
(2014) 07 CAL CK 0106
In the Calcutta High Court

Case No : W.P. Nos. 19091 (W) of 2011, 17732 and 18863 (W) of 2013

Jakir Hossain

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 21-07-2014

Acts Referred:

Citation : (2014) 07 CAL CK 0106

Hon'ble Judges : Joymalya Bagchi, J

Bench : Single Bench

Advocate : Murari Mohan Das, Debabrata Chakraborti and Sattwik Bhattacharya, Advocate for the Appellant; Pantu Deb Roy, Subrata Guha Biswas, Binod Kumar Gupta, Sattwik Bhattacharya and Nurul Islam Khan, Advocate for the Respondent

Judgement

Joymalya Bagchi, J.—With the consent of the parties, the writ petition being W.P. No. 19091 (W) of 2011 is taken up for hearing by treating it as on the days' list and the same is also disposed of along with W.P. No. 18863 (W) of 2013 and W.P. No. 17732 (W) of 2013 by a common judgment and order.

Facts giving rise to the aforesaid writ petitions are as follows:

2. On 04.09.2002 a draft reciprocal transport agreement executed between the State of West Bengal and State of Jharkhand was published in terms of Section 88 sub-section 5 of the Motor Vehicles Act, 2004. Annexure--"B" to the draft notification provided various routes approved by two Governments. Serial no. 25 of Annexure-"B" to the said notification reads as follow:

NEW ROUTE Annexure--"B"

3. Pursuant thereto, final reciprocal transport agreement between two States was duly executed and published by contracting States. In the annexure on the final agreement delineating the notified routes item no. 23 read as follow:-

4. Pursuant to such reciprocal agreement, stage carriage permits were applied for and granted by the State of Jharkhand in favour of Rahul Samanta and Binod

Kumar Jaiswal for the route "Gama to Kolkata". Subsequently, prayers for countersign in such permits were made before S.T.A., West Bengal and it is submitted that such countersignatures have been made.

5. Jakir Hossain filed writ petition being W.P. No. 17732 (W) of 2013 wherein he, inter alia, prayed that interstate permit granted to Rahul Samanta and Bijoy Kumar Jaiswal for route "Gama-Kolkata" be not countersigned by S.T.A., West Bengal.

6. However, in 2011 an advertisement was issued by the State Transport Authority, Jharkhand inviting applications for the route "Gomo-Kolkata". Jakir Hossain applied in response to such advertisement and was granted permit by S.T.A., Jharkhand being P.St. S. 103 of 2011 (I/S) for "Gomo to Kolkata". Request was thereafter made to S.T.A., West Bengal to countersign his permit so granted by S.T.A., Jharkhand.

7. Rahul Samanta in W.P. No. 19091 (W) of 2011, inter alia, praying for a direction that the interstate permit granted to Jakir Hossain for the route "Gomo-Kolkata" be not countersigned by the respondent S.T.A., West Bengal.

8. Since no steps were being taken, Jakir Hossain filed writ petition before this Court being W.P. No. 1069 of 2011 and by order dated 22.12.2011 S.T.A., West Bengal was directed to take final decision on the countersignature to the said Inter-State permit.

9. It is apposite to note that Binod Kumar Jaiswal had instituted an earlier writ petition being W.P. No. 21444 (W) of 2011 challenging the grant of Inter-State permit to Jakir Hossain before this Court.

10. By order dated 02.01.2012 a learned Single Judge of this Court admitted the writ petition and passed orders upon the respondent authorities to personally appear before the Court.

11. Pursuant to the aforesaid order passed in W.P. No. 21444 (W) of 2011 dated 02.01.2012, S.T.A., Jharkhand issued a notice upon Jakir Hossain to show cause why his Inter-State permit be not cancelled. Jakir Hossain challenged such notice by filing a writ petition before Jharkhand High Court.

12. He also preferred appeal being M.A.T. No. 33 of 2012 against the aforesaid order dated 02.01.2012 passed in W.P. No. 21444 (W) of 2011.

