

28.11.2025

Item No.36

Crt.No.10

b.r.

WPA 11743 of 2025

Md. Arif Hussain

-vs-

The State of West Bengal & Ors.

Mr. Aashutosh Bhattacharyya
.... For the petitioner.

Mr. Amal Kumar Sen, Ld. AAG
Ms. Ashima Das (Sil)
.... For the State.

Mr. Bhaskar Nandi
..... for the Resp. no.4

1. Affidavit of service filed in Court today, is taken on record.
2. Parties are heard through their respective learned counsels.
3. Mr. Aashutosh Bhattacharyya, learned counsel appears for the petitioner and submits that an online application dated 08.09.2024 for grant of one permanent stage carriage permit was made on the notified inter-State route Code 15-KCBT at Satragachi to Biharsariff via-Burdwan, Dhanbad, Hardia in a prescribed manner.
4. On the even date, the said application was considered and rejected without assigning any reason whatsoever.
5. Learned counsel for the petitioner also places reliance upon Section 71 Sub-Section 3 (d)

of Motor Vehicles Act, 1988 (hereinafter referred to as the said Act) with regard to the procedure of the RTA in considering the application of the stage carriage permit.

6. Being aggrieved by the decision taken by the authority concerned, the petitioner had filed a writ petition being WPA 3835 of 2025. The matter was heard at length and the Co-ordinate Bench of this Hon'ble Court by an order dated 18.03.2025 disposed of the writ petition directing, inter alia, to consider the representation and dispose of the same by affording an adequate reasonable hearing to the petitioner as well as respondent by passing a reasoned order.
7. In pursuance of the said order, a notice of hearing was issued by the Secretary State Transport Authority, West Bengal on 11.04.2025 fixing the date of hearing on 21.04.2025.
8. Thereafter on the date of hearing, STA Board rejected the application on the ground of "First in First out(fifo)".
9. The petitioner therefore challenges the said decision of the STA Board, which is the subject matter of challenge in this writ petition.

10. Mr. Amal Kumar Sen, learned Additional Advocate General appears for the State fairly submits that the notification dated May 8, 2025 has been introduced wherein in Paragraph-5 Clause-C speaks of issuing new permits 'first come first serve' basis. The said paragraph 5(C) is reproduced below:-

“All the RTAs shall dispose of the applications on First come First Serve' basis, based on the date and time of application as mentioned above in order to ensure transparency and to preempt the element of discretion in the approval of a new permit from amongst the valid applications received.”

11. It is also submitted that this notification come into force on May 8, 2025 whereas the application and the decision was much prior to the enforcement of the notification in question.

12. Mr. Bhaskar Nandi, learned counsel appearing for the private respondent no.4 submits that Section 71 Sub-Section (3)(d) only speaks of the procedure of the Regional Transport Authority whereas the case of the applicant is for inter-state region and the same has to be decided by the State Transport

Authority. It also submitted that the statute is silent about the procedural of the State Transport Authority in considering the application of the inter-state stage carriage permit.

13. The private respondents also place reliance upon a Division Bench judgement of this Hon'ble High Court and relied upon paragraph 11 to 13, which is reproduced below:-

“11. The first question which needs to be answered is- What is the nature of the power exercised by the Transport Authority in granting a stage carriage permit?

12. Section 71(3)(d) provides:

“After reserving such number of permits as is referred to in clause (c), the Regional Transport Authority shall in considering an application have regard to the following matters, namely:-

- (i) Financial stability of the applicant;
- (ii) Satisfactory performance as a stage carriage operator including payment of tax if the applicant is or has been an operator of stage carriage service; and
- (iii) Such other matters as may be prescribed by the State Government Provided that,

other conditions being equal, preference shall be given to applications for permits from:-

- (i) State transport undertaking;
- (ii) Co-operative societies registered or deemed to have been registered under any enactment for the time being in force; or
- (iii) ex-servicemen”

“Rule 109. Preference in granting Stage Carriage permit. Under sub-clause(iii) if clause (d) of sub-section (3) of Section 71 of the Act in addition to the provisions under clause (c) of sub-section (3) of Section 71 of the Act and financial stability and satisfactory performance including payment of tax, a preference shall be given to the educated unemployed, project affected persons, applicant having a Diploma in Automobile Engineering and/or a Diploma in Tourism or Transport Management from recognized Institute, or a travel Agent recognized by India Tourism Development Corporation or the West Bengal Tourism Development Corporation.”

13. Smt. Sahu says that the choice must be limited in the factors mentioned in s.17(3)(d) and Rule

109. The submission is unacceptable. Section 71(3) only lays down the minimum requirements which an applicant must fulfil and does not limit the discretion to be exercised even after the fulfilment of the requirements mentioned in that section. Rule 109 similarly has no application as it only deals with preference with regard to the categories of applicants and it has no relevance on the question of assessment of better qualification. There is in fact no provision in the Act or the Rules which covers a situation where the STA has to choose between two applicants who have fulfilled all the statutory conditions and the who are otherwise equally placed. In such a situation it is obvious that the concerned authority must make a selection by evaluating the relative merits of both. Therefore, the authorities must have a discretion over and above the statutory requirements. This is implicit in the word selection.”

14. After hearing the rival contentions of the parties, I am of the considered view that from the records it appears that the application and the decision were taken much prior to the enforcement of the notification dated 08.05.2025.

Since the State Transport Authority is the authority concerned to decide the application of the applicant to arrive at a finding with regard to the legality of the selection process upon considering the statutory conditions as required to be applied for.

15. The entire selection process for granting of permit has been challenged by the petitioner which has a substance and thereby requires further consideration by the STA Board by exercising his discretionary power to consider as to whether the applicant is at all eligible to be granted with the permit in a route in question where there is an existence of a single vacancy as declared by the authority.

16. The STA Board is directed to serve a notice of hearing dated 8.12.2025 at 12 noon to both the petitioner and the private respondent no.4 for considering the issue of grant of a new permit in respect of a single vacancy which is existing in the route in question upon compliance of all formalities and pass a reasoned order in accordance with law forthwith by communicating such decision to the concerned parties.

17. The writ petition is disposed of without taking any exception to the merits of the case

18. However, it is made clear that since the statute is silent with regard to the power of exercising discretion by the STA for inter-stage carriage permit, the STA Board shall take a logical stand by considering the fulfillment of the criteria as laid down in the statute.
19. The STA Board meeting dated 21.04.2025 issued by the Chairman, STA is set aside and the respondent no.4 shall not ply the vehicle till the decision is arrived at by the State Transport Authority Board.
20. The STA Board is further directed to conduct a special meeting on December 8, 2025 at 12 noon at the office of the STA Board and to take appropriate decision.
21. Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Smita Das De, J.)