

**WPA 10525 of 2020
WPA 5280 of 2019
(Reference file)**

Pradip Dutta & ors.
Vs.
The State of West Bengal & Ors.

Adv. Samim Ahmed,
Adv. Amibya Khatun

...for the petitioners.

Adv. Amal Kumar Sen,
Adv. Asima Das (Sil),
Adv. Lal Mohan Basu,

...for the State.

Heard learned counsels for the parties.

The notifications issued on August 14, 2018, December 10/18, 2018 and March 31, 2017 are assailed in the writ petition.

The notification issued on December 18, 2018 demonstrates that the same was issued in supersession of the notification no. 1276-WT/4M-23/95 PtI dated 31st March, 2017. Therefore, the notification dated 31st March, 2017 is non-est as on this date.

Challenging the maintainability of the writ petition, learned counsel for the respondents has submitted that an earlier writ petition challenging the notifications dated August 14, 2018 and December 18, 2018 has been decided by a coordinate Bench of this Court by an order passed on 12th March, 2019 in WP 5280 (W) of 2019. The said order was carried in appeal and by an order passed on 14th June, 2019 in MAT 5621 of 2019 with CAN 4126 of 2019, an

Hon'ble Division Bench of this Court modified the impugned notifications and directed implementation of the same by the Government by using their discretion reasonably, fairly and without practising any malicious discrimination between the new auto rickshaw and the unauthorised auto rickshaw in registration under the impugned notifications.

Learned counsel submits that since the matter has been adjudicated by this Court earlier, the same cannot be reopened in the present writ petition.

Speaking in support of his claim, learned counsel for the petitioners submit that the earlier orders were passed without consideration of a judgment passed by a coordinate Bench of this Court in a batch of writ petitions on March 28, 2014 since the said judgment was not brought to the notice of the Courts when the matter was adjudicated. Learned counsel further submits that in the said judgment, this Court placed reliance on an order passed in WP 22994 (W) of 2009 on January, 2010 by a coordinate Bench of this Court directing the State Government to consider the desirability of framing an appropriate policy in the matter pertaining to the grant of auto rickshaw permits. Relevant portion of the order is set out hereinbelow:

“Unless the State Government frames a policy laying down qualifications and criteria for grant of an auto rickshaw permit, a Regional Transport Authority, on its own, cannot take such a decision. It is true that if Auto Rickshaws are allowed to ply on bus routes, there may be severe traffic congestion or risk to the safety of passengers travelling in such auto rickshaw, but unless the State Government formulates a policy, the

rejection by an authority on a ground which is not within the policy of the State nor within the statute, cannot be allowed to be sustained.

Accordingly, the order and/or the Resolution of the Regional Transport Authority, Nadia, taken on 18/7/2009 is set aside and the matter is remanded to the said authority for a reconsideration and for taking a fresh decision in accordance with law within a period of four weeks from the date of receipt of a copy of the order.

Simultaneously, let a plain photocopy of this order be handed over and served upon the learned Advocate General, State of West Bengal, for consideration of the observations made above and for taking up the matter with the Government for considering the desirability of framing an appropriate policy in the matter pertaining to the grant of auto rickshaw permits.”

Referring to the said order, this Court refused to interfere with the impugned notification issued by the Government on 29th January, 2010 laying down guidelines to be followed in respect of granting permits for three wheeled auto rickshaws in the State.

Learned counsel submits that the said notification dated 29th January, 2010 which has been upheld by this Court prohibits issuance of any subsequent notification contrary to the same.

I have heard the submission made on behalf of the parties and the material placed before me.

It is not in dispute that the notifications dated August 14, 2018 and December 18, 2018 have been dealt with and finally decided by a single Bench as well a Division Bench of this Court. The notification dated 29th January, 2010 referred to in the judgment dated March 28, 2014 indicates that the Government in the Transport Department shall only be competent to grant any relaxation in the matter. Therefore, any subsequent

notification made by the Government in supersession of earlier notifications cannot be said to be contrary to the earlier notifications or in violation of the directions of the Court in the judgment referred to above. Subsequent notifications are made by the Government by virtue of the power conferred upon it for relaxation of earlier notifications.

Since the notifications challenged in the present writ petition have been finally dealt with and decided by this Court earlier, the writ petition, in its present form, is barred by the principles of *res judicata*, and as such, is not maintainable.

Accordingly, the writ petition, being *in* WPA 10525 of 2020 is dismissed, being not maintainable.

There shall however, be no order as to costs.

Urgent certified website copy of this order, if applied for, be furnished to the parties on usual undertakings.

(Suvra Ghosh, J.)