IA No. GA 1 of 2022
APOT No. 82 of 2022
with
WPO No. 1926 of 2022
IN THE HIGH COURT AT CALCUTTA
In Appeal from its
CONSTITUTIONAL WRIT JURISDICTION
CIVIL APPELLATE JURISDICTION

Md. Waris Ali
Versus
State of West Bengal & Ors.

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon’ble Justice BIVAS PATTANAYAK
Date: 21st June 2022

Appearance:
Mr. J. K. Gupta, Advocate
Mr. P. Haldar, Advocate
Mr. A. Rasul, Advocate
Mr. P. K. Jajodia, Advocate
for the appellant

Mr. Amal Kr. Sen, Advocate
Mr. Lal Mohan Basu, Advocate
for the State

The Court: We formally admit the appeal from a judgment and order dated 25th April 2022 made by a learned single judge of this court in a writ application.

By the impugned judgment and order the learned judge relegated the appellant/writ petitioner to the alternative remedy of an appeal under section 9 of the West Bengal Motor Vehicles Tax Act, 1979 (hereinafter referred to as the “Tax Act”)

Mr. Gupta, learned advocate for the appellant/writ petitioner cited the impugned notice of the respondent authority dated 6th April 2021 (Annexure P4 at page 43 of the petition) and submitted that it alleged violation of the Motor Vehicles Act, 1988 relating to non-payment of taxes, plying of bus without permit and so on. Undoubtedly, any remedy arising out of any wrongful tax demand by the respondent authority is under section 9 of the Tax Act. All the allegations in the impugned notice have not been taken care of by the said provision, especially the one relating to plying the bus without permit, he submitted.

Mr. Sen, learned advocate for the respondent very rightly points out that if the allegation of plying the bus without permit is proved against the appellant petitioner, he will be liable to pay 17 weeks' tax under schedule B of the said Tax Act. Any grievance with regard to this would also be covered by section 9 of the Tax Act.

In those circumstances, we are of the view that the writ application was very rightly not entertained by the trial court and relegated to the alternative remedy under section 9 of the said Tax Act.

We dispose of this appeal affirming the order of the learned trial judge. We also make it clear that all questions of fact relating to payment of tax, possession of permit etc. shall be decided by the respondent authority under section 9 if and when it is approached. The respondent authority, when moved, would dispose of the matter as early as possible by a reasoned order after hearing the parties.

We add that if the appellant/petitioner approaches the said respondent authority within four weeks from date, any prosecution of the appellant contemplated by the respondent authority under section 192A of the Motor Vehicle Act, 1988 could be commenced only after proper finding of facts by the authority.

The appeal (APOT 82 of 2022) and the connected stay application (IA No. GA 1 of 2022) are accordingly disposed of.

(I. P. MUKERJI, J.)

(BIVAS PATTANAYAK, J.)

R. Bose