

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No.10604 of 2022

Akthar Ali

Vs.

The State of West Bengal and others

For the petitioner	:	Mr. Debabrata Chakraborti, Sk. Samim Akhtar
For the State	:	Mr. Sirsanya Bandopadhyay, Mr. Arka K. Nag
Hearing concluded on	:	29.06.2022
Judgment on	:	12.07.2022

Sabyasachi Bhattacharyya, J:-

1. The petitioner was plying his auto-rickshaw in the Howrah and Bally Municipal areas on a permanent contract carriage permit which was renewed on December 1, 2016 up to November 30, 2021, for the last time by the Regional Transport Authority (RTA), Howrah.
2. When the petitioner applied for renewal and deposited the requisite fees on November 8, 2021, such renewal was not granted, on which the petitioner, thorough an advocate, sent a Demand Justice Notice to the RTA on May 5, 2022 to which a reply was given by the Authority, declining to renew the permit of the petitioner since the petitioner did

not take opportunity of the regularization process which was given pursuant to Notifications dated March 5, 2004 and December 10, 2018 issued by the Transport Department, Government of West Bengal.

3. It is contended by learned counsel for the petitioner that Section 81 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the 1988 Act') provides for renewal of permits. It is argued that a permit renewal can be rejected only on the grounds as specified in sub-section (4) of Section 81. However, in the present case, though no such ground was applicable, yet, the petitioner's renewal application was rejected arbitrarily.
4. The RTA also cited certain Notifications and stated that the Transport Department had considered it necessary in the public interest to direct the RTA, Howrah to limit the number of auto-rickshaws operating in different city routes, in the towns within the jurisdiction of the Howrah Municipal Corporation and Bally Municipality in the District of Howrah.
5. Eighteen (18) routes were accordingly notified, thereby limiting the maximum number of auto-rickshaws permits that can be granted.
6. It is contended by the petitioner that such limitation of the route was also arbitrary and *de hors* the law. It is submitted that Section 74(3)(a) of the 1988 Act provides that the State Government shall, if so directed by the Central Government, having regard to the number of vehicles, road conditions and other relevant matters, by Notification in the Official Gazette, direct a State Transport Department to limit the number of contract carriages.

7. Section 74(3)(b) provides that where the number of contract carriages are fixed under Clause (a), the RTA was, in considering an application for the grant of permit in respect of any such contract carriage, have regard to the matters as stipulated thereunder. The several yardsticks stipulated thereunder were adhered to while considering the petitioner's application, it is submitted.
8. On the other hand, learned counsel for the State submits that the Notification dated December 10, 2018 specifically stipulates that in view of the several auto-rickshaws plying on many routes, a chance was being given to the unauthorized operators to have their auto-rickshaws regularized.
9. It is submitted that, *vide* Notification dated March 5, 2004 and that dated December 10, 2018, several routes were notified. As such, the concept of granting permits for particular 'areas' was done away with and specific 'routes' were demarcated.
10. It is submitted that despite having such opportunity, which was availed of by many other operators, the petitioner did not take any step for regularization of his auto-rickshaw, which carried on plying area-wise and had been rendered unauthorized by virtue of the Notifications mentioned above.
11. A perusal of the 1988 Act indicates that Section 81 thereof deals with duration and renewal of permits. In sub-section (4) thereof it is stated that the RTA or the STA, as the case may be, may reject an application for the renewal of a permit on one or more of the grounds given therein. One of the grounds is that

“the applicant had been punished twice or more for any of the following offences within twelve months reckoned from fifteen days prior to the date of consideration of the application committed as a result of the operation of a stage carriage service by the applicant, namely, -

(i) plying any vehicle –

(1)

(2)

(3) on any unauthorised route;

(ii) making unauthorised trips:”

12. In the communication dated May 17, 2022 made by the RTA, Howrah, the petitioner was informed that the petitioner had not taken the opportunity of regularization, for which reason the renewal was refused. It was, however, clarified that the petitioner might apply to get permit for his vehicle to ply in the route where vacancy was still available for renewal of permit.

