

(2002) 05 DEL CK 0233

In the Delhi High Court

Case No : Letters Patent Appeal No's. 609-612 of 2001

A.K. International

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 31-05-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Constitution of India, 1950 — Article 14, 141, 19(1)

Marine Zones of India (Regulations of Fishing by Foreign Vessels) Act, 1981 — Section 2, 25, 3, 4, 5

Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Rules, 1982 — Rule 11, 2, 3(4), 7, 7(1)

Motor Vehicles Act, 1988 — Section 47, 47(1)

Citation : (2002) 144 ELT 241

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : G.L. Sanghi and Rohit Tandon and Sharan Sethi, for the Appellant;
Amit Andley, Jayant Bhushan, Maninder Singh and Nishakant Pandey, for the Respondent

Judgement

S.B. Sinha, C.J.—These four (4) Letters Patent Appeals involving similar questions of law and fact were taken up for hearing together and are being disposed of by this common judgment.

2. The basic fact of the matter is being noticed from L.P.A. No. 610 of 2001. The appellant is a company incorporated under the Companies Act.

The appellants admittedly applied for and were granted respective permits in terms of the provisions of the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981 (hereinafter for the sake of brevity referred to as "the said Act") and the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Rules, 1982 (hereinafter for the sake of brevity referred to as "the said Rules").

The applications for grant of permit in respect of separate vessels have been

dealt with differently, but the Permit to Fish in the Exclusive Economic Zone of India was granted in the prescribed form. The said Permit bearing No. 21002-25/92 FPI(F y), dated 2-9-1994 as contained in Annexure-P/4 to LPA No. 610 of 2001 initially pertaining to Deep Sea Fishing Vessel, namely, "VILLA DE MOGOR" was substituted by respondents vide Permit bearing No. 21002-26/92-FY(IND), dated 21-8-1998 as contained in Annexure- P/5 to LPA No. 610 of 2001 in favor of the appellant's Deep Sea Fishing Vessel, namely "TEUCRO" was valid for a period of five years expired on 1-9-1999. The said Permit authorised the appellant to obtain on lease and operate the above stated Foreign Deep Sea Fishing Vessel in terms of the said Act and the said Rules, but the said Permit has allegedly not been renewed. It was further alleged that the said Permit issued under the said Act was granted in accordance with the Government of India policy relating to fishing of Deep Sea Resources in Indian Exclusive Economic Zone by leased Foreign Deep Sea Fishing Vessels and is valid for a period of 15 years w.e.f. 2-9-1994, as would be evident from the following records :-

(i) Guidelines & policy for leasing of Foreign Deep Sea Fishing Vessels issued and published by the Government of India, as contained in Annexure - P/2 to LPA No. 610 of 2001.

(ii) Letter of Intent dated 6-9-1993, as contained in Annexure - P/3 to LPA No. 610 of 2001, whereby and where under permission was accorded to appellant to acquire on lease Deep Sea Fishing Vessel, for a period of 15 years. The appellant's application was also for permission to operate the leased vessel for a period of 15 years;

(iii) Permit dated 2-9-1994, as contained in Annexure - P/4 to LPA No. 610 of 2001, as substituted by Permit dated 21-8-1998, as contained in Annexure - P/5 to LPA No. 610 of 2001, where in the period of operation of leased vessel is declared to be 15 years;

(iv) Letter dated 12-10-1994, as contained in Annexure - P/8 to LPA No. 610 of 2001, issued by the respondent No. 3, stating that the permit in question is valid for a total period of 15 years, automatically extendable after every 5 years, subject only to payment of permit renewal fees; and

(v) Records of respondents pertaining to Deep Sea Fishing Policy of Government of India and implementation thereof.

Clauses 6 and 7, which are relevant for the purpose of these cases, read thus :-

"6. Base and area of : Cochin Indian EEZ as per conditions Operation indicated under Paragraphs 8 & 10 Mentioned below 7. Period of Operation : 15 YEARS" of the vessel

3. The contention of the appellants in these cases is that the period of operation of the vessel having been fixed for 15 years, the grant of 5 years permit at the beginning was only for the purpose of finding out the efficacy of grant of such permit and no breach of conditions takes place and the term, of such permit was

to be extended automatically.

