IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE ASHIM KUMAR BANERJEE**
And
The Hon'ble **JUSTICE SANJIB BANERJEE**
And
The Hon'ble **JUSTICE ASHIS KUMAR CHAKRABORTY**

WP 3937 (W) OF 2013

PRABHAT PAN AND OTHERS

VERSUS

THE STATE OF WEST BENGAL AND OTHERS

For the Petitioners:	Mr N.I. Khan, Adv.
For the Respondent No. 8:	Mr Sanat Kumar Roy, Adv.
For the State:	Mr Pantu Deb Roy, Adv., Mr Subrata Guha Biswas, Adv., Mr Malay Chakraborty, Adv.

AND

WP 2507(W) OF 2013

KOLAGHAT-JASAR JATRI PARIBAHAN SAMITY AND OTHERS

VERSUS

THE STATE OF WEST BENGAL AND OTHERS

WITH

WP 12466(W) OF 2014

BAISHAKI CHATTERJEE

VERSUS

THE STATE OF WEST BENGAL AND OTHERS

WITH

WP 13809(W) OF 2014

SWARUP DAS AND OTHERS

VERSUS

THE STATE OF WEST BENGAL AND OTHERS

WITH

WP 15668(W) OF 2014

SANDIP GHOSAL AND ANOTHER

VERSUS

THE STATE OF WEST BENGAL AND OTHERS

WITH

WP 22078(W) OF 2014

DULAL KUNDU AND OTHERS

VERSUS

THE STATE OF WEST BENGAL AND OTHERS

WITH

WP 23900(W) OF 2014

DULAL KUNDU AND ANOTHER

VERSUS

THE STATE OF WEST BENGAL AND OTHERS

For the Petitioners in
WP 2507(W) of 2013: Mr Saktipada Jana, Adv.,
Mr Subhrangsu Panda, Adv.

For the Petitioners in
WP 13809(W) of 2014,

WP 22078(W) of 2014 and WP 23900(W) of 2014:	Mr Rameswar Bhattacharjee, Adv., Mr Soumen Bhattacharjee, Adv., Mr S. Panda, Adv.
For the Petitioner in WP 15668(W) of 2014:	Mr Rameswar Bhattacharya, Adv., Mr Arun Kanti Bera, Adv., Ms Soumi Pal, Adv.
For the Respondent No.4 in WP 23900(W) of 2014 :	Mr Arabinda Chatterjee, Adv., Mr Arkadipta Sengupta, Adv.
For the Respondent Nos. 6 and 7 in WP 13809(W) of 2014:	Mr Bhaskar Nandi, Adv.
For the Respondent No. 10 in WP 12466(W) of 2014:	Mr Prabhat Kr. Chattopadhyay, Adv.
For the State in WP 2507(W) of 2013:	Mr Pantu Deb Roy, Adv., Mr Subrata Guha Biswas, Adv., Mr Anit Kumar Das, Adv.
For the State in WP 15668(W) of 2014:	Mr Amal Sen, Adv., Mr Bhaskar Nandi, Adv.
For the State in WP 22078(W) of 2014:	Mr Arabinda Chatterjee, Adv. Mr Bhaskar Nandi, Adv.
For the State in WP 13809(W) of 2014:	Mr Arabinda Chatterjee, Adv., Mr Lal Mohan Basu, Adv.
For the State in WP 12466(W) of 2014:	Mr Amal Kumar Sen, Adv., Mr Bikash Mukherjee, Adv.

Hearing concluded on: January 21, 2015.

Date: February 25, 2015.

SANJIB BANERJEE, J.

There is a primary question and a supplemental issue that have been referred to this Full Bench:

> "Whether, in view of the law laid down by the Hon'ble Supreme Court in Mithilesh Garg v. Union of India : AIR 1992 SC 443, a writ petition at the instance of existing operators providing stage carriage services on different routes, who seek to challenge grant of fresh permits in favour of new operators (either on the self-same routes on which they have been operating or touching a portion of the same) by the transport authorities ostensibly taking recourse to the bogey of liberalized policy relating to grant of permits under the Motor Vehicles Act, 1988, is not maintainable although such grant ex facie might appear to the Court to be grossly illegal, patently arbitrary and in colourable exercise of power, consequently offending the constitutional concept of equality?"
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> "Whether it would be permissible for the Court exercising jurisdiction under Article 226 of the Constitution of India to entertain applications by holders of stage or contract carriage permits under the Motor Vehicles Act, 1988 questioning action or inaction on the part of the transport authorities in dealing with the complaint or allegations in relation to acts of other operators in running their vehicles for carrying passengers, whether holding permits or not, which acts would constitute ex-facie violation of the provisions of the Motor Vehicles Act, 1988 or Rules made in that regard".

The circumstances in which the reference has arisen have been succinctly captured in the orders of October 8, 2013 and November 11, 2014. Ideally, such orders ought to be reproduced, but for the sake of brevity the salient parts of the orders are paraphrased to bring out the essence thereof.

