

Ct. 05
Item No.03
28.01.2022
(suwendu)

WPA 17583 of 2021
[Via Video Conference]

Uttam Kumar Bhakat & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Debabrata Saha Roy
Mr. Soumen Bhattacharyya
Mr. Neil Basu
.....for the petitioners
Mr. Amal Kumar Sen
Mr. Lal Mohan Basu
.....for the State
Mr. N.I.Khan
Mr. Amlan Kumar Mukherjee
.....for the respondent nos. 7 to14.

The petitioner seeks quashing of a Resolution taken by the State Transport Authority (STA) on 26th February, 2019 and a further Resolution of the Regional Transport Authority, Malda dated 7th February, 2018 to the extent of the Agenda Items in the said Resolution pertaining to approval of the applications for stage carriage permits of the private respondent nos. 7-14.

The petitioner plies his vehicle on the same routes in respect of which the private respondents were granted permits.

The dispute relates to four Notifications/Orders of the State Transport Department relating to registration of vehicles and

issuance of permits subject to compliance of certain conditions. The petitioner has relied on an Order of the State Transport Department dated 26th April, 2013 under which stage carriage permits would be granted for routes outside Kolkata if the 'new vehicle' is BS-III norms compliant.

According to learned counsel appearing for the petitioner, the conditions for grant of permit as would appear from the order dated 26th April, 2013 were not followed in the case of the private respondents whose applications for permits were approved without requiring fulfillment of any of the conditions in the order of 26th April, 2013. It is also submitted that the approval was granted on the basis of an outsider namely, the Sabhapati and the Secretary of a particular bus stand which is not contemplated under the relevant Rules. Counsel also submits that the orders and notifications issued by the State Transport Department lack clarity on the conditions of eligibility for grant of permits.

Learned counsel appearing for the State places reliance on a Notification no. 877 dated 25th February, 2019 clarifying the Order of 28th April, 2013. Counsel also places reliance on a Notification dated 7th August, 2012 by which BS-III norms are applicable for areas outside Kolkata as well as a judgment passed by the learned Single Judge on

26th July, 2018 in WP 5633(W) of 2018 (*Asim Kumar Ghosh and Anothers vs. The State of West Bengal And Others*) on the meaning of the expression 'new vehicle'. Counsel submits that the Notification dated 7th August, 2012 would prevail over the Order dated 28th April, 2013 as clarified in the Notification dated 25th February, 2019 by the State Transport Department.

Learned counsel appearing for the private respondent nos. 7-14 relies on the judgment of a Co-ordinate Bench on the meaning of the expression "new vehicle".

From the submissions of learned counsel appearing for the parties, it is evident that the dispute centres around the criterion for eligibility for grant of permits for vehicles plying in routes outside Kolkata. A composite reading of all the relevant Orders and Notifications, namely the Notification of 7th August, 2012, the Order dated 26th April, 2013 and the Notification dated 25th February, 2019 read with a Resolution of the STA taken on 26th February, 2019 makes it clear that for grant of permits outside Kolkata, the vehicle must be BS-III norms compliant. This condition is specifically reflected in the Notification of 7th August, 2012 and the Order dated 26th April, 2013. The additional requirement of a 'new vehicle' has been explained in

the Resolution of 26th February, 2019 to mean a vehicle which is to be placed afresh against a permit in accordance with the prevailing restriction on BS norms in terms of the Notification dated 7th August, 2012. The term 'new vehicle' has also received a similar explanation in *Asim Kumar Ghosh* which held that a 'new vehicle' does not mean that the vehicle must be purchased from the manufacturer but that the vehicle should not be attached with any other permit at the time of application and must be BS-III norms compliant. The clarification of the Order dated 28th April, 2013 issued by the STA on 25th February, 2019 reiterates the aforesaid meaning of the expression 'new vehicle' and lays emphasis on the prevailing BS norms. Notably, the clarification does not alter the position with respect to the BS-III norms compliance under the Order dated 26th April, 2013 or the Notification dated 7th August, 2012.

Hence, the requirement of the new vehicle being BS-III norms compliant for grant of permit outside Kolkata is retained through all the orders and notifications and is continued by the last Notification dated 25th February, 2019.

The question therefore, is whether this requirement was applied in the case of the private respondents at the time of approval of permits granted to them. The Resolution of the Regional

Transport Authority, Malda dated 7th February, 2018 to the extent of the particular Agenda Items related to the private respondents shows that neither of the conditions required under the Orders and Notifications namely placing a new vehicle for grant of permit and the new vehicle being BS-III norms compliant were applied in the case of the private respondents. The only condition which was applied was the intimation by the Sabhapati and the Secretary of the particular bus stand and the marketing complex, Malda. Sections 71 and 72 of the Motor Vehicles Act, 1988 read with the relevant notifications do not require any such intimation of either the Sabhapati or the Secretary of a bus stand or marketing complex. Further, there is no statutory provision under which the approval or intimation of the Sabhapati or Secretary or any outsider for that matter is considered necessary for grant of permit.

Joint Action Committee of AIR Line Pilots' Association of India (ALPAI) And Others vs. Director General of Civil Aviation And Others; (2011) 5 SCC 435 is relevant in this context. In this decision, the Supreme Court held that the authority who has been vested with the power to exercise its discretion alone can pass the order. *Sant Ram Sharma vs. State of Rajasthan; AIR 1967 SC 1910* which has been cited on behalf of the petitioner for the proposition that the

Government can issue administrative instructions to fill up gaps if the Rules are silent on a particular point, is not relevant in the present case since the mandatory requirement of the new vehicle being BS-III norms compliant finds place from 7th August, 2012 till 25th February, 2019 and continues till date.

Since the conditions for grant of Stage Carriage Permits to vehicles plying outside Kolkata have not been followed in the present case in respect of the private respondents as laid down under the relevant provisions of the Motor Vehicles Act, 1988, WPA 17583 of 2021 is allowed in terms of prayers (a) and (b). The Resolutions of the State Transport Authority dated 26th February, 2019 and Regional Transport Authority, Malda dated 7th February, 2018 to the extent of the approvals granted to the private respondents are set aside.

WPA 17583 of 2021 is disposed of accordingly.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Moushumi Bhattacharya, J.)