

(2011) 09 CAL CK 0087**Calcutta High Court****Case No:** Writ Petition No. 16863 (W) of 2009

Manik Lal Maji

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Sept. 20, 2011**Acts Referred:**

- Constitution of India, 1950 - Article 226, 246
- Motor Vehicles Act, 1988 - Section 71(3), 74(3), 80, 82
- West Bengal Motor Vehicles Rules, 1989 - Rule 159(9)

Citation: (2012) 2 CHN 172**Hon'ble Judges:** Debasish Kar Gupta, J**Bench:** Single Bench**Advocate:** Maloy Kumar Basu, Rabindranath Das, Durga Prasad Dutta, Souvik Sen, Sumanta Ganguly, Dilip Kumar De and Snehasis Bala, for the Appellant; Debayan Bera, Sakti Prasad Chakraborti for Respondent No. 3 and Manik Chandra Das, For Surface Transport Corporation, for the Respondent**Judgement**

Debasish Kar Gupta, J.

This writ application is filed by the Petitioner challenging the propriety of the notice dated July 9, 2009 published in "Ananda Bazar Patrika" by the Respondent No. 3, an order dated December 30, 2009 passed by the Joint Secretary to the Government of West Bengal, Transport Department, and notification No. 180-WT/8S-16/2005 dated January 1, 2010 issued by the Government of West Bengal, Transport Department.

2. The back drop of the case in a nutshell is as follows:

3. The Petitioner was plying his vehicle under Stage Carriage Permit in an around Asansol Sub-division in the district of Burdwan. Asansol had a population over ten lakhs. There had been significant raise in road accident consequent upon granting of a large number of permits for plying vehicles.

4. An application under Article 226 of the constitution of India bearing W.P.

No. 11631(w) 2004 was filed by some of the operators and an association of operators who had been plying their vehicles under Stage Carriage Permits in the district of Burdwan in and around the town of Asansol. The above writ application was disposed of, on July 13, 2005 with the following order:

Accordingly, I dispose of the writ petition giving liberty to the Petitioner to bring to the notice of the Transport Authority and the Central Government the conditions of the town of Asansol, including number of the vehicles operating there, road conditions and other relevant matters by way of representation and if such representations made the concerned authorities shall consider the same and upon giving the Petitioners and other concerned parties opportunity of being heard, and take a decision in this regard as expeditiously as possible.

It has been submitted on behalf of the Petitioners that they would make a representation to the authorities including the Transport Authority and Union of India within a period of fortnight. If such representation is made, the concerned authorities shall take a decision upon given a concerned parties including the Petitioners an opportunity of being heard within a period of not more than four months from the date of receipt of such representation. The writ petition is accordingly, disposed of. There will be no order as to costs.

Urgent xerox certified copy of this order, if applied for, be supplied on priority basis.

5. On July 26, 2005 a representation was submitted to the State Government in the above matter. After giving an opportunity of hearing to the persons concerned, the Principal Secretary to the Government of West Bengal, Transport Department prepared a report dated February 21, 2006 in the matter of imposing restriction on issuing Stage Carriage Permits and Contract Carriage Permits relating to the routes originating or terminating within the city of Asansol in Burdwan district and forwarded the same to the Central Government by a communication dated February 22, 2006.

6. The Central Government, Ministry of Shipping, Road Transport and Highways (Department of Road Transport and Highways) issued notification No. S.O.846(E) dated June 1, 2006 in exercise of Clause(a) Sub-section(3) of Section 71 and Clause(a) of Sub-section(3) of Section 74 of the Motor Vehicles Act, 1988 directing the Government of West Bengal to direct concerned State Transport Authority and the Regional Transport Authority to limit, by a notification in the official gazette, the number of Stage Carriages as well as Contract carriages, generally or of any specified type as may be fixed and specified in the notification, operating in the municipal limits of Asansol city in Burdwan district.

