

167
08.04.2022
TN

WPA No.5633 of 2022

Rabideb Mukherjee
Vs.
The State of West Bengal and others

Mr. Sakti Pada Jana,
Mr. Subhajyoti Das

.... for the petitioner

Mr. Pantu Deb Roy,
Mr. Anand Farmaria

.... for the State

Learned counsel for the petitioner contends that the petitioner has been enjoying several renewed temporary permits to run his vehicle on the route Bankura to Raniganj via Mejia. Subsequently, however, when the petitioner applied for a permanent stage carriage permit to ply his bus on the said route, an offer letter was issued by the Secretary, RTA (Regional Transport Authority), Bankura on September 16, 2021 wherein, among other clauses, Clause 1 of the said offer letter contained a stipulation that the vehicle has to be of BS-IV model or higher and should be registered in the name of the applicant

and produced physically before the authority for inspection.

Learned counsel, by placing reliance on the relevant Notification dated February 20, 2018 annexed at pages-34 and 35 of the writ petition, indicates that in Rule 115 of the Central Motor Vehicle Rules, 1989, after Sub-Rule (20), a new Sub-Rule was inserted by the said Notification, which stipulates specifically that a new sub-Rule (21) is to be introduced, which specifies that new motor vehicles conforming to ES (Emission Standard) Bharat Stage-IV, manufactured before the 1st April, 2020 shall not be registered after the 30th June, 2020.

It is submitted that although such stipulation has been introduced, the same is restricted to registration of new vehicles, which have to comply BS-IV standard.

However, it is further argued that the petitioner has all along been plying his vehicle on the aforesaid route with his BS-III compliant bus, the certificate of fitness of which is valid at least for three more years.

Learned counsel appearing for the respondent-authorities contends that in view of the certificate of fitness of the petitioner's bus being valid only for three more years, in view of the extant Rule that transport vehicles beyond 15 years would not be permitted to

ply, which is restricted to the KMA (Kolkata Metropolitan Area). However, it is fairly submitted that there is no specific bar in that regard in respect of the vehicles plying outside the KMA area.

Learned counsel for the respondent-authorities also hands over a copy of an unreported judgment of the National Green Tribunal (Eastern Zone Bench, Kolkata) dated August 11, 2016 passed in Original Application No.33/2014/EZ, wherein it was mentioned that in Notification dated August 7, 2012, which was issued in pursuance of an observation of this court, it was *inter alia* prescribed that vehicles plying within Kolkata Municipal Corporation and areas under Salt Lake and Lake Town Police Stations should have Bharat Stage IV emission norms while in the rest of the State it was required to be of Bharat Stage III.

However, learned counsel further contends that since Section 81 of the Motor Vehicles Act specifies that a permanent licence shall operate for at least five years from issuance, in the present case, the issuance of a permanent certificate would entail that the vehicle of the petitioner would lose the validity in respect of its certificate of fitness prior to the expiry of such period.

Upon hearing learned counsel for the parties, it is evident from the records that the restriction stipulated in the Notification bearing G.S.R. 178(E) dated February 20, 2018 published by the Ministry of Road Transport and Highways is limited to registration of new vehicles manufactured before 1st April, 2020. However, there is no bar stipulated in the said Notification in respect of Bharat Stage III vehicles, which was the earlier model, to ply on the roads. Moreover, such restriction is limited also to the Metropolitan areas and does not apply to the route for which the petitioner seeks a permanent stage carriage permit, which entirely lies beyond the Kolkata Metropolitan area.

Hence, Clause 1 of the offer letter dated September 16, 2021, which stipulates that the vehicles of BS-IV model or higher should be registered in the name of the applicant and produced physically before the authority for inspection, loses its validity and justification.

Moreover, Clause 1(b) of the same offer letter clearly provides that vehicle must have valid certificate of fitness.

Again, it is always possible for the permit-holder to replace the vehicle within the ambit of Section 83 of

the Motor Vehicles Act in the event the same does not retain the validity of its certificate of fitness.

In such view of the matter, even if the validity of the certificate of fitness of the petitioner's present Bharat Stage III vehicle expires during the tenure of the permit, it would be open to the authorities to insist upon the petitioner replacing such vehicle with an appropriate vehicle having valid certificate of fitness.

In such view of the matter, Clause 1 of the offer letter, as indicated above, cannot stand judicial scrutiny.

Accordingly, WPA No.5633 of 2022 is allowed, thereby striking out Clause 1 of the offer letter issued to the petitioner on September 16, 2021 (Annexure – P-4 at page-33 of the writ petition) in respect of the permanent stage carriage permit for bus being granted to the petitioner for the route Bankura to Mejia via Chhatna, Susunia, Lakshmanpur, Kushthal, Sorakdihi. The offer letter, however, will retain its legality and validity insofar as the rest of its clauses are concerned.

Accordingly, the petitioner shall do the needful and comply with all the formalities on the premise that the offer letter does not contain the said vitiated

Clause 1 as found in Annexure – P-4 at page-33 of the writ petition.

The authorities shall, in the event the petitioner complies with all formalities, grant such permanent permit to the petitioner without insisting upon compliance of Clause 1 of the offer letter, which has been struck down by the present order.

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.)