
(2006) 09 CAL CK 0045

In the Calcutta High Court

Case No : Writ Petition No. 11489 (W) of 2005

Asoke Chowdhury and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 27-09-2006

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1)

West Bengal Motor Vehicles Act, 1989 — Section 107, 111, 138, 159, 176

West Bengal Motor Vehicles Rules, 1989 — Rule 270(1), 88A, 88B

Citation : AIR 2007 Cal 176

Hon'ble Judges : Pratap Kr. Ray, J

Bench : Single Bench

Advocate : Rameswar Bhattacharya, Aditya Bose, Sanat Kr. Roy, Prabhat Kr. Chatterjee, Bhaskar Nandi and Kajal Roy, for the Appellant; Tarun Kr. Roy, General and N.I. Khan, for the Respondent

Final Decision : Allowed

Judgement

Pratap Kr. Ray, J.—Challenging the Notification No. 2044-WT/3M-18/2005 dated 26th April, 2005 whereby and where-under West Bengal Motor Vehicles Rules, 1989 was modified so far as colour scheme is concerned by Amendment Rule being West Bengal Motor Vehicles (Second Amendment) Rules, 2005 on inserting Rule 88-B in the West Bengal Motor Vehicles Rules, 1989 empowering the State Government to fix different colour schemes for different types of passenger transport vehicles and challenging the Notification No. 2076-WT/3M-177/ 04PT dated 27th April, 2005 issued by the Principal Secretary to the Government of West Bengal, Transport Department whereby and whereunder it is provided that no permit should be granted and/or no replacement of the vehicles/change of address/transfer of ownership of vehicle should be allowed in respect of the types of the vehicle mentioned thereto, namely, the stage carriages plying under respective permits issued by State Transport Authority, West Bengal or by the Regional Transport Authority, unless the prescribed colours as mentioned in the said notification are being followed, all these writ applications have been filed by

the respective permit holders of different stage carriages issued by the appropriate authority, namely, either by State Transport Authority or Regional Transport Authority as the case may be.

2. The ground of challenge is on the point that the State Government had no power under the West Bengal Motor Vehicles Act, 1988 to amend the rule for fixing a particular colour scheme as has been intended to be done by Rule 88B of the West Bengal Motor Vehicles Rules, 1989 and as such due to the legislative incompetency the notifications impugned being dated 26th April, 2005, and 27th April, 2005 respectively, both are of without jurisdiction and as such liable to be quashed.

3. To appreciate the argument as advanced, the relevant provision of the statute is required to be looked into to test whether the West Bengal Legislature has the jurisdiction to prescribe particular colour scheme in respect of stage carriage and/or contract carriage as are plying in different routes within the State of West Bengal and/ or outside of the West Bengal in terms of the permit issued by the State Transport Authority or Regional Transport Authority respectively. The impugned notifications, namely, amendment of West Bengal Motor Vehicles Rules, 1989 for the purpose of inserting Rule 88B and the colour scheme as prescribed on exercise of the power under said Amended Rule 88B in terms of the notification impugned reads such:

GOVERNMENT OF WEST BENGAL TRANSPORT" DEPARTMENT WRITERS"
BUILDINGS KOLKATA-700 001. NOTIFICATION

No. 2044-WT/3M-18/2005.

Date : the 26th April, 2005.

WHEREAS a notification on draft amendments was published in the Kolkata Gazette dated the 4th April, 2005.

AND WHEREAS no objection and suggestion have been received with respect to the said draft amendments by the Transport Department within the stipulated period of fifteen days from the date of publications of the draft amendments in the Kolkata Gazette.

NOW, THEREFORE, in exercise of the powers conferred by Sections 28, 38, 65, 96, 107, 111, 138, 159 and 176 read with Section 211 of the Motor Vehicles Act 1988 (59 of 1988), the following amendments in the West Bengal Motor Vehicles Rules, 1989 are hereby published as required u/s 212 of the said Motor Vehicles Act, 1988.

Amendment

1.(1) These rules may be called the West Bengal Motor Vehicles (Second Amendment) Rules, 2005.

(2) These rules shall come into force on the date of their final publication in the

Official Gazette.

(2) In the said rules.-

(1) After Rule 88A, insert the following rule:

88B. Powers of the State Government to fix the colour scheme for different types of passenger transport vehicles. - The State Government may, by notification in the Official Gazette, fix the colour scheme and direct the State Transport Authority or the Regional Transport Authority, as the case may be, to maintain the colour scheme for different types of passenger transport vehicles including the State Carriage and the Contract Carriage, plying with the permit issued by the respective authorities. Such colour scheme, as may be notified, shall be one of the conditions of the permits of such vehicles.

(2) Omit Sub-rule (1) of Rule 270.

By order of the Governor (H. Mohan) Joint Secretary to the Government of West Bengal.

GOVERNMENT OF WEST BENGAL TRANSPORT DEPARTMENT WRITERS BUILDINGS KOLKATA-700 001. NOTIFICATION

No. 2076-WT/3M-77/04PT

Date : the 27th April, 2005.

STAGE CARRIAGE plying under permit issued by (STA), West Bengal

Navy blue on the top window top & for 25 cm. Width at the border bottom cream/off white in the middle with double red strips of 7 cms Width each. The higher of these strips should be starting just windows with a 3 cms gap in between the strips.

