

(2022) 04 CAL CK 0083

In the Calcutta High Court

Case No : MAT No. 925 Of 2021, IA No. CAN 1 Of 2021

Arun Kumar Saha & Ors.

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 22-04-2022

Acts Referred:

Motor Vehicle Act, 1988 — Section 71(3)(a), 86

Citation : (2022) 04 CAL CK 0083

Hon'ble Judges : Subrata Talukdar, J; Krishna Rao, J

Bench : Division Bench

Advocate : N.I. Khan, B.K. Samanta, Pantu Deb Roy, Subrata Guha Biswas, Debabrata Saha Roy, Debasish Saha, Dipika Banu

Final Decision : Dismissed

Judgement

Krishna Rao, J

This appeal is directed against the order passed by the Hon'ble Single Judge in WPA No. 12633 of 2021 dt. 09.08.2021 wherein the Hon'ble Single Judge has passed the following order:-

"In my opinion, the order impugned has categorically provided the reasons for cancellation of the permit of the petitioners. Furthermore, the petitioners are not able to indicate to this Court any notification on the basis of which vacancies had been declared for the particular route in question. As such, it appears that the resolution dt. 13.12.2019 wherein fresh offer letters were issued in favour of the writ petitioners were in contravention to the existing law and were not based on any notification that has sought for vacancies to be fulfilled.

In the light of the above discussion there is no requirement for any interference of the order assailed before this Court."

The appellants have submitted their application for grant of stage carriages permit on the routes 24, 24A, 24B and 24 A/1 before the Regional Transport

Authority, Kolkata Region sometimes in the month of December 2018/January 2019. On receipt of the application of the appellants, the authorities have issued notices to the appellants to appear before the concern authority for hearing for grant of permit. Even after hearing of the appellants, no order was passed and accordingly, the petitioners have approached before the Hon'ble Single Judge for passing necessary direction upon the authorities for taking decision on the applications submitted by the appellants.

On 18.04.2019 the Regional Transport Authority, Kolkata Region had communicated the decision to the appellants by rejecting the application submitted by the appellants on the ground of "No vacancy".

Being aggrieved with the order of rejection, the petitioners have preferred writ application before the Hon'ble Single Judge and the said writ petition was disposed of by the Hon'ble Single Judge by passing the following order:

"Having heard the parties and considering the materials placed, this Court is of the view at this stage that the decision as communicated on 18.04.2019 of the Regional Transport Authority, Kolkata Region is cryptic and, in the light of the vacancy position relied upon by the petitioner at paragraph 5 of the writ petition, the exercise to consider grant of permanent carriages permit as applied for requires to be revisited.

Accordingly, the communication dt. 18.04.2019 as well as the decision communicated connected to the route in issue dt. 22.02.2019 stands set aside.

Having noticed the submissions as above the matter is remanded now to the Regional Transport Authority, Kolkata Region to undertake the procedure as submitted by the Learned AGP keeping in mind paragraph 5 of the petition and heard the parties, in the opinion of the Regional Transport Authority, Kolkata Region are necessary to be heard and take a reason decision at its earliest convenient Board Meeting".

After the order passed by the Hon'ble Single Judge, the request of the petitioners were placed before the Board Meeting held on 13.12.2019 and accordingly, the Board had decided to issue fresh offer of letters in favour of the appellants in route no. 24A/1 and in accordance with the resolution dt. 13.12.2019, the Regional Transport Authority, Kolkata Region had issued necessary offer of letters in favour of the appellants for grant of permanent stage carriages permits on Route No. 24A/1 vide Memo dt. 04.02.2020 in favour of the appellants no. 1 and 2 and Memo dt. 27.07.2022 in favour of appellants no. 3, 4 & 5.

Being aggrieved with the permit granted to the appellants, the private respondents have preferred writ applications before the Hon'ble Single Judge and the said writ petition was disposed of on 05.02.2021 wherein the Hon'ble Single Judge has passed by following order:

"After hearing the parties including the Ld. Advocate for the State Authorities, I find that an opportunity of hearing was required to be given to the petitioners,

who represent Route No. 24 Bus Syndicate as their matter relates to Route Nos. 24, 24A, 24B and 24A/1. I direct the Principal Secretary, Department of Transport to hear the parties including the petitioner, the Regional Transport Authority and the private respondents and other authorized representatives and to consider the representation given by the Route No. 24 Bus Syndicate dt. 24.01.2021 which is at page 93 of the writ application. If the private respondents want to file any such representation, they are granted liberty to do so and it should reach before the Principal Secretary at least 10 days before the date of hearing fixed. The Principal Secretary will fix the date of hearing according to his convenience but within a period of 60 days from the date of communication of this order and will take a reason decision in respect of the grievances of the parties that would be ventilated before him. Till 15 days after the decision of the Principal Secretary is intimated to the parties, no further new permit in the concern routes of 24A, 24B and 24A/1 can be granted by the concern authority. As a serious question has been raised that the permits to the private respondents have been granted violating all notifications, if it is ultimately found that there was violation in granting the permits to them, issuance of permit to the private respondents will not create any equity in their favour. The Principal Secretary will communicate his order after hearing the parties within a period of 15 days from the date of hearing.

