

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

APOT 117 of 2025

With

WPO 781/2024

IA NO: GA/1/2025

THE STATE OF WEST BENGAL AND ORS

-Vs-

ARUP KUMAR GHOSH

For the Appellant : Mr. Amal Kr. Sen, A.G.P.
Mr. S. Sumi.

For the Respondent : Mr. Sankar Nath Mukherjee, Adv.
Mr. Sk. Samim Akhter,
Ms. Manisha Paswan.

Judgment on : September 4, 2025.

Madhuresh Prasad, J.:

1. The writ petition has been filed by the State assailing the order dated 20.08.2024 passed in WPO No. 781 of 2024.
2. The writ petitioner was holding a Stage Carriage Permit (hereinafter referred to as permit) for Route Mansukha to Howrah via Kharar, Ghatal, Mechogram, Kolaaghat, Uluberia. The said permit is bearing NO. 192/10 issued by the State Transport Authority West Bengal (hereinafter referred to as the STA in Short). He made a request on

10.10.2018 for curtailment of some distance between Mansukha and *Borda Chowkan*. The respondents took no decision on such request for curtailment of the route for a long time.

3. Under a communication dated 17.12.2022 bearing No. TPT-2012(13)/9481/2022, the RTO and Assistant Director, STA, West Bengal rejected the petitioner's request by assigning a reason that curtailment of the rout will fail to serve the service of the common people to and from *Borda Chowkan* to Mansukha to Howrah. The same was put to challenge by the writ petitioner in an earlier writ proceedings (WPA 7084 of 2023) and the same was disposed of on 4.09.2023 in the following terms:

“ The writ petition is disposed of directing the 2nd respondent herein to revisit the issue and take a resolution in this regard in the board meeting upon granting an opportunity of hearing to the petitioner, in accordance with law.

The entire exercise is expected to be completed within six weeks from the date of communication of this order.;

There shall be no order as to costs.

Since no affidavit has been invited, allegation contained in the writ petitions shall be deemed not to have been admitted.”

4. Thereafter the issue was re-agitated by the petitioner along with copy of the order passed in the writ proceedings. The same resulted in issuance of a letter dated 08.12.2023, by Regional Transport Officer No. 5 communicating decision of the STA Board in its resolution dated 09.10.2023. Relevant extract of the decision reads:

“And whereas, in serial (i) in second proviso of sub-section (3) of Section 80 of MV Act, 1988 prescribed that the termini shall not be altered.

And whereas, in the said application of the permit holder is asking to change the termini.

Hence, after consideration, STA Board rejected the application for curtailment of the portion of Monsukha to Borda Chowkan in the route Howrah to Monsuka submitted by the permit holder Sri Arup Kumar Ghosh.”

5. Decision of the Board was assailed by the writ petitioner in a writ proceedings. WPA 1133 of 2024 filed by the petitioner was allowed. The resolution of the STA Board dated 09.10.2023 was set aside and the respondents were again directed to revisit the issue and conclude the same by a reasoned decision within a stipulated time frame. WPA 1133 of 2024 was disposed of on 10.05.2024.
6. In compliance of the order passed in WPA 1133 of 2024 the Regional Transport Authority Ghatal revisited the issue by a reasoned order dated 14.06.2024. The authority decided not to allow the curtailment of the route since such curtailment will not serve the convenience of the public. The order dated 14.06.2024, is put to challenge in the present writ proceedings, reads:

“Whereas, in accordance with sub-section (3) of section 80 of MV Act 1988, states that, "Any such variation or extension within such limits shall be made only after the transport authority is satisfied that such variation will serve the convenience of the public and that it is not expedient to grant a separate permit in respect of the original route as so varied or extended or any part thereof."

AND,

Whereas, A route inspection report vide docket number 586/STA/SC/ dated 29.09.2023, was dispatched to the A.R.T.O Ghatal office asking for opinion on whether or not the curtailment will benefit the general public's transportation to and fro Borda Chowkan and Monsukha.

AND,

Whereas, the route inspection report dated 16.10.2023 vide memo no. 066/M.V.Section (Gtl) was submitted by the Ghatal ARTO, stating that it will fail to serve or provide any benefit to the movement of common people residing between Borda Chowkan and Monsukha.

