

23.12.2024.
Tudu (p.a)
Sl. No.15
Ct. No.25.

WPA 19267 of 2024
Bapi Ghosh
Vs.
State of West Bengal & Ors.

With

WPA 19269 of 2024
Jitendra Kumar Jaiswal
Vs.
State of West Bengal & Ors.

With

WPA 19270 of 2024
Laxmi Ghosh
Vs.
State of West Bengal & Ors.

With

WPA 19271 of 2024
Jitendra Kumar Jaiswal
Vs.
State of West Bengal & ors.

With

WPA 19274 of 2024
Pradip Kumar Mondal
Vs.
State of West Bengal & Ors.

Mr. Sanat Kumar Roy,
Mr. Baidurya Ghosal.
... For the Petitioner.

Mr. Amal Kumar Sen,
Mr. Lal Mohan Basu.
.....for the State in
WPA 19270 of 2024 & WPA 19271 of 2024.

Mr. Pantu Deb Roy,
Mr. Pannalal Bandopadhyay.
.....for the State in
WPA 19274 of 2024

Mr. Suman Ghosh,
Mr. Sankha Prasad Roy.
..... for the State in
WPA 19267 of 2024

Mr. Rajarshi Basu,
Mr. S. T. Mina.
..... for the State in
WPA 19269 of 2024

1. All the writ petitions in this bunch involve similar issues, hence taken up together for hearing and disposal by the same order.
2. The matter relates to grant of “No Objection Certificate”, by the corresponding reciprocating Regional Authority that is, RTA Birbhum, as to the order of extension of the route upon which the writ petitioner operates, issued by the other Authority, that is, the Regional Transport Authority, Paschim Burdwan/respondents No.2&3. The “No Objection Certificate” would be required as the extended route would lie through the said two regions under RTA Paschim Burdwan as well as RTA Birbhum.
3. The writ petitioners are the operators on the route from Durgapur Railway Station to Pandabeswar. The petitioners applied for extension of the route from the termini Pandabeswar, to Dubrajpur, covering 18 kilometres of roadway. The proposed extension would fall under jurisdiction of the RTA Birbhum/respondents No. 4, 5 & 6. Their such prayer has been allowed by the RTA Board, Paschim Burdwan, in its resolution dated December 23, 2020. Consequently and in terms of the statutory provision, the Secretary, RTA Paschim Burdwan/respondent No.3 wrote to his counterpart at RTA Birbhum, vide letter dated September 1, 2022, for grant of the “No Objection Certificate”, in order to let the petitioner operate on the extended route. Reminder has also been sent vide letter dated July 7, 2023. Since there has not been any response to such requisition of the respondent No.3, by the respondent No.6, the petitioners have filed the instant case.

4. The petitioners have prayed for direction to be made upon the respondents No.4, 5 & 6, for granting “No Objection Certificate”, as to the order for extension of the route.
5. The respondent’s stand is evident from the report of them, submitted on affidavit. Its decision is not to grant the “No Objection Certificate” and the same is based on the report of the Superintendent of Police, Birbhum [herein after referred to as “the SP”], dated October 10, 2023. The SP writes that *“Dubrajpur is already over burdened with huge traffic. Allowing more vehicles would make the traffic congestion worse. Local people are already feeling aggrieved. This will create more inconvenience for them.”*
6. The respondent No.5 informs his counterpart at RTA Paschim Burdwan, vide letter dated October 30, 2023 that route extension is not feasible owing to the traffic congestion in Dubrajpur.

Arguments made on behalf of the writ petitioners:

- ❖ Not granting counter signature/“No Objection Certificate”, would amount to gross violation of the statutory provision under Rule 104, of the West Bengal Motor Vehicles Rules, 1989.
- ❖ That, the respondents No.4 to 6, would not be empowered and eligible under the law to refuse to grant “No Objection Certificate”, as to the order of RTA Board, Paschim Burdwan, in view of the provision under section 88 of the Motor Vehicles Act, 1988, in so far as section 88 (3) of the said Act, has provided the countersigning authority only with the power to impose certain conditions, before grant of counter signature, as it considers proper. That, there is no power of the counter signing authority, to decline countersignature, to the order

for extension of the route already granted by the permit issuing authority.

- ❖ That, non-granting of counter signature/no objection certificate would amount to limiting the number of vehicles on the route. However, controlling the number of vehicles to run on a route is the sole domain of the state government, which it controls by means of notification to that effect, published in exercise of the statutory power granted under section 71 (3) (a) of the Act of 1988. The provisions under section 115 of the said Act has also been referred to in this regard. That, the Regional Transport Authority cannot embark upon any such action or inaction which effectually would mean usurping the power of the State Government as above by it. That, had there been a notification restraining number of vehicles on the said extended route the entire scenario would have been otherwise. Also that the ground cited of congestion in the route would not be a cogent, justified or maintainable ground, for declining counter signature/no objection certificate, in accordance with the law.