The principal question indicated above has been formulated in WP 3937(W) of 2013 in the order of October 8, 2013. Such principal question has been quoted in the second order of reference along with the supplemental question extracted above. The second order of reference has been passed in the other clutch of petitions. The case made out in the first of the petitions, which is covered by the order of reference of October 8, 2013, is that the petitioners are holders of stage-carriage permits on different routes all terminating in Howrah. The petitioners

complain of the respondent transport authorities having allowed vehicles to be operated in contravention of a notification of August 2, 2004 which was issued pursuant to the direction of a Division Bench of this court of November 21, 2003. The notification was published in the Official Gazette on August 6, 2004 and it stipulates that no new bus route through Esplanade or the Bandstand in Kolkata or the Howrah Station or the approach areas of the Howrah Bridge (Rabindra Setu) would be formulated or permits be issued; that no stage-carriage permits would be issued for any route originating or terminating at Esplanade or Bandstand in Kolkata and at Howrah Station; and, no new bus route shall be created in Kolkata and in Howrah without establishing appropriate parking places having requisite amenities for both the passengers and the transport workers.

The seven complaining petitioners in the first of the petitions have sought, inter alia, a mandamus for cancellation of the permits issued in violation of the notification published on August 6, 2004. One of the beneficiaries of the alleged illegal grant of permit was subsequently impleaded as the eighth respondent to the first of the petitions and such added respondent questioned the maintainability of the petition at the instance of the rival operators by referring to a Division Bench judgment of this Court apparently extending the dictum in *Mithilesh Garg* [(1992) 1 SCC 168] to any complaint made by an existing operator against a rival.

The first order of reference noticed the Division Bench judgment reported at (2008) 1 CHN 1096 (*Sekhar Chatterjee v. Abdur Rahim Mondal*) and similar views expressed in the Division Bench judgments reported at AIR 2007 Cal 252 (*Sanjit Chakraborty v. State of West Bengal*) and AIR 2008 Cal 31 (*Mobesher Hossain Mondal v. Sekhar Chatterjee*) and the unreported Division Bench decisions in FMAT No. 2902 of 1996 (*Secretary, Route No. 56 Bus Association v. Champadanga Dakshineswar Bus Association*); APOT No. 604 of 1999 (*Sagar Chatterjee v. Shambhu Basu*); and, FMAT No. 1017 of 2003 (*Mrityunjay Transport*

Co. v. State of West Bengal). Though all the said six judgments were sought to be distinguished by the writ petitioners by referring to the Supreme Court views in the judgments reported at (2000) 7 SCC 552 (*M.S. Jayaraj v. Commissioner of Exercise*) and (2005) 3 SCC 683 (*Sai Chalchitra v. Commissioner, Meerut Mandal*), the first order of reference recorded that neither Supreme Court judgment referred to *Mithilesh Garg*. Such first order of reference perceived that the Division Bench judgments of this court referred to earlier pertained to the locus standi of vehicle operators who questioned new grants and, as such, had a closer nexus with the legal question that had arisen than the two Supreme Court judgments. The first order of reference found *Sanjit Chakraborty* to have read *Mithilesh Garg* to imply that "an existing permit holder cannot challenge the grant of permit to other operators, on the same route, even if it had been granted illegally".

Such order of reference, thereafter, noticed a Division Bench order of June 20, 2013 in APOT No. 51 of 2013 (*Shyamal Mukherjee v. The State of West Bengal*) which interpreted *Mithilesh Garg* to be relevant only for the purpose of considering a prayer for a route permit. In *Shyamal Mukherjee*, the Division Bench observed as follows:

> "… The judgment in the case of Mithilesh Garg has no manner of application. That judgment is relevant only for the purpose of considering the prayer of an applicant for a route permit. While considering such a prayer, a rival has no say and the authorities have been directed to consider the prayer for a route permit on the basis of its own merit without being influenced by anything which a rival may have got to say. Financial loss to the rival is no factor at all to refuse to issue a permit. The law laid down in Mithilesh Garg's case has to be understood in that context."

However, the order in *Shyamal Muk*herjee was made without reference to the several previous Division Bench judgments holding to the contrary and reading *Mithilesh Garg* to imply that an existing permit holder would have no legal right to object to the grant of a new permit to another. It was upon appreciating such facet and the diametrically opposite view expressed in *Sanjit*

Chakraborty, that the issue has been referred to the Full Bench. In course of referring the question, the first order of reference observed that in *Mithilesh Garg* the challenge before the Supreme Court in the several petitions under Article 32 of the Constitution was not on the ground of the impugned grants of permit being illegal; the challenge was perceived by the Supreme Court to be only on the ground of warding off the new operators so that the existing operators did not have to share the same pie with more persons. In the first order of reference, an opinion was expressed that though an existing operator may not be permitted to challenge a new grant to a potential rival on the ground that it would affect the business of the existing operator, but the existing operator ought to be at liberty to complain of the issuance of a permit to another on considerations which were not germane and not traceable to the Motor Vehicles Act, 1988. The first order of reference perceived the opinion in *Mithilesh Garg* to be confined to the context of the right of objection under the predecessor statute (Motor Vehicles Act, 1939) being obliterated in the successor enactment. The first order of reference noticed that Section 64-A of the 1939 Act had been preserved in Section 90 of the 1988 Act and observed that it had engaged the attention of the court that there was indiscriminate issuance of permits in derogation of the policy decisions of the executive and in contravention of the statutory provisions. By referring to some pithy illustrations, the first order of reference brings out the distinction between an objection to the grant of a permit or prayer for annulment of an issue of permit on business considerations and a challenge to a permit on the ground of it being illegal.

