

(1993) 06 CAL CK 0012
In the Calcutta High Court
Case No : Matter of 1992

Gouranga Barik

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 11-06-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Motor Vehicles Act, 1988 — Section 80, 80(1), 80(2), 87(1)(c)

Citation : (1994) 1 CALLT 1

Hon'ble Judges : Ajoy Nath Ray, J

Bench : Single Bench

Advocate : R.N. Dutta and A.K. Saha, for the Appellant; D.K. Sett and R. Bhattacharjee, for the Respondent

Judgement

Ajoy Nath Ray, J.—Though this is an opposed ad-interim stage of the application and affidavits are yet to be filed, the matter has been argued out at length on the part of the respondent Motor Vehicle Authorities.

2. The respondents have contended through the able advocacy of Mr. Seth that, no interim order should be passed at this stage and that the directions granted earlier for issue of temporary permits to the writ petitioner should cease.

3. A few facts are necessary to appreciate the background in which these submissions were made and pressed.

4. The writ petitioner had made an application for grant of a permit on the 1st April 1991 and had moved the consumer Forum in that regard. From those proceedings, the writ petitioner came up under an application under Article 227 of the Constitution of India and on the 8th April 1992, Justice N.K. Mitra passed an order, wherein His Lordship gave liberty to the petitioner to apply afresh.

5. On the 13th April 1992, the petitioner did so apply afresh. But this time not only for the permanent permit, but a temporary permit was also applied for by the writ petitioner.

6. It might be mentioned that, though a permanent permit might be valid for five years, yet a temporary permit for passenger carriage can be issued under the Act for a maximum validity period of four months only.
7. Since the new applications were not disposed of within a period of four-weeks, which had been fixed by Justice Mitra for disposal of the application, a proceeding in Contempt was initiated by the petitioner and an order was passed on the 14th July 1992 in effect extending the time for compliance by two weeks.
8. There ended, so speak, the first set of attempts by the petitioner to get a reasoned order upon his application for road permit.
9. The second round of battle began with a second writ on which on 24th October 1992, Justice Susanta Chattcrji passed an order directing consideration of the representation of the petitioner within three weeks and His Lordship also directed that, in default, the respondent-authority will issue a temporary permit in favour of the writ petitioner.
10. Such temporary permit for the Calcutta-Joramandir Route was issued on the 16th January 1993 and the same was valid till 14th May 1993.
11. Showing diligence and care in the matter, since the application for the main permanent permit made by the writ petitioner was still undisposed of, he made on 13th April, 1993 a second application for a fresh temporary permit.
12. It should be noted that a temporary permit cannot be renewed like a permanent permit but that successive fresh temporary permits must be obtained, if the occasion so demands.
13. The third set of legal proceedings by the writ petitioner, again primarily intended for a disposal of the petitioner's application for a permanent permit, is the present writ application, upon which on the 14th May 1993, in the presence of the respondents, Justice Kalyanmoy Ganguly passed an order directing a further grant of temporary permit with the validity period till 14th June 1993.
14. Though 14th June 1993 is soon to come and expire, the petitioner's main application for permanent permit is yet undisposed of.
15. On the 1st June 1993, the petitioner was therefore, compelled to make yet another application for a temporary permit and a copy of the said application has been filed in Court and directions have been given by me for the same to be kept on the records counter-signed by the Court Officer.
16. The petitioner has moved for appropriate orders with notice to the respondents and requests for a resolution of the impasse created by the continued inaction of the respondent-authorities. The writ petitioner cannot be expected to file writ after writ and obtain interim order after interim order for grant of temporary permits successively and he wants a decision on his rights, even if the same be at the interim stage.

17. Mr. Seth appearing for the respondents, on the other hand, made a submission that, though interim permits have been granted pursuant to orders of Court in the past, yet no order for grant of any further interim permit should again be passed by me.

18. Mr. Seth has further argued at length upon the present law as to grant of permanent permits and he has submitted that the transport authority has a discretion in the matter of consideration, grant and refusal of the permit notwithstanding the current changes in law made on the subject. Since the matter has been argued at length, some decision is called for even though the same is subject to the final decision in the writ. The observations below are to be read in that light.

19. The principal reason, why the matter of grant of permanent permits requires a consideration is the introduction of Section 80 in the Motor Vehicles Act 1988.

20. The said section and the first two sub-sections thereof, which are relevant for our purpose are quoted below :

"80. Procedure in applying for and granting permits.

(1) An application for a permit of any kind may be made at any time.

