

Item no. 07

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice T.S. Sivagnanam

And

The Hon'ble Justice Hiranmay Bhattacharyya

FMA 399 of 2021

with

IA No. CAN 1 of 2020 (Old No. CAN 2755 of 2020)

Sk. Israil

vs.

State of West Bengal & ors.

Appearance:

For the Appellants : Mr. Dilip Kumar Sinha

For the Respondents : Mr. Amal Kumar Sen
Mrs. Ashima Das (Sil)

Heard on : 11.11.2022

Judgment on : 11.11.2022

T.S. Sivagnanam J.:

This intra-Court appeal is directed against the order dated 3rd December, 2019 passed by the learned Single Bench in WP 2990 (W) of 2019. The said writ petition was filed by the appellant praying for issuance of a writ of certiorari to set aside the resolution dated 31st August, 2014 which had come to the knowledge of the appellant

pursuant to a query made by the appellant under the provisions of Right to Information Act, 2005 by reply dated 27.11.2018 given by the Regional Transport Authority, Paschim Medinipur. The learned Single Judge by the impugned order dismissed the writ petition on the ground that the appellant cannot seek for a contract carriage autorickshaw permit merely by seeking application of right of equal treatment under Article 14 of the Constitution of India de hors the State policy which holds the ground.

In our considered view, the learned Single Judge did not travel thus far to consider as to whether the appellant would be entitled to any relief. All that was required to be seen whether the concerned authority had complied with order and direction issued by the learned Single Bench of this Court in WP 8513 (W) of 2018 on 5th July, 2018. The said order reads as follows:

“The affidavit of service filed in Court today is taken on record.

The petitioner claims to have applied a permit under Gati Dhara Scheme for self-employment to the Regional Transport Authority, Paschim Medinipur for plying auto rickshaw in the route Khalsuli to Al Habib Hotel (Kharagpur).

The grievance of the petitioner in the instant writ petition is that the said application has not been disposed of by the authority. It appears that the said application was made on 28th August, 2016 and till date no communication has been made to the petitioner.

The learned advocate appearing on behalf of the respondent authorities submits that the applications made under the said Scheme shall

be taken up in the next Board Meeting of the Regional Transport Authority and the application of the petitioner shall also be considered.

In view of the above, the writ petition is disposed of directing the Regional Transport Authority, Paschim Medinipur to take a decision on the said application in the ensuing Board Meeting, which should not be beyond two months from the date of communication of this order and shall afford an opportunity of hearing to the petitioner and the decision shall be communicated to the petitioner within one week therefrom.

There shall, however, be no order as to costs.”

On a reading of the above order, it clearly shows that there was specific direction to the Regional Transport Authority, Paschim Medinipur to take a decision on the application of the appellant for contract carriage autorickshaw permit in the board meeting, which was to be held within two months from the date of communication of this order. There was a further direction upon the authority to afford an opportunity of hearing to the appellant/writ petitioner and the decision taken should be communicated to him within one week thereafter. From the material papers placed before this Court and also after hearing the learned Counsel for the State we find that the Regional Transport Authority, Paschim Medinipur has violated the order and direction issued by the learned Single Bench of this Court on 5.7.2018 quoted above. It is open to us to initiate suo motu contempt proceeding against the State Authority, however, that will in no way grant any relief to the appellant as the appellant is kept in the dark as to for what reasons the

application given by the appellant for contract carriage autorickshaw permit was rejected. In fact, the Regional Transport Authority, Paschim Medinipur did not even communicate the order to the appellant nor any opportunity of personal hearing was afforded to him and the appellant came to know that his application was rejected only after he filed an application under Right to Information Act, 2005 and for which information was supplied by communication dated 27.11.2018. In the said information nothing has been stated as to on what ground the application was rejected. Therefore, we are of the clear view that rejection of the application by the Regional Transport Authority, Paschim Medinipur is illegal and the same is liable to be set aside.

Accordingly, the decision taken to reject the application of the appellant is quashed and the matter is remanded back to the Regional Transport Authority, Paschim Medinipur to strictly follow the order and direction dated 05.07.2018 passed in WP 8513 (W) of 2018 within four weeks from the date of receipt of the server copy of this order.

Hence, the appeal stands **allowed** to the extent as indicated hereinabove. Consequently, the connected application also stands **disposed of**.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)

RP/Amitava (AR. CT.)