13. An Hon"ble Division Bench of this Court by order dated 31.01.2012 allowed the appeal and dismissed the writ petition including order dated 02.01.2012 passed therein on the ground that Bijoy Kumar Jaiswal had approached this Court by suppressing the fact, that he had already instituted another writ petition before Jharkhand High Court for the self same relief. By the said order, the Hon"ble Division Bench also directed that all orders passed by the respondent authorities should not be given effect to.

14. Consequentially, no further effect was given to the notice issued upon Jakir

Hossain by S.T.A., Jharkhand for cancelling his permit. Jakir Hossain withdrew the writ petition filed by him before Jharkhand High Court challenging such notice. I am however informed that writ petition filed by Bijoy Kumar Jaiswal before Jharkhand High Court challenging the Inter-State permit of Jakir Hossain is still pending but no order has been passed in the said proceeding till date.

15. In view of the application made by Jakir Hossain to S.T.A., West Bengal for countersignature of his Inter-State permit, S.T.A., West Bengal vide Memo No. 41-STA/2P-21/2011, dated 16.01.2012 raised the following query upon S.T.A., Jharkhand:-

(1) During publication of Draft Reciprocal Transport Agreement between Jharkhand & West Bengal the route alignments "Gama-Kolkata was included by both the States. No route was included as GOMO-KOLKATA.

2. During publication of Final Reciprocal Transport Agreement the route was shown as GOMO-KOLKATA in the relevant Notifications although the distances in relevant columns remain same as in the Draft agreements. Also, in the relevant final notification u/s. 88(6) of M.V. Act, 1986, no line is mentioned about change of Gama-Kolkata in the Draft Agreement to Gomo-Kolkata in the final agreement.

3. Your authority already issued two permits (P.St. S. 05/08 & 06/08) in favour of Rahul Samanta & Binoy Kumar Jaiswal on the route from GAMA to KOLKATA. Moreover, permit issued by STA/W.B. (P.St. P. 24/07) on the route from GOMO to KOLKATA (issued as per Notification No. 1350-WI) was allowed C/S by your authority from GAMA to KOLKATA.

4. Now it is established that some elements of discrepancy in the route in question remains.

5. The two alignments (GOMO-KOL & GAMA-KOL) are reported not identical in respect of length & stoppages.

6. In the above context, I am further directed to request you kindly to apprise of the facts in issuing permit on the route from GOMO to KOLKATA.

7. An early reply is requested as the matter has become subjudice under Hon''ble High Court, Calcutta.

16. In response to such query, Vijay Kumar Singh, IAS, Secretary-cum-Transport Commissioner, Jharkhand vide memo No. Pari.Ayu-6736/11-253 dated 21.03.2012 replied as follows:

1. This is true that during publication of draft Reciprocal Agreement 2002, Gazette no. 37 dated: 27-01-2013 by our Authority the route alignment for permit on the route Gama to Kolkata was via Giridih, G.T. Road, Durgapur (copy annexed). But inadvertently while publishing the final reciprocal agreement 2004 by your Authority, the Gama was published as Gomo which is also a place in Dhanbad District of Jharkhand.

Similarity, while publishing Reciprocal Agreement Gazette No. 124 dated: 08-03-2006 of Jharkhand Gama was inadvertently published as Gomo (copy annexed).

But while consideration of permit in STA meeting on 13-02-2008 the route Gama to Kolkata was adhered to as this is the correct alignment as per the distance and via (copy of the proceeding of the meeting annexed). For better appreciation of the case, a sketch of the route alignment is annexed herewith. The STA, Jharkhand issued permit on route Gama to Kolkata to Mr. B.K. Jaiswal & Mr. Rahul Samanta in the year 2008. Both the permit are duly countersigned by your Authority also (vide C/S No. 69/08 and 58/08).

Nevertheless, in another meeting of STAT on 20/21-09-2011 inadvertently, the vacancy Gomo to Kolkata was published as per the Gazette of 2006 and permits were issued to Zakir Hussain and Jivan Gope. But when the matter came to the knowledge of our Authority, those permits were duly decided to be cancelled and a notice has been issued to the permit holders on Gomo to Kolkata route and after a proper hearing, the same will be cancelled in right perspective.