(2) A Regional Transport Authority shall not ordinarily refuse to grant an application for permit of any kind made at any time under this Act : Provided that the Regional Transport Authority may summarily refuse the application if the grant of any permit in accordance with the application would have the effect of increasing in the number of stage-carriages as fixed and specified in a notification in the Official Gazette under clause (a) of sub-section (3) of Section 71 or of contract carriages as fixed and specified in a notification in the Official Gazette under clause (a) of sub-section (3) of Section 74 :

Provided further that where a Regional Transport Authority refuses an application for the grant of a permit of any kind under this Act, it shall give to the applicant in writing its reasons for the refusal of the same and an opportunity of being heard in the matter."

21. The authoritative case decided by five Judges of the Supreme Court, that is the case of Veerappa Pillai Vs. Raman and Raman Ltd. and Others, laid down several guiding propositions in the matter of the Court's passing compulsive orders upon permit granting Authorities. The said case recognised like many other cases of at least equal authority that the Courts could grant an order for mandamus in case an authority refused to perform its duty. The case, however, also laid down that under the Motor Vehicles Act then operating a prospective operator could not as of right obtain a permit even if he satisfied all the necessary conditions laid down in the Motor Vehicles Act. The grant or not of the permit was in the discretion of the concerned transport authority, which itself would be the only fit authority to consider such a grant in view of the existing circumstances then prevailing.

22. In the above case, the Supreme Court observed that, it would not be appropriate for the Court to grant an order for mandamus directing the issuance of a permit by a transport authority, because it is not the Court but the transport authority that is to consider in its discretion the fitness of the grant of a permit.

23. Some 36 years after Virappan's case came the present amendment and the introduction of Section 80 quoted above. The said section contains words of wide amplitude and import. It has been said there that, applications for permits can be made at any time. It has been said there further that such applications are ordinarily to be granted. This makes an extremely important departure by reason of which it can no longer be said, as was said in Virappan's case, that even if all the conditions are satisfied and the provisions of the Motor Vehicles Act are not broken, even then a permit might not be had.

24. The statutorily changed law to-day is that the concerned transport authority is compelled to exercise its duty to grant a permit in all ordinary circumstances. The grant of permit is the rule, and the ordinary legal result of an application for a permit by an ordinary operator seeking to operate on an ordinary route. Refusal is an exception. That was not the law, but this is not the law in view of the said 1988 amendment.

25. Further, such refusal is not to be made excepting in the manner provided in the Act. Section 80 provides that a refusal must be preceded by the giving of a hearing to the applicant for the permit and the refusal must take the shape of an order containing reasons for refusal.

26. The Supreme Court has pronounced upon Section 80 in the recent case of Mithilesh Garg, Vs. Union of India and others etc. etc., .

27. In paragraph 15 of the said judgment, the Supreme Court has said that the duty of the Permit Granting Authority is quasi-judicial. The authority is also bound to give reasons for refusal as per the express provisions of the Act; again, the giving of reasons is a constitutional mandate so as to prevent arbitrariness in decisions.

28. Mr. Seth has drawn my attention to various sections of the Motor Vehicles Act and he made his expertise on the subject available to the Court in the classical tradition of an upright bar to which he belongs and to which I belonged too, until only the other day. He has pointed out that the Regional Transport Authority or the State Transport Authority, as the case might be, is not a mere rubber stamping machine and that it still has a definite jurisdiction to refuse permits.

29. I entirely agree with Mr. Seth. In case a grant of a permit would be in some manner contrary to any of the provisions of the Motor Vehicles Act, 1988, then the transport authority would not only have a jurisdiction to refuse the grant, but it would have a duty to refuse the permit.

30. Such violations of the Act in the matter of an application for permit might occur in many different ways. Mr. Seth placed the provisions of the Act and

particularly those contained in Sections 66, 67, 68, 71 and 72 of the Act in that regard. It is not necessary to consider the said sections in detail, because it is not the submission of Mr. Seth that any of those provisions has been violated in the instant case. In case there is any such violation, the same could be made the subject of a refusal of the grant of permanent permit to the writ petitioner and that is not yet the case. In any event, the fact of any such violation may be pleaded in the affidavit yet to be filed by the respondents.

31. u/s 67, the State Government having regard to one or more of four specified contingencies, may notify regarding the fixing of fare or as to prohibition of goods traffic or concerning any agreement between the Governments. This is the rough import of the section. If it is found by the Granting Authority that the permit would be likely to violate any such notified direction, the authority might refuse to grant permit.

32. Under Sections 71 and 72 of the Act, the procedure for consideration and grant of permits is dealt with in detail. Violations of these sections might entail the refusal of grant. It might be that the financial stability of the applicant is doubtful. He might be an undischarged insolvent or a recently discharged insolvent. The same would be a factor in considering the application made by such a person and Section 71(3)(d)(i) makes that position clear.

