(1997) 12 GAU CK 0023

In the Gauhati High Court

Case No : Civil Rule No. 291 of 1995

Gostha Behari Ghosh APPELLANT

Vs

State of Tripura and Others RESPONDENT

Date of Decision : 09-12-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 41(14), 47, 51(6), 51(7), 51(8)

Citation : (1998) 1 GLT 161

Hon'ble Judges : N.C. Jain, J;J.N. Sharma, J

Bench : Division Bench

Advocate : M. Kar Bhowmik and R.R. Dutta, for the Appellant; S.N. Banerjee and S. Chakraborty, for the Respondent

Judgement

N.C. Jain, J.—In the present writ application filed under Article 226 of the Constitution of India, a very significant and important question of law has arisen for determination of the Court. The precise question of law is whether on the silence of a financier to issue or refuse to issue the necessary ''no objection'' certificate within the meaning and purview of Section 51 Sub-section (7) of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act), the same will be deemed to have been issued or not. In order to appreciate the precise question, it is necessary to notice a few facts.

2. The Petitioner purchased a Vehicle bearing No. TRL- 2761 after taking loan of Rs. 1,53,600/- from the Respondent No. 4, the State Bank of India and naturally the said vehicle was hypothecated. With the passage of time the Petitioner did pay certain amount. However, at one point of time, the Petitioner, it appears defaulted certain payments compelling this financier to institute a suit for recovery of Rs. 1,37,869/-. The Petitioner for renewal of the permit which is granted under the provision of Section 81 of ''the Act'' filed the application. For getting the renewal of the permit the Petitioner was under statutory obligation to file a no objection certificate from the financier in accordance with the Sub-

section (8) of Section 51 of ''the Act''. At this stage it is necessary to note that the Petitioner did apply to the concerned Branch Manager of the Bank for issuance of no objection certificate on 2.5.1995 but he was neither granted ''no objection'' certificate nor he was refused. Rather he received no communication whatsoever till 11th May, 1995 when the Petitioner filed the necessary application before the Registering authority for renewing the permit of his vehicle. The concerned authority also neither renewed the permit nor refused to renew compelling the Petitioner to approach this Court for issuing a writ of mandamus directing the Registering or Renewal authority, to renew the permit.

3. The case came up for hearing before Hon''ble Mr. Justice A.K.Patnaik. Before the learned Single Judge another judgment was cited which was given by Hon''ble Mr. Justice N.G.Das in Civil Rule No. 198/92 on 20.7.1995. Hon''ble Mr. Justice N.G.Das while dismissing the writ petition observed as under:

I do not know how the Petitioner is entitled to submit an application for No-objection certificate in face of the fact that the Respondent No. 3 has already instituted a suit for huge amount of money from the Petitioner.

4. Hon''ble Mr. Justice Patnaik after perusing the relevant provisions of the Act did not agree with the view taken by Hon''ble N.G. Das, J. and referred the matter to the Division Bench and this is how the matter has been placed before us. For determining the precise question of law which is referred, it is necessary to notice few provisions of the Act. For facilitating of ready reference we have extracted Sub-sections (6) and (7) of Section 51. These provisions read as under:

(6) The registered owner shall, before applying to the appropriate authority, for the renewal of a permit u/s 81 or for the issue of duplicate certificate of registration under Sub-section (14) of Section 41, or for the assignment of a new registration mark u/s 47, make an application to the person with whom the registered owner has entered into the said agreement (such person being hereafter in this Section referred to as the financier) for the issue of a no objection certificate (hereafter in this Section referred to as the certificate).

Explanation : For the purpose of this Subsection and Sub-sections (8) and (9), " appropriate authority", in relation to any permit, means the authority which is authorised by this Act to renew such permit and, in relation to registration means the authority which is authorised by this Act to issue duplicate certificate of registration or to assign a new registration mark.

(7) Within seven days of the receipt of an application under Sub-section (6), the financier may issue, or refuse, for reasons which shall be recorded in writing and communicated to the applicant, to issue, the certificate applied for, and where the financier fails to issue the certificate and also fails to communicate the reasons for refusal to issue the certificate to the applicant within the said period of seven days, the certificate applied for shall be deemed to have been issued by the financier.

5. It is further necessary to extract the relevant provision of Section 81 4 (a) & 4 (b) which read as under:

81 4 (a) the financial condition of the applicant as evidenced by insolvency, or decrees for payments of debts remaining unsatisfied for a period of thirty days, prior to the date of consideration of the application ;

(b) the applicant had been punished twice or more for any of the following offences within twelve months reckoned from fifteen days prior to the date of consideration of the application committed as a result of the operation of a stage carriage service by the applicant, namely:

(i) plying any vehicle:

(1) without payment of tax due on such vehicles;

(2) without payment of tax during the grace period allowed for payment of such tax and then stop the prying of such vehicle;

(3) on any unauthorised route;

(ii) making unauthorised trips;

Provided that in computing the number of punishments for the purpose of Clause (b), any punishment stayed by the order of an appellate authority shall not be taken into account;

Provided further that no application under this sub-section shall be rejected unless an opportunity of being heard is given to the applicant.

6. Section 81 of the Act envisages the grant of a permit for a period of 5 years. Sub-section (4) lays down that the Regional Transport authority or the State Transport authority may reject an application for renewal of a permit on one or more of the grounds which are mentioned in Clauses (a) and other clauses with which we are not concerned.