In the other order of reference, the petitioners therein were found to be aggrieved by the action or inaction on the part of the transport authorities in permitting certain other operators to carry passengers in contravention of the 1988 Act and the rules thereunder. The several sets of petitioners covered by the second order of reference were found to be aggrieved by the modification of a route by an authority which did not possess the jurisdiction to allow the modification; or, the grant of the relevant permit was otherwise contrary to law.

The first order of reference was noticed and it was observed in the second order of reference that a similar view as in *Shyamal Mukherjee* had been expressed in an unreported single Bench decision in WP 6875(W) of 2003 rendered on May 12, 2005 (*Prasad Konar v. State of West Bengal*) but such opinion was not accepted by the Division Bench in *Sekhar Chatterjee*. The question formulated in the first order of reference was repeated in the second order of reference and the supplemental question was framed.

On behalf of the parties asserting a right to question the propriety of the grant of a permit, several provisions of the 1988 Act have been referred to, particularly from Chapter V thereof pertaining to the control of transport vehicles. It is submitted on behalf of such parties that it can never be said that an existing permit-holder cannot complain of another person operating on the same, or a part of, the relevant route without a permit; or, that a permit had been granted to a person not qualified to obtain the same; or, that the existing law or the applicable policy prohibited the grant of a permit to the person complained against.

In such light, several provisions from Chapter V of the 1988 Act have been placed. Section 66(1) of the Act provides for the necessity of permits and is couched in a language that prohibits a person from using, or permitting the use of, a vehicle as a transport vehicle in any public place without observing the conditions of a permit obtained therefor. In other words, a vehicle cannot be used as a transport vehicle in any public place without a permit being obtained for such purpose and the vehicle may be plied only in accordance with the conditions governing the permit. Section 67 of the Act provides for directions being issued by a State Government to the State Transport Authority (STA) and the Regional Transport Authorities (RTAs) regarding fares, conditions of operation and any other matter which may be necessary or expedient. Section 68 of the Act provides for the State Government constituting an STA and RTAs. Sub-section (3) of Section 68 binds the STA and the RTAs to give effect to the directions issued

by the State Government under Section 67. Section 69 of the Act indicates the manner of application to the relevant RTA for a permit. Section 70 of the Act deals with applications for permits for stage-carriages. A "stage-carriage" is defined in Section 2(40) of the Act to mean a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey. Section 71 of the Act lays down the procedure for consideration of applications for stage-carriage permits by an RTA. Sub-section (3) of the Section 71 of the said Act obliges the STA or an RTA to limit the number of stage-carriages operating in certain routes if the State Government so provides at the instance of the Central Government. Section 72 of the Act envisages the grant of a stage-carriage permit, but makes the authority of the concerned RTA subject to the provisions of Section 71.

Section 73 of the Act deals with contract-carriage permits. Loosely speaking, a contract-carriage, as defined in Section 2(7) of the Act is a motor vehicle which carriages passengers for hire or reward under a contract at an agreed rate on the basis of time or on the basis of the fixed points of travel. Section 74(3) of the Act is the equivalent provision of Section 71(3) in respect of contract-carriages.

The three other provisions from Chapter V of the Act that have been referred to by the parties complaining against other operators plying their vehicles in contravention of the law or the applicable rules are Sections 80, 88 and 90 thereof. Section 80 deals with the procedure in applying for and in granting permits. Section 88 allows the permit granted by the RTA of one region to be valid in another region upon it being countersigned by the RTA of the other region and the like provision for inter-state permits. Section 90 of the Act is of some relevance, particularly in it being expressly referred to in the first order of reference. The provision mandates as follows:

> **90. Revision**.- The State Transport Appellate Tribunal may, on an application made to it, call for the record of any case in which an order has

been made by a State Transport Authority or Regional Transport Authority against which no appeal lies, and if it appears to the State Transport Appellate Tribunal that the order made by the State Transport Authority or Regional Transport Authority is improper or illegal, the State Transport Appellate Tribunal may pass such order in relation to the case as it deems fit and every such order shall be final:

Provided that the State Transport Appellate Tribunal shall not entertain any application from a person aggrieved by an order of a State Transport Authority or Regional Transport Authority, unless the application is made within thirty days from the date of the order:

Provided further that the State Transport Appellate Tribunal may entertain the application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by good and sufficient cause from making the application in time:

Provided also that the State Transport Appellate Tribunal shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard."

