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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO 546/2019

SK. NURUL AMIN
VERSUS
STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble Justice SUVRA GHOSH

Date : 15th December, 2022.

APPEARANCE:

Mr. Dilip Kumar Samanta,Adv.
Biswapriya Samanta,Adv.
...for the petitioner.

Mr. Amal Kr. Sen,Adv.
Ms. Ashima Das (Sil),Adv.
...for State

Mr. Sattwik Bhattacharyya,Adv.
Mr. Aashutosh Bhattacharyya,Adv.
...for private respondent no. 5

The Court:-The State respondents do not intend to use any affidavit-in-opposition.

The Resolution taken by the State respondents in its meeting held on 2nd August, 2019 has been assailed in the writ petition.

It is submitted on behalf of the petitioner that the authority has taken this Resolution in utter violation of the direction given by the Hon'ble Division Bench.

Learned counsel has referred to Rule 114 of the West Bengal Motor Vehicles Rules, 1989 which indicates that the authority shall summarily reject an application for permit, if the applicant fails to furnish the papers and documents which the applicant has been asked to furnish along with the application. Learned counsel further submits that since the direction of the Hon'ble Division Bench has not been complied with by the authority, the authority be directed to revisit their decision in compliance with the said order.

Learned counsel for the State respondents, in his usual fairness, has submitted that there is no clear indication in the Resolution impugned as to compliance of the order of the Hon'ble Division Bench.

Learned counsel for the private respondent submits that despite complying with all formalities and depositing prescribed fees, permit has not been issued in his favour since 2007.

The operative portion of the order of the Hon'ble Division Bench passed on 21st August, 2018 in APO No. 215/2018 is set out :-

“We remand the matter back to the said authority to consider the matter fresh, first on the preliminary point whether the application of the private respondent was in an incorrect form and ought to have been rejected within a month of communication of this order and if the answer to the said question is in the negative, a decision on merits. We also direct that even if it is found that the application was defective, an opportunity should be given to the respondent no. 5 to make a fresh application or correct the existing

application. The decision on merit should be made within two months of communication of this order, upon hearing the parties and by a reasoned order. Any observation made by this order with regard to the merits of this matter is to be treated as tentative.

The Resolution of the State Transport Authority dated 15th September, 2017 is set aside.”

In the Resolution impugned, it is only recorded that the application of the private respondent was in form IA and the application of the petitioner was in form I. The authority did not proceed to ascertain whether the application of the private respondent was in correct form, as directed by the Hon’ble Division Bench.

It is crystal clear from the said Resolution that the direction of the Hon’ble Division Bench has not been complied with by the authority in dealing with the matter.

In view of the above, the Resolution taken by the State Transport Authority on 2nd August, 2019 is set aside.

The matter is remanded back to the State Transport Authority, being the 2nd respondent herein, to reconsider the issue in terms of the direction of the Hon’ble Division Bench in APO No. 215/2018. The authority shall complete the exercise within four weeks from the date of communication of this order upon affording reasonable opportunity of hearing to all the interested persons including the petitioner, in accordance with law.

The learned Counsel for the private respondent prays for stay of this order. Such prayer is considered and rejected.

The application, being WPO No. 546/2019 is accordingly disposed of.

There shall however be no order as to costs.

Urgent certified website copies of this order, if applied for, be made available to the parties subject to compliance with all requisite formalities.

(SUVRA GHOSH, J.)