

(2016) 08 CAL CK 0090
In the Calcutta High Court
Case No : W. P. No.11678 (W) of 2016

Abhijit Ghosh

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 11-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 CalJ 428

Hon'ble Judges : Biswanath Somadder, J.

Bench : Single Bench

Advocate : Mr. Rameswar Bhattacharjee, Mr. Ram Uday Bhattacharyya and Mr. Soumen Bhattacharjee, Advocates, for the Petitioners; Mr. Pantu Deb Roy and Mr. Subrata Guha Biswas, Advocates, for the State; Mr. N. I. Khan and Mr. Amlan Kumar Mukherjee, Advocate, for the R

Final Decision : Dismissed

Judgement

Biswanath Somadder, J.—The writ petition has been filed by two petitioners who have stated in paragraph 2 of the writ petition that they are operators in respect of Route No.56, i.e., from Howrah Station to Titagarh, as extended upto Ruiya via Bandhaghat, Ghosuri, Belur Math, Dakshineswar, Dunlop and Sodepur, etc. The reason for approaching this Court - according to the petitioners - is that the concerned authorities are on the verge of issuing permit in favour of the private respondents in respect of a non-formulated route from Howrah Fire Services Station to Sodepur in contravention to the provisions of the Motor Vehicles Act, 1988, as well as the Rules framed thereunder.

2. A report in the form of an affidavit was called for, which has since been filed by the Regional Transport Authority, Howrah.

3. Learned advocate appearing on behalf of the private respondents draws this Court's attention to the Inter-Region permit issued in favour of the petitioners by the Secretary, Regional Transport Authority, Howrah, which does not have any signature or endorsement of the other Regional Transport Authority, namely,

North 24-Parganas, within whose jurisdiction Route No.56 terminates.

4. In response, the learned advocate for the petitioners submits that merely because the permit does not have the countersignature of the other Regional Transport Authority, it does not mean that the petitioners are not allowed to ply within the region of the Regional Transport Authority, Howrah, upto the point falling within its jurisdiction even though the permit is for an Inter-Region route.

5. While it is true that a person in whose favour an Inter-Region permit is issued is entitled to operate along the designated route upto the limit of the jurisdiction of the concerned Regional Transport Authority who has signed the permit, here it is a case of making a statement on oath, which is patently false. In paragraph 2 of the writ petition it has been specifically stated by the petitioners that "they are operators in respect of Route No.56, i.e., from Howrah Station to Titagarh as extended upto Ruiya via Bandhaghat, Ghosuri, Belur Math, Dakshineswar, Dunlop and Sodepur, etc." The submission made by the learned advocate for the petitioners, however, is wholly contrary to the pleadings contained under paragraph 2 of the writ petition.

6. If a person seeks to invoke this Court's high prerogative Constitutional writ jurisdiction under Article 226 of the Constitution of India - which is essentially a discretionary jurisdiction - he has to approach the Court with clean hands and with utter honesty and transparency, which will manifest itself from the pleadings itself, wherein only material facts are required to be stated. The Supreme Court in at least three judgments has categorically observed to the effect that the jurisdiction of the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and it is imperative that a person while approaching the writ Court must come with clean hands and put forward the relevant material facts before the Court without concealing or suppressing anything and only then seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his/her petition may be dismissed at the threshold without even considering the merits of the claim. In this context, one may take notice of the judgments rendered by the Supreme Court in *Prestige Lights Ltd. v. State Bank of India*, reported in (2007) 8 SCC 449; *K.D. Sharma v. Steel Authority of India Limited*, reported in (2008) 12 SCC 481 and *Dalip Singh v. State of Uttar Pradesh and others*, reported in (2010) 2 SCC 114.

7. It is palpably evident that not only the petitioners have not disclosed all material facts fairly and truly but have stated them in a distorted manner in order to mislead the Court. The impression, which the Court gets from paragraph 2 of the writ petition, is that the petitioners have a valid permit to ply on Route No.56, which covers two regions, i.e., Howrah and North 24-Parganas. The document annexed to the writ petition, however, reveals that the petitioners have got clearance from only one authority, namely, the Regional Transport Authority, Howrah, and not from the Regional Transport Authority, North 24-Parganas. This fact has not been stated anywhere in the pleadings. In such a

factual scenario, the writ petitioners ought to have come with candid facts and made a "clean breast" of all material details in the absence of which, the writ petitioners are not permitted to hold a writ of the Court with "soiled hands". Suppression of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. In this context, one may take notice of the ratio of the decision rendered by the King's Bench in *R. v. Kensington Income Tax Commissioners*, reported in (1917) 1 KB 486 (CA).

8. It is noticed from the facts of the instant case that the petitioners are essentially seeking to try and render the process initiated by the Regional Transport Authority, Howrah, to grant permit/permits in favour of the private respondents, nugatory. The report in the form of an affidavit reveals that the Regional Transport Authority, Howrah, is merely acting in terms of an order of this Court dated 13th May, 2016, passed in another writ proceeding. The manner in which the petitioners have approached this Court makes their bona fides suspect, although in paragraph 40 of the instant writ petition, the following statement has been made:-

"This application is made bona fide and for the ends of justice, equity and fair play".

9. A person who approaches this Court invoking high prerogative Constitutional writ jurisdiction under Article 226 of the Constitution of India essentially seeks relief which is discretionary in nature. For such discretionary relief to be granted, the petitioner has to demonstrate unimpeachable bona fides. This is precisely why a writ petitioner requires to make in his/her petition a specific averment to the effect that the application is made bona fide and for the ends of justice. In this context one may take notice of the observation made by this Court in *Tirthankar Ghosh v. The Superintendent (SIV), Service Tax - II Kolkata & Ors.*, reported in (2016) 2 WBLR (Cal) 472. There cannot be any manner of doubt whatsoever that in the facts and circumstances of the instant case, the writ petition was not made bona fide even though the petitioners have made a statement to that effect in paragraph 40 of the writ petition.

10. The writ petition is, therefore, liable to be dismissed with cost and is accordingly dismissed with cost assessed at 50 G. Ms. to be deposited with the High Court Legal Services Committee, Calcutta, within a week from date.

11. List this matter a fortnight hence, only for the purpose of ensuring compliance of the order of payment of cost.

12. Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.