However, I make it clear that due to ensuing Legislative Assembly Election, it may not be possible for the Principal Secretary to hold such a hearing within a period of 60 days as aforesaid and in that event, he should intimate the parties the convenient date of hearing. It is expected that the matter will not be delayed for more than 90 days from date of communication of this order.”

In terms of the order passed by the Ld. Single Judge dt. 05.02.2021, the appellants herein have also made their representations to the Principal Secretary, Transport Department for consideration of their case for grant of permit. In terms of the order passed by the Ld. Single Judge, the Secretary, Transport Department had passed an order on 28.06.2021 wherein the permit granted to the appellants with regard to stage carriages buses in route no. 24A/1 were cancelled.

Mr. N.I. Khan, Ld. Counsel representing the appellants submits that the appellants have submitted their respective applications for grant of permits on the Route Nos. 24, 24A, 24B, 24A/1 as per the vacancy arising out of non-plying of some vehicles on the route due to lapse of permits of those vehicles in terms of the Gazette Notification No. 2129-WT/8S-50/2000 dt. 07.05.2003 issued under Section 71 (3) (a) of the Motor Vehicle Act.

The Ld. Counsel further submits that the Regional Transport Authority, after prolong litigation process, decided in the Board Meeting dt. 13.12.2019 for issuance of fresh offer letters to the appellants by cancelling five permits of the erring permit holders who were given ample scope of hearing as per Section 86 of the Motor Vehicle Act, 1988.

Ld. Counsel for the appellants further submits that the Regional Transport Authority, Kolkata Region since 2003 onwards used to issue new offer of letters to the intending operators on the notified routes as per Notification of 2003 after cancelling invalid/inoperative permits upon giving an opportunity of hearing to the erring permit holders.

The Ld. Counsel for the appellants further submits that the appellants have purchased their respective new BS-VI model buses by investing huge money after taking loan from the financial institutions as per the offer letters issued by the authorities.

The Ld. Counsel for the appellants further submits that the existing operators are plying their 39 vehicles in excess of notified fleet strength of 15 as per 2003 notification on Route 24A/1 from Mukundapur to Howrah Fire Station.

The Ld. Counsel for the appellants further submits that the operators of JNNURM Buses are illegally plying the said buses which are not notified route from Mukundapur to Howrah Fire Service since 2009/2010 without approval of the competent authority and without complying Notification dt. 2nd August 2004.

The Ld. Counsel for the appellants further submits that Route 24A/1 cannot be treated as a separate route without approval of Transport Department, Government of West Bengal and it must be treated as one of the sub route of Route No. 24 and the route Mukundapur to Howrah Fire Station can be treated as separate route with the approval of the Transport Department but in the instant case no approval was granted by the Transport Department.

The Ld. Counsel for the appellants further submits that the Notification dt. 02.08.2004 will not be applicable in the instant case as issuance of new permit against vacancies on the notified route is permissible as per the judgment of Sujata Ganguly case vide GA No. 568 of 2002/ APOT 83 of 2002.

Per contra, Mr. Debabrata Saha Roy representing the private respondents submits that the private respondents are the permanent stage carriages permit holder with respect of Route No. 24 and its bye Route Nos. 24A, 24B and 24A/1 issued by the Regional Transport Authority, Kolkata Region.

The Ld. Counsel further submits that on the basis of the permit issued to the private respondents, the private respondents are plying their respective buses.

The Ld. Counsel for the private respondents further submits that as per Section 71 (3) (a) of the Motor Vehicle Act, 1988, the State Government shall, if so desire by the Central Government having regard to the number of vehicles, road conditions and other relevant matters, by notification in the Official Gazette, direct the State Transport Authority and the Regional Transport Authority to limit the number of stage carriage generally or of any specified type as may be fixed and specified in the notification, operating on city routes in town with a population of not less than 5 lakhs.

