

(2015) 12 CAL CK 0036

In the Calcutta High Court

Case No : W.Ps. 2573(W), 2575 (W), 2576(W), 2579(W), 3340(W), 3341(W), 3342(W), 3344(W), 3345(W), 3346(W), 3348(W), 3338(W), 3339(W), 3347(W), 3349(W) and 11961(W) of 2015

Chaitali Chatterjee

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 02-12-2015

Acts Referred:

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

Citation : (2015) 12 CAL CK 0036

Hon'ble Judges : Subrata Talukdar, J.

Bench : Single Bench

Advocate : Arabinda Chatterjee, Amal Kr. Sen, Lal Mohan Basu, Khairul Alam, Ashima Das and Sabyasachi Mondal, for the Respondent

Judgement

Subrata Talukdar, J.—Since all the above noted writ petitions raise a common question of facts and law, they are taken up for hearing analogously and are being decided by this common judgment and order.

2. In all the writ petitions, except WP 11961(W) of 2015, Mr. N.I. Khan, Ld. Counsel appears for the petitioner. The State-respondents are represented respectively by Sri Amal Kr. Sen, Ld. Senior Government Advocate, Sri Arabinda Chatterjee, Ld. Senior Counsel with Sri Lal Mohan Basu, Sri Sabyasachi Mondal, Sri Khairul Alam and Ms. Ashima Das (Sil), Ld. Counsel. Sri Shyamal Mr. Das, Ld. Counsel appears for the petitioner in WP 11961(W) of 2015.

3. Arguing WP 2573(W) of 2015, Mr. Khan submits that the petitioner is an applicant in respect of a permanent stage carriage permit for route No. 18 and its variants. The petitioner applied on 7th November, 2014 for the permit and was favoured with an offer letter pursuant to a meeting of the Regional Transport Authority (for short RTA) Board, Kolkata on the 15th of December, 2014. Thereafter by memo dated 19th December, 2014 the Secretary, RTA, Kolkata issued an offer letter in favour of the petitioner asking her to comply with the

terms and conditions mentioned therein within a period of 60 days from the date of issue of such offer letter.

4. Mr. Khan complains of the fact that by the offer letter dated 19th December, 2014 the petitioner was required to produce a Bharat Stage (for short BS) IV emission compliant vehicle. Mr. Khan argues that the route No. 18 along with its variants is aligned in a fashion that one point of terminus is originating in the Kolkata Metropolitan area while the other terminus is placed outside the Kolkata Metropolitan area.

5. Relying heavily on a Transport Department, Govt. of West Bengal Notification, dated 7th August, 2012 (for short the 2012 Notification), Mr. Khan points out that the Central Government Notification dated 9th February, 2009 in respect of BS IV norms regulating mass emission standards became applicable to the city of Kolkata along with other metropolitan cities with effect from 1st April, 2010. However, BS III norms are still applicable for areas outside the city of Kolkata and within the State of West Bengal.

6. Relying on Schedule II pertaining to grant of new permits under the 2012 Notification Mr. Khan further points out that in respect of Stage Carriage Permits having one terminus within Kolkata Municipal Corporation area and areas under Salt Lake and Lake Town Police Station and another terminus outside the areas as specified above, BS III norms will apply meaning thereby, intending permit holders will be eligible to obtain a permit on production of a BS III compliant vehicle.

7. Ld. Counsel for the petitioner also points out that BS III will apply for the whole of West Bengal except Kolkata Municipal Corporation area and the areas under Salt Lake and Lake Town Police Stations. Only in respect of both termini being within the Kolkata Municipal Corporation area and the areas under Salt Lake and Lake Town Police Station, BS IV norms will apply. On the strength of the above noted facts Mr. Khan argues that in several of the variants of route No. 18 one terminal point is located within the Kolkata Metropolitan area and other is outside the Kolkata Metropolitan area.

8. Furthermore, relying on the affidavit-in-reply filed on behalf of the writ petitioner to the affidavit-in-opposition of the State-respondents, Mr. Khan submits that the alignment of the route No. 18 has been subsequently modified from the original Sarsuna to Esplanade now from Sarsuna Park to Unitech Housing, New Town Bus Stand. Similarly, route No. 18B has been modified from the original alignment of Sakuntala Park to Baghmari Park to now Dakghar to Bagmari Bazar.

9. Mr. Khan strongly argues having regard to the above noted modification of the route alignment to route No. 18 and maximum number of its variants, it will be noticed that one of the terminal points is invariably outside the jurisdiction of the Kolkata Municipal area. Therefore, Mr. Khan submits that the insistence by the RTA, Kolkata in the offer letter issued to the writ petitioner to produce a BS IV

vehicle is illegal and de-hors the provisions of the 2012 Notification.

10. Per contra, Sri Amal Kr. Sen, Ld. Senior Government Advocate relying heavily on the affidavit-in-opposition filed on behalf of the State-respondents submits that route No. 18 and its variants are notified routes under Section 71(3)(a) of the Motor Vehicles Act, 1988 (for short the 1988 Act). Relying on a chart appearing at page 5 of the State's affidavit-in-opposition, Mr. Sen argues that the alignment of route No. 18 was fixed vide notification dated 7th March, 2003. From the fixed alignment as on 7th March, 2003 it transpires that route No. 18, 18B and 18C have both their terminal points within the Kolkata Metropolitan area. However, in respect of route Nos. 18A, 18A/1, 18B/1 and 18D one of the terminal points is located within the Kolkata Metropolitan area.