It has further been contended that there exists a distinction between a chartered vehicle and the leased vehicle as would be evident from the fact that whereas in the case of a chartered vehicle, a period of 5 years is fixed but in the case of a leased vehicle, the same may be extended to a period of 15 years.

Further contention of the petitioner is that the purported policy decision on the basis whereof the renewal permit had not been granted being contrary to the provisions of the said Act and the said Rules, the learned Single Judge erred in dismissing the writ petitions.

4. Before proceeding to deal with the matter, we may notice that there exists a controversy as regard genuineness or otherwise of the letter dated 12-10-1994, which is annexed as Annexure - P/8 to LPA No. 610 of 2001 and it is in the following terms :-

"Dated : 12-10-94

To:

M/s. A.K. International,

E-26, Anand Niketan,

New Delhi-110 021

Subject: Leasing of Three Stern Trawlers

Sir,

I am directed to refer to your letter dated 16-9-94 on the above subject and to say that the leasing permits issued under the Letter of Intent No. 21002-25/92 FPI(F y) dated 6-9-93 are valid for a total period of fifteen years, as stated in the LO1, automatically extendable after end of every five years subject to payment of permit fees.

Your's faithfully

(S.K. DAS)

Deputy Commissioner (FY)"

However, as contended by Mr. Sanghi, we need not to go into the aforementioned question in these appeals.

5. It appears from the records that the petitioners filed applications for renewal of their permits with the requisite renewal fee, but except in LPANo. 612 of 2001, no express order declining to grant such permit had been passed, which was done in terms of its letter dated 17-4-2000, contained in Annexure - P/16 (Colly) to LPA No. 612 of 2001, which is as under :-

"No. 21002/7/93-Fy(Ind) Vol. II

Government of India

Ministry of Agriculture

(Department of Animal Husbandry & Dairying)

(Fisheries Division)

N. Delhi, the 17th April, 2000

To

M/s. A.K. International

E-26, Anand Niketan

New Delhi-110021

Sub : Operation of fishing vessels under lease - Return of pay order towards license fee - Regarding.

Sir,

I am directed to refer to this office letter dated 24-12-99 on the subject and to inform you that the pay order No. 711205, dated 9-3-2000 for Rs. 50,000/- towards license fee of your two Tuna Long liners under lease cannot be accepted. The validity of these vessels i.e. HWA TAS1101 and YUH YOW No. 317 were only up to 2-4-2000 as shown in the permits and further extension cannot be granted as requested. Therefore, the pay order No. 711205, dated 9-3-2000 of Hong Kong and Shanghai Corporations Ltd., New Delhi for Rs. 50,000/- is returned here with. You are requested to acknowledge the receipt of the same.

Yours faithfully,

Sd/-

(B.C. Varghese)"

However, even in the said letter, no reason has been assigned. No policy decision to the effect that such renewal cannot be granted was not referred to.

6. In the counter affidavit filed by the respondents before the learned Single Judge, a contention had been raised that having regard to the change in the policy, the Central had refused to renew the said permits. Reliance in this connection was placed on a Division Bench judgment of this Court in . Golden Ahar Ltd. and Another Vs. Union of India, , it has been held :-

"4. We have carefully considered the rival contentions of the learned counsel appearing for the parties. In our view the submission made on behalf of the respondent that the extension of permit for two years is neither automatic nor it can be claimed as a matter of right, has merit. Under the original permit itself renewal of the permission could be on satisfactory performance for one year at a time and for a maximum of two years. The letter dated 31st August, 1982 under

which permission was granted to the petitioner contains several conditions. Therefore, it cannot be said that renewal of permission was as a matter of right. Secondly, an important fact in this case is the change in Government policy. The facts noted hereinabove show that in larger public interest, the deep sea fishing policy had to be reframed. The Government had to appoint a Review Committee in this behalf and the recommendations of the Review Committee received in February, 1996 had been duly accepted by the Government. In view of the entire policy change being under taken by the Government, the grant of permission for deep sea fishing to foreign trawlers/vessels was totally suspended. The petitioner who admittedly had arrangement with foreign vessels could not, Therefore, get renewal of permit for deep sea fishing. The petitioner cannot seek permission as a matter of right. Moreover ,where public interest is involved, individual interest has to give way "

