

(2007) 06 CAL CK 0059
In the Calcutta High Court
Case No : MAT No. 4065 of 2005

Mobesher Hossain Mondal and Others	APPELLANT
Vs	
Sekhar Chatterjee and Others	RESPONDENT

Date of Decision : 26-06-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 71
West Bengal Motor Vehicles Rules, 1989 — Rule 114, 123, 141

Citation : AIR 2008 Cal 31

Hon'ble Judges : Tapan Kumar Dutt, J; Pinaki Chandra Ghose, J

Bench : Division Bench

Advocate : Aurobindo and Ishita Chakraborty, for the Appellant; Alok Kumar Ghosh, N.I. Khan, A.K. Das Adhikari, Mihir Kundu, for the Respondent

Final Decision : Dismissed

Judgement

1. This instant appeal has been preferred against a common judgment and order dated 26th September, 2005 passed by the Hon'ble First Court dismissing the writ petition filed by the appellant being W.P. No. 18196(W) of 2005 and allowing the writ petition being W.P. No. 15787 (W) of 2005.

2. The facts of those writ petitions briefly are as follows:

The present appellant filed the writ petition challenging the resolution dated 7th July, 2005 in connection with an application filed by the private respondent No. 4 in Form No. 1 along with the prescribed fees. In connection to the said application the Authority issued an offer letter. The writ petitioner/appellant herein challenged the validity of the said other offer letter issued by the Chairman, Regional Transport Authority, Burdwan vide Memo No. 5038(131)/MV, dated 25th July, 2005.

3. In the other writ petition the private respondent No. 4 and the writ petitioner/appellant herein in respect of W.P. No. 15787 (W) of 2005 challenged the gross inaction on the part of the Authorities to issue permits in terms of the offer letter

dated 25th July, 2005 despite the compliance of necessary formalities thereof.

4. The Hon''ble First Court after hearing the parties came to the conclusion that the writ petition filed by the writ petitioner/appellant herein is not maintainable on the ground that the writ petitioner/appellant had no locus standi to oppose the grant of new permit being an existing operator.

5. The Hon''ble First Court further held that Form No. 1 is only a Procedural matter and it cannot have any bearing even when the non-disclosure of the number of permits enjoyed by the private respondent were not disclosed by the private respondent No. 4 being the writ petitioner in W.P. No. 15787 (W) of 2005 and the same can be a ground to reject the application.

6. According to the Hon''ble First Court, such non-disclosure is only to be treated as a procedural criteria and it cannot encroach upon the substantive right of the writ petitioner being W.P. No. 15787(W) of 2005 in this matter and, therefore, His Lordship directed to issue the permit in favour of the private respondent No. 4/writ petitioner in W.P. No. 15787(W) of 2005.

7. His Lordship on such ground also set aside the decision taken on 7th July, 2005 by the Regional Transport Authority, Burdwan (hereinafter referred to as "the RTA") for cancelling the earlier order dated 28th March, 2005 and further a direction was given that a fresh offer letter on the basis of application with prescribed fee should be deemed as pre-date consideration for the purpose of regularization of the defect.

8. It is the case of the writ petitioner/appellant herein that non-furnishing of the particulars in Form No. 1 is not a contract finding in view of the specific provisions of Rule 114 of the West Bengal Motor Vehicles Rules, 1989 (hereinafter referred to as "the said Rules"). The Authorities had no other option but to reject the application for permit if the applicant fails to furnish the papers and documents which have not been asked to furnish along with the application.

9. It is further submitted that the Form of application for permanent stage carriage permits is Form No. 1 under Rule 123 of the said Rules and the statement relating to the particulars of stage carnage and contract carriage is required to be given in order to complete the Form and in this case the statement was given by private respondent No. 4/writ petitioner in W.P. No. 15787 (W) of 2005 that he is not holding any permit, which according to the Learned Advocate appearing in support of this Appeal, is absolutely false because admittedly on the date of filing of the said application, he was holding other permits.

10. He further submitted that there is no restriction of holding any number of permits as per the statute but that does not give any applicant a right to make a false statement at the time of filing the application. Therefore, he submitted that it also cannot be a procedural matter because as soon as the application is considered on merits, offer letter has been issued and question of correction and

that amending the same cannot and does not arise and he submitted that the Hon''ble First Court has failed to appreciate the said fact and has wrongly come to such conclusion that it is a procedural error and can be removed.

