

04.03.2021

AKG
Sl. 9
Ct. 22

WPA 33 of 2020

Md. Aslam & Anr.
Vs.
The State of West Bengal & Ors.

Mr. N.I. Khan, Adv.,
Mr. Amlan Kumar Mukherjee
..for the petitioners.

Mr. Niladri Bhattacharjee
...for the State.

1. This is a contract carriage permit matter.

2. Pursuant to the direction given by this court on 18th February, 2021, a report by the Secretary, Regional Transport Authority has been filed in the form of affidavit affirmed on 3rd March, 2021. In the said report, it has been stated, inter alia, that office of the concerned respondent has not yet published any notice inviting the application for offer letter in respect of notified auto routes in which the petitioner or any other person may apply.

3. The Petitioners have drawn my attention to Section 80 (1) of the Motor Vehicles Act, 1988 which lays down that an application for a permit of any kind may be made at any time.

4. If that be so, the observation made in

the report that no notice inviting application for offer letter has been notified bears no meaning.

5. Respondent Authorities have relied upon Rule 107 of West Bengal Motor Vehicles Rules, 1989 which is reproduced below :

“107. Power of refusal to accept application for permits.—Where, on the direction to the Transport Authorities by the State Government by notification in the Official Gazette to limit the number of Stage Carriages or Contract Carriage generally or of any specified type under sub-section (3) of section 71 and sub-section (3) of section 74 of the Act, such Transport Authorities have limited the number of vehicle of any class in such area or as the case may be, on such route, the Regional Transport Authority shall notify this fact on the notice board of its office and may decline to receive any further applications for permits in respect of class of vehicle in such area or on such route”.

6. The respondents have submitted that where the State Government by notification in the Official Gazette limit the number of stage carriage or contract carriage and directs the Transport Authorities, and such Transport

Authorities have limited the number of vehicles the Regional Transport authority shall notify this fact on the notice board of its office and may decline to receive any further application for permits in respect of class of vehicles in the notified area or in the notified route, as the case may be. According to the respondents such steps have been taken by the authorities.

7. The case made out by the writ petitioners is for a direction upon the respondent authorities which includes the Regional Transport Authority and other Authorities of the state relating to transport to accept the application and requisite fees for grant of contract carriage permit of auto rickshaw.

8. There is clearly a misunderstanding of the provisions of Section 80 (1) and 80 (2) of the Act and rule 107 of the West Bengal Motor vehicle Rules, 1989. A conjoint reading of the said Section and the Rule shows that the Regional Transport Authority or the State Transport Authority has the power to summarily refuse the application for the reasons as mentioned in the proviso of Section

80 (2). But the second proviso of Section 80 (2) mandates that reasons for refusal has to be given.

9. Therefore, unless a situation is shown which is contrary to the proviso of Section 80 (2) of the above Act, writ Court cannot be invited to interfere in to the allegation.

10. Page 18 of Annexure P-1 of the writ application is a letter with prayer to the respondent No.4 for accepting requisite fees for contract carriage permit. This document is wholly questionable. It refers to an application dated 01.04.2018 which was re-sent on 04.09.2019. This page 18 initially referred to a notification dated 31.03.2017 and in hand writing thereupon the date 18.12.2018 has been written. This shows that there was no application against the Gazette Notification dated 18.12.2018 (Annexure P-2 of the writ application). By the said notification dated 18.12.2018 the earlier notification dated 31.03.2017 was superseded. The application dated 01.04.2018 has been tried to be shown here as an application dated 04.09.2019 under 18.12.2018 notification. This is wholly untrue

and not bonafide. The respondent authorities cannot be blamed for not considering such a fictitious application.

11. However, the other submission made by the petitioner is required to be considered as they submitted that no notice as to resultant vacancy is published by RTAs. The State Government may not want to increase the number of contract carriage by not enhancing maximum permit strength. But unless permit strength is reduced by a new gazette notification, filling up of resultant vacancy/vacancies in the existing strength cannot be denied and application for permit in such resultant vacancy/vacancies cannot be refused summarily. Such refusal will be without any reason and, therefore, will be arbitrary.

12. Considering the submission of the parties in this regard I direct that whether there is any resultant vacancy within the maximum permit strength has to be published by each of the Regional Transport Authorities covered under the Gazette Notification dated 18th December, 2018. For this purpose. I direct

the Secretary to the Government of West Bengal, Transport Department to instruct each and every Regional Transport Authority covered under the above gazette notification to publish a notice once in a month the number of resultant vacancy, if any, within its jurisdiction with a cut of date by which date application for grant of resultant permit can be made by the interested parties. Such notice with the cut off date has to be published and uploaded in the Website of the concerned Department on the date of the notice. Copy of such notice has also to be affixed in the notice board of the concerned RTA.

First of such notice as directed above has to be published in the month of July 2021.

With the above direction this writ application is disposed of.

No costs.

(Abhijit Gangopadhyay, J.)