

(1996) 02 CAL CK 0032

In the Calcutta High Court

Case No : C.O. No. 12360 (W) of 1995 and C.O. No. 14788 (W) of 1995

Jhikira Howrah Bus Syndicate and Others

APPELLANT

Vs

Regional Transport Authority, Howrah and Others

Gout Byabarata Vs State of W.B. and Others

RESPONDENT

Date of Decision : 16-02-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Motor Vehicles Act, 1988 — Section 112, 59, 62, 62(1), 70

Citation : 100 CWN 545

Hon'ble Judges : Satya Brata Sinha, J

Bench : Single Bench

Advocate : M.M. Das and Naren Ghosh Dastidar, for the Appellant; Rameswar Bhattacharjee and H. Chowdhury, for the Respondent

Judgement

Satya Brata Sinha, J.—All these writ applications involving common questions of law and fact were taken up for hearing together and are being disposed of by this common judgment. The fact of the matter may be noticed from C.O. No. 12360 (W) of 1995.

2. The said writ applications were filed by 13 petitioners out of which the petitioner no. 1 is an Association and the petitioner No. 2 is the Secretary thereof. The writ petitioners have, inter alia, questioned a resolution as communicated by a letter dated 28-6-95 in respect of fixing the fleet strength and fixing the age of vehicle irrespective of grant of permit in L-service as also a direction upon the respondent not to grant the permit in the route Zhikira to Howrah and back (L-service), pursuant thereto, as also a declaration the Zilla Parishad has no authority/jurisdiction to adopt any resolution or grant of permit or increase in the strength of the fleet under the Motor Vehicles Act, 1988 and any resolution passed by the said authority on the basis thereof should be declared ultra-vires.

3. By an order dated 11-8-95 this court directed that the matter may be

disposed of in view of the pure question of law involved in this application.

4. The only fact which requires to be noticed is that the respondents protested as regards increase in the bus services of S.B.S.T.C. and C.T.C. It further appears that by a letter dated 28-6-95 the Regional Transport Officer, Howrah, by a letter addressed to the petitioner No. 2 categorically stated that extension has been granted to L-type bus service from Howrah to Zhikira upto Muchighata and the fleet strength has been fixed upto 30 after discussion and as per resolution of the Zilla Parishad. It was further stated that New model vehicles (1994 and above) will get the permit as it is a long route as well as "L" route. It was also stated that every third vehicle i.e. 1/3rd number of the vehicle will ply upto Muchighata

5. Mr. Das learned Counsel appearing on behalf of the writ petitioners inter alia submitted that in issuing the aforementioned letter the Regional Transport Authority has patently acted beyond the power vested in it under statute. The learned Counsel contends that before granting permit it is the duty of the concerned authority to consider the provisions of Section 71(2) of the Motor Vehicles Act, 1988. It was further submitted that fixing the age of the vehicle is beyond the scope and object of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). It was further submitted that no temporary permit can be granted beyond the para meters of the provision of 87(1)(c) of the Act for carrying regular passengers.

6. Mr. Rameswar Bhattacharjee the learned Counsel appearing on behalf of the respondents, inter alia, submitted that the petitioner-Association has no locus standi to maintain a writ application. The learned counsel in support of his aforementioned contention relied upon in Siliguri Inter-District Minibus Owners Association & Ors. vs. Sri Bijan Krishna Bhowmick, reported in 1993(2) CLJ, 99, Sand Canter's Owners' Union and Ors. vs. Board of Trustees for the Port of Calcutta & Ors., reported in 1990 Cal. 176.

7. It was submitted that in view of the decision of the Supreme Court in Mithilesh Garg vs. Union of India & Ors. reported in 1992 SC 443, the concept of hearing any objection has been given a complete go-bye and in that view of the matter the petitioners cannot have any locus standi. He has also in this connection referred to a decision of Division Bench of the Allahabad High Court in Smt. Munni Devi and others Vs. Regional Transport Authority and another,

8. There cannot be any doubt whatsoever that the Regional Transport Authority being a statutory authority and having derived its power under the statute must act within the four corners thereof. It is also a well settled principle of law that a statutory functionary while exercising a jurisdiction under the statute must apply its own mind on the basis of materials on record for the said purpose. It cannot take advise or act on the basis of the recommendations of any other person who has no role to play under the statute,

9. In M. Pentiah and Others Vs. Muddala Veeramallappa and Others, the Supreme Court observed :-

In this context learned counsel for the appellants invoked the doctrine of law that an action of a statutory corporation may be ultra vires its powers without being illegal and also the principle that when a statute confers an express power, a power inconsistent with that expressly given cannot be implied.