STAGE CARRIAGE Plying under permit Issued by (RTAs)

Sky Blue colour with yellow band of 45.72 cms. Width just below the window on all sides of the vehicles.

4. The aforesaid amended Rule 88B was framed in exercise of the power of the State Government to make rule u/s 96 of the Motor Vehicles Act, 1988. The relevant Act under Chapter V and heading "Control of Transport Vehicles" being Clause (xviii) Sub-section (2) of Section 96 reads to this effect:

96(2)(xviii). Regulating the painting or marking of transport vehicles and the display of advertising matter thereon, and in particular prohibiting the painting or marking of transport vehicles in such colour or manner as to induce any person to believe that the vehicle is used for the transport of mails.

5. It is the submission of the learned Advocates appearing for the petitioners that under the aforesaid Clause (xviii) of Sub-section (2) of Section 96 of Motor Vehicles Act, 1988, hereinafter for brevity referred to as said Act, the word

"regulating the painting or marking of transport vehicles" does not mean empowerment to the State Government to identify a particular colour scheme in terms of Rule 88B as framed whereby State Government has empowered itself to fix the colour scheme for different types of passenger transport vehicles. It is contended that the word "regulating" does not include the prohibition and as such the State Government cannot prohibit the transport owners running the business of transport to colour their vehicles as per their own desire. It has been submitted that in terms of the notification dated 27th April, 2005 issued by the Principal Secretary to the Government of West Bengal on purported exercise of the power under Rule 88B of the West Bengal Motor Vehicles Rules, 1989, it has fixed the liability upon the transport owners who are plying the vehicles under stage carriage permits issued by the State Transport Authority. West Bengal to paint their vehicle in the following terms:

Navy blue on the top window top and for 25 cm width at the border bottom cream/ off white in the middle with double red strips of 7 cms width each. The higher of these strips should be starting just windows with a 3cms gap, in between the strips.

6. Similarly, the vehicle owners who are plying their vehicles under stage carriage permits issued by Regional Transport Authority also have been compelled to paint their vehicle under particular colour scheme as follows:

Sky blue colour with yellow band of 45.72 cms width just below the window on all sides of the vehicles.

7. It is submitted that stipulation of such particular colour scheme under the garb of "regulating" in terms of Clause (xviii) Sub-section (2) of Section 96 of said Act, is contrary to the Central Legislation and thereby it has infringed the Central Legislation due to alleged acquiring of uncanalized power by the State Government by amendment of the Rule 88B empowering the Government to fix any colour scheme. It is contended that right to colour their own vehicles playing under different permits is the basic right of the transport owners and the State Government cannot make any prohibition by such amendment incorporating Rule 88B in the West Bengal Motor Vehicles Rules, 1989 and thereby to issue notification dated 27th April, 2005 prescribing the colour scheme on stipulating the said colour scheme as a condition of permit. Fixing of a particular colour scheme is clearly suggestive of a prohibition to paint the vehicles otherwise. Such order of prohibition is not within the legislative competency of the State Legislatures in terms of the Motor Vehicles Act, 1988, whereby the State is only empowered to "regulate" the painting in terms of Clause (xviii) Sub-section (2) of Section 96 of the Motor Vehicles Act, 1988. It has been further contended that even if prescription of "colour scheme" is assumed for argument, is within the competency of the State Legislatures to pass, it has no basis to identify a particular colour scheme as it is not fulfilling any object. Fixing of a colour scheme in respect of the stage carriages plying at different routes rather would confuse the general commuters, particularly the illiterate persons who have no

knowledge of reading the route number to identify a particular vehicle plying in a particular route, which otherwise could be possible to be identified by the different colour of the vehicles as used by different owners of vehicles. It has been further urged that if colour scheme is followed in the event of an accident, it would be very difficult to identify the offending vehicle, if it runs away after such an accident at a high speed, which is the normal sequential event as is done by the driver of the offending vehicle to avoid public wrath. By number plates solely the offending vehicle is not possible to be identified when it runs at high speed, whereas due to different painting of different vehicles as is now prevalent, it is easier to identify the vehicle by its colour also and it is easier for the Police Authorities also to seize the vehicle, even if any vehicle runs away from the spot after an accident.

8. It has been further urged by the learned Advocates appearing for the petitioners, that the colour scheme as intended to be introduced by the said notification, different painting configuration has been stipulated, which is not based on any route but on basis of permit granting authority, namely, State Transport Authority or Regional Transport Authority, which has no rational bearing to introduce such colour scheme. Resultant effect would be that in a particular route, which is covering two respective regions where due to the concurrent jurisdiction to grant route permit, it could be exercised by the State Transport Authority as well as by the Regional Transport Authority and a stage carriage whose permit has been granted by State Transport Authority would be painted in one manner, whereas permit granted by Regional Transport Authority to another vehicle of said route would be painted in different colour, which does not pass the test of any rational logic.

