

(2005) 08 CAL CK 0050

In the Calcutta High Court

Case No : Writ Petition No. 10359 (W) of 2004

Madhab Saha and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 17-08-2005

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 17(1), 20
Central Motor Vehicles Rules, 1989 — Rule 115, 115(10), 115(11), 115(2), 115(6)
Constitution of India, 1950 — Article 14, 162
Motor Vehicles (Second Amendment) Rules, 2001 — Rule 1
Motor Vehicles Act, 1939 — Section 51(2)
Motor Vehicles Act, 1988 — Section 110, 72(2), 74(2), 83, 88
West Bengal Motor Vehicles Rules, 1989 — Rule 153(2)(1)(ii)

Citation : (2006) 1 CHN 59

Hon'ble Judges : Aniruddha Bose, J

Bench : Single Bench

Advocate : A. Chatterjee, Amal Kr. Sen, Sanjay Paul, Arun Kanti Bera, A. Felix, B.K. Samanta, Dipankar Pal and Sanat Kumar Roy, for the Appellant; Debashis Kar Gupta, N.I. Khan, D.K. Dey, Tarapada Ghosh, Nilima Das, Foruk Ali, for the Respondent

Judgement

Aniruddha Bose, J.—In this batch of writ petitions, the main controversy relates to legal validity of a notification issued by the Stbate Government on 7th June, 2004 mandating compliance of Bharat Stage II emission norms in respect of different categories of vehicles for which permits are required under the Motor Vehicles Act, 1988 (the Act). The text tin"s notification is reproduced below :

For sometime past the Government had been issuing several directions and orders in the matter of control of vehicular pollution within Kolkata Metropolitan Area. In the light of orders passed by the Hon"ble Division Bench Calcutta High Court dated 30.03.2004 in W. P. No. 2062 of 1999 and after careful consideration of the entire matter the Governor is pleased to issue the following directions in the matter of issue of permits to different categories of vehicles within Kolkata Metropolitan Area :

1. Application for all new permits in respect of transport vehicles (except three-wheelers) operating within Kolkata Metropolitan Area shall be considered by the STA and the RTAs in respect of only Bharat Stage II emission norms complaint vehicles.
2. Applications for replacement of vehicles (except three-wheelers) against any existing permit within Kolkata Metropolitan Area shall be considered by the STA and the RTAs in respect of only Bharat Stage II emission norms complaint vehicles.
3. Application for issue of new permit in lieu of surrender of an older permit within Kolkata Metropolitan Area shall only be considered by the STA and RTAs in respect of only Bharat Stage II emission norms complaint vehicles only.
4. Application for renewal of permit may be considered on the existing vehicle subject to their compliance to emission norms as fixed by Government of India under Rule 115 of the Central Motor Vehicle Rules.
5. Application for new permits of auto-rickshaws in respect of regularization shall be considered as per the policy already framed in this connection and accordingly application for replacement of existing auto-rickshaws shall be considered in respect of LPG driven auto-rickshaws only as per the guidelines issued vide number 1080-WT dated 25.03.2003.

The above directions shall take immediate effect.

The directions and order's as referred to at the outset in the matter of operation of BS II vehicles within Kolkata Metropolitan Area, issued by this department viz., No. 3882/WT/8S-78/2000 dated 02.09.2003 and other directions issued in connection therewith resting with No. 2189/WT/8S-78/2000 dated 27.05.2004 will stand superseded with immediate effect.

2. All the writ petitioners, who were applicants for stage carriage permits or for replacement of vehicles have been refused permits on the ground of their vehicles being non-complaint of Bharat Stage II norms (which I shall describe to briefly as B.S.II). In W. P. No. 5999(W) of 2004, the writ petitioner Sujit Roy's application for permit was responded to by the Transport Operator with an offer letter which specified the requirement of BS II norm. He had, however, specified in his application the registration number of the vehicle, which was described as "model 2000", thus not BS II complaint.

