

24.04.2025
Court No. 25
S.G. (p.a)

WPA 21822 of 2024

Kingshuk Kar
Vs.
State of West Bengal & Ors.

Mr. Sankar Nath Mukherjee,
Mr. Niraj Gupta,
Mr. Manisha Paswan,

... for the Petitioner.

Mr. Barun Kumar Samanta

... for the added respondents.

Mr. Pantu Deb Roy, Id. A.G.P.,
Mr. Pannalal Bandopadhyay

...for the State

- 1) The question determinable in this writ petition is whether the respondent authorities have acted just legal and proper, in issuing the vacancy notice dated July 19, 2024, thereby declaring 12 vacancies, for the route "*Nayabad Bus Terminus to Kolkata*", on which the writ petitioner used to ply his vehicle, on the strength of a permit, but has remained non operational, for a considerable period of time. It is also under scrutiny of this court if the respondent authorities have acted just, legal and proper, by allowing the applications for issuance of permit of the appellant/private respondents and granting them offer letters, pursuant to their applications in response to the vacancy notice dated July 19, 2024.
- 2) The writ petitioners permit is No 002/Nayabad to Kolkata Station/New-/2011, which has expired on July 6, 2016. Thereafter, on March

4, 2024 the writ petitioner has stated to have submitted an application for renewal of the permit, with the statutory fees. Allegedly during pendency of such application filed by the writ petitioner for renewal of his permit, the impugned notification was published on July 19, 2024 declaring 12 vacancies over the said route and inviting applications for issuance of permit over there.

- 3) Mr Mukherjee learned advocate appearing for the petitioner has submitted that the act of the respondent authority of issuance of vacancy notification dated July 19, 2024 is not only based on erroneous assumption of actual facts and data, but also is illegal and non-maintainable in the eye of law. With reference to the documents annexed with the writ petition Mr Mukherjee has submitted that previous to the notice as stated above, another notice was published by the respondent authority on March 13, 2024 thereby declaring only 1 vacancy over the said route. According to the petitioner this time the respondent authorities did not commit any mistake in assessing the actual vacancy position over the route insofar as there were other permit holders including the petitioner over there, though have not been operating. He says that the petitioner has never surrendered his permit. Therefore, according to the statutory provision the petitioner shall be eligible for renewal thereof at any point of time, after payment of the statutory fees, if not within the time stipulated in the law for renewal of permit. It is stated further that on the date of issuance

of the notification impugned, as mentioned above, 3 permits over the said route had remained valid (till 2028) and the petitioner's application for renewal of permit was pending consideration of the respondent authorities. Allegedly, the Regional Transport Authority, Kolkata Region as published the vacancy notice dated July 19, 2024 without taking into consideration all these facts. Therefore, according to the petitioner, neither the notice dated July 19, 2024 can sustained in the eyes of law nor the follow-up actions undertaken by the said respondent authority pursuant to the said notice, thereby selecting the intending operators and granting them offer letters, for plying their vehicles, on the said route.

- 4) The impugned vacancy notice has been challenged for the reason that it has not been widely published through website publication, as is required in terms of this Court's order dated *September 21, 2023, in an appeal, No. FMA 1311 of 2022 [Nand Kishore Shaw & Others vs State of West Bengal & Another]*.
- 5) Mr. Mukherjee has submitted that in view of the facts and circumstances as above, issuance of offer letters has amounted to enhancing the fleet strength of the said route which is not permissible under section 71(3)(a) of the Motor Vehicles Act, 1988. He seeks appropriate relief for the writ petitioner in this case.
- 6) The respondents, including the added/private respondents have raised strong objection as to the contentions and prayer of the writ

petitioner as stated above. The respondents No.2-4/the Regional Transport Authority, Kolkata Region has filed a report in the form of an affidavit to controvert the petitioner's case. It has been represented by Mr Deb Roy, learned AGP. On the basis of the report as above, Mr Deb Roy has submitted that the vacancy notification as above has been published or judgment of the order of the Hon'ble Division Bench of this Court. He says that the petitioner's permit has expired on July 19, 2016. That, since thereafter the petitioner has remained silent and did not take any step for renewal of his permit so expired. It is only in the year 2024, on February 20, 2024 to be precise, the petitioner has filed it effective application seeking renewal of this comic expired about 8 years back. It is submitted that the petitioner has failed to file Part-B of the permit. It is submitted also that due to such failure of the petitioner's permit could not have been renewed particularly in view of the fact that the vehicle covered under the said apartment of the writ petitioner has already crossed its operational age of 15 years. Mr Deb Roy has further submitted that since you to whether the writ petitioner has stopped operating on the said route, since after expiry of the validity period of his permit. It is submitted that likewise post of the palm it on the said route has remained non-operational for prolonged time periods.

