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jdt.

29.08.2023
jb.

W.P.A. 13118 of 2011
Subrata Ghosh & Ors.
vs.
State of West Bengal & Ors.

Mr. Debabrata Saha Roy
Mr. Subhankar Das
Mr. Sankha Biswas
.... For the Petitioners

Mr. Pantu Deb Roy
Mr. Subrata Guha Biswas
.... For the State

Re: CAN 4 of 2022

By consent of the parties CAN 4 of 2022 is treated as on day's list.

The application is not pressed by the applicants-petitioners and is, therefore, dismissed for non-prosecution.

Re: W.P.A. 13118 of 2011

Heard learned counsels for the parties.

The petitioners assail the decision taken by the Secretary, Regional Transport Authority, Kolkata Region for obtaining approval/*post facto* approval of the Transport Department for permitting diversion of buses in the route on rotational basis from Howrah Maidan to Raja Bazar instead of Howrah Maidan to Mahishbathan.

The petitioners are operators in route No. 71 from Howrah to Mahishbathan, major portion of the route lying within the domain of the Regional Transport Authority, Kolkata. The petitioners applied for diversion of route from Howrah Maidan to Raja Bazar instead of the existing route from Howrah Maidan to Mahishbathan which was accepted by the Secretary, Regional Transport Authority in the meeting held on 5th May, 2011 subject to approval of Transport Department. Proposal of the petitioners for permission to ply 50% buses of the route on rotational basis from Howrah Maidan to Raja Bazar was also accepted subject to *post facto* approval of the Transport Department.

Learned counsel for the petitioners has taken this Court to Section 68 of the Motor Vehicles Act, 1988 which envisages that the State Government shall by notification in the Official Gazette, constitute for the State a State Transport Authority to exercise and discharge the powers and functions specified in sub-section (3), and shall in like manner constitute Regional Transport Authorities to exercise and discharge throughout such areas as may be specified in the notification in respect of each Regional Transport Authority; the powers and functions conferred by or under this Chapter on such Authorities. Learned counsel also places reliance on the provision laid down

under Section 72 of the Act which deals with grant of stage carriage permit as well as Section 80(3) with regard to variation of conditions of permit by the inclusion of a new route or routes or a new area or by altering the route or routes or area covered by it. According to the learned counsel, since the State Transport Authority and the Regional Transport Authorities have been vested with the power to deal with the proposal of the petitioners, approval or *post facto* approval of the Transport Department is not required for accepting such proposal.

Section 68 of the Act of 1988 empowers the Regional Transport Authorities to deal with issuance of permits and alteration of routes as independent authorities and there is no provision under the law which requires approval/*post facto* approval of the Transport Department in this regard.

Legal sanction to such approval/*post facto* approval has not been substantiated by the respondents.

Upon consideration of the submission made on behalf of the parties as well as the law on the point, this Court is inclined to hold that in the letter dated 12th May, 2011 accepting the proposal of the petitioners for diversion of the route from Howrah Maidan to Raja Bazar instead of Howrah Maidan to Mahishbathan subject to approval of the Transport Department the

portion “subject to approval of the transport department” is *de hors* the law and be expunged. Similarly, in the letter dated 15th July, 2011 accepting the request for allowing plying of 50% buses on this route on rotational basis from Howrah Maidan to Rajabazar, the portion ‘*post facto* approval in support of this decision of RTA, Kolkata will be taken from the Government in Transport Department” be expunged.

The writ petition is accordingly disposed of directing the concerned authority being the third respondent herein, to accept the proposal of the petitioners in terms of the resolutions taken in its meetings dated 5th May, 2011 and 14th July, 2011 respectively as communicated vide letters issued on 12th May, 2011 and 15th July, 2011 respectively within one month from the date of communication of this order.

There shall be no order as to costs.

All connected applications are disposed of.

Urgent certified website copy of the order, if applied for, be given to the parties on compliance of requisite formalities.

(Suvra Ghosh, J.)