This Court noted that having regard to the policy decision adopted by the respondents in the year 1996 pursuant to the report of a Review Committee constituted under the Chairmanship of Mr. P. Murari, which was constituted having regard to the agitation from the traditional fishing community the Government was in the process of formulating a new deep sea fishing policy.

7. The Parliament of India enacted the said Act so as to provide Regulations of Deep Sea Fishing by Foreign Vessels and for matters connected therewith.

We may now take notice of some of the relevant provisions of the said Act.

Section 3 of the said Act reads thus :-

"3. Subject to the provisions of this Act, no foreign vessel shall, except under and in accordance with -

(a) a license granted u/s 4; or

(b) a permit granted u/s 5;

by the Central Government, be used for fishing within any maritime zone of India."

Section 5 of the said Act provides for imposition of prohibition of fishing by Indian citizens using foreign vessels in the following terms :-

"5(1). Every Indian citizen and every person to whom any of the descriptions specified in sub-item (2) or (3) of item (i) of Sub-clause (ii) of Clause (e) of Section 2 applies, who intends to use any foreign vessel for fishing within any maritime zone of India, may make an application to the Central Government for a permit to use such vessel for such purpose.

5(3). No permit shall be granted unless the Central Government, having regard to such matters as may be prescribed in the public interest in this behalf and after making such inquiry in respect of such other matters as may be relevant, is satisfied that the permit may be granted.

5(5). A permit granted under this section -

- (a) shall be in such form as may be prescribed;
- (b) shall be valid for such areas, for such method of fishing and for such purposes as may be specified therein;
- (c) may be renewed from time; and
- (d) shall be subject to such conditions and restrictions as may be prescribed and to such additional conditions and restrictions as may be specified therein."

Section 6 of the said Act provides for cancellation or suspension of license or permits.

8. The Central Government, in exercise of its power conferred upon it by Section 25 of the said Act, made the said Rules.

Rule 2(f) of the said Rules defines "permit" inter alias means a permit granted u/s 5 or u/s 8 of the said Act, as the case maybe.

Sub-rule (4) of Rule 3 of the said Rules authorizes the Central Government or an officer designated by it who may on receipt of an application and after making such enquiry as may be deemed fit grant a license in Form B for the purposes specified there in.

Rule 7 of the said Rules provides for validity of permit. Rule 7(1) of the said Rules reads thus :-

"7. Validity of permit:

(1) Every permit shall,

(a) be issued in original/duplicates and authenticated copies are to be distributed to enforcement and other connected authorities.

(b) be valid for a period as may be specified in the permit and in no case exceed more than five years."

The said Rules were amended by a notification bearing No. S.O.36(E), dated 22-1-1991 in the following terms :-

"3. In Rule 7 of the said Rules, in Sub-rule (1) -

(1) in Clause (b), for the words "be valid", the words "be valid in the case of charter" shall be substituted.

(2) after Clause (b), the following shall be added, namely :-

"(c) in the case of lease be valid for a period as may be specified in the permit and in no case exceed more than fifteen years."

9. It is not in dispute that the petitioners had applied for and were granted Permit to Fish in the Exclusive Economic Zone of India where for their vessels

were found fit to be operated initially for a period of 15 years. So far as the terms and conditions of the permit are concerned, there does not exist any dispute before the parties to the lis.

