

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(APPELLATE SIDE)**

**Present:
The Hon'ble Justice Rai Chattopadhyay**

WPA 22270 of 2023

**Sudip Kundu
Vs.
State of West Bengal & Ors.**

With

WPA 22267 of 2023

**Purnima Paul
Vs.
State of West Bengal & Ors.**

For the Petitioner : Mr. Barun Kumar Samanta.

For the respondent Nos. 4 & 7 : Mr. Arabinda Chatterjee,
Ld. Sr. Adv.
: Mr. Bhaskar Nandi.

For the State : Mr. Pantu Deb Roy
(WPA No. 22270 of 2023) Ld. A.G.P.,
: Ms. Saswati Chatterjee.

For the State : Mr. Amal Kumar Sen,
(WPA No. 22267 of 2023) Ld. A.G.P.,
: Ms. Ashima Das (Sil).

Heard On : 16/08/2024

Judgment on : 16/08/2024

Rai Chattopadhyay, J.

1. Two writ petitions being WPA No. 22270 of 2023 and WPA No. 22267 of 2023, have been heard together and are being disposed of by dint of this common judgment.
2. The petitioners therein have challenged the resolution of the Board of Regional Transport Authority, Kolkata Region, adopted in the meeting held on July 28, 2023. The same is with regard to grant of permit for four stage carriages, in routes No. 219 and 219/1. For grant of permit as above, altogether nine candidates had applied for, including the present two petitioners. The panel has been prepared by dint of the said resolution dated July 28, 2023, on the basis of certain considerations, as per the statute.
3. Accordingly, the first four candidates in the list/the respondent in these cases, were granted the offer letters. The present two petitioners were listed as the 5th and 6th candidates, in the said list, in accordance with their respective scores.
4. The petitioners in these two writ petitions have challenged the fairness and transparency of the process of selection for grant of permit by dint of the said impugned resolution dated July 28, 2023. According to them, the respondent authority has founded its decision on erroneous considerations and its final decision as regards the list of competence, as prepared in the meeting dated July 28, 2023 by dint of the impugned resolution is wrongful, dehors the law and thus is unsustainable. The petitioners have sought for the relief for setting aside of the said impugned notification and also seek that the panel may be recast, upon consideration of the essential components as prescribed in the statute, to come to a just and proper finding.
5. Mr. Barun Kumar Samanta, learned counsel is appearing for the petitioner. He has submitted that initially, as it transpires from the '*broadsheet*', the educational qualification of the candidates was considered by the concerned respondent authority as an essential component, to judge the inter se competence of the respective

aspirants, including the petitioners, though such consideration would have been de hors the law, in view of the law settled in this regard vide judgment of this Court dated October 3, 2023, in writ petition No. WPA 14494 of 2023.

6. Mr. Samanta, learned counsel for the petitioner submits that the Court by dint of the said judgment has promulgated the law which is a good law as on date, that there is no provision in the Motor Vehicles Act, 1988, for consideration of educational qualification of the applicant/petitioner, as an essential prerequisite for grant of permit. So far as the writ petitioner Sri Sudip Kundu is concerned (in WPA No. 22270 of 2023), Mr Samanta has stated that after elimination of consideration of educational qualification of the candidates, the said writ petitioner would appear to have scored better than the private respondents. It is stated that therefore, had the respondent authorities considered the eligibility criteria of the respective candidates in its proper perspective, the petitioner as above would have been placed in the list, at a higher position and been eligible for grant of offer letter. Regarding the other petitioner, that is, Smt. Purnima Pal (in WPA No.22267 of 2023), Mr Samanta, has indicated that the concerned respondent authority has committed a gross error in considering experience of the said petitioner to be of 3 years. Instead, it is actually of 23 years and supporting documentary proof thereof has been placed before this Court in this case and also before the respondent Regional Transport Authority, at the time of consideration of her prayer for grant of permit. He alleges non consideration thereof by the said respondent. Thus, he is of the opinion that had the respondent authorities considered the petitioner's actual experience as above, she would have been granted more marks, to find higher place in the list of candidates.
7. Mr. Samanta, learned counsel has argued that in view of the law settled by the order of the Court in the manner as mentioned above and the erroneous and unlawful considerations adopted by the respondent authority while preparing the panel vide the impugned resolution dated July 28, 2023, the same is violative of the settled law as well as is an outcome of gross error, so far as proper appreciation of the facts and documents of the cases individually. It is stated for all the reasons as above, the impugned resolution of the Board is manifestly illegal and cannot be maintained any further.

