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IN THE HIGH COURT AT CALCUTTA
Constitution Writ Jurisdiction
ORIGINAL SIDE
(VIA VIDEO CONFERENCE)

W.P.O. No. 638 of 2019

GOUR BARAN MUKHERJEE
Versus
THE STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 19th November, 2020

Appearance:

Mr Sakti Pada Jana, Adv.

...for the petitioner

Mr. Amal Kumar Sen, ADDL. Govt. Pleader

Mr. Lalmohon Bose, Adv.

Ms. Aishwarya Rajyashree, Adv.

Mr. Tirthankar Das, Adv.

...for the State

The Court : The present challenge is directed against an order dated August 2, 2019, passed by the respondent-authorities, cancelling the petitioner's permit to ply a vehicle on the ground that the petitioner had violated the permit condition by not plying the concerned vehicle daily as per the approved timetable on the Inter-State route, Bokaro to Ghatshila.

Learned counsel for the petitioner argues that, despite the renewal of the permit on January 22, 2019 (Annexure P1 at page 31 of the writ petition) in the meantime, the respondents took action on a previous cancellation proceeding, arising from a show-cause which had culminated in an order dated June 14, 2019, passed by a Coordinate Bench, whereby the STA law was called upon to

take a final decision and report the decision to this Court. It was further observed by the Learned Single Judge that, “having heard the parties and considering the materials placed, this Court was left in no manner of doubt that the provisions of Section 86 of the Motor Vehicles Act, 1988, insofar as such provisions relate to compliance with the principles affording the permit holder an opportunity of hearing, stood substantially complied with in the facts of this case.”

It is submitted that, subsequent to the said order dated June 14, 2019, (Annexure R6 at page 23 of the affidavit-in-opposition), another show-cause notice was acted upon, without hearing the petitioner at all on the reply given by the petitioner to such show-cause notice. Placing reliance on the content of such reply, learned counsel for the petitioner argues that the petitioner substantially took the stand that the petitioner was not being able to ply the vehicle as per the permit due to the appropriate authorities of the State of Jharkhand having not counter-signed the necessary documents, which was a pre-requisite for so plying.

Since the respondent-authorities did not give any opportunity of hearing to the petitioner on the subsequent show-cause notice, which was issued after the order of the Coordinate Bench dated June 14, 2019, a fresh cause of action arose for the petitioner to move the instant writ petition.

It is argued that such cancellation of the permit is in gross violence of law and natural justice and, in effect, negates the renewal of the permit.

Learned counsel appearing for the respondent-authorities submits that the matter had come up before the previous Coordinate Bench even subsequent to the issuance of the further show-cause notice issued by the respondents and it

was decided vide order dated December 11, 2019 that the final decision of the STA, West Bengal dated August 2, 2019, required no intervention. The STA was permitted, in the same order, to take further steps in accordance with law (Annexure R9 at page 29 of the affidavit-in-opposition).

It is further submitted, by placing reliance on several documents annexed to the affidavit-in-opposition, that the petitioner has been a habitual defaulter as far as appearance before the authority is concerned. The minutes and decisions of several previous meetings are placed in support of the said point.

It is evident from the previous decision taken by the authorities that the petitioner had failed to appear before the STA authorities on several occasions.

Although, by virtue of the renewal of permit dated January 22, 2019, the petitioner claims a new lease of life, such argument is inherently fallacious insofar as the same does not take into account the subsequent order of the Coordinate Bench, as mentioned above, which expressed that the decision dated August 2, 2019 required no intervention.

Moreover, mere renewal of a licence, *ipso facto*, cannot operate as a terminus to the pending cancellation proceeding, because renewal, by its very definition, implies the novation of an existing permit and not a new grant.

The conditions of renewal in terms of the law, particularly Section 81 of the 1988 Act, do not contemplate that such renewal, *ipso facto*, shall operate as adjudication on a pending dispute regarding cancellation of the original permit itself.

That apart, by the subsequent order dated December 11, 2019, passed in W.P. No. 149 of 2019, the Learned Single Judge had observed that the decision

impugned in the present writ petition required no intervention. Such finding, it is evident, was in pursuance of the previous order dated June 14, 2019, which acted as a closure to any further right of hearing for the petitioner.

The renewal, in the interregnum, does not invalidate the fact that the petitioner harped on the self-same defence, as already heard and negated by the authorities and affirmed up to this Court, while replying even to the fresh show cause notice.

Hence, the factum of renewal is only a disparate event in the continuum of the process of cancellation and cannot put a terminus to such cancellation process.

The petitioner had ample opportunity of hearing and has not come up with any new point which is a subsequent event after the previous order of this Court, as referred to above.

In such view of the matter, W.P.O. No. 638 of 2019 is dismissed on contest without any order as to costs.

Urgent certified photostat copy if applied for, be supplied to the parties subject to the compliance with all requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)