10. The contention of the respondents to the effect that the period of fifteen years had been mentioned by way of a mistake cannot be accepted. It appears to be an after thought. It was, thus, obligatory on the part of the respondents to consider the matter as regard renewal of the permit in accordance with law and/or refuse to do the same and pass an appropriate order there upon. They could not have kept mum. They could not have refused to accept the renewal fee.

11. Renewal of a permit, as is well known, is a valuable right. It can be refused only on cogent and valid grounds. Permits are granted and renewed in terms of the provisions of a statute. The competent authority derives their power under the statute. They, thus, must strictly be in terms of the provisions of the statute. Their actions must be fair, reasonable and equitable.

12. In *D. Nataraja Mudaliar Vs. The State Transport Authority, Madras*, the Apex Court held :-

"7. ... The transport tribunals function quasi-judicially and this imports some imperatives. You must tell the man whose fundamental right you propose to negative the materials you may use in your decision. You must act on relevant considerations, properly before you, not on rumour or hearsay, hexahedra assertions or inscrutable hunch.

8. The Authority must remember that a permit holder has an ordinary right of renewal unless it is shown total outweighing reasons of public interest lead to a contrary result. Permits are not bounty but right, restricted reasonably by the Motor Vehicles Act."

13. In *Ajantha Transports (P) Ltd., Coimbatore Vs. T.V.K. Transports, Pulampatti, Coimbatore District*, , the Apex Court laid down the law in the following terms :-

"23. Thus, decisions of this Court have made it clear that an exercise of the permit issuing power, u/s 47 of the Act, must rest on facts and circumstances relevant for decision on the question of public interest, which has to be always placed in the forefront in considering applications for grant of permits. Consideration of matters, which are not relevant to or are foreign to the scope of powers conferred by Section 47, will vitiate the grant of a permit u/s 47. A fact, which, in certain circumstances, is relevant for a decision on what the public interest demands may become irrelevant where it is not connected with such public interest. Indeed, every class of consideration specified in Section 47(1) of the Act seems correlated to the interests of the public generally. It appears that Section 47(1)(a) gives the dominant purpose and Section 47(1)(b) to (f) are only its subcategories or illustrations. If any matter taken into consideration is not shown to be correlated to the dominant purpose or, the relationship or the effect of a particular fact, which has operated in favor of a grant is such as to show that

it is opposed, on the face of it, to public interest, the grant will be bad. The power to grant permits u/s 47 of the Act is limited to the purposes for which it is meant to be exercised. Considerations which are relevant for applying Articles 14 and 19(1)(g) of the Constitution could not be foreign to the scope of Section 47(1)(a) which is fairly wide."

"27. Relevancy or otherwise of one or more grounds of grant or refusal of a permit could be a jurisdictional matter. A grant or its refusal on totally irrelevant grounds would be ultra virus or a case of excess of power. If a ground which is irrelevant is taken into account with others which are relevant, or, a relevant ground, which exists, is unjustifiably ignored, it could be said to be a case of exercise of power u/s 47 of the Act, which is quasi judicial, in a manner which suffers from a material irregularity. Both will be covered by Section 115 Civil Procedure Code."

14. It is trite that principles of natural justice are required to be complied with more vigorously in the case of a renewal of license than at the time of grant of it.

In Principles of Judicial Review by De Smith, Woolf & Jowell, published in 1999, it is stated :-

"Non-renewal of an existing license is usually a more serious matter than refusal to grant a license in the first place. Unless the licensee has already been given to understand when he was granted the license that renewal is not to be expected, non-renewal may seriously upset his plans, cause him economic loss and perhaps cast a slur on his reputation. It may Therefore be right to imply a duty to hear before a decision not to renew irrespective of whether there is a legitimate expectation of renewal, even though no such duty is implied in the making of the original decision to grant or refuse the license."

15. In the instant case, except in one matter, a clear indication had been given that the vessels taken on lease by the appellant herein would be allowed to ply for a period of 15 years. Although license had not been granted for a period of 15 years, there had been a legitimate expectation in the mind of the appellant that such license would be renewed.