9. Countering the argument advanced by the learned Advocates for the petitioners, the learned Counsel appearing for the State respondents has urged that the word "regulating" as appearing in the said Clause (xviii) Sub-section (2) of Section 96 of the Motor Vehicles Act, 1988 has empowered the State Legislatures to frame the Rule 88B in the West Bengal Motor Vehicles Rules, 1989 empowering it to fix any colour and/or painting in public transport and as such it is within the legislative competency of the State Legislatures. Learned Advocate for the State respondent submits that the word "regulating" under rule making provision of Central Act has empowered the State Government to fix a particular colour scheme. Hence, there is no infringement of the Central Legislation and it is within the rule making power of the State Government to fix a particular colour scheme. Learned Advocate for the State further submits that by fixing the particular colour scheme in respect of the public transport, the object of beautification of the transport vehicles has been advanced. It has been further urged that the common people, particularly the illiterate persons will not face any disadvantage to identify the particular vehicle of a particular route and as such there is no irrationality in introducing such colour scheme.

10. Having regard to the rival contention of the parties, the points for

adjudication as emerged, are as follows:

(1) The meaning of the word "regulating" as it appears in Clause (xviii) Sub-section (2) of Section 96 of the Motor Vehicles Act, 1988, whether could empower the State Government to legislate by framing a rule stipulating a particular colour scheme.

(2) Is there any justification to identify a particular colour scheme in respect of all the public transports plying in the State on the basis of Permit Granting Authority, namely, State Transport Authority and/or Regional Transport Authority?

(3) By such introduction of a colour scheme whether the general commuters would face the consequential effect of failure to identify the vehicle in the event of motor accident and/or in identifying the route, which he intends to travel.

11. Section 96 is the relevant provision under the Motor Vehicles Act, 1988 whereby" and whereunder State Government is empowered to make rules to control transport vehicles, particularly, the public transport vehicles as are plying under route permit issued by the respective Transport Authorities, Regional and/or State, as the case may be. Under Clause (xviii) of the said Section 96 it appears that not only the word "regulating" has been used in respect, of painting, or marking of transport vehicles but a prohibitory clause also has been incorporated therein, so far as painting or marking of such vehicles in such colour or manner as would induce any person to believe that the vehicle is being used for transport of mails. Hence, under the statutory framework of Clause (xviii) of Sub-section (2) of Section 96 of the said Act, a Central legislation, it appears that the legislatures at their wisdom also prohibited a particular" painting and that prohibition only relates to the colour as may induce any person to believe that the vehicle is being used for transport of mails. Save and except such prohibition, there is no prohibitory clause about use of any other colour by said Central Legislation.

12. The basic principle of interpretation of a statutory provision speaks that to interpret a particular word in a statute the entire provision and the words as used thereto are required to be considered to identify the real meaning of a particular word in the angle of the other words as used thereto. Reliance may be placed to the judgment passed in the cases Philips India Ltd. Vs. Labour Court, Madras and Others, , , Osmania University Teachers" Association Vs. State of Andhra Pradesh and Another, , P. 2042, Captain Subash Kumar Vs. Principal Officer, Mercantile Marine Department, Madras, . In this context the principle of construction "ex visceri-bus actus" has explained in the judgments passed in the cases The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P., , Superintendent and Remembrancer, Superintendent and Remembrancer of Legal Affairs to Government of West Bengal Vs. Abani Maity, , Mohan Kumar Singhania and Ors. v. Union of India and Ors., AIR 1992 SC 1 , are also referred to. It is also a settled law that to ascertain the real meaning of a clause in a statute, the whole statute to be considered. Reliance may be placed to the judgment passed

in the case *Queen v. Eduljee Byramjee* reported in (1846) 3 MIA 468, p. 483 (PC).

13. The word "regulating" has been considered by the English Court as well as the Apex Court of India to identify the nucleus of the word. The word "regulating" is a verbal noun and power to regulate does not include a power to prohibit. House of Lords in the case *Tarr v. Tarr* reported in (1973) App Cas 254 (HL) following the judgment passed by Lord Davy passed in the case *Municipal Corporation of City of Toronto v. Virgo* reported in (1896) AC 88 (pp. 93-94) at page 267 observed as follows:

Thus, the word "regulating" in itself is not apt to include a power to prohibit. There is no evident reason why the draftsman should not have added the words "or prohibiting" if he meant to include a power to prohibit. If a temporary prohibition were required, the duration could have been limited under Sub-section (4). Alternatively the words "or suspending" might have been added.

14. The Apex Court of India considered the said judgment *Tarr* (supra) in the case *State of U.P. and Others Vs. Hindustan Aluminium Corpn. and Others*, and held that the word "regulate" does not include prohibition. The relevant paragraphs 33 and 34 of the said judgment reads to this effect:

33. What Section 22B of the Act authorizes the State Government to do, is to make an order providing for "regulating", the supply, distribution, consumption or use of energy, and it has been held by the High Court that the section does not confer the power to prohibit the supply of energy to any consumer. The High Court has gone on to hold that Parliament did not confer on the State Governments the power to cut off supply to existing consumers. Mr. Ray has supported the view of the High Court and has invited our attention to the decisions in *Municipal Corporation of the City of Toronto v. Virgo*, *Attorney-General for Ontario v. Attorney General for the Dominion and the Distillers and Brewers' Association of Ontario*, *Birmingham and Midland Motor Omnibus Co. Ltd. v. Worcestershire County Council*, *Tarr v. Tarr*, *Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan* and *State of Mysore v. H. Sanjeeviah*. As against that the learned Solicitor General has placed reliance on the view taken in *Fatehchand Himmatlal v. State of Maharashtra* that "regulation", if the situation is necessitous, may reach the limit of prohibition.

