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07.07.2022
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WPA No. 9983 of 2022

Samaresh Bhattacharya
Vs.
State of West Bengal and others

Mr. Dilip Kumar Samanta,
Mr. Biswapriya Samanta
.... for the petitioner

Mr. Srijan Nayak,
Mrs. Rituparna Maitra
.... for the State

Mr. N.I. Khan,
Mr. Amlan Kr. Mukherjee
.... for the respondent no.4

Affidavit-in-reply filed by the petitioner,
affidavit-in-opposition by the respondent no.4 and
affidavit-in-opposition by the State-respondents filed
in court today be kept on record.

Learned counsel for the petitioner submits
vociferously that despite the specific direction of this
court on the transport authorities vide order dated
April 05, 2022 to strike out Item no.10 of the offer
letter given to the petitioner dated March 08, 2022
and to retain the other items, the transport
authorities are sitting tight over the matter, despite

this court having clarified that in the event a clash is actually apprehended between other routes and/or the time-tables of existing operators and that suggested by the petitioner, it would be within the authority of the respondents to seek an alteration in the time-table from the petitioner although the petitioner has already provided clash free provisional time-tables.

It is submitted further that in pursuance of Rule 118 of the West Bengal Motor Vehicles Rules, 1989 (hereinafter referred to as “the 1989 Rules”), the transport authority has to issue a permit on the basis of a provisional time-table, as submitted by the operator, till the dispute, if any, regarding production of clash-free time-table is resolved. However, in the present case, it is alleged that the respondent-authorities have not issued the permanent permit to the petitioner for plying stage carriages, contrary to law.

Learned counsel appearing for the respondent-authorities submits that the respondent-authorities duly gave a hearing to the petitioner and other objectors and, upon duly considering the respective points of view of the parties, had directed the petitioner to submit a clash-free time-table vide order

dated May 17, 2022 passed by the Regional Transport Officer, Purba Bardhaman.

However, it is submitted that the petitioner has not submitted any further clash-free time-table as yet.

Learned counsel appearing for the added respondent no.4 points out that, in the first place, the petitioner had given proposed time-tables to the respondent-authorities before the previous order of this court, precisely in respect of which the dispute had been raised by the respondent no.4 and other objectors.

As such, the order of this court was complied with duly.

Learned counsel for the petitioner, in reply, further places reliance on a judgment passed by a coordinate Bench in WP 26253(W) of 2014, wherein, in a similar case, the offer letter had been issued and the time-table of the petitioner, as proposed, was directed to be approved, keeping it open for the authority to seek alteration of the time-table, applying the provisions of Rule 119 of the 1989 Rules, in the event there was a clash of time-table with others.

A composite perusal of Rules 118 and 119 of the 1989 Rules reveal that the transport authority, at any time during the validity of a permit of a stage carriage, may attach a condition to the permit that the stage

carriage/carriages shall ply on a portion of the route for which the permit has been granted *in accordance with the time-table approved by the Transport Authority* and on the other portion only during such period as may be specified and according to such time-table as *may be approved by the Transport Authority* for such portion.

The proviso to Rule 118 suggests that the Transport Authority may also attach to the permit a condition that the time-table as originally approved may be subject to such amendments/changes as may seem to the Transport Authority to be reasonable. In case of such amendment, if any, the interest of the State Transport Undertaking operating services on the route or in the area are to be given priority.

On the other hand, Rule 119 stipulates that in all cases of disputes in respect of the time-tables for Stage Carriage on a route or area, the decision of the Transport Authority granting the permit or of the officer authorised under the Rule shall be final.

The proviso thereto also gives preference to State Transport Undertaking, etc.

In the present context, the clear language of the order dated April 05, 2022 passed in WPA No.5136 of 2022 was that the particular Clause, that is, Clause 10 of the offer letter, which was challenged by the

petitioner, was struck out and the other clauses of the offer letter were retained. However, it was specifically clarified that in the event a clash was actually apprehended between the other routes and/or the time-tables of existing operators and that suggested by the petitioner, it would be within the authority of the respondents to seek an alteration in the time-table from the petitioner.

The order of the coordinate Bench, as cited by learned counsel for the petitioner, was rendered in the facts of the said case and does not lay down any ratio or straightjacket proposition that in every case, the court shall direct the respondent-authorities to approve the time-table, even without exercising its discretion as conferred within the purview of Rules 118 and 119.

Moreover, it is clear from the tenor of the said Rules that there cannot be issuance of a permit without there being a time-table, at least a provisional time-table, which is approved by the transport authority. In the present case, the transport authority refused to approve of the provisional time-tables submitted by the petitioner and asked the petitioner to submit a clash-free time-table on the basis of objections of two local operators. However, the ground of objection taken by the petitioner to the

objections of such operators being considered by the authority, being that they are not on a similar footing as the petitioner, since the petitioner is not plying on a local permit whereas the objectors are, is not tenable in the eye of law since the law does not distinguish or discriminate between local operators and long-distance operators insofar as the right to take objections is concerned.

Moreover, I do not find any irregularity or patent illegality on the face of the decision-making process of the respondent-authorities in the meeting dated May 17, 2022, in which the petitioner was directed to produce a clash-free time-table. Since the petitioner has failed to comply with such decision, there is no scope for finding any fault with the respondent-authorities for not having issued a permit till now.

The argument of the petitioner that, even if there is an objection to the provisional time-table submitted by the petitioner, the permit has to be issued subject to the petitioner subsequently submitting a clash-free time-table, cannot be accepted, since the same, if accepted, would be logically absurd. In such an event, the purpose of Rules 118 and 119 would be entirely frustrated, since the Rules envisage that a permit has to be granted in accordance with the time-table which is approved by

the transport authority and cannot be granted on a provisional time-table submitted at the sweet will of the applicant/operator, if the same is not approved by the transport authority. A permit without a time-table does not carry any sense and is unheard-of.

As such, the proposition sought to be made out by the petitioner is turned down.

There is no scope of interference in present writ petition.

Accordingly, WPA No.9983 of 2022 is dismissed without any order as to costs.

However, it is made clear that as and when the petitioner submits a clash-free time-table to the respondent-authorities, the latter shall take necessary steps to issue the permanent permit of the petitioner at the earliest thereafter. Nothing in this order shall prevent the respondent-authorities from doing so.

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.)