3. In W. P. No. 10359 (W) of 2004, Madhav Saha is an applicant for a new permit and the offer letter issued to him specified that his vehicle must be Bharat Stage II complaint and not be more than three years old. It is pleaded that in his application, he had disclosed the number of the vehicle. His vehicle also was not BS II complaint.

4. In fact, in none of the petitioner's cases, the vehicle is BS II complaint. In the case of the writ petitioner in W. P. No. 12700(W) of 2004, Shri Shiburam Maity,

the petitioner has been denied permit though he undertook to convert his vehicle into BS II compliant by 30th September, 2004. His certificate of registration of the vehicle (registered on 16th June, 2003) also carries a condition that the same was being issued subject to conversion of the vehicle into Bharat Stage II within 2nd April, 2004. It is his case also that he had specified the registration number of the vehicle in his application and his offer letter made a stipulation for such compliance.

5. In the case of writ petitioner (Sukur Ali Sk.) in W. P. No. 16293(W) of 2004, the Transport Authority has agreed to grant permit to him subject to his fulfilling the conditions of the subject notification. This writ petitioner had earlier approached this Court by filing a writ petition being W. P. No. 12820 (W) of 2004 and this Court had directed the authorities to consider his case on filing of certain documents, by an order dated 10th August, 2004. Thereafter, his application was rejected by the Transport Authorities for the same deficiency, i.e. non-compliance of BS II norm.

6. Mr. Dilip Kumar Sadhu, the writ petitioner in W. P. No. 14665 (W) of 2004 is aggrieved by the refusal on the part of the Transport Authorities to permit him to replace his vehicle which is of 1978 model, with an upgraded model on the same ground. As per pleading, he purchased a new vehicle sometimes on 21st July, 2003 for the purpose of replacement.

7. In W. P. No. 15936 (W) of 2004, the petitioner applied for permit in a route touching upon the area covered by the subject-notification, after purchasing a vehicle manufactured in the year 2002. The offer letter, however, stipulated that the concerned vehicle must meet the BS II norms. His case is that so far as diesel vehicles are concerned, there cannot be a question of BS II compliance and BS II norms apply only to Petrol, LPG and CNG run vehicles. His complain is that in spite of having submitted requisite papers, no permit is being granted him. He attributes this refusal to the restrictions imposed by the impugned notification.

8. The writ petitioners in W. P. No. 16294 (W) of 2004, W. P. No. 16295 (W) of 2004, W. P. No. 16296 (W) of 2004 are all applicants for stage carriage permits in the route between Jagannathpur and Taratala Marine College (SD 30), whose applications were rejected as the vehicles they intended to place did not comply with the subject-emission norm.

9. Similarly, in W. P. No. 21039 (W) of 2004, the writ petitioner is the first time applicant for a stage carriage permit who disclosed in his application dated 25th October, 2003 the registration number of his vehicle and the offer letter stipulated that the vehicle should conform to the same emission norms. This offer letter was issued on 28th October, 2004 and it is the admitted position that the vehicle in question is not compliant with such norms. The writ petitioner in this case has written to the authorities claiming permit and in his communication he has asserted that the condition in the offer letter requiring BS II compliance

cannot apply in his case, on the ground of prior disclosure of the registration number.

10. Birendra Nath Shahoo, the writ petitioner in W. P. No. 21474 (W) of 2004 is an operator in the inter-State route between Paradeep and Kolkata, counter-signature of whose permit is being withheld by the Transport Authority, on the ground of his vehicle not being BS II compliant vehicle. His grievance is that several inter-State operators have been issued permits after having their vehicles tested by a testing centre, named Surja Filing Station, had received counter-signature. In case of these vehicles, it has been argued on his behalf, emission standard of less than 65 HSU, was found to be acceptable and he is also maintaining the same level. In his case, the Secretary, State Transport Authority has written to his counterpart in Orissa on 11th August, 2004 (the copy of which communication has been annexed as "P 12" to the writ petition) that no inter-State stage carriage permit (permanent or temporary) shall be issued in respect of routes which may originate from and terminate to Esplanade and Band Stand of Kolkata and Howrah Station with effect from 2nd August, 2004. This communication has been made on the strength of the notification which has been reproduced in the earlier part of this judgment.

