

AD. 185.
May 11, 2022.
MNS.

WPA No. 7790 of 2022

Smt. Atasi Chatterjee and others
Vs.
The State of West Bengal and others

Mr. Sanat Kumar Roy,
Mr. Abhishek Banerjee

...for the petitioners.

Mr. Pantu Deb Roy,
Mr. Anand Farmania

...for the State.

The grievance of the writ petitioners is primarily that, upon the petitioners having applied for replacement of the original vehicle, which has turned to scrap after an accident, by an existing vehicle of higher model insofar as the environmental specifications are concerned, the respondent authorities are not deciding on such application and insisting upon production of a Bharat Stage (BS)-III certificate for the vehicle.

Learned counsel places reliance on the specific language of the Notification dated August 7, 2012 and submits that the case of the petitioners is squarely covered by Schedule-III (replacement of vehicle), Clause (F), sub-clause (b) pertaining to the column which covers areas excluding the Kolkata Municipal Corporation area and the areas under Salt

Lake and Lake Town Police Stations and other areas within the Kolkata Metropolitan Area (KMA).

It is contended that the authorities are insisting upon production of a BS-III certificate, despite the petitioners' existing vehicle, which is sought to be replaced, having a BS-II certificate, which is sufficient, being a higher model than the scrapped vehicle.

Learned counsel further contends that even the latest order of the National Green Tribunal, passed in Original Application No. 33/2014/EZ dated August 11, 2016, is besides the point and the discussion therein, insofar as the Notification dated August 7, 2012 is concerned, was not directly on the issue at hand and, is, not binding on the petitioners.

Learned counsel appearing for the respondent-authorities, at the outset, submits that the writ petition is premature, insofar as the application for replacement of vehicle filed by the writ petitioners is still pending decision.

It is further submitted, by placing reliance on an order of the Joint Secretary to the Government of West Bengal dated April 26, 2013 vide memo No. 1643-WT/3M-38/2013, that the same is the latest order governing the field and stipulates that even for areas outside Kolkata, the applicants have to produce BS-III certificates for the vehicle sought to be brought in as replacement.

By placing reliance on the judgement of the National Green Tribunal in *O.A. No. 33/2014/EZ (Shri Subhas Datta Vs. State of West Bengal and others)* it is further stressed that the National Green Tribunal clearly held that for the rest of the State of West Bengal other than the Kolkata Municipal Corporation and areas under Salt Lake and Lake Town Police Stations, production of BS-III certificate is mandatory. As such, the petitioners fall short of the requirement of law, it is submitted.

Learned counsel appearing for the respondent-authorities further places reliance on the second paragraph of the Notification dated August 7, 2012, where it has been stipulated that BS-IV norms are applicable in the city of Kolkata with effect from April 1, 2010 and BS-III norms are applicable for the areas outside the city of Kolkata but within the State of West Bengal.

It is, thus, contended that even apart from the writ petition being premature, the grounds taken by the writ petitioners, in support of production of BS-II certificate, are not tenable in law.

A consideration of the cited judgement of the National Green Tribunal indicates that the question which fell for consideration therein was entirely concerning the cities of Kolkata and Howrah, as indicated clearly in the very first sentence of the said judgment.

Even the subsequent paragraphs of the judgment indicate that the zone of consideration by the National Green Tribunal was the alarming deterioration an air quality situation of Kolkata and adjacent areas, including Howrah.

Only in such context, in paragraph – 25 of the said judgment, the National Green Tribunal observed that by Notification dated August 7, 2012, it was *inter alia* prescribed that vehicles plying within the Kolkata Municipal Corporation and areas under Salt Lake and Lake Town Police Stations should have BS-IV emission norms *while in the rest of the State it was required to be of BS-III*.

A bare perusal of the Notification dated August 7, 2012, which is relied on by both sides, clearly indicates that the general norms regarding emission certificates are stipulated therein. It is clearly mentioned in the said Notification that the directions enumerated in the said notification were given in respect of registration of new vehicle/grant of new permit/replacement of existing vehicle.

