

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction

ORIGINAL SIDE

WPO/761/2024

DEBARGHYA DHAR MOHAPATRA
VS
THE STATE OF WEST BENGAL & ORS.

BEFORE:
THE Hon'ble JUSTICE RAI CHATTOPADHYAY
Date : 26th September, 2024.

Appearance:
Mr. Shankar Nath Mukherjee, Adv.
Mr. Samim Akter, Adv.
Ms. Manisha Paswan, Adv.
...for the petitioner

Mr. Amal Kr. Sen, Ld. AGP.
Ms. Ashima Das (Sil), Adv.
...for the State

The Court: The petitioner has challenged in this writ petition, the decision of the Board, State Transport Authority, West Bengal, dated 6th February, 2024, thereby rejecting the petitioner's application for grant of permit for the inter-state route from Diamond Harbour to Bhubaneswar. The reason therefor has been stated in the said resolution of the Board to be availability of no vacancy, in the said route. The petitioner is also aggrieved that his grievance, as ventilated through the letter of his Ld. Advocate, dated 12th June, 2024, has also remained unattended by the said respondent, as yet. Hence, he has filed the present writ petition.

Mr. Mukherjee has represented the petitioner in this case. He has submitted that a new inter-state route was inducted vide notification dated 12th September, 2011, amongst others, that is from Bhubaneswar to Diamond Harbour via Laxmannath, Vidyasagar Setu and a total of 4 vacancies were declared there in.

The petitioner has submitted his two applications on line, for two vehicles, on 26th December, 2023. A notice was issued on 31st January, 2024, by the RTO & Ex-Officio Asstt. Director, State Transport Authority, West Bengal informing the schedule of the Board meeting to be held on 6th February, 2024 at 3 p.m. and seeking personal attendance of all the applicants. The writ petitioner was called for with respect to his both the applications, to be present in that meeting.

On the date, the following decision was taken :

“Decision of STA Board

Five applications received for the Inter State route DIAMOND HARBOUR TO BHUBANESWAR. Members of the STA Board considered and rejected all the applications as mentioned in serial No.1 to 5 as there is no vacancy at this point of time.”

The two applications of the petitioner found place at serial Nos. 2 and 3 of the said resolution dated 6th February, 2024, which were rejected along with the others.

According to Mr. Mukherjee, such decision of the Board is arbitrary and illegal; that the same has been a non-speaking, unreasoned and cryptic order based on no consideration of the relevant materials on record. He says that the Board’s resolution as above is untenable in the eye of law and the same should be set aside.

To buttress his submissions, Mr. Mukherjee has relied on a letter dated 22nd December, 2023, of the Joint Secretary, State Transport Authority, Odisha, to submit that the reciprocating State Odisha has granted counter signature in respect of the two applicants, for the said route, by dint of the said letter. Hence, after completion of that formality, two vacancies in the route can be said to have been filled up. However, the rest two vacancies out of total four of those, still remain vacant, which the Board, STA West Bengal has failed to take into consideration. Hence the decision of the Board vide resolution dated 6th February, 2024, regarding availability of no vacancy in the said route, suffers from gross error, he says.

Mr. Mukherjee would submit that after the existing permit holders failed to make an application for renewal of their permit which has expired earlier, it is a duty of the competent authority to immediately cancel those permits. The competent authority would be duty bound to immediately undertake a process of filling up of the vacancies which arose due to non-submission of an application for renewal of the earlier permits. He would say that this Court in earlier orders have mentioned such a permit to be a 'dead permit'. To buttress his such submission Mr. Mukherjee has relied on the following three judgments/orders of this Court:-

- (i) ***Bikash Chandra Saha vs. The State of West Bengal & Ors.*** reported in **2013 SCC OnLine Cal 21062**;
- (ii) ***Benu Binod Maity vs. The State of West Bengal & Ors.*** reported in **2023 SCC OnLine Cal 2402**;
- (iii) ***Debashis Das vs. State of West Bengal & Ors. in W.P.A 9902 of 2019, (order dated March 11, 2022).***

Also Mr. Mukherjee has put forth an anomaly with respect to the grantee, namely '*Shyamoli Paribahan Private Limited*', that in spite of its application dated

1st September, 2023, having been rejected by the State Transport Authority Board on 9th October, 2023, it can be found from the letter of the Joint Secretary, State Transport Authority, Odisha, dated 22nd December, 2023, that the reciprocating State has granted counter signature in respect of permit granted to it. Mr. Mukherjee has suggested that the legality and authenticity of such grant of permit to '*Shyamoli Paribahan Private Limited*', is suspicious, in absence of any cogent material on record, to justify such grant, even after rejection of its prayer earlier on 9th October, 2023.

