

05.02.2025
 Crt. No.4
 Item No. 3
 PA

M.A.T. 1917 of 2024
with
CAN 1 of 2024
CAN 2 of 2024

Dilip Singh and others
Versus
Milan Gour & Ors.

Mr. Sankar Nath Mukherjee,
 Mr. Niraj Gupta,
 Mr. Saikat Pal
 ...For the petitioners.

Mr. Srijan Nayak
 Ms. Rituparna Maitra
 ... For the State.

CAN 1 of 2024

An application being CAN 1 of 2024 has been filed by the appellants seeking leave to prefer an appeal against the impugned judgment and order.

Without prejudice to the rights and contentions of the parties, in view of the appellants claiming their right to apply for permit for plying a vehicle, this Court allows CAN 1 of 2024 and allow the present appellants to prefer the present appeal.

MAT 1917 of 2024

This intra-court appeal has been preferred by the appellants being aggrieved by and dissatisfied with the judgment and order dated 04.03.2021 passed in WPA 49 of 2020.

Through the aforementioned impugned order
The Ld. Single Judge has directed the following:

“12. Considering the submission of the parties in this regard I direct that whether there is any resultant vacancy within the maximum permit strength has to be published by each of the Regional Transport Authorities covered under the Gazette Notification dated 18th December, 2018. For this purpose. I direct the Secretary to the Government of West Bengal, Transport Department to instruct each and every Regional Transport Authority covered under the above gazette notification to publish a notice once in a month the number of resultant vacancy, if any, within its jurisdiction with a cut of date by which date application for grant of resultant permit can be made by the interested parties. Such notice with the cut off date has to be published and uploaded in the Website of the concerned Department on the date of the notice. Copy of such notice has also to be affixed in the notice board of the concerned RTA.”

An application being CAN 2 of 2024 has been filed by the appellants seeking stay of operation of the impugned judgment.

Mr. Sankar Nath Mukherjee, the Ld. Counsel representing the appellants during his elaborate submission stated as follows:

i) The Ld. Single Judge has not considered Rule 107 of the West Bengal Motor Vehicles Rules, 1989.

ii) He has further submitted that in the event an intending operator has to wait till the transport authority declares the vacancy on the particular route then the whole object of the Motor Vehicles Act, 1988(hereinafter referred to as the MV Act) as regards to

grant of permit gets frustrated. The Ld. Counsel has placed and stressed upon Section 71 (3) and Section 74 (3) of the MV Act.

iii) He has also relied upon Section 80(1) of the said Act and has tried to impress upon the Court the fact that an application for a permit of any kind may be made at any time.

iv) The Ld. Counsel has further submitted that the Ld. Single Judge through the impugned judgment has directed the transport authorities to publish notifications inviting application from the intending operator with a cut off date having declared the vacancy, which has not been laid down either in the said act or in the rules governing the field.

v) The Ld. Counsel has placed Section 107 of the West Bengal Motor Vehicles Rules, 1989 in this regard.

Banking upon the aforesaid facts and circumstances the Ld. Counsel has prayed for allowing the present appeal by setting aside the impugned judgment.

Mr. Srijan Nayek, Ld. Counsel representing the State submits that the authority has ample power to accept applications for route permit. It is submitted that the West Bengal Motor Vehicle Rules empowers the authority to do the same.

Relying upon the aforesaid fact the Ld. Counsel has submitted that the judgment passed by the Ld. Single Judge is in accordance with law and does not require any interference.

Thus, from the contentions of the parties the moot point for consideration is as to whether the transport authorities have the power/discretion to allow the applications for route permit from the intending operators as and when they deem fit.

From the impugned judgment it is apparent that the Ld. Single Judge has relied upon Sections 80(1), Section 80 (2) of the said Act and Rule 107 of the West Bengal Motor Vehicle Rules, 1989.

We consider it appropriate to take into consideration the following Sections also, being Section 71(3), Section 74(3), Section 80 (1) and Section 80(2) of the Motor Vehicles Act 1988 and Rule 107 of the West Bengal Motor Vehicle Rules, 1989 states as follows:

“Section 71. (3) *(a) The State Government shall, if so directed by the Central Government having regard to the number of **vehicles, road conditions** and other **relevant matters**, by notification in the Official Gazette, direct a State Transport Authority and a Regional Transport Authority to limit the number of stage carriages generally or of any specified type, as may be fixed and specified in the notification, operating on city routes in towns with a population of not less than five lakhs.*

(b) Where the number of stage carriages are fixed under clause (a),

the Government of the State shall reserve in the State certain percentage of stage carriage permits for the scheduled castes and the scheduled tribes in the same ratio as in the case of appointments made by direct recruitment to public services in the State.