7. Thereafter, the government of West Bengal, Transport Department issued notification No. 4596-WT/8S-16/65 dated October 20, 2006 in exercise of powers

conferred under Sections 71(3)(a) of Motor Vehicles Act, 1988 and 74(3)(a) of Motor Vehicles Act, 1988 restraining Regional Transport Authority, Burdwan and other Regional Transport Authorities as well as the State Transport Authority, Government of West Bengal from issuing new Stage Carriage Permits as well as Contract Carriage Permits (for all category of passenger transport vehicles) on any rout/area within the municipal limit of Asansol city of Burdwan District excluding the Inter State Carriage/Inter State Contract Carriage Routs, that too with the approval of the State Government, until further orders with a the rider that the government in the Transport Department should, however, be at liberty to invite such routs as deem fit in public interest.

8. On July 9, 2009 a notice was published in "Ananda Bazar Patrika: a daily vernacular at the instance of the Respondent No. 3 inviting applications from the interested persons to ply hundred High-Take Luxury Semi Low Floor buses in and around the municipal limits of Asansol, Durgapur cities of Burdwan district as franchisee of the Respondent No. 3 under JNNURM scheme. The Petitioner filed this writ application under Article 226 of the constitution of India challenging the above notice. The above writ application was allowed on December 22, 2009 with the following order is quoted below:

The advertisement has been issued by the South Bengal Transport Corporation and not the State Transport Authority or any Regional Transport Authority. The South Bengal TransportCorporation does not issue permits. The advertisement is apparently in relation to the plying of buses by the South Bengal TransportCorporation.

The Regional Transport Authorities and the State Transport Authorities shall, however, not issue any new permit in contravention of the Notification u/s 71(3)(a) read with Section 74(3) issued by the Government of West Bengal.

The writ application is disposed of with the above observation and or direction. Urgent photostat certified copy of this order be supplied to the appearing parties, if applied for, with all necessary formalities.

9. By an order dated January 27, 2010, a Division Bench of this Court set aside the above judgment and order dated December 22, 2009 passed in this writ application remanding the same back for final adjudication.

10. By an order dated February 15, 2010 passed by this Court, the Petitioner was allowed to amend this writ application challenging the order dated December 30, 2009 passed by the General Secretary Government of West Bengal Transport Department enabling the Respondent No. 3 to operate buses owned by them under JNNURM scheme on different routs originating from and/or terminating at Asansol/Durgapur in relaxation of existing restrictions as also notification No. 180-WT/8S-16/2005 dated January 15, 2010 issued by the State Government in relaxation of restrictions imposed by notification No. 4596-WT/8S-16/2005 dated

October 20, 2006 allowing the Respondent Nos. 4 and 5 to issue new Stage Carriage Permits in favour of the Respondent No. 3 for plying 100 buses procured under JNNURM scheme in respect of any route touching/terminating/originating in the areas falling within the municipal limit of Asansol city of Burdwan district.

11. At the very outset a preliminary objection is raised on behalf of the State Government with regard to maintainability of this writ application at the instance of the Petitioner. According to him, the Petitioner has no locus standi to maintain this writ application challenging the notification issued by the State Government in the matter of relaxation of restriction of the number of vehicles plying on the basis of the Stage Carriage permits and/or contract carriage permits in the areas falling within the municipal limit to Asansol city of Burdwan District.

12. Reliance is placed by the learned State Advocate on the case of Mithilesh Garg, Vs. Union of India and others etc. etc., Sanjit Chakraborty Vs. State of West Bengal and Others, and Sanjit Chakraborty v. State of West Bengal, reported in 2007 cal 252 in support of the above submissions.

13. The above submissions have been adopted by the learned advocates appearing for the Respondent Nos. 3 and 7 respectively.

14. On the other hand, it is submitted by Mr. Malay Bose, learned senior advocate appearing on behalf of the Petitioner, that the Petitioner was plying his vehicle in and around the areas falling within the municipal limit of Asansol city of Burdwan district on the basis of a valid permit issued by the Respondent authority. According to him, the Petitioner was plying his vehicle within the aforesaid area and his legal rights would be infringed by the illegal actions on the part of the Respondent authorities in allowing others to ply their vehicles on the strength of stage carriage or contract carriage permits to be issued in violation of the provisions of Motor Vehicles Act, 1988. Therefore, the Petitioner is a person aggrieved by the illegal actions on the part of the Respondent authorities.