2. This is also requested that the C/S No. 69/08 and 58/08 done earlier by your Authority be remained intact where as the countersignature of permit issued by this Authority to Sri Jivan Gope and Zakir Hussain, route Gomo to Kolkata be withheld till the elements of discrepancy in the route is removed by mutual consent.

17. As no decision was being taken by S.T.A., West Bengal in the matter of countersignature of his permit, Jakir Hossain initiated contempt proceeding being C.C. No. 1 of 2013 was initiated for non compliance of direction given by this Court in W.P. No. 1069 of 2011 (supra). In the course of such contempt proceeding, respondents submitted the impugned order dated 29.01.2013 whereby they rejected the application of Jakir Hossain for countersignature of his Inter-State permit for the route "Gomo-Kolkata" holding as follows:-

I am directed to refer to the subject mentioned above and to state that counter-signature on permit No. 103/2011 of Jakir Hossain isn't allowed as the route against the permit namely Gomo-Kolkata isn't at per with original route alignment Gomo to Kolkata in accordance with Reciprocal Transport Agreement between West Bengal & Jharkhand.

18. As a result, contempt proceeding was dropped and Jakir challenged such order in W.P. No. 18863 (W) of 2013.

Arguments on behalf of the parties:-

19. Mr. Das, learned senior counsel appearing for the Jakir Hossain submitted that the final agreement executed between the State of Jharkhand and the West Bengal does not show any approved route between "Gama to Kolkata". He relied on route map of the State of Jharkhand and submitted that there was no place as "Gama" whereas a place in the District of Giridih is described as "Gawan".

Accordingly, he submitted that permit granted to his client is in terms of the final agreement and that granted to Rahul Samanta and Binod Kumar Jaiswal is contrary thereto. He referred to 8(f) of the final agreement and submitted that any change or correction in any clause of the agreement of any addition or deletion of route or any correction/change in the alignment of route can be done only by mutual consent and after discussion. Mr. Das strenuously argued that as the agreement is executed by the respective Governments it was beyond the powers of the Transport Authorities to make any alteration thereto or act in derogation to the terms of the final reciprocal agreement. He further submitted that S.T.A., West Bengal had earlier issued Inter-State permits for "Gama-Kolkata" to another operator, namely, Pinaki Bhusan Das. He submitted that opinion of Vijay Kumar, Secretary-Cum-Transport Commissioner, Jharkhand was issued pursuant to order dated 02.01.2012 passed in W.P. No. 21444 (W) of 2011 which had been subsequently set aside.

20. Mr. Bhattacharya and Mr. Khan appearing for the Rahul Samanta and Binod Kumar Jaiswal respectively opposed the submissions of Mr. Das. According to them, the description of the route in the final agreement as "Gomo to Kolkata" was nothing but a typographical error. The draft agreement referred to route from "Gama to Kolkata" and the distance as delineated in the draft agreement and the alignment of route concurs with the route "Gama to Kolkata" and not with the route "Gomo to Kolkata". They further submitted that the place "Gawan" is also referred to as "Gama" as averred in the affidavit in opposition filed by the State of Jharkhand. It was further submitted by the learned counsels that incorporation of route "Gomo-Kolkata" in the final agreement was an error is unequivocally established from the communication of Sri Vijay Kumar Singh, Secretary-cum-Transport Commissioner, Jharkhand. The opinion of the said signatory to the agreement on behalf of the State of Jharkhand is most vital in determining the true meaning of the expressions contained in the agreement or clarifying any confusion surrounding it. They submitted that S.T.A., West Bengal have rightly countersigned their Inter-State permits and refused to countersign that of Jakir Hossain. Hence, no interference is called for.

21. Mr. Deb Roy, learned counsel appearing for S.T.A., West Bengal submitted that in view of the communication received from the State of Jharkhand, the decision was taken to reject the prayer for countersignature of Jakir Hossain's permit. He submitted that steps are being taken for a mutual discussion and a consensual decision so that the inadvertent discrepancy which had crept in final agreement may be resolved. He reiterated that the discrepancy in the final agreement was an unintentional one arising out of a typographical error and the route was, in fact, from "Gama to Kolkata" and not "Gomo to Kolkata". He has also produced the original records before this Court in support of his submissions.

