
(2022) 06 CAL CK 0091
In the Calcutta High Court
Case No : WPA No. 10886, 10896 Of 2022

Avijhit Ghosh

APPELLANT

Vs

State Of West Bengal And Others

RESPONDENT

Date of Decision : 29-06-2022

Acts Referred:

Evidence Act, 1872 — Section 114(e)

Citation : (2022) 06 CAL CK 0091

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Arabinda Chatterjee, Kakali Dutta, Arkadipta Sengupta, Subhajit Das, Pantu Deb Roy, Subrata Guha Biswas, Amal Kumar Sen, Lal Mohan Basu, Bhaskar Nandi, B. K. Samanta

Final Decision : Allowed

Judgement

Sabyasachi Bhattacharyya, J

1. The writ petition has been filed against an order dated June 7, 2022 passed by the Regional Transport Authority, Kolkata Region, thereby affirming the decision of the RTA Board Meeting dated June 27, 2018, whereby the permit of the petitioners to ply their buses on Routes - 30C and 30C/1 were cancelled.

2. The brief facts of the case are as follows :

3. The petitioners' buses were registered on September 14, 2011. Upon being issued Offer Letters for plying their buses on the aforesaid routes, issued by the Motor Vehicles Authority on May 5, 2011 and May 11, 2011 respectively, the petitioners purchased the chassis of their buses and allegedly had the same developed as ready buses in a private garage. Ultimately, registration was granted in respect of the buses on September 14, 2011 and the petitioners started plying their buses on the aforesaid routes.

4. On October 11, 2017, the Secretary, RTA, Kolkata issued show-cause notices

to the petitioners on the basis of certain complaints lodged by the private respondents. A similar notice was issued again on April 18, 2018. The petitioners duly attended the hearing fixed by the RTA, Kolkata on April 27, 2018.

5. On May 15, 2018, three complaints dated August 24, 2017, January 17, 2018 and March 9, 2018 were handed over to the petitioners. On May 15, 2018, a writ petition was filed by the private respondents, upon which a co-ordinate Bench of this Court directed the RTA, Kolkata to decide on the complaints lodged against the petitioners. The petitioners preferred appeals bearing MAT 496 of 2018 and MAT 497 of 2018 respectively against the said order, but the orders were substantially retained in appeal.

6. On June 27, 2018 pursuant to the said direction, the RTA cancelled the petitioners' permits.

7. The petitioners preferred writ petitions bearing WPA 18920 of 2018 and WPA 18922 of 2018 respectively against the said decision, upon which another co-ordinate Bench of this Court, vide order dated April 01, 2022, remanded the matter to the RTA, Kolkata Region with a direction to reconsider the case afresh, taking into account all relevant documents and the facts which would emerge from the documents. The RTA was given liberty to hear all necessary parties once again, including the petitioners and the private respondents and pass an order within a period of six weeks from the date of communication of the order.

8. Subsequently the RTA, vide order dated June 07, 2022, affirmed its decision dated June 27, 2018, against which the present writ petitions have been preferred.

9. Upon hearing learned counsel for the parties, certain documents, which are part of the records, deserve mention.

10. Proforma invoices were issued to the petitioners on May 25, 2011 by one Bhandari Automobiles Private Limited, indicating the costs of the chassis of each of the vehicles.

11. The petitioners have annexed receipts dated June 25, 2011 for payments made by the petitioners to Bhandari Automobiles, In the said receipts, it was mentioned "Hypothecated to State Bank of India".

12. Sale Certificates were issued for the bus chassis to the petitioners by the said Bhandari Automobiles on September 12, 2011.

13. The petitioners have produced receipts of Registration Fee dated September 13, 2011 and for payment of further Registration Certificate Fee dated September 13, 2011. In the said documents, the year of manufacture was mentioned as "8/2011". The registration was granted in respect of the vehicles on January 14, 2011.