32A. It is also important to note that, in case of city routes in towns with a population of not less than 5 lakhs, the number of Stage Carriage Permits may be limited at the direction of the Central Government by the State Government.

Section 71(3)(a) in that regard is set out below :

"71(3) (a) : The State Government shall, if so directed by the Central Government having regard to the number of vehicles, road conditions and other relevant matters, by notification in the Official Gazette, direct a State Transport Authority and a Regional Transport Authority to limit the number of stage carriages generally or of any specified type, as may be fixed and specified in the notification, operating on city routes in towns with a population of not less than five lakhs."

33. Thus, congestion of traffic, which is often a ground of refusal resorted to by the Permit Granting Authority can no longer be resorted to. A permit is to be granted as a matter of course in the ordinary run of events, notwithstanding apprehended increase in traffic, unless there is some restriction imposed in accordance with Section 71(3)(a). In such a case, the rejection of the permit application is to be made summarily.

34. It is important to note that no other case of congestion of traffic, apart from the city routes in over-populated towns, has been expressly mentioned in the Act. One of the wellknown principles of statutory construction is that the expression of one particular event or thing or contingency is to be construed as an exclusion of the other possible things, events or contingencies, which might

have otherwise been under consideration, without such express mention. If a power is given only under a certain contingency to a particular authority, it is the normal rule of construction that such power is not to be exercised under any other contingency or by any other authorities.

35. The limitation of the number of vehicles on a route can be made only by an interaction of two Governments u/s 71(3)(a). It would be an interpretation contrary to the object and purpose of the liberalised Motor Vehicles Act of 1988, if it were to be held that for less congested routes, which are not wholly in over-populated towns, a lesser authority, like the State Transport Authority or the Regional Transport Authority, can refuse permits on a plea of congestion. Congestion is not to be invoked as a reason for refusal of permit, because the Parliament in its wisdom has liberalised the policy of permit granting and has laid down the law that ordinarily permits are to be granted. Refusal for congestion is a ground jealously guarded and limited by Parliament. The intention of the Parliament cannot be curtailed by any local policy of any STA or any RTA which might seek to avoid any particular congestion in any particular terminus. What the high authority of two Governments can do in situations of urban over population, surely, the fare lower authority of transport authorities cannot effect in situations lesss grave, less urgent and calling for less interference.

36. Although Mr. Seth submitted that the above case of Mithilesh Garg was decided in the context of a challenge by existing operators to the constitutional validity of Section 80, yet I respectfully read the said case as lay down the law and explaining Section 80 for all Courts in India including mine.

37. Paragraphs 6 and 7 of the said judgment are particularly relevant for our purpose and the same are not set out in extenso only because these are easily available to every lawyer in India.

38. In the manner I venture to read the said paragraphs, I find that their Lordships have recognised the liberalisation of the policy of permit granting made by the introduction of the new Section 80. I find that in the writ petition under consideration by the Supreme Court, the previous number of 23 permit holders had gone up by 272 in view of the liberalised policy. A plea of congestion is not to stop the way that has been opened by the Parliament in Section 80. Policies of STA's and RTA's are to be brushed aside from such a path opened by the higher authority of our Parliament. Congestion, clash of timing and such other matters of detail, which were earlier considered often regarding grant of permits, must no longer be used for refusing permits to citizens, who wish to ply their vehicles on routes without infringing the law.

39. Mr. Seth referred me to two porvisions under Chapter VI of the Motor Vehicles Act regarding notified routes, which is the technical expression for what would be ordinarily called a nationalised route. Mr. Seth referred to the two cases reported in State Transport Authority and Others Vs. Nirmalendu Das and Others, (which related to an inter-State Calcutta-Gopalpur Route) and to the Supreme

Court case reported in Adarsh Travels Bus Service and Another Vs. State of U.P. and Others, . Mr. Seth submitted that the route applied for by the petitioner is a part of a, notified route especially that part falling on the highway (NH 6) and he submitted that even such a part overlapping would cause the refusal of a permit. The above Supreme Court case does say that even a part overlapping would cause a permit to be refused, because corridor restriction regarding the taking and dropping of passengers on parts of a route cannot be maintained by way of any effective check on long routes. If any part of the petitioner's route is notified, then the same can be used for refusal of the permit. But in this case it has not yet been done. Further documents would be needed to verify such notification of the route and I cannot refuse an interim order on oral submissions without further documents. Liberty to incorporate documents in this regard in the affidavits is naturally preserved for Mr. Seth's clients.