11. The primary challenge in all these writ petitions is the notification of 7th June, 2004, which mandates compliance of BS II norms on introduction of a fresh vehicle in the Kolkata Metropolitan Area, though there are some variations in the factual basis of such challenge in respect of individual petitioners. In the offer letter of some of the petitioners, a bench mark age of three years has been prescribed for the vehicles intended to be operated under the permit, but no argument has been advanced on this aspect of the dispute.

12. What is the Bharat Stage II norm? Section 110 of the Act empowers the Central Government to make Rules for introducing various anti-pollution measures in respect of vehicles, which rules are being incorporated from time to time in the Central Motor Vehicles Rules, 1989. The specification relating to emission of smoke, vapour etc. from automobiles and their testing technique are mostly contained in Rules 115 (with its various sub-rules), 115A, 115C and 116.

13. For the purpose of adjudication of the subject controversy, Rule 115 and its sub-rules are relevant. Sub-rule (2) of the said rules stipulates the idle emission standards for Carbon Monoxide (Co) and Hydro Carbon for petrol, CNG and LPG driven vehicles which they have been required to comply with for operating on or after 1st October, 2004. For operating diesel driven vehicles from this date, smoke density has been prescribed. Rule 115(9.) stipulates mass emission standard for both diesel and petrol driven vehicles on certain indicators, whereas Rule 115(10) specifies the same standard (i.e. Mass Emission Standard) on certain other indicators, which appears to be stricter norms, for vehicles manufactured on or after 1st June, 1999 in case of National Capital Region of Delhi and in other cases on and after 1st April, 2000. Thus, compliance of Rule 115 (2) is now mandatory for all operating vehicles including transport vehicles

and compliance of Rule 115(10) is applicable to vehicles manufactured after the given date referred to above.

14. The expression "Bharat Stage II" is used, it appears, in respect of a more stringent Mass Emission Standards, contained in items (A), (B), (C) and (U) of Sub-rule (11) of Rule 115. Introduction of these rules have been made in stages, both in specification and their application on stipulated geographical regions. Items (A) and (15) appear to have been introduced with effect from 1st April, 2000 in the National Capital Territory, whereas items (C) and (D) with effect from 24th April, 2001 under notification No. G.S.R.286 (E) of even date and for other areas, initially power was retained by the Central Government for their gradual application, without providing any cut-off date.

15. The Id. Advocate appearing for the State of West Bengal has produced a copy of another notification, being S.O. 731(E) issued by the Ministry of Road Transport and Highways, published in the Gazette of India. Extraordinary, dated 31st July, 2001. Under this notification, the applicability of these rules appear to have been enlarged geographically. The text of this notification is reproduced below :

S.O. 731(E): In exercise of the powers conferred by items (b) of Sub-rule (ii) of Rule 1 of the Central Motor Vehicles (Second Amendment) Rules, 2001, the Central Government hereby notifies 31st October, 2001 as the date on which the provisions of said rules shall come into force in Mumbai (including Greater Mumbai) Kolkata and Chennai in respect of four wheeled vehicles (other than passenger vehicles) with GVW equal to less than 3500 kg as also with GVW exceeding 3500 kg :

Provided that the provisions of the said rules shall not come into force with the effect of this notification in respect of the "four-wheeled transport vehicles" from Mumbai (including Greater Mumbai), Kolkata or Chennai to respectively, in other region of the States of Maharashtra, West Bengal or Tamil Nadu or plying on Inter-State Permits or National Permits or on the All India Tourist Permits within the territorial jurisdiction of the said metropolitan cities.

16. I do not consider it necessary to reproduce the actual emission standards as contained in these rules which are highly technical in nature and the analysis of such standards is not required, in my opinion, for adjudication of these writ petitions. It would suffice our purpose if I continue to describe these stipulations as BS II norms. However. I must add that all the vehicles do not appear to be required to convert to these norms, as in the case of Rule 115(2). Para 1 of the Central Motor Vehicles (2nd Amendment) Rules, 2001 through which items (C) and (D) to Rule 115(11) was introduced and a copy of which has been made available to this Court by the Id. Counsel for the State Government reads as :

1. (i) These rules may be called the Central Motor Vehicles (2nd Amendment) Rules, 2001.