14. On September 14, 2011, the petitioners made request for route permit.

15. It is noted that the complaints, on which the permits of the petitioners were cancelled were to the effect that it was not possible for the petitioners to complete manufacturing of fully prepared buses within two days. The RTA proceeded on such premise, on the basis of the Sale Certificates being dated September 12, 2011 and the registration being granted on September 14, 2011.

16. From the Sale Certificates dated September 11, 2011, it is evident that the same were issued for bus chassis. However, the petitioners have made out a credible case to the effect that the invoices for the chassis were issued by Bhandari Automobiles, the vendor, on May 25, 2011. On June 25, 2011, a token amount of Rupees Five thousand was given by the petitioners, upon receipts being issued by Bhandari Automobiles. The petitioners have indicated that over the next few months the bodies of the buses were built in a private garage. The final Sale Certificate, however, was issued for the chassis on September 12, 2011.

17. Although the RTA has disbelieved the case of the petitioners that the chassis were handed over to them by Bhandari Automobiles about three months prior to the issuance of the Sale Certificate, there is nothing to disprove the case made out by the petitioners to the effect that the petitioners had procured the chassis in May/June, 2011 and had the buses built in a private garage and ultimately applied for registration on September 13, 2011 and got the same on the next date that is September 14, 2011.

18. In fact, allegations of fraud and forgery have been levelled against the petitioners by the private respondents and accepted by the RTA without any particulars or details of such alleged act of fraud/forgery having been established by the private respondents at any point of time. Allegations of fraud, it is well-settled, cannot be accepted merely on the basis of conjecture and surmise but the details thereof have to be specifically pleaded and proved. In the present case, however, the RTA over-stepped its jurisdiction in crossing over behind the back of the grant of registration for the purpose of cancelling the permit of the petitioners.

19. In fact, the registration was granted by the Registering Authority, to which a presumption of correctness is to be attached, since the same was an official act, within the contemplation of Section 114(e) of Evidence Act. Official acts are presumed to have been regularly performed. In the absence of specific allegations being levelled or proved against the Registering Authority in respect of purported collusion with the petitioners, the RTA travelled beyond its authority, while considering the issuance of permit to the petitioners, to reopen the veracity of the registration itself.

20. The premise of the entire observations of fraud arrived at by the RTA was conjecture and surmise.

21. There is nothing on record to disbelieve the petitioners' case that the chassis were handed over to them by Bhandari Automobiles in May/June, 2011 and, over the next two or three months, they had the body built in a private workshop.

22. In fact, nothing has been brought on record to substantiate that final receipts and/or documents in respect of manufacture of the body of buses, to prepare it for the road, were being issued in regular course of business by the private manufacturer/garage where the petitioners had their buses built.

23. Hence, there was nothing on record to hold that, when the buses were registered on September 14, 2011, the complete and ready buses were not produced before the Registering Authority.

24. The mere issuance of the Sale Certificates by Bhandari Automobiles for the bus chassis on September 12, 2011 do not necessarily implicate the said Bhandari Automobiles or the petitioners for committing any fraud, since it depended on the mutual understanding between the said vendor and the petitioners as to whether part payment for the chassis was made subsequent to the same being handed over on trust to the petitioners by the vendor. In fact, the petitioners have alleged that the State Bank of India, Small and Medium Enterprises City Credit credited an amount to the Bhandari Automobiles on October 10, 2011, which is even after the date of issuance of the Sale Certificates, in view of the loan obtained by the petitioners.

25. The Registering Authority, well within its charter, had been satisfied with the Sale Certificates and a presumption is raised that the built buses were produced before the said Authority at the time of grant of Registration on September 14, 2011.

