

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(APPELLATE SIDE)**

**Present:
The Hon'ble Justice Smita Das De**

W.P.A. No. 22553 of 2025

**Somen Chakraborty
Vs.
The State of West Bengal & Ors.**

For the Petitioner : Mr. Debabrata Saha Roy, Sr. Adv
: Mr. N.I.Khan
: Mr. Amlan Kr. Mukherjee
: Mr. Dilip Kumar Mondal

For the State : Mr. Pantu Deb Roy, Ld. AGP,
: Mr. Subrata Guha Biswas

For the Respondent no. 5 to 8 : Mr. Bhaskar Nandi

Reserved on : **06/03/2026**
Judgment on : **25/03/2026**

Smita Das De, J.:-

1. The instant writ petition has been filed by the petitioner in WPA No. 22553 of 2025, challenging inter alia, on the following—
 - (a) The impugned notification dated June 12, 2025 issued by the Secretary, Transport Department, Government of West Bengal and;
 - (b) The endeavour on the part of Transport Department, Government of West Bengal for grant of fifteen more permits in the newly illegally formulated route no. HB- 9 and;

(c) Whether the state can validly renotify Minibus 9 as a standard bus route and such re-classification are at all legally permissible under the Motor Vehicles Act, 1988.

2. Apropos the facts of the case is that the petitioners are stage carriage permit holders in Route no. 71 (Howrah Maidan to Mahishbathan), Route no. 28 (Sealdah to Howrah Maidan via Amherst Street, C.R. Avenue, Pagaiya Patty, Burrabazar , Howrah Station) and Route no. 24B (Howrah Station to Munshi Bazar Via Howrah Station , Burrabazar , Pagaiya Patty, C.R Avenue Crossing , Amherst Street, Sealdah , Lorry Road , Palmer Bazar crossing respectively and their permits are valid for a substantial period of time. The petitioners are plying their vehicles strictly in accordance with the prescribed rules, since the permits have been granted pursuant to the notification dated May 20, 2003.
3. The Transport Department, Government of West Bengal in exercise of its power conferred under Section 71(3)(a) of the Motor Vehicles Act, 1988 and under the direction of the Central Government as conveyed in No. SO.288(E) dated April 4, 1994 of the Ministry of Surface Transport and in supersession of the notification dated May 9, 2000 issued a notification dated May 7, 2003 which has been published in the Official Gazette on May 20, 2003 directing the Regional Transport Authorities (hereinafter referred to as the 'RTA') of Kolkata and Howrah to limit the number of stage carriages (Ordinary Service & Special Service) and Special Stage carriages operating on city routes in towns within the jurisdiction of Kolkata Police along with the areas under

Salt Lake and Lake Town Police Station in respect of RTA, Kolkata in the manner specifies therein with immediate effect. In the notification several routes have been incorporated fixing the maximum number of stage carriage permits to be granted.

4. An appeal has been filed before this Hon'ble Court being G.A. No 568 of 2002, A.P.O.T. No 83 of 2002 (Sankar Automobiles & Ors vs State of West Bengal & Ors).
5. The dispute concerns a policy decision against granting of permit originating from or terminating at Esplanade and Howrah on the ground of congestion, pollution and lack of halting places due to buses parked on the roads.
6. Before the Appellate Court, the Government of West Bengal asserted that there has been no such policy decision.
7. The matter has been heard by the Hon'ble Division Bench on November 21, 2003 which held that the Court cannot undertake the exercise of jurisdiction specially assigned to the expert authority as these are matters for experts to consider. The Court cannot step into the shoes of the expert to enumerate the factors for grant or refusal of permit.
8. The Division Bench has observed that it is the high time to be considered for grant or refusal of permit by the appropriate authority created under the statute and directed the State Government/State Transport Authority (hereinafter referred to as the 'STA' for the sake of brevity and convenience) and RTA to appoint a committee within a month from the date of communication of the order and the State

Government and the STA shall issue permit pursuant to the Committee's recommendation.

