

21-09-2023
ct no. 13
sl. no. 10
pk

F.M.A. No. 1311 of 2022
Nand Kishor Shaw & Ors.
-Versus-

State of West Bengal & Anr.

Mr. Gunjan Sinha @ Kanishk Sinha

...for the appellants

Mr. Amal Kumar Sen, ld. Sr. Adv.,
Mr. Subrata Guha Biswas

...for the State

1. The appellants challenge the judgement and order dated 1st August, 2022 passed by a Single Bench of this Court in WPA 9705 of 2022.
2. By the impugned judgement, the writ petition was dismissed, inter alia, on the ground that the respondents acted in accordance with law.
3. The brief facts relevant to the case are that the seven petitioners, in December, 2018 applied for permits to ply auto-rickshaws on Route No. AR-3 i.e. Howrah to Don Bosco School, Liluah. They have the following grievances:-
 - a. Their applications were rejected, contrary to law.
 - b. Subsequent notification of vacancies published under Section 80 of the Motor Vehicles Act was not enough to come to the notice of the petitioners.

- c. While filling up 150 vacancies in the said route, the petitioners were within the zone of consideration and persons who ranked below the petitioners have been granted permits.
4. Learned counsel for the appellants would argue that Section 80 of the Motor Vehicles Act must be read in consonance with Section 23 of the General Clauses Act 1897. The latter section mandates upon a statutory authority to publish vacancies even in Motor Vehicles Rules, in local newspapers.
5. The petitioners claim that they have been wrongfully deprived of auto rickshaws permits and certain persons favourable to the Government have been so granted permits.
6. Mr. Amal Kr. Sen, learned AGP, appearing for the State submits that prior to 2018, a large number of permits for plying auto rickshaws were already existing. Such permits were issued in an area wise manner.
7. By the notification dated 2004 under Section 74(3)(a) individual and distinct routes were created and the policy on issuing limited permits route wise was to be followed. Serious problem was faced by the State at the relevant point of time in filling up vacancies route wise. The problem was

that the existing permit holders of auto rickshaws already fell within the newly demarcated routes having valid permits under the earlier area wise permit allocation system.

8. It is submitted by Mr. Sen, as also stated in the affidavit-in-opposition in the Court below that to streamline the entire system of granting permits route wise and to ensure that the existing permit holders are not deprived of rights, a certain number of existing permit holders under the earlier regime were granted formal permits under the new route wise permit system.
9. Even after accommodating all existing permit holders, a few vacancies remained in various routes and particularly route AR – 3.
10. The petitioners' applications thereafter came to be considered. While considering the petitioners' applications in terms of order of this Court, the RTA had received many more applications for the same route. The petitioners' cases were considered along with the others who had already applied but there were no vacancies left to accommodate the petitioners any further.
11. This Court notices that the aforesaid stand of the RTA has been indicated in addressing affidavit-in-opposition filed in the Court below.

The writ petitioners have deliberately and wilfully chosen not to challenge such averments.

12. In the backdrop of the above, the arguments of any lacuna in the selection process adopted by the RTA for holding a permit in route AR-3 becomes rather academic.
13. There may be some substance into individual grievances raised by the petitioners. If the same are entertained, they would not upset a number of awarded permits on a particular route, but could also deprive existing permit holders of rights.
14. For, inter alia, the reasons stated hereinabove, this Court is not inclined to interfere with the impugned judgement and order dated 01.08.2022 rendered by the Single Bench.
15. This Court directs that henceforth all vacancies in any permit on any route would be indicated and published on the website of the concerned RTA in the State.
16. The petitioners may take note of the same and apply in accordance with law.
17. It is expected that the State puts in place a comprehensive and transparent process of allocation of route permits for auto rickshaws in future in the State.

18. The Principal Secretary, Transport Department shall communicate a copy of this order to all RTAs in the State.
19. Mr. Sen shall communicate this order to the Principal Secretary, Transport Department, Government of West Bengal.
20. The instant appeal is disposed of.
21. There shall be no order as to costs.
22. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)