34. It appears that a distinction between "regulation" and "restriction" or "prohibition" has always been drawn, ever since *Municipal Corporation of the City of Toronto v. Virgo*. "Regulation promotes the freedom or the facility which is required to be regulated in the interest of all concerned, whereas "prohibition" obstructs or shuts off, or denies it to those to whom it is applied. The Oxford English Dictionary does not define "regulate" to include prohibition so that if it had been the intention to prohibit the supply, distribution, consumption or use of energy, the Legislature would not have contended itself with the use of the word "regulating" without using the word "prohibiting" or some such word, to bring out

that effect.

15. The same view was observed by the Apex Court in the case Himat Lal K. Shah Vs. Commissioner of Police, Ahmedabad and Another, .

16. Having regard to the judgment of the Apex Court as discussed, it appears before this Court that when the Central Legislation, namely, the Motor Vehicles Act, 1988 while incorporating the word "regulating" in Clause (xviii) Sub-section (2) of Section 96 also has used the word "prohibition" in respect of a particular colour, which may induce the commuters to believe that the vehicle is used for mail service, save and except, said prohibition, the word "regulating" does not empower the State Government to frame Rule 88B under West Bengal Motor Vehicles Rules, 1989 to identify a particular colour scheme as same would nothing but prohibiting the owners of such vehicle to paint their vehicles as per their own choice and desire. Hence, the State Government had no jurisdiction to frame a rule by fixing a particular colour scheme as has been purportedly done by amendment of West Bengal Motor Vehicles Rules, 1989 for incorporation of Rule 88B in exercise of their alleged power u/s 96 Sub-section (2) Clause (xviii) of Motors Vehicles Act, 1988..

17. Hence, this Court is of the view that the incorporation of Rule 88B by amendment of West Bengal Motor Vehicles Rules, 1989, is de hors of the power of the State Legislature in terms of Central Legislation in the field by interpreting the word "regulating" under Clause (xviii) Sub-section (2) of Section 96 of the Motor Vehicles Act, 1988, as inclusive of power of prohibition, as central legislation never intended to mean such, which is explicit from statute due to prohibitory clause as mentioned colouring of a vehicle-as may induce to believe the vehicle as mail service.

18. The right to colour and /or paint his own vehicle, even if the vehicle is allowed to ply under any stage carriage permit and/or contract carriage permit under the authority of the State Government is an absolute right within the facet of Article 19(1)(g) under Part-3 with heading "Fundamental Rights" as adumbrated in Constitution of India. Right to carry on any occupation, trade or business includes a right to run the business at his own choice, which also includes the beautification of his particular place of business or the instruments and/ or gadgets as are used to run such business. It is the derived rights from the basic fundamental right to carry on trade or business subject to State restriction as to be imposed for public interest, namely, grant of permit, fixation of condition of such grant of permit etc. Colouring of the motor vehicle as per choice of owner for the purpose of beautification or special orientation and/or identification of his vehicle is within the domain and choice of the motor vehicle owner. In India about 40 per cent people are illiterate and they have no reading knowledge of any script of regional language or national language, namely. Bengali, Hindi, English etc. They identify the object by remembering colour of the object. Hence, colouring /painting of a vehicle is for the purpose of identification of a particular vehicle by the general commuters, majority of whom are illiterate

and have no knowledge of reading of the route number /vehicle number. It is also the choice of the general commuters to choose a particular vehicle considering the service as it renders and the benefit and accommodation as it provides. Hence, identification of a particular vehicle by its colouring if is lost due to painting with identical colour of all motor vehicles plying in the different routes in the State of West Bengal, surely it would cause an impact upon the illiterate commuters and it would also infringe the right to trade or business under Article 19(1)(g) of vehicle owners.

19. Now the question as to be addressed further is whether the State Government can make any restriction under Clause (6) of Article 19 of the Constitution of India. It is a settled law that power to impose a restriction even in respect-of fundamental rights and /or derived or emanated fundamental rights, it must pass through the test of reasonableness and justifiability of such restriction. It is a settled principle of law that there must be a direct and proximate nexus or reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions and the object of the Act, then only a strong presumption in favour of the constitutionality of the Act will naturally arise. Reliance may be placed to the judgment passed in the case *M.R.F. Ltd. Vs. Inspector Kerala Govt. and Others*, . The reasonableness has two components, one is substantive another is procedural. Under the substantive aspect, the restriction must have a rational connection with the object sought to be achieved by the law. Reliance may be placed to the judgment passed in the cases *Pathumma and Others Vs. State of Kerala and Others*, , *Municipal Corporation of the City of Ahmedabad and Others Vs. Jan Mohammed Usmanbhai and Another*, . The Court has to see whether by restriction imposed on the right of the citizen, the object of the statute is really fulfilled or frustrated. Reliance may be placed to the judgment passed in the case *Pathumma (supra)*.