He seeks that appropriate orders be passed in the present writ petitions, to redress such grievance of the petitioners.

8. Mr. Pantu Deb Roy, learned Additional Government Pleader is representing the State in WPA No. 22270 of 2023 and Mr. Amal Kumar Sen, learned Additional Government Pleader, is representing the State in WPA No. 22267 of 2023.
9. Mr. Pantu Deb Roy, has referred to the second additional report submitted in Court by the said respondent pursuant to the Court's order. The State has enclosed therein, a modified '*broadsheet*', deleting the column of educational qualification of the respective applicants and marks allotted to them in consideration of the same. Admittedly, the respondent Regional Transport Authority, previously had assessed the competence of the individual candidates, on the basis of the same, over and above their financial stability and experience in the field etc. Mr. Deb Roy, has indicated that as per the modified '*broadsheet*', which does not include the educational qualification of the candidates, the State is agreeable to re-cast the panel and disburse the offer letter accordingly.
10. Mr. Sen has also submitted similarly.
11. Mr. Arabinda Chatterjee, learned senior counsel, is appearing for the private respondents. Mr Chatterjee has raised strong objection against the contentions and prayers of the writ petitioners, particularly that of Sri Sudip Kundu, petitioner in WPA 22270 of 2023. Regarding him, Mr Chatterjee has specific objections that, according to the '*broadsheet*' (including the modified broadsheet), the said petitioner has not possessed any vehicle, on the date of consideration of his application by the Board. As a matter of fact, this aspect has not been even denied specifically by the said writ petitioner. In this regard, Mr Chatterjee has referred to *Section 71 (3)(d)(iii)* of the Motor Vehicles Act, 1988, as well as *Rule 109* of the West Bengal Motor Vehicles Rules, 1989.
12. Mr. Chatterjee, learned senior counsel states that according to *Rule 109* of the West Bengal Motor Vehicles Rules, 1989, an incumbent, on the date of decision of the Board, should possess a vehicle to

offer to the authorities after being handed over with the offer letter. The petitioner Sri Sudip Kundu, having not complied with the said provision, according to Mr. Chatterjee, he would not be eligible to be granted with the offer letter even if, it is taken that his final score is more than some of the private respondents. Mr.Chatterjee informs further that the private respondents namely, Sri Swapan Kumar Saha, Biswajit Saha, Ratnanka Saha and Rituparna Das Gupta, have been granted the offer letters and after producing the vehicle and remittance of the fees, they are now plying the said vehicles in the allotted routes. Mr.Chatterjee seeks that an appropriate order may be passed in the instant writ petitions.

13. The fact remains that for the route Nos. 219 and 219/1, the authorities proceeded to fill up four vacancies, by granting stage carriage permits. Nine persons had applied and their suitability were tested by the Board. The result thereof is apparent in the impugned resolution dated July 28, 2023, which is challenged in the present case.
14. It has already been stated that, pursuant to the Court's order, the authorities have modified the '*broadsheet*', by eliminating the component of the educational qualification, that is, in terms of the Court's judgment in *WPA no. 14494 of 2023* dated October 3, 2023.
15. So far as the writ petitioner Sudip Kundu is concerned in *WPA no. 22270 of 2023*, after elimination of the educational qualification as an essential component of consideration, his grand total of marks apparently takes him to a better position in the final list. However admittedly, on the date of the resolution, the said petitioner did not possess a vehicle.
16. Strong reliance has been placed on behalf of the private respondents in this regard, on *Rule 109* of the West Bengal Motor Vehicles Rules, 1989, to submit that the statute has made due payment of tax, a factor to be considered by the authorities at the time of grant of permit. Mr.Chatterjee has suggested that this by implication, has provided for processing of a vehicle by an aspirant, at the time of consideration of his prayer for grant of permit, for the reason that unless a vehicle is possessed by the person, there would not be any

question for payment of any tax by him, which is a condition to be fulfilled at the time of consideration of the prayer for grant of permit.