Arguments made on part of the State respondent:

- ❖ The State has raised a preliminary point of objection. That is regarding an alternative dispute redressal statutory forum being available to the petitioners. That, according to section 68(3)(c) of the Act of 1988, the State Transport Authority, West Bengal has been empowered to exercise and discharge the powers and functions throughout the State, to settle all disputes and decide on matters on which differences of opinion arise between Regional Transport Authorities. Since according to the State respondent, the present dispute is between the two Regional

Transport Authorities due to differences of their opinion, the same should be referred to and decided by the State Transport Authority, under the provisions of section 68(3)(c) of the Motor Vehicles Act, 1988. That, in this regard the corresponding Rule would be Rule 103 of the Rules of 1989, which has provided jurisdiction and power of the Divisional Commissioner or the State Transport Authority in case of no unanimity between the two Regional Authorities with respect to grant of permit on any route, falling within jurisdiction of the two regions. Therefore the writ Court may not entertain the present case, due to availability of the alternate forum for dispute resolution.

- ❖ According to section 88(1) of the Motor Vehicles Act 1988, the respective Authority of the reciprocating region is the appropriate Authority for granting permit or permission for extension of the route under a permit, which lies within its jurisdiction. A permit or permission for extension of route under the permit lying within jurisdiction of the other region, shall not be counted as valid, unless countersigned by Authority of such other region, as per the said provision of law.
- ❖ A conjoined reading of section 88(1) of the Act of 1988 and Rule 104 of the West Bengal Motor Vehicles Rules, 1989 would suggest it to be a mandate that concurrence in the form of countersignature/no objection certificate, be obtained before the order of the issuing Authority be considered as valid.
- ❖ Section 88(4) of the Act of 1988 has provided that provisions in this regard for grant of a new permit would similarly be applicable in case of validity

of the permission granted for extension of the route too.

7. In reply, the petitioner would say that the present dispute is not with regard to the route in question but due to the inaction in granting concurrence/no objection. That, therefore, the preliminary point taken against the petitioners would not be maintainable.
8. Propriety and legality of refusal of countersignature as to the permission granted to the petitioners for extension of the route, beyond the boundary of the permit issuing Authority, is in question and to be determined in this writ petition.
9. According to the Supreme Court [in case of ***Mithilesh Garg vs. Union of India*** reported in (1992) 1 SCC 168], Article 19 (1) (g) is a guaranteed right of every citizen of India to take up and carry on the motor transport business. It is only the State which can impose reasonable restrictions within the ambit of Article 19(b). The Court says that the Act of 1988 provides liberal policy, which are in conformity with Article 19(1) (g). According to the Court, as promulgated therein, when the State has chosen not to impose any restriction under Article 19(b) by any Rule in respect of motor transport business and has left the citizens to enjoy their rights under Article 19(1)(g) of the Constitution, the Court in that case hold that, such right of a citizen, cannot be held restricted at the instance of the other operate.
10. Of course unlike the present case, in ***Mithilesh Garg's case (supra)***, the Court was concerned with grant of new permit to the appellant therein. However, as per provisions under Section 88 (4) of the Motor Vehicles Act, 1988, in case of grant of countersignature, which is an issue involved in the

present case, the provisions of grant of a new permit would apply *mutatis mutandis* for grant of countersignature of permit too, without following the procedure laid down in Section 80 of the Act, regarding grant of a new permit.

11. Taking clue from the ratio decided in ***Mithilesh Garg's case (supra)***, it is to be seen that if there would have been a justification in imposing restriction, for the reason of traffic congestion, as regards permission granted to an operator, to operate on extended route, under the liberal policy of the Act of 1988.
12. The present matter relates to grant of permission to the petitioner to operate on extended route, through inter regional territory, where one of the termini changes and shifts within the territory of the other region. In that event, according to Section 88 (1) of the Act of 1988, such permission granted by one RTA of any one region (in this case RTA Purba Bardhaman), shall not be valid in the other region (in this case RTA Birbhum), unless countersigned by the Authority of the other region (in this case RTA, Birbhum).
13. Pertinent also is to note the provisions under Section 88 (3) of the said Act, which speaks that at the time of countersignature, the Authority of such other region, may attach or vary any condition attached to the permit, which it might have imposed if it had granted the permit.
14. Therefore, the power of such other Regional Transport Authority, to turn down request for countersignature, is unavailable in the statute. On the other hand, according to Section 88 (3) of the said Act, power for variation or attachment of

conditions at the time of countersignature, has been granted.