26. The vehicle particulars given with the receipts by the Registering Authority, Motor Vehicles Department, Alipore, South 24-Parganas clearly show that the bodies comprise of "bus" and not merely chassis. Again, the communication issued by the Registering Authority on September 28, 2018 to the petitioner in respect of their vehicles, bearing Registration Nos. WB 19E 8423 and WB 19E 8421 respectively, clearly show that the motor models of the vehicle class were mentioned as "bus" and, under the caption "Purchase As", it was mentioned "fully built". Even the colour of the buses was mentioned as "sky-blue/yellow". Hence, there was no material before the RTA to cancel the permits of the petitioners in the first place on the assumption of fraud.

27. That apart, it is seen from the order of the learned Single Judge dated April 1, 2022 in WPA 18920 of 2018 and WPA 18922 of 2018 that the matter was remanded to the RTA in the light of certain specific observations. It was observed by the learned Single Judge that there was no indication of any reason or factual basis supporting the conclusion of the RTA and that the presumption of impossibility was vague in the final part of the impugned order. Moreover, it was observed that the order was passed on surmises. The document issued by the Registering Authority on September 28, 2018` in reply to the petitioners' query under the Right to Information Act, 2005 as to whether at the time of registration, a ready bus or a chassis was produced, was a part of the records but not considered by the RTA. The same was directed to be considered afresh,

which was not done by the RTA.

28. However, the respondent-Authorities and the private respondents before this Court have sufficiently established that the amendment to Section 44 dated August, 2019 had been introduced only subsequent to the registration of the vehicles of the petitioners and, as such, at the juncture when the registration was effected, a "transport vehicle" was also to be produced before the Registering Authority. Such provision was deleted by way of amendment only subsequently and, as such, was applicable at the relevant juncture.

29. Yet, it is surprising that the RTA reiterated and 'affirmed' its decision dated June 27, 2018 without considering all the materials as directed by the learned Single Judge in the remand order dated April 1, 2022.

30. The only reasoning added by the respondent-authorities in the impugned order dated June 7, 2022 was that the RTA had reconsidered the case afresh and heard the relevant parties and had revisited the chronological proceedings of the incidents related to the matter. It was further observed by the RTA that from the "above documents", being primarily the Sale Certificate and other connected document, it was evident that chassis were delivered by Bhandari Automobiles to Abjihit Ghosh and Gouranga Biswas, the petitioners, in Form-21 containing the Sale Certificate dated September 12, 2011. In the absence of any proof from any side in respect to the exact date of delivery of the chassis to the petitioners, there was nothing on record to prompt the RTA to suo motu arrive at the finding that the chassis were handed over along with the Sale Certificates only on September 12, 2011 instead of May/June, 2011, although there was equal possibility of the chassis being handed over in May/June, 2011, in view of the invoices dated May 25, 2011 and receipts of rupees five thousand, also issued by the Bhandari Automobiles (the vendor) on June 25, 2011. In fact, in the receipts dated June 25, 2011, it was indicated: "Hypothecated to State Bank of India", which was a sufficient indicator, coupled with the specific averment of the petitioners that the State Bank of India subsequently disbursed amounts to the Bhandari Automobiles in view of the loan taken by the petitioners, to come to the conclusion that the complete buses, and not merely the unprepared chassis, were produced by the petitioner at the time of registration.

31. In such view of the matter, the impugned order dated June 7, 2022 passed by the Regional Transport Authority, thereby confirming its own decision dated June 27, 2018, cannot stand the scrutiny of judicial review.

32. In view of the RTA having acted palpably without authority and on the basis of conjecture and surmise, there is no scope of agreeing with the same or affirming the order of the RTA. Hence, WPA No.10886 of 2022 and WPA No.10896 of 2022 are allowed on contest, thereby setting aside the order dated June 7, 2022, whereby the RTA, Kolkata Region affirmed its earlier order dated June 27, 2018 cancelling the permits issued to the petitioners for plying their vehicles. Accordingly, the petitioners' permits stand revived.

33. There shall be no impediment to the petitioners plying their vehicles on the designated routes in terms of their permits, subject to the petitioners complying with the law otherwise.

34. There will be no order as to costs.

35. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.