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ORDER SHEET

WPO/1061/2024

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

AKSHAY GATAIT ALIAS AKSHAY KUMAR GANTAIT
VS
STATE OF WEST BENGAL & ORS.

BEFORE:

The Hon'ble JUSTICE RAI CHATTOPADHYAY

Date : 19th November, 2024.

Appearance:

Mr. Sankar Nath Mukherjee, Adv.

Mr. Niraj Gupta, Adv.

...for the petitioner

Mr. Amal Kr. Sen, Ld. A. G. P.

Ms. Sahina Sumi, Adv.

...for the State

The Court: The writ petitioner is the operator on the route from Dunlop to C. K. Road. His application for extension of the route from Dunlop to Kolkata Station via Sinthi More, Chiria More, Shyambazar has been rejected by the Board, STA, West Bengal, in its meeting dated September 20, 2024. The reason shown by the Board for rejection of petitioner's prayer as above is as follows:

“REJECTED UNDER SECTION 80(3) OF THE M.V. ACT 1988. AS THE TERMINI WOULD BE CHANGED.”

The writ petitioner being aggrieved as to the decision of the Board and the reason shown as stated above has come up with this writ petition to seek proper redress.

Mr. Mukherjee for the petitioner would refer to the Clause (ii) of the second proviso of Section 80(3) of the Motor Vehicles Act, 1988 to say that the reason for which the petitioner's application as above has been rejected is not in conformity with the law. He would say that for extension of a route, change of termini point is irrelevant. And, therefore, the ground shown for rejecting the petitioner's application for extension of the route by the Board would not be sustainable. He challenges the decision of the Board as above and seeks setting aside thereof.

Mr. Sen is appearing for the State respondent. Mr. Sen is, however, supporting the decision of the Board on the following two grounds. Firstly, that in accordance with Section 80 sub-section (3) of the Act of 1988, an application for extension would be altering the route for which, he says, the petitioner has to apply in a similar manner as for grant of a new permit. He says that Section 80(3) of the Act of 1988, has provided that for a stage carriage, for alteration or extension of the route, the application has to be treated as if for grant of a new permit, in accordance with the law.

Mr. Sen has also elaborated that the route from Dunlop to C. K. Road upon which the petitioner at present is operating, if extended from Dunlop to Kolkata Station as per prayer of the writ petitioner, that would amount to declaration of a new route and in accordance with Section 68 of the Motor

Vehicles Act, 1988, the power to declare a new route is vested to the State only. Without assent of the State, such extension of route, which tantamounts to declaration of a new route, would not be maintainable, he says.

For the reasons as above, Mr. Sen insists that the writ petition be dismissed.

The provision under Clause (ii) of the second proviso of Section 80 sub-section (3) of the Motor Vehicles Act, 1988 is clear and eloquent enough, which provides as follows:

“80. Procedure in applying for and granting permits.-

(3) An application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area or by altering the route or routes or area covered by it, or in the case of a stage carriage permit by increasing the number of trips above the specified maximum or by the variation, extension or curtailment of the route or routes or the area specified in the permit shall be treated as an application for the grant of a new permit:

Provided that it shall not be necessary so to treat an application made by the holder of stage carriage permit who provides the only service on any route to increase the frequency of the service so provided without any increase in the number of vehicles:

Provided further that,-

(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.”

Therefore, according to the same and for all practical purposes, in case of extension of a route, the termini is supposed to change, in all cases. It is also worth noting that in case of extension of the route, the only considerable point is the length of the extendable route and the law has not provided as regards any relevance of change of termini, in case of extension of the route. Therefore, the decision of the Board citing the reason of change of termini, appears to be erroneous, *de hors* the law and thus, illegal and not maintainable

In that view of the matter, the arguments advanced on behalf of the State respondent appear to be unacceptable. The Court finds that, pursuant to Section 80 sub-section (3) of the said Act, an application for extension has to be treated as if that for grant of a new permit. The same does not imply compliance of the statutory formalities in totality, in the similar manner as for grant of a new permit. That possibly is not the mandate of the law. Instead the law provides that the process of extension of a route, has to be akin to the process of grant of a new permit.

The Court concurs with the submission on behalf of the writ petitioner that in the same meeting in case of the other applicant, the Board has allowed prayer for extension without, however, complying with the formalities of submission of statutory application form etc., by the said applicant.

It is also pertinent to note that the points argued before this Court, have not been the grounds for rejection of the petitioner's prayer in the Board's meeting dated September 20, 2024.

Evidently, the same are formulated at the time of argument and in order to supplement better grounds as to the reasons for rejection of petitioner's prayer by the Board in the same meeting. The Court is constrained to find that as per the settled law, supplementing new grounds at a later stage than what has been the reason of rejection of the petitioner's prayer, by the competent authority, would not be maintainable.

For the reasons as discussed above, the present writ petition should succeed. Hence the same is allowed and disposed of, with the directions as follows:-

(i) The decision of the Board, STA, West Bengal dated September 20, 2024, is set aside.

(ii) The respondent Board is directed to consider afresh the petitioner's application for extension of the route upon which he is operating, from Dunlop to Kolkata Station, after granting opportunity of hearing to the writ petitioner.

(iii) The decision of the Board, unless is in favour of the writ petitioner, be communicated to the petitioner within one week from the date of the order of the Board.

(iv) The entire exercise as above shall be concluded by the Board within a period of four weeks from the date of communication of this order.

Since no affidavits are called for, the allegations in the writ petition, are deemed to have been denied.

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

(RAI CHATTOPADHYAY, J.)

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