

(2012) 04 CAL CK 0050
In the Calcutta High Court
Case No : Writ Petition No. 7069 (W) of 2012

Anjali Paul

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 05-04-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 71(3), 80(3)

Citation : (2012) 04 CAL CK 0050

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : N.I. Khan and Mr. Amlan Kumar Mukherjee, for the Appellant; Pantu Deb Roy, Ms. Chama Mukherjee and Mr. Amritlal Chatterjee for the State, for the Respondent

Final Decision : Dismissed

Judgement

Mr Justice Jayanta Kumar Biswas

1. The petitioner in this WP under art. 226 dated March 22, 2012 is alleging inaction on the part of the Regional Transport Authority, Kolkata in that the RTA has not decided her application dated May 18, 2011 (at p.20). The application was for "surrender of permit/transfer of permit Rt.257 to 40, 40A, 40B." Relevant part of the application is quoted below:

"I do hereby apply to transfer of route permit Rt.257 to 40, 40A, 40B in respect of above said vehicle due to non viability of plying in Rt.257, please do the needful, we ready to pay prescribe fee/revenue for that."

2. Routes 40, 40A and 40B have been combined to form one route. By a notification under s. 71(3)(a) of the Motor Vehicles Act, 1988 the number of stage carriages operating on the route has been limited.

3. Relying on sub-s.(3) of s. 80 of the Motor Vehicles Act, 1988, Mr Khan appearing for the petitioner has submitted that the petitioner possessing a valid

permit for route 257 was entitled to seek transfer of her existing permit to the combined route. Referring to the document at p.29 he has said that in a similar case the RTA has permitted transfer. He has submitted that in yet another similar case this Court has directed the RTA to decide the application for transfer of an existing permit to a notified route.

4. Mr Deb Roy appearing for the State has strongly disputed the correctness of the proposition. He has said that if transfer of an existing permit to a notified route has been allowed, that has been allowed illegally.

Sub-section (3) of s. 80 of the Motor Vehicles Act, 1988 is quoted below:

"(3) An application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area or by altering the route or routes or area covered by it, or in the case of a stage carriage permit by increasing the number of trips above the specified maximum or by the variation, extension or curtailment of the route or routes or the area specified in the permit shall be treated as an application for the grant of a new permit:

Provided that it shall not be necessary so to treat an application made by the holder of stage carriage permit who provides the only service on any route to increase the frequency of the service so provided without any increase in the number of vehicles:

Provided further that,-

(i) in the case of variation, the termini shall not be altered and the distance covered by the variation shall not exceed twenty-four kilometres;

(ii) in the case of extension, the distance covered by extension shall not exceed twenty-four kilometres from the termini,

and any such variation or extension within such limits shall be made only after the transport authority is satisfied that such variation will serve the convenience of the public and that it is not expedient to grant a separate permit in respect of the original route as so varied or extended or any part thereof."

5. It is evident from the provisions of sub-s.(3) of s. 80 of the Motor Vehicles Act, 1988 that an application to vary the conditions of a permanent permit by altering the route or routes or area covered by it shall be treated as an application for grant of a new permit. The petitioner has offered to surrender the existing permit for route 257. He has requested the RTA to grant her permit for the combined route (formed by combining routes 40, 40A and 40B). As a matter of fact, she has applied for a new permit for a notified route.

6. A request for grant of a stage carriage permit for a notified route is to be decided by the RTA according to the provisions of cl.(d) of sub-s.(3) of s. 71 of the Motor Vehicles Act, 1988. It is not the case that the RTA has published an advertisement inviting applications for filling a vacancy for the notified combined route. Since the route is a notified route, a permit therefor cannot be granted in

exercise of power conferred on the RTA by the provision of sub-s.(3) of s. 80 of the Act.

7. Even if the RTA has permitted transfer of an existing permit of another operator to the notified combined route, that cannot be a ground to accept the allegation of discrimination, for an illegality committed by it cannot be the fundament of a contention that art. 14 has been violated.

8. That in a similar case this Court directed the RTA to consider the application of the operator concerned for transfer of her existing permit to a notified route is not a ground either to pass a similar order directing the RTA to consider the petitioner's application.

9. An order directing consideration of an application is not to be made mechanically. Only if it is found that the request is lawfully entertainable, the authority facing the allegation of inaction is to be directed to act in the discharge of its statutory duty. For these reasons, the WP is dismissed. No costs. Certified xerox.