(ii) They shall come into force--

(a) in the National Capital Territory of Delhi in respect of vehicles manufactured on or after six months from the date of their final publication in the Official Gazette; and

(b) in respect of the "four wheeled transport vehicles" which are plying on Inter-State Permits or on National Permits or on All India Tourist permits within the jurisdiction of National Capital Territory of Delhi and in respect of any vehicles in other areas of the Country from such date as the Central Government may, by notification appoint in the Official Gazette; and different dates may be appointed for different areas.

17. Under another memorandum bearing No. EN/867/1E-50/2000 (Pt.1) dated 4th June, 2001 issued by the Government of West Bengal, Department of Environment, the State Government had adopted the same norms in exercise of powers under Sections 17(1)(g) and 20 of Air (Prevention & Control of Pollution) Act, 1981 for "All four-wheeled vehicles (other than passenger vehicles) with GVW equal to or less than 3500 kg and vehicles with GVW exceeding 3500 kg" and has directed registering authorities in Kolkata Metropolitan Area refuse registration of vehicles not conforming to such norms, if brought on or after 23rd October, 2001.

18. This is broadly the legislative history of BS II norms.

19. Ld. Counsels appearing for almost all the petitioners have strongly placed reliance on an order of an Hon'ble Division Bench of this Court, passed on 30th March, 2004, in which applicability of Stage II norms in the Kolkata Metropolitan region was in issue. This order was passed in a batch of writ petitions, the lead one being W.P. No. 2062 of 1999 (S. M. Ghosh v. Secretary, Ministry of Environment and Ors.). In this writ petition, originally (by an order dated 3rd April, 2003), the State of West Bengal was directed to enforce BS II norms by 1st April, 2004. This order as modified on 30th March, 2004 with a direction that the new policy which was been issued by the Central Government should be valid by 1st October, 2004 and all the vehicles operating in the Greater Calcutta and Howrah shall conform to the norms laid down by the Central Government.

20. The petitioners, who are mostly intending and some existing stage-carriage operators have submitted that this order mandates compliance of norms specified in Rule 115(2) only and the transport authorities cannot insist on compliance of BS II norms over and above this compliance. It has further been submitted that there is no legal requirement to introduce new vehicles under the Act or rules for placing a vehicle in a given route under a permit and if the vehicles conform to the standard specified in Rule 115(2), that should be sufficient compliance of law.

21. The other decision on which reliance was placed by the petitioners is the decision of an Hon'ble Division Bench of this Court in the case of MAT No. 2208

of 2004/CAN No. 7983 of 2004 (Chittaranjan Dhar v. State of West Bengal and Ors.) where an Hon"ble Division Bench of this Court held, referring to the abovereferred order of another Hon"ble Division Bench passed on 30th March, 2004:

In fact, by reason of this modification of the earlier order, the year of manufacture would not be relevant factor, the relevant factor would be the standard of emission that has to be tested. Whether this should be described as Bharat Stage II compliance or not is neither here nor there because of the modification of the order passed by the Division Bench which has laid down particular standard of emission to which the vehicle has to conform.

In the circumstances, the authority will consider the question of grant of permission to the petitioners in accordance; with law if the petitioners are able to produce the vehicles with the required standard of emission as directed by the Division Bench in modification of its earlier order, as applicable on the date when the vehicle is produced. Permits is supposed to be granted pursuant to this order. The authority shall be free to decide the question of standard of emission in terms of the order passed by the Division Bench as modified and quoted above in this order. At the same time the respondents must ensure that no permit should be granted in respect of any vehicle which does not conform to the emission standard in terms of the order of the Division Bench. With this observation both the appeals and the applications stand disposed of. The order of the Id. Single Judge stands modified to that extent.

