

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE MADHURESH PRASAD**

**APO 133 of 2023
With
WPO 530 of 2022
IA GA 1 of 2023
Biswajit Chatterjee & Anr.
Vs.
Ram Pujan & Ors.**

**APO 134 of 2023
With
WPO 531 of 2022
IA GA 1 of 2023
Biswajit Chatterjee & Anr.
Vs.
Sheo Pujan & Ors.**

**APO 135 of 2023
With
WPO 532 of 2022
IA GA 1 of 2023
Biswajit Chatterjee & Anr.
Vs.
Shashi Pujan & Ors.**

**APO 148 of 2023
With
WPO 530 of 2022
IA GA 2 of 2024
Om Prakash Gupta
Vs.
The State of West Bengal & Ors.**

**APO 149 of 2023
With
WPO 531 of 2022**

IA GA 2 of 2024
Om Prakash Gupta
Vs.
The State of West Bengal & Ors.
APO 150 of 2023
With
WPO 532 of 2022
IA GA 2 of 2024
Om Prakash Gupta
Vs.
The State of West Bengal & Ors.

Appearance:

For the Petitioners(1 to 3) : **Mr. Aurobinda Chatterjee, Sr. Adv.**
Mr. Arkadipta Sengupta, Adv.
Ms. Aayushi Mukherjee, Adv.

 For the Appellant (4 to 6) : **Mr. Sattwik Bhattacharyya, Adv.**
Mr. Aashutosh Bhattacharyya, Adv.

 For the State (4 to 6) : **Mr. Amal Kumar Sen, Adv.**
Mr. Lal Mohan Basu, Adv.

 For the Respondent(1 to 6) : **Mr. Debabrata Saha Roy, Adv.**
Mr. Debabrata Chakraborty, Adv.

 For the STA Jharkhand (1 to 6): **Ms. Aishwarya Rajyashree, Adv.**

Judgment On : **05.04.2024**

Harish Tandon, J.:

The instant appeal is filed by the respondent No. 7 of the writ petition assailing a judgment and order dated 1st August, 2023 passed by the Single Bench disposing of the writ petition with the direction that the State Transport Authority, West Bengal and the State Transport Authority, Jharkhand will take a conscious decision within 3 months in relation to all

formalities which appears to have not been followed in terms of the provisions of the Motor Vehicles Act, 1988.

The salient facts involved in the instant case are required to be narrated in order to determine the questions raised in the instant appeal. The writ petitioner who is arraigned as respondent no. 8 in the instant appeal was the permanent permit holder issued by the State Transport Authority, Jharkhand for a route between Jamshedpur and Durgapur. After the issuance of the permit by the State of Jharkhand, the counter signature is required to be put in by the reciprocating State i.e., State of West Bengal which appears to have been a subject matter of several litigations between the parties. It appears that there was reluctance on the part of the State Transport Authority, West Bengal in putting a counter-signature and for every fresh permit or the renewal thereof, the approaches were made to the High Court and orders were passed to put a counter-signature. The writ petitioner/respondent No.1 has vividly reflected various writ petitions filed before this Court and the contempt application in violation of such order passed in the writ petition which were ultimately disposed of.

At the time of the last renewal, the same stand was taken by the State of West Bengal showing their dormant attitude in not putting a counter signature and the writ petition was filed by the said respondent No. 4 seeking a mandamus commanding the State Transport Authority to issue counter-signature/letter so that the said respondent would continue plying the vehicle on the basis of the permit granted by the State Transport Authority, Jharkhand. The record would further reveal that an objection

was raised by the appellant before the Authority and order was passed by the writ Court to add the appellant as party respondent in the said writ petition. By the impugned order the learned Single Judge passed the following direction:

“It is expected that the STA, West Bengal and the STA, Jharkhand will come to a decision within three months from today which is considered to be a reasonable period for completion of all exercises in terms of the order passed by this Court. Fixing a reasonable period is necessary since the added respondents have expressed their continued grievance in face of the discrepancy in the two routes. The STA, West Bengal and the STA, Jharkhand will publish the decision pursuant to the discussion in their respective websites and also give notices to the parties in the present writ petition within two weeks from the date of publication of the decision in the official website.

It is also made clear that there should not be any unreasonable delay on the part of the two authorities since one of the parties before the court is continuing to enjoy interim protection. The interim order which is till 21st August, 2023 will continue until four weeks from the communication of the decision to the parties.”