The Ld. Counsel for the private respondents further submits that the Transport Department had issued Notification dt. 07.05.2003 in exercise of power conferred under Section 71 (3) (a) of the Motor Vehicle Act, 1988 which was duly published in the Gazette Notification dt. 20.05.2003 wherein limiting the numbers of stage carriage in respect of different routes of stage carriage within the Kolkata or Howrah Region.

The Ld. Counsel for the private respondents further submits that in the Notification dt. 07/20th May, 2003 the numbers of stage carriage in various routes under the Kolkata Region in respect of the Regional Transport Authority, Kolkata Region has been fixed by the authority in the manner enumerated in the list appended in the said notification.

The Ld. Counsel for the private respondents further submits that the concern authorities have deviated from the Notification dt. 20.05.2003 and allowed plying of more vehicles than the notified fleet strength. He further submits that in respect of Route Nos. 24, 24A and 24B the authorities have allowed 56 vehicles to ply and in case of Route No. 24 A/1, 39 vehicles were allowed and as such the total number of 95 vehicles in Route No. 24. Different bye routes are in operation in excess of the sanction fleet strength of 70. By referring the said, Counsel for the private respondents submits that there is no vacancy is available in so far as Route No. 24 and its bye Routes are concerned as per Notification dt. 20.05.2003.

The Ld. Counsel for the private respondents further submits that the Secretary had passed the order after considering all the aspects and as such the said order does not require any interference.

The Ld. Counsel for the private respondents relied upon the judgment passed in the case of Sujata Ganguly & Anr. -Vs- State of West Bengal dt. 27.09.2005 submitted that the Division Bench of this Court held that the State Transport Authority and the Regional Transport Authority of Kolkata and Howrah may issue stage carriage permits against offer letters already issued by the concern authorities prior to the Notification dt. 24.08.2004 subject, however, to the Notification dt. 20.05.2003 issued under Section 71(3) (a) of the Motor Vehicle Act, 1988. No offer letter or permit shall be issued in violation of the policy decision notified on 06.08.2004 in case where offer letters have been issued after 06.08.2004 which violates the policy decision dt. 06.04.2004, no permits shall be granted in respect of such offer letters so issued.

Mr. Pantu Deb Roy, Ld. Counsel representing the State submits that subject Route No. 24 had been a cluster route comprising of 24, 24A, 24B and 24A/1 as per the Notification dt. 07.05.2003 issued by the Transport Department, Government of West Bengal and as per the said notification respective fleet strength of the four bye routes were allowed which are as follows:-

“Route No. 24-25, Route No. 24A-15, Route No. 24B-15 and Route No. 24A/1-15.”

The Ld. Counsel for the State further submits that subsequently the Notification

dt. 07.05.2003 and on receipt of several representations from the operators of the Route No. 24 and the letters issued by the West Bengal Transport Infrastructure Development Corporation Limited (WBTIDCL) regarding non-payment of permit consideration and non-payment of government dues in kind of repayment of loan, the Regional Transport Authority Board, Kolkata region in its meeting held on 16.03.2015 after much discussion and upon hearing the interested parties have taken a decision to separate Route no. 24A/1 (Mukundapur-Howrah Fire Station) as a separate route with a fleet strength of 39 numbers to be operated exclusively by WBTIDCL under JNNURM Scheme having fare chart at par the Government rates i.e. Rs. 1/- extra for each stage.

The Ld. Counsel representing the State further submits that the Regional Transport Authority, Kolkata Region in its meeting held on 18.11.2016 reaffirmed the decision taken on 16.03.2015 and had decided to fill up the vacancies in the rest of Cluster i.e. Route Nos. 24, 24A and 24B as per their respective fleet strengths as approved in the Notification dt. 07.05.2003.

The Ld. Counsel for the State further submits that in compliance of the order dt. 05.02.2021 passed by the Ld. Single Judge, the Principal Secretary, Transport Department, Government of West Bengal after hearing all the parties and considering the issue involved in the matter has come to the conclusion that at the time of issuance of five offer letters in favour of the appellants the direction issued by the Transport Department dt. 02.08.2004 was not observed properly and accordingly, the permit issued to the appellants were cancelled.

Heard, the Ld. Counsel appearing for the parties, considered the documents available on record and the judgment relied by the Counsel for the private respondents.