20. In the angle of the said judgment it appears that there is no reasonable justification to paint all the stage carriage /contract carriage in a particular colour. On the other hand, such restriction would cause a confusion in the mind of the Commuters so far as their failure and/or mistake to identify the particular vehicle of their choice. In that view of the matter, this Court is of the view that there is no reasonable justification even to impose such a colour scheme as issued by Principal Secretary, Transport Department, Government of West Bengal, impugned in this writ.

21. Besides such, a point has been canvassed by the learned Advocate appearing for the writ petitioners that the prescription of the colour in terms of the Gazette Notification dated 27th April, 2005 on purported application of amended Rule 88B of the West Bengal Motor Vehicles Rules, 1989 by specifying the different colours/painting on the footing and basis of the permit as issued either by Regional Transport Authority or by State Transport Authority, has no legal justification and there is no reasonable classification to prescribe the colour scheme on the basis of the authority of the permit who issued it. It has been

submitted that in West Bengal on different routes, particularly the routes as are falling within the regions more than one as per the division of different regions, which is based on the basis of geographical configuration of the districts, under proviso of Section 69, the Regional Transport Authority under whose region the major portion of the proposed route or area lies is empowered to issue the permit, whereas under Sub-section (3)(b) of Section 68, a concurrent jurisdiction was vested to the State Transport Authority by empowering it to discharge the function of Regional Transport Authority in respect of any route common to two or more regions. It has been further pointed out that u/s 69 Sub-section (2) of said Act, the State Government is also empowered to authorize the State Transport Authority to issue permit by publishing such authorization in the Gazette. Section 69 in extenso and the relevant provision of Section 68(3) are set out herein below for effective adjudication of the matter:

69. General provision as to applications for permits.--(1) Every application for a permit shall be made to the Regional Transport authority of the region in which it is proposed to use the vehicle or vehicles:

Provided that if it is proposed to use the vehicle or vehicles in two or more regions lying within the same State, the application shall be made to the Regional Transport authority of the region in which the major portion of the proposed route or area lies, and in case the portion of the proposed route or area in each of the regions is approximately equal, to the Regional Transport Authority of the region in which it is proposed to keep the vehicle or vehicles:

Provided further that if it is proposed to use the vehicle or vehicles in two or more regions lying in different States, the application shall be made to the Regional Transport Authority of the region in which the applicant resides or has his principal place of business.

(2) Notwithstanding anything contained in Sub-section (1), the State Government may, by notification in the Official Gazette, direct that in the case of any vehicle or vehicles proposed to be used in two or more regions lying in different States, the application under that Sub-section shall be made to the State Transport Authority of the region in which the applicant resides or has his principal place of business.

68(3). The State Transport Authority and every Regional Transport Authority shall give effect to any directions issued u/s 67 and the State Transport Authority shall, subject to such directions and save as otherwise provided by or under this Act, exercise and discharge throughout the State the following powers and functions, namely:

(a) to co-ordinate and regulate the activities and policies of the Regional Transport Authorities, if any, of the State;

(b) to perform the duties of a Regional Transport Authority where there is no such Authority and, if it thinks fit or if so required by a Regional Transport

Authority, to perform those duties in respect of any route common to two or more regions;

(c) to settle all disputes and decide all matters on which differences of opinion arise between Regional Transport Authorities;

((ca) government to formulate routes for plying stage carriages; and)

(d) to discharge such other functions as may be prescribed.

22. Having regard to the said statutory provisions it is explicit that in respect of any route, which falls within two or more regions, both the Regional Transport Authority under whose jurisdiction the major portion of the area of the route falls and the State Transport Authority, are entitled to issue the permit in the concerned route. The formation and constitution of such Transport Authority, namely, the Regional Transport Authorities and State Transport Authorities are specified u/s 68 Clause (1), which reads to this effect:

68. Transport Authorities.-- (1) The State Government shall, by notification in the Official Gazette, constitute for the State a State Transport Authority to exercise and discharge the powers and functions specified in Sub-section (3), and shall in like manner constitute Regional Transport Authorities to exercise and discharge throughout such areas (in this Chapter referred to as regions) as may be specified in the notification, in respect of each Regional Transport authority; the powers and functions conferred by or under this Chapter on such Authorities:

Provided that in the Union Territories, the Administrator may abstain from constituting any Regional Transport Authority.

23. On a bare reading of the aforesaid statutory provision, hence, it is explicit that sometimes in a particular route falling within the two or more regions within the State of West Bengal, the route permit is granted either by State Transport Authority, or by Regional Transport Authority. But from the prescribed colours as was directed to be painted in such motor vehicle in terms of the Notification dated 27th April, 2005 as referred to, a vehicle covered under a permit granted by the Regional Transport Authority should be coloured in the following terms "Sky Blue colour with yellow band of 45.72 cms. width just below the window or all sides of the vehicles", whereas for stage carriage permit issued by State Transport Authority, West Bengal, in the said route to a vehicle it should be coloured as "Navy Blue on the top window top & for 25 cm width at the border bottom cream/off white in the middle with double red strips of 7 cms width each. The higher of these strips should be starting just windows with a 3 cms gap in between the strips."

