

26.07.2023
Court No.13
Item Nos. 5 to 8
AP

MAT 1534 of 2022
With
CAN 1 of 2022
Sk. Sajed Ali and Ors.
Vs.
The State of West Bengal and Ors.

With
MAT 1537 of 2022 (File not here)
Sunil Kumar Mondal
Vs.
The State of West Bengal and Ors.

With
MAT 1565 of 2022
Narottam Majumdar and Ors.
Vs.
The State of West Bengal and Ors.

With
MAT 1589 of 2022 (File not here)
Sk. Jahiruddin and Ors.
Vs.
The State of West Bengal and Ors.

Mr. N. I. Khan
Mr. Amal Kumar Mukherjee
...For the Appellants in MAT 1534 of 2022
and MAT 1565 of 2022.

Mr. Dilip Kumar Samanta
Mr. Debapriya Samanta
...For the Appellants in MAT 1537 of 2022.

Mr. Sanat Kumar Roy
Mr. Abhishek Banerjee
...For the Appellants in MAT 1589 of 2022.

Mr. Amal Kumar Sen
Mr. Lal Mohan Basu
... For the State in MAT 1534 of 2022.

Mr. Srijan Nayak
Ms. Rituparna Moitra
... For the State in MAT 1565 of 2022.

Mr. Pantu Deb Roy
Mr. Subrata Guha Biswas
... For the State in MAT 1589 of 2022.

Mr. Arabinda Chatterjee, Senior Advocate
Mr. A. Sengupta
... For the Private Respondent.

1. This appeal is directed against a judgement and/or order dated 2nd September, 2022 passed by the learned Single Bench in ten several writ petitions being WPA 20632 of 2021, WPA 17069 of 2014, WPA 20611 of 2021, WPA 22916 of 2014, WPA 2662 of 2022, WPA 28026 of 2013, WPA 2824 of 2022, WPA 2826 of 2022, WPA 33889 of 2013 and WPA 4331 of 2022. The petitioners before the Single Bench were stage carriage permit holders to ply vehicles from surrounding areas of Burdwan Town and further.

2. The challenge in the writ petitions was to a notification dated 6th June, 2014 issued by the District Magistrate, Burdwan that was published in the official gazette on 31st October, 2014.

3. By reason of the impugned notification initially issued in exercise of power under section 96(2)(xxii) and subsequently corrected to have also been issued under Section 116(1)(a) of the Motor Vehicles Act, 1988. By reason of the notification, the petitioners/stage carriage permit holders were required to stop at two new bus stations i.e. Nawabhat and Alisha in Burdwan town, instead of Tinkonia bus station where they earlier stopped.

4. New bus terminuses were constructed at Nawabhat and Alisha, which are on the eastern and western side of the Burdwan Town, by the administration. The new bus stations were required in view of a huge increase in population and traffic within Burdwan Town.

Tinkonia, which was the original bus station and/or terminus, is located inside the Burdwan Town, next to the railway station. The congestion and traffic had increased to unmanageable proportion.

5. The petitioners had four fold grievances in the Court below:-

a. It is only the State Government that is empowered to issue any notification under Chapter V and Chapter VIII of the Motor Vehicles Act of 1988. The District Magistrate had no authority to issue any such notification.

b. It is stated that the stage carriage permits indicate that the bus-stop at Burdwan Town was at Tinkonia. The impugned notification has the effect of altering a stage carriage permit that has been granted to the writ petitioners. The District Magistrate by the impugned notification sought to do indirectly what he could not do directly.

c. The impugned notification is, therefore, without authority of law and hence illegal.

d. The residents of Burdwan Town would be seriously prejudiced if they would have to alight and board at Nawabhat and Alisha bus-stops. They would be compelled to additional local transport facilities in Burdwan Town to reach their

destination and the most common destination being the railway station etc.

6. The State Government was represented in the Court below and filed a report. It was indicated before the Single Judge as also this Court that the District Magistrate has been empowered by the State Government in terms of Rule 182 of the West Bengal Motor Vehicles Rules, 1989. Such power to make and delegate Rules is conferred upon the State Government by the Motor Vehicles Act, 1988 inter alia both under Chapter V and Chapter VIII.

7. In fact, it is the District Magistrate, in the facts of the case, who is best placed to ascertain the ground realities and requirements and convenience of the people of Burdwan. The construction of new bus terminus being necessitated is pursuant to changes in demography and population at Burdwan town. It is essentially in public interest and for the larger benefit of the people of Burdwan that the impugned notification was issued by the District Magistrate.

8. The Single Judge has heard the counsels for all the writ petitioners. As in the Court below, the writ petitions/appellants are represented by Mr. Khan, Mr. Samanta and Mr. Roy here. The Single Bench had addressed each and every one of the arguments raised by the parties, particularly the appellants and had considered the decisions of the Supreme Court

particularly the case of ***Rajasthan State Industrial Development and Investment Corporation Vs. Subhash Sindhi Cooperative Housing Society, Jaipur and Ors.*** reported in ***(2013) 5 SCC 427***; ***New Punjab Calcutta Transport Co. (Private) Ltd. Vs. Commissioner of Police, Calcutta*** reported in ***66 CWN 1029***, ***T.B. Ibrahim Vs. The Regional Transport Authority, Tanjore*** reported in ***AIR 1953 SC 79***, ***State of Orissa and Anr. Vs. Radheyshyam Meher and Ors.*** reported in ***(1995) 1 SCC 652***, ***Delhi Development Authority and Anr. Vs. Joint Action Committee, Allottee of SFS Flats and Ors.*** reported in ***(2008) 2 SCC 672*** and several other decisions.