Before the other judgments referred to at the Bar are noticed, the circumstances in which the dictum in *Mithilesh Garg* came to be pronounced ought to be appreciated. The opening paragraph of the judgment noticed the challenge by the petitioners therein to the liberalised policy for private sector operators in the road transport field on the ground that the existing operators had been adversely affected in the exercise of their rights under Articles 14 and 19 of the Constitution. As in the present reference, the matter pertained to Chapter V of the 1988 Act and the provisions therein were seen in the light of the corresponding provisions in Chapter IV of the 1939 Act which also covered the control of transport vehicles. Upon reading the comparable provisions of the two statutes, the court observed, at paragraph 5 of the report, that the procedure for grant of permits under the 1980 Act had been liberalised to such an extent that an intending operator could get a permit for the mere asking irrespective of the number of operators already in the field. The court noticed that the procedure under Section 57 read with Section 47 of the 1939 Act invited objections from the existing operators that were "required to be decided in a quasi-judicial manner." The court appreciated the salient features of Chapter IV of the 1939 Act pertaining to the control of transport vehicles and observed, at paragraph 6 of the

report, that there "is no similar provision to that of Section 47 and Section 57 under the *(new)* Act." The judgment regarded Section 80(2) of the 1988 Act to be the harbinger of the liberalised policy reflected in the 1988 Act, while perceiving Section 71(3)(a) of the 1988 Act to be "a provision … under which a limit can be fixed for the grant of permits in respect of the routes which are within a town having population of more than five lakhs."

The Supreme Court observed in *Mithilesh Garg* that the petitioners in that case were "in full enjoyment of their fundamental right … under Article 19(1)(g) of the Constitution … *(and there)* is no threat of any kind … to the enjoyment of their right to carry on the occupation of transport operators." Indeed, the three next sentences from paragraph 7 of the report capture the essence of the verdict:

> "There is no complaint of infringement of any of their statutory rights. Their only effort is to stop the new operators from coming in the field as competitors. We see no justification in the petitioners' stand."

The Supreme Court viewed Section 47(3) and Section 57 of the 1939 Act as some of the restrictions which were imposed by the State on the enjoyment of the right under Article 19(1)(g) of the Constitution in respect of motor transport business and observed that the "said restrictions have been taken away and the provisions of Sections 47(3) and 57 of the old Act have been repealed from the Statute Book." Finally, the judgment referred to authoritative precedents that enunciated that no right was guaranteed to any private party by Article 19 of the Constitution of carrying on trade and business without competition from other eligible persons, before dismissing the petitions without affording any relief. But it is also necessary to see the closing sentence in the penultimate paragraph of the report as the same throws some light on the primary question that has been referred to this Bench:

> "15. … The statutory authorities under the Act are bound to keep a watch on the erroneous and illegal exercise of power in granting permits under the liberalised policy."

Thus, the dictum in *Mithilesh Garg* has to be confined to the context of the challenge therein and the *ratio decidendi* has to be seen as follows: that an existing operator cannot challenge the grant of a permit to a new operator for a part or the whole of the route operated on by the existing operator on the ground that the business on the route or the relevant part of the route would not warrant the new grant. *Mithilesh Garg* cannot be read to imply that an existing operator prejudiced by an illegal grant of a new permit for a part or the entirety of the route covered by the existing operator will have no right to complain to the authorities of the illegal grant or carry a grievance before a judicial forum upon the complaint going unheeded or being rejected.

It is now necessary to notice the views expressed in the several judgments of this court on the maintainability of a challenge by an existing operator to the illegal grant of a permit to a new operator or to the illegal operation of a stage-carriage or contract-carriage by a new operator.

The issue in the unreported judgement in FMAT No. 2902 of 1996 (*Secy, Route No. 56 Bus Asscn. v. Champadanga Dakhbineswar Bus Association*) rendered on February 20, 1997 was whether an existing operator could complain of the overlapping of a part of his route upon a permit being issued to a new operator. The problem had arisen because of the closure of a part of the route assigned to the respondents to the writ petition. By way of a temporary measure, the respondent operators were permitted to ply their vehicles on a route partially covered by the permits granted to the members of the petitioner association. The petitioners succeeded before the single Bench on the ground that no new route had been formed under Section 68(3)(ca) of the 1988 Act. The order was set aside by the Division Bench on its perception that the rule in *Mithilesh Garg* applied to the case since the basis of the writ petitioners' objection was that their business interests were affected by the acts complained of. To the extent that the judgment observes that the acts of illegality complained of could not be canvassed in view of the embargo envisaged in *Mithilesh Garg*, the Division Bench's opinion has to

be seen to be in excess what *Mithilesh Garg* laid down. The writ petitioners' challenge in that case ought to be understood to have been repelled only on the ground that their business interests were affected and not on the ground that they had no locus standi to question the legality of the acts complained of. The Division Bench, however, found the challenge to be otherwise unmeritorious.

The judgment in APOT No. 604 of 1999 (*Sagar Chattergee v. Sambhu Basu*) delivered on August 9, 1999 also involved a writ petition being allowed by setting aside the temporary permits granted to the appellants on the Calcutta to Kandi route. The Division Bench relied on *Route No. 56 Bus Association* to set aside the order impugned on the ground that "merely because … a person's business was likely to be adversely affected, it would not give such person a locus standi to initiate a challenge under Article 226 unless such contravention infringes a vested right."