7. Clause 4(a) lays down that the concerned authority can reject the application for renewal on the ground that the financial condition of the applicant is not good on the date of application. The provision contemplates that there should be some evidence of insolvency or decrees for payment of debts which has remained unsatisfied for a period of 30 days before the date of consideration of the application (for renewal). At this stage, it is necessary to mention that before rejecting the application the grant of an opportunity to the applicant is necessary in accordance with the second proviso to sub-section 4(b) of Section 81 of ''the Act''.

8. It appears to us that the provision for granting the opportunity has been made for the reason that in a particular given case a loanee may be able to satisfy the concerned authority that he has not been able to re-pay the loan for reasons beyond his control or on account of unavoidable circumstances. Supposing a loanee falls seriously ill and he is unable to run the vehicle for which the loan is

taken or the vehicle meets with an accident, authority may feel satisfied that loanee was not at fault and in that situation permit may be renewed despite the passing of the decree for payment of debt against the loanee.

9. Having laid down the scope of Section 81 of the Act, it remain to be seen as to what would be the effect of the provisions of Sub-section (6) and (7) of Section 51 of the Act. Sub-section (6) contemplates the filing of an application by the registered owner to the appropriate authority for renewal of the permit u/s 81 and along with the application he has to file'' no objection certificate''. Sub-section (7) clearly envisages that within 7 days of the receipt of the application under the aforementioned Sub-section (6) the financier would either issue the necessary no objection certificate or refuse to issue the same. It further envisages that if the financier decides to refuse the no objection certificate it has to record the reasons in writing and the same has to be communicated to the applicant. The recording of reasons is mandatory on account of the use of the word ''shall''. It is further the mandate of Sub-section (7) that in case the financier fails to issue the certificate and further fails to communicate the reasons for renewal to issue the necessary certificate within the prescribed period of 7 days, the certificate applied for shall be deemed to have been issued by the financier. Even if the financier was simply to refuse to issue the certificate but at the same time he fails to communicate the reasons, the certificate by fiction of law shall be deemed to have been granted. In other words not only the communication of the refusal but recording of the reasons is also mandatory in accordance with the provision of Sub-section (7). This is the only construction which in our considered view can be placed upon Sub-section (7). Any other interpretation to be placed upon Sub-section (7), it would mean doing violence to the language of provisions of Section 7. Admittedly, Sub-section (7) was not complied with by the financier by remaining silent and therefore by applying a fiction which is a legal assumption the necessary ''no objection certificate'' would be deemed to have been granted by the financier. The Petitioner admittedly applied for the renewal of the permit after expiry of 7 days and, therefore, he was entitled to the consideration of his application for renewal on the assumption that the financier had no objection to the grant of renewal. Since the concerned authority did not consider the application for renewal at all and also remained silent, it has failed to perform its part of the duty in accordance with the relevant provisions of law. The financier as well as Transport authorities having failed to perform their part of duty in accordance with the mandatory provision of law, this Court in our considered view must and hereby issue a writ of mandamus directing the Transport authority to renew the permit for another period of 5 years forthwith.

10. At this stage it has been brought to our notice by the State Transport authority that the application was filed to registering authority which in fact should have been filed to State Transport authority. If that be so, the application could have been sent by the registering authority to the concerned authority instead of sitting silent over the matter. In any case, we hereby issue a writ of

mandamus to the State Transport authority to issue the necessary permit as indicated above forthwith.

11. At this stage it is necessary to highlight that during the pendency of the matter a decree in the sum of Rs. 1,37,000/- along with contractual interest has been passed in T.S. (Mort) No. 100 of 1989 which decree has been subjected to a challenge in First Appeal No. 95 of 1996. In order to ensure the interest of the Bank, we hereby order that the Petitioner would deposit on or before 10th of every month a minimum sum of Rs. 4,000/- directly to the Bank till the entire decretal amount along with interest is paid. If the Petitioner is in a position to pay higher amount in a particular month, he would be at liberty to deposit more than Rs. 4,000/-. The payments would, however, be subject to the result of the F.A. No. 95/96. It goes without saying that in case the appeal of the Petitioner is to be allowed or some relief is granted by the Bench hearing the First appeal, it would be at liberty to pass such order as it deems appropriate. The first instalment would be payable after a period of 4 months from the date of renewal of the permit. If the first instalment is not paid as indicated above, and in case of default of three consecutive instalments the permit would automatically stand cancelled. Till the Petitioner makes the payment of three instalments, the Money decree would remain in abeyance. After the payment of 3 instalments the Petitioner would be at liberty to file an application for stay in the main appeal and the Bench shall be entitled to consider the same keeping in view in the interest of justice.

12. The aforementioned observations which have been made by us in this writ petition, may on the face of it appear to be of unusual nature but the same are necessary in view of the fact that on account of non-application of mind by the financier as well as the concerned authorities the Petitioner''s permit has not been renewed which in the ordinary course would have been renewed. It is well settled proposition of law mat no litigant should suffer on account of some lapse either on the part of the Court or Statutory authorities. It is manifested on the face of it which can safely be concluded that the Petitioner had to suffer a lot of harassment on account of in-action on the part of the authorities.

13. Since the Petitioner has not plied the vehicle on account of non-renewal of permit we further observe that he would not be liable to pay the arrear dues subject to the production of certificate from the garage to the effect that the vehicle was lying in the garage.

14. With the aforementioned observations while disposing of the case, we accept the reference as made by Hon''ble Mr. Justice A.K.Patnaik and while disagreeing, with respect, with the views of Hon''ble Mr. Justice N.G.Das over ruled the same. In view of the peculiar facts and circumstances of the case, we leave the parties to bear their own costs. At one stage we were inclined to impose heavy cost upon the Respondents but it is not being done as the Petitioner was also guilty of not paying the loan instalments in time compelling the Bank to file the money suit.