13. One of the Notifications cited by the respondent-Authorities is a Gazette Notification dated March 5, 2004, whereby the Transport Department, Government of West Bengal, in exercise of power conferred under Section 74(3)(a) of the 1988 Act, limited and altered the permit limits, since considered necessary by the State Government in the Howrah and Bally Municipality areas in 18 routes. It is, however, noteworthy that even thereafter the petitioner’s permit was

renewed from time to time, lastly on December 1, 2016 till November 30, 2021.

14. Subsequent to December 1, 2016, another Gazette Notification dated December 10, 2018 was published. In the same, it was indicated that several unauthorized auto-rickshaws were operating on many routes falling within the jurisdiction of the Regional Transport Authority, Kolkata without having proper Insurance Certificate, Registration Certificate, Tax Receipt, Permit and Pollution under Control Certificate.
15. Thus, lack of proper permit was one of the reasons cited by the Transport Department in the said Notification, for rendering an auto-rickshaw “unauthorized”. As per the Notification, the Government was deeply concerned about the safety and security of the passengers travelling on such unauthorized auto-rickshaws and their difficulties in getting legal assistance in case of any accident.
16. Meanwhile, by a Notification published in the Kolkata Gazette dated October 21, 2016, the RTAs of Howrah and other districts were to transfer all such routes under their jurisdictions to the jurisdiction of the RTA Kolkata, where major portion of a route lies in the new and expanded jurisdiction of the RTA,, Kolkata in respect of the combined areas of the Police Commissionerates of Kolkata, Howrah, Barrackpore and Bidhannagar.
17. According to the Notification dated December 10, 2018, a High-Powered Committee was formed by the Governor *vide* Notification dated December 2, 2016 for considering proposals of regularization of unauthorized auto-rickshaws then plying on routes on ‘as is where is’

basis, as well as for issuance of fresh auto-rickshaw permits within the jurisdiction of RTA, Kolkata and other related matters. The High-Powered Committee apparently submitted a report on December 31, 2017. On an examination of the said report, it was decided by the Transport Department to regularize the unauthorized auto-rickshaws then plying on the city-routes in Kolkata on 'as is where is' basis and a draft Notification was published on June 1, 2018 to limit the number of permits to an auto-rickshaw within the present jurisdiction of the RTA, Kolkata upon supersession of an earlier Notification in that regard.

- 18.** The Notification dated December 10, 2018, apart from providing for the regularization of unauthorized auto-rickshaws, also stipulated several designated routes which were to be adhered to by the different operators.
- 19.** Section 81(4) of the 1988 Act contains no clause to indicate that the grounds for rejection of renewal applications stipulated therein were the sole/exclusive grounds for rejection. Even if it is assumed that the said grounds are exhaustive, clause (4)(b)(ii) of Section 81 indicates that if an applicant has been punished twice or more within 12 months reckoned from 15 days prior to the date of consideration of the renewal application committed as a result of operation of a stage carriage service by the applicant for making unauthorized trips, the renewal can be rejected.
- 20.** Clause (4) (b) (i) (3) of Section 81 provides that plying any vehicle on any unauthorized route is also such a ground for refusal to renew.

- 21.** The second proviso to Section 81 (4) stipulates that no application under that sub-section shall be rejected unless an opportunity of being heard is given to the applicant.
- 22.** In the present case, the petitioner had not been given any such opportunity of hearing prior to rejection of his renewal application.
- 23.** It was only after a demand notice being given by the petitioner through an advocate that the RTA issued a reply disclosing the reasons for such refusal.
- 24.** A scrutiny of the Notification dated December 10, 2018 indicates that there were several pointers in the same to indicate that several auto-rickshaws were then plying on city routes within the jurisdiction of the RTA, Kolkata in an unauthorized manner. The decision to limit the routes, as reflected in the Notification, was taken after much ponderance by a High-Powered Committee. The Notification clearly indicates that ample opportunity was given for regularization of unauthorized auto-rickshaws on 'as is where is' basis by issuing fresh permits for auto-rickshaws within the notified limits.
- 25.** In the present case, since the petitioner was allegedly plying in the entire Howrah and Bally Municipal areas, the petitioner's auto-rickshaw traversed several of the routes stipulated in the Notification of 2018.
- 26.** Although the respondent-authorities could be blamed for having renewed the permit of the petitioner previously in the year 2016 even after the limitation of routes in the year 2004, the said error was mitigated by the Notification dated December 10, 2018, by which

ample opportunity of regularization was given to the auto-rickshaws then plying on routes which had been rendered unauthorized by virtue of the aforesaid Notifications.

