

(1998) 02 CAL CK 0017

In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction (Original Side) G.A. No. 97 of 1996
Matter No. 1418 of 1994 with C.O. No. 260 of 1996

Milan Kumar Puri

APPELLANT

Vs

The State of West Bengal and Others
Puri Vs R.K. Prasanna

RESPONDENT

Date of Decision : 17-02-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Motor Vehicles Act, 1988 — Section 104, 80

Citation : (1998) 3 CALLT 138

Hon'ble Judges : Gitesh Ranjan Bhattacharjee, J

Bench : Single Bench

Advocate : Mr. Arun Kanti Bera and Mr. S.K. Samir Akhtar, for the Appellant; Mr. Joydip Kar, for the Respondent

Judgement

The Court

1. In this writ petition the petitioner prays for quashing the resolution of the State Transport Authority, West Bengal dated 17.5.94 as communicated to the petitioner by the STA's No. 2597-STA dated 20.6.94 which is annexure-2 to the writ petition. By that resolution the STA rejected the application of the petitioner for permanent stage carriage permit on the route Mazna to Calcutta on the ground that the alignment of the said route coincides mainly with the notified route Calcutta Digha and hence no permit can be granted u/s 104 of the Motor Vehicles Act, 1988. The case has a chequered history. It was as far back as in 1987 that the petitioner applied for grant of permit in the route Mazna to Calcutta and since then he had to repeatedly come up before this court as the STA was not granting him permit on that route. He was however granted temporary permit from time to time and at different times under the orders of this Court on successive occasions. However the thread of the present part of the episode can be traced back to a fresh application of the petitioner for grant of permanent permit in respect of the said route Mazna to Calcutta which was made

to the STA on 20.3.90. As the application was not being considered by the STA, the petitioner had to file a writ petition in this. Court on which a learned single Judge of this court directed the STA to consider the same within a particular time after giving an opportunity of hearing u/s 80 M.V. Act. 1988. That application was however subsequently rejected by the STA by its resolution dated 5.11.90 on the ground that u/s 80 M.V. Act the STA had no jurisdiction to grant such permit. The petitioner then moved a writ petition against the said decision of the STA. The matter then went upto the Division Bench and the Division Bench by the order dated 28.9.93 set aside the resolution of the STA dated the 5th November, 1990 and directed the STA to consider the application of the petitioner dated 20.3.90 in accordance with section 80 M.V. Act. Pursuant to the said order of the Division Bench the petitioner was heard by the STA on 15.12.93 and by a resolution of that date the STA rejected the application of the petitioner for permanent permit on the said route on the ground that the major portion of the route falls within the alignment of the Digha-Calcutta route which is a notified route. The said resolution of the STA was however challenged before this court by the petitioner by another writ petition filed on 6.4.94. The matter then again went upto the Division Bench in appeal and the Appeal Court set aside the said resolution dated the 15th December, 1993 and again directed the STA to consider the petitioner's application for permanent permit. Pursuant to that the STA again heard the petitioner and by its resolution dated 17.5.94 which is the impugned resolution, rejected the petitioner's application for permanent permit on the said route on the ground that the main alignment of the route coincides mainly with the Calcutta Digha route which is a notified route. This latest resolution of the STA dated 17.5.94 rejecting the petitioner's application for permanent permit, which is Annexure-2 to the writ petition is the subject-matter of challenge in the present writ petition.

2. Calcutta-Digha is indeed a notified route covered by the approved scheme as appearing in the Calcutta Gazette (Extraordinary) notification dated the 15th September, 1988 which is Annexure-F to the application for vacation/modification dated the 12th January, 1996 affirmed by Sri Pallab Kr. Goswami. From the said notification it would appear that the Calcutta-Digha route was notified in favour of the State Transport Corporation to the exclusion of other operators. There was also another notification on the same date regarding an approved scheme notifying Digha-Howrah route in favour of South-Bengal State Transport Corporation to the partial exclusion of other persons. There is no doubt that the Calcutta-Digha is a notified route and the route in respect of which the petitioner has applied for permit overlaps that route upto the point of taking a diversion from Conlai on that notified route. There was a subsequent notification dated the 14th June, 1989 which has been reproduced in paragraph 7 at page 14 of the said vacating application, and yet another subsequent notification dated the 18th September, 1989 which is annexure at page 31 of the said vacating application. Both these notifications dated the 14th June, 1989 and the 18th September, 1989 are indeed very clumsily drafted. However a careful reading of those

documents will show that subsequent to the original notification dated the 35th September, 1988 the State Government felt that it was necessary to make adequate arrangements for transport services in the concerned area around the notified route and services from the private operators were also required to be introduced in the concerned area, and that is why the State Government by its notification dated that 4th June, 1989 permitted grant of permits for four months in respect of (I) such routes which crossed or overlapped the said notified route as was in existence on 15th September, 1988, and (ii) inter-regional routes (excepting Calcutta/Howrah/Digba route) which were in existence on 15th September, 1988. By the subsequent notification dated the 18th September, 1989, it appears, there was further relaxation authorising grant of permit (i) in respect of the areas or routes within the districts of Howrah/Midnapur/Calcutta and 24-Parganas to the extent of such number as would secure or maintain the adequacy of services in such areas or routes which may touch or overlap the notified route and (ii) also in such approved existing inter-regional routes excepting Calcutta/ Howrah/Digha which were in existence on 15th September, 1988 and were being maintained under temporary or permanent permits, to the extent of such number as not to exceed the approved vacancies as on 15th September, 1988. In that notification there was also a third exception in favour of interstate routes with which we are not however concerned here. What is to be noticed is that under the said notification dated the 18th September, 1989 such number of permits can be granted in favour of private operators in respect of such routes which touch or overlap the notified route excepting the notified route itself, as can secure or maintain the adequacy of services in such area or routes. Another category of exception is in respect of permits on routes excepting the notified route itself, which were in existence as on 15th September, 1988, but in that case the number of permits had to be restricted to the approved vacancies as on 15th September, 1988. It is therefore evident that under the first category permits can be granted even in respect of new applicants on routes touching or overlapping the notified route upto any number as may be sufficient to secure or maintain the adequacy of services in such routes. In the second category permits can be granted however only upto approved vacancies as on 15th September, 1988.