17. Rule 109 of the West Bengal Motor Vehicles Rules 1989 provides as follows;

“109. Preference in granting Stage Carriage permit.—

Under sub clause (iii) of clause (d) of sub-section (3) of section 71 of the Act, and financial stability and satisfactory performance including payment of tax, a preference shall be given to the educated unemployed, project affected persons, applicant having a Diploma in Automobile Engineering and/or a Diploma in Tourism or Transport Management from recognised Institute, or a Travel Agent recognized by India Tourism Development Corporation or the West Bengal Tourism Development Corporation”.

18. Rule 109 of the West Bengal Motor Vehicles Rules 1989, is the outcome of exercise of power by the State government under section 71 (3)(d)(iii) of the Motor Vehicles Act, 1988, by dint of which it has prescribed as to when and to whom reference may be extended, in case of grant of permit. The general conditions to be satisfied by an applicant is his financial stability [as per section 71 (3)(d)(i)] and satisfactory performance as a stage carriage operator including payment of tax [as per section 71 (3)(d)(ii)]. The performance clause as above would be applicable if the incumbent has been an operator of stage carriage. None of these provisions, however, has mandated for an applicant of permit in a particular route, to produce the vehicle meant to ply in that route at the time of consideration of his application by the Board. Instead, in case an incumbent would be found to be suitable and given offer letter, he would be allowed opportunity to produce the vehicle within a stipulated period of time. Hence, the fact that the said petitioner has not produced a vehicle at the time of consideration of his prayer for grant of permit, may not ipso facto, disqualify him, in case the other criterion for grant of permit having been fulfilled.

19. So far as the other writ petitioner Smt Purnima Pal is concerned, her grievance is with regard to erroneous consideration of her experience in the field. By producing document this writ petitioner has shown that her experience in the field should have been considered to be much more, in order to fetch better score in the '*broadsheet*'. According to her, proper consideration of her actual experience should have led her to be a successful qualifier, for grant of permit.
20. No doubt, the process of selection for grant of permit should qualify with the tenets of being free, fair and transparent. Due consideration of the eligibility criteria of the respective candidates is imperative for the authorities in order to come to a just and fair decision. The petitioner's grievance in this writ petitions are prima facie substantiated in view of modified broadsheet, as produced by the State authorities in Court and also from the documents relied on by the writ petitioners. A proper consideration of those and recast of the panel is found to be necessary in this case for the ends of justice.
21. On the discussion as above, it is therefore, held that the concerned respondent authority that is, R.T.A. Kolkata Region should take appropriate steps for re-cast of the panel as prepared vide the impugned resolution dated July 28, 2023 by appropriately considering the cases of the present petitioners. Operation of the panel of successful permit holders in route Nos. 219 and 219/1, as prepared vide the said resolution dated July 28, 2023, shall be subject to such final recast of the panel, after taking into consideration by the RTA, Kolkata region, of all these relevant factors.
22. It is, however, directed that in the interregnum and till the time of reconsideration and recast of the panel of eligible and successful candidates by the said authority, the private respondents shall be allowed to ply their vehicles, as per their existing permit. It is made clear that subject to final decision by the said authority and subject to recast of the panel, the existing permits of the private respondents would be liable to be cancelled, in case they or any of them are not found to be eligible and suitable, pursuant to the new panel after recast of the one that was declared vide resolution dated July 28, 2023.

23. For the purpose as above, the said respondent shall consider the modified '*broad sheet*', as submitted in Court and all other such documents, as it may think fit and proper, to come to a finding in accordance with law.
24. The entire exercise as above, shall be concluded by the said respondent No.2, within a period of eight weeks from the date of communication of copy of this order and its final decision shall be communicated to the parties within one week from the date of its order.
25. Since no affidavits are called for, allegations made in the writ petitions, are deemed to have been denied by the respondents.
26. This writ petitions being WPA No. 22270 of 2023 and WPA no. 22267 of 2023 are disposed of, along with the pending applications, if any.
27. Urgent Photostat certified copy of this order duly downloaded from the official website of this Court upon compliance all legal formalities.

(Rai Chattopadhyay, J.)

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