9. The Court also directed that the State Government should issue directions to such committee as to the scope and extent allowing the STA or State Government to add or subtract from the committee's ambit as they deem fit and the committee shall examine- (a) Road space and availability of halting places / termini's for long distance buses (b) Accommodation of buses in termini and road space for plying such buses (c) Total number of vehicles that can be accommodated in different termini and the rotation system for bus halting and outward journeys. The Hon'ble Division Bench emphasized that it is the high time for consideration of the grant or refusal of permit be taken by the expert authority under the statute and the Court should not substitute its own judgment for that of the experts.
10. On January 1, 2004 the Transport Department, Government of West Bengal vide a notification constituted a Committee under G.A No. 568 of 2002 /APOT No 83 of 2002, to submit a report with recommendations for control of traffic congestion and vehicular pollution by July, 2004 focusing on termini extension and bus accommodation availability.
11. A notification has been issued dated August 6, 2004 by the Transport Department, Government of West Bengal after perusing the report of the committee, which has been published in the official gazette on

August 6, 2004 directing inter alia, the STA, and all the RTA in the State of West Bengal is enumerated below:

(a) No new bus route be issued which may pass through the Central Business District (hereinafter referred to as 'CBD' for the sake of brevity and convenience) viz. Esplanade and Band Stand in Kolkata and Howrah Station and approach areas of Howrah Bridge (Rabindra Setu) till further orders.

(b) No new permit for stage carriage shall be issued which may originate/terminate in Esplanade and Band Stand in Kolkata and Howrah Station.

(c) No new bus route shall also be created /formulated in Kolkata and Howrah without creating any appropriate parking place having requisite amenities for both the passengers as well as the transport workers.

(d) No new permit shall be issued for auto rickshaw operating within Kolkata Metropolitan area.

- 12.** On June 12, 2025 the Secretary, Transport Department, Government of West Bengal issued a notification no 3254-WT/TPT-1011/60/2024 which holds that multiple proposals have been received from different associations and stakeholders for the restoration and replacement of the old 27 seated mini bus route from Ramrajatala to Rajabazar(route no 9) by new BS-VI buses having 39 seats and the District Magistrate and Chairman, RTA ,Howrah has recommended in favour of such change of existing mini bus route. The DCP (Traffic), Howrah Police Commissionerate has given NOC in favour of such replacement and

the Secretary, Transport Department, Government of West Bengal in cancellation of “Special Stage Carriage” (Mini Bus) service from Ramrajatala to Rajabazar and back at Sl. No 35 under notification May 7, 2003, notified ‘a new stage carriage bus route’ by fixing maximum number of permits to be issued in exercise of powers conferred under section 68(3)(ca) and section 71(3)(a) of the Motor Vehicles Act, 1988 in public interest, with immediate effect. It is evident from the new formulated route “HB-9” (Ramrajatala to Rajabazar) that it passes through Howrah Station and approach areas of Howrah Bridge (Rabindra Setu).

13. The core issue is whether a route designated for small stage carriages (mini buses) can be converted into Stage Carriage (Standard Bus Route).
14. Being aggrieved by the impugned notification dated June 12, 2025 issued by the Secretary, Transport Department, Government of West Bengal, seeking the grant of fifteen additional permits for the newly formulated route no. HB- 9, is the subject matter of challenge in the instant writ petition.

Contention of the Petitioner-

15. Learned counsel on behalf of the petitioner states that the impugned notification dated June 12, 2025 issued by the Secretary, Transport Department, Government of West Bengal which has been issued under section 68(3)(ca) and section 71(3)(a) of the Motor Vehicles Act, 1988, the intent and purport of the same is to facilitate operators from different associations and stake holders as multiple proposals

have been received from different associations for the restoration and replacement of old 27 seated mini bus route from Ramrajatala to Rajabazar by new BS VI having 39 seats and not merely for the existing twelve operators.

- 16.** It has also been stated by the petitioner that from the impugned notification it appears that the Secretary, Transport Department, Government of West Bengal have acted in terms of the 'No-Objection' certificate issued by the DCP(Traffic) Howrah Police Commissionerate who has absolutely no role to play in interfering with the job of the permit issuing authority.
- 17.** It has been also contended that the Respondent authority has ignored the existing notification dated August 6, 2004 which is in force and time to time the excerpts of the notification has been clarified by this Hon'ble Court in G.A. 568 of 2002 /APOT No. 82 of 2002.
- 18.** The petitioner argues that the renotification is not a mere nomenclature of change of the route based on increased passenger density. The RTA has the inherent power to upgrade route status to meet public demand, and once this policy decision is codified in a Board meeting, it must be given full effect.
- 19.** Under Section 68(3) and Section 72 of the Motor Vehicles Act, the RTA and the State Government possess the authority to limit or modify the number and type of stage carriages on any given route. Renotifying a route is a valid exercise of administrative discretion, provided it follows the prescribed procedure of inviting objections.

