

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Ct.551 **02.07.25**
Item No.18 Sws.M

WPA 1661 of 2025
With
CAN 1 of 2025
SrikantoGhosh
Vs
Union of India &Ors.

Mr. Dilip Kumar Samanta
Mr. Biswapriya Samanta
Mr. S. Palit
Mr. Akash Kumar Chakraborty
...for the petitioner

Mr. Ashim Kumar Ganguly, Ld. AGP
Mrs. Ashima Das (Sil)
Ms. Raima Ganguly
....for the State

Mr. N.I. Khan
Mr. Amlan Kumar Mukherjee
Mr. Dilip Kumar Mandal
...for the added respondent

Mr. Brijendra Pratap Singh
Mr. Uttam Basak
...for the Union of India

1. The petitioner is aggrieved by the non-grant of trade certificate in terms of Rule 35(1) of the Central Motor Vehicles Rules, 1989 (hereafter 'the said Rules').
2. Briefly summed up the relevant facts are that the petitioner applied for grant of trade certificate in the category of dealer in Form 16A on or about August 7, 2024 and also the requisite fees in respect of the same in accordance with the relevant

laws. The petitioner claims to be a dealer in terms of an Authorised Dealer Agreement entered into between the petitioner and one Honda Motorcycle Scooter India Pvt. Ltd.

3. Despite the petitioner having filed the application for grant of trade certificate along with requisite fees, trade certificate has not been issued in favour of the petitioner. Feeling aggrieved thereby, the petitioner has approached this Court by filing the instant writ petition.
4. Mr. Samanta, learned advocate appearing for the petitioner invites the attention of this Court to Rule 34 of the said Rules and submits that in terms thereof, the only requirement for the purpose of obtaining trade certificate is to make an application before the authorities with the requisite details and in the format prescribed under Rule 34 of the said Rules.
5. Mr. Samanta submits that the petitioner has made an application in consonance with the provisions of Rule 34 of the said Rules. He submits that once an application complying with the provisions of Rule 34 was made, the authorities ought to have taken a decision on such application and they could not have kept it pending.
6. Mr. Ganguly, learned advocate appearing for the State-respondents relies on the report in the form

of affidavit filed on behalf of the State-respondents and submits that trade certificate could not be issued in favour of the petitioner because of the confusion created by the “Authorized Dealer Agreement” provided by the petitioner along with his application wherein expressions like “associate dealer”, “authorized dealer” and “authorized main dealer” have been used. He submitted that the registering authority also sought for clarification from the manufacturing company with whom the petitioner claims to have entered into the said “Authorized Dealer Agreement” but no clarification was given and as such the petitioner could not be granted trade certificate.

7. It is further submitted that Rule 34 speaks about only dealers and therefore the usage of various other expressions along with the expression dealer in the said agreement has created confusion and the petitioner’s status therefore cannot be decided with certainty.
8. Mr. Khan, learned advocate appearing for the applicant in CAN 1 of 2025 (an application for addition of party) submits that his client is the “Authorized Main Dealer” and that his client has been granted a trade certificate on the basis of an agreement to that effect which is captioned Authorised Main Dealer Agreement. He further

submits that any grant of trade certificate in favour of the petitioner would adversely affect his client and therefore his client should be heard by this Court, while hearing the writ petition.

9. Mr. Khan further relies on Rule 33 of the said Rules and submits that a person in order to be entitled to apply must fulfill the conditions mentioned in Rule 33.

10. Mr. Samanta, learned advocate appearing for the petitioner in reply submits that the objection taken by the State authorities is not well founded. He reiterates that the only requirement for the transport authority at the stage is to check whether the ingredients of Rule 34 have been complied with or not. According to him, once the ingredients of Rule 34 have been complied with, the authority is bound to consider the application.