15. He relies upon the decisions of M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others, and Mehsana District Central Cooperative Bank Ltd. and Others Vs. State of Gujarat and Others,

16. The power and authority of the Government of West Bengal to pass order dated December 30, 2009 for allowing South Bengal State Transport Corporation to operate JNNURM buses owned by above corporation on different routes originating from or terminating at Asansol/Durgapur in relaxation of restrictions imposed under Notification No. 4596-WT/8S-16/2005 dated October 20, 2006, is under challenge in this writ application.

17. The other issue involved in this writ application is the validity of notification No. 180-WT/8S-16/2005 dated January 15, 2010, issued by the State of West Bengal for relaxation of restrictions imposed by Notification No. 4596-WT/8S-16/2005 dated

October 20, 2006, in the above matter. According to the Petitioner, the aforesaid order and the Notification cannot be sustained in view of the provisions of clause(a) of Sub-section(3) of Section 71 as also taking into consideration the provisions of clause(a) of Sub-section (3) of Section 74 of the Motor Vehicles Act, 1988.

18. Therefore, at the instance of an existing operator of bus in the area under reference, the question of violation of law by the Government of West Bengal in passing an order dated December 30, 2010 and in issuing Notification No. 180-WT/8S-16/2005 dated January 15, 2010 for the purpose of relaxing the restriction imposed for issuing new permits for stage carriage are under judicial review in this writ petition. Such judicial review requires interpretations of the provisions of clause(a) of Sub-section(3) of Section 71 and Clause (a) of Sub-section(3) of Section 74. This writ petition cannot be dismissed solely on the ground of locus standi on the settled principles of law as decided by the Hon'ble Supreme Court in the matter of M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others, and the relevant portions of the above decision are quoted below:

14. In the light of the expanded concept of the locus standi and also in view of the finding of the Division Bench of the High Court that the order of the Excise Commissioner was passed in violation of law, we do not wish to nip the motion out solely on the ground of locus standi. If the Excise Commissioner has no authority to permit a liquor shop owner to move out of the range (for which auction was held) and have his business in another range it would be improper to allow such an order to remain alive and operative on the sole ground that the person who filed the writ petition has strictly no locus standi. So we proceed to consider the contentions on merits.

19. In the matter of Mithilesh Garg (Supra), the Hon'ble Supreme Court examined the locus standi of existing operator to challenge the policy of liberalization for private sector operations in the Road Transport field u/s 80 and other provisions of the Motor Vehicles Act, 1988. The authority of State Government to act under the provisions of clause(a) of Sub-section(3) of Section 71 and clause(a) of Sub-section(3) of Section 74 was not examined by the Hon'ble Supreme Court in the above matter. So, the above decision has no manner of application in this case following the settled principles of law as decided in the matter of Punjab National Bank Vs. R.L. Vaid and Others, and the relevant portions of the above decision are quoted below:

5. We find that the High Court has merely referred to the decision in R.K. Jain's case(supra) without even indicating as to applicability of the said decision and as to how it has any relevance to the facts of the case. It would have been proper for the High Court to indicate the reasons and also to spell out clearly as to the applicability of the decision to the facts of the case. There is always peril in treating the words of a judgment as though they are words in a Legislative enactment and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different facts may made

a difference between conclusions in two cases. Disposal of cases by merely placing reliance on a decision is not proper. Precedent should be followed only so far as it marks the path of justice, but you must cut out the dead wood and trim off the side branches else you will find yourself lost in thickets and branches, said Lord Denning, while speaking in the matter of applying precedents. The impugned order is certainly vague.

20. For the aforesaid reasons, the decisions of Division Bench and Single Bench respectively of this High Court in the matter of Sanjit Chakraborty (supra) have no matter of application in this case.