(c) Where the number of stage carriages are fixed under clause (a), the Regional Transport Authority shall reserve such number of permits for the scheduled castes and the scheduled tribes as may be fixed by the State Government under sub-clause (b).

(d) After reserving such number of permits as is referred to in clause (c), the Regional Transport Authority shall in considering an application having 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 undertakings; (ii) co-operative societies registered or deemed to have been registered under any enactment for the time being in force; (iii) ex-servicemen; (iv) any other class or category of persons, as the State government may, for reasons to be recorded in writing consider necessary;

Section 74. (3) *(a) The State Government shall, if so directed by the Central Government, having regard to the number of vehicles, road conditions and other relevant matters, by notification in the Official Gazette, direct a State Transport Authority and a Regional Transport Authority to limit the number of contract carriages generally or of any specified type, as may be fixed*

and specified in the notification, operating on city routes in towns with a population of not less than five lakhs. (b) Where the number of contract carriages are fixed under clause (a), the Regional Transport Authority shall, in considering an application for the grant of permit in respect of any such contract carriage, having regard to the following matters, namely :— (i) financial stability of the applicant; (ii) satisfactory performance as a contract carriage operator including payment of tax if the applicant is or has been an operator of contract carriages; 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) the India Tourism Development Corporation; (ii) State Tourism Development Corporations; (iii) State Tourism Departments; (iv) State transport undertakings; (v) co-operative societies registered or deemed to have been registered under any enactment for the time being in force; (vi) ex-servicemen.

Section 80. (1) An application for a permit of any kind may be made at any time.

(2) A [Regional Transport Authority, State Transport Authority or any prescribed authority referred to in sub-section (1) of section 66] shall not ordinarily refuse to grant an application for permit of any kind made at any time under this Act: Provided that the [Regional Transport Authority, State Transport Authority or any prescribed authority referred to in sub-section (1) of section 66] may summarily refuse the application if the grant of any permit in accordance with the application would have the effect of increasing the number of stage carriages as fixed and specified in a notification in the Official Gazette under clause (a) of sub-section (3) of section 71 or of contract

carriages as fixed and specified in a notification in the Official Gazette under clause (a) of sub-section (3) of section 74: Provided further that where a [Regional Transport Authority, State Transport Authority or any prescribed authority referred to in sub-section (1) of section 66] refuses an application for the grant of a permit of any kind under this Act, it shall give to the applicant in writing its reasons for the refusal of the same and an opportunity of being heard in the matter.

Rule 107 of the West Bengal Motor Vehicles Rules, 1989. Power of refusal to accept application for permits.—Where, on the direction to the Transport Authorities by the State Government by notification in the Official Gazette to limit the number of Stage Carriages or Contract Carriage generally or of any specified type under sub-section (3) of section 71 and sub-section (3) of section 74 of the Act, such Transport Authorities have limited the number of vehicle of any class in such area or as the case may be, on such route, the regional Transport Authority shall notify this fact on the notice board of its office and may decline to receive any further applications for permits in respect of class of vehicle in such area or on such route.”

From plain reading of the aforementioned sections and Rule 107 of the said Rule it is apparent that the transport authorities may accept application for permit having regard to the number of vehicles, road conditions and other relevant matters and refuse the application if the grant of any permit would have the effect of increasing the number of carriages on a specified route.

It is apparent that an applicant can apply for and may be granted permit if there is vacancy within the maximum number of permits set forth.

A co-ordinate Division Bench of this Court in MAT 604 of 2023 in the case between Ashok Kumar Shaw and Another Vs. Milan Gour and Others has not interfered with self-same direction of the Ld. Single Judge, impugned herein, by stating the following:

“We find from the records made available that Section 80 of the Motor Vehicles Act, 1988 and provisions of Rule 108 of the West Bengal Motor Vehicles Rules, 1989 were considered by the learned Single Judge after consideration of the same, the learned Single Judge issued the direction as noted above.

At present, maximum permissible limit is fixed in respect of motor vehicles to be plied within a jurisdiction of a Regional Transport Authority. It is the practice that an applicant can apply for and obtain permit if there is a resultant vacancy within the maximum permit fixed. Whether or not there is a vacancy should be intimated to the members of the public at large. To such effect, the learned Single Judge directed the vacancy to be declared and the declaration of the vacancy to be published in the manner as prescribed.”

From the aforesaid discussion and following the order passed by the Co-ordinate Bench of this Court in MAT 604 of 2023 dated 13.12.2023, this Court finds no ground to interfere with the directions issued through the impugned judgment.

Accordingly, **MAT 1917 of 2024** is **disposed of** without any order as to cost.

All connected applications made in **MAT 1917**
of 2024 are also **disposed of**.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)