Be that as it may, Mr. Mukherjee has insisted that as against the two vacancies available, petitioner's prayer for grant of permit should have been considered and allowed by the State Transport Authority West Bengal. Also that in such view of the matter, the impugned resolution of the same dated 6th February, 2024, is bad in law and liable to be set aside. An appropriate order has been sought for by the petitioner, in this writ petition.

Mr. Sen, Ld.AGP has represented the respondent State Transport Authority. Mr. Sen raises objection that any permit can be granted to the petitioner immediately, even if there are vacancies available. His arguments are principally based on the report dated 28th August, 2024, filed in Court by the Secretary, STA West Bengal and the relevant statutory provisions. On the basis of the said report he would submit that two permits in the said route, as against a total of four vacancies, have expired on 22nd December, 2023. Those permit holders, whose permits have expired, have neither come up with any prayer for extension of the same, nor for cancellation thereof, since after such expiry of its validity period.

It has been indicated that for renewal of permit, there is not any maximum time limit fixed in the statute, after which an existing permit holder may be said

to have been restrained from making an application for renewal thereof. On the contrary, the statute and the rules have provided for acceptance and grant of renewal of permit at any belated stage, upon fulfilment of the conditions as prescribed in the statute and the rules. It is therefore argued that mere expiry of the validity period of a permit would not ipso facto imply extinction thereof. Hence, the contention of the petitioner would not be tenable, in view of the statutory provision as mentioned above.

Mr. Sen would say that the Motor Vehicles Act, 1988, has not provided for any automatic 'cancellation' of permit. Mr. Sen would further say that the petitioner being an unsuccessful applicant amongst others, cannot claim any preference to be extended to him, even if there are vacancies available. That, in any event the petitioner must undergo the free and fair process of selection, against any vacant position, in any route. It has further been submitted that if not any vacancy has been declared by the competent authority, in terms of the statutory provisions, there would not arise any occasion for consideration of the petitioner's applications for grant of permit, which have once been rejected. Mr. Sen would suggest that the writ petition would not be maintainable and urge that the same may be dismissed.

Admittedly, on the day of rejection of the petitioner's applications for grant of permit, that is 6th February, 2024, validity period of two of the permits in the said route, had expired.

The duration of a permit to be valid would be in accordance with the provisions under section 81(1) of the Motor Vehicles Act, 1988. According to section 81(2) thereof, a permit may be renewed on an application made not less than fifteen days before the date of its expiry.

To the general provision as above, section 81(3) of the said Act, makes an exception. It says that :

81. Duration and renewal of permits. -

(1) *****

(2) *****

(3)Notwithstanding anything contained in sub-section (2), the Regional Transport Authority or the State Transport Authority, as the case may be, may entertain an application for the renewal of a permit after the last date specified in that sub-section if it is satisfied that the applicant was prevented by good and sufficient cause from making an application within the time specified.

The corresponding rule is Rule 151 of the West Bengal Motor Vehicles Rules, 1989, which provides as follows:

“151. Application for renewal of permit or of renewal of counter-signature of permit may be received after the date of expiry thereof provided a fee in the scale as prescribed in Schedule E3, for condonation of delay is paid in the manner as prescribed.”

Section 81(3) of the Act of 1988 read with Rule 151 of the Rules of 1989, have provided discretionary powers to the competent authorities, in a case when an application for renewal of a permit has not been made at least 15 days before expiry of validity period of that permit. Any delay in applying for renewal of a permit, the reason for which would be found to be sufficient by the said authority, may be condoned and renewal of permit may be allowed subject to payment of fees as per the schedule of the Rules of 1989, as prescribed. Therefore, the respondent has stated that there is no maximum limit as prescribed in the Act for the purpose of applying for renewal of a permit and has rightly stated so. The question is that whether therefore the authority is bound to wait in perpetuity, for a permit holder to come before it for renewal of his permit, the validity period of which has expired. The question also is if the permit holder,

validity of whose permit has since been expired would be called upon to explain as to why his permit would not be cancelled in absence of his prayer for renewal. The answer may be found in the erudite scripting by the Court in the judgment of **Bikash Chandra Saha (supra)**. Relevant portion thereof may be quoted below:

“There is no provision in the Act or the rules framed thereunder which obliges the permit issuing authority to call upon the permit holder to show cause as to why the permit issued in his favour, which has since expired, should not be cancelled. In other words, once the permit outlives its validity, it becomes a dead permit. Applicability of Section 86 of the Act relating to cancellation of permit would arise only in respect of a permit that is valid and operative. Recourse to cancellation of a dead permit is not envisaged in the statute. True it is that rule 151 read with Form E3 does not specify the outer time limit within which an application for renewal ought to be made, but it is open to the permit issuing authority to wait for a reasonable period of time after expiry of the permit and thereafter to notify the vacancy on the route, if it is an inter-state route or a notified route. However, what would be the ‘reasonable period’ must depend on the facts and circumstances of each case and there cannot be any exhaustive enumeration in this behalf.”

