

(1967) 07 CAL CK 0003
In the Calcutta High Court
Case No : Matter No. 417 of 1967

Calcutta Tramways Co. Ltd.

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 18-07-1967

Acts Referred:

Calcutta Tramways Act, 1880 — Section 9
Calcutta Tramways Act, 1951 — Section 6
Constitution of India, 1950 — Article 226, 366

Citation : 72 CWN 29 : (1968) 1 ILR (Cal) 437

Hon'ble Judges : B.C. Mitra, J

Bench : Single Bench

Advocate : P.P. Ginwalla, for the Appellant; A.K. Dutt, General and S.K. Acharyya, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Mitra, J.—This application for a rule nisi is directed against the Calcutta Tramways (Amendment) Ordinance, 1967. By this Ordinance, Section 9 of the Calcutta Tramways Act, 1880, was amended by substituting therein the words "shall have power with the previous consent of the State Government, to fix or revise" for the words "shall have power from time to time to fix".

2. The Petitioner's case is that by virtue of the Calcutta Tramways Act, 1880, and Clause 9 of the Agreement dated October 2, 1879, the Petitioner had the power from time to time to fix the rates of fares for carrying passengers and goods in tram cars and carriages. It is alleged that in the beginning of 1967 it became necessary in consequence of increase in costs to revise the rates of fares so as to increase the total traffic receipts. Accordingly a notice was published in daily newspapers on March 23, 1967, informing the public of the Petitioner's intention to charge revised fares from March 24, 1967.

3. On March 23, 1967, an application was moved before this Court under Article 226 of the Constitution, a rule was issued as also an interim order restraining the

Petitioner from giving effect to the revised new schedule of fares until April 10, 1967, with liberty to the Petitioner to apply for vacation of the interim order. On April 11, 1967, an order was made by this Court extending the interim order till the disposal of the rule. An appeal was preferred against this order extending the injunction and the Court of Appeal directed expeditious hearing of the rule. Thereafter the rule came up for hearing before me on May 15, 1967, and while the hearing was continuing the impugned Ordinance was promulgated by the Respondent.

4. The Petitioner's contention is that the Respondent had no power to promulgate the Ordinance or to amend the Calcutta Tramways Act, 1880, so as to restrict the Petitioner's right to fix and revise its fares. The next contention of the Petitioner is that the Ordinance is invalid and void as it purports to deprive the Petitioner of its property without compensation or provision for compensation. The further contention of the Petitioner is that the impugned Ordinance purports to provide for taking over of the management or part of the management of the Petitioner's property by the Respondent, and is accordingly invalid, void and of no effect. It is next alleged that the impugned Ordinance was promulgated without the instruction of the President of India and, therefore, is void and of no effect. The Petitioner further contends that it is suffering a daily average loss of about Rs. 13,000 and as a result of further firm commitments and future increase in costs, the daily average loss will increase by a further Rs. 4,000.

5. The first contention of Mr. Ginwalla, learned Counsel for the Petitioner, was that the Petitioner's business was a railway as defined in Clause 20 of Article 366 of the Constitution in which a "railway" has been defined as not to include a tramway wholly within a municipal area. It was argued that the Petitioner's tramway was not within one municipal area and, therefore, it was a railway and as such it came under item 22 of list I of Schedule VII of the Constitution and, therefore, the Central Government had exclusive jurisdiction to make laws with regard to the Petitioner's tramways which must be treated as a railway as defined in the Constitution.

