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11.05.2022
TN

WPA No.7719 of 2022
IA No: CAN 1 of 2022

Mousumi Ghosh
Vs.
The State of West Bengal and others

Mr. Arabinda Chatterjee,
Ms. Kakali Dutta

.... for the petitioner

Mr. Pantu Deb Roy,
Mr. Pannalal Bandopadhyay

.... for the State

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

.... for the added respondents

In Re: IA No: CAN 1 of 2022

The application for addition of party is taken up for hearing first.

Learned counsel appearing for the applicants in CAN 1 of 2022 submits that on the applicants' objection, the application of the present writ petitioner for extension of the writ petitioner's provisional time-table was refused.

The learned Senior Advocate appearing for the writ petitioner submits that the writ petitioner shall also place the proposed time-table of the applicants in

the addition of party application for the purpose of supporting the cause in the writ petition.

However, it is submitted that since the premise of the arguments in the writ petition is that without giving any opportunity of representation of hearing to the writ petitioner, the refusal of the extension of provisional time-table took place, the applicants are not a necessary party to the writ petition.

However, upon considering the submissions of the parties, it appears that although the applicants in CAN 1 of 2022 might not be necessary for complete disposal of the writ petition, the applicants have a direct interest in the matter insofar as it was the applicants' objection which was upheld in refusing the extension of provisional time-table to the writ petitioner, which is the subject-matter of the writ petition.

Moreover, the applicants shall be able to throw further light on the scope of the objection for the purpose of deciding the writ petition and hence are, in the least, proper parties.

Accordingly, CAN 1 of 2022 is allowed on contest without any order as to costs.

However, the merits of the writ petition have not been considered while deciding CAN 1 of 2022.

The writ petition itself is taken up for hearing next.

In Re: WPA No.7719 of 2022

The learned Senior Advocate for the petitioner contends that no written notice as required by the extant Rules and the concerned section, that is, Section 72 of the Motor Vehicles Act, 1988, was served upon the petitioner before the date of hearing was fixed for considering the objections of the added respondents/objectors.

It is contended that it will be evident from the purported notice of hearing, a copy of which is handed over in court today with a bunch of certain other documents by learned counsel for the respondent-authorities, that no copy of any of the objections was, in fact, served on the writ petitioner.

Moreover, although the petitioner attended the hearing-in-question upon verbal notice from the authorities and signed to indicate her presence, no hearing worth the name was given to the petitioner at all and the time-table was altered without any rhyme or reason. The learned Senior Advocate further submits that it will be evident from the impugned decision dated April 20, 2022 annexed at page-23

(Annexure-P3) of the writ petition, that no reason for the alteration is disclosed therein.

The learned Senior Advocate further argues that it will be evident from the objections annexed to the addition of party application, which was allowed previously, that the said objections were mostly frivolous. Moreover, it is pointed out that two of the objectors, *inter se*, had time-tables which exactly clashed with each other insofar as the stoppage at Guskara was concerned.

Since the timing regarding Guskara was the bone of contention, such factors ought to have been weighed in by the Regional Transport Officer (RTO) while passing the impugned decision, it is submitted.

Moreover, on the same date as the hearing, that is, April 20, 2022 itself, immediately after the order came to the knowledge of the petitioner, a handwritten application was filed before the Regional Transport Authority, Purba Bardhaman, as annexed at page-25 (Annexure-P4) of the writ petition.

It will be evident that on the same date as the impugned order, the petitioner gave a representation to the respondent-authorities indicating vividly that no hearing whatsoever was given to the petitioner and that no formal notice of hearing, as mandated by law,

was given prior to such date of hearing to the petitioner as well.

However, such representation, containing the specific objections of the writ petitioner, was never considered by the authorities.

It is alleged that such action on the part of the respondent-authorities is patently arbitrary and biased against the petitioner.

The learned Senior Advocate also indicates that there was no particular reason why the provisional time-table was extended only for three months and not further.

Learned counsel appearing for the respondent-authorities as well as the added respondents/objectors submit that a full-fledged hearing was given to the writ petitioner, as reflected from the impugned order itself. Moreover, notices were also given to the petitioner prior to the hearing.

It will also appear from the impugned order itself that the petitioner herself signed the said order along with the objectors.

As such, it is argued that the writ petition ought to be dismissed, being devoid of any valid grounds of challenge.

The instruction filed by learned counsel for the respondent-authorities be kept on record.

Upon hearing learned counsel for the parties and perusing the materials on record, it is evident that the impugned order itself, as annexed to the writ petition, reflects that the objections taken by the objectors were heard and, after careful consideration and hearing of all aspects, the time-table following thereafter was fixed.

Apart from the writ petitioner's written objection in the form of a representation filed on the same date, but subsequent to the order, there is nothing on record to indicate, even *prima facie*, that actually no hearing was given to the petitioner.

The representation, *ipso facto*, is not sufficient evidence to indicate that no hearing was given to the petitioner. In fact, there is every possibility of the said representation being an afterthought, despite having been filed on the same date (but subsequently) as the impugned order.

Moreover, as per the provisions of Section 114 of the Indian Evidence Act, 1872, there is a presumption of correctness attached to official and judicial acts.

In the present case, there is no concrete reason to disbelieve the findings in the impugned order of the RTO recording that the objections were heard and all aspects of the matter were considered and heard as well.

Such presumption has not been rebutted by any cogent evidence, apart from the subsequent representation of the petitioner.

It is evident that there is no bar in law as well regarding the time-frame of the provisional time-table extension being limited to three months.

Insofar as the objections of the writ petitioner as to non-service of notice of hearing is concerned, the writ petitioner took a chance and participated in the hearing, as reflected from the impugned order itself. After such participation and after taking a chance and an adverse order being passed, which was detrimental to the interest of the petitioner, the petitioner has taken out a challenge of non-service of proper notice as required by the Rules.

As far as the other allegation of the writ petitioner is concerned, that is, no copy of any of the objections was served on the petitioner, there is no reflection that such objection on the part of the writ petitioner was taken before the RTO at the time of hearing.

That apart, the same logic, as applicable to non-service of notice, is also attracted to such alleged non-service of copies of the objections, as the writ petitioner participated in the hearing, knowing fully well that no such copy had been served on the writ

petitioner even as per the petitioner's contention, but having not taken such objection specifically either at the time of hearing and/or in the post-hearing representation annexed at page-25, hence, rendering such objections on the part of the writ petitioner invalid as well.

In any event, such *post facto* allegation, after knowing the result of the decision, cannot be said to be *bona fide* in nature.

Even apart from that, the signature of the writ petitioner is appearing on the impugned order, at least signifying that the petitioner was present at the said hearing, which fact has also not been denied by the petitioner, as represented through the learned Senior Advocate of the petitioner, in his usual fairness.

The alleged defect of non-service of prior notice becomes academic after participation of the petitioner in the hearing.

In view of the above reasons, there is no scope of entering into the merits of the decision taken by the Regional Transport Officer on April 20, 2022.

Insofar as the other allegations of the petitioner on the merits of the objections raised by the added respondents are concerned, it is for the writ court only to examine the transparency and validity of the decision-making process, but beyond the charter of

this court under Article 226 of the Constitution of India to re-appreciate the materials on record and adjudicate the dispute on its merits afresh. Since this court is not sitting in appeal over the impugned decision, and in view of there being no patent irregularity and/or illegality to taint the decision-making process in the impugned order, this court is not inclined to interfere with the impugned order in the present writ petition.

Accordingly, WPA No.7719 of 2022 is dismissed on contest without any 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.)