40. The concerned authority cannot sleep over a permit application for ever. In case it could, the mandate of refusing permits only by a reasoned order, could be easily got rid of by mere inaction. If an authority communicates no reasons, within a reasonable time, then it must be assumed that there are no reasons to the contrary to communicate.

41. Temporary permits form the subject of Section 87 of the 1988 Act. The first part of the said Section is set out below :-

"87. Temporary Permits

(1) A Regional Transport Authority and the State Transport Authority may without following the procedure laid down in Section 80, grant permits, to be effective for a limited period which shall, not in any case exceed four months, to authorise the use of a transport vehicle temporarily-

(a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or

(b) for the purpose of a seasonal business, or

(c) to meet a particular temporary need, or

(d) pending decision on an application for the renewal of a permit and may attach to any such permit such condition as it may think fit:

Provided that a Regional Transport Authority or, as the case may be, State Transport Authority may, in the case of goods carriage, under the circumstances of an exceptional nature, and for reasons to be recorded in writing, grant a permit for a period exceeding four months, but not exceeding one year."

42. I quite agree with Mr. Seth that u/s 87, a temporary permit can be granted during the time of consideration of renewal of an already existing permit, but it cannot be granted during the time of consideration of an application for a fresh permit. This is all the more reason why the authority must communicate its reasons for refusal to grant a fresh permanent permit as expeditiously as

possible.

43. If the time for four months elapses after the making of an application for a permanent permit, it would be quite reasonable to suppose that there are no reasons to communicate to the contrary or that there has been unreasonable delay or laches on the part of the respondents and they have failed to discharge their duty to consider the application or pass any reasoned order thereupon. The Courts shall, in that event, naturally be compelled to interfere and to give content to the intention of the Parliament expressed in Section 80. A suitably moulded relief must be made available to the aggrieved citizen in such a case.

44. In the present case, though the petitioner is not applying for a renewal of a permit, but is applying for a fresh permit, yet a particular temporary need within the meaning of Section 87(1)(c) has arisen in the following way. By reason of orders of Court mentioned above, which have not been appealed from the petitioner has continuously operated on the route in question from January 1993. If a temporary permit is no further to be granted, then the petitioner would be compelled to lift his vehicle off the route. It is to prevent such a specific contingency that the Parliament has permitted grant of a temporary permit pending consideration of renewal of a permanent permit. The petitioner is not to take his vehicle off the road without a good cause and merely because the transport authority has not had time to publish its decision. Thus, in the present case a temporary permit could be granted by the transport authority on the basis of the petitioner's application dated 1.6.93 and accordingly a mandamus even by way of an interim order to that effect can issue.

45. It must, at least now, be realised by the respondents that a writ application might result in an order for mandamus directing grant of even a permanent permit to the writ petitioner in case the transport authorities continue to be totally inactive in the matter of disposal of the application for the permanent permit. In case of total inaction, Courts might goad the authorities into action by an order of mandamus, or might themselves pass a suitably framed order of relief. In case an authority has a duty to speak by making a speaking order within a reasonable time, the Courts are bound to draw appropriate inferences from continuous silence maintained by such an authority. A person who has a duty to speak or an authority which has a duty to speak, if they do not speak, call for an inference that they have nothing to say. In case of such non-existent reasons for refusal, permits must be granted not only on the express wording of Section 80 of the present Act, but also to enforce fair action on the part of the concerned transport authority.

46. Under these circumstances, the following order is made :-

No formal Rule need be issued, but the respondents shall answer the entirety of the petition and bring on record all relevant or subsequent facts by an opposition or oppositions to be filed within four weeks from date hereof. Reply two weeks thereafter. The matter will be listed for hearing the following working day. In the

meantime, the respondents and all of them are directed to grant temporary permits on the application of the writ petitioner in the route in question, the application already pending in that regard being the one dated 1st June, 1993. Such temporary permits shall be granted until further orders of Court or a disposal of the application for permanent permit made by the writ petitioner on 13th April, 1992, whichever is earlier. For the present, the temporary permit upon the application made on 1.6.93 shall be granted for a period of 16 weeks from 14th June, 1993. The grant is to be made within a week hereof at the latest and the respondents are restrained from interfering with the operation by the petitioner on the Calcutta-Joramandir Route without further leave of the Court. It is clarified that notwithstanding the pendency of the writ application and notwithstanding the passing of this order, the respondents will be free to dispose of the writ petitioner's application for permanent permit in accordance with law.

47. The parties, the respondents, their employees, Officers, agents and all others concerned will act first upon a signed copy of the Minutes of the operative part of to-day's order and thereafter upon a signed xerox copy of the dictated order upon the usual undertaking given on the part of the petitioner to have the order duly drawn up, completed and filed.