- 27.** However, the petitioner did not avail of such opportunity.
- 28.** Thus, it cannot be said that the basis on which the renewal of the auto-rickshaw was refused fell entirely beyond the scope of Section 81(4) of the 1988 Act, since the trips being made by the petitioner in the entire Howrah and Bally Municipal areas were unauthorized and being made on unauthorized routes.
- 29.** Nevertheless, the respondent-authorities were at fault in not giving an opportunity of hearing to the applicant prior to rejection of the renewal application, as per the second proviso to Section 81 (4) of the 1988 Act. Obviously, the scope of such hearing would solely on whether the petitioner had been plying his auto-rickshaw in an unauthorized manner. By admittedly operating in the entire Howrah and Bally Municipal 'areas', as opposed to any of the specific 'routes' designated and demarcated by the Notifications of 2004 and 2018, the petitioner had been in breach of the relevant Notifications, rendering his auto-rickshaw 'unauthorised' within the contemplation of the 2018 Notification.
- 30.** Hence, even if the refusal to renew the petitioner's auto-rickshaw was to be set aside on the technicality of absence of opportunity of hearing, a reconsideration of the petitioner's renewal application, even on giving hearing to him, could not have yielded any different result.

- 31.** In any event, in their reply to the advocate's letter sent by the petitioner, the RTA, Howrah had admitted that the petitioner might apply to accommodate his vehicle in the routes where vacancy was still available for renewal of permit.
- 32.** Although it is worth consideration whether, by virtue of the 2016 Notification, referred to in paragraph no. 16 above, the Kolkata RTA and not the Howrah RTA had jurisdiction to give such reply at that juncture, much does not depend on the reply itself, since the admitted position still remains that the petitioner had been plying area-wise as per the previous permit, which had been rendered obsolete by the 2018 Notification.
- 33.** Hence, no useful purpose would be served by remanding the matter to the concerned RTA for fresh decision upon hearing the petitioner.
- 34.** However, the ends of justice would be sub-served, since the petitioner had no effective opportunity of hearing, if the petitioner is re-heard by the RTA on the question as to whether the petitioner is agreeable to operate on any of the route/routes as prevalent at present by virtue of the 2018 Notification, as it stands amended (if at all) till date.
- 35.** The argument of the petitioner, that the renewal had to be made with regard to the Howrah – Bally Municipal area, cannot be sustained, since it is well within the authority of the respondents to notify specific demarcated routes for plying of auto-rickshaws. Such power can be exercised by the State Government, if so directed by the Central Government, under Section 74(3)(a) of the 1988 Act. The Court, in a judicial review under Article 226 of the Constitution of India, need not

go into the propriety of the policy adopted by the executive within the parameters of law. Since a High-Powered Committee was appointed by the Governor, on whose suggestion, as per the direction of the Central Government, the State Transport Department published the Notifications-in-question, no fault can be attributed to the said decision-making process on the ground of illegality or jurisdictional error.

36. In the light of the above observations, **WPA No.10604 of 2022 is disposed of** by granting liberty to the petitioner to approach the Regional Transport Authority, Kolkata and/or any other RTA exercising the jurisdiction at present in respect of the RTA, Howrah, with a modified application from the applicant seeking issuance of a new permit and/or renewal in respect of a specific route falling under the category of any of the route/routes as stipulated in the 2018 Notification.
37. In the event such an approach is made, the said authority will process such application, upon the petitioner complying with all other formalities, including deposit of fees, and consider whether the existing permit of the petitioner may be renewed or modified terms or whether a new permanent permit may be issued to the petitioner with regard to such renewed application in respect of one or more authorized routes.
38. In the event the petitioner so approaches the concerned RTA, the said authority shall process the same and decide on the same in accordance with law as expeditiously as possible, preferably within

four weeks from making such application and intimate the outcome of the decision to the petitioner immediately thereafter.

39. There will be no order as to costs.
40. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(**Sabyasachi Bhattacharyya, J.**)