

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

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

WPO 392 of 2024

**Mahammad @ MD. Iyasin Khan
Vs.
The State of West Bengal & Ors.**

For the Petitioner : Mr. Sankar Nath Mukherjee,
: Mr. Samim Akhter,
: Mr. Niraj Gupta.

For the State Respondent : Mr. Amal Kumar,
Additional Government Pleader.
: Ms. Ashima Das (Sil).

**Heard on : 02/07/2024
Judgment on : 02/07/2024**

Rai Chattopadhyay, J.

1. The writ petitioner has challenged in this case the letter dated March 22, 2024 issued by STA West Bengal.
2. The crux of the same is that while answering petitioner's request for issuance of permit for his vehicle no. WB-11C-6824 the respondent authority, by dint of the said impugned letter writes that the vehicle placed by the petitioner as above for grant of permit is of Euro 3 standard. As such the same is not commensurate with the standard of vehicle eligible for grant of permit as per Transport Department vide memo number 2085-WT/TPT/2/2021. That, as per the guidelines as

provided vide the said memo dated June 2, 2023, it is required that for grant of new permit in area beyond Kolkata Metropolitan area, the concerned vehicle should be commensurate with at least BS IV emission standards/norms. By dint of the said impugned letter dated March 22, 2024, the authorities have requested the petitioner to abide by the provision as enumerated in the Transport Department memo dated June 2, 2023, as above.

3. The writ petitioner had applied for a permanent Inter-Regional Stage Carriage Permit in the route Code No. 1831 between Digha Bus Stand and Bardhaman Alisha Bus Stand. Date of his application is September 12, 2023. He has submitted requisite fees. An 'Offer Letter' was issued to him dated November 29, 2023, for grant of permanent "Stage Carriage Permit (Inter-Regions Permit)". The offer letter specifies that a vehicle as per specification given should be placed by the petitioner within the stipulated period, that is, a period of six months from the date of the offer letter, unless the said period is extended further, by authorities. So far as the specifications of the vehicle to be produced, is concerned, the first page of the offer letter dated November 29, 2023, mentions that the '*vehicle with specification as given overleaf*', should be produced/placed. The dispute however, arises as the writ petitioner has claimed in this case that no vehicle specification has been available "overleaf", as stated in the first page of the offer letter dated November 29, 2023.
4. Thus, the writ petitioner placed his vehicle as mentioned above which complies with BS III norms of auto emission and pertains to the category of Euro 3.
5. According to the writ petitioner, since thereafter the respondent authorities have kept mum regarding grant of permit and issuance of time table with respect to his vehicle as above. He is aggrieved that in

spite of the Board having taken a decision for grant of permit to the writ petitioner's vehicle over a specified route and the petitioner having duly submitted the fees as well as placed the vehicle, such inaction on part of the respondent authority is unreasonable, coercive and arbitrary. Thus the writ petitioner seeks an appropriate order in this case.

6. Mr. Sankar Nath Mukherjee, who has appeared for the writ petitioner has submitted that the authorities by dint of the offer letter dated November 29, 2023, has not asked for or let the petitioner be intimated with the requirement of production of any specified kind of vehicle. Therefore, according to Mr. Mukherjee the BS III vehicle as produced by the writ petitioner before the authorities upon submission of the requisite statutory fees, could not have been rejected on any ground whatsoever.
7. Mr. Mukherjee has stated that the respondent is empowered by virtue of the provision under Section 59 of the Motor Vehicle Act, 1988, to determine age limit of a vehicle in consideration of the factors as mentioned therein, that is, public safety, convenience, protection of environment etc. Any vehicle exceeding such prescribed age limit would not be eligible for grant of fitness certificate and issuance of permit. According to Mr. Mukherjee excepting that the authority could have not lawfully imposed any other restriction upon the vehicle particularly when no such restriction has been indicated in the 'offer letter' of the writ petitioner dated November 29, 2023. As such, he says that the impugned order by the authorities is in exercise of power which is not vested with it.
8. Besides this on behalf of the writ petitioner it has been argued that a non-notified departmental order has been unjustly and unlawfully relied on by the concerned respective respondent to decline grant of permit for

the vehicle of the writ petitioner, that too, in derogation of the terms and condition as the same authority has envisaged in the 'offer letter' granted to the writ petitioner by it, at an earlier date, that is, November 29, 2023. Thus, the said departmental order dated June 2, 2023, could not have been made applicable in case of the vehicle of the writ petitioner.

