

Debasis Chatterjee Vs. State of West Bengal

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Court : Kolkata

Decided On : Mar-31-2004

Reported in : I(2005)ACC206,(2004)2CALLT625(HC),2004(3)CHN121

Judge : Bhaskar Bhattacharya, J.

Acts : Motor Vehicles Rules, 1989 - Rule 109; ;[Motor Vehicles Act, 1988](#) - Section 71(3); ;[Constitution of India](#) - Article 226; ;[West Bengal Motor Vehicles Tax Act, 1979](#)

Appeal No. : W.P. No. 1404(W) of 2004

Appellant : Debasis Chatterjee

Respondent : State of West Bengal

Advocate for Def. : Dilip Kumar De, Adv. and Shankar Ranjan Sen, Adv. for private respondent

Advocate for Pet/Ap. : Dipankar Dutt and ;Saktipada Jana, Adv.

Disposition : Writ application succeeded

Judgement :

Bhaskar Bhattacharya, J.

1. By this writ application, the petitioner, an applicant for grant of Stage Carriage Permit in Route Nos. 242 and 44/44A, has challenged the decision of Regional Transport Authority, Kolkata to hold lottery for the purpose of disposal of pending applications for grant of permit in those routes.

2. There is no dispute that fleet strength of the routes in question was fixed in terms of notification under Section 71(3)(a) of the [Motor Vehicles Act, 1988](#) ('Act'). According to the respondents there were only three vacancies but number of candidates was nine who were all eligible in terms of the provisions contained in the Act and Rules framed thereunder. Under such circumstances, the Regional Transport Authority, Kolkata, decided that the number of eligible candidates being more than the number of existing vacancies, the fate of the applicants should be decided by lottery in the presence of a retired Judge.

3. Being dissatisfied, the petitioner has come up with the instant writ application.

4. Mr. Dutt, the learned Counsel appearing on behalf of the petitioner, has challenged the aforesaid decision of the Regional Transport Authority, Kolkata, on the ground that neither the Act nor the Rules having provided such a procedure for grant of permit, the procedure adopted by Regional Transport Authority should be quashed. Mr. Dutt contends that by taking recourse to a system of holding lottery, the Regional Transport Authority violated the provisions contained in the Act and the Rules. Mr. Dutt submits that even if the number of candidates is more than the number of vacancies, in such a case, the Regional Transport Authority is free to evolve criteria which should be reasonable for the purpose of selection of the best according to merit. But adoption of a procedure for holding lottery, Mr. Dutt continues, may result in selection of a less meritorious candidate. Mr. Dutt, thus, prays for quashing of the decision impugned herein.

5. This application is opposed by the Regional Transport Authority and Mr. De, the learned Counsel appearing on its behalf contended that all the nine candidates being eligible in terms of the provisions contained in the Act and the Rules framed thereunder, the Regional Transport Authority decided to hold lottery so that no allegation can be imputed against the Transport Authority of favouritism or impartiality. Mr. De submits that a retired District Judge had been invited to be

present at the time of lottery so that nobody can allege foul play or partisanship against Regional Transport Authority in the process of holding lottery. Mr. De, thus, prays for rejection of the application.

6. Mr. Sen appearing for the private respondent adopted the argument of Mr. De.

7. After hearing the learned Counsel for the parties and after going through the materials on record, I find substance in the contention of Mr. Dutt that in the absence of any provision either in the Act or in the Rules regarding mode of selection by way of lottery, the Regional Transport Authority could not adopt such a procedure. By way of lottery, no adjudication is made on the respective merit of the applicants. By lottery, selection is made on the basis of luck of a candidate. Thus, in the process, a less meritorious candidate may be selected ignoring the claim of a superior one. Therefore, in a given situation, unless there is a statutory rule prescribing selection by lottery, a selecting authority cannot evade its responsibility of selection by taking recourse to lottery. In the West Bengal Motor Vehicles Tax Act, the Regional Transport Authority has been empowered to grant permit after making selection from the eligible candidates. Therefore, such authority is required to exercise its discretion if there are more eligible candidates than the required number of vacancies. In such a case, the Regional Transport Authority may lay down further criteria for selection, although not provided in the Rules or Act but, those conditions must not be in conflict with any of the provisions of the Act or the Rules.

8. In this connection Mr. Dutt placed strong reliance upon a Division Bench decision of this Court in the case of Ashis Kumar Goswami and Ors. v. Rita Devi Sahu and Ors., reported in 1997(1) CHN 378. In the said decision a Division Bench of this Court pointed out that Section 71(3) of the Act or Rule 109 of the Motor Vehicles Rules, 1989 merely lay down the minimum requirement which an applicant must fulfill and does not restrict the discretion of the Transport Authority in the matter of selection even if there is fulfilment of requirement mentioned in the said section and Rule 109. According to the said Division Bench, those provisions merely deal with preference with regard to the categories of the applicant and it has no relevance on the question of assessment of better qualifications. In the

said decision it was further pointed out that it was not even necessary for the Transport Authority to mention in the advertisement that the aspiring candidate with further better qualifications should be preferred.

9. I, thus, find that in a situation where there are more applicants than a restricted number of vacancies, it is the duty of the Transport Authority to lay down further norms not inconsistent with the provisions contained in the Act or Rules framed thereunder for the purpose of evaluating superior candidates. There cannot be any exhaustive enumeration of factors which should be taken into consideration in exercise of the discretion in the matter of selection but experience in the field, condition of vehicle, age of the candidate, unblemished character of the applicant etc. are some of the circumstances which can be taken into consideration in addition to those mentioned in the Act or the Rules and the authority should fix 'marks' on the basis of those factors. To leave the process of selection on luck amounts to refusal of jurisdiction vested in the authority by law. Thus, by giving a direction for lottery, the Transport Authority cannot evade its responsibility to make selection.

10. I am quite conscious that in some of the statutes, for instance, in case of grant of liquor licence, there is provision for selection by lottery; but when the legislature has not introduced such system in the field of grant of stage permit, it necessarily follows that the legislature was quite alive to the situation and decided not to select candidate for giving permit on the basis of lottery. Therefore, in the absence of any specific statutory rule, the authority cannot take the help of lottery for selection of a candidate for grant of permit.

11. I, thus, quash the decision of the authority to select candidate for grant of permit by lottery and direct the authority to lay down norms for selection in case the number of applicant is more than the number of vacancy and those norms should be uniformly followed for selection of the candidates.

12. I thus, direct the respondent authority to make fresh selection and to select the best three candidates from among nine applicants after taking into consideration, the relevant factors to be fixed by the authority.

13. Such decision be taken within a month from the date of communication of the order.

14. The writ application, thus, succeeds.

15. In the facts and circumstances, there will be, however, no order as to costs.

Bhaskar Bhattacharya, J.

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