

## WEST BENGAL HUMAN RIGHTS COMMISSION

Purta Bhavan, 2<sup>nd</sup> Floor, Salt lake, Kolkata – 700 091

File No. 189/WBHRC/COM/2020

### Present

1. Justice Girish Chandra Gupta
2. Shri Naparajit Mukherjee

Chairperson  
Member

Train services including suburban trains were suspended on 21<sup>st</sup> March 2020 consequent to Janata curfew imposed by the central government as a precautionary measure to contain the spread of coronavirus. The suburban trains provide services to the cities of Mumbai, Kolkata, Chennai and Secundrabad. These trains help in facilitating movement of passengers within the cities and suburbs. These trains as a matter of fact provide a lifeline to the dwellers of suburbs. There is no viable alternative to the suburban trains for the poor including the lower middle class. There are in West Bengal six main lines and 19 branch lines. The suburban railway operates more than 1500 services, carrying 35,00,000 people daily. The suburban train services run from 03.00a.m until 02.00 a.m. and the fares range from ₹ 5 to ₹ 20. They cover short distances up to 150Km.

This system is operated by two zones of Indian Railways; the Eastern Railway Zone and the South-Eastern Railway Zone. These zones are further divided into the Howrah and Sealdah division for the Eastern Railway and the Kharagpur division for the South-Eastern Railway. The Howrah, Sealdah and Kolkata railway stations are the three major terminals serving the network in the city.

Train services were resumed conservatively on 14<sup>th</sup> May 2020. Hindustan Times dated 14<sup>th</sup> May 2020 reported that the PM told the Chief Ministers of the country that "resumption of train services is needed to rev up the economic activity".<sup>1</sup>

Western Railway resumed selected services on 15<sup>th</sup> June 2020 with defined protocol and SOP only for movement of essential staff as identified by the state government.<sup>2</sup> The privileged class of passengers was enlarged on 19<sup>th</sup> September

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<sup>1</sup> See Annexure 1 on page 1 of the compendium

<sup>2</sup> See Annexure 2 on page 3 of the compendium

2020 to include 10% employees of private banks.<sup>3</sup> On 20<sup>th</sup> September 2020, 10% staffs of cooperative and private banks were allowed to travel with unique QR code e-passes.<sup>4</sup>

On 11<sup>th</sup> September 2020 Outlook India.com quoted Sanjay Kumar Mohanty the General Manager of South-Eastern Railways to have said "we will work out a strategy for resuming suburban train services in a graded manner," it was also reported that "the railways will soon hold a meeting with the West Bengal government for working out a strategy to resume suburban train services in the state in a graded manner".<sup>5</sup> It is significant that the state government had already on 28<sup>th</sup> August 2020 requested the railways to allow a limited number of local trains to be operated along with Kolkata Metro maintaining the norms of physical distancing and health hygiene protocols.<sup>6</sup>

Unlock 4.0 guidelines were released by the Ministry of Home affairs on 29<sup>th</sup> August 2020 providing "State/UT governments shall not impose any local lockdown outside the containment zones, without prior consultation with the central government".<sup>7</sup> Restrictions on interstate and intrastate movement were lifted. Metro trains were allowed to be operated with effect from 7<sup>th</sup> September 2020. Congregations with a ceiling of 100 persons wearing masks and maintaining social distance and user of hand wash or sanitiser was allowed with effect from 21<sup>st</sup> September 2020.<sup>8</sup>

In the aforesaid backdrop Times of India carried a news item on 10<sup>th</sup> September 2020 under the caption "No immediate plan to resume suburban train services: Eastern Railway GM".<sup>9</sup> The reasons why the aforesaid decision is bad in law, violative of human rights and blatantly opposed to the constitutional safeguards are inter-alia as follows:

Right to move freely throughout the territory of India is a fundamental right guaranteed under article 19(1)(d) of the Constitution of India. It is true that under clause (5) reasonable restrictions on the exercise of the right may be imposed in the interest of the general public. Public interest is nothing but the general welfare of the public. It can also be said that public interest is "that which is best for society as a whole". The views expressed by the General Manager Eastern Railway quoted above do not pass the test indicated above.

