

(2009) 01 CAL CK 0040
In the Calcutta High Court
Case No : Writ Petition No. 23257 (W) of 2006

Sk. Emamul Rahaman

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 21-01-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 86, 86(1)(d)

Citation : (2009) 01 CAL CK 0040

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Sanat Kumar Roy, for the Appellant; N.I. Khan, for the State, for the Respondent

Final Decision : Allowed

Judgement

Jayanta Kumar Biswas, J.—The petitioner in this writ petition dated November 3rd, 2006 is questioning the decision of the Chairman, Regional Transport Authority, Burdwan cancelling his permanent stage carriage permit in terms of provisions of Section 86(1)(d) of the Motor Vehicles Act, 1988.

2. Mr. Roy, counsel for the petitioner, submits that the chairman of the Regional Transport Authority had no jurisdiction to cancel the permit, because the authority competent to cancel the permit is the transport authority; that the decision to cancel the permit, not communicated to the petitioner, was taken without giving the petitioner any opportunity of hearing.

3. The respondents have filed an opposition. They have not said that the decision to cancel was taken by the transport authority; that the decision was communicated to the petitioner; that the decision was given after giving the petitioner a reasonable opportunity of hearing. What they have said is that before giving the decision, in terms of a decision of the RTA, the Secretary thereof issued a show cause notice and the petitioner's reply thereto was considered by the Chairman.

4. In my opinion, the decision cancelling the petitioner's permit has been given by an authority that was not competent to give the decision. The Chairman of the Regional Transport Authority was not authorized by the provisions of Section 86 to cancel the permit, the power to give decision In the proceedings initiated for cancellation of permit was conferred on the transport authority. By not communicating the reasoned decision the respondents defeated the petitioner's right to question the validity of the decision. The denial of an opportunity of personal hearing amounted to violation of a principle of natural justice. When the proceedings were initiated for cancellation of permit, in my opinion, in addition to giving an opportunity to show cause in writing, the transport authority was under the obligation to give the petitioner a reasonable opportunity to defend himself and also of hearing. In the proceedings he could lead evidence in support of his case that he did not obtain the permit by fraud or misrepresentation. The allegations were that he obtained the permit by misrepresentation and suppression of facts.

5. For these reasons, I allow this writ petition. The decision of the chairman of the Regional Transport Authority as communicated by the secretary of the transport authority by letter dated September 13th, 2006 at p. 30 is hereby set aside. This order shall not prevent the transport authority from giving a fresh decision in the proceedings initiated by it u/s 86 of the Motor Vehicles Act, 1988. If the transport authority proposes to proceed afresh, then it shall give the petitioner a fresh opportunity of submitting a detailed reply to the show cause, to lead evidence in support of his defense and also of hearing. If a fresh decision is given by the transport authority, then it shall be communicated to the petitioner without any delay. There shall be no order for costs.