22. On the main issue, these are the two decisions on which reliance has been placed by the petitioners and it has been submitted that these being authorities of Appellate Benches, they are binding on me. For this proposition, i.e. binding effect of ratio of a decision laid down by an Appellate Bench, reliance has been placed on the following authorities:

- (i) Government of West Bengal Vs. Tarun K. Roy and Others, ;
- (ii) State Bank of India and Ors. v. Labour Enforcement Officer (Central) and Anr., (1997) 10 SCC 258 ;
- (iii) State of U.P. and another Vs. C.L. Agrawal and another, etc., .

23. The other submissions of the petitioners are that the notification dated 7th June, 2004 is an executive instruction and cannot bind the Transport authorities considering grant of permit, which is a quasi-judicial function (B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others,) (P.D. Aggarwal and Others Vs. State of U.P. and Others,).

24. It has also been argued that several operators of different types of vehicles like auto-rickshaws have been excluded from the rigours of the 7th June, 2004 notification and subsequently some other categories of permit-holders and this rendered the impugned notification vulnerable to the anti-discriminatory clause enshrined in Article 14 of the Constitution. The other ground of discrimination

made out by the petitioners was that existing operators were not being targeted under the notification, taut only those applying for new permit, replacement of vehicles and applicant for new permit against surrounding old permit were being required to follow the BS II norm. This is argued to be based on unreasonable and irrational classification (cases relied on this aspect are In re: In Re: The Special Courts Bill, 1978, , A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., and Rattan Arya and Others Vs. State of Tamil Nadu and Another,).

25. It is also the grievance of some of the petitioners that they are being required to produce BS II compliance certificate from the manufacturer though under the Act, it is the duty of the authorities to ensure proper testing facilities are there. Such action, it is submitted, amounts to taking action not sanctioned by law and hence illegal. (Cases relied on for this proposition are State of Mizoram Vs. Biakchhawna, and J.N. Ganatra Vs. Morvi Municipality, Morvi, .

26. On behalf of the respondents, the main submission is that the law itself mandates compliance of Rule 115(11), which in effect is BS II. So far as the decision of this Hon'ble Court in the case of S.M. Ghosh (supra), it has been submitted that; this order applied to vehicles in general, but the State has power to impose independent condition for stage carriage vehicles or other vehicles operating on permit. On the issue of discrimination, the defence of reasonable classification has been advanced.

27. I propose to deal with the legal character of the impugned notification first, as in my opinion this is the central issue in the present controversy. On behalf of the petitioners, it has been contended that this is an arbitrary executive fiat, intended to bind a quasi-judicial authority. The power to issue such notification, governing pollution control measure, it is contended vests exclusively in the Central Government.

28. I, however, cannot accept this argument. Section 110 of the Act, it is true, saves rule making power for adopting pollution control measures for the Central Government. But regulating the granting of stage or contract carriage permits is solely within the domain of the State Government, as per the scheme of chapter V of the Act. The Transport Authority has been given substantial discretionary power to impose condition at the entry-level and subsequently on applicants for stage and contract carriage permits. This authority is derived from the overall scheme of the Act under Chapter V and in particular Sections 72(2)(xxiv) and 74(2)(xiii) of the Act. Laying down pollution control specification for general vehicles and regulating grant of permits by requiring permit holders/ applicants to adopt certain anti-pollutant measures form different rule making zones, which do not clash. In pith and substance, I find the conditions contained in the notification a regulatory measure for vehicles running on permit keeping in view the general public interest.

29. It could well be a situation where the State Government may lack the power to make rules for application on general vehicles, but if confined to situations

relating to grant of permit, such Rules can be held to be valid. The decision of the Hon''ble Supreme Court in the case of Subhash Chandra and Others Vs. State of U.P. and Others, , is an authority for this proposition. In that case, imposition of age ceiling on a contract carriage permit u/s 51(2)(x) of the Motor Vehicles Act, 1939, which is akin to Section 74(2)(xiii) of the Act was held to be valid as coming within "any other conditions which may be prescribed." This came within the rule making zone of the State Government.