AND,

Therefore, after considering all the aspects of the writ petition along with the report submitted by the A.R.T.O. Ghatal, and the submission of the Ld. Advocate of the petitioner, the STA board took a unanimous decision not to allow the said curtailment of the above-mentioned route, as it will not serve the convenience of the public.”

7. By an order dated 20.08.2024 passed in WPO No. 781 of 2024 the Hon'ble Single Judge Bench set aside decision of the authority dated 14.06.2024; and direction was issued upon the Secretary, STA to consider the petitioner's prayer afresh in terms of the statutory provision as well as the law settled in this regard. The order of the Single Judge dated 28.08.2024, directed an opportunity of hearing to be given to the petitioner and a reasoned order to be passed thereupon. The order of the learned Single Judge is put to challenge by way of the present intra-court appeal by the State authorities.
8. Learned Counsel for the State/appellants submits that the Hon'ble Single Judge has remitted the matter back to the authority for reconsideration, but after recording a conclusion that under the proviso of Section 80 (3) of the Motor Vehicles Act, 1988 (hereinafter referred as the "Act"), "curtailment" has not been made subject to any condition or rider under the second proviso to Section 80(3) of the Act. In view of such conclusion being recorded by the Hon'ble Single Judge, the authority is hardly left with any discretion and the

direction for passing reasoned order after giving opportunity of hearing amounts to an empty formality.

9. It is also submitted that the findings recorded by the Hon'ble Single Judge with regard to Second proviso of Section 80 (3) of the said Act, is unsustainable in law. It is submitted that any decision with regard to curtailment amounts to altering the route covered by the route permit and amounts to variation of the route. Curtailment of route has the effect of altering the termini. The same thus has to be treated as application for grant of new permit. The fact that the expression "curtailment" has not been mentioned in the second proviso cannot be made the basis to conclude that curtailment is not subject to public convenience contemplated under the Act. He has also placed reliance on Section 72 (XXII) of the Act to buttress his submission. Relying upon decision of the Apex Court in the case of ***Union of India and Another vs. Hansoli Devi and Ors.*** reported in ***(2002) 7 SCC 273***, he submits that while interpreting a provision in the statute it was not open to the writ Court to adopt a hypothetical construction because such construction in its view, is more consistent with the object and policy of the Act. The learned State Counsel submits that the underlying object of the statute in so far as the grant of Stage Carriage Permit is concerned, is to serve the public convenience, maintain an optimum level of road safety and frequency of vehicles plying on such routes, so as to best serve the commuting public. While undertaking such exercise for grant of variation, curtailment extension of route of

Stage Carriage Permit all these issues have to be taken into consideration.

10. The learned Counsel for the State has also placed reliance in this regard a decision of the apex Court in ***Mithilesh Garg & Ors. V. Union of India & Ors. reported in (1992) 1 SCC 168***. It is submitted that as per said judgment the transport system in any State is meant for benefit and convenience of the public. The STA has the power under the said Act to consider an application by a reasoned order considering all relevant factors. The apex Court in the said judgment has held such consideration to be quasi-judicial in nature.
11. Therefore, the order of the Hon'ble Single Judge in so far as such conclusions recorded therein, is, therefore, unsustainable and fit to be set aside, so as to enable the appropriate authority to take a reasoned decision, in accordance with law.
12. The learned Counsel for the respondent on the other hand submits that plain reading of the second proviso to Section 80(3) of the said Act, leaves no room for doubt that there is an omission to include the expression "*curtailment*" in this provision, therefore, an application for curtailment cannot be subjected to any condition or rider whatsoever. Commuter's convenience is relevant only in case of an application for "variation" or "extension" of existing route. He has also referred to the provisions contained in Section 72 (XXII) of the said Act to emphasize his submission.