16. A policy decision, which is contrary to the statute, cannot be up held. It may be that the doctrine of promissory estoppel or legitimate expectation may give way to public interest, but such public interest must exist. Although a public interest may prevail over the private interest, the same would require serious application of mind on the part of the appropriate authority where for it was obligatory on its part to give an opportunity of hearing to the appellants.

Be it recorded that according to Mr. Sanghi even despite the said purported policy decision, similar licenses had been renewed. If that be so, the appellants cannot be discriminated against.

17. The contention of the respondents to the effect that a bonafide mistake had been committed in filling up column No. 7 of prescribed form of Permit to Fish in

the Exclusive Economic Zone of India cannot also be accepted. Even such a mistake could have been rectified, having regard to the civil consequences suffered by the appellants herein, only upon compliance of the principles of natural justice.

In *Bhagwan Shukla Vs. Union of India and others*, , the law has been laid down in the following terms :-

"2. ... The appellant who had joined the Railways as a Trains Clerk w.e.f. 18-12-1955 was promoted as Guard, Grade - C w.e.f. 18-12-1970 by an order dated 27-10-1970. The basic pay of the appellant was fixed at Rs. 190/- p.m.w.e.f. 18-12-1970 in a running pay-scale. By an order dated 25th July, 1991, the pay-scale of the appellant, was sought to be refixed and during the refixation his basic pay was reduced to Rs. 181/- p.m. from Rs. 190/-p.m. w.e.f.18-12-1970. The appellant questioned the order reducing his basic pay with retrospective effect from 18-12-1970 before the Central Administrative Tribunal, Patna Bench. The justification furnished by the respondents for reducing the basic pay was that the same had been "wrongly" fixed initially and that the position had continued due to "administrative lapses" for about twenty years, when it was decided to rectify the mistake. The petition filed by the appellant was dismissed by the Tribunal on 17-9-1993.

3. We have heard learned counsel for the parties. That the petitioner's basic pay had been fixed since 1970 at Rs. 190/- p.m. is not disputed. There is also no dispute that the basic pay of the appellant was reduced to Rs. 181 /- p.m.from Rs. 190/- p.m. in 1991 retrospectively w.e.f. 18-12-1970. The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There, has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order, which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter"

18. In this view of the matter, we are of the opinion that the applications filed by the appellants herein for renewal of the licenses should receive serious consideration at the hands of the concerned respondent.

The Division Bench decision of this Court in *M/s. Golden Ahar Ltd's case* (supra) cannot be said to have any application in the facts and circumstances of this case.

In the said decision, the attention of the learned Judges had not been drawn to the amendment made by reason of a notification bearing No. S.O.36(E), dated 22-1-1991. By reason of such an amendment, a distinction has been made between a chartered vehicle and a leased vehicle. In relation to a chartered vehicle license for a period of 5 years only can be granted where as in respect of

leased vehicle license can be extended up to 15 years.

Thus, the chartered vehicles and leased vehicles for the purpose of grant and/or renewal of license stand absolutely on different footings.

A purported decision adopted by the State must, Therefore, be construed in the light of the statutory provisions and not de hors the same.

As the attention of the Division Bench of this Court in M/s. GoldenAhar Ltd."s case (supra) had not been drawn to the aforementioned amendment, the said decision cannot be said to be a binding precedent on the aforementioned question.

In Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , it was held :-

"19. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid"s theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Norton (1951 AC 737 at P. 761), Lord Mac Dermot observed :

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the Rules of interpretation appropriate there to. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

In Home Office v. Dorset Yacht Co. 1970 (2) All ER 294 Lord Reid said, "Lord Atkin"s speech ... is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J. in (1971) 1 WLR 1062 observed : "One must not, of course, construe even a reserved judgment of even Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972) 2 WLR 537 Lord Morris said :

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

20. The following words of Lord Denning in the matter of applying precedents

have become locus classics :

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, Therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

xxx xxx xxx xxx xxx xxx "precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

A decision, as is well known, an authority what it decides and not what can logically be deduced there from.

It is also a trite law that a point not raised before a Court would not be an authority on the said question.