21. On the merits of this case it is submitted by the Mr. Bose that according to clause(a) of Sub-section(3) of Section 71 and Clause(a) of Sub-section(3) of Section 74 of the Motor Vehicles Act, 1988, the State Government can limit the number of the stage carriages or contract carriages operating on city routes in towns with a population not less than five lakhs subject to the direction of Central Government. In the instant case the State Government issued a notification in exercise of powers conferred by aforesaid sections by issuing notification No. 4596-WT/8S-16/2005 dated October 20, 2006 imposing a complete ban upon the Respondent Nos. 4 & 5 and other Regional Transport Authorities on issuing new stage carriage and/or contract permit carriage in respect of any route terminating/ originating in the areas within the municipal limit of Asansol city of Burdwan district. Therefore, it was not open to the State Government to issue further notification in the matter of granting stage carriage or contract carriage permits in the areas under reference without further authorization and/or direction from the Central Government in exercise of the provisions of Clause (a) of Sub-section(3) of Section 71 and Clause(a) of Subsection(3) of Section 74 of the Motor Vehicles Act, 1988.

22. Secondly, it is also submitted by him that the attempt on the part of the Respondent No. 3 to allow anybody to ply stage carriage or contract carriage on the basis of the permits granted in favour of the Respondent No. 3 was contrary to the provisions of Motor Vehicles Act, 1988.

23. Reliance is placed on behalf of the Petitioner on the decisions of Brij Mohan Parihar Vs. M.P. State Road Transport Corporation and Others, Dr D.C. Wadhwa and Others Vs. State of Bihar and Others, OM Parkash Pahwa v. State of Delhi and Ors., reported in 75 (1988) DLT 3.

24. It is submitted by the learned State Advocate that the Central Government directed the State Government for issuing directions upon the concerned State Transport Authority and Regional Transport Authority by a notification to limit the number of stage carriages and contract carriages either generally or of any specified type as might be fixed and specified in the notification operating in the municipal limits of Asansol city in Burdwan district. According to him, the State Government issued notification dated October 20, 2006 imposing a complete ban

regarding granting of new stage carriage and contract carriage permits (for all category passenger transport vehicles) in respect of any route touching/terminating/originating in the areas in the municipal limit of Asansol city of Burdwan district until further orders reserving the rights to notify such routes as might deem fit in public interest. According to him, the above notification empowered the state Government to take subsequent decision of allowing the Respondent No. 3 to operate JNNURM buses owned by them on different routes originating from or terminating at Asansol/Durgapur as also to issue subsequent notification dated January 15, 2010 for relaxation of the restrictions imposed in the notification dated October 20, 2006. According to him, taking into consideration the notification by the Central Government dated June 1, 2006, the State Government was empowered to issue the aforesaid notifications.

25. It is submitted by Mr. Debayan Bera appearing on behalf of the Respondent No. 3 that the Central Government provided assistance to the State Government under JNNURM providing fund for purchasing buses for urban transport system. A decision was taken in the 69th meeting of the Central Sanctioning and Monitoring Committee of urban infrastructure governance Component of JNNURM held on February 21, 2003 for releasing fund to procure buses under JNNURM including 100 buses for Asansol at Rs. 22 crores. According to him the Central Government issued the notification dated June 1, 2006 without specifying maximum number of stage carriages or contract carriages for plying in the areas falling within the municipal limit of Asansol city of Burdwan district. According to him, the State Government issued notification dated October 20, 2006 putting a total ban on issuing new stage carriage or contract carriage permits in respect of the above areas until further orders. It is submitted by him that the decision of the State Government dated December 30, 2009 as also the notification dated January 15, 2010 of the State Government are sustainable in law.

26. I have heard the learned Counsels appearing on behalf of the respective parties and have given my thoughtful considerations to the facts and circumstances of this case.

