

MAT 355 of 2022
With
CAN 1 of 2022

Mahiuddin Mallick
-VS-
State of West Bengal & Ors.

Mr. Dilip Kumar Samanta
Mr. Biswapriya Samanta
... for the appellant

Mr. Pantu Deb Roy
Mr. Pannalal Bandopadhyay

... for the State

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

This is an appeal against an order passed by the Hon'ble Single Judge in WPA 9021 of 2021 dated 28.9.2021.

Initially, the petitioner has filed a writ petition before the Hon'ble Single Judge being WPA 143 of 2021 praying for a direction upon the authority for consideration of the representation submitted by the appellant for renewal of stage carriage permit.

By an order dated 21st January, 2021, the Hon'ble Single Judge has disposed of the writ petition by directing the Secretary of the State Transport Authority, West Bengal to consider the application submitted by the appellant within a period of eight weeks from the date of communication of the order.

The petitioner had again made a representation

to the Secretary, State Transport Authority, West Bengal on 26th February, 2021 praying for compliance of the order passed by the Hon'ble Single Judge dated 21st January, 2021.

In compliance of the order dated 21.1.2021, the Secretary, State Transport Authority, West Bengal had taken up the matter for hearing by giving an opportunity of hearing to the appellant.

During the course of hearing the Secretary, State Transport of Authority, West Bengal found that the vehicle bearing Registration No.WB-41A-4179 had already been transferred by the appellant in the name of one Sekh Mohibul Islam on 2nd February, 2016 and after expiry of the permit, no lease agreement was executed by the appellant with the new owner of the vehicle.

The Secretary, State Transport Authority, West Bengal has found that the permit-holder applied for permit on 27th April, 2016 when the appellant was not the owner of the vehicle and accordingly the request made by the appellant was rejected.

Being aggrieved by the order of the Secretary, State Transport Authority, West Bengal the petitioner has filed a writ application.

The Hon'ble Single Judge disposed of the writ application by giving liberty to the appellant to approach the appropriate forum, if so advised,

challenging the merit of the impugned order.

Being aggrieved with the order of the Hon'ble Single Judge the appellant has preferred the instant appeal.

Learned Counsel for the appellant submits that the Secretary, State Transport Authority, West Bengal has passed the impugned order but as per Section 81(4), the Secretary has no power to decide the issue with regard to the issuance of permit and as such the order passed by the Secretary, State Transport Authority, West Bengal is nonest in the eye of law.

Learned Counsel for the respondents submits that under Rule 214(i) of the West Bengal Motor Vehicles Rules, 1989 the delegation of power by the State Transport Authority has been given to the Secretary, State Transport Authority and as such the Secretary has the power to pass an order with regard to the renewal of the permit.

Learned Counsel for the respondents further submits that in the earlier proceeding, the Hon'ble Single Judge has passed an order directing the Secretary, State Transport Authority, West Bengal to consider the request made by the appellant and the appellant has acted upon the order passed by the Hon'ble Single Judge..

The appellant has not challenged the order passed by the Hon'ble Single Judge dated 21st

January, 2021.

From the order passed by the Secretary, State Transport Authority, West Bengal it reveals that the appellant had appeared before the Secretary, State Transport Authority and has raised no objection with regard to the authority of the Secretary and accordingly after hearing the appellant the Secretary has passed the order dated 26th February, 2021.

This Court considered the rival submissions of the parties and the documents available on record.

Admittedly, in the earlier proceeding the Hon'ble Single Judge has directed the Secretary of the State Transport Authority to consider the request of the appellant for renewal of the permit and after the order passed by the Hon'ble Single Judge the appellant has acted upon by making a representation to the Secretary for disposal of the representation in compliance of the order passed by the Hon'ble Single Judge and had also appeared before the Secretary at the time of hearing and had not raised any objection to the authority of the Secretary.

In view of the above, this Court is of the view that the Secretary has passed the impugned order dated 26th February, 2021 in compliance with the order dated 21st January, 2021 and thus the argument made by the appellant that the Secretary has no power to pass the order cannot be sustained.

The points raised by the Counsel for the appellant that as per Section 81(4) the Regional Transport Authority or the State Transport Authority are the only authority having jurisdiction to decide the issue with regard to the issuance of the permit but as per Rule 214(i) there is power of delegation by the State Transport Authority to the Secretary of the State Transport Authority. For the benefit of this discussion Rule 214(i) is quoted below:

“214.(i) to renew a permit and to renew the counter-signature of such permit;”

As per Rule 214 of the West Bengal Motor Vehicles Rules there is power of delegation and in the instant case the Secretary has passed the order as per direction passed by the Hon’ble Single Judge and thus it can be presumed that in view of the order passed by the Hon’ble Single Judge the Secretary has passed the order dated 26.2.2021.

In view of the above, we do not find any infirmity in the order passed by the Hon’ble Single Judge and thus the order does not require any interference.

MAT 355 of 2022 and **CAN 1 of 2022** stand **disposed of** accordingly.

Since the appeal is decided on the point of law raised by the parties, affidavits are not invited, allegations are deemed to be denied and disputed

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.

(Krishna Rao, J.)

(Subrata Talukdar,J.)