

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

**W.P.A. No.11662 of 2021
IA No: CAN 1 of 2022**

Asansol Mini Bus Association and others

Vs.

Union of India and others

For the petitioners	:	Mr. Durga Prasad Dutta, Mr. Souvik Sen
For the State	:	Mr. Amal Kumar Sen, Mrs. Ashima Das (Sil)
Hearing concluded on	:	13.05.2022
Judgment on	:	18.05.2022

Sabyasachi Bhattacharyya, J:-

1. The writ petitioner nos.1 and 3 are Bus and Minibus Operators' Associations and the other petitioners are the respective Secretaries thereof. The writ petition has been filed seeking the operators' right/authority in the matter of determination, fixation and/or regulation of fares and freights of stage carriages, in a manner proportionate to hike of the market price of fuel prevailing at the relevant point of time.
2. Learned counsel for the petitioner argues that the respondent-Authorities ought to ensure that the structure of the Bus fares bears a parity with the fuel price.

3. With the recent hike in fuel prices, it is alleged that the petitioners are on the verge of being out of business. It is argued that heavy loss is being suffered by the Associations on a day-to-day basis in view of the rising fuel prices, which is not being matched by an equal rise in the fare structure.
4. Several families of employees and operators associated with plying of buses shall also suffer immeasurably in the event the Associations and the Operators close business.
5. Learned counsel argues that the provisions of Section 67 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the 1988 Act”) ought to be read down to give a handle to the bus operators to have a say in the fixation of fare structures. Section 67(2) of the 1988 Act, it is argued, provides that any direction under sub-section (1) of the said Section regarding the fixing of fares and freights for stage carriages, contract carriages and goods carriages may provide that such fares or freights shall be inclusive of the tax payable by the passengers or the consignors of the goods, as the case may be, to the operators of the stage carriages, contract carriages and goods carriages under any law for the time being in force relating to tax on passengers and goods.
6. It is argued that the powers of the State Government to control road transport, apart from having regard to the specific yardsticks as stipulated in Section 67(1), should also take into consideration the fluctuation of fuel prices.
7. In fact, it is contended that Section 67(1) is flexible enough to be read down by the Court to represent the interest of the operators as well.

8. Learned counsel for the petitioners cites a Five-Judge Bench decision of the Supreme Court, reported at *JT 1990 (3) SC 725 [Delhi Transport Corporation Vs. DTC Mazdoor Congress and others]*, in support of his proposition in respect of reading down of statutes.
9. Learned counsel appearing for the respondent-Authorities submits that matters of excise duty and revenue are policy matters, to be determined by the State and ought not to be interfered with by Courts under normal circumstances.
10. In support of such proposition, learned counsel cites a Two-Judge Bench decision of the Supreme Court in *Mangalam Organics Limited Vs. Union of India [(2017) 7 SCC 221]*.
11. Upon hearing learned counsel for the parties, it is evident that the proposition as to reading down a statute was laid down by Sabyasachi Mukharji, CJI in a dissenting opinion in *Delhi Transport Corporation* (supra).
12. The majority decision in the said case, however, was rendered in the circumstances of the case, thereby striking down the *vires* of the law challenged therein.
13. However, the premise of consideration in the said judgment was the violation of natural justice and Article 14 of the Constitution of India, in respect of termination without giving opportunity of showing cause to the concerned employee.
14. As opposed to the said case, the present writ petitioners have claimed a 'reading down' of Section 67 of the 1988 Act, which does not have any direct nexus with the object and purpose of the said Act.

- 15.** The 1988 Act, in its statement of objects and reasons, takes into account consolidation and amendment of the law relating to motor vehicles, factoring in various criteria such as changes in the road transport technology, pattern of passenger and freight movements, development of the road network in the country and improved techniques in the motor vehicles management.
- 16.** That apart, in the present case, the privilege sought by the petitioners for the operators of motor vehicles in having a say in the fixation of fare structure has to be balanced with the convenience of the huge number of passengers and consignors who use the road transport network regularly for travelling and transporting goods.
- 17.** That apart, the domain of fixation of taxes in public transport is squarely within the authority of the executive and pertains to policy decisions of the Governments, both at the State and the Central level.
- 18.** Judicial interference, under normal circumstances, is not warranted, unless the very Constitutionality of the statutes are hit and/or the statutes-in-question are in direct contravention of public policy or the like.
- 19.** In the present case, there is nothing in the scheme of the 1988 Act to divest the State Government of the power vested in it to control road transport and to determine the fare structure, as a necessary corollary thereof. Sub-section (2) of Section 67 categorically indicates that directions of fixation of evidence and freights for carriages – stage, contract and goods – “may” provide that such fares or freights shall be

inclusive of the taxes payable by the passengers or consignors to the operators.

- 20.** However, such discretionary power of the State cannot be enforced at the whim of the operators, whose primary interest would be to earn profits from their business.
- 21.** It is for the State, according to its policy decisions, to balance the equities between the interest of the passengers/consignors and owners/operators, to strike the right chord insofar as the business interest of the operators is not hampered on the one hand and on the other, that the interest of the common citizens is not affected adversely.
- 22.** In the event the operators have a hand in the determination of freights/fares, the very purpose of regulation of such fares and freights will be frustrated, inasmuch as the motivating factor for the operators would be profits, as opposed to the interest of the consumers.
- 23.** In a welfare state, like the Indian democracy, it is also the duty of the Governments to protect the interest of the common citizens.
- 24.** Any alternative interpretation of Section 67 than its plain meaning would operate to the detriment of the masses and be contrary to the intendment of the statute.
- 25.** That apart, as laid down in *Mangalam Organics Limited* (supra), revenue and excise duty matters pertain mostly to the policy of the Government and ought not to be interfered with judicially at the drop of a hat.

- 26.** The ratio laid down in *Delhi Transport Corporation* (supra) is not applicable to the present case at all in view of the gross differences between the facts of the two cases. In *Delhi Transport Corporation* (supra), a question arose as regards the violation of tenets of natural justice and Article 14 of the Constitution of India. In the present case, neither the legality nor the Constitutionality of the relevant provisions of the 1988 Act have been put under the scanner. Hence, there is no scope of interference in the writ petition.
- 27.** Accordingly, W.P.A. No.11662 of 2021, and consequentially CAN No.1 of 2022, are dismissed on contest, without any order as to costs.
- 28.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)