27. In India, since independence, most the activities of the State relate to socio-economic matters. Those activities require technical, complex and expert knowledge to work out the details for full implementation of the policies in view. So, legislations are oftenly passed in our country in skeleton form containing only the policies and the general principles leaving the task of shaping and formulating details to the concerned administrative agencies. But sub-planting of those policies and principles by administrative agency is forbidden.

28. The Motor Vehicles Act, 1988 is one of such legislation. It was enacted by the parliament of our country in exercise of powers conferred by clause(2) of Article 246 of the constitution of India with respect to the matters enumerated in entry 35 of list III in the Seventh Schedule. It is an Act to consolidate and amend the law relating to

motor vehicles. The parliament while legislating the above law, could foresee and made provision for future contingency of imposing restrictions on operation of stage carriages and contract carriages. But it was not possible for the parliament at that time to workout the extent of restrictions for the purpose of meeting such future contingency. As a result, the parliament performed its essential duty by laying down the policy of imposing restriction on operation of stage carriages and contract carriages together with general principles delegating the task of shaping and formulating details to the Central Government and the State Governments. The crucial provisions are contained in clause(a) of Sub-section(3) of Section 71 and Clause (a) of Sub-section(3) of Section 74 of the Motor Vehicles Act, 1988 and the above provisions are quoted below for interpretation of the scope and ambit of the provisions:

71. Procedure of regional Transport authority in considering application for stage carriage permit.-

1. ...

2. ...

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.

74. Grant of contract carriage permit.-

1. ...

2. ...

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 contract carriage 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.

29. The parliament performed its essential legislative function by declaring the policy of limiting the number of stage carriages and/or contract carriages, either generally or of any specified type, operating on city routes in towns with a population of not less than five lakhs leaving the task of fixing the numbers specifying the types of the above vehicles upon the State Government subject to clear and unambiguous condition of formation of an opinion by the Central Government having regard to the factors of (i) the number of vehicles, (ii) road

conditions, and (iii) other relevant matters. In other words, the State Government could not exercise the function of limiting operation of the aforesaid vehicles by fixing the numbers of the same specifying the types unless the Central Government had formed opinion having regard to the number of such vehicles, road conditions and other relevant factors in terms of the aforesaid provisions of the Motor Vehicles Act, 1988.

30. In the instant case, after due consideration of the report dated February 21, 2006 of the Principal Secretary to the Government of West Bengal, the Central Government Ministry of Shipping, Road Transport and Highways(Department of Road Transport and Highways), formed an opinion to limit the number of stage carriages as well as contract carriages, generally or of any specified type, operating in Municipal limits of Asansol city in Burdwan and issued notification No. S.O.846(E) dated June 1, 2006 in exercise of powers conferred by clause(a) of Sub-section(3) of Section 71 and clause(a) of subsection(3) of Section 74 of the Motor Vehicles Act, 1988.

31. Thereafter, the Government of West Bengal, Transport Department discharged its function in exercise of powers conferred by clause(a) of Sub-section (3) of Section 71 and clause(a) of Sub-section (3) of Section 74 of the Motor Vehicles Act, 1988 by issuing notification No. 4596-WT/8S-16/2005 dated October 20, 2006 for the purpose of imposing complete ban on issuing new stage carriage permits as well as contract carriage permits (for all category of passenger transport vehicle) on any route/area within the Municipal limit of Asansol city of Burdwan.

32. But in case issuing subsequent notification No. 180-WT/8S-16/2005 dated January 15, 2010 for relaxing the restrictions imposed in notification No. 4596 WT/8S-16/2005 dated October 20, 2006, the pre-condition obtaining direction from the Central Government was not fulfilled. As a result, there was no scope for the Central Government to form an opinion in the matter of relaxing the restriction imposed in the matter having regard to the number of vehicles, road conditions and other relevant matters existing at the material point of time. Or in other words, policy and principle formulated and determined by the parliament of our country incorporating clause(a) of Sub-section(3) of Section 71 and clause(a) of Sub-section (3) of Section 74 in the Motor Vehicles Act, 1988 designing suitable controls and safeguards were abused by virtue of issuing the impugned notification dated January 15, 2010. It had the effect of threatening the legal right and liberty of the Petitioner and other concerned people at the cost of violating the aforesaid provisions of the Motor Vehicles Act, 1988.

