

N.22Sl

151/CL

29.09.2020
SL-07
Ct.11
(S.R.)
via video
conference

W. P.A. No.5860 of 2020
With
CAN No.1 of 2020 (Old No: CAN No.3935 of 2020)
With
CAN No.2 of 2020 (Old No: CAN No.3936 of 2020)
With
CAN No.3 of 2020
With
CAN No.4 of 2020
With
CAN No.5 of 2020

Aloke Kumar Goswami & Anr.
v.
The State of West Bengal & Ors.

Mr. Saktipada Jana ... for the petitioners.

Mr. Amal Kr. Sen, AGP
Mr. Jaladhi Das ... for the State.

Mr. Sattwik Bhattacharyya ... for the respondent no.4.

Mr. Arabinda Chatterjee
Mr. Arkadipta Sengupta ... for the Intervenor.

The present writ petition has been preferred
primarily praying for the following relief: -

“(a) A writ in the nature of Mandamus commanding the Respondents, particularly the Respondent no.2, namely, the State Transport Authority, West Bengal to withdraw and/or cancel and/or by setting aside the impugned resolution adopted in the meeting held on 27.02.2020 (as in Annexure-P/6 to this writ application);”

Mr. Jana, learned advocate appearing for the petitioners submits that the petitioners’ application for permit was considered by the competent authority and an order was passed on 28th January 2020. In the said

order, it was decided that the petitioners' application would be considered as approved since they have a ready vehicle bearing registration no.WB-55B-2111 (04/2019M, BS-IV, SC-45). Without grant of any opportunity of hearing, the said order was substituted by a fresh order dated 27th February, 2020 observing that the vehicle registration number of the private respondent no.4 is WB-55B-2112 (11/2019M, BS-IV, SC-42) and the same is of better and latest model. In the said order it was also observed that inadvertently the petitioners' joint application was allowed by the earlier order.

Drawing the attention of this Court to an earlier order passed by STA on 2nd August, 2019, Mr. Jana submits that though there was a specific decision that the concerned vacancy would be declared due to cancellation of the permit of one Gour Baran Mukherjee, no such declaration was made. Had such declaration been made, the ambit of consideration would have included other conditions over and above the conditions as regards the year of manufacture and the date of registration of the vehicles.

Records reveal that being *prima facie* satisfied that the petitioner was not granted any opportunity of hearing prior to issuance of the order dated 27th February, 2020, an interim order was passed on 10th August, 2020. Records further reveal that the respondent no.4 preferred a vacating application being CAN No.3 of 2020. By an

order dated 9th September, 2020, the said application was treated to be an affidavit-in-opposition to the main writ petition and the petitioners were directed to file a reply. Such reply has been filed by Mr. Jana. In connection with the writ petition a further application being CAN No.5 of 2020 has been preferred by one Sri Ashis Kumar Goswami, who is represented by Mr. Chatterjee, learned senior advocate.

Mr. Chatterjee submits that it would be explicit from the order dated 29th June, 2018, as annexed at page 22 of the application, that the application of the applicant was directed to be kept pending. In view thereof, after the concerned vacancy was uploaded due to cancellation of the permit of one Gour Baran Mukherjee, the authorities ought to have considered the applicant's pending application. Thus, in an illegal and *mala fide* manner the applicant had been kept out of the selection process and his legal right to participate in the said selection process has been infringed and as such the applicant is a necessary and proper party.

Mr. Bhattacharyya, learned advocate appearing for the respondent no.4 submits that the primary ground of challenge against the order impugned in the writ petition is that the petitioners were not granted any opportunity of hearing. According to him, there was an inadvertent error on the part of the authorities to note the month and year of manufacture of the vehicle of the respondent no.4. The

petitioners' vehicle was manufactured on 4/2019 whereas the vehicle of the respondent no.4 was manufactured on 11/2019. For such inadvertent error, there was no requirement to grant any further opportunity of hearing to the petitioners prior to issuance of the order dated 27th February, 2020. Drawing the attention of this Court to the documents at pages 65 and 66 of the application Mr. Bhattacharyya further submits that the vehicle of the respondent no.4 is admittedly better and of the latest model.

He further submits that the application of Mr. Chatterjee's client was cancelled and the vacancy was uploaded. Such fact would be explicit from the last line of the order dated 2nd August, 2019. After the decision to declare the said vacancy, the application of the applicant did not survive any further.

The contention of Mr. Chatterjee, learned senior advocate appearing for the applicant is not acceptable to this Court since it is clear from the order dated 2nd August, 2019 that the permit issued to Sri Gour Baran Mukherjee was cancelled. It also appears that after issuance of the said order dated 2nd August, 2019, the authorities uploaded the vacancy vide memo dated 1st November, 2019, annexed at pages 32 and 33 of the vacating application. Responding thereto, the applicant admittedly did not submit any fresh application. As such, the applicant's presence is not necessary for

adjudication of the writ petition and accordingly the application for addition of party is dismissed.

Mr. Sen, learned senior advocate appearing for the State respondents submits that there was an inadvertent error on the part of the authorities to note the date of manufacture of the petitioners' vehicle. Such error was simply rectified by the order impugned in the present writ petition and as such there was no necessity towards grant of any further opportunity of hearing to the petitioners, which would have been an idle formality.

It is true that prior to issuance of the order impugned in the present writ petition, no opportunity of hearing was granted to the petitioners. As all the records have been disclosed before this Court, there is no necessity to relegate the matter again to the authorities to consider afresh upon granting an opportunity of hearing to the petitioners. In such circumstances, this Court thought it fit to hear the petitioners and to decide the matter finally.

The underlying the principle of natural justice is to check arbitrary exercise of power by the State. In exercise of the power of judicial review, the Court interferes when the decision taken by the administration is illegal, unreasonable or if it suffers from procedural impropriety.

Records reveal that admittedly the petitioners and the respondent no.4 only applied for the vacancy uploaded *vide* memo dated 1st November, 2019. Both the

applications were duly considered and an order was passed on 28th January, 2020 granting permit to the petitioners. However, it was later found that the petitioners' vehicle was not of the latest model. The same was manufactured on 4/2019 whereas the vehicle of the respondent no.4 was manufactured on 11/2019. As such, there is no doubt that the vehicle of the respondent no.4 was of the latest model.

The argument of Mr. Jana that the authorities did not advertise the concerned vacancy after issuance of the order dated 2nd August, 2019 is also not acceptable to this Court in as much as the vacancy was admittedly uploaded, as would be explicit from the documents annexed at pages 32 and 33 of the writ petition. Such argument of Mr. Jana also does not stand supported with appropriate pleadings in the writ petition or in the reply to the vacating application.

In the said conspectus, I am of the opinion that the order impugned is neither unreasonable nor arbitrary. An inadvertent error in the order dated 28th January 2020 has been simply rectified by the order dated 27th February, 2020. There is also no error in the decision making process and as such no interference is called for and the writ petition is, accordingly, dismissed.

There shall, however, be no order as to costs.

Urgent certified photocopy of this order, if applied

for, be supplied as expeditiously as possible.

(Tapabrata Chakraborty, J.)