3. The petitioner was enjoying temporary permit on the route Calcutta-Mazna on the 15th September, 1988 under order of the Court. The learned Advocate for the respondents submits that there is a clause in the said notification dated the 18th September, 1989 that the order in the notification will not apply in respect of permit issued pursuant to any order passed and any court and permit so granted under order of the court shall be effective strictly in terms of such order till such order till such order has spent its force and accordingly the petitioner is not entitled to the benefit of this notification because he was enjoying temporary permit on the basis of the court's order. In my opinion this interpretation is wholly untenable because it will be an invidious discrimination to say that a person who was holding a permit on 15.9.98 granted by the appropriate

authority in discharge of its duty will be entitled to the benefit of the said notification but a person who has been granted permit by such authority under an order of the court, passed obviously because the court must have felt that the authority concerned should have granted the permit in discharge of its duty, will not be entitled to the same benefit. Such an interpretation will be patently discriminatory and cannot therefore, be acceptable. The true scope of the clause regarding permits granted under the orders of court in the said notification dated the 18th September, 1989 is that any permit granted under the order of the court will be however not subject to the bindings of the stipulations made in the notification dated the 18th September, 1989 and will be governed by the terms of the order of the court. Even then it has to be mentioned here again that the notification dated 18th September, 1989, as we have seen, also contemplates grant of permits to new applicants falling under the first category mentioned above irrespective of the question whether he was holding any permit on the 15th September, 1988, and that being so the petitioner is entitled to ask for a permit in the concerned route even as a new applicant. It is not the case of the respondents that the petitioner's application for permanent permit on the concerned route cannot be granted because adequate services already exist in that route. The only ground, as we have seen, which the STA repeatedly hammered for rejecting the petitioner's application was that the route for which permit was asked for overlapped the notified route. As we have seen, that cannot be a good ground because the notifications dated 14th June, 1989 and 18th September, 1989, both made certain relaxation in favour of private operators in respect of routes which cross or overlap the notified route excepting the notified route itself. It is also unfortunate that in spite of the fact that the court set aside its earlier resolution rejecting the petitioner's application for permanent permit on the ground of overlapping of notified route, the STA has again rejected the application on the self-same ground which as we have found is wholly untenable. Similar interpretation of the notifications also has been made in the decision of Samanesh Banerjee, J. dated the 29th August, 1997 in W.P.No.392 of 1996, Rina Chakraborty v. State etc. a xerox copy of which has been placed before me and which is kept with the record. The learned Advocate for the respondents wanted to give an interpretation to the word "overlapping" only in the sense of "crossing" the notified route which I must say is not tenable, because both these words have been used as alternative circumstances in the concerned notifications.

4. The learned advocate for the respondents relies upon the decision of the Supreme Court in U.P. State Roadways Transport Corpn., Lucknow through its General Manager Vs. Anwar Ahmed and Others, where it has been held that after a scheme is approved and published the private operators have no right to claim permit to operate their vehicles on the notified area, route or portion thereof except to the extent permitted by the scheme itself. As we have seen, in our present case the petitioner's case for grant of permit falls within the scheme itself.

5. I therefore, find that the plea of the STA rejecting the petitioner's application

for permanent permit on the route Calcutta-Mazna on the ground that the major portion of it overlaps the notified route is wholly untenable. Since that is the only ground on which the petitioner's application for permit has been rejected and that ground has been repeatedly reiterated by the STA inspite of the fact that the court has been consistently setting aside the decision of the STA based on such ground and since no other ground has been assigned for rejecting the petitioner's application for permit and since the matter is pending for a very long time and the petitioner had to approach the court repeatedly. I think this Is a fit case where the court should now direct the respondents to issue permanent permit in favour of the petitioner on the route Calcutta-Mazna and accordingly I direct the STA and its authorities who are respondents in this case to issue permanent permit" on the concerned route Calcutta-Mazna in favour of the petitioner within four weeks from the date of communication of this order. In view of the present order and in view of the fact that the petitioner has been enjoying temporary permit now under the orders of the court the application for contempt is disposed of without passing any order thereon except observing that any non-compliance of the court's order in future will be properly dealt with. The writ petition and the" contempt application both stand disposed of.

6. The prayer of the learned advocate for the respondent for stay of the operation of this order is hereby rejected.

An urgent xerox certified copy of this judgement may be supplied to the parties, if applied for on priority basis.

All parties are to act on a signed copy of the operative part of this judgement on the usual undertaking.

7. Petition disposed of