Furthermore, refusal to grant and /or renew a permit on irrelevant consideration would be a jurisdictional fact amenable to the writ jurisdiction.

19. In State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, , the law has been stated in the following terms :-

"40. "Incuria" literally means "carelessness". In practice per in curiam appears to mean per ignorathim. English courts have developed this principle in relaxation of the rule of stare decisis. The "quotable in law" is avoided and ignored if it is rendered, "in ignorathim of a statute or other binding authority", (Young v. Bristol Aeroplane Co. Ltd. [1994 1 KB 718 : (1944) 2 All ER 293. Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents asa matter of law. In Jaisri Sahu Vs. Rajdewan Dubey and Others, this Court while pointing out the procedure to be followed when conflicting decisions are placed before a Bench extracted a passage from Halsbury"s Laws of England incorporating one of the exceptions when the decision of an appellate court is not binding."

20. Yet again in A One Granites v. State of U.P. and Ors. AIR 2001 SCW 848, it is stated as follows :

"10. The first question which falls for consideration of this Court is as to whether the question regarding applicability of Rule 72 of the Rules in relation to the present lease is concluded by the earlier decision of this Court rendered in Prem Nath Sharma Vs. State of U.P. and another, . From a bare perusal of the said judgment of this Court it would be clear that the question as to whether Rule72 was applicable or not was never canvassed before this court and the only question, which was considered was whether there was violation of the said rule.

11. This question was considered by the Court of Appeal in Lancaster Motor Co.

(London) Ltd. v. Bremth Ltd. (1941) 1 KB 675, and it was laid down that when no consideration was given to the question, the decision cannot be said to be binding and precedents sub silentio and without arguments are of no moment. Following the said decision, this Court in the case of Municipal Corporation of Delhi Vs. Gurnam Kaur, , observed thus :-

"In Gerard v. Worth of Paris Ltd. (1936) 2 All ER 905, the only point argued was on the question of priority of the claimant's debt, and on this argument being heard, the Court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, Therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd. (1941) 1 KB 675, the Court held itself not bound by its previous decision, Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier Court before it could make the order which it did; never the less, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has even since been followed."

In State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, reiterating the same view, this Court laid down that such a decision cannot be deemed to be a law declared to have binding effect as is contemplated by Article 141 of the Constitution of India and observed thus :-

"A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to by law declared to have a binding effect as is contemplated by Article 141."

In the case of Arnit Das Vs. State of Bihar, while examining the binding effect of such a decision, this Court observed thus (Para 20) :-

"A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This is the rule of sub silentio, in the technical sense when a particular point of law was not consciously determined."

12. Thus we have no difficulty in holding that as the question regarding applicability of Rule 11 of the Rules having not been even referred to, much less considered by this Court in the earlier appeals, it cannot be said that the point is concluded by the same and no longer rest Integra and accordingly this Court is called upon to decide the same."

21. However, this Court, keeping in view the facts and circumstances of this case, cannot grant any relief by issuing a Mandamus directing the respondents to

renew the license such consideration must be made by the statutory authorities at the first instance.

22. In *State of West Bengal and Others Vs. Nuruddin Mallik and Others*, , the Apex Court held as under :-

"28.Submission for the respondents was that this Court itself should examine and decide the question in issue based on the material on record to set at rest the longstanding issue. We have no hesitation to decline such a suggestion. The courts can either direct the statutory authorities, where it is not exercising its discretion, by mandamus to exercise its discretion, or when exercised, to see whether it has been validly exercised. It would be appropriate for the Court to substitute itself for the statutory authorities to decide the matter.

23. For the reasons aforementioned, the applications for renewal filed by the appellants, Therefore, having regard to the peculiar facts and circumstances of the case, must be directed to be disposed of expeditiously and preferably within a period of 6 weeks from the date of communication of this Order. It is so directed. The appeals are allowed in part and to the extent mentioned hereinabove. However, in the facts and circumstances of the case, there shall be no order as to costs.