9. It is submitted that even if taken into consideration the relevant Clause of the revised guidelines for registration and permit of vehicles in terms of pollution norms dated June 2, 2023, it could be said that the respondent has exercised the provision thereof in a perfunctory manner not commensurate with the letters and spirit of the said order itself. Mr. Mukherjee has suggested that the language in the said order as regards usage of BS IV emission norms complied vehicles, would suggest an option may be exercised in case of chain of vehicle. That in a route exclusively outside Kolkata, BS IV vehicle may or may not be used. He has emphasised on the word '*preferably*' as enumerated in Clause A Sub-clause (II) (a) (v). However, his client has allegations against the respondent department that erroneously, unjustifiedly, illegally and arbitrarily, this optional Clause has not been applied in case of the writ petition. Thus, under the veil of compliance with the provisions of a non-notified inter departmental order dated June 2, 2023, the respondent authorities have flouted the statutory provisions. The writ petitioner has also taken a ground that before rejecting grant of permit to the vehicle placed by him, the authorities have violated the principles of natural justice by not allowing him an opportunity of hearing. Mr. Mukherjee seeks adequate relief for the writ petitioner.
10. Mr. Amal Kumar Sen represents the State authorities. Pursuant to the direction of the Court he has filed in Court a report submitted by the Secretary, State Transport Authority, West Bengal, dated January 7, 2024.

11. The Court intended to be clarified about the narration in the offer letter dated November 29, 2023, regarding “*to place a complaint Vehicle with specification as given overleaf*”.
12. In the said report dated July 1, 2024, the concerned respondent has stated firstly, that the STA Board has approved prayer of the petitioner for grant of permit subject to compliance with the notifications No. 2085-WT/TPT/2/2021 and 3438-WT/3M-139/2004.
13. Secondly, it has mentioned that the offer letter dated November 29, 2023, was communicated to the writ petitioner through electronic system and after obtaining the e-information through his mobile phone, the writ petitioner had downloaded the print copy of the said offer letter. The said respondent in its report as above asserts and claims that the offer letter dated November 29, 2023 is a complete document and also has annexed photocopy of the same along with the report.
14. On the basis of the said report Mr. Sen has submitted that at the time of application made by the writ petitioner as well as issuance of the ‘offer letter’, the guidelines in the form of Notification dated June 2, 2023, has been followed. It is submitted that the guidelines dated June 2, 2023 are to govern grant of permit to a new vehicle. The decision of the Board has been ventilated by the dint of the impugned letter dated March 22, 2024. The same is in terms of the said guidelines and thus cannot be flawed on any ground whatsoever. Mr. Sen has further stated that there would not be any question of not supplying the completed ‘offer letter’ to the writ petitioner, in so far as the present date practice is of supply of a soft copy e-document, instead of its physical form. Therefore, the allegation of the writ petitioner that the entire ‘offer letter’ has not been received by him is also baseless, Mr. Sen says. Mr. Sen has indicated that due compliance with auto emission norms as per the government policies would have

very important and far reaching consequences, so far as the public health as well as protection of environment is concerned. Therefore he says that the action taken by the respondent authority by dint of the impugned letter dated March 22, 2024, may not be interfered into in view of the authorities having complied with the existing guidelines and norms as well as in view of the larger perspective involved in this kind of cases. Mr. Sen has insisted that the writ petition should be dismissed.

15. So far as the fact of issuance of offer letter dated November 29, 2023 to the writ petitioner is concerned, there is no dispute in this case. The respondent have come up to say that the permit was allowed to be granted to the petitioner subject to compliance of notification no. 2085-WT/TPT/2/2021 dated June 2, 2023, and 3438-WT/3M-139/2004 dated August 2, 2024. It is however a fact in this case that Board's resolution as above has never been supplied to the grantee, that is, the writ petitioner. What is communicated to the writ petitioner is the 'offer letter' enumerating therein all the terms and conditions which the petitioner has to abide by, in order to get the permit and/or the time table for the vehicle. The following in the said offer letter dated November 29, 2023 is worth noticing :-

“This offer-letter will be treated as cancelled, if not vehicle, as per specification given above, is place within the stipulated period, unless the offer letter is extended by STA/RTA/RTO under certain conditions.”

16. Therefore there has to be certain specification as regards the vehicle to be produced by the writ petitioner before he can be granted a time table.
17. Admittedly, in this case the 'offer letter' as above contains only one page and nothing 'overleaf'. Therefore, I find force in submission on behalf of the writ petitioner that, while issuing offer letter the petitioner has not

been provided with the specification of the vehicle which he has to produce before the concerned authorities.

