

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Moushumi Bhattacharya

WPA 18920 of 2018

With

IA No. CAN 2 of 2021

Avijit Ghosh

Vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Arabinda Chatterjee, Adv.
Ms. Kakali Dutt, Adv.
Mr. Arkadipta Sengupta, Adv.
Mr. Subhajit Das, Adv.

For the State : Mr. Amal Kumar Sen, Adv.
Mr. Lal Mohan Basu, Adv.
Ms. Ashima Das (Sil), Adv.

For the Respondent no. 5 : Mr. Bhaskar Nandi, Adv.

For the Respondent no. 6 : Mr. B. K. Samanta, Adv.

Last Heard on : 16.03.2022.

Judgment on : 01.04.2022.

Moushumi Bhattacharya, J.

1. The petitioner prays for quashing of a resolution dated 27th June, 2018 held at the Board meeting of the Regional Transport Authority (RTA),

Kolkata. The permit of the petitioner was cancelled by the said decision. The impugned decision was passed by the RTA pursuant to an order of a Coordinate Bench dated 15th May, 2018 by directing the authorities to dispose of the proceedings after giving an opportunity of hearing to all the parties. The said order was passed in a writ petition filed by the private respondent no. 5.

2. It appears from the submissions made by learned counsel on behalf of the petitioner that the petitioner purchased a chassis from the dealer on 25th June, 2011 which was thereafter developed into a fully built-up bus. The petitioner registered the vehicle on 10th September, 2011 upon placing a fully functional bus. The petitioner submitted fees for obtaining the registration certificate and the permit was granted on 14th September, 2011 after completion of all formalities. The private respondent no. 5 filed a writ petition being W.P. No. 4924(W) of 2018 against grant of permit to the petitioner which was disposed of by the order dated 15th May, 2018. Counsel submits that after passing of the impugned order, an application was made by the petitioner under The Right to Information Act, 2005 seeking information as to the status of the petitioner's vehicle which was presented for registration. The Registering Authority replied to the petitioner's application by forwarding particulars of the vehicles which were available in their database from which would appear that the fully functional bus was presented by the petitioner to the Registering Authority for registration.

3. According to learned counsel appearing for the State, the automobile dealer offered "Tata Diesel Chassis" to the petitioner for a sum of

Rs.9,33,945/- but that the proforma invoice shows that the invoices were issued without any commitment of delivery. Counsel submits that the receipt for payment of the vehicle does not show that any bus chassis was handed over to the petitioner on the basis of such receipt. Counsel places emphasis on the fact that the automobile dealer handed over a chassis worth Rs. 10 lacs to the petitioner against a down payment of Rs. 5,000/- which is also not corroborated from any of the documents produced by the petitioner.

4. Upon hearing learned counsel, the primary dispute appears to be that the RTA could not accept that the petitioner could develop a complete “bus body” within 48 hours. The RTA found the chain of events presented by the petitioner to be factually unbelievable. The RTA hence concluded that the petitioner/permit-holder had obtained the permit without fulfilling the condition of presenting a fully built up bus as required in law. The petitioner’s permit was cancelled on this basis.

5. The impugned order dated 27th June, 2018 passed by the RTA cancelling the petitioner’s permit is solely based on the presumption that a “bus body” cannot be built within “24/36/48 hours”. The RTA narrates the sequence of events in brief in that the petitioner purchased the chassis of the vehicle on 12.09.2011 and got the same registered on 14.09.2011. The RTA also recorded that the petitioner applied for and obtained the permit on 14.09.2011 i.e. on the same date of getting the vehicle registered. Although the RTA records the petitioner’s submission that the vehicle has been supplied to him about a month prior to the date of payment, i.e. 12.09.2011

and that the body was built within this time frame, the RTA concludes that it is not possible to build the complete vehicle within 24/36 hours of purchasing the chassis, on two presumptions. First, the petitioner could not submit any documentary evidence and second, by reason of an alleged acceptance on the part of the petitioner that it is impossible to build a body within restricted time frame. There is no indication of any reason or factual basis in relation to the alleged acceptance by the petitioner supporting the conclusion of the RTA. Further, the presumption of impossibility becomes even more vague in the final part of the impugned order which is:

“On consideration of all pros and cons, it circumstantially appears that the permit holder had obtained the permit by not fulfilling the permit condition of presenting a fully built up bus and hence the permit is considered and cancelled.”

The RTA has not disclosed what the so-called pros and cons are or the circumstantial evidence which leads to the conclusion that the petitioner could not have built the body within 36/48 hours.

6. The submissions made on behalf of the respondent authorities are in the nature of after-thoughts. This would be evident from the respondents dwelling on an offer letter of 11th May, 2011 with certain conditions and the alleged lack of evidence in relation to a ready vehicle being handed over to the petitioner on 12.09.2011. All these allegations are in aid of and lead to the same presumption, namely, that the petitioner could not have constructed the body of the vehicle from the chassis within 48 hours and hence did not fulfil the permit condition of presenting a fully built up bus to the authorities.

7. The relevant part of the impugned order does not refer to any statutory provision which the petitioner was under an obligation to fulfil and failed, which called for cancellation of the petitioner's permit. The impugned order is based only on facts and surmises without any corroborating material. The impugned order is also vulnerable to challenge by reason of documents produced by the petitioner in relation to an application made under The Right to Information Act, 2005, by which the petitioner sought information as to whether at the time of registration, a ready bus or a chassis was produced. A reply of the Registering Authority dated 28th September, 2018 to the petitioner's application refers to particulars of the "vehicle" being found in the computer database of the Motor Vehicle Department, Alipore. This document is part of records and is material to the petitioner's claim that the petitioner produced a bus (complete vehicle) at the time of registration.

8. Since the RTA did not have occasion to consider this relevant piece of evidence, this Court is of the view that the RTA should reconsider the case afresh taking into account all relevant documents and the facts which would emerge from the documents. The RTA shall be at liberty to hear all necessary parties once again, including the petitioner and the private respondent and pass an order after hearing the relevant parties within a period of six weeks from the date of communication of this order. The RTA shall also take into account whether the petitioner's permit lapsed in the interregnum.

9. The other point which should be noted is that section 44 of the 1988 Act, as it stands, does not require the production of a "transport vehicle" before the registering authority. A Notification dated 28th August 2019 of the

Ministry of Road Transport and Highways, indicates that the proposed amendment to section 44 has not been notified. From the definition of a “transport vehicle” under section 2(47) and “public service vehicle” under section 2(35), it is evident that the petitioner’s vehicle is a transport vehicle and there was hence no requirement for the petitioner to produce the vehicle at the time of registration under section 44 of the Act. The impugned order should also be set aside on this ground.

10. The impugned order dated 27th June, 2018 is set aside for the above reasons and WPA 18920 of 2018 and all connected applications are allowed and disposed of.

Urgent Photostat certified copies of this judgment, if applied for, be given to the respective parties upon fulfilment of requisite formalities.

(Moushumi Bhattacharya, J)