- 20.** It has been further submitted that the RTA, Howrah in its Board meeting dated June 25, 2025 on the basis of the representation of the General Secretary, Howrah Bus-Minibus Owners Welfare Association, dated February 29, 2025 for restoration of Mini Bus Route No.9 as there has been no progress on the re-notification of the route, allowed the prayer of the twelve applicants for issuance of offer letter for permits and accordingly, permits have been issued in favour of the applicants.
- 21.** Learned Counsel on behalf of the petitioner further submitted that it appears from the resolution of the RTS Board meeting dated June 25, 2025 that the Transport Department issued notification dated June 12, 2025, renotifying the mini bus route no 9 as a bus route having 39 seats (including driver) and the RTA illegally decided to modify the seating capacity of the offer letters in terms of the notification dated June 12, 2025. It has been further stated that the intent of the impugned notification dated June 12, 2025 issued by the Secretary, Transport Department is to facilitate all stake holders of different associations from where it has received multiple proposals for restoration and replacement of route no.9.
- 22.** The petitioner contends that the notification dated June 12, 2025 issued under section 68(3)(ca) of the Motor Vehicles Act,1988 for formulation of the new route from Mini bus route no 9 to Bus route no HB-9 is in violation of the Government Policy and the order of the Hon'ble Division Bench dated November 21,2003 .

23. The petitioner has relied upon the judgment reported in **(2011) 5 SCC 142 Coal India Limited vs Ananta Saha**, where it has been held by the Apex Court that it is a settled legal proposition that if the initial action is not in consonance with law, subsequent proceedings would not sanctify the same.
24. The petitioner has also relied upon other judgments reported in **2008 (2) CHN 728, Sujata Ganguly vs State Of West Bengal** in which the Division Bench of this Hon'ble Court has been pleased to hold that the STA and RTA of Kolkata and Howrah may issue stage carriage permits against offer letters already issued by the concerned authorities prior to the issuance of the notification dated August 2, 2004 subject, to the notification dated May 20, 2003 issued under Section 71 (3)(a) of the Motor Vehicles Act, 1988. The Hon'ble division Bench has been further pleased to direct that no offer letter or permit shall be issued in violation of the policy decision notified on August 6, 2004 and in cases where offer letters have already been issued after August 6, 2004 runs contrary to the policy decision dated August 6, 2004. The Hon'ble division Bench has been further pleased to hold that the RTA of Kolkata and Howrah may fill up, the vacancies against the strength fixed in the notification dated May 20, 2003 issued under Section 71(3) (a) of the Motor Vehicles Act, 1988.
25. Learned Counsel on behalf of the petitioner further states that it is evident from the notification dated August 6, 2004 published by the Transport Department, Government of West Bengal and the necessary clarification of the Division Bench of this Hon'ble Court in **Sujata**

Ganguly (supra) that there is no scope to formulate new bus route and to grant permits in respect of vehicles which may pass through the CBD i.e Esplanade and Band Stand in Kolkata and Howrah Station and approach areas of Howrah Bridge (Rabindra Setu) after issuance of the notification.

Contention of the State Respondent-

- 26.** Learned counsel on behalf of the state respondent submits that the State Government introduced Notification no 3438-WT/3M-139/2004 dated August 2, 2004, in terms of the order passed by this Hon'ble Court vide order dated November 21, 2003 passed in A.P.O.T No. 83 of 2002. It is further contended that, restrictions has been imposed in formulation of new bus routes and the issuances of new permits which may pass through the CBD, until further order has been passed and new permits are issued.
- 27.** It has been stated by the state respondents that the withdrawal of the previous route namely, Route no 9 and formulating the route HB-9 does not violate the restrictions so formulated under the notification of August 2, 2004 and is merely revival of an existing route with improved amenities and infrastructures providing developed transportation service to the commuters.
- 28.** Learned Counsel on behalf of the state respondent states that the Hon'ble High Court at Calcutta, while explaining the meaning and purport of the notification dated August 2,2004 in F.M.A No 604 of 2004, clearly specified that the RTA Howrah and Kolkata may fill up vacancies against the strength fixed in the notification dated May

20,2003 .The Court further held that the RTA Kolkata may, if it deems fit, renew existing vacancies and may fill up casual vacancies against the notified strength, meaning thereby as per the vacancies of the notification dated May 7, 2003, which has been fixed at twelve.

