

WPO/1065/2015

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SWAPAN KUMAR DEY
Vs
THE STATE OF WEST BENGAL & ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 2nd May, 2022.

Appearance:

Mr. Sankar Nath Mukherjee, Adv.

Sk. Samim Akhtar, Adv.

Mr. Amal Kr. Sen, AGP

Mr. Lal Mohan Basu, Adv.

The Court: The grievance of the petitioner is that the petitioner was by-passed to select one Md. Arif Hussain, without following the due yardsticks as stipulated for the said selection, for the purpose of granting permit for an inter-State stage carriage to be plied between West Bengal and Jharkhand.

Initially, a decision was taken to the effect that the present writ petitioner would be granted permit in respect of the concerned route subject to production of EURO-II ready bus (Model 2004) having seating capacity of 51 passengers. Such decision was taken as long back as on May 30, 2007.

Subsequently, the petitioner was intimated that the petitioner's selection had been done inadvertently and a temporary permit was granted to the petitioner. By a decision taken on January 21, 2010, it was decided by the authorities that the State Transport Authority, West Bengal, had

resolved to inform the petitioner that it was not able to grant permit without concurrence of STA, Jharkhand.

Initially, the CSTC was one of the successful candidates which got such permit, along with another candidate but, later, it was discovered by the petitioner that the CSTC had not been plying its vehicle on the route as per the permit granted to the CSTC. Thus prompted, the petitioner moved Court again and, vide order dated May 14, 2015 passed in W.P. 8033(W) of 2015, a Co-ordinate Bench of this Court disposed of the writ petition by specifically directing the State Transport Authority, West Bengal to consider the fresh application of the writ petitioner for grant of permit for the route in question, if necessary by affording the petitioner an opportunity of hearing. The STA, West Bengal, was also observed to be free to consider any other eligible applicant for grant of the permit in question and to take a decision “purely on the merits of the issue”.

Subsequently, the petitioner’s application was considered along with certain other candidates, including one Md. Arif Hussain and ultimately, by a decision dated July 10, 2015, the respondent authorities decided to approve the application of the said Md. Arif Hussain in preference over the petitioner and the other applicants, since the said successful candidate was owning and possessing a ready vehicle registered on June 1, 2015 which was of the then latest model in comparison to the vehicles offered by the other applicants.

It is contended by the petitioner that the criterion of the newest vehicle being given preference was never there in the original process of

granting permit. Such new yardstick could not have been validly introduced later by the authorities to refuse the petitioner's application, it is contended.

That apart, learned counsel for the petitioner seeks to submit that during the previous relevant period, one Nitai Kumar Barik, who had also applied with the petitioner previously for such permit, was granted a permit from November 5, 2014 as per the decision dated July 10, 2015 itself.

It was further reflected in the July 10, 2015 decision that the said permit of Nitai Kumar Barik was valid up to August 11, 2015. Learned counsel for the petitioner also contends that the said grant of permit to Nitai Kumar Barik was not valid in the eye of law, in preference to the petitioner.

Learned counsel appearing for the respondent authorities, by elaborately placing the decision dated July 10, 2015, which is primarily impugned in the present writ petition, submits that sufficient plausible reasons were given for selecting Md. Arif Hussain over the petitioner and the other applicants.

It is further submitted that the yardsticks applied were those of prudence befitting a normal person and could not be found fault with.

Upon considering the materials on record, it is evident that the decision taken on July 10, 2015 was on the basis of a fresh exercise, upon inviting fresh applications from eligible candidates, including the present petitioner. Such exercise was undertaken by the dint of the direction dated May 14, 2015 passed by the learned Single Judge in W.P. 8033(W) of 2015.

It was categorically mentioned by the learned Single Judge that the petitioner, if necessary, would be afforded an opportunity of hearing and the decision shall be taken purely on the merits of the issue.

As such, it is evident that the said selection in question did not have any connection with the previous selection, where the writ petitioner had been refused a permit on entirely different grounds.

Hence, the parity and analogy sought to be drawn between the yardsticks of the two selection processes by the petitioner is not tenable in the eye of law. It is seen from a plain reading of the impugned decision dated July 10, 2015 that the process of selection and the method of arriving at the decision could not be faulted in any manner whatsoever. The reason for selection of Md. Arif Hussain over the petitioner and others was clearly given in the decision, being that the successful candidate had offered the newest vehicles. Thus, the decision-making process was transparent.

Since the said criterion is not absurd or patently *mala fide*, under Article 226 of the Constitution of India, there should not be any interference with such a purely administrative decision.

Since none of the criteria of interference, as well-settled by several decisions of this Court and the Supreme Court, are met in the instance case, the writ petition fails.

Accordingly, WPO/1065/2015 is dismissed without any order as to costs.

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

(SABYASACHI BHATTACHARYYA, J.)