

S/L. 25.
August 1, 2022.
MNS.

WPA No. 9705 of 2022

Nand Kishor Shaw and others
Vs.
The State of West Bengal and another

Mr. Kanishk Sinha

... for the petitioners.

Mr. Amal Kumar Sen,
Mr. Pantu Deb Roy,
Mr. Subrata Guha Biswas

...for the respondent-authorities.

Learned counsel for the petitioners, at the outset, on the query of Court as to whether the petitioners seek to use an affidavit-in-reply to the composite affidavit-in-opposition filed by the respondent-authorities, submits that the irregularities allegedly committed by the respondent-authorities shall be evident from a plain reading of the composite affidavit-in-opposition itself and, as such, no further reply is required to be filed.

However, at a later stage of the argument, when learned counsel for the respondent-authorities has almost completed his submissions, learned counsel for the petitioners again seeks leave to file a reply. Such leave is

refused at this belated stage, since the liberty to use reply was deliberately turned down by learned counsel for the petitioners.

The plinth of the petitioners' case is that the respondent-authorities have been granting permits to ply auto-rickshaws on the concerned route, that is, Route No. AR-3, which is the subject matter of dispute in the present writ petition, without following any transparent process and/or issuing any advertisement for the public at large to know about the available vacancies.

It is further submitted by learned counsel for the petitioners, by placing reliance on several paragraphs of the composite affidavit-in-opposition of the respondent-authorities, that the number of vacancies disclosed in various paragraphs therein, in particular, paragraph nos. 9, 10, 16 and 17, does not tally with the RTI information issued by the authorities, which is annexed to the pleadings as well. It is further submitted that there is nothing on record to show that any advertisement was published for the common public to know about the vacancies, only upon which the eligible operators could have exercised their informed choice.

Learned counsel appearing for the respondent-authorities, by placing each and every paragraph of the affidavit-in-opposition, submits that sufficient explanation has been provided in the said paragraphs with regard to the *modus operandi* of considering and deciding the applications made at various points of time. It is further pointed out by learned counsel for the respondents that upon the Motor Vehicles Act, 1988 (1988 Act) having come in force, there has been ample liberalization in the concerned law as well, as also observed by the Supreme Court in different judgements.

As per Section 80 of the 1988 Act, it is submitted, all applications, which are filed for the purpose as aforesaid, have to be considered and the proviso to the said Section permits the authorities to summarily reject the applications if there is no vacancy. There is nothing in the Act, it is contended, requiring prior advertisement being issued inviting such applications as such.

Learned counsel for the petitioners, in reply, submits that Section 80 of the 1988 Act nowhere precludes any advertisement from being published. In any event, it is reiterated that the process followed by the respondents and the

“number game” resorted to by the respondents are not sufficient to dispel the doubt which has arisen in respect of the entire process of filling up the vacancies.

Furthermore, it is submitted that there has to be a process by which the number of available vacancies are to be intimated to the general public in order for them to take out applications for route permits.

Upon considering the contentions of the parties and the materials on record, it transpires that in paragraph- 9 of the composite affidavit-in-opposition, it has been mentioned that the different auto-rickshaw routes in Howrah region (Route Nos. AR-1 to AR-18) had been notified by the Notification dated March 5, 2004 mentioned therein, issued by the Transport Department, Government of West Bengal under Section 74(3)(a) of the 1988 Act, whereby the respective permit strengths of the routes were fixed. It is further stated therein that in so far as Route No. AR-3 is concerned, the fleet strength was fixed at 150.

In paragraph- 10 of the composite affidavit-in-opposition, it is stated that vide order dated October 4, 2016 passed in W.P.No.16412(w) of

2016, a Co-ordinate Bench of this Court had been pleased to pass an interim order restraining the Regional Transport Authority, Howrah, from issuing any route permit to any auto-rickshaw to ply within the District of Howrah up to Uluberia covering the KMDA area till disposal of the writ petition. Subsequently, the said order was vacated by another Co-ordinate Bench of this Court on July 12 2017. As such, it has been submitted, during the period from October 4, 2016 to July 12, 2017, no application for contract carriage permit in respect of Route No. AR-3 was taken up for consideration by the Regional Transport Authority, Howrah.