24. Hence, it appears from the said observation that in a particular route falling within two or more regions, the colour identification of the vehicle since have been prescribed on the basis of permit granting authority, there would be vehicles painted with different colours in the same route. Learned Advocate for the State failed to satisfy this Court about the justification of such. This Court is

also failed to understand any justification of prescription of the colours of the vehicle in a particular route on the basis of the permits granted by respective authorities. Hence, prescription of colour of different vehicles in a particular route, on the basis of authority who granted permit, practically has no justification and rational foundation and it is per se an arbitrary decision without any logic, which may be construed as Wednesbury Arbitrariness in terms of the judgment passed in the case *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* reported in (1948)1 KB 223. Hence, this Court is of the view that such prescription of the colours of different stage carriage permits granted by different Transport Authorities in a particular route falling within two or more regions is absolutely arbitrary and hence such decision is not legally sustainable.

25. Learned Advocate for the petitioners further raised a point that amendment of Rule 88B on purported exercise of the authority derived under Clause (xviii) Sub-section (2) of Section 96 of Central Legislation, namely, Motor Vehicles Act, 1988 by the State Government for the purpose of incorporation of the said Rule 88B in the West Bengal Motor Vehicles Rules, 1989, as per mandatory requirements u/s 212 was required to be published in a Gazette Notification. Relevant provision of Section 212 reads such:

212. Publication, commencement and laying of rules and notifications.--(1) The power to make rules under this Act is subject to the condition of the rules being made after previous publication.

(2) All rules made under this Act shall be published in the Official Gazette, and shall unless some later date is appointed, come into force on the date of such publication.

(3) Every rule made by any State Government shall be laid, as soon as may be after it is made before the State Legislature.

26. But Notification No. 2044-WT/3M-18/2005 dated 26th April. 2005 though published in the Kolkata Gazette but immediately thereafter within 24 hours effect of such amended rule was given by Notification No. 2076-WT/3M-177/04PT dated 27th April, 2005. which has prescribed the colour specification on the strength of such Rule 88B of the West Bengal Motor Vehicles Rules. 1989 as incorporated in the rule on alleged exercise of the power under Clause (xviii) Sub-section (2) of Section 96 of the Central Legislation.

27. On that factual matrix, an argument has been advanced by the petitioners that the Notification dated 27th April. 2005 specifying the colour scheme on purported exercise of Rule 88B was invalid and ineffective because of the simple reason that even if for argumendo it is assumed that the State Government had the jurisdiction in terms of Clause (xviii) Sub-section (2) of Section 96 of the Motor Vehicles Act, 1988 to incorporate Rule 88B specifying the particular colour combination of vehicles plying under stage carriage permits, still then as Rule 88B as framed and constituted on exercise of the power u/s 96 of the said Act by

issuing the Notification published on 27th April, 2005 did not see the light of the day and same was even not placed for sale for the purpose of giving effect of the Notification, which could be the effective date of such Notification to empower the State Government to prescribe the colours of vehicles as introduced by the impugned Notification dated 27th April, 2005 notifying in the Kolkata Gazette. Since the effect of a Notification by which the State Government empowered itself to prescribe such colour combination of the different vehicles plying in different routes on the permits granted by different Transport Authorities is the basic question, which goes to the root of the matter irrespective of this Court's finding that the State Government had no power in terms of the word "regulation" as prescribed under Clause (xviii) Sub-section (2) of Section 96 of Central Legislation, the Motor Vehicles Act, 1988, to identify any particular colour in respect of any stage carriage permit and/ or different stage carriage permits plying in a particular route by different colours as the case may be, this is required to be addressed for effective adjudication of the point as raised.

28. It is a settled law even assuming that the State Government got the power to prescribe a particular colour for painting of motor vehicle and more particularly to incorporate Rule 88B in the Motor Vehicles Rules, 1989 being empowered under Clause (xviii) Sub-section (2) of Section 96 of the Motor Vehicles Act, 1988, that mandatory requirement for publication of the same in the Gazette giving a wide publication thereof is required to be fulfilled. The Apex Court has settled the law that the effect of such Notification should be from the date when such Notification reaches to the sales counter for purchase by the citizen. Reliance may be placed to the judgment passed in the cases Collector of Central Excise Vs. New Tobacco Co. Etc. Etc., . Garware Nylons Ltd. Vs. Collector of Customs and Central Excise, Pune, . The Full Bench of Calcutta High Court. (Coram : S.B. Sinha, J., M.H.S. Ansari, J. and Barin Ghosh, J.) relying upon the Apex Court judgment aforesaid also expressed the same view by holding that executive must take all reasonable efforts to make the law known to the public, in the case Collector of Customs and Ors. v. Jindal Strips Limited, reported in 2000 (1) CHN 332.

29. In the judgment Collector of Central Excise Vs. New Tobacco Co. Etc. Etc., the Apex Court had dealt with the matter in extenso and it is a settled law now that until and unless any Notification published in the Gazette reaches to the sales counter for sale to the general public, it has no effect and effect should be considered from the date when it reaches to the sales counter for sale to the public.