The impugned decision runs counter to Article 21 of the Constitution of India which guarantees the right to life and personal liberty of every person. Right to life means more than mere survival or animal existence. All that makes a man's

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<sup>3</sup> See Annexure 3 on page 5 of the compendium

<sup>4</sup> See Annexure 4 on page 7 of the compendium

<sup>5</sup> See Annexure 5 on page 8 of the compendium

<sup>6</sup> See Annexure 6 on page 9 of the compendium

<sup>7</sup> See Annexure 7 on page 11 of the compendium

<sup>8</sup> Ibid

<sup>9</sup> See Annexure 8 on page 13 of the compendium

life meaningful, complete and worth living are included in the right to life. Needless to say that a restriction which deprives a person of his right to earn his livelihood is the worst kind of violation of his right to life. Personal liberty guaranteed under article 21, it has been held, includes the right of locomotion, except in so far as it is included in article 19 (1) (d).

Article 25 of the Universal Declaration of Human Rights provides inter alia as follows:-

"everyone has the right to a standard of living adequate for the health and well-being of himself and of his family including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

By prolonging the suspension of the suburban trains neither safety nor security nor health nor livelihood nor treatment of the sick nor the disabled have been benefited. I am enclosing some photographs of the overcrowded buses and streets which go to illustrate the condition in which the general public of the country and particularly the inhabitants of the state of West Bengal have been thrown. Neither social distancing nor maintenance of any protocol as regards hygiene is possible in the crowded buses. The commuting public has no choice but to avail those buses. Not only are the commuting public risking their health, they are also exposed to unscrupulous transport operators who are making holes in their pocket by the exorbitant charges realised in the name of fare. One cannot but think that those who decided that the suburban trains cannot be put back to the tracks anytime soon are living in ivory towers and are divorced from the ground reality. Why is the rule for Metro is not also the rule for the local train? It is the responsibility of the state to maintain law and order. The state is ready to discharge its obligation. Why is then the railway fighting shy?

Western Railway resumed services of the suburban trains for the passengers engaged with essential services. They have allowed employees of the cooperative banks to avail the benefit. Presumably they must have considered that such employees were also engaged in essential services. In that case why are the employees of private commercial houses also not given the same benefit? The commercial houses fill the coffers of exchequer by deposit of taxes. Are they not essential for the country?

News items carried by various newspapers both Bengali and English on 9<sup>th</sup>, 10<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> October 2020 are enclosed to show that wage earners have become desperate and the situation may go out of control.<sup>10</sup> As late as yesterday protesters blocked train tracks in Hooghly, demanding train services.<sup>11</sup> Lack of the service of suburban trains has rendered lakhs and lakhs of people jobless.

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<sup>10</sup> See Annexure 9 on page 14 of the compendium

<sup>11</sup> See Annexure 10 on page 25 of the compendium

The pittance that they earn by which they somehow make both ends meet, does not allow them the luxury to avail the alternative mode of transport for reasons already indicated. It has also created artificial scarcity in the market. Vegetables are supplied to the city of Kolkata by the suburbs. The local trains have compartments for vendors specially designed to facilitate transportation of vegetables to the city of Kolkata. With the suspension of the suburban trains the supply has been largely affected. The cultivators are losing their income. Their produce is wasted. Meanwhile the city dwellers are purchasing the same at a double or triple the price.

As per the 2011 census, India has 41 million migrant workers. Add to that domestic workers, daily wagers, construction workers and white-collar employees destined to earn lowest possible wages. There are for example nearly 8500 guest lecturers in colleges in the state of West Bengal. Some of them earn as low as ₹ 100 per class and some others barely ₹ 3000 a month, even though the colleges rely heavily on them. The Hindu, a daily newspaper on 25<sup>th</sup> June 2020 carried a news item under the caption "West Bengal fixes salaries for poorly paid guest lecturers" the aforesaid news item quoted a full-time lecturer, who did not want herself or her college to be named "about three years ago a central team visited our college, and they asked how much we pay our guest lecturers.

I said we pay ₹ 3500. The leader of the team asked, very surprised, ₹ 3500 a day?" I replied, no, ₹3500 a month. He was even more surprised, and said "that is even less than what daily wagers earn".<sup>12</sup>

We are asking the question to ourselves, how do these people survive? Those who were spared by Corona virus are slowly being killed by the caregivers. One may recollect the word of caution sounded by Shakespeare "care is no cure, but rather a corrosive for things that are not to be remedied"

Clause (a) and (e) of Article 39 require the government to take steps to ensure that citizens have a right to adequate means of livelihood, and citizens are not forced by economic necessity to enter avocations unsuited to them. These obligations are among the directive principles of state policy which are considered to be fundamental in the governance of the country. Prolongation of the suspension of suburban train services have been creating conditions that run contrary to these obligations.

