

Ct.41 18.01.2024
JPD .3&4 Sws.M

**IN THE HIGH COURT AT CALCUTTA
(CIRCUIT BENCH AT JALPAIGURI)
Civil Appellate Jurisdiction**

WPA 797 of 2022

**Mala Sharma @ Sarma
vs.
The State of West Bengal & Ors.**

With

WPA 794 of 2022

**Sukumar Sharma @ Sarma
vs.
The State of West Bengal & Ors.**

Mr. Arindam Paul

.....for the petitioner

Mr. Milindo Paul

Mr. Nabankur Paul

....for the respondent No.4

Mr. Arindam Paul, learned advocate appears on behalf of the petitioner.

Mr. Milindo Paul, learned advocate appearing through virtual mode on behalf of the respondent No. 4.

Subject matter of both writ applications are similar in nature, the same are taken up for hearing together. Private respondents of both the matter have purchased their respective vehicles (Ashok Leyland Sleeper Bus) bearing registration no. WB73/E9213 and WB73/E 9975 by borrowing loan from the respondent no. 4, Cholamandalam Investment and Finance Company Ltd. and the buses were hypothecated with the said finance company.

The private respondent failed to repay the loan

amount to the respondent no.4, the respondent no.4 to recover the loan amount has invited tender for sale of the said buses. The petitioner has participated in the said tender process and was the highest bidder with respect of both the buses, the respondent no.4 has accepted the price quoted by the petitioner. The petitioner has deposited the tender amount in favour of the respondent no.4. On receipt of the amount, the respondent no.4 issued the sale acceptance letter and possession of the vehicles to the petitioner.

The petitioner had applied for transfer of the ownership of the said vehicle before the respondent no.3 but the respondent no.3 has not taken any steps for transfer of the buses in the name of the petitioner but the petitioner has got information from the portal of the Regional Transport Authority, Darjeeling wherein it appears that the vehicles purchased by the petitioners have been blacklisted by the Additional Regional Transport Authority, Silliguri on 9th December 2021.

Being aggrieved with the same, both the petitioners have filed their respective writ application before this Court being WPA No. 2448 of 2021 and WPA 2450 of 2021. By an order dated 20.12.2021, this Court had disposed of both writ applications by passing the following order:

“Having heard the learned advocates for the respective parties, this Court finds that the reasons assigned by the transport authority in not registering the vehicle in the name of the petitioner, was that the vehicle blacklisted on the basis of the complaint of the respondent No. 5. The complaint of the respondent No. 5 was subsequent to the sale of the vehicle to the petitioner as per the records available before this Court.

However, without going into the correctness of the reasons and also without

going into the fact as to whether there are other reasons for blacklisting, apart from the complaint of the respondent no. 5, this Court is of the opinion that the matter should be revisited by the Additional Regional Transport Officer, Siliguri on the basis of the documents to be supplied by the petitioner with regard to the auction sale, sale certificate and the letter for taking over possession, issued by the financier.

The blacklisting of the vehicle at the instance of the respondent no. 5 after the respondent no. 5 lost all rights over the said vehicle does not seem to be prima facie correct. However, it is the authority, who shall intimate to the petitioner whether there are other non-compliances listed against the said vehicle as per the Motor Vehicles Act and Rules. If the non-compliances are rectified and the petitioner submits all documents and complies with all formalities and requirements under the law, the vehicle shall be registered in the name of the petitioner.

While considering the documents, the ARTO, Siliguri shall be at liberty to call for the records from the finance company and ascertain the correctness of the contentions of the petitioner. The respondent no. 5 shall also be heard. The petitioner shall file a detailed representation before the ARTO, Siliguri pursuant to this order and the same shall be disposed of in the manner stated hereinabove.

The entire exercise shall be completed within a period of eight weeks from the date of receipt of the petitioner's representation.

Accordingly the writ petition is disposed of."

After the order passed by this Court, the respondent no. 3 had passed the impugned order dated 18th February 2022 by rejecting the request of the petitioner. The respondent no. 3 had rejected the request of the petitioner for transfer of the ownership of the bus on the ground that the financier had sold the vehicle to one Bikash Kumar Gupta after providing No Objection Certificate and consent certificate and there is

also a breach of agreement entered between the respondent no. 4 and the respondent no.5 and the dispute is still pending before the Learned Court of ACJM-III,Silliguri. It was also of the opinion that the auction process was malicious.

The case of the petitioner that the petitioner has purchased the vehicle by way of an auction conducted by the respondent no.4 and the petitioner was the successful bidder and had paid the accepted amount to the respondent no.4 and on receipt of the amount, the respondent no.4 had issued sale certificate and possession of the bus to the petitioner.

Inspite of service of notice none appeared on behalf of the respondent nos.1,2,3 and 5.The respondent no.3 has blacklisted the vehicle on 9th December 2020 that is after the auction process with the reasons that the respondent no.5 has submitted complaint. In the impugned order, the respondent no. 3 has noted all the sequences from serial no. 1 to 20. After taking into account of all the documents, the respondent no.3 has come to conclusion that the auction process was malicious. The respondent no. 3 has taken into consideration about the purchase of the buses by Ragubir Gupta and Bikash Kumar Gupta from the respondent no.4 and the respondent no. 4 on the earlier occasion had issued no objection and consent certificate in favour of the said two persons with respect of two buses. The respondent no. 3 has also recorded in the impugned order that the petitioner has possessed the custody of the bus from Raghubir Singh and Bikash Kumar Singh respectively and still the buses are registered in the name of the respondent no.5.

Neither Raghubir Singh nor Bikash Kumar Singh have made any complaint about the purchase of the busses by the petitioners through auction. The respondent no.3 has also recorded that one dispute is adjudicated before the Learned Court of ACJM-III at Silliguri. It is not the case of the respondent that the learned court has passed any order of injunction and admittedly there is no order of injunction.

The respondent no.3 has blacklisted the vehicle at the instant of the respondent no.5 who lost his/ her right with respect of the vehicle and the blacklist order was passed after completion of the auction process. The respondent no.5 has not challenged the auction process and has also not obtained any order declaring the auction process is bad in law. The respondent no.3 of his own come to the conclusion that the auction process is malicious.

By an order dated 20.12.2021 this Court given liberty to the respondent no.3 to call for records from the financier company to ascertain the correctness of the petitioner and the respondent no.3 has called for the financial company. The respondent no.4, the financial company has not disputed the document relied by the petitioner.

The order of black list which is appearing in the portal of the Regional Transport Authority, Darjeeling reveals that the blacklist order was passed only on the basis of the complaint of the respondent no.5 though he/she has no right over the said vehicle on the said date. The order of black list is without any reasons. The impugned order does not speak about any order of blacklisting with respect of the vehicles in question. This Court finds that the respondent no.3 only to favour the

private respondent and to harass the petitioner and in connivance with the respondent No. 5 has blacklisted the vehicles only on the complaint of the respondent no.5. The impugned order also does not justified for denial for change the ownership of the vehicles as neither the respondent no.4 nor the alleged Raghubir Singh or Bikash Kumar Singh come forward for raising any objection for transfer of ownership of the vehicles. The respondent no.3 also admitted that the possession of the bus is with the petitioner.

In view of the above, the impugned orders dated 18th February 2022 and order of blacklisting of the vehicle No. WB73/E9213 and WB73/E 9975 dated 9th December 2021 are set aside and quashed.

WPA No. 797 of 2022 and **WPA No.794 of 2022** are **allowed**.

All parties to act on a server copy of this order duly collected from the Official Website of the Hon'ble High Court Calcutta.

(Krishna Rao , J.)