10. Similar view has been taken in *Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others*, Reference in this connection may also be made to *Maniuddin Bepari v. The Chairman of the Municipal Commissioners Dacca*, reported in 40 CWN 17 wherein it has been held :

It is a fundamental principle of law that a natural person has the capacity to do all lawful things unless his capacity has been curtailed by some rule of law. It is equally a fundamental principle that in the case of a statutory corporation it is just the other way. The Corporation has no power to do anything unless those powers are conferred on it by the statute which creates, it.

11. The aforementioned decision has been followed by this Court in *Scotts (P) Ltd. and Others Vs. Corporation of Calcutta and Others*, and the said principle was reiterated by a Division Bench of this Court in *Sasanka Sekhar Panda Vs. State of West Bengal and Others*, in the following terms :

The most serious objection to the settlement by auction of the aforesaid ferry in favour of *Sadhapati Sagar Panchayat Samity* was that under the provisions of *West Bengal Panchayat Act, 1998*, the said body was not authorised to offer bids in auction for settlement of a ferry under the management of the *Zilla Parishad*. It is settled law that a statutory corporation of authority like the *Panchayat Samity* has no power to do anything unless such power has been conferred upon it by the statute creating it.

It was observed :

We respectfully agree with the view expressed by D.N. Sinha, J. in the case of *Narendra Nath Chakraborty v. Corporation of Calcutta (supra)*, that where the statute does not expressly or impliedly authorise the doing of a particular thing, it must be taken to have been prohibited. A statutory corporation cannot go beyond the ambit and extent of the powers which by law are given to the Corporation.

12. In *Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others*, the Supreme Court observed

An excess of statutory power cannot be validated by acquiescence in or by the operation of an estoppel. The Court declines to interfere for the assistance of persons who seek its aid to relieve them against express statutory provision. Lord Selborne in *Meddison v. Alderson*, (1883) 8 App Cas 467 said that courts of equity would not permit the statute to be made an instrument of fraud. The impeached resolution of the Municipality has no legal foundation. The High Court was wrong in not quashing the resolution on the surmise that money might have been spent. Illegality is incurable.

(Underling is mine for empiasis)

13. The Supreme Court in the case of State of Punjab and Others Vs. Gurdev Singh, observed :

Appopos to this principle, Prof. Wade states "the principle must be equally true even where the "brand of invalidity" is plainly visible for there also the order can effectively be resisted in law only by obtaining the decision of the Court. Prof. Wade sums up these principles :

The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plaintiffs lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights or for some other legal reasons. In any such case the "void" order remains effective and is, in reality, valid. It follows that an order "may be void for one purpose and valid for another and that it may be void against one person but valid against another.

14. The decision of the Regional Transport Authority to fix the strength of the fleet in terms of the recommendations of the Zilla Parishad, in this view of the matter, must be held to be wholly illegal and without jurisdiction.

15. The points raised in these application do not require detailed discussions, Section 70 of the Motor Vehicles Act provides for the manner as to how the application for stage carriage permit should be granted. Clause (c) of Sub-Section (1) of Section 70 provides that the minimum and maximum number of daily trips proposed to be provided and the time-table of the normal trips is one of the particulars which must be furnished in an application for a stage carriage permit or as a reserve stage carriage.

16. Sub-Section (2) of Section 71 of the said Act empowers the Regional Transport Authority to refuse to grant a stage carriage permit if it appears from a time-table furnished that the provisions of the said Act relating to the speed at which vehicles may be driven are likely to be contravened. It appears that the Central Government has issued a notification dated 9.6.89 whereby and whereunder the highest speed limit had been fixed at 65 Km. per hour. There cannot, therefore, be any doubt that the speed limit is one of the factors for fixing time limit and for the said purpose, the Regional Transport Authority or the State Transport Authority, as the case may be, must consider time-table filed by all other operators. For the purpose of grant or otherwise of the permits, this speed limit plays a vital role.

17. Section 112 occurring at Chapter-VIII provides for control of traffic. In view of Section 112 read with the Central Government's notification dated 9.6.89 as referred to hereinbefore the Transport Authorities are bound to take into consideration the time-table which is to be supplied by the applicants in their application and in the event the same comes within the mischief of Sub-Section

(2) of Section 71, an application for grant of stage carriage permit has to be refused subject of course to the condition, that before such refusal, an opportunity has to be given to the applicant to amend the time-table so as to conform to the said provisions. The Transport Authorities, therefore, in my opinion, cannot but consider such applications on the basis of the time-table of all the permit holders.