29. The objection raised with regard to seating capacity of the stage carriages from 22 to 39 in the impugned notification dated June 12, 2025, it is submitted that Section 2(40) under the Motor Vehicles Act, 1988 defines a stage carriage as motor vehicle constructed or adapted to carry more than six passengers, excluding the driver, for hire or reward, at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey.
30. The state respondent submits that a vehicle, which would qualify as motor vehicle for stage carriage permits, has to be a motor vehicle having minimum seating capacity of six persons, excluding the driver, and there is no bar or impediment against increasing the seating capacity from 22 to 39. Revision of the old route permit, and the introduction of new 39 seated stage carriage motor vehicle falls within the ambit of the definition of the Motor Vehicles Act, 1988.
31. Learned counsel on behalf of the state respondent states the petitioner cannot have any *locus standi* to object regarding revision of the old route no.9 to a new route no.HB-9, since the petitioners are not the operators of the said route.

Contention of the Private Respondent-

32. The private respondent contends that the State Government has the power to alter and add to the list of routes under notification No.

2129- WT dated May 7, 2003, by exercising the power under section 68(3)(c) read with section 71(3)(c) of the Motor Vehicles Act, 1988 to cancel the special stage carriage (Mini Bus) service and notify a new stage carriage 'Bus Route No HB-9' by fixing a maximum number of permits.

- 33.** As per the notification dated June 12, 2025, the maximum permit strength of Route No.HB-9 is fifteen, whereas the earlier Route no 9 has been twelve as per the notification dated May 7, 2003. This indicates the enhancement of three permits in the route in question, but factually the three permits have been restricted exclusively for electric vehicles, while the remaining twelve permits pertain to general vehicles, having no change in the fleet strength on Route no HB-9.
- 34.** Learned counsel on behalf of the private respondent submits that in with regard to the grant of 'Special Stage Carriage Permit for Minibus' has been considered to be in violation of the provisions of the Motor Vehicles Act, 1988. This Hon'ble Court, in the order dated August 14, 1990 has been pleased to direct that the right to issue stage carriage permit cannot be extended to the issuance of special stage carriage permits. Accordingly, the issuance of such special stage carriage permit is liable to be set aside.
- 35.** It has further been submitted that one notification being No 4203-WT/8S-24/90 dated March 24, 1991 has been duly issued by the Transport Department, Government of West Bengal thereby restricting the issuance of 'Special Stage Carriage' permits for Minibuses and the context of the notification is appended below-

“The matter has been examined by the Government and the Governor has been pleased to direct the henceforth Minibuses which are omnibuses of approves specifications and are actually plying as stage carriage under the ambit of section 2(40) of the Motor Vehicles Act, 1988 shall be granted ‘Stage Carriage’ permits in accordance with the provisions of the Act for such purpose”

Thus in the light of the above clarifications the present Notification dated June 12,2025 empowering the RTA of Howrah to issue ‘Stage Carriage’ permits for buses in the Route no HB-9 is very much within the scope and ambit of the Motor Vehicles Act,1988 and rules framed there under.

- 36.** It has been also stated that the Regional Transport Authority, Howrah in its meeting dated March 25,2025 ,vide Agenda no.1 B(ii), decided to issue ‘Offer Letters’ for permit of Minibus having seating capacity 28 (including the driver) and subsequent thereto, in the meeting dated June 25, 2025 it has been further decided to modify the seating capacity of the offer letters upto 39 (including the driver) in terms of the Notification no. 3254-WT/TPT-18011/60/2024 dated June 12,2025 issued by the Transport Department. It has been also submitted that according to section 83 of the Motor Vehicles Act, 1988 read with Rule 153 of the West Bengal the Motor Vehicles Act, 1989, since the holder of a permit may, with the permission of the permit granting authority, replace any vehicle covered by the permit by any other vehicle of the same nature, therefore there is no infirmity in the decision adopted by the RTA, Howrah on June 25, 2025 for modification of seating capacity in respect of the offer letters. In this

regard the Private respondent has also relied upon the judgment passed by the Hon'ble High Court at Calcutta in the matter of **Sujit Kumar Dutta vs State of West Bengal** read with **Amit Kumar De vs State of West Bengal** reported in **2011(4) CHN (cal) 286**.