In the next unreported judgment of a Division Bench of June 13, 2003 in MAT No. 1017 of 2003 (*Mrityunjay Transport Co. v. State of West Bengal*), the grant of a permit in favour of the private respondent to the petition was challenged on the ground that the State Government had taken a policy decision that no further permits would be granted in any route allowing entry to the Howrah Station area or Esplanade. The Division Bench held, by relying on *Mithilesh Garg*, that "a rival in trade though aggrieved is debarred from challenging the grant of permit to his rival competitor in the trade." To the extent that the decision can be read to imply that even an act of illegality complained of by an existing operator in the manner of grant of permit to a new operator cannot be entertained on the strength of dictum in *Mithilesh Garg*, such view cannot be supported as *Mithilesh Garg* was restricted to the challenge canvassed by an existing operator on the ground of his business being affected by the impugned grant; and no more.

Another Division Bench observed in the judgment reported at (2008) 1 CHN 1096 (*Sekhar Chatterjee v. State of West Bengal*) that the writ petitioners therein were not entitled to maintain a challenge to the STA granting stage-carriage permits for an inter-regional route without reference to the RTAs and without inviting applications from the interested operators. The challenge in that case was as to the authority of the STA to act in the manner complained of. The primary issue that arose before the single Bench was whether the writ petitioners had the locus standi to question the action of the STA. The single Bench relied on the unreported judgments in WP No. 6229(W) of 2002 (*Monoranjan Mukherjee v. State of West Bengal*) of February 3, 2003, WP No. 8013(W) of 2003 (*Amirul Islam Mullick v. State of West Bengal*) of January 21, 2004 and WP No. 6875(W) of 2003 (*Prosad Konar v. The State of West Bengal*) of May 12, 2005 to hold that a writ petition by the existing operators challenging an act of perceived illegality could be maintained. The Division Bench in *Sekhar Chatterjee* summarised the view taken by the single Bench to imply that if the "transport authorities acted illegally or arbitrarily or in patent violation of the provisions of law, then the existing operators on a route, even in the face of the provisions of the Motor Vehicles Act, 1988 and the rules framed thereunder as well as the Judgment of the Apex Court in the case of *Mithilesh Garg* vs. *Union of India*, reported in AIR 1992 SC 443, were entitled to maintain a writ petition under Article 226 of the Constitution of India."

It would do well, at this stage, to notice at least one of the views expressed in the several single Bench judgments that notwithstanding *Mithilesh Garg*, an existing operator had the locus standi to challenge the illegal grant of permit to a new operator, before returning to *Sekhar Chatterjee*. In *Prasad Konar* the single Bench considered a batch of writ petitions filed by transport operators for quashing what they alleged were illegal actions of the transport authorities in conferring undue benefits to certain operators. A preliminary objection was taken by the transport authorities and the respondent private operators that the petitions were not maintainable. The petitioners sought to meet the challenge

with the assertion that their objection was to the illegal acts of the transport authorities and not merely as persons whose business interests were affected upon benefits being conferred on other operators. The single Bench noticed *Mithilesh Garg* and several other judgments, including those in *Route No. 56 Bus Association* and *Mrityunjay Transport Ccompany*, to hold that "if an act is ex-facie illegal, and ultra vires the Motor Vehicles Act, 1988, an existing operator would have the locus standi to challenge such an act, irrespective of the fact as to whether the authority committing such illegal act had the jurisdiction or authority to commit such acts or not."

Sekhar Chatterjee did not accept such reasoning though the judgment does not refer in any great length to *Prasad Konar* save in recording the reference. *Sekhar Chatterjee* also noticed the single Bench opinion in *Sanjit Chakraborty* reported at (2004) 1 WBLR 293 where a distinction was made between challenges to ward off increased competition and challenges to the illegal grants issued by the transport authorities, but did not discuss the distinction in appreciating the legal position on the matters in issue. The essence of the decision in *Sekhar Chatterjee* on such aspect is captured in the following passages at paragraph 14 of the report:

> "14. ...
>
> Under such circumstances it is obvious that the *locus standi* of the existing operators/persons interested/persons aggrieved, has been taken away completely by reason of section 80 of the new Act conferring them a status without any existing right to challenge the grant of permit.
>
> Consequently and in the absence of legal right the respondent Nos. 1 to 4 had no *locus standi* to challenge an act by which a transport authority chose to grant permits to these appellants. Therefore, the finding of the learned Single Judge to the extent holding that the respondent Nos. 1 to 4 were entitled to move the Writ Court, is held to be a finding and/or an order which is contrary to the well-known judgments holding the field in this context."

To be fair, the judgment in *Sekhar Chatterjee* thereafter dealt with the merits of the challenge launched by the writ petitioners and found the same to be without basis.

The opinion expressed in *Sekhar Chatterjee* as to the locus standi of existing operators to challenge the grant of new permits, is similar to the views taken in previous Division Bench judgments reported at AIR 2007 Cal 252 (*Sanjit Chakraborty v. State of West Bengal*) and AIR 2008 Cal 31 (*Mobesher Hossain Mondal v. Sekhar Chatterjee*). In the appeal in *Sanjit Chakraborty*, the Division Bench observed, at paragraph 3 of the report, that in *Mithilesh Garg* "it has been clearly held that an existing permit holder cannot challenge the grant of permit to other operators, on the same route, even if it had been granted illegally." Though the Division Bench proceeded to consider the matter on merits, its interpretation of *Mithilesh Garg* became binding on such issue in subsequent matters before any single Bench or Division Bench of this court. In *Mobesher Hossain Mondal* the court considered the matter on merits before citing *Mithilesh Garg* to hold that the writ petitioner appellant had no locus standi to maintain the petition against permits granted to the respondent operators as "he has a rivalry and *(is)* engaged in the same profession."

