
(2000) 02 CAL CK 0033

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction M.A.T. No. 3423 of 1999 with C.A.N. 433 of 2000 and C.P.A.N. 90 of 2000

Chandra Kanti Bag and Others

APPELLANT

Vs

Chandidas Mitra and Others

RESPONDENT

Date of Decision : 14-02-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 69, 69(1), 80, 80(3), 81
West Bengal Motor Vehicles Rules, 1989 — Rule 103

Citation : (2000) 2 ACC 508 : (2000) 2 CALLT 427

Hon'ble Judges : Ranjan Kumar Mazumdar, J; Altamas Kabir, J

Bench : Division Bench

Advocate : Mr. Arun Prokash Sircar, Mr. Pantu Deb Roy and Mr. Chitta Ranjan Panda, Mr. Manik Ch. Das and Mr. N.I. Khan, for the Appellant; Amal Sen, for the Respondent

Judgement

1. In terms of the order dated 14th October, 1999, both the application for stay as also the appeal are taken up for hearing together. It may be indicated that this appeal was preferred pursuant to the leave granted to the appellants who had not been made parties to the writ application which had been filed by the Respondent No. 1. Such leave was granted on the ground that the order passed by the learned single Judge also affected the appellants who were the existing operation on the route in question.

2. The case made out in the writ petition is that the writ petitioner's application for grant of a permanent stage carriage permit on Route No. 71, which commences from Howrah Maldnn and ends at Salt Lake after passing through Sealdah, had not been considered by the Regional Transport Authority. Howrah on account of a confusion which had arisen as to whether the Regional Transport Authority. Howrah, or the Regional Transport Authority. Calcutta region, was entitled to grant such permit, having regard to the provisions of section 69 of the Motor Vehicles Act, 1988.

3. Admittedly, the major portion of the route in question falls within the jurisdiction of the Regional Transport Authority, Calcutta region, and, accordingly, the learned single Judge, having regard to the proviso in subsection (1) of section 69 of the aforesaid Act, directed the Regional Transport Authority, Calcutta region, to consider and dispose of the writ petitioner's application for grant of permit on the aforesaid route.

4. As far as the appellants are concerned, as indicated hereinbefore, they are existing operators on the said route and their permits had been granted by the Regional Transport Authority, Howrah. On seeking renewal of their permits, they were informed by the Regional Transport Authority, Howrah, that having regard to the Judgment delivered by the learned single Judge on the writ application filed by Sri Chandidas Moitra, Respondent No. 1 herein, the Regional Transport Authority, Howrah, was not competent to consider grant of renewal of the said permits and that all the applications for grant of renewal of permits on the said route would now have to be considered by the Regional Transport Authority, Calcutta. This appeal has been preferred by the appellants who are obviously affected by the stand taken by the Regional Transport Authority, Howrah.

5. Appearing in support of the appeal and the stay application, Mr. A.P. Sircar, learned senior counsel, submitted that the order passed by the learned single Judge had created a legal problem which was required to be reconciled so far as those operators whose applications for renewal of their permits were pending before, the Regional Transport Authority, Howrah, were concerned.

6. Mr. Sircar urged that since renewal of permit could not be equated with grant of fresh permit, the provisions of section 69 of the Motor Vehicles Act, 1988, would not be applicable so far as the appellants were concerned and that their cases for renewal of their permits would have to be considered by the Regional Transport Authority, Howrah, and not the Regional Transport Authority, Calcutta region.

7. Mr. Sircar also submitted that the grant of permits by the Regional Transport Authority, Howrah, on the aforesaid route had been done pursuant to a resolution which had been adopted at a Joint conference of the Regional Transport Authorities of Howrah and Calcutta in keeping with the provisions of Rule 103 of the West Bengal Motor Vehicles Rules, 1989 and that pursuant to the said resolution it had been decided that the Regional Transport Authority, Howrah would have the jurisdiction to issue permits on the aforesaid route. Mr. Sircar submitted that since the said resolution had remained unchanged, it has no longer open to the Regional Transport Authority, Howrah, to contend that such resolution had been adopted by mistake and that having regard to the provisions of section 69 of the aforesaid Act, the applications for renewal of permit would now have to be considered by the Regional Transport Authority, Calcutta region. In support of his submission that an application for renewal of permit could not be equated with an application for grant of fresh permit. Mr. Sircar referred to the provisions of sections 80 and 81 of the Motor Vehicles Act, 1988. Referring to

sub-section (3) of section 80, Mr. Sircar urged that only in the case of an application for variation, extension or curtailment of the route or routes of the areas specified in the permit, the application to vary such permit would be treated as an application for grant of a new permit. He also referred to clauses 2(11) of the second proviso to sub-section (3) which indicates that such application would also not be treated as an application for grant of a new permit where in case of extension the distance covered by such extension did not exceed 24 kms, from the termini. Mr. Sircar urged that although the route had been extended to Salt Lake, since the total distance from the termini was within 24 Kms., in the instance case the application made by the appellants for renewal for of their permits could not be treated as applications for grant of new permit.

8. Referring to section 81, Mr. Sircar also urged that under sub-section (4) the Regional Transport Authority or the State Transport Authority could reject the application for renewal of permit only on the grounds indicated therein and that otherwise the applicant for renewal of a permit was entitled to have his permit renewed, which also indicated that such renewal could not be treated to be a fresh permit.