Subsequently, it has been stated in paragraph- 12, pursuant to a Resolution dated October 17, 2017, the RTA Board considered all applications pending as on that date in respect of Route No. AR-3 under Sections 74(3)(b)(i) and 74(3)(b)(iii) of the 1988 Act and found that out of the total fleet strength of 150, only 50 vacancies were available and 19 applications were found eligible.

In paragraph- 13, however, it is disclosed that in another RTA Board meeting dated October 11, 2018 further applications for grant of contract

carriage permit in respect of Route No. AR-3 were considered and that in so far as the said route is concerned, there were 19 vacancies on that date and 7 applications were found to be eligible.

At the first blush there appears to be a discrepancy between the vacancies disclosed with regard to October 17, 2017 (that is, 50) and that existing on October 11, 2018 (that is, 19). However, subsequently in paragraph- 14, it has been explained that the total number of vacancies remaining at the relevant juncture, upon filling the vacancies for 19 and 7 of the said slots respectively, was 24. Hence, the arithmetic disclosed in paragraph- 14 of the composite affidavit-in-opposition comprehensively takes care of the total number of vacancies existing as on October 17, 2017 and subsequent thereto.

It has been submitted by the respondent-authorities that the said remaining 24 vacancies in respect of Route No. AR-3 were filled up by converting 24 valid existing permits.

It is well within the discretion of the respondent-authorities to consider the conversion of existing valid permits, upon the operators agreeing to the same.

The same having been stated to be done, there is no scope of there is no scope of further grant of permit.

In any event, since at least some of the petitioners themselves participated in the Board meeting of 2018, upon the first challenge to the process being taken out as late as in the year 2021, the court cannot reopen the entire filling up of vacancies for Route No. AR-3, since the same will upset the existing situation *post facto*, which would directly and adversely affect the interests of all operators on the route without even impleading them in the writ petition.

As far as paragraph 16 of the comprehensive affidavit-in-opposition is concerned, the authorities explain that it was inconvenient to hear all 242 applications, for which they were split up in small groups of 40-50 each and heard on diverse dates on and from March 5, 2019 to February 12, 2020 and that 153 applicants were called for hearing in respect of their applications for grant of contract carriage permits on the Route No. AR-3.

Upon a comprehensive perusal of the writ petition, it does not appear that any valid ground has been disclosed to urge palpable wrong or

lack of transparency in the procedure of filling up vacancies *de hors* the discretion of the authorities as conferred within the ambit of Section 74 and Section 80 of the 1988 Act or otherwise.

Moreover, as indicated earlier, the petitioners did not challenge the refusal of the petitioners' applications, even after some of them participated in the meeting of 2018, for three subsequent years and only seek to rely on the averments and/or purported discrepancies therein in the opposition used by the respondent-authorities.

However, it is well-settled that the proponent of an argument has to succeed or lose on his own case and cannot take advantage of alleged discrepancies in the defence.

From the averments in the writ petition, no palpable discrepancy is found for this Court to set aside the entire process of filling up of vacancies over the period since 2017, merely on the writ petition having been filed by the petitioners. More so, since some of the petitioners themselves participated in previous meetings.

Furthermore, the law does not mandate any prior advertisement to be issued or published by the respondent-authorities; rather, the

provisions of Section 80 of the 1988 Act only mandate that the authorities have to consider all applications made by different operators for route permits and have the authority in law, in the event there are no vacancies, to summarily reject such applications.

In the present case, the exercise-in-question by the respondent-authorities has not traversed beyond the jurisdiction of the authorities as conferred by law. As such, there is no scope for granting the reliefs as prayed for in the writ petition.

Accordingly, WPA 9705 of 2022 is dismissed on contest.

However, nothing in this order shall preclude the petitioners from applying subsequently in the event vacancies are available. If so, it will be open to the respondents to consider such application(s), subject to availability of vacancies and that juncture and upon compliance of all due formalities by the applicants, afresh in accordance with law without being prejudiced in any manner by the previous rejections of the petitioners' applications.

It is further made clear that since WPCRC 107 of 2022 was already discharged for the

reasons as given in the order dated July 11, 2022, the contempt application on the basis of which the said Rule was issued and discharged itself is deemed to stand disposed of. As such, no further order need be passed on the said contempt application.

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.)