18. No doubt, in case there has been any restriction and embargo, as regards any specific type of vehicle, the writ petitioner should have been informed before hand, for the sake of fairness of the process or else it will be unjust for a grantee to know about the decision of the Board or any internal circular of the department, in absence of any specific direction as to the kind of vehicle he would be required to place before the authorities. Admittedly, the Notification No. 2085-WT/TPT/2/2021 dated June 2, 2023, has not been published in an official gazette. Therefore, the only information available with the grantee/petitioner as regards the vehicle specification, at the relevant point of time is that disclosed in the offer letter and nothing else. Admittedly, in this case, the offer letter of the petitioner dated November 29, 2023 has been silent as regards the specific kind of vehicle the petitioner was to offer.
19. On the discussion as above the Court finds that at the time of production of the vehicle by him he was not informed in any way regarding restrictions as to the kind of vehicle, he has to produce.
20. It is further necessary that the relevant Clause of the notification no. 2085-WT/TPT/2/2021 dated June 2, 2023, be also considered. Let that be extracted as herein below:-

“v. If the route is exclusively outside Kolkata, the vehicle to be placed in case of new permit, may preferably be minimum BS IV emissions norms complaint, except the cases mentioned below in para c.”

21. *Vis-à-vis* the relevant provision of notification no. 2085-WT/TPT/2/2021 dated June 2, 2023, as above, the portion of the impugned letter is also required to be extracted:-

“Moreover, it should be noted that the vehicle you have placed in the route Digha to Bardhaman Alisha Bus Stand is EURO 3, and the above mentioned order clearly states that for non-KMA areas for the grant of a new permit, the vehicle norms must be at least BS-IV. Therefore, you are kindly requested to abide by the aforementioned order issued by the Transport Department.”

- 22.** On a comparative study of both as above, it can be found that the Notification dated June 2, 2023 has been crafted with the words ‘*may*’ and ‘*preferably*’ to qualify the words ‘*minimum BS IV emission norms*’ whereas the department in its own wisdom has interpreted the same that the ‘*vehicle norms must be at least BS IV*’.
- 23.** The usage of the word ‘*may*’ and ‘*preferably*’ to qualify the nature of vehicle, indicates about its characteristic as an optional measure. That is, in a route which is exclusively outside Kolkata Metropolitan area a vehicle to be placed for new permit may or may not be minimum BS IV emission norms, though a BS IV vehicle would be preferable in case of grant of permit. The said provision has never stated about any mandatory compliance thereof, as the concerned authority has put forth in its letter dated March 22, 2024. Hence, there has been an erroneous consideration of the guidelines by the authorities as well as wrong application of the same in case of the present writ petitioner. In case a provision has been made, the concerned authority shall have no other option than only to act in terms of the said provision and not otherwise. This being the settled position of law, the respondent authority would have no opportunity to interpret the guidelines according to its own whims. Therefore, even if the argument on behalf of the respondent is taken into consideration that the Board’s decision for grant of permit to the writ petitioner is subject to provision of notification no. 2085-WT/TPT/2/2021 dated June 2, 2023, the same would imply *preference* of BS IV vehicles and not a complete bar as regards vehicle of any other specification.

- 24.** More fully, at the cost of reiteration, it can be stated that any specific condition restraining grant of permit should have been intimated to the writ petitioner beforehand, which has not been done in the present case.
- 25.** On the discussion as above this Court is of the considered view that the impugned letter of the respondent STA West Bengal dated March 22, 2024, is not in conformation with the law, guidelines/norms. Rather the same appears to be an arbitrary one, having been not supported by any specific rules, regulations or guidelines etc. Thus, the same is liable to be set aside.
- 26.** Hence, the writ petition no. WPO 392 of 2024 is allowed with the following direction:-
- (i) Impugned letter dated March 22, 2024 is set aside;
 - (ii) The writ petitioner shall be allowed to place his vehicle no. WB-11C-6824;
 - (iii) Respondent STA West Bengal shall grant permit and time table with respect to the same, subject to fulfilment of the other conditions as enumerated in the offer letter;
 - (iv) The entire exercise as above shall be concluded by the respondent concerned, within a period of three weeks, from the date of the communication of this order;
- 27.** Report submitted by Mr. Sen, is taken on record.
- 28.** Urgent Photostat certified copy of this judgment, if applied for, be given to its parties on usual undertaking.

(Rai Chattopadhyay, J.)