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03.10.2023
Ct. No.10
b.das

WPA 14494 of 2023

Md. Salahuddin

Vs.

The State of W.B. & Ors.

Mr. Soumen Bhattacharya

Mr. Ankan Das

...for the petitioner.

Mr. Amal Kr. Sen

Mr. Lal Mohan Basu

...for the State.

Mr. N. I. Khan

...for respondent no.5.

Mr. B. K. Samanta

...for respondent no.6.

Heard learned counsels for the parties.

The petitioner has assailed the resolution taken by the RTA Board on 12th April, 2023 turning down the prayer of the petitioner for issuance of permit. The resolution suggests that educational qualification of the applicants was taken into consideration by the Board and marks allotted to each applicant on the basis of their educational qualification.

Learned counsel for the petitioner submits that there is no provision under the Motor Vehicles Act, 1988, particularly Section 71(3)(d) of the Act for evaluation of applications on the basis of educational qualification of the applicants.

Learned counsel has placed reliance on the authority in S. K. Ali Haque Vs. State of W. B. & Ors. reported in (2012) 2 Cal LJ 405. The judgment, in turn, refers to the

authority in Commissioner of Income Tax Vs. Anjum M.H. Ghaswala reported in (2002) 1 SCC 633 wherein it is held by the Hon'ble Supreme Court that it is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself.

Learned counsel prays for reconsideration of the applications and submits that if the educational qualification of the applicants are not taken into consideration by the Board, the private respondent no.5 and the petitioner shall be eligible for the permits.

Learned counsel for the State respondents, in his useful fairness, submits that there is no provision in the Act of 1988 for consideration of educational qualification of the applicants for grant of permit. Learned counsel submits that the 2nd respondent be directed to reconsider the applications, in accordance with law.

Learned counsel for the 6th respondent places reliance on Rule 109 of the West Bengal Motor Vehicles Rules, 1989 and submits that preference shall be given to the educated unemployed in granting permits. It shall be profitable to set out Rule 109 of the West Bengal Motor Vehicles Rules, 1989:

“109. Preference in granting Stage Carriage Permit.—Under sub-clause (iii) of clause (d) of sub-section (3) of section 71 of the Act, and financial stability and satisfactory performance including payment of tax, a preference shall be given to the educated unemployed project affected persons,

applicant having a Diploma in Automobile Engineering and/or a Diploma in Tourism or Transport Management from recognised Institute, or a Travel Agent recognised by India Tourism Development Corporation or the West Bengal Tourism Development Corporation.”

The 6th respondent having been a permit holder for seven years as reflected from the resolution taken by the Board cannot be termed as an educated unemployed person.

Learned counsel for the 5th respondent submits that even if educational qualification of the applicants is not taken into consideration, the marks obtained by the 5th respondent shall be the highest.

Upon consideration of the submission made on behalf of the parties, this Court is inclined to hold that since there is no provision in the Act of 1988 for consideration of educational qualification of the applicants for grant of permit in a particular route, the resolution taken by the Board is de hors the statute and is required to be revisited.

The resolution taken by the 2nd respondent on 12th April, 2023 is set aside/quashed.

Accordingly, the writ petition is disposed of directing the 2nd respondent to consider the applications submitted by the applicants including the petitioner and the private respondents on the basis of other parameters recorded in the resolution dated 12th April, 2023 except the educational qualification of the applicants.

The resolution shall be taken upon affording reasonable opportunity of hearing of all concerned including the petitioner and the private respondents within two weeks from the date of communication of this order strictly in accordance with law, particularly the provision laid down under Section 71(3)(d) of the Motor Vehicles Act, 1988.

However, there shall be 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 supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)