

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

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No. 433 of 2024

**Merlin Projects Limited and another
Vs.
The State of West Bengal and others**

For the petitioners	:	Mr. Jishnu Chowdhury, Ms. Rajshree Kajaria
For the State	:	Mr. Biswabrata Basu Mallick, Ld. AGP, Ms. Parna Roy Choudhury
For the WBRERA	:	Mr. N.C Bihani, Mrs. P.B. Bihani
Hearing concluded on	:	02.02.2024
Judgment on	:	06.02.2024

Sabyasachi Bhattacharyya, J:-

1. The petitioners are real estate developers. The present writ petition assails a Traffic Notification issued by the Commissioner of Police, Kolkata bearing No. TP/25 dated August 7, 2023. By virtue of the said Notification, *inter alia*, movements of Heavy Goods Vehicles and Medium Goods Vehicles have been restricted to ply from 06:00 hrs. to 22:00 hrs. on all days throughout the city of Kolkata except the Port area. Exception has been made for goods vehicle carrying essential and perishable items like – LPG (Liquefied Petroleum Gas), POL (Petroleum, Oil and Lubricants), Oxygen, Milk, Medicine, Vegetables, Fruits, etc., which have been allowed to ply from 22:00 hrs. to 08:00 hrs. and again from 12:00 hrs. to 16:00 hrs.

- 2.** The petitioners are concerned with Transit Concrete Mixtures, which fall under the category of Heavy Goods Vehicles required for transporting Ready Mixed Concrete (RMC) from Batch Mix Plants, where they are manufactured, to the sites of construction. RMC, according to the petitioners, has a life-span of around two hours which can be extended by use of Admixtures to slow down the rate of workability loss. Learned counsel cites the Indian Standards Ready Mixed Concrete – Code of Practice, issued by the Bureau of Indian Standards, and the PWD Handbook, Chapter No. 41 relating to Ready Mixed Concrete to substantiate the said shelf-life of RMC. It is argued that as per Regulation 34 of the Kolkata Municipal Corporation (Building) Rules, RMC cannot be used at construction sites between sunset and sunrise. Thus, the said product has to be used during the day-time, when transit of heavy vehicles transporting the same is debarred.
- 3.** Again batching plants where RMC is manufactured cannot operate during night-time between 22:00 hrs. and 06:00 hrs. due to various restrictions. Thus, the short window for transporting RMC from the manufacturing site to the site of construction is about four hours.
- 4.** Since the Batch Mix Plants have to operate during day-time and the transport also has to be effected during day-time to the construction sites for RMC to be of any use, unless the transport of RMC by heavy vehicles is permitted during the day-time, the entire use of RMC and construction by such method is virtually debarred by the impugned Notification for all practical purposes.

5. Learned counsel for the petitioners argues that since construction is an essential activity and RMC is a widely used modern technology in construction, the restriction imposed is violative of the right of the petitioners to carry on business, in contravention of Article 19 of the Constitution of India.
6. It is next argued that since other essential commodities have been permitted under the same Traffic Notification, the transport of RMC and movement of heavy vehicles for such limited purpose should be brought within the exception clause of the impugned Notification, even if the Notification itself is not cancelled.
7. It is argued that in view of the unreasonable discrimination made between other essential commodities such as Oxygen, LPG, POL, etc. and RMC, the said restriction is also violative of Article 14 of the Constitution of India.
8. Learned counsel for the petitioners cites *Chintamanrao v. State of Madhya Pradesh*, reported at AIR 1951 SC 118 and *Sakal Papers (P) Ltd. and others v. Union of India and others*, reported at AIR 1962 SC 305 in support of the contention that unreasonable and therefore arbitrary restrictions contrary to Article 14 of the Constitution ought to be set aside.
9. Learned counsel cites *Shayara Bano v. Union of India and others*, reported at AIR 2017 SC 4609 and *Natural Resources Allocation In RE Special Reference No. 1 of 2012*, reported at (2012) 10 SCC 1 in support of the proposition that the restrictions imposed upon the petitioner are disproportionate and results in total deprivation,

infringing upon the petitioner's fundamental right to movement and carry on business enshrined under Article 19 of the Constitution of India. As such, the said restrictions should be set aside.

10. Lastly, learned counsel cites *Sachidanand Pandey and Another v. State of West Bengal and others*, reported at (1987) 2 SCC 295 on the proposition that relevant considerations have not been considered while issuing the impugned Notification.
11. Learned counsel for the State argues that RMC is one of the options for building purpose and is not essential. It is argued that the use of RMC is merely to earn more profit for the petitioners and as such cannot be said to be essential. It is argued that the Notification makes exception in respect of not only perishable commodities but items which are perishable as well as essential. The transport of RMC does not satisfy such dual test.
12. It is argued that the restrictions in the Traffic Notification have been brought about keeping in mind public safety for certain hours. There have been gruesome accidents in the recent past especially the one on August 4, 2023 at Behala where a school-boy got smashed by a loaded truck. As a result, in view of the powers vested under Section 62 of the Calcutta Police Act, 1866, authorizing the Commissioner to make rules for regulation of traffic, the impugned Notification dated August 7, 2023 was issued.
13. It is argued that the same was duly published in the Official Gazette as well.