Hence, in this regard the law is thus settled in a manner as enumerated above. Neither the authority would wait for an indefinite period or forever, for a permit holder to come before it with an application for renewal of his such permit, the validity period of each expired, nor the authority would proceed to call the permit holder and seek explanation as to why his permit should not be cancelled in absence of any application filed by him seeking renewal thereof. Instead, in a case where the validity period of permit would expire, and since thereafter, the holder of the permit would not turn over, to file an application seeking extension of validity of the said permit, the permit issuing authority would wait for a reasonable period of time after expiry of the permit, and thereafter notify the vacancy on the route.

Similar principles have been propounded by the Court in the judgment of **Benu Binod Maity (supra)**, in which the Court has held that once the permit

outlives its validity, the same becomes a dead permit. The issue has been similarly dealt with in the judgment of ***Debashis Das (supra)***.

In the present case as the two permits in the said route have expired much earlier, on 22nd December, 2023. Sufficient time has already been elapsed, from the said date, without the permit holder having approached the authorities for renewal of such permit. There would not be any justifiable reason as to why the permit issuing authorities should wait any further without officially notifying the said positions, in respect of the said route, as vacant.

At this juncture, it is necessary that the second limb of argument of the petitioner be discussed. The petitioner has stated that since admittedly, the two positions stand vacant due to non-renewal of the permits already expired, as on the date of his applying for the permits, he should be granted with the permits, as against the said two vacant positions. The Court finds that in view of the scheme of the Act and the Rules as stated above, which have provided that there would virtually not be any outer limit of time for filing an application for renewal of a permit and that a vacancy has to be filled up through a process of selection pursuant to a vacancy notification inviting applications from the eligible intending operators, to take part in the said process of selection, there would not be any scope under the law, for automatic transposition of an applicant in place of a permit holder, though validity of permit might have expired much earlier. For filling up a vacancy, the pre-condition is to declare the vacancy by publishing notification. It is a fact admitted in this case that on the date of consideration of petitioner's prayer for grant of permit, validity of the two permits in the said route amongst the four, had already expired. However, the records would reveal that either on the date of the petitioner making applications for grant of permit, or on the date of cancellation by the authority of such prayer of the petitioner, there was no formal declaration of vacancy in the said route. Hence, the court finds

that unless there has been a formal declaration of vacancy through a duly published notification, the respondent authority could not have considered those to be vacancies available. Therefore, as regards the finding of the Board, STA, West Bengal in its resolution dated 6th February 2024, regarding availability of no vacancy, the Court finds the same technically to be bereft of an error and hardly to be interfered into.

The Court is also unable to find any justification as regards the inaction by the said authority not to declare any vacancy in the said route, for such a considerable long period of time, since after expiry of the validity of the two permits which existed earlier. Therefore the decision of the Board dated 6th February, 2024, is, if not illegal, but unjust and improper to affect the lawful rights of the intending applicants, including the present petitioner adversely. Hence the same is found to be not tenable in the eye of law.

On the premise as above, the Court finds it proper to dispose of the present writ petition with the directions as below:

- (i) The resolution of the Board, State Transport Authority, West Bengal dated 6th February, 2024, is set aside;
- (ii) The STA West Bengal is directed to immediately declare vacancies in the said route, in accordance with law, pursuant to the validity period of the two permits in the said route having been expired long ago and no application having being made for all these periods, for renewal of the same;
- (iii) In the process, the STA, West Bengal shall take into consideration the existing applications of the petitioner dated 26th December, 2023, along with the other applications received, if any. However, regarding relevant documents to be submitted by the writ

petitioner for consideration of his applications as mentioned above, the said respondent/permit issuing authority, may direct for submission by the present petitioner, of the latest documents/data as relevant and necessary for due and proper consideration of his applications.

- (iv) The STA, West Bengal shall consider, for grant of permit as against the said two vacancies in the route, all the applications received, including those of the petitioner's dated 26th December, 2023, and decide upon those in accordance with law.
- (v) The result thereof shall be communicated to the petitioner within one week from the date of its order.
- (vi) The entire exercise as above shall be concluded by the respondent State Transport Authority, West Bengal, within a period of three months from the date of communication of this order.

Writ petition No. WPO 761 of 2024 is disposed of.

Urgent certified website copies of this order, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(RAI CHATTOPADHYAY, J.)