18. However, it has to be noticed that in terms of Sub-Section (3) of Section 71 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 carriage generally or any specified type as may be fixed and specified in the notification, operating on city routes in towns with a population not less than 5 lakhs. The Central Government may issue such a notification and pursuant thereto the State Government may also direct a State Transport Authority and a Regional Transport Authority to limit the number of stage carriages only in city routes in towns with a population of not less than 5 lakhs. The said provision has, therefore, no application in relation to any other route.

19. It may further be noticed that this Court in *Binay Kumar Biswas v. Regional Transport Authority* (C.O. No. 10965(W) of 1995) disposed of on 10.11.95, inter alia, has held that in view of the provisions of the W.B. Motor Vehicles Rules an applicant need not be in actual physical possession of the vehicle if such an application is filed in Form No. 1.

20. In *Shamin Haider & Anr. v. Regional Transport Authority, Meerut & Anr.*, reported in 1995 All 385, a division bench of the Allahabad High Court upon taking into consideration the provisions of the Act and the liberalised policy, inter alia, held :

The question of limiting the number of 35 permits in the route cannot be sustained in view of Section 71 (3) of the said Act. However, if a harmonised interpretation is to be arrived at on the basis of the provisions contained in the Act and the judgments referred to above, it cannot be denied that the transport authority has the discretion and power to refuse permit on the ground that no more permits can be issued on the route in consideration of the relevant factors enumerated hereinbefore.

21. It further held :

We also cannot subscribe to the view that the permit shall be granted on the basis of "first come first serve" principle. In fact, every one has a right to apply for a permit from amongst whom the choice has not be made by the transport authority in accordance with the provisions contained in the Act. itself and only suitable candidate in order of suitability or merit is to be selected.

There cannot also any doubt that except in the case falling under Sub-Section (3)

of Section 71 of the Motor Vehicles Act no fleet strength can be prescribed.

22. So far as the bar on the age of the vehicle is concerned suffice it to state that such a power is conferred a u/s 59 of the Motor Vehicles Act which provides for a notification to be published in the official gazette of the Central Government having regard to the probable speed convenience and object of the Act. It is not the case of the respondents that there exists any such notification. But even in absence of any notification having been published, the respondents evidently has jurisdiction to grant permit only on such basis having regard to the model of the Bus.

23. In Subhash Chandra and Others Vs. State of U.P. and Others, it has been held :

The short question is whether the prescription that the bus shall be at least a seven-year old model one is relevant to the condition of the vehicle and its passengers comparative safety and comfort on our chaotic highways. Obviously, it is, the older the model, the less the chances of the latest safety measures being built into the vehicle. Every new model incorporates new devices to reduce danger and promote comfort. Every new model assures its age to be young, fresh and strong, less likely to suffer sudden failures and breakages, less susceptible to wear and tear and mental fatigue leading to unexpected collapse. When we buy a car or any other machine why do we look for the latest model? Vintage vehicles are good for centenarian display of the curious and cannot but be mobile menaces on our notoriously neglected highways. We have no hesitation to hold, from the point of view of the human rights of road users, that the condition regarding the model of the permitted bus is within jurisdiction, and not to prescribe such safety clauses is abdication of statutory duty.

24. In Bharath Kumar v. Karnataka State Transport Appellate Tribunal & Anr. reported in AIR 1995 Kar 164, the law is stated thus :-

The provisions of Section 59 and Section 72 operate in two different fields and the Authorities acting under both the provisions can impose conditions relevant thereto including as to date of manufacture of the same. Even in the absence of Rules, if conditions could be prescribed in the permit and such conditions are reasonable and such power to impose conditions is traceable to the provisions of the Act itself, it cannot be said that such power is exercised by the Authority beyond its powers. The expression "Specified Description" used in Section 72(2) of the Act is similar to such expression used in Section 48(3) of the 1939 Act. Specific description of a stage carriage is not confined to its class or make, but it also includes the year of manufacture.

25. However, there cannot be any doubt that such a power has to be exercised on an objective basis and neither arbitrarily nor under the recommendations of any other authority. The Transport authorities must apply their own minds and issue necessary directions on an objective basis. Such a direction by a statutory authority must be informed by reason. Factors required to be considered therefor

must be objective and not subjective. Different consideration may arise as regards fixation of age of the vehicle depending on facts and circumstances of each Case. The authorities, therefore, may consider the matter afresh as no user has been assigned therefor by the respondents.

26. So far as the question as regards grant of temporary permit is concerned there cannot be any doubt that the temporary permit can be granted only for the purposes mentioned therein. In terms of the provision of Motor Vehicles Act permanent permits are required to be granted where there exists a permanent need. Clause(c) of Sub-section (1) of Sec. 87 in no uncertain terms provides that a temporary permit can be granted only to meet a particular temporary need. This aspect of the matter has been considered in *M/s. Shrikishan Sayardevi v. The State Transport Appellate Tribunal, Jaipur & Ors.* reported in 1976 Raj 164, it has held :

The purpose mentioned in the application of respondent of running bus service is no purpose within the meaning of any of the clauses of Section 62(1) of the Act and, therefore, no temporary permit could have been granted by the Regional Transport Authority on such an application.

