
(2018) 05 CAL CK 0104
In the Calcutta High Court
Case No : Writ Petition4183 (W) of 2018

Kanchan Pandey

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 03-05-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 72
West Bengal Motor Vehicle Rules, 1989 — Rule 99A

Citation : (2018) 05 CAL CK 0104

Hon'ble Judges : HARISH TANDON, J

Bench : Single Bench

Advocate : Amal Sen, Pritwish Basu

Final Decision : Disposed Of

Judgement

The resolution dated 21st December, 2017 taken by the State Transport Authority, West Bengal is challenged in the instant writ petition not only on

the ground that the decision does not contain any justifiable reasons but also in violation of the judgement rendered by this Court in case of Sri

Godadhar Roy & Anr. vs. State of West Bengal & Ors (W.P. 5449 (W) of 2012) decided on July 04, 2012. It is not in dispute that the petitioner is

granted Stage Carriage Permit for the route between Dumka to Tata via Palajori, Jamtara, Mihijam, Maithon, Nirsra, Dhanbad, Chas, Purulia,

Balarampur and Chandil on the basis of "Reciprocal Transport Agreement" published in Kolkata Gazette on March 29, 2004. Clause 2 (g) of the

said Agreement provides :

"It is agreed upon between the two States that a Single permit with 4(four) trips per day (2 ups x 2 downs) may be granted where length of the

route is up to 100 kms. And single permit with 2(two) trips per day (1 up x 1

down) may be granted where the length of the route is more than 100 kms. but not more than 300 Kms. If the length of the route is more than 300 Kms., one single permit with one trip may be granted.â??

It appears that the total length of the route is 290 Kms. and in terms of the said agreement two permits were to be issued for such route â?" one allocated to each State. The State Transport Authority, West Bengal granted one permit covering single vehicle for two trips â??1 up and 1 downâ? on 25th November, 2016, which was duly countersigned by the State Transport Authority, Jharkhand. The petitioner applied to the State Transport Authority, West Bengal for allowing him to ply additional vehicle to cover the said route because of the distance and the condition of the road, which consumes more time to embark one trip in a day. In other words, the petitioner wanted two vehicles to be covered under a single permit, so that it can ply upward and downward in a single day simultaneously. According to the petitioner there will be no change in the permit, as the said vehicles would cover two trips â??1 up and 1 downâ?? in a single day.

It is submitted on behalf of the State Transport Authority that the schedule appended to the permit was well within the knowledge of the petitioner and having accepted the same he cannot take departure therefrom. The reliance is placed upon the provisions of Section 72 of the Motor Vehicles Act and Rule 99A of the West Bengal Motor Vehicle Rules, 1989 in support of the aforesaid contention. The learned advocate for the State Transport Authority ardently submits that unless the total kilometres is assessed, it is not permissible to grant the permit for additional vehicle under the single permit.

I am unimpressed with the aforesaid submission for the simple reason that the State Transport Authority had already granted permission to the petitioner to ply the vehicle within a specified route. The schedule appended to the permit inevitably shows that such permit relates to a route, which is well below 300 Kms. If the authorities with its open eyes have issued the permit permitting the petitioner to ply the vehicle within the specified route for two trips â?" â??1 up and 1 downâ? then in terms of Clause 2(g) of the Agreement, which postulates that the length of the route is below 300 Kms., it would be an idle formality to remit the matter to the authority to assess whether the petitioner is plying the vehicle more than the specified

length. This Court, therefore, does not find any substance in the submissions advanced in this regard.

It appears from the judgement rendered in *Gadadhar Roy & Anr. (supra)* that an identical point was raised for and on behalf of the State Transport

Authority, which was not found to be legally sustainable for the reasons as recorded therein. It was specifically held that neither the said Act nor the

Rules framed thereunder put any fetter in permitting the carriage permit holder to ply on the same route two vehicles covered under the single permit

granted by the State Transport Authority, West Bengal.

It is further evident from Section 72 of the said Act that the holder of the Stage Carriage Permit can be permitted to use more than one vehicle on a

specified route for which the permit is granted and can even keep one vehicle as reserved or surplus to meet the exigencies and for better and

effective services to be rendered to the commuters of the said route. Rule 99A of the West Bengal Motor Vehicle Rules, 1989 also permits the holder

on a single permit to ply two vehicles for two single trips provided the requisite permit fees is paid. It would be profitable to quote the relevant excerpts

from the said judgement, which runs thus:

“The holders of a stage carriage permit such as the petitioners, not parties to the agreement, could not get any right or incur any disqualification

under the agreement. The agreement only provided them an opportunity to apply for grant of permits for the routes to which it was applicable. Hence

STA WB was wrong in saying that since the agreement did not provide for permission to cover two vehicles by one permit for a route, the petitioners

were not entitled to apply for permission to ply on the route two vehicles covered by the permit already covering one vehicle.

There is no dispute that the provisions of s.72 of the Motor Vehicles Act, 1988 and r.99A of the West Bengal Motor Vehicles Rules, 1989 were and

still are applicable to the permit granted to the petitioners by STA WB. It is evident from the provisions of s.72 that a holder of a stage carriage permit

can be permitted to use more than one vehicle on the specified route for which the permit is granted; that even more than one vehicle can be kept as

reserve by a holder of a permit to maintain the operation and to provide for special occasions; and that conditions of a permit can be varied. The

provisions of r.99A of the West Bengal Motor Vehicles Rules, 1989 are as follows:

99A. In respect of stage carriage permit, if the permit holder intends to ply two vehicles for two single trips under one stage permit, holder shall pay double the amount of permit fee; Provided that in no case two round trips or four single trips for the two vehicles shall be allowed. It is evident from the provisions of r.99A that a holder of a single permit can be permitted to ply two vehicles for two single trips, provided he pays the requisite permit fee.

There is no dispute that in this case the petitioners offered to pay double the amount of permit fee; and that making this offer they requested STA WB to allow their permit to cover a second vehicle. The apprehension that if the permit is allowed to cover two vehicles, then one vehicle may be misused or illegally used for purposes other than plying on the route for giving daily trip cannot be a ground to reject the request.

There is no justification in taking shelter under the Notification No. 340-WT dated 6th February, 2012, as under the said notification the detailed route alignment has been incorporated, which do form part of the Stage Carriage Permit granted to the petitioner. If the Court has interpreted Clause 2(g) of the said Agreement in a particular manner, it is not open to the authority to take a different view. Furthermore, there is no justifiable reason assigned in the impugned decision taken by the State Transport Authority, as it abruptly jumped to the decision that such permission cannot be granted.

In view of the categorical decision taken in Gadadhar Roy & Anr. (supra) neither Section 72 of the Act nor Rule 99A of the Rules creates any

embargo in permitting two vehicles under a single permit for a voyage between specified routs provided the number of trips in a single day is not

exceeded. This Court, therefore, do not find that the decision is legally sustainable, which is hereby set aside. The State Transport Authority, West

Bengal is directed to permit the petitioner to ply the second vehicle on the route specified under the permit granted to the petitioner. Such compliance

must be made within four weeks from the date of the communication of this order. It goes without saying that apart from the grounds taken in the

instant decision if the petitioner has to comply with the other formalities, the learned advocate for the petitioner undertakes to complete such

formalities in order to expedite the matter, so that the time limit indicated hereinabove is strictly adhere to. The writ petition is thus disposed of. There

will be no order as to costs