14. Moreover, the restrictions have been imposed for the office-hours when school, college and office going people are in a rush. If heavy vehicles are allowed to enter the city during such time, it would hamper the day-to-day affairs and chances of accidents would increase manifold.
15. It is next argued that the life-span of RMC is relative. Studies show that the RMC's shelf-life could be extended by admixtures up to eight hours depending on the quality and quantity of the admixtures used.
16. If RMC is manufactured in the early hours of dawn, the same could easily reach the site before the scheduled time and for eight hours could be utilized and construction work can commence within the time-frame as stipulated under the KMC Rules.
17. Learned counsel appearing for the respondent no. 3, the West Bengal Real Estate Regulatory Authority (WBRERA), submits that Section 6 of the Real Estate (Regulation and Development) Act, 2016 provides for extension of registration by respondent no. 3 on an application made by the promoter due to *force majeure* in such form and on payment of such fees as may be prescribed. The explanation to the said Section also defines the expression *force majeure*.
18. Upon hearing learned counsel for the parties, it transpires that although initially the petitioners also challenged the impugned Notification on the ground that the same was not duly published in the Official Gazette as required, subsequently such point was given up, since the State has produced documents to show that Official Gazette Notification was duly made.

- 19.** The question which arises is whether the impugned Traffic Notification is violative of Article 14 or Article 19 of the Constitution of India vis-à-vis the transport of RMC by heavy vehicles.
- 20.** Article 19(1)(d) confers right on all citizens to move freely throughout the territory of India and Article 19(1)(g) confers the fundamental right to practice any profession or to carry on any occupation, trade or business.
- 21.** However, Article 19(6) stipulates that nothing in sub-clause (g) shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause.
- 22.** Similarly, Clause (5) of Article 19 provides that nothing in sub-clause (d) shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clause either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.
- 23.** There cannot be any doubt that the Traffic Notification impugned herein falls within the exceptions enumerated in sub-clauses (5) and (6) of Article 19. Not only does the Traffic Notification impose restriction in the interest of general public, the premise of such Notification is sufficiently reasonable.
- 24.** To consider whether the restriction is “reasonable”, the court cannot impose its own notion of reasonableness but has to test the State

action on the ground of reasonableness befitting a prudent man. The State has furnished sufficient justification for issuance of the Traffic Notification, which has the force of law, being issued under Section 62 of the Calcutta Police Act and Section 39 of the Calcutta Suburban Police Act, read with other connected Rules.

- 25.** The justification for the State to issue the said Notification is that during the busy hours of the hustle-bustle of life in a metropolis such as Kolkata, the movement of heavy vehicles has been restricted. Not only is such restriction absolutely essential for regulating the pandemonium during such busy hours and to ensure smooth traffic movement and commute of the citizens, such restrictions are also an integral part of safety measures taken for office goers, school and college going children and the public at large. In fact, sufficient relaxations have been made for transport of essential and perishable commodities by carving out appropriate exceptions in the Notification.
- 26.** Thus, the reasonableness behind the Notification cannot be disputed.
- 27.** Hence, in any event, the argument on violation of Article 19(1)(d) or (g) is not tenable in the eye of law, as the restrictions imposed by the Traffic Notification having the force of law comes within the exceptions of Clauses (5) and (6) of Article 19.
- 28.** Moreover, a careful scrutiny of the petitioners' argument reveals that the impugned Notification does not have the effect of stopping construction of real estate in the city of Kolkata altogether. If construction as a whole was stopped, there might have been an arguable case as to whether there is an unreasonable restriction to an

essential activity by way of the Traffic Notification. However, RMC is only one of the types of concrete used in construction business and the use of the same is not “essential” in any sense of the term.

- 29.** The State is justified in arguing that exceptions have been reasonably made with regard to goods vehicles carrying essential as well as perishable items. Thus, both the conditions of essentiality and perishability have to be fulfilled. In case of RMC, although it might be arguably said to be perishable, it cannot be said to be an essential item on an equal footing with LPG, POL, Oxygen, Milk, Medicine, Vegetables, Fruits and the like, without which the citizens cannot survive and all activity and business would come to a standstill.
- 30.** Thus, the argument that the Notification is discriminatory and violative of Article 14 is also not acceptable as RMC cannot stand on an equal footing with the exceptions mentioned in the impugned Notification.
- 31.** The reliance of the petitioners on *Chintamanrao (supra)* and *Sakal Papers (supra)* is, thus misplaced, as the impugned Notification is neither unreasonable nor arbitrary.
- 32.** In *Shayara Bano (supra)* and *Natural Resources Allocation (supra)*, the Supreme Court was considering cases whether the restrictions imposed are disproportionate and results in total deprivation, infringing upon the petitioners’ fundamental right to movement and carry on business.
- 33.** However, the restrictions imposed by the impugned Notification in the case at hand are not disproportionate. The stipulations introduced by

the Notification are quite appropriate and necessary to ensure free movement of traffic and in order to avoid chaos during office hours in a large city like Kolkata as well as to maintain safety of its citizens which would be jeopardized if heavy vehicles treaded the roads of the city during busy hours, except for transport of essential and perishable commodities as mentioned in the Notification.

- 34.** Hence, the restrictions are neither disproportionate nor do they totally deprive the real estate businesses, who can very well use other forms of construction material than RMC or, in case of sufficiently large construction projects, manufacture RMC on-site.
- 35.** There is no relevant consideration which has been omitted to be factored in while issuing the impugned Notification. The impugned Notification, rather, is well-reasoned and is backed by sufficient application of mind to the practical situation of the city during busy hours.
- 36.** Thus, *Sachidanand Pandey (supra)* cannot be attracted here.
- 37.** In such view of the matter, there is no scope of interference with the impugned Traffic Notification dated August 7, 2023.
- 38.** Accordingly, WPA No. 433 of 2024 is dismissed on contest without any order as to costs.
- 39.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)