

12.12.2022
rc/ct.no.10
Item No.117

WPA No. 27012 of 2022

Mr. Biswajit Hazra
Mr. Archisman Sain
Mr. Arif Md. Khan ...for the petitioner

Mr. Amal Kumar Sen
Mr. Ashima Das Sil ...for the State

Affidavit of service filed in Court today is taken on record.

On the prayer of the petitioner liberty is granted to expunge the name of the 6th respondent from the cause title of the writ petition. The cause title be amended accordingly.

It is contended on behalf of the petitioner that on 01.12.2022 when the vehicle owned by the petitioner was carrying film sand from Sadar Ghat, Purba Bardhaman to Garfa at Howrah, the vehicle was detained and impounded by the respondents and fine/penalty to the extent of Rs.36,000/- was imposed upon the petitioner on three fold grounds :-

Firstly, the vehicle was carrying excess load; secondly, the vehicle was being driven dangerously and thirdly, the driver was not holding of valid and effective driving licence.

It is submitted on behalf of the petitioner that it shall appear from the copy of the driving licence of the driver Sk. Mansur appearing as Annexure at page 18 to the writ petition that the driving licence of the driver was

valid at the relevant time. The allegation of dangerous driving has been denied by the petitioner.

Learned counsel has referred to a notification issued by the Ministry of Road Transport and Highways (Transport Division), Government of India issued on 16.07.2018 as amended on 06.08.2018 which has been adopted by the State of West Bengal which demonstrates that tolerance upto 5% in the gross vehicle weight shall be allowed for the purpose of compliance to sub-section (3) of Section 113 of the Motor Vehicles Act, 1988. It is submitted that taking into account the said latitude granted by the notification, the vehicle was carrying an excess weight of only 355 kilograms for which fine of Rs.36000/- has been imposed.

Per contra, learned counsel for the respondent submits that in terms of Section 181 of the Motor Vehicles Act, 1988 whoever drives a motor vehicle in contravention of Sections 3 and 4 of the Act shall be punishable with imprisonment or with fine or with both. Referring to Section 3 of the Motor Vehicles Act, 1988, learned counsel has submitted that the driver was unable to produce a valid driving licence before the authority at the relevant time for which fine has been imposed upon him.

Learned counsel further submits that the petitioner may be granted the latitude offered by the notification referred to earlier and the fine amount for the same may be adjusted accordingly.

Since the matter involves factual disputes, the petitioner seeks to submit a representation before the concerned authority ventilating his grievance and prays for a direction upon the authority to consider his representation at the earliest since his vehicle laden with goods is lying impounded with the authority.

In view of the above, the writ petition is disposed of with liberty to the petitioner to submit a comprehensive representation ventilating his grievance before the 5th respondent within 7 days from date. The 5th respondent is directed to consider and dispose of the representation within two weeks from the date of receipt thereof upon affording reasonable opportunity of hearing to all the interested parties including the petitioner, in accordance with law.

The decision taken by the authority shall be communicated to the petitioner within a week thereof.

With the above observations and directions this writ petition is disposed of.

There shall be, however, no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be furnished to the parties upon compliance of necessary formalities.

(Suvra Ghosh,J)