Fundamental rights cannot be suspended even during the emergency. The freedoms guaranteed under Article 19 of the Constitution can only be curtailed by declaration of an emergency under Article 358 of the Constitution of India. No such emergency has been declared. Therefore any curtailment of the rights guaranteed under Article 19 is open to serious objection. Under Article 359 of the Constitution of India the rights guaranteed under Article 20 and 21 can

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<sup>12</sup> See Annexure 11 on page 27 of the compendium

never be suspended though proceedings pending in any court for the enforcement of right so mentioned shall remain suspended while the proclamation is in force. This discussion is however academic because there is no such proclamation.

Even assuming that the lockdown was permissible under the provisions of the Disaster Management Act 2005 and further assuming that suspension of train services including suburban services was permissible under the provisions of the aforesaid Act sight cannot be lost of the fact that section 11 of the Disaster Management Act (hereinafter referred to as the Act) provides for a national plan, section 12 provides for minimum standards of relief, section 35(2)(a) requires coordination of actions of the ministries or the departments of the Government of India. Here there is no coordination between the Eastern Railway and the South-Eastern Railway though both of them belong to the Ministry of Railway. The Western Railway, as indicated above, functions in a different way altogether. Coordination under the aforesaid provision is also required between the Government of India and the State Government which is conspicuous by its absence. Under section 35(2)(e) of the Act cooperation and assistance to state government as requested by them is enjoined upon the Government of India which does not appear to have been extended.

Under section 36(g)(iii) of the Act every Ministry or department of the Government of India is under an obligation to provide immediate relief wherever required which has been performed only in breach. Under section 37(1) of the Act the ministries and the departments of the Government of India are required to prepare a disaster management plan inter alia for mitigation of the disaster. No such plan for mitigation of the woes of the commuters is anywhere within the sight.

Reference may also be made to the views expressed by the experts stating that – “বিজ্ঞানীদের মূল বার্তা হল, অতিমারী পরিস্থিতি হলে অর্থনীতি ও জনস্বাস্থ্য স্বাভাবিক রাখতে হবে। মাস্ক পরে, পারস্পরিক দূরত্ব-বিধি বজায় রেখেই স্বাভাবিক জীবনে ফিরতে হবে সকলকে। এতে ভ্যাকসিন আসতে দেরি হলে, নিয়ন্ত্রিত ভাবে হার্ড ইমিউনিটি তৈরি হবে। অর্থাৎ গোষ্ঠী সংক্রমণ ঘটে গিয়ে ভাইরাস নতুন করে আর কাউকে সংক্রমণের জন্য খুঁজে পাবে না। রোগ প্রতিরোধ ক্ষমতা তৈরি হবে।

তবে বয়স্ক বা অসুস্থদের মাস্ক পরেও বাইরে বেরোতে দেওয়া উচিত নয় বলে মনে করছেন বিজ্ঞানীরা। পরিবারের বাকিরা রাস্তায় বেরোলে, বাড়ির চৌহদ্দিতেও দূরত্ববিধি মানতে হবে। প্রয়োজনে মাস্ক পরতে হবে বাড়িতেও। বিজ্ঞানীকুলের কথায়, নিউনর্মাল যুগে অর্থনীতি স্বাভাবিক না হলে, মৃত্যু বাড়বে। তাঁরা করোনায় মরবেন না। না খেতে পেয়ে মরবেন।”

Aforesaid views have been published by Ananda Bazar Patrika on 13.10.2020 under the Caption

“মাস্ক পরে বিধি মেনে ‘নর্মাল’ হোক অর্থনীতি।”

In the aforesaid premises we make the following recommendations:-

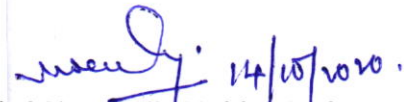
The Chief Secretary to the Govt. of West Bengal should immediately take up the matter with the Ministry of Railway for restoration of the service of the Sub-Urban trains with immediate effect in the state of W.B.

Date: 14th October 2020



(Justice Girish Chandra Gupta)

Chairman



(Shri Napa Rajit Mukherjee)

Member

Joint Secy to take necessary steps and to communicate the recommendation to the Chief Secy at once. A copy be also uploaded in the website.