It is a specific stand of the appellant petitioner that he is an old existing operator in respect of an inter-State route i.e., Jamshedpur to Durgapur via Purulia, Hura, Kamalpur, Bankura since 1988 and the said permit was renewed from time to time. The objection is raised by the appellant that a draft state reciprocal agreement was published in the official gazette of State of West Bengal on 4.9.2002 which includes one inter-State route i.e., Jamshedpur to Durgapur via Barrage, Bankura, Burdwan, Kating, Patamda for inviting objections under Section 88(5) of the Motor

Vehicles Act, 1988. Correspondingly, the State of Jharkhand also published the said draft reciprocal transport agreement for the said route on 27.1.2003 both in Hindi as well as in English version. Subsequently, the said draft reciprocal transport agreement was finally published by the State of West Bengal on 29.3.2004 revising the said inter-State route and subsequently, the State of Jharkhand also published the same on 8.3.2006 both in Hindi as well as English version.

It is a specific case of the appellant that there is a variance in a finally published inter-State Reciprocal Transport Agreement published by the Jharkhand in Hindi version with the English version. It is categorically stated that the inter-State permit issued by the State of Jharkhand on the basis of the Hindi version of the Reciprocal agreement is, in effect, a new route which does not tally with the English version nor in tune with the route finally published by the State of West Bengal and, therefore, there is no question of any counter-signature to be put thereupon.

Noticing the discrepancy as projected by the appellant, the writ petitions filed by the respective respondent no. 8 were disposed of on the directions as quoted hereinabove. The appellant have taken us to the various provisions of the reciprocal agreement published both by the state of West Bengal and the State of Jharkhand to support its contention that the route which does not form part of the said reciprocal agreement, no permit can be granted for such route by the reciprocating State in view of the mandatory provisions contained under Section 88(5) of the said Act. It is submitted that any permit granted without being included in the said

reciprocal agreement is illegal and therefore, the objection of the State of West Bengal in declining to put the counter-signature cannot be faulted with. In support of aforesaid contention, the reliance is placed upon the judgment in case of **Ashwani Kumar & Anr. Vs. Regional Transport Authority, Bikaner & Anr.**, reported in **(1999)8 SCC 364** and **A. Venkatakrishnan vs. State Transport Authority, Kerala**, reported in **(2004) 11 SCC 207**. It is sought to be contended that Section 88(5) of the said Act mandates an agreement to be entered into between the States for the purpose of fixing the numbers of the permit proposed to be granted or counter-signed in respect of each route or area to be published by each of such State in the Official Gazette. It is thus, submitted that the route for which the counter-signature is sought for is not included in the said reciprocal agreement and because of a discrepancy having arisen in the Hindi version published by the State of Jharkhand it would not be presumed that the said route forms part of the said reciprocal agreement.

On the other hand, the writ petitioner/respondent submits that the route permit was granted to the petitioner since long and the objection raised by the appellant and the State of West Bengal is untenable. The counsel for petitioner reliance upon the various orders passed in connection with the writ petition concerning the said route and submits that this court all along accepted the route to be a part of the reciprocal agreement and directed the State Authority to put the counter-signature on the permit. It is thus, submitted that the objection so raised is untenable and in order to eradicate any confusion, the Single Bench has directed both the State

Transport Authorities of the reciprocating State to take a conscious decision which cannot be faulted with.

Such being the short question involved in the instant appeal, our attention was drawn to the interim order passed in the instant appeal whereby the writ petitioner/respondent was permitted to continue to ply the vehicle in the said route and a decision to be taken by the reciprocating States so that the matter can be brought to its logical end. Since a legal point was raised by the appellant, we intend to deal with the same as we feel that non-consideration thereof would tantamount to failure in discharge of a solemn duty entrusted upon the Court.

In ***Ashwani Kumar (supra)***, the Apex Court has concerned with the matter relating to a route passing through the State of Rajasthan, Haryana and UT Delhi. The regional Transport Authority of Bikaner took a conscious decision to open the route i.e., Bhadra to Delhi but granted permit in favour of only one person. The application of the other applicants were rejected. The approach was made by one of the applicants, whose application was rejected, to the Tribunal which was disposed of directing a RTA, Bikaner to grant stage carriage permit in respect of its bus for daily one single trip with the condition that the permit would be valid on obtaining counter-signature from the other State concerned. Subsequently, the said permit was cancelled by the RTA, Bikaner and the challenge was made to the High Court of Rajasthan and ultimately the matter reached to the Supreme Court. The Apex Court held that the existence of a route is a condition precedent for exercise of powers under Section 88(1) of the said Act and the

scheme of the aforesaid Section would indicate that one State cannot take an unilateral decision unless a reciprocal agreement is entered into and published in the Official Gazette in the following:

“7. Accepting the submissions made on behalf of the appellants would result in frustration of the objective sought to be achieved by the Act. The interpretation put by the High Court is rational, legal and proper. In the absence of the existence of an inter-State route, the authorities under the Act were not justified in granting the permits to the appellants. The existence of permit depends upon the reciprocal agreements between the States covered by the route which, admittedly, did not exist in the instant case. The orders of the authority granting permit in favour of the appellants were thus without jurisdiction.”