Notification dt. 28.05.2003 reads as follows:-

GOVERNMENT OF WEST BENGAL

TRANSPORT DEPARTMENT

WRITERS BUILDING

NOTIFICATION

No. 2129-WT/8S-50/2000 pt. III., the 7th May, 2003 in exercise of the power conferred under Section 71 (3) (a) of the Motor Vehicles Act, 1988 (Act- 59 of 1988) and under direction of the Central Government as conveyed in No. S.O. 288 (E) dated 04.04.94 of the Ministry of Surface Transport (Transport Wing (and in suppression of notification issued vide No. 4638- WT dated 09.05.2000, the Governor is pleased hereby to direct the Regional Transport Authorities of Kolkata and Howrah to limit the number of Stage Carriages (ordinary service and special service) and Special Stage Carriages operating on City routes in towns within the jurisdiction of Kolkata Police along with the areas under Salt Lake and Lake Town police station in respect of R.T.A., Kolkata in the manner specified hereunder with

immediate effect. The list may be altered or added to subsequently if so considered necessary by the Stage Government.

Kolkata Region

SAGE CARRIAGE

Sl. No.

Route No.

Name of the Routes

Maximum number of Stage Carriage Permit to be granted

37.

24

Topsia to Bandhyaghat

25

38.

Bantola to Bandhyaghat

15

39.

Kasba Gas Turbine to Maidan

15

40.

Dankarpara (Mathpara) to Howrah

15

As per the said Notification the maximum numbers of stage carriage permits in Route No. 24 is 70.

Subsequent to the Notification dt. 07.05.2003 on receipt of several representations from the operators of Route No. 24, letters issued by the WBTIDCL regarding of non-payment of permit and non-payment of Government dues in kind of re-payment of loan, the Regional Transport Authority, Kolkata Region held a meeting on 16.05.2003 and the following decision was taken in the said meeting:-

"GOVERNMENT OF WEST BENGAL

OFFICE OF THE REGIONAL TRANSPORT AUTHORITY, KOL.

REGION, 38, BELTOLA ROAD, KOLKATA-700020

"Extract of the R.T.A. Board meeting held on 16.03.2015"

GENERAL AGENDA:

Agenda Sl. No. 6

To take decision on the representation of the Secretary, Route Committee, Route No. 24A/1, to consider the existing route alignment, "Mukundupur to Howrah" as a separate route with the Fleet Strength of 39 vehicles exclusively for the W.B.T.I.D.C.L allotted buses. Out of 39 buses 32 no. of vehicles make endorsement in their permit and plying buses since 2009. They had obtained Fare Chart accordingly. Necessary endorsement for the rest of the vehicles in the permit would be made after obtaining N.O.C. from the W.B.T.I.D.C.L authority.

** R.T.A. Board has decided to approve the extension of Route proposal, route no. 24A/1 from Gas Terbine, Kasba to Mukundupur with the Fleet Strength 15 as notified in the Transport Department Notification No. 2129-WT/8S-50/2000 pt. Dated 07.05.2003. Route Syndicate to be informed to contact with the Enforcement Wing, P.V.D., Kolkata, to conduct survey for the preparation of fare chart.

R.T.A. Board has also discussed the allegation received through the Jt. Secretary, Transport Department, Govt. of West Bengal regarding plying vehicles in this route without any route permit. Notice was issued to them for their views but reply has not been received. Now, R.T.A. Board has decided to conduct a enquiry through the Enforcement Wing P.V.D. Kolkata, so that no illegal vehicle can ply in this route without any route permit.

Sd/-

Chairman

Regional Transport Authority

Kolkata Region.

&

Director

Public Vehicles Department

Kolkata."

After the Board Meeting dt. 16.03.2015, the the Regional Transport Authority, Kolkata Region held its meeting on 18.01.2016 and the following decision was taken:-

"EXTRACT OF PROCEEDING OF THE BOARD MEETING OF THE REGIONAL TRANSPORT AUTHORITY, KOLKATA REGION HELD ON 18/01/2016 AT 12 NOON IN THE OFFICER CHAMBER OF DIRECTOR, P.V.D., KOLKATA.

MEMBER PRESENT

1. Sri Tapan Kanti Rudra, I.A.S.

Director, P.V.D. & Chairman, R.T.A, Kolkata.

2. Col. Sabyasachi Bagchi,

Dy. Chairman, R.T.A., Kolkata.

3. Sri N. Chakraborty, I.P.S.

Dy. Commissioner of Police, (South), Kolkata.

and Sri Achintya Kumar Mondal, W.B.C.S. (Exe.)

Secretary, R.T.A., Kolkata was also present.

The Director, P.V.D. & Chairman, R.T.A., Kolkata took the chair and initiated the meeting. After Agenda wise detailed discussion the following resolution have been taken item wise:-

MISCELLANEOUS:-

(1) The Route Committee, local commuters have placed demands in several times for filling up of vacancies against cancellation of 15 permits in the route-24,24A,24B. This has been recommended by the Hon'ble M.L.A. Sri Swarna Kamal Saha and Sri Javed Khan Hon'ble Minister Govt. of West Bengal. The shortage of vehicles in this route is causing grave inconvenience to the local people there.

