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Court
No. 11 01.03.2022
G.S.Da
s

MAT 143 of 2022
With
CAN 1 of 2022

Kishore Saha & Ors.

-Vs-

Uttam Kumar Bhakat & Ors.

(Via Video Conference)

Mr. N. I. Khan
Mr. Amlan Kr. Mukherjee

... for the Appellants

Mr. Amal Kr. Sen
Mr. Lal Mohan Basu

... for the State

Mr. Debabrata Saha Roy
Mr. S. Bhattacharji

... for the writ petitioners/respondents

Party/Parties is/are represented in the order of their name/names as printed above in the cause title.

The appeal has been argued at length even at the application stage by the respective parties.

The sole question which arise for consideration before this Court centres around the definition of a *new vehicle* presented for grant of a permit under the Motor Vehicles Act and the related question as to whether such *new vehicle* is one which is purchased from the manufacturer and is BS-III norms compliant *or*, is a vehicle which must be BS-III norms compliant and should not be attached with any other permit at the time of making an application for a particular permit.

Learned Counsel for the State-respondents agrees

with the definition provided by Learned Counsel for the appellants, that the requirement of a *new vehicle* must be BS-III norms compliant and not attached with any other permit instead of one purchased from the manufacturer with BS-III compliant norms. Such a definition has also been settled by a decision of the Hon'ble Single Bench in *WP 5633(W) of 2018 (In Re.: Asim Kumar Ghosh and Others vs. The State of West Bengal And Others)*.

Both the appellants, who were the respondents before the Hon'ble Single Bench and the State-respondents submit that the uniform requirement of BS-III norms compliant vehicles has been settled through Notifications and clarificatory Order of the Transport Department - respectively being the 7th of August, 2012 and 25th of February, 2019.

Per contra, Mr. Saha Roy, Learned Counsel for the writ petitioners/private respondents to this appeal, relies upon an Order dated 28th of April, 2013 of the Transport Department and submits that the *new vehicle* to be placed in the permit must be either BS-III norms compliant or BS-IV norms compliant depending upon the route being respectively outside the Kolkata or within the Kolkata region.

It is submitted that the Hon'ble Single Bench committed no error in setting aside the resolutions of the State Transport Authority (STA) dated 26th of February, 2019 and the Regional Transport Authority (RTA), Malda dated 7th of February, 2018 on the ground that the mandatory requirements of a *new vehicle* being BS-III norms complaint as found from the Notification dated 7th

of August, 2012 and continuing upto the order dated 25th of February, 2019 has not been reflected in such orders either of the *STA* or the *RTA (supra)*.

Emphasis is also placed by Learned Counsel for the private respondents/the writ petitioners, which appears to have found acceptance by the Hon'ble Single Bench, that the only condition which was applied for grant of a new permit to the present appellants was the intimation by the *Sabhapati* and the Secretary of the local bus stand requiring the placement of vehicles which permits regularity of access to their respective areas.

Having heard the parties and considering the materials placed, it does not transpire to the mind of this Court, that there is an apparent or inherent inconsistency *inter se* the Notification dated 7th of August, 2012, the Order dated 28th of April, 2013, and the clarification dated 25th of February, 2019 – all issued by the Transport Department.

To the further mind of this Court the writ petitioners have been unable to specify that the order dated 28th of April, 2013 requiring placement of a *new vehicle* fundamentally alters the position set forth by the Notification dated 7th of August, 2012 that any area outside the Kolkata Municipal Corporation and not under the Salt Lake and Lake Town Police Stations must ensure BS-III norms compliant vehicle for obtaining a permit.

The argument that the Order dated 28th of April, 2013 places a premium on presentation of a *new vehicle* purchased straightaway from the manufacturers with norms compliance is a red herring. To the mind of this

Court, the Hon'ble Single Bench incorporated the requirement of a new vehicle to be mandatorily compliant of BS-III norms without being persuaded to define that such *new vehicle* must be one which is purchased straightaway from the manufacturer.

To the considered mind of this Court, the Hon'ble Single Bench, in its wisdom, was of the view that the STA and the RTA, Malda respectively by their Resolutions dated 26th of February, 2019 and 7th of February, 2018 were guided by an extraneous consideration of the local *Sabhapati* and the Secretary of the local Bus Stand lobbying for grant of permits to access local routes. Accordingly, the resolutions of the STA and the RTA, Malda (*supra*) stood set aside upon such sole consideration.

Therefore, this Court, for the convenience of maintaining public transportation in the areas which stand still denied of regular access, disposes of this appeal by permitting the STA to take an appropriate decision considering the applications of all the parties, including the present appellant and the private respondents, based on the terms of the Notification dated 7th August, 2012 as clarified by the Order dated 25th of February, 2019 of the Transport Department defining a *new vehicle* to be BS-III norms compliant and such vehicle being otherwise eligible for applying for a permit without the requirement of being registered as a *vehicle* purchased straightaway from the manufacturer.

This Court further finds no inconsistency between the Order dated 28th of April, 2013 and the Notification dated 7th of August, 2012 as clarified by the Order dated

25th of February, 2019 – the common requirement being presentation of a vehicle for a permit which is BS-III norms complaint.

Since the above findings turn on pure questions pertaining to the interpretation of the Notification dated 7th of August, 2012 read with the Orders dated 28th of April, 2013 and 25th of February, 2019, as well as the overwhelming requirement of not prolonging a litigation where public transportation service to the common man is involved, affidavits are not invited and other allegations are therefore deemed to be denied and disputed.

It is expected that the decision, as directed above, shall be taken by the *STA* within a period of four weeks from the date of communication of this order.

MAT 143 of 2022 and **CAN 1 of 2022** stand thus **disposed of**.

All parties to act on a server copy of this order duly obtained from the official website of the Hon'ble High Court, Calcutta.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Ananda Kumar Mukherjee, J.)

(Subrata Talukdar, J.)