

18.03.2025.
PB
Sl. No.16.
Ct. No.25.

WPA 3838 of 2025

Apu Sinha
Vs.
The State of West Bengal & Ors.

Mr. Barun Kr. Samanta.
... For the Petitioner.

Mr. Pantu Deb Roy,
Mr. Pannalal Bandopadhyay.
... for the State.

1. The present writ petition has been filed by the petitioner to challenge the order of cancellation of his permit, that is vide the order of the STA, West Bengal dated November 29, 2024.

2. Mr. Samanta, learned advocate, is appearing for the petitioner. He has submitted that the petitioner is the operator and permit holder to run the stage carriage from "Sonakania to Karunamoyee". So far as the allegation against the petitioner to have violated the permit condition is concerned, according to Mr. Samanta, the same is accepted by the writ petitioner and the petitioner undertakes not to repeat the same any further.

3. Mr. Samanta has also indicated that previously a show-cause notice by the said authority dated August 6, 2024, has been replied to by the petitioner, by dint of his letter dated September 2, 2024, though

not considered by the said respondent. He has further stated that the order of cancellation of permit dated November 29, 2024, has also been requested to be withdrawn by the letter of learned advocate dated December 9, 2024. However, the petitioner alleges that all his endeavours before the respondent authority has gone in vain and the respondent authority has neither considered the petitioner's representations nor afforded him any opportunity of hearing, before cancellation of his permit.

4. In such circumstances, Mr. Samanta insists that the petitioner may be afforded opportunity to submit fine as prescribed by the respondent authority in terms of Section 86(5) of the Motor Vehicles Act, 1988 and be allowed to ply his vehicle on the permitted route.

5. To the prayer and contentions of the petitioner as above, the State through its learned advocate Mr. Deb Roy, learned AGP, raises strong objections. According to the State, the petitioner is a habitual offender, who has violated the permit condition not once, but for the second time. Mr. Deb Roy has further submitted that the petitioner has not even remitted the fine imposed upon him previously. Mr. Deb Roy has mentioned about an order of the Division Bench of this Court, by dint of which, a second violation by the operator shall render his permit to be cancelled.

6. Mr. Deb Roy says that the petitioner runs his vehicle through Kolkata CBT, which is a restricted zone in terms of the Court's order. Hence, the petitioner having been found violating his permit conditions and running through Kolkata CBT for the second time, shall not be entitled for any leniency excepting cancellation of his permit in terms of the Court's order. Hence, necessary steps have been taken against him, by dint of the said order dated November 29, 2024, Mr. Deb Roy has submitted.

7. Heard both the counsels. Perused an order of the Hon'ble Division Bench dated February 6, 2025, in WPA(P) 36 of 2023, in which the Court has directed as follows:-

“Therefore, we grant liberty to the individual permit holders to invoke the remedies available to them under the provisions of the Motor Vehicles Act and the Rules framed thereunder or common law remedy in the event the authorities take any action against them for alleged violation of a permit condition or a notification or a Rule or a regulation”.

8. Hence, subsequent to its earlier direction, the Court has further directed, vide the order as above granting liberty to the individual permit holders like the present petitioner to invoke remedies available to him under the provisions of the Motor Vehicles Act and the Rules framed thereunder or common law.

9. The petitioner in this case has accepted the allegation of violation of the permit conditions and entering into the restricted zone, for plying his vehicle. Under such circumstances, the fact of violation, by the petitioner, is already established. This would generally render the petitioner's permit liable for cancellation in terms of the Court's order. However, this Court finds that under Section 86(5) of the Motor Vehicles Act, 1988, the statute has provided discretion on the transport authority, which may be exercised for recovering requisite fees from the concerned violator instead cancelling or suspending his permit. The Court also finds that in accordance with the directions of the Hon'ble Division Bench as above a permit holder has been granted liberty to take recourse of the statutory remedy available to him.

10. Having heard the learned counsels and perused the records, this Court is of the considered opinion that the petitioner may be granted opportunity to espouse his cause before the respondent authority seeking the provision of Section 86(5) of the Motor Vehicles Act, 1988, to be applied in his case, instead of cancellation of his permit as done vide order dated November 29, 2024. Therefore, the Court is inclined to dispose of this writ petition with the following directions:-

- i) Let the respondent no.2 consider the representation submitted by the petitioner

through his learned advocate dated December 9, 2024, and decide thereupon by granting opportunity of hearing to the writ petitioner and by dint of a reasoned order.

ii) In doing so, the said respondent shall consider if the petitioner's case can be covered under the provisions of Section 86(5) of the Motor Vehicle Act or not. If upon consideration, the said respondent authority comes to an affirmative decision, it shall forthwith recall its order dated November 29, 2024, and pass necessary order in terms of Section 86(5) of the Motor Vehicles Act, 1988.

iii) The entire exercise as above, shall be concluded by the said authority, within a period of six weeks from the date of copy of this order and its decision shall be communicated to the petitioner, within one week thereafter.

11. With the direction as above, this writ petition is disposed of.

12. Since no affidavit has been called for, allegations made in the writ petition, shall be deemed to have not admitted by the respondents.

13. Urgent certified photocopy of this order, if applied for, shall be supplied to the parties, on compliance of all necessary formalities.

(Rai Chattopadhyay, J.)