13. The learned Advocate for the writ petitioner/ respondent has placed reliance on judgement of the Division Bench of the Karnataka High Court in the case of **A. Diwakara Naik Vs. Karnataka State Transport Authority and Ors.** reported in **ILR 2002 KAR 1357**. He has also relied upon decision of the Apex Court in the case of **M/s Shiv Chand Amolak Chand Vs. The Regional Transport Authority and Anr.** reported in **AIR 1984 SC 9**.
14. We have considered the submissions of the rival parties.
15. The writ petitioner applied for a stage carriage permit for the rout Mansukha to Howrah under the motor vehicles act 1988 (hereinafter referred to as the Act). Considering all relevant factors including convenience of the public, the petitioner was allowed stage carriage permit for the rout Mansukha to Howrah.
16. The petitioner thereafter sought curtailment of the route. He no longer wanted to ply the stage carriage on the entire route for which he had earlier taken a permit. Instead of plying the stage carriage from Mansukha to Howrah, he wanted to shorten the route and ply the stage carriage from Mansukha only up to Borda Chowkan. The authorities have taken into consideration whether such curtailment would serve public convenience and general requirement for public transportation as contemplated under section 80 (3), of the Act. They have relied upon inspection reports submitted by Assistant Regional Transport Officer (ARTO), which found such curtailment not being

beneficial for movement of common people residing between Borda Chowkan to Mansukha. The petitioners' application has thus been rejected by the state transport authority West Bengal, after giving an opportunity of hearing to the writ petitioner.

17. The learned Advocate for the appellant/state submitted that the conclusion of the Hon'ble single judge is unsustainable. Under section 80(3) of the Act, public convenience cannot be ignored while considering an application for altering/curtailing/varying a route alignment, which initially was granted upon due consideration of public interests to provide safe, convenient and speedy transportation to the common man.

18. In order to appreciate the rival submissions we have to take into consideration the scope and object of section 80 (3) of the Act which reads:

“ 80. Procedure in applying for and granting permits.—

...

(3) An application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area or by altering the route or routes or area covered by it, or in the case of a stage carriage permit by increasing the number of trips above the specified maximum or by the variation, extension or curtailment of the route or routes or the area specified in the permit shall be treated as an application for the grant of a new permit:

Provided that it shall not be necessary so to treat an application made by the holder of stage carriage permit who provides the only service on any route to increase the frequency of the service so provided without any increase in the number of vehicles:

Provided further that,—

(i) *in the case of variation, the termini shall not be altered and the distance covered by the variation shall not exceed twenty-four kilometres;*

(ii) *in the case of extension, the distance covered by extension shall not exceed twenty-four kilometres from the termini,*

and any such variation or extension within such limits shall be made only after the transport authority is satisfied that such variation will serve the convenience of the public and that it is not expedient to grant a separate permit in respect of the original route as so varied or extended or any part thereof. “

19. A plain reading of Section 80(3) reveals that an application to vary the conditions of any permit other than a temporary permit shall be treated as an application for grant of a new permit. The application to vary referred to in Section 80(3), includes application for new route or routes or area; or by altering the route, routes or area covered by the original stage carriage permit. An application for increasing the number of trips above the number specified in the original stage carriage and an application for variation extension or **curtailment** of the rout/routes or the areas specified in the permit, are all to be treated as an application for grant of a new permit.

20. The first proviso governs only an application for increase in frequency of the service provided on a route, without increasing the number of vehicles, when such an application is made by a stage carriage permit holder who provides the only service on any route. The petitioner did not make an application for increasing frequency of service being provided by him. Therefore, the petitioner's application cannot be considered under the first proviso to Section 80(3) of the Act.

21. Insofar as the second proviso, on which reliance is placed by the learned Advocate representing the respondents we find that Clause (i) of the second proviso deals with the issue of variation in the termini and Clause (ii) deals with extension of the distance covered. The second proviso clearly states that any variation or extension is to be made only after the transport authority is satisfied that the same will serve the convenience of the public and also that it is not expedient to grant a separate permit for the original route, so varied or extended.

22. From plain reading of Section 80(3) and the two provisos thereto we find that the intention of the Act is clear that convenience of the public is a paramount consideration. The same is required to be observed in case of variation of the existing conditions of the permit, or variation in the route or area of operation of the permit. The Act also contemplates keeping the termini of the route undisturbed unless of course it is in accord with the second proviso to Section 80(3). Therefore, an application for curtailment of an existing route which undoubtedly has the effect of varying the original route and altering the termini cannot be considered without taking into consideration the convenience of the public.

