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22.05.2024

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W.P.A. 9920 of 2024

(Saroj Kumar Mandal vs. State of West Bengal & Ors.)

N. I. Khan

Mr. Amlan Kr. Mukherjee

.... For the Petitioner

Mr. Arabinda Chatterjee

Ms. Aayushi Mukherjee

.... For the Respondent Nos. 8-10

Ms. Aishwarya Rajyashree

.... For the State of Jharkhand

Mr. Amal Kr. Sen

.... For the State

Affidavit of service filed on behalf of the petitioner is taken on record.

Heard learned counsels for the parties.

The petitioner was granted stage carriage permit in respect of the interstate route between West Bengal and Jharkhand in terms of the reciprocal agreement entered into by and between the two states on March 29, 2004. The permit granted in favour of the petitioner is from Bankura to Tata via Jhilimili, Ghatsila covering a length of 146 kms. Timetable was issued in favour of the petitioner by the State Transport Authority, West Bengal wherein Khatra and Bandwan were included in contravention of the permit granted to him. The petitioner continued to ply his vehicle in terms of the said timetable. The private respondents lodged

complaint before the Secretary, State Transport Authority, West Bengal alleging violation of route permit by the petitioner following which the petitioner was called for a hearing by the authority. By an order passed on 5th February, 2024, the petitioner was directed to follow the route alignment strictly as approved in the reciprocal transport agreement, 2004 by plying his vehicle avoiding Purulia (Bandwan) and through Jhargram. A show cause notice was slapped upon the petitioner on 20th March, 2024 alleging violation of the permit by him and directing him to show cause within 7 working days from the date of receipt of the notice as to why the permit in question would not be cancelled and penal action would not be taken against him in terms of Section 86 of the Motor Vehicles Act, 1988. On the same day, the Secretary State Transport Authority, Jhargram was requested not to transact any business with the petitioner with regard to the permit on the route Bankura to Tata via Jhilimili, Ghatsila. Again on 20th March, 2024, the State Transport Authority, West Bengal blacklisted the vehicle of the petitioner from the said date. In the meantime the petitioner submitted a representation before the concerned authority on 29th February, 2024 requesting modification of the permit in order to enable him to ply from Bankura to Tata via Khatra, Bandwan and Ghatsila.

In assailing the communications made by the authority on 20th March, 2024, learned counsel for the petitioner submits that though the petitioner was directed to reply to the show cause notice within 7 days from the date of receipt of the notice, his vehicle was blacklisted by the authority on the same date arbitrarily and illegally. Also, there was no reason for the authority to direct the petitioner to ply through Jhargram since the route through Jhargram shall increase the distance to 267 kms instead of 146 kms as recorded in the reciprocal agreement.

Learned counsel for the private respondents places reliance on a judgment of an Hon'ble Division Bench of this Court in APO 133 of 2023 along with other matters dated 5th April, 2024 wherein the Hon'ble Court has held that any discrepancy in a reciprocal agreement entered into by and between the two states can be removed by mutual discussion between the states and upon publishing the same in the official gazette of the respective states. The relevant portion of the judgment is set out:

“In this regard, we further find that the reciprocal agreement contains a specific provision that any change or the correction in any Clause of the agreement or any addition or deletion of the routes, any correction or changes in the alignment of routes may be done by a mutual consent after discussion. By virtue of the said Clause, the mutual discussion has taken place

and the discrepancies have been removed but such alteration or the incorporation can only take effect after the same is duly published in the official gazette in the respective States”

It is not in dispute that the petitioner has been plying his vehicle in route Bankura to Tata in terms of the timetable issued in his favour by the State Transport Authority, West Bengal which is in contravention to the permit. Such contravention has not permissible in law.

However, it is evident that the show cause notice was issued upon the petitioner without dealing with the representation submitted by him prior to issuance of such notice. The direction upon the petitioner to ply the vehicle through Jhargram as given in the order dated 5th February, 2024 is also *de hors* the permit as well as the reciprocal agreement. Jhargram is not found place either in the reciprocal agreement or in the permit. No explanation has been accorded by the authority as to how Jhargram was inserted in the order without modification/alteration of the reciprocal agreement or the permit.

In view of the above, this Court is inclined to hold that the order passed by the Secretary, State Transport Authority, West Bengal on 5th February, 2024 and the notices issued on 20th March, 2024 are required to be set aside/quashed.

The authority ought not to have issued the show cause notice prior to considering the representation pending before them and also, the notice blacklisting the vehicle of the petitioner before expiry of the stipulated time frame for furnishing reply to the show cause notice is not enjoined in law.

Accordingly, the writ petition is allowed.

Order dated 5th February, 2024 and notices issued on 22nd March, 2024 by the Secretary, State Transport Authority, West Bengal are set aside/quashed. The State Transport authority, being the 2nd respondent herein, be directed to consider and dispose of the representation submitted by the petitioner dated 29th February, 2024 within one month from the date of communication of this order upon affording reasonable opportunity of hearing to all concerned including the petitioner, in accordance with law.

In the event the 2nd respondent contemplates modification/alteration of the reciprocal agreement, the authority shall comply with the directions given by the Hon'ble Division Bench as recorded hereinabove in doing so.

Pending disposal of the representation, the petitioner shall operate his vehicle strictly in terms of the permit issued in his favour.

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.)