

IN THE HIGH COURT OF BOMBAY AT GOA PANAJI

WRIT PETITION NO. 299 OF 2016

WITH

WRIT PETITION NO.398 OF 2016

WRIT PETITION NO. 299 OF 2016

Shri Paresh Pandurang Naik,
Son of Pandurang Naik,
Major in age,
H. No.467, Davorlim,
Salcete, Goa.

..... Petitioner

V e r s u s

1. State of Goa,
Through Chief Secretary,
Secretariate Porvorim Goa.

2. The Regional Transport Authority,
Represented by its Member secretary
State Agriculture Marketing,
Board Complex,
Arlem Goa.

3. Mr. Dayesh Karekar,
H. No. 839/B,
Mugali, near Church,
St. Joseph de Areal,
Salcete Goa.

..... Respondents

Shri Salman Keny, Advocate for the Petitioner.

Smt. N. Kholkar, Additional Government Advocate for the
Respondent.

WRIT PETITION NO.398 OF 2016

Shri Dayesh Karekar,
H. No. 839/B,
Mugalli, near Church,
St. Jose de Areal,
Salcete, Goa.

.... Petitioner

V e r s u s

1. The Regional Transport Authority
Represented by its Member Secretary,
State Agricultural Marketing Board Complex,
Arlem, Margao-Goa.

2. Mr. Paresh P. Naik,
S/o Pandurang Naik,
Major in age,
R/o H. No. 467, Davorlim,
Salcete, Goa.

..... Respondents

Shri C. A. Coutinho, ,Advocate for the Petitioners.

Smt. P. Kamat, Additional Government Advocate for the
Respondents.

CORAM: C. V. BHADANG, J.
DATE: 3rd MAY, 2016.

ORAL JUDGMENT:

Rule. The learned counsel for the respective respondents waive

service. Heard finally by consent of the parties.

2. Both these petitions arise from the Judgment and order dated 10/2/2016 passed by the learned Principal District Judge, Panaji, in STAT Appeal No.2/2014, as such, the petitions are being disposed of by this common judgment. For the sake of convenience the parties are referred to in their respective capacity in W.P. No.398/2016.

3. By a public notice dated 11/6/2013, the second respondent, Regional Transport Authority (RTA) had invited applications from persons desirous of getting a regular contract carriage permit (permit, for short) to operate one yellow black taxi (A.C) from Margao (Konkan Railway station stand). In pursuance of the advertisement, in all four persons including the petitioner and the respondent no.2, Paresh Naik (Petitioner in W.P. No.299/2016) applied for grant of the permit. The applications were initially considered in the meeting of the RTA on 22/7/2013, vide item no.4, in which the matter was deferred till the next meeting. In the next meeting, which was held on 10/9/2014 the RTA took the following decision:

"Since all the 4 applicants are equally eligible, RTA resolved to decide the matter by drawing lots. The lot bearing the name of Shri Paresh Pandurang Naik was drawn

in the same. Hence the permit shall go to him, at serial no.2 above. "

4. Thus Paresh Naik succeeded in getting the permit, which was accordingly communicated to him. This was challenged by the petitioner Dayesh Karekar before the Principal District Judge, Panaji, in STAT Appeal no.2/2014. The contention raised was that on the date of the application, although the petitioner was owning a vehicle, namely, a Maruti Swift VXI car bearing registration no. GA-08-K-1297, the second respondent and for the matter of that the rest of the two applicants were not owning any vehicle. It was thus contended that the RTA could not have treated the petitioner at par with the other applicants, which was the principal reason why the RTA had decided to draw lots.

5. The learned District Judge, by the impugned judgment, partly allowed the appeal and while setting aside the grant of permit to the second respondent has remanded the matter back to the authority to decide the same afresh “ after properly scrutinizing the applications, by keeping in mind the observations made in the judgment”.

6. The aforesaid judgment is challenged by the petitioner in Writ Petition no.398 of 2016 , who although was holding a vehicle on the date of the application has been denied the permit. Writ Petition no.299 of 2016 is

filed by the person who was successfully in getting the permit.

