

AD. 142.
March 29, 2022.
MNS.

WPA No. 4374 of 2022

Seidul Khan
Vs.
The State of West Bengal and others

Md. Mokaram Hossain,
Mr. Kamakshya Prasad Mukhopadhyay,
Mr. Sandipan Maity

...for the petitioner.

Mr. Pantu Deb Roy,
Mr. Subrata Guha Biswas

...for the State.

Learned counsel for the petitioner contends that, despite a previous direction of a co-ordinate Bench of this Court dated August 12, 2021, passed in WPA No. 1526 of 2020, to reconsider the petitioner's application for a new permit for plying the petitioner's 'auto-rickshaw', the respondent authorities, by a cryptic order dated February 11, 2022, rejected such application. It is submitted that such so-called rejection cannot be deemed to be sufficient compliance of the direction of the co-ordinate Bench and, as such, the matter should be adjudicated afresh by the respondent authorities.

At this juncture, learned counsel appearing for the respondents hands up a copy of a comprehensive order dated March 15, 2022, apparently in continuation of the letter vide memo No.

123/MV dated February 11, 2022, which was the alleged cryptic order, which clearly indicates the reasons for refusing the petitioner's new application for permit to ply 'auto-rickshaw'.

Learned counsel for the petitioner, in reply to such submission of the respondents, argues that even the said subsequent order, which is nothing but a continuation of the previous order dated February 11, 2022, does not furnish sufficient reasons within the contemplation of the notification as annexed to the present writ petition, and/or in consonance with the specific stipulations in the said notification dated January 29, 2010. As such, it is submitted that the petitioner's challenge still remains valid.

That apart, learned counsel for the petitioner places reliance on an unreported judgement of a Division Bench of this Court dated August 9, 2019 passed in *WP 23638(W) of 2017 [Goutam Sarkar Versus The State of West Bengal and others]*, wherein the said Division Bench specifically recorded subsequent notifications modifying the stipulations in the notification dated January 29, 2010.

It is argued that, as a result of such modification, the stipulations of the notification-in-question have since been altered and the terms of the original notification, as relied on by the learned counsel for the respondents, cannot be taken note of in deciding the present writ petition.

A perusal of the said order of the Division Bench, however, clearly indicates that, by virtue of the modifications as pleaded by the petitioner, Clause-1 and Clause-4 in the second page of the original notification dated January 29, 2020 had been omitted.

However, it is clear from the notification, as it stood originally on January 29, 2010 (annexed to the present writ petition), that Clause-6 at the second page of the said original notification, which is the only relevant clause in the instant case, was not altered in any manner by the subsequent modifications.

The said clause clearly stipulates that grant of 3-wheeled auto-rickshaw permit within a particular district only may, however, be considered by the concerned RTA of the district after taking into consideration the road condition, congestion of road traffic and safety and security of the passengers travelling in such vehicles within the ambit and scope of the Motor Vehicles Act, 1988 and Rules framed thereunder.

In the present case, the respondent authorities, subsequent to the order impugned in the writ petition, passed a further order dated March 15, 2022 in continuation of the previous order dated February 11, 2022, a copy of which is filed today and is kept on record, which clearly indicates that no parking place is available at both terminating points

and that the road is narrow and, thus, not suitable for the plying of auto-rickshaw. The said additional grounds have been cited in the subsequent order dated March 15, 2022 for rejection of the petitioner's fresh application for plying auto-rickshaw.

Since this court finds no discrepancy, perversity and/or illegality in the decision-making process of the authorities preceding such subsequent order, there is no occasion for the court, under Article 226 of the Constitution of India, to interfere under its writ jurisdiction, as conferred by Article 226 of the Constitution.

It was well within the authority and domain of the respondent authorities to refuse the petitioner's application for plying auto-rickshaw on the grounds as mentioned in the subsequent continuation-order dated March 15, 2022, which is perceived to be a continuation and part of the original order dated February 11, 2022.

In such view of the matter, WPA 4374 of 2022 is dismissed without any order as to costs.

However, nothing in this order shall preclude the petitioner, in the event the circumstances and bases of the current refusal change in future, from making a further application for plying auto-rickshaw.

If such a new application is made, upon the hindrance in grant of licence/permit, as mentioned in the continuation-order dated March 15, 2022, being

mitigated, the respondent authorities shall consider the same afresh without being influenced by any of the observations made herein and shall decide the same in accordance with law.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)