The judgment rendered in ***A. Venkatakrishnan (supra)*** by the Three-Judge Bench of the Apex Court have reiterated and accepted the ratio of the decision rendered in ***Ashwani Kumar (supra)*** in the following:

“13. A purposive and meaningful construction, it is trite, must be given to a statute, so that it is made workable. A statute should not be construed in such a manner, which would create a vacuum. In the absence of any route being fixed in terms of an agreement, in the event it be held that an application for grant of permit for inter-State route can be entertained, the same would lead to a futile exercise. A mutual approval of the States concerned, in the matter, therefore, must be held to be mandatory. In other words, the proviso, appended to sub-section (4) of Section 88 of the Act, must be read conjointly with sub-sections (5) and (6) of Section 88 thereof and consequently, it must be held that by necessary implication agreements are contemplated for creation of inter-State routes.

14. We are in agreement with the view taken by this court in the case of Ashwani Kumar case.”

It admits no ambiguity that the scheme of the Act concerning the inter-State route bestowed power upon the respective States to create an inter-State route and to get it finalized by virtue of Sections 88(5) and 88 (6) of the said Act. The Sub-Section (5) of Section 88 postulates that every proposals for inter-State route or permit has to be entered into by the reciprocating State and, therefore, to limit or fix the number of permits, the same is to be published in the Official Gazette of the respective State in any one or more of the Newspaper in regional language circulating in the area or the route proposed to be covered by the said agreement. The object underline the aforesaid provision is explicit that there should not be the congestion in the said route as the intention for such permit is to facilitate the services to the commuters and a comfortable journey in the specified route. By the advancement of the technologies several committees were set up and the recommendations were made to encourage the adoption of the technologies in the automotive sector in order to facilitate the greater flow of passengers and also to control the freight. Apart from the same, the road safety Standards and the parameters are required to be set up to avoid any accident to occur. The scheme of the Act manifests several roles of the Route Transport Authorities and imposing the conditions differently in relation to a permit to ply the vehicle inter-Region, intra-Region and inter-State.

We are concerned with the inter-State permit and therefore it has to pass through a muster of Sub-Section (5) of Section 88 of the said Act. We

have been taken to the publication of the reciprocal agreement in the official gazette of the West Bengal and the Jharkhand and we find that so far as the Hindi version of the said reciprocal agreement published by the State of Jharkhand there appears to be same variance. Section 88(5) of the Act requires the publication of the said reciprocal agreement in a regional language circulating the area or the route proposed to be covered and if any discrepancies is found, we do not find any fetter on the part of the respective States to take a conscious decision in this regard. It cannot be said that the route for which the permit was granted to the respondent no. 8 of the respective appeals that the said route is covered within the said reciprocal agreement published in the Hindi version and, therefore, the Trial Court directed the RTA of both the States to resolve the said dispute by removing the discrepancies if therebe any.

During the hearing of the instant appeal, the counsel for the State hands over the decision taken by the RTA of the respective States wherein the route for which the respondent no.8 was granted permit has been rectified by amending and/or incorporating in the reciprocal agreement. The aforesaid decision has been taken on 5th December, 2023 and 6th December, 2023 by the respective States and, therefore, the contention of the appellant cannot faulted that the route for which the permit was granted to the respondent no. 8 by the State of Jharkhand has been rectified. There is no fetter on the part of the Court to take note of the subsequent events and in the event, the authorities have acted strictly within the purview of the statutory provision, the same cannot be said to be infirmed and/or illegal. In this regard, we further find that the reciprocal agreement contains a

specific provision that any change or the correction in any Clause of the agreement or any addition or deletion of the routes, any correction or changes in the alignment of routes may be done by a mutual consent after discussion. By virtue of the said Clause, the mutual discussion has taken place and the discrepancies have been removed but such alteration or the incorporation can only take effect after the same is duly published in the official gazette in the respective States. We have not been informed by the counsel for the State that the same has been published in the official gazette and, therefore, we modify the order impugned in the instant appeal to the extent that the counter-signature to the permits can only be made after, the amendment in the reciprocal agreement is duly published in the official gazette strictly in terms of Sections 88(5) and 88(6) of the said Act. With this observation, all the appeals are disposed of.

No order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with the requisites formalities.

(Harish Tandon, J.)

I agree.

(Madhuresh Prasad, J.)