09.10.2026
Item No.12
Court No. 30
Aloke

**WPA 26537 of 2026**

**Nanda Dulal Mishra**
**-vs-**
**The State of West Bengal & Ors.**

Mr. Biswabrata Basu Mallick.
Mr. BImal Halder
... for the petitioner

Ms. Aparna Banerjee
Mr. Debabrata Mondal
... for the State respondents
Mr. Smarajit Basu
... for the respondent no. 3

1. The petitioner files his exception to the report filed by the respondent/State.
2. On hearing the learned counsels for the parties and on perusal of the materials on record, it appears that vide the impugned order dated 18.08.2026, the authority being the Referee under the West Bengal Shops and Establishments Act, 1963 has decided the issue as follows :

*"On perusal of the oral and written averments made by both the parties, the undersigned hosts the following decisions :*

- *That to note the instant OP holds an Office of transport Agent, which is evident from the documents marked as "Annexure- A' by the OP Company*
- *That the thorough examination of Section 4(1)(b) of the said Act and its* ***determination*** *could not be possible by making more statement by either of*

*the parties,* ***it should be done through documentary evidences****.*

- *That to note that the said OP Company has* ***never got registration either manually or from wbshopsonline.gov.in portal and it is not covered under the "Commercial Establishment" as is defined in Section 2(2) of the said Act.***
- *Hence, the instant application in Form-N is beyond the scope of the Act concerned and the undersigned has no authority to adjudicate the same. Thus, the instant application in Form-N dated 02.07.2025 is considered to* ***be dismissed****."*

3. It appears from the observations and findings of the said authority that though point no. 2 and point no. 3 are **contradictory** the respondent authority has come to a finding on the basis of point no. 3.

4. The impugned order thus prima facie appears to be an erroneous one and thus not in accordance with law, considering that at one hand the authority has held that the **issue cannot be decided without going through the documentary evidence**. **On the other hand, the authority has held that the respondent/establishment did not get its registration under the Act on the Government portal and, the same is not a commercial establishment as defined in Section 2(2) of the Act**.

5. The said findings of the authority is thus erroneous on the ground that the Government registration is a

choice of the establishment and prayer for registration is considered on placing the relevant documents and on meeting the requirements the registration is allowed.

6. In the present case, there is no such observation that the establishment in the present case applied for any registration at all and, as such, the fact that the establishment is not registered is not a ground to decide that it does not come within the definition of "commercial establishment".

7. **The private respondent no. 3 herein is a private commercial establishment operating goods transportation business**.

8. It is the case of the private respondent that they do not come within the definition of "Commercial Establishment".

9. On perusal of the definition in Section 2(2) of the Act, it appears that, water and road transport services are covered under the said definition of "Commercial Establishment". The said definition does not provide any difference between private/public/Govt. operating such business.

10. Thus considering that the impugned order is an erroneous one, on wrong interpretation of law, the impugned order dated 18.08.2026, passed by the respondent no. 2/The Referee, is hereby set aside, on the matter being sent back on remand for fresh consideration by Mr. P. Chatterjee, (another officer of the same rank), and Assistant Labour Commissioner-cum-EL & MW Section and Referee

under the West Bengal Shops and Establishments Act, 1963 and the issue be decided by the said authority preferably within 60 days from the date of this order considering that the puja vacation intervenes.

11. It is made clear that in case Mr. P. Chatterjee is not available, the Labour Commissioner shall assign the matter to any other officer other than the officer who has passed the impugned order being S. Ghosh Bhattachrya.

12. The order directing that the matter be heard by a specific officer is on prayer of the petitioner who submits that he is unable to have his matter heard expeditiously or fairly by the concerned officer, who has passed the impugned order in the instant case.

13. Writ application stands disposed of.

14. Connected application, if any, stands disposed of.

15. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(Shampa Dutt (Paul), J.)**