Finally, there is the unreported Division Bench order of June 20, 2013 in APOT No. 51 of 2013 (*Shyamal Mukherjee v. The State of West Bengal*). The appellant therein contested an order allowing the addition of a party by citing *Mithilesh Garg.* The added party, however, contended that the appellant had obtained a permit on the basis of forged documents and the permit issued to the appellant had been cancelled on the basis of the representation made by the added party to the transport authorities. It was in such context that the Division Bench held that the rule in *Mithilesh Garg* was limited to the challenge to a new permit on the ground of financial loss to an existing operator.

A similar objection, as to the maintainability of the writ petitions as canvassed in the two sets of petitions herein and which culminated in the orders of reference, was raised before a single Bench in the judgment reported at (2012) 2 CHN Cal 172 (*Manik Lal Maji v. Union of India*). The Division Bench judgment in *Sanjit Chakraborty* and its reading of *Mithilesh Garg* was cited in *Manik Lal Maji*, but the single Bench held that the dictum had no manner of application and proceeded to quash the impugned notice issued by the transport authorities on the ground that "where power is given to an authority to do *(a)* certain thing in a certain manner, that thing must be done in that manner or not at all and that other modes of performance are necessarily forbidden." In another recent single Bench judgment reported at (2014) 3 Cal LJ Cal 57 (*Jiban Kumar Sarkar v. Union of India*) the objection on the ground of locus standi was repelled by referring to some of the Supreme Court judgments noticed above and by holding that the objection was "a hyper-technical plea only to thwart the *bona fide* approach of the petitioners to bring to the notice of this court – exercising its jurisdiction under Article 226 of the Constitution of India – an action of the State which is blatantly and palpably contrary to the statutory laws as applicable."

Several judgments have been cited on behalf of the writ petitioners that a challenge under Article 226 of the Constitution can be maintained, even at the instance of an existing operator against a new operator, if the complainant can demonstrate a legal right in his favour and the act complained of is said to be illegal. In the judgment reported at (2005) 3 SCC 683 (*Sai Chalchitra v. Commissioner, Meerut Mandal*), the court held that a person in the same trade as another whose licence was sought to be cancelled could otherwise maintain a writ petition if the cancellation of the licence was sought on the ground of the issuance thereof being in violation of any statute or the rules framed under any statute. In *Pancham Chand v. State of Himachal Pradesh* reported at (2008) 7 SCC 117, a matter pertaining to the Motor Vehicles Act, 1988, the Supreme Court noticed that a person with considerable political clout had caused his application for the grant of permits to be entertained directly by the Chief

Minister of Himachal Pradesh. The Supreme Court held that the Chief Minister could not have entertained the application "nor usurp the function of the Regional Transport Authority". In a more recent decision reported at (2013) 5 SCC 427 (*Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur*), the Supreme Court observed that executive instructions which had no statutory force could not override the law; and, as a consequence, executive actions which ran contrary to statutory provisions could not be enforced. It follows that when such an illegal act is complained of and the complainant demonstrates the prejudice suffered as a consequence thereof, his locus standi to maintain the complaint under Article 226 of the Constitution cannot be questioned unless the court finds that an efficacious, alternative remedy exists and the court exercises self-restraint in not receiving the petition on such ground.

In the judgment reported at AIR 2006 SC 3444 (*Kanchan v. State Transport Appellate Tribunal*), the issue pertained to the several permits being granted by the STA without any applications in such regard. On a revision filed by some private parties, the State Transport Appellate Tribunal in Lucknow set aside the grant of the permits and held the action of the STA to be mala fide as it had acted in clear contravention of the statutory requirements. Such order of the tribunal was challenged before the Allahabad High Court on the ground that the proceedings before the Tribunal were not maintainable at the instance of the existing operators. The High Court found that the permits could not have been granted. The Supreme Court upheld the order of the High Court.

In the judgment reported at (2008) 7 SCC 748 (*Deepak Agro Foods v. State of Rajashtan*), in the context of the Rajasthan Sales Tax Act, 1994, the Supreme Court made a distinction between erroneous orders and orders made without jurisdiction by referring to a celebrated authority:

> "17. All irregular or erroneous or even illegal orders cannot be held to be null and void as there is a fine distinction between the orders which are null and void and orders which are irregular, wrong or illegal. Where an

> authority making order lacks inherent jurisdiction, such order would be without jurisdiction, null, *non est* and *void ab initio* as defect of jurisdiction of an authority goes to the root of the matter and strikes at its very authority to pass any order and such a defect cannot be cured even by consent of the parties. (See *Kiran Singh v Chaman Paswan [AIR 1954 SC 340]*.) However, exercise of jurisdiction in a wrongful manner cannot result in a nullity – it is an illegality, capable of being cured in a duly constituted legal proceedings."