30. I am thus of the opinion that imposition of condition, as contained in the impugned notification, comes within the State Government's domain. And once it does, in my view, it can acquire legislative character in view of the provisions of Article 162 of the Constitution and is of statutory strength. While construing the scope of Article 162 of the Constitution, a Constitution Bench of the Hon''ble Supreme Court in the case of Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab, held:

On the other hand, the language of Article 162 clearly indicates that the powers of the State executive do extend to matters upon which the State Legislature is competent to legislate and are not confined to matters over which legislation has been passed already....

31. This notification, in my opinion, cannot be held to be an executive fiat on a quasi-judicial body. The decisions of the Hon''ble Supreme Court in the cases of K. Rajagopala Naidu (supra) and P.D. Agarwal (supra) are thus not applicable in the present case. The notification has been issued in a field which is the State's domain, i.e. regulating the grant of permits. It can have the force of law and hence binding on the permit granting authority.

32. But is the decision of the Hon''ble Division Bench in S. M. Ghose's case(supra) an authority for the proposition that any vehicle is automatically entitled to permit, other requirements being fulfilled, once they satisfy Rule 115(2)? As I have already observed, in this decision the Hon''ble Division Bench was concerned with stipulating general pollution control norms for all vehicles. This order of the Hon''ble Division Bench is not the ratio, for the proposition that the Transport Authorities have no power to impose conditions under Chapter V of the Act, including Sections 72(2)(xxiv) and 74(2)(xiii) of the Act touching upon pollution control measures as a condition for granting permit, in the event the operator/intending operator satisfies the pollution control norms specified by the Hon''ble Division Bench in that decision. This order of the Hon''ble Division Bench, in my opinion, is not a ratio for this proposition.

33. Other decision of the Hon''ble Division Bench in the Chittaranjan Dhar's case (supra), however, has taken the view that compliance of emission norms in terms of the order of the Hon''ble Division Bench [i.e. compliance of Rule 115(2)] is sufficient for obtaining a permit. In a subsequent decision delivered on 4th April, 2005 an Hon''ble Division Bench of this Court in MAT No. 1249 of 2005, CAN No. 3383 of 2005 (Pranab Kumar Ghosh v. Rekha Sadhukan and Ors.) observed

referring to both S.M. Ghosh's case (supra) and Chittaranjan Dhar's case (supra):

In case a vehicle complied with the formalities contained in Rule 115(11) of the Central Motor Vehicles Rules in respect of the vehicles in respect of the vehicles which are already operating in that event such compliance was held to be compliance with the BS II norms. This question may not apply in respect of new vehicle or in respect of permit to be granted after 30th March, 2004. We do not record any observation to that extent in view of the order dated 30th March, 2004 passed in S.M. Ghosh(supra) the vehicle already operating in the cities could be held to be complying with BS II norms if complied with Rule 115(11).

34. In the S. M. Ghosh's case, the issue of imposition of emission control norms as a condition of permit was not in issue. The decision of Chittaranjan Dhar's case (supra) was delivered in an appeal against an order passed by an Hon'ble Single Judge in two writ petitions which were disposed of on 19th May, 2004. Thus, the impugned notification and its impact could not have been in controversy in the said two writ petitions. From the decision of the Hon'ble Appellate Bench which has been cited before me (MAT. No. 2207 of 2004), it also does not appear that the validity of the impugned notification was in issue in that appeal.

35. The decision of the Hon'ble Division Bench in Chittaranjan Dhar's case (supra) thus cannot assist the petitioners in the present batch of writ applications, in which under consideration is the legality of the notification of 7th June, 2004. This notification, which I have already observed, carries the strength of a legislative instrument and specifically mandates compliance of BS II norms for vehicles to be run under permit, under certain situations.

36. Thus, the three decisions on binding value of precedent cited by the Id. Counsels for the petitioners in my opinion cannot be made applicable in the present batch of writ petitions.