- 37.** It has been contended by the Private respondent that the notification dated June 12, 2025 has been issued in consonance with the judgment reported in **2008 (2) CHN 728, Sujata Ganguly vs State Of West Bengal** in which the Hon'ble Court has been pleased to uphold the policy decision dated August 6, 2004, wherein necessary guidelines has been laid down for the grant of permits as mentioned under Clause 5. Clause 5.1 of the guidelines debarring the RTA of Kolkata and Howrah to issue offer letters or permits in violation to the notification dated August 6, 2004. On the contrary, Clause 5.2 postulates that the transport authorities may fill up vacancies against the strength fixed in the notification dated May 20, 2003 issued under section 71(3)(a) of the Motor Vehicles Act, 1988 on the other hand Clause 5.5 contemplates that the RTA of Kolkata and Howrah, if it thinks fit may fill up vacancies remaining after such renewal and may also undertake to proceed with filling up the casual vacancies against notified strength. According Clause 7.1 this order will not affect the applications or offer letters even if made after August 6, 2004 provided it does not violate or flout the policy decision dated August 6, 2004 and the notification dated May 20, 2003 issued under Section 71(3)(a) of the 1988 Act. Therefore in view of such guidelines the RTA, Howrah is competent to issue 'Stage Carriage Bus Permits in Route No

HB-9' following the order being no 3254-WT/TPT-18011/60/2024 dated June12,2025 issued by the Transport Department, Government of West Bengal.

- 38.** It has been stated by the Private respondent that the petitioners have no *locus standi* to raise any objection against the grant of permits made in favour of the private respondent, in the light of the Judgment of the Hon'ble Apex Court in **Mithilesh Garg vs The Union Of India** reported in **1991 (1) SCC 168**, since the petitioners are admittedly existing operators of Route No 71, 28 and 24B respectively. It has also been submitted that the private respondents be allowed to continue their 'Stage Carriage Bus' services on Route No HB-9 in due observance to the Notification being no 3254-WT/TPT-18011/60/2024 dated June 12,2025 issued by the Transport Department ,Government of West Bengal.

Analysis-

- 39.** The moot question evolved herein are as follows –
- (a) Challenge to a notification dated June 12, 2025 issued by the Secretary, Transport Department, Government of West Bengal allegedly deviating from the guidelines in a prior Notification dated August 6, 2004 and;
 - (b) The Legality of granting fifteen more permits for the newly formulated Route No. HB-9 and whether such formulation is sustainable.
 - (c) Reclassification of Minibus Route no 9 as a standard bus route and its permissibility under the Motor Vehicles Act, 1988.

40. It is a well settled principle that once the Government issues a notification re-classifying a route, all ancillary instruments, including an offer letter, must reflect that change. As minibuses and buses are distinct categories under the Motor Vehicles Act, an offer letter cannot merge both categories.
41. In the instant case the primary legal conflict involves the notification dated August 6, 2004 which restricted new permits from touching or passing through the CBD of Kolkata.
42. The notification dated August 6, 2004 is a valid exercise of a State power under Motor Vehicles Act and must strictly be followed by STA and RTA. No new permit or route extension should be granted if they have touched the CBD specifically to address the traffic congestion.
43. The petitioner challenges the grant of permit of route HB-9 asserting that the said route violates the restrictive covenants of the notification dated August 6, 2004. It is contended that the route touches the prohibited CBD zone which is a direct contravention of the law laid down in the case of **Sujata Ganguly (supra)**.
44. The respondent authorities have acted ultra vires by formulating route HB-9 in direct contravention of the restrictive notification dated August 6, 2004 which remains the governing policy for traffic rationalisation. By allowing operators to ply on a route that touches restrictive zones, the State has bypassed the mandatory guideline established in the case of **Sujata Ganguly (supra)**.
45. The petitioner challenges the memorandum issued by the Transport Department in the year 2024 which renotifies Route No. 9 as a

Standard Bus route effectively superseding its prior status as a Minibus route. The petitioner contends that such a renotification is arbitrary and lacks a rational nexus with public interest. Under both the Motor Vehicles Act, 1988 read with West Bengal Motor Vehicles Rules, the STA and the RTA hold the power to create, modify or renotify routes to meet evolving, commuting demands. However, such administrative actions must adhere to the principles of natural justice and must not be hit by the doctrine of legitimate expectation without a compelling public policy reason.

