

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

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No. 15442 of 2022

**Debashis Das
Vs.
The State of West Bengal and others**

For the petitioners	:	Mr. Sankar Nath Mukherjee, Sk. Samim Aktar, Mr. Niraj Gupta
For the State	:	Mr. Amal Kr. Sen, Mr. Lal Mohan Basu
Hearing concluded on	:	15.07.2022
Judgment on	:	02.08.2022

Sabyasachi Bhattacharyya, J:-

1. The petitioner has challenged a decision of the Regional Transport Authority (RTA), Howrah dated June 29, 2022, whereby the petitioner's application for auto-rickshaw permit on Route AR-3 was rejected. The said decision was taken in terms of an order dated March 11, 2022 passed by a co-ordinate bench in WPA No.9902 of 2019.
2. Learned counsel for the petitioner contends that the RTA, Howrah acted without authority in passing the order since, *vide* Gazette Notification dated October 21, 2016, the RTA, Kolkata had been conferred with the power to exercise jurisdiction over the combined areas of Police Commissionerates of

Kolkata, Howrah, Barrackpore and Bidhannagar. Moreover, by a notification dated June 7, 2016, the composition RTA was nominated. As per Rule 81(1), read with Rule 83(4), of the West Bengal Motor Vehicles Rules, 1989 (hereinafter referred to as, “the 1989 Rules”), the authority so conferred is valid for a period of three years. Hence it is contended that the designated RTA, Howrah had become defunct on the expiry of three years from the notification dated June 7, 2016.

3. Furthermore, the RTA, Howrah, in the impugned decision, arbitrarily specified March 11, 2022 as a cut-off date for the purpose of ascertaining the financial stability of an applicant in terms of Section 74(3) (b) (i) of the Motor Vehicles Act, 1988.
4. The impugned order does not disclose any reason for choosing the said date of order of the coordinate bench as a cut-off date.
5. Learned counsel for the respondent-Authorities, on the other hand, points out that the writ petitioner has contended in paragraph no.18 of the writ petition that the appointment of the RTA, Howrah had expired long back, prior to the decision being taken on June 29, 2022. As such, the RTA Board did not have any existence in the eye of law at the time of passing the said order.
6. However, it is vociferously submitted that the said contention is not only incorrect but has been affirmed to be true to the petitioner's knowledge. Such conduct, without properly ascertaining the current position of law, ought to be deprecated, it is argued.
7. By placing reliance on a subsequent Notification dated August 17, 2021 issued by the Joint Secretary, Transport Department, Government of West

Bengal, it is contended that the tenure of the RTA, Howrah had been extended for a further period of three years as contemplated in Rules 81(1) and 83(4) of the 1989 Rules.

8. It is further contended that the RTA has an administrative authority to stipulate a cut-off date for the purpose of ascertaining the criteria as stipulated in Section 74 for grant of contract carriage permit. In any event, it is argued, an unscrupulous applicant may, immediately prior to applying for an auto-rickshaw permit, deposit lump sum amounts of money in his bank account to establish good financial stability, whereas the same can be manipulated for the purpose of obtaining a permit, even though the applicant may not otherwise have such financial stability. The authorities have to fix up some cut-off date, taken as the date of order of the coordinate Bench in the present case. The said discretion comes within the legitimate domain of administration, it is submitted. Hence, learned counsel argues, there was no illegality in such exercise and, as such, the decision of the authority should not be interfered with under Article 226 of the Constitution of India.
9. Insofar as the territorial jurisdiction of the RTA, Howrah at the relevant time was concerned, learned counsel for the respondents submits that the petitioner himself invited the writ court to pass a direction on the RTA, Howrah to take a decision on the petitioner's application for permit. Thus, the petitioner ought not to be permitted to resile from such position now and claim that the rejection of the petition's application was without jurisdiction.

10. Upon considering the submissions of the parties, the materials-on-record reveal that *vide* Notification No. 2237-WT/3M/25/2011 (Pt.I) dated August 17, 2021 issued by the Transport Department, Government of West Bengal the tenure of the RTA, Howrah had been duly renewed. Such nomination, in terms of Rule 81(1) read with Rule 83(4) of the 1989 Rules, extends till August 16, 2024, which yet to come. Hence, the concerned RTA, Howrah had jurisdiction on such score to decide on the petitioner's application on June 29, 2022, when the impugned order was passed.
11. Another aspect to be considered is that by virtue of the Gazette Notification dated October 3, 2016 published on October 21, 2016 the territorial authority of the RTA, Howrah in respect of the Police Commissionerate of Howrah, among others, had been conferred upon the RTA, Kolkata.
12. Yet, on the petitioner's own writ petition, challenging the resolution of the RTA, Howrah dated March 26, 2019, the writ petition bearing WPA No. 9902 of 2019 had been disposed of on March 11, 2022.
13. The said order was passed by the learned Single Judge in presence of learned counsel for the petitioner and the State at the behest of the petitioner. By the said order, the matter was sent back to the RTA, Howrah to take a considered view on the petitioner's application for grant of contract carriage permit in the light of existing vacancy in the said notified route.
14. Thereafter the petitioner awaited the decision of the RTA, Howrah which was taken subsequently on June 29, 2022. The petitioner participated, along with his learned advocate, at the hearing before the RTA on May 5, 2022 and made his submission regarding grant of auto-rickshaw permit on

