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**(2019) 08 CAL CK 0289**

**In the Calcutta High Court**

**Case No :** Writ Petitions (WP) No. 6602 (W) Of 2019

Dakshineswar Auto Rickshaw Union Dunlop-Bally Via  
Dakshineswar & Ors

APPELLANT

Vs

State Of West Bengal & Anr

RESPONDENT

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**Date of Decision :** 27-08-2019

**Acts Referred:**

**Citation :** (2019) 08 CAL CK 0289

**Hon'ble Judges :** Subrata Talukdar, J

**Bench :** Single Bench

**Advocate :** S. P. Dalapati, Satyajit Mahata, Abhisek Addya, Amal Kr. Sen, Lal Mohan Basu, S. K. Roy, Baidurya Ghosal

**Final Decision :** Dismissed

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## **Judgement**

Subrata Talukdar , J

Party/Parties is/are represented in the order of their name/names as printed above in the cause title.

This writ petition has been filed by the Union/Association purportedly of the Auto Rickshaw permit-holders namely, Dakshineswar Auto Rickshaw Sramik Union plying on the Route Dunlop to Bally via Dakshineswar, the co-petitioner Nos. 2 and 3 being the Secretaries of the said Union/Association.

The arguments at the Bar have swerved sharply away from the pleadings on record. The arguments advanced today by Mr. Dalapati, Learned Counsel for the petitioners, centre around the terms of an Offer Letter dated 14th February, 2019 issued by the Regional Transport Authority (RTA), North 24 Parganas at Barasat in favour of the private respondent No. 9 and the other private respondent Nos. 10 to 16 alleging that they are neither the permit-holders in possession of Auto Rickshaws nor owners of Auto Rickshaws.

It is argued that the Offer Letter can only be valid subject to scrapping of the old

Auto Rickshaws by its owners or the persons in possession thereof through a permit and, replacement of the scrapped old Auto Rickshaws by new Auto Rickshaws.

The details of the procedure to be followed for scrapping the old vehicle and its replacement by a new vehicle have been provided in the Offer Letter dated 14th February, 2019 and, are uniformly applicable to all the private respondents.

Mr. Dalapati submits that each of the private respondents starting from the private respondent no.9 are neither the owners nor, in possession of permits connected to Auto Rickshaws.

It is alleged that they are the drivers of Auto Rickshaws. It is, therefore, further alleged that as the drivers of Auto Rickshaws they do not come within the purview of the notice dated 14th February, 2019 (supra).

Therefore it is submitted that the grant of Offer Letters and subsequently permits to the Private Respondents for the route in issue, i.e. from Dunlop to Bally via Dakshineswar, is invalid in law.

In support of the stand taken as to who can be said to be the owner of a vehicle, reliance is placed at paragraphs 25, 26 and 27 of the decision of the Hon'ble Single Bench reported in (2017) 1 CLJ (Cal) 488.

Per contra, Mr. Sen, Learned Additional Government Pleader (AGP), takes this Court to the Report of the RTA, North 24 Paraganas.

The attention of this Court is drawn to the Notification dated 10th December, 2018 which is the new Auto Rickshaw policy.

Mr. Sen submits that the new Auto Rickshaw policy restricts the number of Auto Rickshaws on the particular route, i.e. Dunlop to Bally via Dakshineswar at a total of 80.

The stand taken by Learned State Counsel is that 71 of the existing operators have scrapped their vehicles and have been issued new permits against offer letters under the new Auto Rickshaw policy of December 10, 2018.

After granting 71 permits, there were vacancies on the route and accordingly, fresh permits were granted.

Mr. Sen submits and, to the mind of this Court justifiably so, that the petitioners cannot have any grievance with regard to the permits issued under the policy of the Transport Department.

It is not the law that the petitioners shall try to stifle other operators for their own commercial interests.

On behalf of the private respondent Nos. 9 to 16, Mr. Roy, Learned Counsel appears and questions the maintainability of the writ petition.

Relying heavily on the decision of the Hon'ble Division Bench of this Court as reported in (1993) 2 CLJ (Cal) 99, Mr. Roy submits and again, to the mind of this Court justifiably so, that an Union or an Association cannot maintain a writ petition unless it is shown by the Union/Association that their rights have been affected by any order. What is being canvassed in this writ petition is the rights of the existing operators, none of whom have approached this Court with their grievances.

The Hon'ble Division Bench has clearly held that in such a situation the writ petition on behalf of the Union/Association is not maintainable.

Parties have exchanged their respective Affidavits to the writ petition including the Report-on-Affidavit and the Affidavit-in-Response as well as an Exception Affidavit of the writ petitioners. Documentation connected to the writ petition is accordingly complete.

Having heard the parties and considering the materials placed, this Court is required to address first the merits of the challenge largely argued at the Bar by the petitioners.

This Court notices the Notification dated 10th December, 2018 which is the new Auto Rickshaw policy. The relevant extract of the Notification is placed below for the benefit of this discussion:

"AND Whereas, after examining the said report of the High Power Committee on Auto-rickshaw and upon considering its recommendations, it was decided by the Transport Department to regularize the unauthorized auto-rickshaws presently plying on the city-routes in Kolkata on 'as is where is' basis. Accordingly, a draft notification was published vide notification No. 2543-WT/3M-01/2010 (Pt.II) dated 11.06.2018, to limit the number of permits on auto-rickshaw within the present jurisdiction of RTA, Kolkata upon supersession of all earlier notifications in this regard and to seek representations, suggestions and/or objections, if any, from all the stake-holders before finalizing such notification;"

From the relevant extract as quoted above, it is obvious that the policy of the State was to regularise the unauthorised Auto Rickshaws.

Regularisation of unauthorised Auto Rickshaws were resorted to by the procedure adopted by the RTA, North 24 Parganas permitting the scrapping of the old vehicles and regularising them with new permits.

In such view of the matter, this Court intends to read the Notification dated 10th December, 2018 in a purposive manner.

By the said Notification dated December 10, 2018 permitting the existing 71 permit-holders to scrap the old vehicles and replace such scrapped vehicles by new vehicles following the procedure as communicated by the notice dated 14th February, 2019 to the Respondent No.9 (supra), the requirement of the Notification dated 10th December, 2018 of enabling the existing operators to ply

on 'as-is-where-is' basis is met.

Therefore, further reading the notice dated 14th February, 2019 (supra) in the context of the Notification dated 10th December, 2018, this Court finds that the remaining vacancies can be filled up within the domain of the RTA, North 24 Parganas provided the new permit-holders are otherwise eligible to hold auto rickshaw permits .

Accordingly, this Court finds no illegality in the State action to fill up the remaining number of vacancies from persons who are not the existing operators in fulfillment of the parent policy dated 10th December, 2018.

Before parting with this discussion, this Court additionally finds merit in Mr. Roy's submission that from the pleadings as well as from the arguments at the Bar advanced today, it cannot be demonstrated that the Association/Union has suffered any prejudice connected to any order of the RTA, North 24 Parganas.. This Court must, therefore, presume that it is the Association/Union's collective commercial interest which has inspired this writ petition and this Court cannot walk on the same path.

For the reasons discussed above, WP 6602(W) of 2019 stands dismissed.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.