- 7) According to the said respondent it has acted on a report of proper field enquire regarding non-plying of vehicle over the said route. As

per field enquiry report conducted by the Motor Vehicles Inspector (non-technical), Public Vehicles Department, Kolkata, there are only 3 vehicles which are plying on the route from “*Nayabad Bus Terminus to Kolkata*”, that too, without maintaining proper route alignment, rather on a curtailed route from “Garia Station to Khanna More”.

- 8) It is submitted further that in the factual backdrop as above, issuance of vacancy notice by the Regional Transport Authority, Kolkata Region dated July 19, 2024 suffers from no illegality as alleged. On the contrary the same has facilitated for accepting new applications from the intending operators from amongst whom, offer letters have been issued to the private respondent. The said respondent has sought for dismissal of the present writ petition.
- 9) 8 persons have been added in the instant print petition as a party respondents. The said added/private respondents have raised objections to the contentions and prayer of the writ petitioner and sought for dismissal of the writ petition. The said persons are the receiver of offer letters, who earlier had applied for issuance of permit in response to the impugned vacancy notice dated July 19, 2024. They have been represented by Mr. Samanta, learned advocate. Mr. Samanta says that none of the permit holders, whose permits remain still valid in accordance with the writ petitioner has come forward before the Court to challenge the legality and validity of the impugned

vacancy notice as above. According to the said added/private respondents, actually there is no such permit remains still valid over the said route. Mr.Samanta has emphasised that in the present case admittedly the petitioners permit has expired long back in the year 2016 and since thereafter is vehicle has remained non-operational on the route. As a matter of fact, the said added/private respondents have demonstrated in tabular form in their application, the respective dates on which the validity of 12 permits on the said route has expired. According to the same the last permit to expired was on March 3, 2019. According to the said added/private respondents, one of the vehicles over the said route remain operational, after expiry of the validity period of the permit.

10) On the other hand, it has further been highlighted that the permit of the petitioner or the pro-forma respondent would not find place in the list of 12 permits of the said route, validity of which have now expired. The said 12 permits, as enlisted by the said added/private respondents, in their affidavits have never been applied for renewal or have never been renewed since after its expiry.

11) In such circumstances, it is stated that the impugned notice of vacancy over the concerned route has been published by the respondent authority, to which the said added/private respondents had responded by submitting their respective applications, in due compliance with the statutory provision. After a proper scrutiny as prescribed under the law,

the said 8 added/private respondents has been granted offer letters, after having been found eligible for issuance of permit on the said route. Not only that, the said 8 added/private respondents have submitted with the respondent Authority requisite documents of their new vehicles as well as the new permit fees for the month of November 2024, to the tune of Rs. 9000/-. In such circumstances according to the said added/private respondents writ petition is only baseless and motivated and should be dismissed.

12) Mr. Samanta submit that the liberty granted under law to an existing permit holder, was permit has expired, for filing an application for renewal of permit, could not be perpetual and the respondent authority would be at liberty after a reasonable period of non-operation by the said permit holder, to treat the position as a vacant one and take steps on filling up of such vacancy. In this regard he has relied on earlier judgments of this Court, dated *December 3, 2013 in WP No. 34576 (w) of 2013 [Bikash Chandra Saha vs The State of West Bengal & Others]* and that dated *November 7, 2024, in writ petition No. WPO 1027 of 2024 [Koushik Global Logistics Limited and Others vs State of West Bengal & Others]*.

13) The writ petitioner claims himself and the proforma respondent as the permit holders authorised to ply their vehicles on the route from “*Nayabad Bus Terminus to Kolkata*”. They admit their permits to have expired on July 6, 2016. They admit not to have taken up any steps for renewal thereof, till before March 4,

2024. It is only on March 4, 2024, admittedly the petitioner has submitted his application for renewal of his permit as above. In such circumstances the petitioner has claimed that publication of the vacancy notification for the said route dated July 19, 2024, is an illegal and unauthorised act by the respondent/Secretary, RTA, Kolkata Region, particularly, without disposing of the application filed by him, for renewal of the permit.

- 14)** It is pertinent to note that the application by the writ petitioner for renewal of permit has only been defective and incomplete, not eligible for consideration. Rule 148 of the West Bengal Motor Vehicles Rules, 1989 has prescribed as to how an application for renewal of a permit shall be made. It is provided that an application for renewal of a permit shall be made in writing within the period of time, specified under Section 81 of the Motor Vehicles Act, 1988 to the authority by which the permit was issued and shall be accompanied by Part A of the permit and the prescribed application fees. Accompaniment of Part A of the permit along with the application for renewal as well as prescribed application fee are the mandatory preconditions which are to be fulfilled at the time of making application for renewal of permit. Furthermore, as per Rule 148 (3) the Transport Authority as the case may be can call upon the holder to produce Part B or both the Parts A and B thereof for endorsement. Therefore, as per the said statutory provision, an application for renewal of permit for being accompanied by Part A of

the permit shall be an defective application, not in consonance with the procedure as prescribed under the rules. It is further noted that a similar application has been filed by the proforma-respondent, though at the date later on the date of publication of the vacancy notice on July 19, 2024, that is after issuance of the impugned vacancy notification dated July 19, 2024.