11. Apropos the submission made on behalf of the applicant seeking to be added as parties to this writ petition, Mr. Samanta submits that the applicants have no *locus standi* and they cannot be heard. In support of his submissions he relies on the following judgments:

1. 1970(1) Supreme Court Cases 575,
(Paragraph 9)
2. (1976) 1 Supreme Court Cases 671,
(Paragraph 13)

*3. (1992)1 Supreme Court Cases 168
(Paragraph 6)*

12. Having heard the learned advocates appearing for the respective parties and having considered the material on record, this Court is of the view that the respondent-Transport Authority ought not to have kept the petitioner's application for grant of trade certificate pending.
13. A perusal of the provisions of Rule 34 and Rule 35 of the said Rules would indicate that once an application is made before the authority in terms of Rule 34 of the said Rules, it is obligatory on the part of the authority to apply its mind to such application and dispose of the same either by granting the trade certificate or by refusing to grant the same.
14. In case the authority decides to refuse to grant trade certificate or to reject a request for grant thereof, the relevant authority would be obliged to afford an opportunity of hearing to the concerned applicant in terms of Rule 35(4) of the said Rules and give reasons in support of such rejection or refusal. From a bare reading of Rule 35(4), this exercise appears to be mandatory.
15. In so far as the submission of Mr. Khan that an applicant while making an application for grant of

trade certificate in terms of Rule 34 must fulfill the conditions mentioned in Rule 33 is concerned, this Court agrees with such proposition, but then the question as to whether the conditions mentioned in Rule 33 have been fulfilled or not would again have to be decided by the relevant transport authority only, in terms of Rule 35(4) of the said Rules. If an applicant has not fulfilled the conditions mentioned under either Rule 33 or Rule 34 of the Rules, then in such case the relevant authority would reject such person's application following the procedure mentioned in Rule 35(4) of the said Rules.

16. In any case, once an application is made and the application is complete, the authority concerned would be bound to consider it and render a decision either by an act of grant of trade certificate or by a reasoned order of refusal upon hearing the applicant.

17. This Court is conscious of the fact that in terms of Rule 35(2) of the said Rules, if the application is not disposed of within a period of thirty days from the date of receipt of the application, the application shall be deemed to have been approved and trade certificate shall be deemed to be granted or renewed through portal. However, in the case at hand, since this Court had directed the authorities

to file a report in the form of an affidavit and the Report reveals that the authorities have taken a stand that they have communicated via emails with the manufacturing company namely Honda Motorcycle Scooter India Private Limited, for clarification upon a confusion having arisen as regards the petitioner's status as dealer, the said provision cannot be invoked in the present case.

18. This Court is of the considered view that such provision is required to be invoked in cases of absolute inaction on the part of the transport authorities despite there being a genuine and bona fide case of grant of certificate where there is no scope for confusion or doubt.

19. In such view of the matter, the controversy as regards the petitioner's status as "dealer" which now appears to be central to the process of arriving at a decision as to whether or not the petitioner should be granted trade certificate, should be settled only by the Respondent Transport authority at the first instance and not this Court under Article 226 of the Constitution of India.

20. This Court is of the view that since Mr. Khan's client, i.e. the applicants in CAN 1 of 2025 claim that such applicant no. 1 is the "authorized main dealer" under the same company, i.e. Honda Motorcycle and Scooter India (P) Ltd. under which

the petitioner claims associate/authorised dealership, and Mr. Khan's client has got a trade certificate on the basis of such agreement with the same company Mr. Khan's client should also be heard by the relevant respondent-Transport Authority in order to avoid future litigation.

21. In view of the aforesaid as well as the fact that this Court is not finally deciding as to whether or not the petitioner's application for grant of trade certificate should be approved/allowed, the decisions as regards locus of the applicants to be heard by this Court in the writ petition need not be dealt with.

22. In view of the aforesaid, this writ petition is disposed of by directing the Regional Transport Officer, Murshidabad, i.e. the respondent No. 4 to consider the petitioner's application for grant of trade certificate and dispose of the same either by granting a trade certificate or by refusing to grant it. Since the facts of the case have become a tad complex in view of rival contentions of the petitioner and the applicants for addition of parties therefore, the Respondent Transport authority shall while considering and disposing of the petitioner's application for grant of trade certificate, afford an opportunity of hearing to the petitioner as well as to MM Automart Private Limited or their

authorized representatives and pass a reasoned order thereon in accordance with law. The entire exercise shall be completed within a period of six weeks from the date of communication of this order.

23. Needless to mention that any decision taken by the said respondent shall be communicated to the parties within a week from the date of taking of such decision.

24. With the aforesaid observations, WPA 1661 of 2025 along with CAN 1 of 2025 stands disposed of.

(Om Narayan Rai , J.)