9. Mr. Sircar urged that section 69 of the Motor Vehicles Act, 1988, would not apply to applications for renewal of permits and the Regional Transport Authority, Howrah, had taken an erroneous stand that such applications would now have to be considered by the Regional Transport Authority, Calcutta region.

10. It, may be mentioned that although the Regional Transport Authority, Howrah, was not a party in the writ proceeding or in the appeal, since certain directions had been given to the said authority on the interlocutory application filed on behalf of the appellants, an affidavit was affirmed by the said authority to bring on record the difficulties being faced by such authority in considering the applications for grant of renewal of permanent permits having regard to the decision of the learned single Judge.

11. Referring to the said affidavit, Mr. Sircar reiterated his submission that the Regional Transport Authority, Howrah, had taken an erroneous stand that the earlier permits which had been granted pursuant to the resolution adopted at a joint conference were all erroneously granted in contravention of the provisions of law and that such situation could not be allowed to continue further, Mr. Sircar submitted that while the decision of the learned single Judge would govern the applications for grant of fresh permits, the same could not act as a bar for the grant of renewal of permits by the Regional Transport Authority, Howrah and that necessary directions should be given to the said authority in that behalf.

12. Appearing for the State and the State respondents, Mr. Manick Ch. Das, learned Additional Government Pleader, submitted that having regard to the provisions of sections 69 of the aforesaid Act, the authority who is now competent to grant stage carriage permits on the route in question was the Regional Transport Authority, Calcutta region, and that even in respect of renewal

of permits granted earlier by the Regional Transport Authority, Howrah, such applications would now have to be considered by the Regional Transport Authority, Calcutta region, and not the Regional Transport Authority Howrah. Mr. Das urged that notwithstanding the resolution which had been adopted at a joint conference earlier, the provisions of sections 69 of the above Act would apply in respect of all the matters relating to grant of fresh permits or renewal of permits and that the stand taken by the Regional Transport Authority, Howrah, could not, therefore, be faulted.

13. Mr. Amal Sen who appeared on behalf of Respondent No.1/writ petitioner and the intervenor, supported and adopted the stand taken by Mr. Das.

14. We have carefully considered the submissions made on behalf of the respective parties and we are inclined to accept the submissions made by Mr. Das appearing for the State and the State respondents.

15. It may be pointed out that the resolution on which Mr. Sircar has placed a good deal of reliance was adopted on 11th March, 1986 at a point of time when neither the provisions of section 69 of the Motor Vehicles Act, 1988, nor Rule 103 of the Motor vehicles Rules, 1989, were available and could not, therefore, be taken into consideration by the parties to the said resolution. With the enactment of the 1988 Act and the inclusion of section 69 therein, the position has altered considerably. The decision of the learned single Judge was rendered keeping in view the provisions of section 69 of the 1988 Act and, in our view, having regard to the altered position, such provisions should be read to include applications for grant of renewal of existing permits.

16. Admittedly, the major portion of the route in question falls within the Jurisdiction of the Regional Transport Authority, Calcutta region and if an application for grant of permit is to be made in respect of the route in question, such application will have to be made to the Regional Transport Authority, Calcutta region. If the applications for grant of renewal of permanent permits are to be considered in the present set of circumstances by the Regional Transport Authority, Howrah, it could lead to an anomalous situation. We are unable to understand as to how the appellants will be prejudiced. If, instead of the Regional Transport Authority, Howrah, their applications for grant of renewal of their permits are now considered by the Regional Transport Authority, Calcutta region which in our view, is the proper authority to issue permits on the route in question. However, the applications for grant of renewal of permits on the said route should be disposed of expeditiously in order to remove the existing dichotomy;

17. In the peculiar facts and circumstances of the case, we direct the Regional Transport Authority, Howrah, to transmit all the pending applications for grant of renewal of permits on Route No. 71 to the Regional Transport Authority, Calcutta region, within one week from the date of communication of this order and the said applications are to be considered by the Regional Transport Authority,

Calcutta region, within two weeks thereafter in keeping with the provisions of section 81 of the Motor Vehicles Act, 1988, and after giving the applications a reasonable opportunity of hearing. Pending grant of such renewal, the applicants whose applications were pending before the Regional Transport Authority, Howrah, for renewal of their permits, will be entitled to ply their vehicles on the basis of the permits which they were holding so that they are not prejudiced in any manner in view of the unusual circumstances in which their applications for renewal of their permits have remained undisposed of.

18. The appeal and the application for stay, being CAN. 8173 of 1998, are both disposed of with the aforesaid directions. There will be no order as to costs.

19. This order will replace the interim order which we had initially passed on 14th October, 1999.

20. As far as the contempt application, being CPAN. 90 of 2000, which has been filed on behalf of the appellants is concerned, the same is treated as not pressed and is disposed of accordingly.

21. Having regard to the nature of the directions given by us, let xerox plain copies of the operative portion of this order, duly countersigned by the Assistant Registrar (Court), be made available to the learned Advocates for the respective parties for communication and implementation.

If an urgent xerox certified copy of this order is applied for, the same is to be supplied to the applicant within one week from the date of such application made, subject to compliance with all the required formalities.

22. Appeal disposed of