route AR-3. Only upon hearing being given to the petitioner, the RTA, Howrah took the impugned decision of rejecting the petitioner's application on June 29, 2022. Thus, it is amply clear that the petitioner totally submitted to the jurisdiction of the RTA, Howrah. It does not now lie in the mouth of the petitioner to take a diametrically opposite stand and challenge the territorial authority of the RTA, Howrah, after having taken a chance and after the petitioner's application was rejected on merits by the RTA, Howrah.

- 15.** Judicial propriety and equitable considerations prevent the petitioner from being permitted to challenge such territorial jurisdiction of the RTA, Howrah at a belated stage, for the first time before the writ court. Such principle is also reflected in Section 21 of the Code of Civil Procedure, which precludes a party to object to the territorial jurisdiction of a court at a belated stage, if not taken at the earliest possible opportunity, before a revisional or an appellate forum. In the absence of any specific Rule on a topic, the principles of the Code are to be imported in writ petitions. Hence, the challenge to the territorial jurisdiction of the RTA, Howrah, levelled by the petitioner in the instant writ petition, cannot but be turned down.
- 16.** Again, no explanation has been offered at all in the impugned decision to take the cut-off date arbitrarily as March 11, 2022 for considering the financial stability of applicants for contract carriage permits. Although the learned Single Judge, in WPA No.9902 of 2019, had passed direction on March 11, 2022 for the RTA, Howrah to re-decide the matter within a period of six weeks from that date by a reasoned order upon hearing all concerned parties including the petitioner, it was never stipulated in the

said order that the relevant criteria for grant of such permit have to be considered on the yardstick as applicable on the date of the order itself.

- 17.** In the absence of the impugned order reflecting any reason for taking the said cut-off date, the same has to be struck down as arbitrary.
- 18.** At a more basic level, the expression “financial stability of the applicant”, as used in Section 74(3)(b)(i), clearly indicates the financial solvency/condition of the applicant at least over a reasonable period of time immediately preceding the application. A proper consideration of stability should include the scrutiny of finances of a person over a reasonable period of time immediately preceding the application; otherwise, the evil of showing inflated income for getting permits cannot be avoided.
- 19.** In the present case, the fixation of cut-off date as March 11, 2022 was arbitrary and unreasonable. It is reflected from the impugned order that the only ground for rejecting the petitioner’s application and the application of others, apart from the successful applicant Abdul Rub Ansari, was based on the sole criterion of financial stability, which was interpreted by the authority to be possessing the maximum bank balance in an applicant’s pass book as on March 11, 2022. Thus, the impugned decision ought to be struck down on such score alone, if not others.
- 20.** Hence, although a “reasoned” order was passed by the RTA, Howrah, in terms of the order of the learned Co-ordinate Bench, the said order has to be set aside on the above grounds.
- 21.** Propriety demands that the matter is remanded again to the appropriate authority having jurisdiction. In view of the Gazette Notification dated October 3, 2016, published on October 21, 2016, which has the force of

law, such re-hearing has to be done by the RTA, Kolkata and/or any other authority which may be currently exercising jurisdiction as on the date of such consideration.

- 22.** In the light of the above observations, **WPA No.15442 of 2022 is allowed**, thereby setting aside the order of the Regional Transport Authority, Howrah *vide* Memo No.826/MV dated June 29, 2022 (Annexure P-9 at page 44 of the writ petition) whereby the RTA selected one Abdul Rub Ansari for the sole vacancy for grant of auto-rickshaw permit on the route AR-3 and precluding the other applicants, including the petitioner. The matter is sent down to the Regional Transport Authority, Kolkata (or any other RTA which may be exercising the jurisdiction for the Howrah Police Commissionerate area as on the date of such consideration), to decide the petitioner's application for grant of permit in respect of Route AR-3 afresh, in the light of the above observations, by giving fresh hearing to the petitioner as well as the other applicants for the same route in respect of the existing vacancy in the said notified route, in accordance with law. A copy of the resultant reasoned order shall be furnished to the petitioner immediately after the date of such order by the concerned RTA.
- 23.** There will be no order as to costs.
- 24.** Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)