23. Insofar as decision of the Karnataka High Court in the case of **A. Diwakara Naik** (supra), relied upon by the writ petitioner respondent, we find that insofar as the application for curtailment was concerned the Division Bench has observed:

“22. It is therefore clear that before granting any extension, variation or curtailment of the route, the Transport Authority should examine the matter and record a finding that (a) the variation or extension of the route sought does not exceed 24 kms with reference to the original route; (b) such variation/extension will serve the convenience of public; and (c) it is not expedient to grant a separate permit in respect of the original route as so varied or extended or any part thereof. If any of the three conditions is not satisfied, the request for variation of the conditions will have to be rejected. Further, if the resolution/order of the Transport Authority does not expressly or impliedly indicate the application of mind and decision on these three aspects, the resolution/order of the Transport Authority will not be in accordance with Section 80(3) and thus, will be open to challenge. We therefore agree with the learned Single Judge that recording of findings on these three aspects by the Transport Authority is necessary, to confer validity on the order granting variation of the conditions of the permit.”

24. In the case of ***M/s Shiv Chand Amolak Chand*** (supra), also relied upon by the writ petitioner, the Apex Court has rendered the judgement considering the provisions contained in the Motor Vehicles Act 1939. On the other hand, we are concerned with Section 80 (3) of the Motor Vehicles Act 1988. An application for extension of the route under an existing permit made by the appellant therein was rejected as it was not in compliance with Section 47 (3) of the 1939 Act. The Apex Court was thus considering submission advanced on behalf of the appellant that Section 47 (3) of the 1939 Act (“Old Act” for short) was not applicable when an applicant is not seeking grant of a new permit under section 48, but merely an extension of the route under an existing permit, under Section 57 (8) of the Act.

25. Section 47(3) and Section 57 (8) of the 1939 Act reads:

“47. Procedure of Regional transport Authority in considering application for stage carriage permit.-

...

(3) A Regional Transport Authority may, having regard to the matters mentioned in sub-section (1), limit the number of stage carriages generally or of any specified type for which stage carriage permits may be granted in the region or in any specified area or on any specified route within the region.”

57. Procedure in applying for and granting permits.-

...

(8) An application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area or, in the case of a stage carriage permit, by increasing the [number of trips above the specified maximum or by altering the route covered by it] or in the case of a contract carriage permit or a public carrier's permit, by increasing the number of vehicles covered by the permit, shall be treated as an application for the grant of a new permit:

Provided that it shall not be necessary so to treat an application made by the holder of a stage carriage permit who provides the only service, on any route or in any area to increase the frequency of the service so provided without any increase in the number of vehicles.”

26. Sub-Section 1 of Section 47 of the Old Act contained procedure to be followed by the Regional Transport Authority in considering an application for a stage carriage permit. Under this provision the authority was obliged to consider various factors including public interest, convenience and advantages including the saving of time likely to be affected thereby, the adequacy of other transport services operating or likely to operate in the near future, by any means. Other factors such as likely benefit to any particular locality or localities, other transport services being operated by the applicant or applied for by the applicant was also to be considered. The provision also required the authority to consider the condition of roads included in the proposed route or area. The authority was also required to consider the representations made by existing permit holders, and existing passenger transport facility by any means near or along the

proposed route, or area. The section also contemplated giving preference to applications made by registered co-operative societies and by a person holding a valid license for driving transport vehicles.

27. Considering the provisions contained in Section 47 (3) of the Old Act, extracted above, the Apex Court held that:

“7. ... An application to vary the conditions of a permit as set out is undoubtedly to be treated as an application for grant of a new permit, but that is only for the purpose of applying the procedure set out in sub-sections (3) to (7) of that section. It is not an application for a new permit and if it is granted, the permit for the extended route does not become a new permit in the hands of the applicant. It is the same permit which now, after the granting of the application, covers the extended route. It may be possible to say that where a totally new route is sought to be included by an application to vary the conditions of a permit or the alteration of the route sought by such an application is of such a drastic character that it becomes substantially a new route, the application, though in form an application to vary the conditions of the permit, would in effect and substance, be an application for grant of a new permit and in such a case, a view may conceivably be taken with some degree of plausibility that the number of stage carriages for which permits may be granted on such new route should first be determined under Section 47 sub-section (3) before the application to vary the conditions of the permit can be entertained. An applicant for a permit on a route which is not merely technically, but in truth and reality a different route, distinct from the original route, may not be permitted to defeat the provision enacted in Section 47 sub-section (3) by labelling his application as one for varying the conditions of the permit and in such a case, the procedure set out in Section 47 sub-section (3) may have to be complied with before the Regional Transport Authority can consider and grant the application. But where an application merely seeks a short extension of the route specified in the permit as in the present case, it would not be appropriate to say that it is an application for grant of a new permit, though technically the extended route may not be regarded as the same as the original route and where such is the case, it would not be necessary to comply with the procedure set out in sub-section (3) of Section 47.”