33. For the purpose of examining the propriety of the notice dated September 3, 2009 (Annexure P-9 at page 60 of the amended writ application) inviting tenders for plying hundred High Take Luxury Semi Low Floor Buses in and around municipal limits of Asansol, Durgapur cities of Burdwan District as franchisee of the Respondent No. 3 under JNNURM Scheme and the order dated December 30, 2009

of the Joint Secretary to the Government of West Bengal, Transport Department, the provisions of Sub-section(1) of Section 82 of the Motor Vehicles Act, 1988 are quoted below:

82. Transfer of permit.- (1) Save as provided in Sub-section (2), as permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit and shall not, without such permission, operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit.

Sub-Rule (9) of Rule 159 of the West Bengal Motor Vehicles Rules, 1989, provides as follows:

159. Transfer of permit.- (9) Any use of the permit, except by its holder, in any manner whatsoever, either through power of attorney or by any other deed or agreement shall render the permit to be cancelled. The onus of proving that the permit was not being used in contravention of this rule shall be on the holder of the permit.

34. I have no hesitation to hold that the above notice and the order under reference cannot be sustained in law in view of the provisions of Sub-section(1) of Section 82 of the Motor Vehicles Act, 1988 and Sub-rule (9) of Rule 159 of the West Bengal Motor Vehicles Rules, 1989 simply because of the principle of law that where power is given to an authority to do certain thing in a certain manner, that thing must be done in that manner or not at all and that other modes of performance are necessarily forbidden. Reference may be made to the decision of AIR 1936 253 (Privy Council) The above principle has been adopted by the Hon"ble Supreme Court in a series of decisions. Relevant portions the decision of a constitution Bench of the Hon"ble Supreme Court in the matter of Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, are quoted below:

27. Then it is to be seen that the Act requires the Board to exercise the power u/s 119 in a particular manner i.e. by way of issuance of orders, instructions and directions. These orders, instructions and directions are meant to be issued to other income tax authorities for proper administration of the Act. The Commission while exercising its quasi-judicial power of arriving at a settlement u/s 245-D cannot have the administrative power of issuing directions to other income tax authorities. It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute it self. If that be so, since the Commission cannot exercise the power of relaxation found in Section 119(2)(a) in the manner provided therein it cannot invoke that power u/s 119(2)(a) to exercise the same in its judicial proceedings by following a procedure contrary to that provided in Sub-section (2) of Section 119.

(Emphasis supplied)

35. In view of the above, the notice dated July 9, 2009 published in "Ananda Bazar Patrik" at the instance of the Respondent No. 3, the order dated December 30, 2009 passed by the Joint Secretary to the Government of West Bengal, Transport Department as also the notification No. 180-WT/8S-16/2005 dated January 1, 2010 issued by the Government of West Bengal, Transport Department are quashed and set aside.

36. Before parting with the matter, another issue is to be taken up for consideration which cropped up during the hearing of this case. An application has been filed by the Petitioner alleging plying the two High-Take Luxury Semi Low Floor buses bearing registration No. WB23-B 8804 and WB23-B 8805 respectively in or around the Municipal limits of Asansol city of Burdwan without valid permit at the instance of the Surface Transport Corporation which is an instrumentality of the State of West Bengal. It made party to this writ application for limited purpose. The Principal Secretary to the Government of West Bengal, Transport Department files an affidavit in compliance of the order passed by this Court. From the above affidavit this Court finds substance in the above allegation of the Petitioner. Since it appears from the aforesaid affidavit that the aforesaid buses have already been seized by the Transport Department of the Government of West Bengal, I direct the above authority to take immediate steps for initiating proceeding against the Surface Transport Corporation in accordance with law.

37. This writ application is thus disposed of.

38. There will be, however, no order as to costs.

39. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.