

(1991) 04 CAL CK 0042

In the Calcutta High Court

Case No : C.O. No. 11490 (W) of 1990 and C.O. No. 1150 (W) of 1990

Ansar Malithya and Another

APPELLANT

Vs

State of West Bengal and Others
 Naba Krishna
Sarkar Vs State of West Bengal

RESPONDENT

Date of Decision : 02-04-1991

Acts Referred:

Contract Act, 1872 — Section 71, 74
Motor Vehicles Act, 1988 — Section 80

Citation : 96 CWN 379

Hon'ble Judges : Susanta Chatterjee, J

Bench : Single Bench

**Advocate : Moloy Kumar Basu and Dinabandhu Choudhury, for the
Appellant;Tulsidas Maity and Manick Chandra Das, for the Respondent**

Final Decision : Dismissed

Judgement

Susanta Chatterjee, J.—Having heard the learned lawyers for the respective parties this court finds that the petitioners have prayed for an appropriate writ of Mandamus commanding the respondents to re-call, rescind and/or set aside the impugned memo being Annexure C to the writ application and to consider further the matter afresh. It is stated in detail that the respondents concerned have acted illegally and arbitrarily in issuing the impugned memo and embargo and/or the restriction is wholly unwarranted and uncalled for. Looking at the said Annexure "C" this Court finds that a radiogram message has since been issued stating that the State Government is reviewing the position of the operation of different stage carriage and contract carriage routes and buses of all nature playing in the State and directed the R.T.As not to issue any new permit on any inter regional and intra regional routes and not to extend and vary the conditions of permits granted previously from the district concerned without obtaining prior clearance of the State. It is seriously challenged that such an embargo is wholly unwarranted and un-called for. It has been argued before this Court that such a communication is not permitted under the provisions of the Motor Vehicles act.

2. Attention of the court has been drawn to a decision reported in AIR 1964 SC 1578 (B. Rajagopala Naidu v. The State Transport Appellate Tribunal, Madras). It is found that Section 43A confers no power on Government to issue any administrative order and the same is outside the purview of the section, and the impugned order as discussed therein was beyond the scope of Section 43A.

3. Attention of the Court has also been drawn to a decision reported in P. Palaniswami Vs. Shri Ram Popular Service (P) Ltd. and Another, There the scope of Section 47 of the Motor Vehicles Act, 1939 has been considered. It has been found that when there is a Government Order in existence and parties applying for permits come to know that the authorities under the Act were disposing of their applications for permits in accordance with the order, matters not referred to in the order but which may be very germane for consideration u/s 47 get automatically excluded during the hearing.

4. This Court has considered the submissions made on behalf of the learned lawyers in depth. In view of the provision of Section 80 of the Act of 1988, it has been stated that an application for permit of any kind may be made at any time. The Regional Transport authorities shall not ordinarily refuse to grant application for permit of any kind made at any time under this Act provided that the Regional Transport Authorities may summarily refuse the applications, if the grant of any permit in accordance with the application would have the effect to increase the number of stage carriage as fixed and specified in the notification in the official gazette under clause (a) of sub-Section (3) of Section 71 or of contract carriage as fixed and specified in the notification in the official gazette under clause (a) of sub-section (31) of Section 74.

5. In view of the above that any party can apply for permit of any kind and the R.T.A. should consider the same, the State authorities certainly can review the entire position and can direct the R.T. As that before granting any permit, consent of the State may be obtained. The impugned circular, in fact, is not found to be an embargo or an act beyond the scope, and jurisdiction of the State. The challenges made by the petitioners are found to have no merit. The impugned circular is neither contrary to nor inconsistent with the provisions of law. This court does not find any justification to interfere with the matter.

6. In the result the writ petition is dismissed. All interim orders are vacated. There will be no order as to costs.

7. This order shall govern the other two matters (In re: Naba Krishna Sarkar v. The State and C.O. 11501 (W) of 1990) - Let xerox copies of this order be handed over to the learned Advocates for the parties on their application and undertaking to apply for and obtain certified copies of the same.