6. The learned Advocate-General for the State of West Bengal, on the other hand, contended that the Petitioner's business could not be treated to be a railway so as to come under Clause 20 of Article 366 of the Constitution, as the tramways of the company were entirely within three different municipal areas, namely Calcutta, Howrah and Bally and there was no part of the tramways which was outside a municipal area. In other words, it was submitted that no part of the tramways being outside a municipal area, the tramways of the Petitioner could not be treated to be railway so as to come under item 22 of list I of Schedule VII of the Constitution. In my opinion, this contention of the learned Advocate-General must prevail. The tramways are entirely within three different municipal areas and, therefore, cannot be treated to be a "railway" so as to come under Clause 20 of Article 366 of the Constitution. The first contention of

Mr. Ginwalla is, therefore, rejected,

7. The next contention of Mr. Ginwalla was that the State Government had no power to promulgate an Ordinance so as to amend Calcutta Tramways Act, 1880, which was a Central Act. It was urged that the Act which was sought to be amended by the Ordinance was a Central Act and could be amended only by the Central Legislature or by an Ordinance made by the Central Government. There is hardly any force in this contention. The Calcutta Tramways Act, 1951, was an Act of the West Bengal Legislature and this Act incorporated an agreement between the Petitioner and the Governor of West Bengal. By Section 6 of this Act, parts of Calcutta Tramways Act, 1880, which related to the purchase of the undertaking were repealed in so far as such provisions of the Act were inconsistent with the provisions of the 1880 Act. It is thus clear that the Petitioner entered, into an agreement with the Government of West Bengal and this agreement was made part of the Calcutta Tramways Act, 1951, which in fact repealed parts of the Calcutta Tramways Act, 1880. The agreement which became part of the Act was acted upon by the Petitioner and it is not open to them at this stage to contend that the Governor of West Bengal has no power to promulgate an ordinance for amendment of the Calcutta Tramways Act, 1880. The second contention of Mr. Ginwalla must, therefore, be rejected.

8. The third contention of Mr. Ginwalla was that the Governor of West Bengal promulgated the Ordinance without the instruction from the President, and for this want of Presidential instruction the Ordinance was void. This contention was founded upon the assumption that the Petitioner's tramway was a railway under Clause 20 of Article 366 of the Constitution. The learned Advocate-General, on the other hand, submitted that the Petitioner's tramway clearly came under item 13 of list II of Schedule VII of the Constitution and, therefore, the Governor of West Bengal was clearly competent to promulgate the Ordinance and the State Legislature was also competent to pass any laws relating to the Petitioner's tramways. This contention on behalf of the State of West Bengal must be upheld. As I have said earlier, the Petitioner's tramways being entirely within the municipal limits of three different municipalities, cannot be held to be a railway and must be held to be a tramway and as such comes under item 13 of list II of Schedule VII of the Constitution. That being so the Governor of West Bengal must be held to have validly promulgated the impugned Ordinance.

9. The last contention of Mr. Ginwalla was that the State Government was taking steps to incorporate the provisions in the Ordinance in an Act of the State Legislature and that a Bill had already been passed by the two Houses of the State Legislature. It was urged that as the State Legislature had no power to pass any law relating to the Petitioner's tramways, an injunction should be issued restraining the State Government from proceeding with any Bill relating to the Petitioner's business. This contention of Mr. Ginwalla must be rejected. In the first place, the Bill has not yet become an Act, and this Court will not in advance issue an injunction restraining the State Legislature from taking into

consideration or the State Government from proceeding with a Bill, even though the Petitioner was right in contending that the Legislature had no jurisdiction to pass the Bill.

10. Before concluding I must note that the learned Advocate-General submitted that this application is mala fide as the Petitioner well knew that a Bill was under consideration of the State Legislature and the Ordinance will lapse as soon as the Bill becomes an Act. It was argued that the Petitioner's contention completely lacks bona fides as it was proceeding to challenge the validity of an ordinance which the Petitioner knew would lapse very soon. It seems to me that there is good deal of force in this contention of the learned Advocate-General. The learned Counsel for the Petitioner submitted that a Bill had been passed by the State Legislature and that the Court should issue an injunction restraining the State Government from proceeding with the Bill any further. That being so, the Petitioner is fully aware of the position relating to the Bill and I see no reason why this Court, having regard to the facts mentioned above, should issue a rule nisi on the Petitioner's challenge to the validity of the Ordinance which, according to the Petitioner itself, is bound to lapse upon the Bill coming into operation as an Act.

11. For the reasons mentioned above this application is rejected.