- 46.** The judgment of **Sujata Ganguly Vs State of West Bengal** reported in **2008 (2) CHN 417** is a landmark decision concerning regulation of bus route in Kolkata and Howrah to prevent traffic congestion and pollution. The judgment of **Sujata Ganguly (supra)** recognized that the State can prohibit or modify the permits on specific routes to serve the broader public interest provided such policy is formally notified. In the instant case, it has been categorically observed that an offer letter does not create an absolute vested right if a subsequent, valid policy, notification, supervenes but it also emphasises that the State must act consistently once a policy is declared contradictory.
- 47.** The judgment criticizes the contradictory stand taken by the State renotifying the route for buses, minibuses in one hand and on the other hand refuses to rectify the offer letters. The relevant paragraph 5.1 of the judgment is reproduced below;

“5.1. The State Transport Authority and Regional Transport Authority of Calcutta and Howrah may issues stage carriage

permits against offer letters already issued by the concerned authorities prior to the issue of the Notification No.3438-WT/3M-139/2004 dated 2nd August, 2004 published on 6th August, 2004 subject however to the notification dated 20th May, 2003 issued under Section 71(3)(a) of the Motor Vehicles Act, 1988. No offer letter or permit shall be issued in violation of the policy decision notified on 6th August, 2004. In cases where offer letters have been issued after 6th August, 2004 which violates the policy decision dated 6th August, 2004, no permit shall be granted in respect of such offer letters so issued.”(emphasis supplied)

48. The judgment of **Sujata Ganguly (supra)** mandates a bar on new formulation for increased congestion in the specified zones. The respondent authorities have allowed the private respondents to act in terms of a new notification which appears to bypass the primary notification of 2004 without formal supersession of judicial bar. Any new route (like HB-9) violates the distance or zone restriction is technically ultra vires unless it falls under specific exception decided in the policy.
49. In the conspectus of the above it is held that the Transport Department is certainly not empowered to formulate a new route involving Howrah Station and Howrah Bridge contrary to the provisions of the notification dated August 6, 2004 which has been issued pursuant to the order passed by the Hon’ble Division Bench of this Hon’ble Court.
50. Section 71(3)(a) of the Motor Vehicles Act of 1988 merely mentions that the exercise of statutory powers by the State Government depends upon a direction of the Central Government "having regard to

the number of vehicles, road conditions and other relevant factors". Accepting that the power to limit has been delegated to the State Government in terms of the statute, under direction of the Central Government, as conveyed by the Special Order No.288(E) dated April 4, 1994 by a Notification dated May 9, 2000 published May 10, 2000 in the Official Gazette, and that the power to alter or add to the limits has also been given to the State Government, thereby, it is incumbent on the State Government to record a specific finding as to not only the road conditions, but also other relevant matters.

- 51.** The respondent authority has misconstrued the provisions of August 2, 2004 Notification .The decision taken by the respondent authority by issuing a notification dated June12, 2025 issued by the Secretary, Transport Department, Government of West Bengal, deviating from the guidelines laid down in the notification dated August 6, 2004 reflects the arbitrariness and biasness of the respondent authority frustrating the entire process of decision making.
- 52.** Moreover, for deemed amendment, or for alteration or for creation or destruction or deemed modification, it has to be manifest on the face of the notification purporting to amend, create, destroy or alter or modify the authorities of the earlier notification on the subject and the regulation, restriction or prohibition order of Competent Court upholding the regulatory restriction contained in it, which has been engrafted by the earlier notification. In the instant case the said notification published on June12, 2025 by the respondent seems to be blissfully aware of the notification dated August 2, 2004, as published

on August 6, 2004, and the regulatory restriction contained in it, which has been upheld by a coordinate bench in **Sujata Ganguly (supra)** and which the present notification egregiously violates.