Place before RTA Board for taking decision.

*** A) Route 24,24A,24B combinedly have a fleet strength of 55 as per Govt. Notification 2003. At present there are 39 vehicles plying in this route. The RTA Board has cancelled 16 invalid permits in this route time to time.

The RTA Board considered the fact and decided to fill-up the vacancies for the interest of public to provide smooth public transportation facilities as demanded by local public representative.

B) As per Govt. Notification published in 2003 and decision of the RTA Kolkata theh route-24A/1 operates between Howrah Station to Mukundapur exclusively by 39 WBTIDCL owned vehicles. The WBTIDCL authority has placed 39 vehicles in this route against replacement for the interest of public. The RTA Board Kolkata in its meeting held on 16.03.2015 allowed to issue fare-chart in terms of Govt. approved rate for WBTIDCL owned vehicles. It has been also reported that 04 WBTIDCL owned vehicles out of 39 are plying in this route without permit since 2009.

Considering the above fact the RTA Board Kolkata decided to treat the Route NO-24A/1 as a separate one and further decided to move the WBTIDCL authority and

Transport Deptt. Govt. of West Bengal to regularize 4 vehicles subject to consent of WBTIDCL.

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As there was no other Agenda, the meeting ended with thanks to the chair.

Sd/-

Chairman

Public Vehicles Department,

Kolkata Region.

&

Chairman

R.T.A., Kolkata

Kolkata.”

The Director, Public Vehicle Department, Kolkata furnished a report vide Memo dt. 20.12.2016 wherein the notified four alignments have been defined by the Regional Transport Authority, Kolkata Region as Route Nos. 24, 24A, 24A/1 24B and respectively and divided in two Clusters i.e. Cluster-A and Cluster-B which are as follows:-

Accordingly, the Director PVD, Kolkata furnished a report vide him Memo. No. RTA/2479 dated 20.12.2016. The notified four alignments have been defined by RTA, Kolkata as Route No. 24, 24A, 24A/1 & 24B respectively and divided into two Clusters viz. Cluster-A & Cluster-B as follows-

Cluster

Route No.

Alignment

Fleet Strength

Cluster-A

24

Topsia to Bandhyaghat

25

Cluster-A

24A

24B

Bantola to Bandhyaghat Dankarpara

(Mathpara) to Howrah

15

15

Cluster-B

24A/1

Kasba Gas Turbine to Maidan

15

Permits status (Cluster-wise) of the route was reported as follows:-

Cluster

Fleet

Strength

Permit issued

Offer letter issued

Cluster-A

55(in total)

43

09

Cluster-B

15

35

4 vehicles to be regularized with permit

35 numbers of permits against the notified fleet strength of 15 on the Route No. 24A/1 under Cluster-B were issued by the Regional Transport Authority, Kolkata Region in favour of WBTIDCL in the year 2009-2010 and four vehicles of WBTIDCL have been plying without permit since 2009.

The Government of West Bengal had issued a notification on 06.08.2004 in terms of the order passed by the Hon'ble Division Bench under GA No. 568 of 2002/ APOT No. 83 of 2002 which are as follows:-

"1. No new bus route be formulated and permits be issued which may pass through the Central Business District, viz. Esplanade and Bus Stand in Kolkata

and Howrah Station and approach areas of Howrah Bridge (Rabindra Setu); till further orders;

2. No new permits for Stage Carriage shall be issued which may originate/terminate in Esplanade and Band Stand in Kolkata and Howrah Station;

3. No new bus routes shall also be operated/formulated to Kolkata and Howrah without creating any appropriate parking place having requisite amenities for both the passengers as well as the transport workers;”

It reveals that in respect of Route Nos. 24, 24A and 24B have allowed 56 vehicles to ply in the said route and in Route No. 24A/1, 39 vehicles were allowed (under JNNURM Project) and as such the total number of vehicles in Route No. 24 is 95 in excess of the sanctioned fleet strength of 70.

In view of the above, it is crystal clear that there is no vacancy is available in Route No. 24 but the petitioners have applied for grant of permit in Route No. 24 and thus this Court is of the view that there is no infirmity in the order passed by the Ld. Single Judge in WPA No. 12633 of 2021 dt. 09.08.2021 and the order does not require any interference.

MAT No. 925 of 2021 with IA No. CAN 1 of 2021 is thus dismissed.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.