In the judgment reported at (2000) 7 SCC 552 (*M.S. Jayaraj v. Commissioner of Excise*), an existing liquor vendor complained of a rival locating his shop in a range other than for which such rival had been granted a licence. The court noticed the relaxation of the rule of locus standi by the Supreme Court in the 1980s and the 1990s. The court referred to the dilution of the strict rule, particularly in public interest litigation, and observed that if the excise commissioner had no authority to permit a liquor shop owner to move out of the range for which the auction was held, "it would be improper to allow such an order to remain alive and operative on the sole ground that the person who filed the writ petition has strictly no locus standi."

The expanded ambit of the concept of locus standi in the context of public interest litigation need not be addressed here and several judgments cited by the writ petitioners on such score are not considered relevant.

Before answering the primary and the supplemental questions raised in this reference, it may be relevant to refer to the principles pertaining to *stare decisis* and binding precedents in the context of the divergent interpretation of *Mithilesh Garg* by various Benches in this court.

Judge-made law relating to binding precedents is founded on the larger public policy of predictability and certainty regarding the law. It is a rule of judicial discipline which is the *sine qua non* for sustaining the system. The Latin maxim, *stare decisis et non quieta movere*, literally means to stand by decisions and not disturb what is settled. The rule has also been explained as, those things

which have been so often adjudged ought to rest in peace. The Constitution Bench observed in the judgment reported at (1981) 2 SCC 362 (*Waman Rao v. Union of India*) that the doctrine of *stare decisis* is the basis of common law. The doctrine is perceived to have originated in England and has been applied in the colonies as the basis of their judicial decisions. The genesis of the rule may be sought in factors peculiar to English legal history, the most important of them being the absence of a code. The Normans forbore to impose an alien code on a half-conquered realm, but sought instead to win as much widespread confidence as possible in their administration of law by the application of near uniform rules. The older the decision, the greater its authority and the more truly was it accepted as stating the correct law. As the gulf of time widened, judges became increasingly reluctant to challenge old decisions. The doctrine of *stare decisis* is also firmly rooted in American jurisprudence. It is regarded as a rule of policy which promotes predictability, certainty, uniformity and stability. The legal system, it is said, should furnish a clear guide for conduct so that people may plan their affairs with assurance against surprise. It is regarded important to further fair and expeditious adjudication by eliminating the need to relitigate every proposition in every case. In *Waman Rao*, the Supreme Court quoted with approval from H.M. Seervai on *Constitutional Law of India* where the author pointed out how important it was for judges to conform to a certain measure of discipline so that decisions of old standing are not overruled for the reason merely that another view of the matter could also be taken.

Since certainty and consistency are the bedrock of a mature judicial system, a legal pronouncement of a superior forum, in the hierarchical judicial structure in this country, when cited before an inferior forum is binding on the inferior forum, subject to the caveat that the authority of the superior forum is not *per incuriam*. A judgment can be said to have been rendered *per incuriam* – in ignorance of the law – and, therefore, having no binding value if such judgment is contrary to any statute or it is contrary to the judgment of a superior forum.

If a judgment of a Division Bench is placed before a single Judge of the same High Court, then the law recognised in such judgment is binding for all practical purposes unless the judgment is patently contrary to the applicable statute or it is contrary to a Supreme Court judgment. If, however, the Division Bench judgment notices a Supreme Court judgment and reads a legal issue discussed in the Supreme Court judgment to imply something that the Supreme Court decision clearly does not say, it is such interpretation which is binding on the single Judge of the same High Court and the single Judge has no room to interpret the Supreme Court judgment in any natural or ordinary way other than as read by the Division Bench. If a single Bench judgment of a High Court on a point of law is cited before a subsequent single Bench of the same court, it is binding on the later single Bench. The only recourse that the subsequent Judge may have, if he does not agree with the previous opinion, is to refer the matter to a larger Bench. The case is similar if a Division Bench judgment is cited before a subsequent Division Bench of the same court and the subsequent Division Bench does not agree with the view expressed in the previous one.

The matter is slightly different if a Supreme Court judgment is cited before a High Court. As to the binding nature of Supreme Court judgments, inter se, it is elementary that a Constitution Bench judgment will prevail over judgments of the Supreme Court rendered by lesser Benches. If, however, there are two Supreme Court judgments of varying import on the same point of law delivered by Benches of coordinate strength without the later judgment noticing the previous view, the High Court – be it a Division Bench or a Single Bench – has the option to choose the one more suited to the case at hand. However, the choice arises only in a situation where the subsequent Supreme Court judgment has not noticed or considered the previous view of the Supreme Court rendered by a Bench of the same strength. If the subsequent Supreme Court Bench of the same strength has noticed the previous view and has read it down, it is the subsequent view which becomes binding.

