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jdt.

10.05.2024
jb.

W.P.A. 1133 of 2024
Arup Kr. Ghosh
vs.
State of West Bengal & Ors.

Mr. Sankar Nath Mukherjee
Samim Akhter
.... For the Petitioner
Mr. Pantu Deb Roy
Mr. Asim Kr. Ganguly
.... For the State

Supplementary affidavit and exception used by the petitioner are taken on record.

The petitioner has challenged the decision taken by the respondent authority in its board meeting held on 9th October, 2023 whereby the authority has turned down the request of the petitioner for curtailment of his route for the portion Monsuka to Borda Chowkan from the existing route Monsuka to Howrah. The authority has referred to second proviso to Section 80(3) of the Motor Vehicles Act, 1988 which contemplates that the termini cannot be altered. The authority has held that since the petitioner has asked for change of termini, his prayer cannot be acceded to.

Learned counsel for the petitioner has placed reliance on an order of a co-ordinate Bench of this Court passed on 7th December, 2018 in W.P. no. 6201(W) of 2018 wherein learned Court has held that

an application for extension of route is not an application for grant of new permit and if it is granted, the prayer for the extended route does not become a new permit in the hands of the applicant. It is the same permit which after granting of the application covers the extended route. In arriving at such decision, learned Court has relied upon the authorities in ***Vallabhdas vs. State Transport Appellate Tribunal and others*** reported in ***AIR 1990 Madhya Pradesh, 119*** and ***M/s Shiv Chand Amolak Chand vs. The Regional Transport Authority and Another*** reported in ***AIR 1984 Supreme Court 9***. Learned counsel submits that though Section 80(3) of the 1988 Act indicates that an application for variation, extension or curtailment of the route shall be treated as an application for grant of new permit, the request of the petitioner for curtailment of his route which already covers the restricted area of Howrah cannot be treated as grant of a new permit altogether.

Placing reliance on an order of a co-ordinate Bench of this Court in W.P. 13661(W) of 2013 on 26th November, 2013, learned counsel for the respondents has submitted that alteration of a terminus not being permissible under the Motor Vehicles Act, the application filed by the petitioner for curtailment of route has been rightly rejected by the authority.

In the order referred to by learned counsel for the respondents the learned Court has observed that a combined application for curtailment of a part of the route and for extension of the other part thereof is not permissible in law. Learned Court has also held that curtailment and extension amount to variation which is permissible keeping the termini of the route intact. In the present case, the petitioner has prayed for curtailment of his route and not for extension of any other part of the route. Curtailment, extension and variation are three different components which have been dealt with in the Act separately. Therefore, the order of the co-ordinate Bench referred to by learned counsel for the respondents can be distinguished from the fact situation of the present case. The notification issued by the authority being 3438-WT/3M-139/2004 in terms of the order of this Court in FMA 604/2004 envisages that "... no new permit shall be issued in the Central business district, viz, Esplanade and Band Stand in Kolkata, Howrah Station and approach area of Howrah Bridge (Rabindra Setu); till further orders."

The existing permit of the petitioner is from Monsuka to Howrah and the curtailment sought is between Monsuka and Borda Chowkan. Therefore, the curtailed route cannot be said to be affecting the original route involving Howrah, permit in respect of which has already been granted. The notification shall

be applicable in case of grant of new permits and not existing ones covering the areas mentioned therein. It is possible that the authority has not taken this into account in turning down the request of the petitioner for curtailment of the route.

Proviso (i) to Section 80(3) of the 1988 Act states that in case of variation, the termini shall not be altered. The petitioner has not prayed for variation of the route and has only sought curtailment of a portion of the same. Therefore, proviso (i) of Section 80(3) of the Act is not applicable in so far as the application of the petitioner is concerned. The authority has misdirected itself in rejecting the petitioner's request on this ground. The observation made by the co-ordinate Bench of this Court in W.P. 6201(W) of 2018 upon placing reliance on the authorities in ***Shiv Chand Amolak Chand (supra)*** and ***Vallabhdas (supra)*** in dealing with an application for extension of route is also applicable in the present case wherein the petitioner has requested for curtailment of the route.

In view of the above, this Court is inclined to hold that the resolution taken by the authority in its board meeting dated 9th October, 2023 is required to be set aside.

The writ petition being WPA 1133 of 2024 is allowed.

The resolution taken by the STA board in its meeting dated 9th October, 2023 is set aside.

The 2nd respondent is directed to revisit the issue and take a reasoned decision within four weeks from the date of communication of this order upon affording reasonable opportunity of hearing to the petitioner and in the light of the observation made in this order, in accordance with law.

The decision taken by the authority shall be communicated to the petitioner within a week thereof.

There shall be no order as to costs.

Since no affidavit has been invited, allegations contained in the writ petition shall be deemed not to have been admitted.

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

(Suvra Ghosh, J.)