

31.03.2023
rc/ct.no.10
Item No.312

WPA No. 17233 of 2019

Mr. Barun Kumar Samanta ...for the petitioner

Mr. Amal Kumar Sen
Mr. Lal Mohan Basu ...for the State

Heard learned counsels appearing on behalf of the parties.

The resolution taken by the Regional Transport Authority, Kolkata on 6th May, 2019 in compliance with the order passed by a coordinate Bench of this court on 9th April, 2019 in WP No. 4578(W) of 2019 is assailed in the writ petition. By the said resolution, the petitioner's prayer for grant of stage carriage permit in route no. 71 was turned down for the reason that the fleet strength of the route was 40 and there was no vacancy in the said route. The resolution states that WBTIDCL owned vehicle was plying in excess of fleet strength of 40 and was the 41st vehicle in the route. Since the said vehicle stopped plying, the number of vehicles in the route stands at 40. The said statement is contrary to the report submitted on behalf of the respondents. The report indicates that the vehicle indicated in the resolution was the 30th vehicle and not the 41st vehicle as stated in the resolution.

In the earlier writ petition the petitioner submitted that he applied for permanent stage carriage permit at

route no. 71 to the vacancy created by the 24th permit holder. The petitioner further submitted that since one permit was allotted in excess of the notified strength of 40 and the fleet strength was allowed at 40+1, with the 24th vacancy having arisen, the Regional Transport Authority, by its agenda no. 4 dated 15th November, 2018 chose to absorb the additional permit of 40+1 against the notified vacancies of 40 by adjusting the additional permit against the 24th vacancy. The submission made on behalf of the respondent authorities before this Court is identical to the one made in the earlier writ petition. In both the writ petitions learned counsel for the State-respondents has submitted that the RTA, Kolkata has treated the total number of vacancies at 40 and in view of Section 71 of the Motor Vehicles Act, 1988, there is no scope for considering the case of the petitioner beyond the 40 vacancies in the route.

Upon consideration of the submission made on behalf of the parties the coordinate Bench disposed of the writ petition by the following order which is set out hereunder:-

“Having heard the parties and considering the materials placed, this Court is of the view that the 24th vacancy created within the notified strength of 40 requires to be treated as a distinct vacancy within the notified vacancy position. The RTA, Kolkata cannot at this stage legalise the 41st permit holder

by adjusting his additional permit against the 24th vacancy on the logic of depressing the collective vacancy to 40.

The petitioner, therefore, deserves to be considered against the 24th vacancy as created treating the notified strength to be 40. It will be open to the RTA, Kolkata to treat the additional vacancy of one beyond the notified strength of 40 in the manner as deserving per law.

With the above observations, the matter is remanded to the RTA, Kolkata for taking a fresh decision on the issue at its earliest convenient Board Meeting.”

The order of the coordinate Bench is crystal clear and does not require further clarification. The Court held that the 41st permit holder could not have been adjusted against the 24th vacancy in order to restrict the fleet strength to 40. The Court decided that the petitioner deserved to be considered against 24th vacancy as created treating the notified strength to be 40. A fresh decision was directed to be taken by the authority on the issue of treating the additional vacancy of key and the notified strength of 40 in the manner as deserving per law. In other words, it was decided by the coordinate Bench that the petitioner was entitled to be adjusted against the 24th vacancy treating the notified strength to be 40. There was no further scope for the authority to reconsider the issue

in violation of the order of the Court. The limited scope for the authority was to take a decision on the additional vehicle which was granted permit despite there being no vacancy at the relevant point of time.

In view of the above, this Court is inclined to hold that since clear and unambiguous direction was given by the coordinate Bench to the authority in the earlier writ petition, the authority could not have taken the resolution impugned in violation of the said order.

Accordingly, the resolution impugned in so far as the vehicle of the petitioner is concerned be set aside.

The concerned authority, being the 2nd respondent herein is directed to comply with the direction of this Court given the order dated 9th April, 2019 in WP No. 4578(W) of 2019 in its letter and spirit within two weeks from the date of communication of this order.

With the above observations and directions this writ petition is disposed of.

There shall be, however, 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 furnished to the parties upon compliance of necessary formalities.

(Suvra Ghosh,J)