The values of judicial decorum and propriety have been endlessly stressed upon by the more experienced and the sagacious. A passage from the judgment reported at (1965) 3 SCR 218 (*Shri Bhagwan v. Ram Chand*) is poignant:

> "**18.** Before we part with this appeal, however, we ought to point out that it would have been appropriate if the learned Single Judge had not taken upon himself to consider the question as to whether the earlier decisions of the Division Benches of the High Court needed to be re-considered and revised. It is plain that the said decisions had not been directly or even by necessary implication overruled by any decision of this Court, indeed, the judgment delivered by the learned Single Judge shows that he was persuaded to re-examine the matter himself and in fact he had substantially recorded his conclusion that the earlier decisions were erroneous even before his attention was drawn to the decision of this Court in *Laxman Purshottam Pimputkar* case. It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, needed to be reconsidered, he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety. It is to be regretted that the learned Single Judge departed from this traditional way in the present case and chose to examine the question himself."

It was, thus, appropriate that the issue has been referred to a Full Bench rather than the erroneous interpretation of *Mithilesh Garg* in some of the Division Bench judgments noticed above being bypassed or plainly ignored by some indecorous logic.

A judgment is an authority for the legal position that it expressly decides and not anything else which is deemed to have been considered or decided. The dictum in *Mithilesh Garg* is binding on this court and has to be regarded as the law declared by the Supreme Court under Article 141 of the Constitution; but what is binding is only the *ratio decidendi* of that judgment. The *ratio decidendi* of a judgment has to be discerned upon the reading of the whole of the judgment and has to be found out from what is set out in the judgment itself. As to what is

set out in the judgment, it has to be read in the context of the matter and not in isolation. A judgment is not to be read as a statute and its ratio is its reasoning on how the law was applied to the facts to arrive at the conclusion. The statements of the Supreme Court contained in its judgments, other than the law, have no binding force.

The dictum in *Mithilesh Garg* has, thus, to be confined to a situation where an existing operator is seen to challenge the entry of a rival in his theatre of operation on the ground of the existing operator's business or commercial interests being prejudiced. The judgment cannot be read to imply that an existing operator has no right to complain of an illegal or irregular act of the transport authorities in allowing a new entrant to operate in the same or like field. There is no doubt that it is the commercial interest of an existing operator that may impel him to challenge the grant of a permit to a rival; but if the challenge is based on the perceived irregular or illegal acts and conduct of the transport authorities, the challenge cannot be repelled only on the ground of business rivalry.

The Motor Vehicles Act, 1988 and the rules or policy guidelines framed thereunder bind the transport authorities to act in a particular manner in the matter of grant of permits or allowing commercial plying of vehicles. Several of these statutory provisions have been noticed in the first order of reference and have been referred to by the writ petitioners in course of the present proceedings. Since statutory authorities are bound to act in accordance with law, and the manner in which the law requires them to act, the actions of the statutory authorities are justiciable. If there is a complaint that the grant of a permit or like action is in derogation of the statutory provisions or the rules or policy guidelines framed thereunder or in colourable exercise of authority, the acts complained of can be subjected to judicial review, subject to the complainant suffering or being likely to suffer a degree of prejudice thereby. If the complaint is of the irregular or illegal exercise of authority which results in the complainant being affected or

likely to be affected, the status of the complainant as a business rival of the beneficiary of the irregular or illegal executive largesse will not stand in the way of the complaint being received for judicial review. However, if there is a tribunal entitled to receive such complaint, the High Court in exercise of its jurisdiction under Article 226 of the Constitution should be slow to entertain the complaint, unless the act complained of is demonstrably and ex facie without jurisdiction or in complete violation of the principles of natural justice; or, like exceptions apply when the court does not regard the alternative remedy to be efficacious.

Accordingly, the primary question raised in the two orders of reference is answered thus: subject to the considerations as to there being an efficacious alternative remedy, a writ petition at the instance of existing operators providing stage-carriage services on different routes, who seek to challenge the grant of fresh permits in favour of new operators (either on the self-same routes on which they have been operating or touching a portion of the same) by the transport authorities is maintainable if the challenge is on the ground of illegality or arbitrariness or colourable exercise of power or otherwise being violative of Article 14 of the Constitution, notwithstanding that the action may be impelled by the commercial interests of the existing operator; provided that, the substance of the challenge is not founded only on the commercial interests of the existing operator being prejudiced by the acts complained of.

The supplemental question framed in the second order of reference is answered thus: subject to the considerations as to there being an efficacious alternative remedy, the court exercising jurisdiction under Article 226 of the Constitution of India may entertain applications by holders of stage or contract-carriage permits under the Motor Vehicles Act, 1988 questioning any action or inaction on the part of the transport authorities in dealing with complaints or allegations in relation to acts of other operators in plying their vehicles for carrying passengers, whether holding permits or not, which acts constitute violation of the provisions of the Act or the rules or policy guidelines framed

thereunder; provided that, the substance of the challenge is not founded only on the commercial interests of the existing operators being prejudiced by the acts complained of.

The answers to the questions have to be read in the context of the discussion preceding them and in the backdrop of the dictum in *Mithilesh Garg*.

The reference is disposed of.

Urgent certified website copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Sanjib Banerjee, J.)

I Agree.

(Ashim Kumar Banerjee, J.)

I Agree.

(Ashis Kumar Chakraborty, J.)