

WPA 19588 of 2024

4.12.2024

ct.25, sl. 12
sk

Samsuddin Shaikh

vs

The State of West Bengal & Ors.

Mr. Mohinoor Rahaman

Ms. Maria Rahaman

Ms. I. Rahaman

...for the petitioner.

Mr. Amal Kr. Sen, ld. AGP

Mr. Lal Mohan Basu

...for the State.

Leave is granted to make corrections in the cause title as regards the respondent Nos. 3,4 & 5.

In this writ petition, the petitioner has challenged imposition on him a fine, to the tune of Rs.31, 000/- and recovery thereof, on the ground of carrying excess load as well as driving dangerously.

Mr. Rahaman, learned advocate appearing for the petitioner has submitted that the allegations leveled against the petitioner as above and fine imposed against him is unsustainable, de hors the provision of law and, thus, is illegal. He would say that the gross vehicle weight was within the permissible limit. In this regard, he refers to a notification of the Ministry of Road, Transport and Highways dated July 16, 2018 and submits that for the purpose of plying the vehicle, in terms of the said notification, 5% excess tolerance in the goods vehicle weight has been allowed therein, for the

purpose of compliance to Section 113(3) of the Motor Vehicles Act, 1988.

By referring the weight challan, he would further submit that the gross weight of the vehicle at the relevant point of time has been 56,320 kgs, including the extra 5% tolerance limit.

Therefore, according to Mr. Rahaman, learned advocate for the petitioner, in terms of the notification as above being considered with the weight challan of the concerned vehicle, the allegation of vehicle having carried excess weight, appears to be unsustainable.

Mr. Rahaman, learned advocate has further submitted that the allegation of dangerous driving by the petitioner, for which fine of Rs.5,000/- has been imposed against him by the said e-challan dated August 1, 2024, has remained unsubstantiated, in absence of any other supporting or corroborative documents. He says that as a matter of fact, the same is unconceivable and false allegations against the petitioner.

On the submission made above, Mr. Rahaman, learned advocate for the petitioner has further stated that in such view of the facts, the imposition of fine as against the petitioner to the tune of Rs.31,000/- appears to be not in conformity with the law and is illegal. Hence, on behalf of the writ petitioner, it has been prayed that the order imposing fine as *above*, that is dated August 1,

2024, through e-challan, be set aside and the direction be made for refund of the fine so imposed and remitted by the writ petitioner.

During his argument, Mr. Rahaman, learned advocate for the petitioner has relied on to the following three orders of the Hon'ble Co-ordinate Benches, in support of his contention that in absence of proof of the alleged illegal acts by the petitioner, imposition of fine would be illegal and liable to be set aside. The orders as follows:-

- i) Order dated December 5, 2023, in WPA 13507 of 2023 (Md. Jairul Islam Vs. The State of West Bengal & Ors.);
- ii) Order dated July 26, 2023, in WPA 13500 of 2023 (Ahadujjaman Vs. State of West Bengal & Ors.); and
- iii) Order dated November 11, 2021, in WPA 5369 of 2021 (Trilok Kumar Agarwal HUF & Anr. Vs. State of West Bengal & Ors.)

Mr. Amal Kr. Sen, learned advocate appearing for the State. He would rather support imposition of fine against the writ petitioner alleging that the steps taken against the writ petitioner by the respondent is in conformity with the law.

Heard the submissions and perused the materials on record. The notification dated July 16, 2018, of the

Ministry of Road, Transport and Highways is to notify the maximum safe axle weight of the axle type mentioned in relation to the transport vehicle. So far as the transport vehicle are concerned, tolerance level up to 5% maximum, up to excess weight has also been provided therein.

Keeping the same in mind and after perusing the weight challan of the vehicle, the gross weight of the transport vehicle of the petitioner to be 55,480 kgs. It is found apparent that the gross weight of the transport vehicle of the petitioner was within the tolerance level as prescribed under the said Government order.

Regarding the allegation against the petitioner for driving dangerously, the Court is unable to find any supporting material as to the same, in the form of any close circuit camera report or photograph or speedometer report etc. In absence of any supporting material, the allegations against the petitioner is vague and could not suffice for the purpose of imposition of the statutory fine against the petitioner, the same being alleged in a vague and unsubstantiated manner.

Therefore, on the discussion as above, it can be concluded that so far as the allegations of the over weight of the transport vehicle of the petitioner is concerned, the same is unfounded. So is the allegation of driving dangerously by the petitioner.

In such circumstances, imposition of statutory fine against the petitioner, for the said two alleged misconduct by the petitioner in violation of the statutory provision appears to be not tenable.

On the discussions as above, the Court is constrained to find that the statutory provision of imposition of fine, which is to be brought into exercise for the reason of the concerned person having violated the statutory norms and restrictions has been erroneously and illegally imposed against the writ petitioner.

Hence, the Court is of the considered opinion that the fine so imposed against the petitioner is liable to be immediately refunded.

On the premise of the above, the writ petition is disposed of under the following directions”-

- i) The e-challan dated August 1, 2024, is set aside.
- ii) The respondent no.3, Regional Transport Officer is directed to immediately refund the fine amount of Rs.31,000/- to the petitioner, within a maximum period of four weeks from the date of communication of this order.

Since no affidavits have been called for, allegations made in the writ petition, shall be deemed not to have been admitted.

It is needless to say that the respondent shall act on the server copy of this order.

Urgent certified photocopy of this order, if applied for, shall be supplied to the parties, on compliance of usual formalities.

(Rai Chattopadhyay,J.)