11. He further pointed out that in the writ petition filed by the private respondent No. 4, the writ petitioner in W.P. No. 15787(W) of 2005 did not even challenge the cancellation of the offer letter and therefore, according to him, the Court cannot assume jurisdiction and pass such order even with out the writ petitioner made out a case in the writ petition.

12. It is further submitted by him that the decisions reported in Ramankutty Vs. Avara, , Kulwant Kaur and Others Vs. Gurdial Singh Mann (dead) by Lrs. and Others etc., and Kedarnath Vs. Mohan Lal Kesarwari and Others, have no application in the facts and circumstances of this case while on the contrary, the decision reported in Kulwant Kaur and Others Vs. Gurdial Singh Mann (dead) by Lrs. and Others etc., would show that the technicalities alone by itself ought not to permit High Court to decide the issue since justice oriented approach is the call of the day presently.

13. The learned Advocate appearing in support of this appeal further submitted that the findings of the Hon''ble First Court quashing the decision of the RTA for cancellation of the earlier order is bad in law beyond the scope of the writ application. He further submitted that neither the decision relating to the cancellation of the offer letter was challenged by the private respondent No. 4. nor any prayer was made for grant of permit in terms of the offer letter dated 25th July, 2005 in the writ petition so filed by the private respondent No. 4.

14. Therefore, it is submitted that the Hon''ble First Court exceeded its jurisdiction by quashing the part of the resolution dated 7th July, 2005 and he relied upon the decisions reported in Krishna Priya Ganguly and Others Vs. University of Lucknow and Others, and Ramrao and Others Vs. All India Backward Class Bank Employees Welfare Association and Others, where the Hon''ble Supreme Court held that moulding relief is not permitted if no factual foundation exist in the pleading of the parties. Admittedly, in the facts and circumstances of this case no pleading has been made for quashing of the said resolution.

15. He further contended that the decision of the Hon''ble First Court that the grant of fresh offer letter on the basis of application with prescribed fee to be deemed as a predate consideration for the purpose to regularization of the defect, cannot also be held as good because it would be evident from the records produced before the Court that the portion of the said resolution where the incorporation made "later Sri Sekhar Chatterjee applies afresh in Form No. 1 with payment of prescribed Ice. The application is considered and RTA decided to issue conditional offer letter to Sri Chatterjee." This would show the direction given by the Hon''ble First Court for regularization is with out any basis and is not permissible and/or tenable in the eye law.

16. He further submitted that even if the earlier offer letter dated 28th March, 2005 is revived and the grant of permit effected, it is absolutely legal and valid after amending of the Rule 141 of the said Rules. It has been specifically stated that validity of the offer letter is only for a month from the date on which the offer letter has been issued. For exceptional circumstances, it can be extended for a maximum period of six months from the date of issue. Therefore, revival of the said offer letter dated 28th March, 2005 can be revived and/or its validity can be extended for six months from 28th March, 2005, from the date of issue of the offer letter and the order so passed by the Hon"ble First Court on 26th September, 2005.

17. According to the Learned Advocate the extension and/or the revival of the said offer in terms of the said offer de hors the statute since the offer letter has already lapsed its force on 28th April, 2005. He further contended that no case has been made out by the private respondent No. 4 that he has taken steps for the extension of the offer letter and/or has acted on the basis of the offer letter by producing the vehicle as owner thereof within the period of a month. Therefore, it is submitted that the order for revival of the same is wholly contrary to the statutory mandate and thus liable to be quashed,

18. In these circumstances, he submitted that the judgment delivered by the Hon"ble First Court cannot be sustainable in the eye of law and the appeal should be allowed.

19. On the contrary, the private respondent on behalf of Mr. Sekhar Chatterjee submitted that the appellant and others being the rival operators having no legal right under Motor Vehicles Act, 1988 raised an objection to the issuance of new permit on the ground that Mr. Sekhar Chatterjee did not disclose the particulars in the column No. 9, in the application form submitted by him. After the amendment of Section 71 of the Act with effect from 14th November, 1994, the restriction of holding 5 permits by an individual has been waived as such disclosure or non-disclosure of holding other permits in the application form cannot be treated as an illegality but it would be only some irregularity which can be cured.

20. On 7th July, 2005, the RTA upon hearing the objection of the rival operators most illegally and arbitrarily cancelled the offer letter despite the writ petitioner/respondent No. 4 placed a new vehicle on 16th June, 2005. The RTA on that date duly decided to issue the offer letter to the respondent No. 4 on a fresh application be made by him. On and from that date Sri Chatterjee tendered the application with the prescribed fees which was duly approved. The RTA issued fresh offer letter on 25th July, 2005 being Memo No. 6038 (131)/MV for issuance of the permit on the said route.

