
(2004) 03 CAL CK 0075
In the Calcutta High Court
Case No : Writ Petition No. 3335 (W) of 2004

Dipak Kumar Patra

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 31-03-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226
Motor Vehicles Act, 1988 — Section 72, 72(2)

Citation : (2005) 1 ACC 224 : (2004) 2 CALLT 600 : 108 CWN 531

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Advocate : Saktipada Jana, for the Appellant; N.T. Khan and S. Bhagat, for the Respondent

Final Decision : Allowed

Judgement

B. Bhattacharyya, J.—By this writ application, the petitioner has challenged the authority of the Deputy Secretary, State Transport Authority to impose a condition in the offer-letter which is in conflict with the actual resolution passed by the State Transport Authority while considering the application for grant of permit.

2. The following facts are not in dispute:

The petitioner applied to the State Transport Authority for grant of Stage Carriage Permit in the route of Kontai to Midnapore Town via Egra, Belda, IIT Kharagpur. While filing such application, in column No. 13, the petitioner made specific statement that he was in possession of the vehicle being No. WB-31/0924.

3. The State Transport Authority in its meeting decided to grant permit in favour of the petitioner. The "actual resolution taken by the State Transport Authority vide Item No. 19 is quoted below:

"Shri Dipak Kumar Patra, the applicant was represented by his learned advocate

in the meeting and was heard. After hearing the STA, W.B. resolved to grant permit on the route Contai to Midnapore Town via Egra, Belda, IIT Kharagpur in favour of the applicant."

4. Pursuant to such decision when offer-letter was issued by the Deputy Secretary, State Transport Authority, it appeared that Clause 2(a) of the terms demanded that the vehicle in possession of the petitioner should not be more than three years old from the date of its initial registration. Further, the Clause 2(1) asked the petitioner to place Bharat Stage II complaint vehicle for the purpose of the said offer.

5. Challenging the aforesaid two conditions, the petitioner has come up with the instant writ application.

6. Mr. Jana, the learned counsel appearing on behalf of the petitioner, has submitted that the petitioner in his application having specifically mentioned that he was in possession of a vehicle being WB-31/0924 which was more than three years old and inspite of that the State Transport Authority having decided to grant permit to the petitioner, the Deputy Secretary, State Transport Authority had no right to incorporate a condition in the offer-letter that the vehicle should be a Bharat State II complaint one and further must not be more than three years old. Mr. Jana contends that the Deputy Secretary, State Transport Authority acted without jurisdiction in imposing those two conditions which were not in conformity with the decision taken by the State Transport Authority.

7. Mr. Khan, the learned counsel appearing on behalf of the State Transport Authority, has, on the other hand, supported the action of the Deputy Secretary by contending that the State Transport Authority having delegated its power to attach conditions of permit to the Deputy Secretary, the said Deputy Secretary did not commit any illegality in imposing those two conditions. Mr. Khan submits that a specific instruction was given to the Deputy Secretary to impose those two conditions in all offer-letters required to be issued by the Deputy Secretary.

8. After hearing the learned counsel for the parties and after going through the materials on record including the provisions contained in Motor Vehicles Act and the West Bengal Motor Vehicles Rules, I find that State Transport Authority has no doubt power of delegation in respect of matters specified in the Act in favour of the Secretary and can also instruct the Secretary to attach to a Stage Carriage permit condition u/s 72(2) of the Act or vary the conditions. But in a case, where an applicant has applied for grant of permit with a specific vehicle disclosing its registration number and if the State Transport Authority on consideration of the application including the condition of the vehicle mentioned therein decides to grant permit, in such a case, the Secretary cannot issue any condition in the offer-letter as regards year of the vehicle or condition of vehicle. The position would have been different if the applicant applied for grant of permit with the statement that he had not yet obtained possession of the vehicle and that vehicle would be produced after grant of offer-letter. In such a case, even if the State

Transport Authority decides to grant permit, such authority can give instruction to the Secretary of the authority to impose conditions as regards the age of the vehicle or conditions of the same.

9. But in a case, where the State Transport Authority has already exercised power and has decided to grant permit, no further delegation is possible in favour of the Secretary. In this case, the petitioner having applied for grant of permit in respect of a vehicle which is more than three years old, if the State Transport Authority was of the view that such vehicle could not get permit, it was its duty to reject such application or to grant permit on condition that vehicle should be changed. But the State Transport Authority having allowed the application without reference to the condition of the vehicle, the Secretary cannot impose further condition as regards age of the vehicle or that the vehicle should comply with the Bharat Stage II norms.

10. It is further pointed out by Mr. Jana that the route being in District of Midnapore, the petitioner is not required to comply with the Bharat Stage II norms as per order of the Division Bench of this Court. Thus, the said condition could not be imposed. I have already pointed out that the petitioner's application having been allowed by Transport Authority on the basis of vehicle mentioned in the application, the Secretary cannot sit over the decision of the Transport Authority and direct the petitioner to produce a different vehicle.

11. Moreover, power of delegation is given to the Secretary of the Transport Authority or Secretary of the Government, but such delegation is not permissible in favour of the Deputy Secretary, State Transport Authority. Thus, on this score also the imposition of conditions inconsistent with the order of the State Transport Authority should be quashed.

12. I, thus, quash the aforesaid two conditions being condition No. 2(a) and condition No. 2(1) regarding age of vehicle and regarding necessity of compliance with the Bharat Stage II norms.

13. The petitioner is directed to comply with other terms of the offer within a month from date and if those terms are complied with, the respondent authority will handover permit to the petitioner within a week thereafter.

The writ application is thus allowed to the extent indicated above.

In the facts and circumstances, there will be, however, no order as to costs.