9. The Court below came to the conclusion that the Rules in question i.e. Chapter V of the Motor Vehicles Act particularly Rule 72(2)(xxii), contained the power to attach conditions/permissions to Stage Carriage Permits issued and to be issued. The power under Section 86 of the Motor Vehicles Act, to cancel the permit has also been discussed.

10. The Court below found that the powers under section 115 and 116 of the MV Act stand on a different footing i.e. under Chapter VIII. Chapter VIII deals with control of traffic and empowers the State Government to frame Rules in this regard. It is essentially in this light that the State Government had framed the West Bengal Motor Vehicles Rules, 1989. Rule 182 reads as follows:-

“182. Stands and halting places. – (1) *The District Magistrate or the Commissioner of Police, [Kolkata], as the case may be, by notification in the Official Gazette or by the erection of traffic signs which are permitted for the purpose under sub-section (1) of section 16 of the Act, or both, may, in respect of the taking up or setting down of passengers or both by public service vehicles or by any specified class of public service vehicles, -*

(i) *conditionally or unconditionally prohibit the use of any specified place or any place of a specified nature or class, or*

(ii) *require that within the limits of any municipality, notified area or cantonment or within such other limits as may be specified in the notification certain specified stands or halting places only shall be so used :*

Provided that no place which is privately owned shall be so notified except with the previous consent in writing of the owner thereof.

(2) *When a place has been notified or has been demarcated by traffic signs, or both as being a stand or halting place for the purpose of this rule, notwithstanding that the land is in possession of any person, the place shall subject to the provisions of these rules, be deemed to be a public place within the meaning of the Act and the District Magistrate or the Secretary to the Government of West Bengal or any other officer authorized by him or the Commissioner of Police, [Kolkata] may enter into an agreement with, or grant a licence to any person for the maintenance of such place including the provision for maintenance of the building or works necessary thereto, subject to the termination of the agreement or licence forthwith upon the breach of*

any condition thereof and may otherwise give directions for the conduct of such place including directions -

- (i) specifying the realisation of fees referred to in rule 183 of these rules from the owners of public service vehicles using the place;*
 - (ii) specifying the public service vehicles or the class of public service vehicles which shall use the place or which shall not use the place;*
 - (iii) appointing a person to be the manager of the place and specifying the powers and duties of the manager;*
 - (iv) requiring the owner of the land, or the local authority, as the case may be, to erect such shelter, lavatories and latrines and to execute such other works as may be specified in the rules or in the direction and to maintain the same in a serviceable, clean and sanitary condition;*
 - (v) prohibiting the use of such place by specified persons or by other than specified persons.*
- (3) Nothing in sub-rule (2) shall require any person owning the land which has been specified as a stand or halting place, to undertake any work or incur any expenditure in connection therewith without his consent and, in the event of any such person declining to carry out such work or to incur such expenditure or failing to comply with any rule or direction made or given to him under this rule, the authority as mentioned in sub-rules (1) and (2) above may prohibit the use of such a place for the purpose of this sub-rule.”*

11. It is clear and evident from Rule 182 that the District Magistrate and/or Superintendent of Police and/or Commissioner of Police by notification in the official gazette may regulate matters relating to taking up and setting down passengers or both by public service vehicles, which undoubtedly includes the petitioners.

12. The Court below went on thereafter to analyse and rightly conclude that the District Magistrate in the instant case was definitely authorized to issue the impugned notification by publication in the official gazette. This Court has no reason to disagree with the findings of the learned Single Bench.

13. It cannot be said that the impugned notification issued by the District Magistrate is either in excess of delegation or outside the delegated power conferred upon him by the State Government under the aforesaid 1989 Rules.

14. The notification *ex facie* indicates that it was issued in public interest and in view of the growing population and change in demography in the Burdwan Town. The original bus stand at Tinkonia was shifted to outskirts of the town to two different parts in the east and west of Burdwan town namely at Nawabhat and Alisha.

15. The impugned notification does not in any way interfere with the stage carriage permits of the petitioners. It only regulates the places where passengers from the

buses being plied by the petitioners would be taken up or set down. It is quite possible that there may be some economic implications on the petitioners as a consequence of the notification. The same by itself cannot negate the notification.

16. There is overriding public interest in the issuing of the notification in question. Any corresponding benefit that the notification may accrue, to transport operators within Burdwan Town cannot be a ground for negating the notification itself, which is clearly public interest.

17. The Court below applied the correct test for interfering with administrative orders and notifications issued under delegated legislation. The test laid down in the ***Delhi Development Authority and Anr. case (supra)*** i.e.

(a) An administrative order and/or a policy decision of the State call for interference only if ex facie unconstitutional.

(b) If it is de hors of the Act or Regulations.

(c) If the delegatee acted beyond the power of delegation.

(d) If the executive powers is exercised contrary to the statutory or the larger public interest.

18. This Court notes without hesitation that none of the four criteria can be applied in the facts of the case to interfere with the impugned notification.

19. For the reasons indicated hereinabove, the impugned judgement and/or order calls for absolutely no interference whatsoever.

20. The appeals fail and are hereby dismissed.

21. In view of dismissal of these appeals, connected applications, if any, shall also stand dismissed.

22. Mr. Samanta has asked this Court to indicate that the text of the notification in the paragraph 9 indicates that it does not apply to Burdwan Town. Mr. Chatterjee appearing for the private respondent submits that the notification does not indicate as such. This Court does not venture to clarify the notification in question. The notification shall speak for itself.

23. There shall be no order as to costs.

24. Interim orders, if any, shall stand vacated.

25. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)