7. I have heard the learned counsel for the parties and the learned Addl. Government Advocate for the Respondent RTA.

8. The learned counsel appearing for the petitioner in W.P. No.398/2016 has pointed out the public notice dated 11/6/2013 in order to submit that the applications in prescribed P.Co.P.A form were called from the applicants. The learned counsel has referred to the said form which is prescribed vide Rule 72(1) (ii) of the Goa Motor Vehicles Rules, 1991 (rules, for short), in which **Item nos.7 and 9 read thus:**

**“7. The type of vehicle
(Bus/Car/A.R./A.C.Bus/Imported
Car.**

**9. Particulars of any stage carriage
or contract carriage permit valid in
the State or any other place and
held by the applicant in respect of:-**

(a) this vehicle _____

(b) any other vehicle _____

9. It is submitted that it was incumbent for the applicant to have owned a vehicle on the date of the application. The learned counsel has also pointed out the provisions of section 73 of the Motor Vehicles Act, 1988

(Act, for short), which inter alia prescribes that an application for permit in respect of contract carriage shall contain the particulars as to type and seating capacity of the vehicle. It is thus submitted that there is enough indication that owning of a vehicle was a necessary concomitant for the applicant to be eligible to apply and get the permit. It is submitted that admittedly, the second respondent was not owning a vehicle as on the date of the application and he could not have been treated at par with the applicant. The learned counsel submits that the petitioner been the only applicant having a vehicle and was entitled to grant of the permit.

10. The learned counsel appearing for the petitioner in W.P. No.299/2016 has pointed out Rule 74(1) of the rules, which reads thus:

74. Entry of registration mark on permit-

(1) Where the registration mark of the vehicle is to be entered on the permit and the applicant is not at the date of application, the registered owner of the vehicle, then the applicant shall, within one month of the sanction of the application by the Regional Passport Authority, or such longer period as such Transport Authority, may specify,

produce before that Authority the certificate of registration of the vehicle registered in his name in order that particulars of the registration mark may be entered in the permit.”

11. It is submitted that the aforesaid rule would indicate that the successful party can acquire a vehicle within one month of the sanction of the application by the RTA or such longer period as may be granted. He submits that the RTA was justified in treating that all the applicants were equally placed, thus necessitating drawing of the lots. It is submitted that once the RTA had decided to take a decision by drawing lots in which the petitioner was successful, no exception can be taken to the decision of the RTA and no case for interference was made out and the learned District Judge could not have directed the RTA to consider the matter afresh.

The learned counsel for the petitioner in W.P. No.299/2016 states that the petition had given the particulars as to sitting capacity of the vehicle in the application and has purchased a car of the same description, namely of the same sitting capacity.

12. The learned Additional Government Advocate points out that the matter was deferred in the meeting dated 22/7/2013 and in the

subsequent meeting on 10/9/2014, the RTA after holding that all the four applicants were equally placed, had rightly decided to take a decision by drawing lots. She has thus supported the order granting permit. In so far as the order of remand is concerned, the Addl. Government Advocate has left it to Court for passing appropriate order.

13. I have given my anxious consideration to the rival circumstances and submissions made.

14. The learned District Judge in para 8 of the judgment has held and to mind rightly so, that the petitioner Dayesh Karekar and other applicants were not equally placed and could not have been treated at par. There is enough material in view of the contents of the application which is prescribed in form P.Co.P.A and section 73 of the Act that the applicant was required to give the particulars of the vehicle in the application. Even assuming for a moment that this was not the requirement of law, the fact that the petitioner Dayesh Karekar was holding a vehicle and the others were not would certainly make a distinction so far as the petitioner is concerned in the matter of consideration of his application. It is, therefore, difficult to envisage as to how the petitioner Dayesh Karekar could be treated equally or at par with the other applicants. Although Rule 74 of the Rules provides that the RTA can grant time, that would only be by way of

an enabling provision, in a case, for instance, where none of the applicants is holding a vehicle. In such an eventuality, the provisions of Rule 74 would enable the RTA to process the applications as per law and in a given case grant time to the successful applicant to acquire a vehicle within a period of one month or such other longer period, as may be allowed. In my considered view, Rule 74 cannot be called into aid to treat an applicant who is holding a vehicle at par with an applicant who is holding none. In such circumstances, I find that the RTA will have to take a decision afresh in the light of the relevant provisions of law and the observations made herein. The RTA shall take such decision within a period of one month. Subject to this, no case for interference is made out. The writ petitions are accordingly disposed of with no order as to costs.

C. V. BHADANG, J.

Ap/-