

(2004) 03 CAL CK 0020
In the Calcutta High Court
Case No : Writ Petition No. 1577 (W) of 2004

Daily Passengers" Association	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 19-03-2004

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Motor Vehicles Act, 1988 — Section 67

Citation : (2004) 3 ACC 238 : (2004) 2 CALLT 192 : (2004) 4 CHN 487

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Advocate : Asish Sanyal, Sudipto Panda and R. Banerjee, for the Appellant; Probhat Chattopadhyay, for the Respondent No. 5 and K.N. Nabi, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.—By this writ petition, Daily Passengers" Association, Bishnupur, a registered, association of daily passengers, has prayed for direction upon the respondents not to give effect to the order dated 15th December, 2003 signed by the District Magistrate and issued by the Regional Transport Authority by which the concession given to daily passengers has been reduced to 30% from previous concession of 50% of the existing fare.

2. Mr. Khan, the learned advocate appearing on behalf of the State Transport Authority and Mr. Chattopadhyay, appearing on behalf of the Bus Owners" Association, have raised a preliminary objection as to the maintainability of this writ application.

3. Both of them have contended that the concession being granted on the basis of agreed decision of the Bus Owners" Association on the request of the Passengers" Associations with the intervention of Regional Transport Authority, the petitioner has no right to file a writ application inasmuch as they have no existing legal fundamental right in their favour to have concession on the rate of

fare fixed by the authority.

4. The aforesaid preliminary objection raised by the learned counsel for the respondents has been seriously opposed by Mr. Sanyal, the learned advocate for the petitioner. Mr. Sanyal contends that according to Section 67 of the Motor Vehicles Act, 1988 the transport authorities are vested with power to fix fares of the transport and once an authority is vested with right to fix fares, such right includes right to give concession to a specified class of people. Mr. Sanyal contends that in this case, decision to reduce the rate of concession was taken without giving an opportunity of hearing to the petitioner and, as such, the petitioner has right to contend that such decision is arbitrary being violative of principles of natural justice.

5. Previously, this Court directed Mr. Khan to take instruction whether there is any circular or notification issued by competent authority in terms of Motor Vehicles Act, 1988 or West Bengal Motor Vehicles Rules, 1989 authorising the Regional Transport Authority to grant any concession to a particular class of people, Mr. Khan has informed this Court that there is no such notification or Government order. Mr. Sanyal also could not place any notification issued by Government authorising the transport authorities to grant concession to any particular class of people over the rate of fare fixed.

6. After hearing the learned counsel for the parties and after going through the materials on record, I find that concessions are granted to some class of people on the basis of decision taken by Bus Owners' Association on the prayer of Daily Passengers' Associations with the mediation of Regional Transport Authority. The Bus Owners' Association, for the purpose of securing their profits to some extent, some time agrees to grant concession to a particular class of passengers on fulfilling certain conditions. In the present case, it appears that so long the Bus Owners were agreeable to grant 50% concession to daily passengers on compliance of certain requirements, but due to escalation of price, they decided to revoke such concession and thus a fresh meeting was held and in that meeting the owners' Association agreed that such concession should be limited to 30% of the existing fare.

7. Thus, the present petitioner has no existing right either statutory or fundamental to demand an order of concession.

8. A person can approach a Writ Court under Article 226 of the Constitution of India if he can establish that any of his existing statutory or fundamental rights has been infringed by the action or inaction on the part of a "State" within the meaning of Article 12 of the Constitution of India. Since the petitioner has no such statutory right, not to speak of fundamental right, to get an order of concession over the rate fixed by the Regional Transport Authority, they cannot file a writ application for a direction upon either the Bus Owners' Association or the Regional Transport Authority to grant concession at a particular percentage on the fare fixed by the appropriate authority.

9. Since there is no such right existing in favour of the petitioner, this Court cannot pass a direction upon the Bus Owners" Association or to the Regional Transport Authority to grant concession to the petitioners.

10. I am unable to accept the contention of Mr. Sanyal that the Transport Authorities being vested with power to fix rate, they have also a right to fix concession to a particular class of person.

11. I have already pointed out that as provided in Section 67 of the Motor Vehicles Act, 1988, it is for the State Government to take policy decision whether fare should be uniform or whether there should be provision for concession to a particular class of people. If any decision is taken by Government and such decision is published in the official Gazette, the Transport Authorities are bound to implement such decision. But as pointed out earlier, there being no such notification authorising the State Transport Authority or Regional Transport Authority to fix different types of fare over the selfsame route for different classes of persons, this Court cannot pass direction for grant of concession at the specified rate claimed by the petitioner. It is for the parties to mutually settle such rate of concession on the rate fixed by the authority. Thus, this Court cannot pass a direction compelling the respondents to enhance the rate of concession if the Bus Owners" Association decides not to give further the rate of concession if the Bus Owners" Association decides not go give further concession on the rate of fare fixed by the authority nor can this Court direct the transport authority to fix different rates of fare over the same route applicable to different classes of person unless the State Government takes such policy decision and the same is published in official Gazette.

I, thus find no merit in this application and the same is dismissed.

In the facts and circumstances, there will be, however, no order as to costs.