28. The facts and circumstances in the present case are completely different than the issue decided by the Apex Court in the case of **M/s Shiv Chand Amolak Chand** (supra). The question whether there is a requirement to examine number of Stage Carriages existing on the

route. As per Section 47(3) of the Old Act, before an application for varying the conditions of permit can be entertained does not arise in the present case. The issue herein is whether the requested variation being a curtailment of the existing route can be granted without having regard to convenience of the public. A plain reading of the provision [Section 80(3)] of the Act leaves no room for doubt that convenience of the public is required to be seen, apart from the other parameters specified in the section. The judgment in the case of **M/s Shiv Chand Amolak Chand** (supra) in our opinion is not applicable to the facts and circumstances of the present case and does not help the case of the writ petitioner.

29. We further proceeded to consider decision of the Apex Court in the case of **Mithilesh Garg and Others vs. Union of India and Others** reported in **(1992) 1 SCC 168**. This judgment was rendered after enactment of the 1988 Act, provisions of which arise for consideration in the present proceeding. As regards Section 47(3) of the Old Act which fell for consideration before the Apex Court in the case of **M/s Shiv Chand Amolak Chand** (supra), we consider it fruitful to quote paragraph 5 of the judgment in the case of **Mithilesh Garg** (supra) which reads:

“5. The Parliament in its wisdom has completely effaced the above features. The scheme envisaged under Sections 47 and 57 of the old Act has been completely done away with by the Act. The right of existing operators to file objections and the provision to impose limit on the number of permits have been taken away. There is no similar provision to that of Section 47 and Section 57 under the Act. The Statement of Objects and Reasons of the Act shows that the purpose of bringing in the Act was to liberalise the grant of permits. Section 71(1)

of the Act provides that while considering an application for a stage carriage permit the Regional Transport Authority shall have regard to the objects of the Act. Section 80(2), which is the harbinger of liberalisation, provides that a Regional Transport Authority shall not ordinarily refuse to grant an application for permit of any kind made at any time under the Act. There is no provision under the Act like that of Section 47(3) of the old Act and as such no limit for the grant of permits can be fixed under the Act. There is, however, a provision under Section 71(3)(a) of the Act under which a limit can be fixed for the grant of permits in respect of the routes which are within a town having population of more than five lakhs.”

30. It is also beneficial to consider what has been stated by the Apex Court in the case of **Mithilesh Garg** (supra) in paragraph 6, relevant extract of which reads:

“6. ...In any case the transport system in a State is meant for the benefit and convenience of the public. The policy to grant permits liberally under the Act is directed towards the said goal. The petitioners who are already in the business want to keep the fresh entrants out of it and as such eliminate the healthy competition which is necessary to bring efficiency in the trade. This Court in Jasbhai Motibhai Desai v. Roshan Kumar [(1976) 1 SCC 671 : (1976) 3 SCR 58 : AIR 1976 SC 578] posed the following questions for its determination: (SCC p. 674, para 1)...”

31. Such observations have been made by the Apex Court emphasizing the convenience of the public. We, therefore, are of the considered opinion that the underlying consideration under the Act as apparent from the plain reading of Section 80(3) is to give primacy to the convenience of the public. The observations of the Hon’ble Single Judge that under the second proviso of Section 80(3) of the Act, “*In that perspective, when the “second proviso” of S. 80 (3) of the Act of 1988, is considered, it can be noticed that “curtailment” of a permitted route alignment has not been made subject to any condition or rider.*”, is not sustainable. We, therefore, set aside this observation of the Hon’ble Single Judge. We also extend the time limit for passing a

reasoned order in compliance of the order passed by the learned Single Judge by six weeks from the date of communication of this judgment.

32. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)

A.D.