15. Even on perusal of the provisions laid down in Rule 104 of the West Bengal Motor Vehicle Rules, 1989, it appears that reference to the other Regional Authority, for concurrence has been mandated therein, though the Rules have not provided empowering the said other Regional Transport Authority, to decline concurrence, without following the due procedure under the law.
16. The statutory provisions as above, being read with the ratio laid down in ***Mithilesh Garg's case (supra)***, would justify that plying of vehicles cannot be reasonably restricted, by anyone, excepting the State Authorities, for any justifiable reason. In this regard the law is eloquent enough vide provisions under Section 71(3) (a) of the Motor Vehicles Act, 1988. Let the said provisions be quoted here:-

“71. Procedure of Regional Transport Authority in considering application for stage carriage permit.—

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(3) (a) The State Government shall, if so directed by the Central Government having regard to the number of vehicles, road conditions and other relevant matters, by notification in the Official Gazette, direct a State Transport Authority and a Regional Transport Authority to limit the number of stage carriages generally or of any specified type, as may be fixed and specified in the notification, operating on city routes in towns with a population of not less than five lakhs.”

17. Therefore, according to the same, restrictions can be imposed having regard to the number of vehicles, road conditions and other relevant matters, by publication of a notification in Official Gazette. No doubt, the ground of traffic congestion, taken by the

RTA, Birbhum, for not granting countersignature as to the permission for extension of the route, relates to considerations to control and limit the number of vehicles, which would be subject to publication of notification in the Official Gazette and not otherwise, in accordance with the statutory provision as mentioned above. Or otherwise any such restriction or restraint would amount to violation of the rights of the petitioner, guaranteed under Article 19(1)(g) of the Constitution. The due procedure of law would be publication of notification under Section 71(3)(a) of the Motor Vehicles Act, 1988, having regard to the number of vehicles plying over the route and modulating the same, in any manner, as deemed fit and proper. Excepting the same, there are no legally justifiable, valid or maintainable course by dint of which, measures may be taken, affecting limiting the number of vehicles plying in any route. Or otherwise the same would be in contravention of the liberal policy under the 1988 Act as well as the Constitutional guarantee under Article 19(1)(g) thereof.

18. Now, coming to the preliminary point, as regards maintainability of this writ petition is concerned, as raised by the State respondent, particularly with reference to Section 68(3)(c) of the Act of 1988 and Rule 103 of the Rules of 1989, is concerned, this Court finds proper to record, as under Section 68 (3) of the Motor Vehicles Act, 1988, has provided for the powers and functions of the State Transport Authority, to give effect to any direction under Section 67 of the said Act. Therefore, the powers and functions of the State Transport Authority under Section 68 (3) of the said Act, is limited to make effective any decision given under Section 67 of the said Act. Section 67 also speaks about prevention of overcrowding and road safety and the

power of the State Government, to control road transport, for the said reason, as well as other reasons as enumerated in the said provision of law. The law says that the State Government is to exercise such power, by publication directions vide notification in Official Gazette. On a careful reading of the said provision, it transpires that any dispute regarding implementation of the direction of the State Government in Official Gazette, including that relating to prevention of overcrowding and maintaining road safety, would be amenable to the resolution mechanism, as provided under Section 68 (3) (c) of the Motor Vehicles Act, 1988. However, as discussed earlier, so far as the extended portion of the route, in this case, that is, from the Pandabeswar to Dubrajpur, is concerned, there is no declaration by the State Government either under Section 67(1) of the Motor Vehicles Act, 1988, or Section 71 (3) (a) thereof, with regard to overcrowding or unsafe road condition or directing to limit the number of stage carriages generally or of any specified type. Since the present case is not related to any direction of the State Government, published in the Official Gazette, the remedy provided under Section 68 (3) (c) of the said Act, would not be available to the petitioners in these cases. The Court is constrained to disapprove and refuse the arguments advanced by the State respondent, in this regard.

19. On the other hand, it is found on the basis of the discussion as above, that the Regional Transport Authority, Birbhum, would not be empowered or authorized under the law, to refuse or grant countersignature on the basis of report whatsoever, in absence of any notification being published by the State Government, with regard to overcrowding, road safety or limiting the number of vehicles, to ply

on the route in question and excepting there is any patent illegality as to the plying of vehicle by the petitioners, on the extended route. Such authority is vested only with the State Government as per law. Hence, the Regional Transport Authority, Birbhum has taken a stand unauthorisedly and not in conformity with the law. It tends to exercise such power which is not vested in it by law. Hence, the same is not tenable in the eye of law. In absence of any statutory power, the respondent Regional Transport Authority, Birbhum cannot be allowed to decline countersignature for extension of the route of the writ petitioner, under their permit, on the ground of road congestion, in accordance with the law. Hence, this writ petition should succeed.

20. The writ petition Nos. WPA 19267 of 2024 with WPA 19269 of 2024 with WPA 19270 of 2024 with WPA 19271 of 2024 with WPA 19274 of 2024 are allowed with the following direction:

(i) the respondent/RTA, Birbhum is directed to immediately grant countersignature as to the extension of route under the permit of the writ petitioners, maximum within a period of two weeks from the date of communication of this order

21. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Rai Chattopadhyay, J.)