators to have the said alterations in the routes, consequent to such administrative decision, endorsed in their respective permits from the relevant authorities.

Upon a consideration of the relevant provisions, it transpires from Section 115 of the 1988 Act that the power on the State Government “or any authority authorised in this behalf by the State Government”, upon satisfaction of the yardsticks of public safety or convenience as stipulated therein, may be exercised by notification in the Official Gazette, prohibiting or restricting, 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 trailer either generally in a specified area or on a specified road and when any such prohibition or restriction is imposed, to cause appropriate traffic signs to be placed or erected under Section 116 at suitable places. It has further been stipulated in the proviso thereto 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.

Read in conjunction with Rule 182 of the West Bengal Rules of 1989, it is clear that the District Magistrate or the Commissioner of Police (in the present case the District Magistrate), by notification in the Official Gazette or by the erection of traffic signs which are permitted for the purpose under subsection (1) of Section 116 of the Act, or both, may in respect of taking up or setting down of passengers both by public service vehicles or by any specified class of public service vehicles conditionally or unconditionally prohibit the use of any specified place or any place of specified nature or class.

However, it is well-settled that Rules framed under the Statute cannot override the parent

provision in the Statute itself. Since Section 115 specifically mandates the notification in the Official Gazette prior to putting up traffic signs within the contemplation of Section 116, it is obvious that until and unless such Gazette Notification is published, it is beyond the authority of the District Magistrate to direct the police to implement such decision.

In the present case, Section 116 of the 1988 Act contemplates that the authority authorised in this behalf by the State Government (herein the District Magistrate) may cause or permit traffic signs to be placed or erected in any public place for the purpose of bringing to public notice, *inter alia*, any prohibitions or restriction imposed under Section 115.

Hence, read together, the aforesaid provisions clearly indicate that the District Magistrate had the authority to come to a decision regarding shifting of the bus stand, keeping in view the interest of public safety and convenience.

Hence, the merit of such decision cannot be interfered with.

However, the latter portion of the impugned order dated May 19, 2022, whereby the District Magistrate directed implementation of such decision, *inter alia*, by directing the Officer-in-Charge of Tamluk Police Station, to provide all sorts of police assistance during shifting of bus stand,

simultaneously with directing the shifting and prior to notification, has to be struck down.

In view of the above observations, WPA 12968 of 2022 is disposed of by modifying the impugned order of the District Magistrate dated May 19, 2022 to the extent that the directions to implement the decision of the District Magistrate as regards shifting of bus stand shall not be implemented immediately, either by the Officer-in-Charge of Tamluk Police Station or otherwise, until and unless the said decision is published in the Official Gazette.

It is, however, clarified that the merits of such decision have not been gone into and the decision of the District Magistrate to shift the bus stand from Tamluk Town (near Tamralipta Municipality Office) to Central Bus Stand near Tamluk Railway Station, is not touched by this order.

However, as indicated above, the implementation of such decision shall have to wait till a notification in the Official Gazette in respect thereof is published.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)