

14.03.2023
rc/ct.no.10
Item No.162

WPA No. 22404 of 2022

Mr. Sankar Nath Mukherjee
Mr. Niraj Gupta
Mr. Samim Aktar
Mr. Priyabrata Saha ...for the petitioner

Mr. Ansar Mondal
Mrs. Sreelekha Bhattacharjee ...for the State

Mr. Surendra Kumar
Mrs. Amrita Pandey
Mr. Ghanshyam Pandey
Mrs. Sneha Singh
...for the respondents no. 5 to 7

Heard learned counsels appearing on behalf of the parties.

In terms of the reciprocal transport agreement executed by and between the State of West Bengal and the State of Bihar, the Deputy Secretary, State Transport Authority, West Bengal, by a communication made to the Secretary, State Transport Authority, Bihar on 14th September, 2020 requested the latter to countersign the permit issued in favour of the petitioner in regard to the inter-state route Siliguri to Banka via Dalkhola, Purnea. The Secretary, State Transport Authority, Bihar being the 7th respondent herein refused to endorse such counter signature with an observation that since the route covers a total distance of more than 250 kilometers, two vehicles

ought to be placed upon payment of double amount of the permit fees. Such refusal is assailed in the writ petition.

At the outset, learned counsel for the respondents challenges the maintainability of the writ petition on the ground that alternative efficacious remedy was available to the petitioner under Section 89(d) of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act of 1988”). It is a fact that under Section 89(d) of the Act of 1988 an appeal lies against an order of refusal by the Regional Transport Authority to countersign a permit or by any condition attached to such counter signature. The Hon’ble Supreme Court of India, in a plethora of decisions, has observed that mere availability of alternative remedy is not a bar to exercise discretionary jurisdiction under Article 226 of the Constitution of India, more so, if the issue does not involve complicated questions of fact which are required to be adjudicated upon taking evidence.

Learned counsel for the petitioner has placed reliance on the authority in *Subrata Kumar Maity Vs. State of West Bengal & Ors.* reported in 2008(3) WBLR (Cal) 706 in this connection.

In view of the same, this Court is inclined to hold that the writ petition is maintainable in its present form since the issue involves interpretation of clause A(ix) of the agreement upon plain reading of the same. .

On merits, clause A(ix) of the reciprocal transport agreement by and between the State of West Bengal and

State of Bihar demonstrates that where the total distance of the route is 250 kilometers or more 2 vehicles can be allowed under a single permit subject to the condition that the permit holder shall pay double permit fees. It is crystal clear that the agreement does not mandate placement of 2 vehicles under a single permit where the total distance of the route is more than 250 kilometers. It is purely the discretion of the permit holder as to whether he shall place a single vehicle or two.

In view of the recital of the agreement itself, the concerned authority being the 7th respondent could not have refused counter signature to the permit of the petitioner on such grounds. Since the said respondent is bound by the terms of the agreement, under no circumstances can he interpret the same according to his whims and fancies and thereby turn down the legitimate request of the petitioner. For the said reason, the letter of refusal issued by the 7th respondent on 24th August, 2022 is set aside.

The 7th respondent is directed to issue the counter signature to the permit issued in favour of the petitioner in terms of the letter issued by the Deputy Secretary, State Transport Authority, West Bengal on 14th September, 2020 subject to the petitioner/permit holder complying with all necessary formalities.

The entire exercise shall be completed by the 7th respondent 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)

Later:

After pronouncement of this order learned counsel for the respondent nos. 5 to 7 prays for stay of the order. The same is considered and rejected.

(Suvra Ghosh,J)