

OD-2

ORDER SHEET

WPO/781/2024

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

ARUP KUMAR GHOSH
VS
THE STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble JUSTICE RAI CHATTOPADHYAY

Date : 20th August, 2024.

Appearance:

Mr. Sankar Nath Mukherjee, Adv.

Sk. Samim Akhter, Adv.

...for the petitioner

Mr. Pantu Deb Roy, Ld. A. G. P.

Mr. Subrata Guha Biswas, Adv.

Mr. Paritosh Sinha, Adv.

...for the State

The Court: The writ petitioner is aggrieved with the order of the respondent State Transport Authority dated June 14, 2024. By dint of the same, the respondent authority has considered the petitioner's prayer for curtailment of the permitted route alignment of the petitioner, through which he has been plying the stage carriage so far. The writ petitioner is aggrieved due to the said decision and the reason therefor that the prayer of the petitioner, if allowed, will fail to serve or provide any benefit to the movement of the common people residing between Borda Chowkan and Monsukha.

The case has a chequered history. From the record it can be seen that for the first time the writ petitioner came up before this Court in

WPA/7084/2023 to challenge the inaction of the respondent authorities to consider his representation for curtailment of the route alignment. The same was disposed of by the order dated September 4, 2023 and pursuant to the direction of the Court, the respondent authorities have considered the petitioner's prayer as above. The result is depicted in the Board's resolution dated October 9, 2023, where it has been held that in terms of Section 80(3)(i) (second proviso) of the Motor Vehicles Act, 1988, the termini of the route cannot be altered; as the writ petitioner was praying for curtailment of the route resulting into change or alteration of the termini, the Board has declined the petitioner's prayer for such curtailment.

The writ petitioner came before the Court for the second time to challenge the said decision of the Board dated October 9, 2023, in WPA/1133/2024. The Court by dint of its order dated May 10, 2024 in the writ petition has set aside the decision of the Board as above. The Court in the said order has held, *inter alia*, that the petitioner's prayer cannot be considered to be a prayer for either variation or extension of the permitted route but only for curtailment of the route. The Court has also distinguished between the terms as provided in the statute like "variation", "extension" and "curtailment" of the route. By setting aside the impugned order therein, the Court in WPA/1133/2024 has directed for fresh hearing of the petitioner's prayer by the respondent authorities.

The resultant order is that dated June 14, 2024, as impugned in the present case.

The Regional Transport Authority Board, Ghatal, in the said impugned order has relied on the provision under Section 80, sub-section 3 of the

Motor Vehicles Act, 1988 and also the report of the A.R.T.O., Ghatal stating, *inter alia*, that curtailment of the route of the petitioner as prayed for shall not serve or provide any benefit to the common people residing between Borda Chowkan and Monsukha.

Mr. Mukherjee is appearing for the petitioner. He has specifically pointed out to the provision under Section 80 (3) of the Motor Vehicles Act, 1988. His contention is that the satisfaction of the authority regarding commuters' convenience or expedience for curtailment of the route as prayed for shall be required and limited only in case of an application for "variation" or "extension" of the route and not for curtailment. By referring to this Court's earlier order dated May 10, 2024 in WPA/1133/2024, he has submitted that the Court has categorically held therein regarding the difference of the statutory terms like "variation", "extension" or "curtailment". According to Mr. Mukherjee, the respondent authorities dwelled on the erroneous basis by considering the convenience of the common people in case of curtailment of the route alignment for the petitioner. He seeks adequate relief in this case.

Mr. Deb Roy is appearing for the State respondents. Mr. Deb Roy raised strong objection as to the contention of the writ petitioner, particularly, on the ground that in accordance with the scheme of the social beneficial legislature like the Motor Vehicles Act, 1988, the convenience of the common people, in each and every case, should be paramount. He says that policy of the statutory authority under the said Act, would depend on benefit of commuters and not that of the permit holders and would not be prompted by their whims and advantages but as per expediency of the

situation. He indicates that in terms of the notification and pursuant to the fact of the petitioner having voluntarily applied for the route permit, he was granted permit to ply through the route, from Monsukha to Howrah. Later on, the petitioner cannot be permitted to alter such alignment according to his own wishes and to the detriment of the interest of the common people of the locality. In this regard, Mr. Deb Roy has relied on the report submitted by the ARTO, Ghatal. He has prayed for dismissal of the writ petition.

The Court has gone thoroughly through the order of the other Co-ordinate Bench in WPA/1133/2024 dated May 10, 2024. It appears that the Court there, has extensively discussed regarding the statutory expressions like “variation”, “extension” or “curtailment” of the route and has come to a finding that “curtailment”, “extension” and “variation” are three different components which have been dealt with in the Act, separately. The Court has further held categorically that the application of the petitioner is for “curtailment” of the route for which he has been granted permit earlier.

The same order having reached its finality, therefore, if read along with the provisions under Section 80 (3), of the Act of 1988, it will be evident that “curtailment” of a route, unlike “variation” and “extension” thereof, has not been made subject to the convenience of the public. For benefit of discussion, let the relevant provision of the Act, be quoted hereinbelow:-

“Provided further that,—

(i) in the case of variation, the termini shall not be altered and the distance covered by the variation shall not exceed twenty-four kilometres;

(ii) in the case of extension, the distance covered by extension shall not exceed twenty-four kilometres from the termini,

and any such variation or extension within such limits shall be made only after the transport authority is satisfied that such variation will serve the convenience of the public and that it is not expedient to grant a separate permit in respect of the original route as so varied or extended or any part thereof.”

Dominant purpose in formulating scheme by the State Government should be the creation of an efficient and properly coordinated road transport service. The same would include commuters’ convenience, as well as feasibility of the permit holder to continue plying the stage carriage. That is why, the legislature, in its own wisdom, has made provisions that a permanent permit holder would be eligible to apply to vary the conditions of permit by inclusion, alteration, extension or curtailment of the route or area covered by the permit or increasing number of trips (as per s. 80 (3) of the said Act).

The legislature having used the word “curtailment”, in addition to “variation” of the route, the said two words would imply two different connotations, with reference to change of route alignment for any reason, including pursuant to an application by the permit holder.

In that perspective, when the “second proviso” of s. 80 (3) of the Act of 1988, is considered, it can be noticed that “curtailment” of a permitted route alignment has not been made subject to any condition or rider.

On consideration as above, the impugned order appears to be not in conformity with the statutory provision. The petitioner’s prayer has been rejected for the reason of apprehended inconvenience of the residents as a consequence of curtailment of the route of the petitioner’s vehicle. It is pertinent to mention that the impugned order has not specified as to how

the inconvenience of the common people of the locality is anticipated by the said respondent authority.

On the discussion as above, the impugned order, having been found bereft of support by the statutory provision and the settled legal principles, should not stand.

Hence the impugned order dated June 14, 2024 is set aside.

The present writ petition is allowed with the direction upon the Secretary, Transport Department, Government of West Bengal, to consider the petitioner's prayer afresh, in terms of the statutory provision as well as the law settled in this regard.

In doing so, the respondent authority shall afford an opportunity of hearing to the petitioner and also to any other person as it may think fit and proper. The said respondent shall decide the prayer of the petitioner by dint of a reasoned order and positively within a period of six weeks from the date of communication of this order.

Since no affidavit-in-opposition has been called for, the allegations contained in the writ petition are deemed to be denied.

Urgent certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(RAI CHATTOPADHYAY, J.)