22. Mr. Gupta, learned counsel appearing for the State of Jharkhand submitted that the draft agreement as well as all communications by and between the States indicate that the approved route is from "Gama to Kolkata" and not

"Gomo to Kolkata". The distance of the route also is an indicator that the same is "Gama to Kolkata" and not otherwise. He further submitted that "Gama" and "Gawan" are the same place in the State of Giridih whereas "Gomo" is in the district of Dhanbad. He further submitted that the permits issued in favour of Rahul Samanta and Binod Kumar Jaiswal need not be interfered with.

Opinion of the Court:-

23. I have considered the rival submissions of the parties. Admittedly, there is discrepancy between the draft agreement executed and published by the State of West Bengal and Jharkhand in September 2002 and the final agreement published by the said States in 2004 and 2006 respectively. In the draft agreement route was described as "Gama to Kolkata" whereas in the final agreement it has been described as "Gomo to Kolkata".

24. In the face of such admitted discrepancy it was incumbent on the contracting parties to resort to Clause 8(f) of the agreement and arrive at a decision by mutual consent through discussion. Clause 8(f) of the agreement reads as follows:

Any change or correction in any clause of the agreement or any addition or deletion of route(s) or any correction change in the alignment of route(s) shown in the Reciprocal Transport Agreement may be done by the mutual consent after discussion.

25. It appears that such course has not been adopted as yet by the States to resolve such discrepancy. In the meantime, interstate permits have been issued by the State of Jharkhand for the route "Gama-Kolkata" to Rahul Samanta and Binod Kumar Jaiswal on the one hand and to Jakir Hossain for the route "Gomo-Kolkata".

26. Relying on the communication of Vijay Kumar, Secretary-cum-Transport Commission, West Bengal refused to countersign the inter state permit of Jakir Hossain for the route "Gomo"-Kolkata.

27. The argument of Mr. Das that as S.T.A., West Bengal had earlier issued inter state permit to one Pinaki Bhusan Das in the self same route "Gomo-Kolkata" the authority ought to countersign his client's permit is factually unsustainable.

28. I have perused the original records of S.T.A., West Bengal in this regard maintained in ordinary course of business. It appears that such interstate permit was initially issued by S.T.A., West Bengal to one Pinaki Bhusan Das but when S.T.A., Jharkhand refused to countersign the same, the route in the said permit was altered to "Gama-Kolkata".

29. The aforesaid instance, therefore, does not render support to the case of Mr. Das. On the other hand it shows that the transport authorities were of the opinion that the route approved in the final reciprocal agreement ought to be "Gama-Kolkata" and not "Gomo-Kolkata".

30. Mr. Das strenuously argued it was not within the province of transport authorities to alter or interpret terms of the final reciprocal agreement executed by the States in question which refers to "Gomo-Kolkata" as the notified route.

31. In resolve such controversy it is most pertinent to refer to the communication of Vijay Kumar Singh, Secretary-cum-Transport Commissioner, Jharkhand to S.T.A., West Bengal vide Memo No. Pari.Ayu-6736/11-253 dated, Ranchi 21.03.2012. Admittedly he is the signatory to the said agreement on behalf of State of Jharkhand. From his letter, it is evident that it was an inadvertent error to describe the route as "Gomo to Kolkata" was the notified route in the final agreement although "Gama to Kolkata" in the draft agreement. Accordingly he opined in his memo that the countersignature to the permits of Rahul Samanta and Binod Kumar Jaiswal need not be interfered with whereas that of Jakir Hossain be withdrawn till a mutual decision is arrived at in the matter.

32. The true interpretation of the terms of an agreement when there is confusion thereto may be inferred from the conduct of the parties. Judged from this angle, the opinion of the Secretary-cum-Transport Commissioner, Jharkhand (who is a signatory on behalf of the State of Jharkhand to the agreement) is of paramount importance while determining the true meaning and purport of the terms of such agreement.