30. It appears from the Notification No. 2044-WT/3M-18/2005 dated 26th April, 2005 published in the Kolkata Gazette on 27th April, 2005 that the Rule 88B was inserted after Rule 88A in the West Bengal Motor Vehicles Rules, 1989, the Gazette Notification in extenso reads to this effect:

GOVERNMENT OF WEST BENGAL TRANSPORT DEPARTMENT WRITERS' BUILDINGS, KOLKATA-700 001. NOTIFICATION

No. 2044-WT/3M-18/2005

Date : the 26th April, 2005.

WHEREAS a notification on draft amendments was published in the Kolkata Gazette dated the 4th April, 2005.

AND WHEREAS no objection and suggestion have been received with respect to the said draft amendments by the Transport Department within the stipulated period of fifteen days from the date of publication of the draft amendments in the Kolkata Gazette.

NOW, THEREFORE, in exercise of the powers conferred by Sections 28, 38, 65, 96, 107, 111, 138, 159 and 176 read with Section 211 of the Motor Vehicles Act, 1988 (59 of 1988), the following amendments in the West Bengal Motor Vehicles Rules, 1989 are hereby published as required u/s 212 of the said Motor Vehicles Act, 1988.

Amendment

1.(1) These rules may be called the West Bengal Motor Vehicles (Second Amendment) Rules, 2005.

(2) These rules shall come into force on the date of their final publication in the Official Gazette.

2. In the said rules:

(1) After Rule 88A, insert the following rule:

88B. Powers of the State Government to fix the colour scheme for different types of passenger transport vehicles. --The State Government may, by notification in the Official Gazette, fix the colour scheme and direct the State Transport Authority or the Regional Transport Authority, as the case may be, to maintain the colour scheme for different types of passenger transport vehicles including the State Carriage and the Contract Carriage, plying with the permit issued by the respective authorities. Such colour scheme, as may be notified, shall be one of the conditions of the permits of such vehicles.

(2) Omit Sub-rule (1) of Rule 270.

By order of the Governor (H. Mohan)

Joint Secretary to the Government of West Bengal.

31. On the strength of such Rule 88B, the colour specification notification bearing No. 2076-WT/3M-177/04PT dated 27th April, 2005 was gazetted in the extra ordinary Gazette dated 29th April, 2005, which has been annexed at page 54 of the writ application No. W.P. 11489 (W) of 2005, which reads to this effect:

GOVERNMENT OF WEST BENGAL TRANSPORT DEPARTMENT WRITERS"
BUILDINGS KOLKATA-700 001

No. 2076-WT/3M-177/04PT

Date : The 27th April, 2005.

In exercise of the powers conferred under Rule 88B of the West Bengal Motor Vehicles Rules, 1989 the Governor has been pleased to. issue the following direction to the State Transport Authority (STA) and the Regional Transport Authorities (RTAs) of this State for implementation of the colour scheme for different category of the transport vehicles as noted below against each of them.

(a) RTAs/STA West Bengal shall incorporate these colour specification as one of the conditions in the offer letter for grant of permit with immediate effect.

(b) Henceforth all the undernoted class of vehicles shall be printed and maintained with colours as prescribed and this shall be one of the conditions of the permit.

(c) Henceforth no permit shall be granted and no replacement of the vehicles/ change of address/transfer of ownership of vehicle shall be allowed unless the vehicle conforms to the said colour specifications.

Type of Vehicle prescribed colour CONTRACT CARRIAGE (Metered Taxi) Mustard yellow body with 10 cm Navy Blue from Headlight to backlight on the both sides. The word Taxi shall be inscribed on the center of the driver's door and on the opposite passenger doors within a Crimson Red Ring having 35 cm. Dia. placed in the center of the door. The width of the letters shall be 7 cm and they shall be equal size. The thickness of the Ring shall be 2.54 cm. The registration Authorized Number of the motor cab shall be painted prominently on the inner side of the windows green at the upper left hand cover. STAGE CARRIAGE plying under permit issued by (STA), West Bengal Navy blue on the top window top and for 25 cm. Width at the border bottom cream/off-white in the middle with double red strips of 7 cms Width each. The higher of these strips should be starting just windows with a 3 cms gap in between the strips.

STAGE CARRIAGE Plying under permit Issued by (RTAs) Sky Blue colour with yellow band of 45.72 cms. width just below the window on all sides of the vehicles. Such colour scheme as noted herein above shall be implemented by the existing permit holders of the aforesaid transport vehicles by 1 -6-2005 at the latest irrespective of the date of issue of certificate of fitness.

This shall take immediate effect.

By order of Governor Sumanta Choudhury Principal Secretary to the Government of West Bengal.

32. Hence, it appears explicitly and with positive indication that Rule 88B being amended rule in terms of the Gazette Notification published in the Kolkata Gazette dated 27th April, 2005 when even did not reach to the sales counter, a Notification dated 27th April, 2005 being No. 2076-WT/ 3M-177/04PT specifying the colour combinations of different vehicles was issued by the principal

Secretary to the Government of West Bengal in exercise of the power under Rule 88B, which is not legally permissible. Learned Senior Advocate Mr. Roy for the State respondent failed to satisfy this Court that the Gazette Notification dated 27th April, 2005 relating to the amendment of West Bengal Motor Vehicles Rules, 1989 by incorporation of Rule 88B reached the sales counter on the same date for purchase by the concerned persons. Furthermore, it is quite impossible that a Gazette Notification dated 27th April, 2005 published in the Kolkata Gazette would reach the sales counter on the same date and immediately thereafter on that date a Notification in exercise of the said amended Rule 88B also would be issued prescribing colour combinations by the Notification No. 2076-WT/3M-177/04PT dated 27th April, 2005 issued by order of the Hon''ble Governor by Sri Sumanta Choudhury, Principal Secretary, transport Department, Government of West Bengal.