11. Mr. Sen further argues that since route No. 18 and its variants have been treated to be a combined route and since a single permit is being issued for covering the alignments to route No. 18 with its variants and, since in respect of three variants both the terminal points fall within the Kolkata Municipal Corporation area, in deference to the 2012 Notification and pursuant to the spirit of the orders of the Hon"ble Court passed in WP 6372(W) of 2007 a common condition has been imposed in respect of all offer letters for the said route to the effect that BS IV compliant vehicle should be placed.

12. After hearing was concluded Sri Arabinda Chatterjee, Ld. Senior Counsel appearing for the State-respondents prayed for an opportunity to make further submissions in connection with WP 3340(W) of 2015 along with WP 3341(W) of 2015 and WP 3346(W) of 2015 in which he represents the State-respondents along with Mrs. Ashima Das (Sil), Ld. State Advocate. In view of the prayer made by Sri Chatterjee and, with the consent of the other appearing parties, the matter was fixed for further consideration on the 10th of September, 2015.

13. Presenting additional arguments for the State-respondents Sri Chatterjee submits that the notification with respect to route No. 18 introducing its variants on different alignments could not be given effect to since the operators on the said route No. 18 were reluctant to accept variations in the route alignment offered under the notification. Sri Chatterjee further points out that in the event operators are desirous of operating within the cluster of route No. 18, the requirement of placing only BS_IV vehicle cannot be waived. According to Ld. State Counsel the terms of the 2012 Notification must be construed in the light of the composite permit granted in respect of the route in issue, viz. route No. 18.

14. Sri Shyamal Kumar Das, Ld. Counsel appears for the writ petitioner in WP 11961(W) of 2015. Sri Das submits that the writ petitioner is a permanent state carriage operator in route No. 75 and 75/1. The petitioner thereafter applied for transfer of the route under the existing permit from route No. 75 and 75/1 to the variants of route No. 18 namely, 18C, 18B/1 18A, B, C, D and A/1.

15. Sri Das submits that at its meeting held on 5th December, 2014 the RTA, Kolkata Region approved the application for transfer. However, such transfer of

route was approved strictly on the condition that the petitioner should place a BS-IV vehicle for the grant of permit.

16. Sri Das submits that the onus of producing a BS-IV vehicle should not be applied to existing permit holders operating in different routes who are allowed to change their route to a route such as route No. 18. It is argued by Sri Das that any restriction can be imposed in respect of a fresh applicant and, since the RTA, Kolkata allowed the petitioner to change his route, he should be allowed to operate on the basis of the existing vehicle held by him which may be only BS-III compliant. Placing reliance on Section 80(3) of the Motor Vehicles Act, 1988 Sri Das submits that the replacing of a route in respect of an existing operator implies that such replacement is with the consent of the holder and, such consent extends to the operation of the existing vehicle in the new route.

17. Having heard the parties and considering the materials on record this Court finds that the language of the 2012 Notification, which is also relied upon by the State-respondents is unambiguous in intent. According to the 2012 Notification conditions for placing either BS III or BS IV vehicles while granting new permits have been clearly elucidated and such conditions have been discussed above in this judgment. Therefore, the case of the writ petitioner claiming to have one terminal point within the Kolkata Municipal Corporation area and the other terminal point outside such area to place an appropriate BS compliant vehicle cannot be faulted. The petitioner is entitled to place the vehicle required - either BS III or BS IV - in strict adherence to the 2012 Notification.

18. It will be seen from the affidavit-in-opposition of the State-respondents at paragraph 5 thereof, that in respect of several routes and their variants namely, 37, 37A, S-112, 45, 45/B when one of the terminal points is outside the Kolkata Municipal Corporation area there was no compulsion upon the permit holder/operator to place a BS IV compliant vehicle. In view of the above noted route positions pointed out by the State-respondents that variants in a particular route alignment where one of the terminal points lies outside the Kolkata Metropolitan area can place a BS III compliant vehicle under the terms of the 2012 Notification, this Court finds no reason as to why the petitioner claiming to be similar circumstanced should be treated differently.

19. Therefore, this Court observes that although there is reason in the stand taken by the State-respondents that route No. 18 with its variants is treated to be covered under a single permit, offer letters in respect of new applicants should indicate the type of vehicle required to be produced by them by taking into consideration the particular route alignment along with the terminal points intended to be operated by such applicants including any modification of such route alignment. This Court finds justification in the plea raised by the writ petitioner that she has been denied parity of treatment while applying the terms of the 2012 Notification.

20. In the above view of the matter this writ petition is allowed by directing the

Competent Respondent Authority to re-indicate in its offer letter to the petitioner the type of vehicle required to be produced by the petitioner in strict compliance with the terms of the 2012 Notification taking notice of the fact whether in the existing route alignment along with the terminal points with any modification thereto, either one or both of the terminal points lie within the Kolkata Metropolitan area or Salt Lake and Lake Town Police Station areas irrespective of the fact whether a single route along with its variants is being treated to be covered by a single permit. To the mind of this Court the consideration of the route alignment overweighs the consideration of a single permit insofar as the type of vehicle required to be produced in respect of a particular route alignment under the terms of the 2012 Notification.

21. Applying the principle of parity of treatment the abovenoted directions shall also apply in cases where the applicant has applied for change of route under an existing permit.

22. WP 2573(W) of 2015 stands accordingly allowed.

23. WP Nos. 2575(W), 2576(W), 2579(W), 3340(W), 3341(W), 3342(W), 3344(W), 3345(W), 3346(W), 3348(W), 3338(W), 3339(W), 3347(W) and 3349(W) of 2015 also stand allowed with the above directions on a parity of reasoning.

24. WP 11961(W) of 2015 stands accordingly dismissed.

25. Urgent certified photocopies of this judgement, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.