37. The petitioners have also relied on a decision of an Hon'ble Single Judge of this Court in the case of Dipak Kumar Patra v. State of West Bengal and Ors. 2004 (2) CLT 600 (HC). In that case, decided on 31st March, 2004, in issue in that case was imposition of BS II norms and benchmark age condition in the offer letter in a case where the applicant had disclosed in his application for permit the registration number of the vehicle. The Hon'ble Single Judge held in this case that while Transport Authorities decided to issue permits having knowledge about the State of the vehicle (from the registration number), the Secretary of the Authority cannot impose such additional conditions.

38. So far as the decision of this Court in the case of Dipak Kumar Patra, (supra) is concerned, this was delivered before the 7th June, 2004 notification came into existence. As I have already held this notification to have legislative character, if a prohibition is imposed after issuance of an offer letter against an application in which the registration number of the vehicle is disclosed, the principle of

constructive notice or that of waiver or promissory estoppel cannot be made applicable. I am of the view that the right of an operator to run his vehicle under a permit accrues only after the permit is issued and if in the period between issuance of offer letter and grant of permit certain rules are introduced imposing fresh norms as a condition for grant of permit, the operator would be required to comply with the conditions imposed by such rules. If the operator is allowed to run his vehicle without complying with such conditions that would amount to sanctioning an act which would be contrary to law.

39. I am also not impressed with the argument based on discrimination. The administrative authorities have a wide discretion in fixing cut off limit and this is too well-established a principle now and does not require strengthening by precedent. From a plain reading of Rule 115(11), the submission that BS II norms is only in respect of Petrol/CNG/LPG vehicles do not appear to be correct. There are stipulations concerning diesel vehicles in Rule 115(11) some of which may correspond to the specifications contained in other sub-rules of Rule 115, but in such a situation if such specifications and stipulations are provided in Rule 115(11) are met, the BS II specification shall remain complied with. What is to be complied with is the specifications contained in Rule 115(11).

40. Introduction of the new pollution control norms on new vehicles for carrying passengers arriving on the crowded roads of the Kolkata Metropolitan Area does not look per se unreasonable to me. I would also not like to grant relief in the case of petitioners exonerating them from the applicability of BS II norms on the ground that some different categories of vehicles have been exempted from its application. It is within the domain of the executive to decide in what manner and through whom a new restrictive law would be introduced and unless an outstanding case of irrationality in the classification is established, I would refrain from interfering with such administrative action. The onus to establish such instance of irrationality rests on those who are alleging it and in the present dispute, the petitioners have failed to discharge such onus. This kind of action is essentially to improve the community health and the Courts ought to lean on construction in these kind of cases which improves, or at least prevents deterioration of community health. The decisions of the Hon"ble Supreme Court in the cases of Special Courts Bill (supra), A.L. Kalra (supra) and Rattan Arya (supra) in my opinion cannot apply in the facts of the present set of cases.

41. Accordingly, I hold that the impugned notification does not suffer from any legal infirmity. Actions taken in pursuance of such notification is valid, except in W. P. No. 14665(W) of 2004, having regard to the peculiar factual context of that case.

42. In W. P. No. 14665(W) of 2004, where the writ petitioner is Mr. Dilip Kumar Sadhu, I am of the view that insistence of production of a BS II vehicle in his case has been illegal. In his case, he is entitled, u/s 83 of the Act, to replace his vehicle by any other vehicle of the same nature. Though the power to allow replacement of a vehicle is discretionary power, the authorities have to exercise

their discretion reasonably. A BS II vehicle and a BS II non-complaint vehicle cannot be held to be vehicles of the same nature. Moreover the conditions under which an authority can reject an application for replacement has been laid down in Rule 153(2)(1)(ii)(iii) and (iv) of the West Bengal Motor Vehicles Rules, 1989. Of these sub-rules, Sub-rule 2(i) is relevant, which is reproduced below :

(2) Upon receipt of an application under Sub-rule (1) the Regional Transport Authority may, in its discretion, reject the application--

(i) if it has, previous to the application, given reasonable notice of its intention to reduce the number of transport vehicles of that class generally or in respect of the route or area to which the permit applies, or...