33. In that view of the matter, this Court is of the positive view relying upon the judgment *New Tobacco Co. : Collector of Central Excise Vs. New Tobacco Co. Etc. Etc.*, of the Apex Court that amendment of Rule 88B as published in the Kolkata Gazette dated 27th April, 2005 under Notification No. 2044-WT/3M-18/2005 dated 26th April, 2005 got no effect at all as it did not reach the sales counter for wide circulation and as such as it was not at all effected on 27th April, 2005. Hence, the Hon''ble Governor also had no jurisdiction to exercise power under the said Rule 88B prescribing the colour combination of different stage carriage permits involved in this matter. Hence, on that angle also the prescription of the colours by Notification dated 27th April, 2005 being No. 2076-WT/3M-177/ 04PT signed by one Sri Sumanta Choudhury by the order of the Hon''ble Governor was of without jurisdiction, ineffective and nullity.

34. Having regard to all the aforesaid legal questions as answered by this Court as raised by the respective parties, this Court is of the view that under the word "regulation" as appearing in Clause (xviii) Sub-section (2) of Section 96 of the Motor Vehicles Act, 1988, the State Government never was empowered to prohibit colouring of the vehicle as per the choice of the motor vehicle owners in respect of their vehicles plying under different stage carriage permits and as such the exercise of the power on the alleged strength of Section 96 of the said Act for the purpose of amendment and incorporation of a new Rule 88B by the State Government in West Bengal Motor Vehicles Rules, 1989, was de hors of the legislative power.

35. Hence, the Notification impugned dated 26th April, 2005 being No. 2044-WT/3M-18/2005 published in the extraordinary issue of Kolkatta Gazette dated 27th April, 2005 is of without jurisdiction and it is set aside and; quashed. The Notification dated 26th April, 2005 aforesaid published in the Kolkata Gezette on 27th April, 2005 also is declared as ineffective. Even if for argumendo it is assumed that by the word "regulation" the State Government was empowered under Clause (xviii) Sub-section (2) of Section 96 of the Motor Vehicles Act, 1988 to frame Rule 88B prescribing particular colour scheme and prohibiting to paint

the vehicles as per choice of the motor vehicle owners, still then it got no effect as said No. tification by amendment of Rule 88B did not see the light of the day by wide publication on placement of the same to the sales counter as being run by the State Government, which should be the date of effect of such Notification. Hence, this Court is of the view that Notification dated 26th April, 2005 being No. 2044-WT/3M-18/2005 published in the extra ordinary issue of Kolkata gazette dated 27th April, 2005 never was effective at all as per law.

36. As a consequence of the both the aforesaid two logics as applied by this Court to nullify the Gazette Notification dated 26th April, 2005, so far as incorporation of Rule 88B in the West Bengal Motor Vehicles Rules, 1989, the Notification dated 27th April, 2005 being No. 2076-WT/3M-117/ 04PT published in the extra ordinary Gazette dated 29th April, 2005 whereby and whereunder different colour combinations were prescribed for different stage carriage permits plying under permits issued by the different Transport Authorities also was dehors of the statutory provision of the Rule and ineffective as such.

37. Having regard to such and on basis of my aforesaid finding and observation, the Notification dated 26th April, 2005 being No. 2044-WT/3M-18/2005 published in the Kolkata Gazette dated 27th April, 2005 annexed in the file W.P. 11489 (W) of 2005 impugned whereby Rule 88B was incorporated in the statute, namely. West Bengal Motor Vehicles Rules, 1989 and the prescription of the different colours in terms of said amended Rule 88B by notification No: 2076-WT/3M-177/04PT dated 27th April, 2005 published in the extra ordinary Gazette dated 29th April, 2005, both are set aside and quashed. All writ applications, accordingly, succeeds. State respondent and particularly Principal Secretary, Transport Department, Government of West Bengal, is directed to notify such judgment regarding quashing and cancellation of the impugned notifications in daily newspaper at their cost as per Courts order and also to intimate all the Regional Transport Authorities and State Transport Authority, so that no impediments is caused to the motor vehicle owners, who are plying their vehicle in the respective routes under different permits issued by different Transport Authorities so far as renewal of the permits, change of route, registration and other particulars for which embargo was created by the impugned notification, now stand quashed. Writ applications are allowed. No order as to costs.

Later:

38. Learned Advocate for the respective parties, namely, the writ petitioners in the respective writ petitions and the State respondents submit that since the judgment has a great impact with reference to dealing with the permits and the other consequential effects and if Xerox plain copy of this judgment is allowed, immediate and prompt action could be taken by the parties.

39. Considering this aspect, accordingly, it is ordered that Xerox plain copy of this judgment duly countersigned by the Assistant Registrar (Court) be given to the learned Advocates appearing for the respective parties within one week of

the reopening of the court after the Puja Vacation.