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**(2014) 06 CAL CK 0083**

**Calcutta High Court**

**Case No:** W.P. 1371(W) of 2014

Pijush Kanti Bain

APPELLANT

Vs

State of West Bengal

RESPONDENT

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**Date of Decision:** June 30, 2014

**Citation:** (2014) 4 CHN 127

**Hon'ble Judges:** Joymalya Bagchi, J

**Bench:** Single Bench

**Advocate:** Debasish Kundu, Advocate for the Appellant; Pantu Deb Roy and Subrata Guha Biswas, Advocate for the Respondent

**Final Decision:** Disposed Off

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### **Judgement**

Joymalya Bagchi, J.

The petitioner had prayed for grant of contract carriage permit in respect of auto rickshaw. The prayer of the petitioner was turned down by the Regional Transport Authority, Nadia, respondent no. 3 herein, in the following observation:

Heard the applicant. After taken into consideration the road condition, congestion of road traffic and safety and security of the passengers travelling in such 3-wheeled Auto-Rickshaw within the ambit and scope of the Motor Vehicles Act and rules framed thereunder, his application is not granted. (See notification no. 268-WT/3M-01/2010 Pt. Dated 29.01.2010).

2. Learned counsel appearing on behalf of the petitioner submits that the rejection of the permit was by way of unreasoned order, wherein only conclusion had been recorded. He further submits that similar order had been set aside by a learned Single Judge of this Court vide order dated 28th March, 2014 in W.P. 19227(W) of 2012 with W.P. 9236(W) of 2012 with W.P. 18354(W) of 2012 with W.P. 17633(W) of 2012 with W.P. 8537(W) of 2012 with W.P. 17749(W) of 2012 with W.P. 21120(W) of 2012 with W.P. 21117(W) of 2012 with W.P. 21115(W) of 2012 with W.P. 21111(W) of 2012 with W.P. 17784(W) of 2012 with W.P. 17757(W) of 2012 with W.P. 17755(W) of

2012 with W.P. 17753(W) of 2012 with W.P. 17751(W) of 2012 with W.P. 8814(W) of 2012 with W.P. 7283(W) of 2012 with W.P. 19903(W) of 2013 with W.P. 19906(W) of 2013 with W.P. 19908(W) of 2013 with W.P. 19910(W) of 2013 with W.P. 20957(W) of 2013 with W.P. 20958(W) of 2013 with W.P. 20959(W) of 2013 with W.P. 20960(W) of 2013 with W.P. 20961(W) of 2013 with W.P. 20962(W) of 2013 with W.P. 20963(W) of 2013 with W.P. 20477(W) of 2013. He, accordingly, prayed for reconsideration of his application for grant of permit.

3. Mr. Pantu Deb Roy, learned advocate appearing on behalf of the State respondents submits that the prayer of the petitioner had been turned down in view of Clause (6) of notification no. 268-WT/3M-01/2010 Pt. I dated 29th January, 2010.

4. I have considered the rival submissions of the parties. Clause (6) of the notification no. 268-WT/3M-01/2010 Pt. I dated 29th January, 2010 reads as follows:

Grant of 3-wheeled auto-rickshaw permit within a particular district only may, however, be considered by the concerned RTA of the district after taking into consideration the road condition, congestion of road traffic and safety and security of the passengers travelling in such 3-Wheeled Auto Rickshaw as aforesaid, within the ambit and scope of the Motor Vehicles Act, 1988 and rules framed thereunder.

5. It appears that in the impugned decision, the said provision has merely been quoted. There is no discussion whatsoever of the factual foundation and/or reasons for arriving at a conclusion as to the existence of the factors referred in the aforesaid clause.

6. Mr. Pantu Deb Roy, learned advocate is unable to produce any material on record before this Court, which was considered by the respondent, Regional Transport Authority, in coming to such conclusion.

7. In the impugned order, the authority has arrived at a conclusion as to the existence of factors reflected in Clause (6) of the aforesaid notification. However, neither the factual foundation nor the reasons therefor have been recorded to arrive at such finding. The reasons are independent of conclusions arrived at by the authority. It was incumbent on the part of the concerned respondent to hold enquiry and obtain information from responsible authorities as to the existence of "road condition", "congestion of road traffic" and "safety and security of the passengers" and upon deliberation of the same and giving an opportunity of hearing to the petitioner come to the conclusion as to existence of factors referred to in the said Clause (6) of the said notification to deny the permit. Failure to do so, renders the impugned decision an unreasoned one, which is liable to be interfered with in exercise of judicial review.

8. In the cited decision a similar decision of the selfsame authority had been set aside by a learned Single Judge of this Court. In paragraphs 50 and 51 of the said report, it has been held as follows:

50. Insofar as the petitioners represented by Mr. Sarkar are concerned, they had all applied for intra-regional permits for operating auto rickshaws before the RTA, Nadia. All such applications have been rejected on diverse dates, but with identical resolutions. The identical resolution of the RTA, Nadia adopted while rejecting the applications reads as follows:-

Heard the applicant. After taken into consideration the road condition, congestion of road traffic and safety and security of the passengers travelling in such 3-wheeled Auto-Rickshaw within the ambit and scope of the Motor Vehicles Act and rules framed thereunder, his application is not granted. (See notification no. 268-WT/3M-01/2010 Pt. Dated 29.01.2010).

51. I have no doubt in my mind that rejection of the petitioners' applications for permits by the RTA, Nadia is arbitrary and that the impugned resolutions are indefensible. Guideline (6) does not restrict grant of permit to operate an auto-rickshaw. What it says is that while granting an auto-rickshaw permit, the permit issuing authority is to consider the road condition, congestion of road traffic, and safety and security of the passengers within the ambit and scope of the MV Act and the rules framed thereunder. There is no discussion in the impugned resolutions with regard to the factors mentioned in guideline (6). While dealing with the applications for permits of each of the petitioners, it was imperative for the RTA, Nadia to indicate with some degree of clarity the impediments standing in the way of grant of permits. The RTA, Nadia could not have simply referred to the factors mentioned in guideline (6) and without anything more, reject an application for permit. Application of mind was necessary, which is conspicuously absent. The impugned resolutions of the RTA, Nadia, thus stand set aside.

9. The aforesaid ratio applies with full force to the facts of the case. Accordingly, the impugned decision is set aside. The Regional Transport Authority, Nadia is directed to reconsider the application for grant of contract carriage permit of the petitioner after holding due enquiry into the matter and upon consideration of all relevant facts and come to a reasoned decision thereon. Such exercise shall be completed within six weeks from the date of communication of this order.

10. It is made clear that if the respondent authority is of the prima facie opinion that they are inclined to refuse the grant of permit on the basis of enquiry, so made, the petitioner shall be given opportunity of hearing before final decision arrived. Any decision taken by the respondent authority shall be communicated to the petitioner within two weeks of taking such decision.

11. The writ petition is, accordingly, disposed of.

12. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.