Out of the said directions, schedule- (iii) pertains specifically to replacement of vehicles and, specifically sub-head (F) thereof, deals with replacement of goods vehicle/bus.

In the third row thereunder, on the left hand column, it is stipulated that the norms given in the corresponding right hand column pertains to areas

excluding the Kolkata Municipal Corporation area and the areas under Salt Lake and Lake Town Police Stations and other areas within the jurisdiction of the Kolkata Metropolitan Area (KMA).

On the right hand column, in clause (b), it is provided that, if the incoming vehicle in respect of replacement is an existing vehicle, replacement shall be allowed on the conditions next following. Sub-Clause (i) indicates that such vehicle must be of similar nature or higher model including BS norms compliance. Sub-Clause (ii) says that, if registered with the same Registering Authority, the vehicle should not be less than BS-II Emission Norms complaint.

Clause (iii) thereof says that the existing outgoing vehicle shall have to be covered under Contract carriage/Stage carriage permit or be scrapped with cancellation of existing registration number.

In the case of the petitioners, clause (b) and all its sub-clauses are applicable squarely.

In respect of the petitioners, the previous vehicle met with an accident and was scrapped with cancellation of existing registration number. Thus, the petitioners are required to provide a BS-II emission norms certificate, which is of higher model in respect of emission norms compliance than the previous vehicle, which was a BS-I model.

Hence, even a bare reading of the Notification dated August 7, 2012 indicates that the BS-III norms covers the Kolkata Metropolitan Area, including those regions which fall outside the Kolkata Municipal Corporation area and the areas under the Salt Lake and Lake Town Police Stations, and does not extend to areas beyond the KMA territory.

That apart, the decision of the National Green Tribunal, as discussed earlier, deals with the environmental situation in Kolkata and Howrah and the entire consideration in the said judgment was in such context. Taken in such context, paragraph- 25 of the same only deals with the Notification dated August 7, 2012 insofar as the KMA is concerned. Within the KMA area, two sub-classifications were made by the National Green Tribunal - vehicles plying within the Kolkata Municipal Corporation area and the areas under Salt Lake and Lake Town Police Stations (BS-IV) and the rest of the State (BS-III). Taken in proper perspective, read in conjunction with the actual Notification dated August 7, 2012, the expression “the rest of the State” has to be necessarily restricted to the rest of the State of West Bengal falling within the “Kolkata Metropolitan Area”, apart from Kolkata, Salt Lake and Lake Town, as opposed to areas of West Bengal falling outside the Kolkata Metropolitan Area.

Hence, it is obvious that the respondent-authorities are acting without jurisdiction in insisting upon prior production of a BS-III certificate for the vehicle of the petitioners with which the replacement is proposed, even prior to deciding on the application for replacement.

It is evident that, in view of the extant law, for areas outside the Kolkata Metropolitan Area but within the State of West Bengal, production of a higher model (including a BS-II compliant vehicle) than the one replaced is sufficient, in case of proposed replacement of an existing vehicle in place of a scrapped vehicle.

Hence, although no decision has yet been arrived at by the respondent-authorities on the application for replacement of the petitioners' vehicle, the insistence on production of BS-III certificate is unwarranted and uncalled for and has no relevant bearing on the decision.

Hence, WPA No. 7790 of 2022 is disposed of by directing respondent no. 2, that is, the Regional Transport Authority, Purba Bardhaman to decide the application for replacement made by the petitioners as expeditiously as possible, in the light of the observations made above, without insisting upon prior production of a BS-III certificate for the existing vehicle sought to be replaced for the previous scrapped one. Such exercise shall be completed by

respondent no. 2, if necessary, upon giving adequate opportunity of hearing to all concerned, as expeditiously as possible, positively within June 11, 2022. Immediately thereafter, the respondent no. 2 shall intimate its decision to the writ petitioners for the latter to take appropriate consequential steps thereafter.

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.)