- 53.** In the Judgment Of **Prabhat Pan & Ors vs State Of West Bengal & Ors** reported in **2013 SCC OnLine Cal 19830** it has been held by the Hon'ble Court that –

“Take a case where a permit is issued in favour of an operator contrary to a notification issued by the State Government, or, a case where despite a cap on the number of permits to be issued, imposed under Section 71 (3)(a) of the 1988 Act, the transport authority issues a permit in excess thereof, or, a case where a holder of a contract carriage permit is allowed a conversion of such permit to a stage carriage permit. All these are illegal acts.”(emphasis supplied)

In another Judgment **State of West Bengal vs Avijhit Ghosh & Ors** it has been held by this Court that-

“In support of the submission that the notification published on June 30, 2016 is deemed to have modified the notification published on August 6, 2004 and that the power to create includes the power to destroy and also the power to alter what is created.

In the instant case, all that is manifest from the Notification published on June 30, 2016 is that the State of West Bengal was under the impression that the only notification binding it was of May 7, 2003, which it was purporting to modify and in view of such express intendment, it cannot be said that the notification published on August 6, 2004 was deemed to be modified or deemed to have been amended. The said notification published on June 30, 2016 or the reasoned decision dated January 22, 2016 as corrected on March 4, 2016 seems to be blissfully unaware of the notification dated August 2, 2004, as published

on August 6, 2004, and the regulatory restriction contained in it, which was upheld by a coordinate bench in Sujata Ganguly (supra) and which the present notification and reasoned order egregiously violates.”

54. Much of the argument that an existing operator has no *locus standi* to challenge a fresh grant of permit to a new operator would loose force, if it could be shown that the statute that governs grant of permits to enable providing of stage carriage services itself provides a forum where an illegal or improper grant of permit could be assailed.
55. Having heard the parties at length and considering the materials available on records I am of the considered view that the respondent authority did not act as per the barring provisions of the August 2, 2004 Notification and proceeded to formulate a new route HB-9 and by virtue of the Judgment and Order pronounced by the Hon'ble Special Bench, the petitioners certainly has *locus standi* to challenge such illegalities. In view of the notification dated August 6, 2004 this Court finds the formulation of route HB-9 is legally unsustainable for the following reasons:
 - (a) The notification dated August 6, 2004 explicitly prohibits the creation of new routes or the extension of the existing route that touches or passes through the central business district and other congested corridors. Route HB-9 as formulated directly intersects those prohibited zones, rendering its creation ultra vires to the standing policy.
 - (b) In the landmark judgement of **Sujata Ganguly (supra)** this Court has upheld the notification dated August 6, 2004 as a necessary

measure to curb the environmental pollution and traffic congestion. The judgment establishes a judicial bar against administrative formalities that seek to bypass this restriction. Any new notification allowing the operators to act in defiance of this Bar is invalid without a formal, evident based supersession of the 2004 Policy.

(c) The respondent authorities have failed to demonstrate any overriding public interest or change in circumstances that justifies deviation from the 2008 judicial mandate. An administrative decision cannot override the Policy validated by a Division Bench of this Court simply by labelling “a new formulation”.

(d) “Where a Bar for not formally exists”, the authorities are duty bound to strictly adhere to the distance and the zonal restriction. Allowing HB-9 to operate would invite chaos and undermine the objective of the 2004 Notification.

- 56.** In view of the above, this Court is inclined to hold that the formulation of HB-9 route is hereby quashed and set aside and the private respondent are allowed to ply as per the route mentioned in their original permits. The respondent authorities are restrained from granting or giving effect to any permits issued under the route in question. The State is directed to ensure that any future route formulations shall strictly adhere to the parameters set out in the 2004 notification along with the judgment of **Sujata Ganguly (supra)** precedent. An administrative notification cannot override a judicial mandate unless the under-lying legal condition (traffic density /population) has been formally reassessed and cleared by the Court.

- 57.** In view of the above **Writ Petition No. 22553 of 2025** is allowed and disposed of. No order as to cost.
- 58.** Urgent Photostat certified copy of this order if applied for be supplied to the parties on priority basis upon compliance of all requisite formalities.

(Smita Das De, J.)