43. In the instant case, Non-BS II complaint vehicles can constitute a separate class of vehicles and intention of the authorities to reduce the number of vehicles of such class is apparent from the impugned notification. Since admittedly the application for replacement was made prior to the issuance of the 7th June, 2004 notification, this notification cannot override such express legal provisions specifying the course of action to be followed by an authority for considering replacement of vehicles. Further, as pleaded, the petitioner in this case intends to upgrade the vehicle, which it can be reasonably presumed, would be less polluting. The authorities would not be able to take any action against him if he continued with the older vehicle meeting the requirement of Rule 115(2). Accordingly, in the peculiar circumstances of his case, I hold that Clause 2 of the impugned notification would not be applicable in the case of the petitioner in this writ petition.

44. Another collective grievance of the operators is that even if they desire to place a Bharat Stage II complaint vehicle, the authorities are requiring them to produce a certificate from the manufacturer to that effect. Such allegation has been made by the petitioner in W.P. No. 21474(W) of 2004. In my opinion, such stipulation cannot be sustained. The impugned notification itself does not make any such stipulation. The requirement on the part of the manufacturers to certify pollution-standard compliance is contained in Section 115(6) of the said rules. The obligation to certify a vehicle which is already sold and on the roads to the effect that such vehicles are BS II complaint has not been cast under the law on the manufacturer. Law confers no power on the authorities to require so. On the other hand, the legislative intent that setting up of the test centres ought to be encouraged by the authorities appears from Rule 115(6) of the said rules. If an operator comes up with a case that his vehicle has been upgraded to meet the BS II standard, i.e. the norms specified in Rule 115(11), along with prima facie evidence of compliance of such standard from a reputed automobile repair/maintenance firm and the Transport Authorities intend not to accept such evidence, it shall be the obligation of the authorities to have the vehicle tested, or direct the vehicle to be tested in a specified testing centre within the Kolkata Metropolitan Area (where the impugned notification is in operation) for proving otherwise, through a technically acknowledged system. For both these purposes,

the State Government may consider empanelment of such testing centres. Under the law, the authority cannot require an operator to have his vehicle certified by the manufacturer, save as provided in Rule 115(6). Insisting on such a requirement would be contrary to the proposition of law laid down by the Hon"ble Supreme Court in the cases of *State of Mizoram v. Biakchhawna* (supra) and *J.N Ganatra v. Morvi Municipality* (supra).

45. In writ petition No. W. P. 21474(W) of 2004, I am of the view that the act of refusal to countersign the permit by the Transport Authority in West Bengal, if the vehicle of the petitioner is BS II non-complaint, would be valid. I hold so because in my view, a proper construction of Section 88 of the Act would imply that for the purpose of countersignature, the countersigning authority would be empowered to impose any condition as if such authority was the originating Transport Authority.

46. In the light of above, in writ petition No. 21474(W) of 2004, I hold that the action of the Transport Authority in West Bengal in refusing to countersign his permit on the ground of the same being BS II non-compliant is legal. However, if he converts his vehicle into BS II compliant and obtains certificate to that effect from an acknowledged pollution testing certificate centre the concerned authority shall accept such certificate. If the authority does not accept such certificate, they should specify a testing centre within Kolkata Metropolitan Area from where fresh testing shall be conducted within a period of three weeks from the date of such rejection. This writ petition is disposed of accordingly. W. P. No. 14665(W) of 2004 is allowed to the extent that the Transport Authority shall permit the writ petitioner to replace the vehicle with the one he has already purchased and necessary formalities to that effect must be completed within a period of four weeks from the date of communication of the order.

47. Writ Petition Nos. W. P. No. 5999 (W) of 2004, W. P. No. 10359 (W) of 2004, W.P. 16293(W) of 2004, W. P. No. 16294 (W) of 2004, W. P. No. 16295 (W) of 2004, W. P. No. 16296 (W) of 2004, W. P. No. 15936 (W) of 2004, W. P. No. 21039 (W) of 2004 and W. P. No. 12700(W) of 2004 are dismissed.

48. There shall, however, be no order as to costs.

49. Let an urgent xerox certified copy be supplied, to the parties, if supplied for an usual undertaking.