27. A bare reading of the aforementioned provisions will show that temporary permits are to be granted by way of exception inasmuch as in terms thereof the procedures required for grant of a permanent permit as laid down in Section 80 of the Act is not required to be complied with. The Apex Court in *Ghanshamdas Srivastava Vs. State of Madhya Pradesh*, Supreme Court Weekly Reporter, 617 while considering the provision of Section 62 of the Motor Vehicles Act, 1939 which is in parimeter is with Section 87 of the Act held "there can be no manner of doubt that in the absence of any purpose or reason for which temporary permits were asked for the Regional Transport Authority should have dismissed the application in limini because a temporary permit can be granted only if the permit is required for the purposes or reasons mentioned from (a) to (d) in Section 62 of the Act."

28. There cannot, therefore, be any doubt whatsoever that the very foundation for exercise of jurisdiction u/s 87 is the existence of the factors enumerated thereunder and the authorities have jurisdiction to grant temporary permit only if one or the other factors mentioned therein is present.

29. In *State Transport Authority and Others Vs. Nirmalendu Das and Others*, a division bench of this court while considering an order directing the grant of temporary permit held "that this court cannot take upon itself, the powers and responsibilities to grant temporary permits as necessary power to grant such permits is vested in the Regional or State Transport Authorities and that too, on the basis of the necessary-satisfaction reached on the four or any of the grounds as indicated in Section 62 of the Act, however, hard of harsh the facts of a given case may be."

30. In view of the aforementioned pronouncements. It is not necessary to notice

the other decisions cited at the Bar.

31. So far as the submission of Mr. Bhattacharjee to the effect that the writ petition is not maintainable is stated to be rejected. It is true that the Supreme Court of India in *Mithilesh Garg v. Union of India* reported in 1992 SC 443 held that the policy of the Central Government is to liberalise grant of permit and in that context it was observed that a third party has no right to object in the matter of grant of a permit.

32. The aforementioned observations have been made by the Supreme Court of India in the context of the differences in phraseology and the purpose and object of the Act as reflected in 1939 Act and 1988 Act inasmuch as in terms of Section 57 of the 1939 Act any person had a right to object to the grant of permit to others whereas no such provision exists now. It, however, does not mean that any other person has also no right to question the grant of a permit by Regional Transport Authority or the State Transport Authority if it acts in violation of the mandatory provisions of law. In any event the decision of this court in *Sand Carrier's Owner's Union and others Vs. Board of Trustees for the Port of Calcutta and others*, and *Siliguri Inter District Minibus Owners' Association & Ors. v. Sri Bijon Krishna Bhowmick* reported in 1993(2) Cal LJ, 99 upon which strong reliance have been placed by the learned Counsel for the respondent, in my opinion, have no application to the facts of the present case. In the instant case, as indicated hereinbefore, besides the association other members are also parties to the writ application in their individual capacities. The petitioner No. 1 is also an interested party in view of the fact that the impugned communication has been addressed to it and thus it had a right to question the said communication along with its members.

33. The aforementioned communication dated 6.7.95 as contained in Annexure D" to the writ application cannot be sustained in view of the findings aforementioned. This court in exercise of its jurisdiction under Article 226 of the Constitution of India can issue a writ of certiorari in the event a statutory authority has exceeded its jurisdiction or has usurped a jurisdiction when it has none or on such similar grounds.

34. As the impugned decision has been taken in violation of the mandatory provisions of the statute, in my opinion, the said order is liable to be quashed. Although, in this application, question of vires of Rule 91 of the West Bengal Motor Vehicles Rules had been raised, but in view of aforementioned findings, it is not necessary to decide the same in this application. Let a writ of certiorari issue accordingly. So far the case of *Uday Chand De v. The State of West Bengal & Ors.* (C.O. No. 15244 (W) of 1995) is concerned it is evident that the application of the petitioner has been rejected without taking into consideration the relevant law in the subject as enunciated by this court in various judgments following the decision of the Supreme Court of India in *Mithilesh Garg's* case (supra) as well as the decision of this court in *Binay Kumar* (supra). The respondent authorities are, therefore, directed to consider the matter afresh in

accordance with law at an early date and preferably within a period of eight weeks from the date of communication of this order.

These writ applications are disposed of with the aforementioned directions and observations but without any order as to costs.