- 15) The question is if by virtue of the non-obstante provision under section 81(3) of the Motor Vehicles Act, 1988, a permit holder, validity of whose permit has expired, shall be entitled in perpetuity to seek renewal of his permit, even if he pays the applicable fees for such late renewal. The Court has earlier dealt with the similar question in the case of Bikash Chandra Saha (supra). The Court has held as follows:

“There is no provision in the Act or the rules framed thereunder which obliges the permit issuing authority to call upon the permit holder to show cause as to why the permit issued in his favour, which has since expired, should not be cancelled. In other words, once the permit outlives its validity, it becomes a dead permit. Applicability of Section 86 of the Act relating to cancellation of permit would arise only in respect of a permit that is valid and operative. Recourse to cancellation of a dead permit is not envisaged in the statute. True it is that rule 151 read with Form E3 does not specify the outer limit within which an application for renewal ought to be made, but it is open to the permit issuing authority to wait for a reasonable period of time after expiry of the permit and thereafter to notify the vacancy on the route, if it is an inter-state route or a notified route. However, what would be the ‘reasonable period’ must depend on the facts and circumstances of each case and there cannot be any exhaustive enumeration in this behalf.”

16) By following the ratio of this judgment, this Court in the case of *Kaushik Global Logistic Limited (supra)* has held similarly. The non-obstante clause under section 81(3) of the Motor Vehicles Act 1988 or the provision under Rule 151 of the West Bengal Motor Vehicles Rules 1989, have bestowed upon the competent authority a discretionary power to condone delay in filing an application for renewal of permit, in a fit case. That imbibes in itself a power of the said competent authority even not to accept the prayer for renewal of a permit, as it may think fit and proper. Delay in applying for renewal is such a ground which may be tested on the anvil of reasonableness and an unreasonable prolonged delay by the permit holder to make an application for renewal of the permit may render that subject to exercise of discretion by the competent Authority, not to renew such permit. Needless is to say that the renewal application must be filed in compliance with the statutory provision. The scheme of the Act and Rules, as mentioned above has considered the benefits of the commuters as paramount. Therefore, the operators cannot be left to make utilisation of the statutory provisions in their favour and at their sweet will, even if their action appears to be unjustified and not reasonable in absence of sufficient explanation as to the reason of delay.

17) In the present case particularly, one should not lose sight of the specific fact that the petitioner has come up with an application for renewal of his permit admittedly after a period of 8 to 9 years. He has offered no explanation

as to the reason of such inordinate delay. He has also not filed an application in proper statutory format. Even in terms of Section 81 (3) of the Motor Vehicles Act, 1988 which has empowered the competent authority to exercise discretion by using a word “may entertain”, the competent authority has to apply its mind and decide if the belated application for renewal of permit of the permit holder, whose permit has expired, may be allowed in lieu of statutory fine or not. It cannot decide over a vacuum.

18) In such circumstances and finding the permits issued over the said route to have expired long ago, the vacancy notice has been issued on July 19, 2024, seeking application to fill up the 12 vacancies on the said route. The affidavit submitted by the said added/private respondents shows the respective dates on which the 12 permits on the route have expired and also that the permits of either the writ petitioner or the pro-forma respondent do not find place amongst the said 12 permits, which are said to have expired and for which fresh vacancy notification has been issued. Also, that the said added/private respondents have emerged as the successful contenders for issuance of the permits, whose vehicle particulars along with fees have already been submitted with the Authority.

19) Therefore, at a juncture when it is found that a route is left with no vehicle operating over there due to expiry of the validity period of their permits causing inconvenience to the commuters the Authority shall be at liberty to

publish the vacancy notification for the said route, declaring those positions in the fleet strength as vacant, as the status of the permit expired and not renewed is that of a '*dead permit*', inoperative and ineffective. In such a case, after a reasonable time period, depending upon facts and circumstances of each case, there should not be any hindrance for the competent Authority to fill up the positions of such 'dead permits' by issuing fresh permits to the new contenders selected in terms of the statutory provisions.

20) Hence, on the discussion as above, the writ petitioner's challenge to the legality and validity of the notice dated July 19, 2024 is found to be not substantiated and sustainable.

21) On the discussion as above the instant writ petition stands dismissed. Interim order, if any, stands vacated. Application, if any pending, stands disposed of.

(Rai Chattopadhyay, J.)