33. I am unable to accept the submission of Mr. Das that such opinion was a consequence of order dated 02.01.2012 of the learned Single Judge which has been subsequently set aside by the Division Bench of this Court. Such opinion was expressed on 21.03.2012 much after the order dated 02.01.2012 passed by the learned Single Judge of this Court had been set aside by the Division Bench on 31.01.2012 in M.A.T. No. 33 of 2012. Hence, such opinion cannot be traced to the order dated 02.01.2012 passed by the learned Single Judge which was not at all in existence when such opinion was given.

34. It is also relevant to note that the distance quoted in the reciprocal agreement in respect of the route in question and its alignment corresponds to "Gama-Kolkata" and not "Gomo-Kolkata". It is also evident, as appearing from the averments in the affidavit of the State of Jharkhand that "Gama" and "Gawan" are one and the same place in the District of Giridih and "Gomo" is situated in the District of Dhanbad.

35. Relying on the version of the said Secretary-cum-Transport Commissioner, Jharkhand it appears that the route no. 23 in the final agreement ought to be "Gama-Kolkata" instead of "Gomo-Kolkata" as erroneously referred to therein.

36. It is trite law that inadvertent error by an authority cannot create any right in favour of any individual. Jakir Hossain cannot take advantage of erroneous issuance of interstate permit in his favour for the route "Gomo-Kolkata" and insist on countersignature of the same especially in the face of unequivocal opinion on behalf of State of Jharkhand that such countersignature to withheld

till the discrepancy is resolved by mutual consent through discussion.

37. Undoubtedly, the discrepancy in the final agreement has not been resolved till date through mutual consent of the parties to the agreement, namely, the concerned States, through discussion as envisaged in clause 8(f) of the agreement. Such alteration/modification cannot be done unilaterally or by authorities who are not parties thereto without the express consent of the contracting parties. Memo dated 21.03.2012 issued by Secretary-cum-Transport Commissioner, Jharkhand on behalf of the State of Jharkhand intended that countersignature to permit of Jakir be withheld till the discrepancy in the final agreement is resolved through mutual consent.

38. In this backdrop, it was imprudent on the part of S.T.A., West Bengal to reject the prayer of Jakir to countersign his permit outright. S.T.A., West Bengal ought to have kept the application in abeyance awaiting the resolution of discrepancy by the concerned State in terms of clause 8(f) of the agreement.

39. In the event, the concerned States agree pursuant to such mutual discussion that "Gomo--Kolkata" was correctly incorporated in the final agreement, the prayer for countersignature may be considered in that light. In the alternative, the same would be liable to be rejected.

40. In the light of the aforesaid discussion, presently there is no need to interfere with the permits granted to Rahul Samanta and Binod Kumar Jaiswal and challenge thrown to issuance of such permits and/or countersignature thereto is bound to fail. In the event, pursuant to discussions a mutual consent is arrived at by and between the contracting States that the final agreement did not intend to include "Gama-Kolkata" as a notified route, Jakir Hossain will be at liberty to raise fresh objections to the interstate permits granted to Rahul Samanta and Binod Kumar Jaiswal in accordance with law. Till then, the said Rahul Samanta and Bijoy Kumar Jaiswal would be permitted to ply their vehicles in terms of their inter state permits for the route "Gama-Kolkata" in accordance with law.

Conclusion:-

41. W.P. No. 17732(W) of 2013 is dismissed with liberty to the petitioner (that is, Jakir Hossain) to raise fresh objections to such interstate permits of Rahul Samanta and Binod Kumar Jaiswal in accordance with law. In the event, pursuant to discussions it is mutually agreed by and between the contracting States that the final reciprocal agreement did not intend to include "Gama-Kolkata" as a notified route.

42. W.P. No. 18863(W) of 2013 is disposed of modifying impugned order dated 29.01.2013 of S.T.A., West Bengal to the extent that the application for countersignature be kept in abeyance awaiting the resolution of discrepancy by the concerned State in terms of clause 8(f) of the agreement. In the event, the concerned States agree pursuant to such mutual discussion that "Gomo-Kolkata" was correctly incorporated in the final agreement, the prayer for

countersignature may be considered in that light. In the alternative, the same would be liable to be rejected.

43. In view of the aforesaid directions, no further order need be passed in W.P. No. 19091 (W) of 2011.

44. There shall be no order as to costs.

45. Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties as expeditiously as possible.