21. The fees for the permit was accepted by the Office of the respondent after scrutinizing the paper on 29th July, 2005 but withheld issuance of the permit on the objection raised by the writ petitioner/appellant herein and others.

22. The writ petition was also filed by the present appellant which has been dismissed on the ground that the appellant is a rival operator and has no locus standi in filing such writ petition. On 7th November, 2005, the Secretary, RTA issued the permit which remained valid till 28th July, 2010 and it is submitted that respondent No. 4 has been plying his vehicle bearing No. WB-41B/7014 on the route to render service to the commuters.

23. Two decisions were placed before us that the writ petitioner/appellant herein has no locus standi effect and reliance was placed on two decisions reported-in Mithilesh Garg, Vs. Union of India and others etc. etc., , Sanjit Chakraborty v. State of West Bengal and Ors. in support of the contention.

24. It is further contended that the Court can mould the relief and the Learned Advocate appearing on behalf of respondent No. 4 relied upon the decisions reported in (2004) 2 WBLR (Cal) 657, Doly Ghosh v. Kumud Chandra Ghosh; (2005) 11 SCC 541 , Commissioner of Endowments and Others Vs. Vittal Rao and Others, , A.N. Pathak and Others Vs. Secretary to the Government, Ministry of Defence and Another, , A.N. Pathak and Ors. v. Secretary to the Government, Ministry of Defence and Anr. in support of his contention.

25. It is further submitted before us that the RTA has already issued the permanent permit to respondent No. 4 in terms of the offer letter validly granted subject to compliance of all formalities without any infraction of the provisions of law and submitted that the appeal preferred by the rival operators is liable to be dismissed with cost.

26. On the contrary, the Learned Advocate appearing on behalf of the State respondent contended before us that some of the operators including the writ petitioner/appellant herein raised an objection and asked for cancellation of the said offer letter issued to the private respondent on the application filed by him on the ground that the said respondent No. 4 suppressed the material facts in the application form with the sole object to mislead the Authorities.

27. It is further submitted that on 7th July, 2005, the RTA resolved that the respondent No. 4 has suppressed the fact relating to the number of permits in his possession. Accordingly, the offer letter issued in favour of respondent No. 4 was cancelled. However, liberty was granted to apply afresh in Form No. 1. On 11th July, 2005, the said respondent No. 4, Sri Sekhar Chatterjee along with the requisite fees filed an application to the Office of RTA and after the consideration of the said application, RTA decided to issue conditional offer letter to Sri Chatterjee.

28. It is further pointed out that by the Learned Advocate appearing on behalf of the State Authorities that the Chairman, RTA in his affidavit affirmed on 11th November, 2005 made it clear that the Chairman, RTA had not signed the offer letter and denied that the said offer letter to have Memo No. 5038 (131)/MV dated 25th July, 2005 containing the signature of the Chairman bearing dated 27th July, 2005. According to the Learned Advocate, the Memo cannot be prior to

the date of signature or initial at the bottom. At present it is submitted that an enquiry is being conducted in order to find out whether anybody of this Office staff is involved in the process of making the fabricated offer letter.

29. We have heard the learned Advocates at length. It appears to us that whether there was any suppression of material facts by the writ petitioner/the respondent No. 4 herein before the Court or before the authorities. We have perused the records and the materials placed before us from which it is clear that it was not mandatory on the part of the applicant and that he is having the permits in his possession and in fact after the amendment of the Act in question, there is no bar of any permit-holders to have more than one permit to become an operator in a particular route.

30. Hence, in our opinion, it cannot be said to be or cannot be deemed to be a suppression of material facts either from the said Authorities or from the Court. Hence, we do not find any substance on such point urged before us on behalf of the appellant. It further appears from the records that the RTA granted liberty to the private respondent No. 4 to apply afresh in Form No. 1 and in fact on 11th July, 2005 the private respondent No. 4 filed the application along with the requisite fees with the Office of the RTA. Thereafter, the application was considered and the RTA decided to issue conditional offer letter to Sri Chatterjee on 23rd July, 2005.

31. Therefore, in our opinion, we do not find there is any reason to interfere with the order since, in our opinion, it cannot be said that there was any irregularity or illegality in respect- of the order so passed by the Hon"ble First Court in this matter.

32. On the other hand, we also do not find that there Is any substance and/or reasons to interfere with the order so passed by the Hon"ble First Court since, in our opinion, the Court has power to mould the relief in the facts and circumstances of the case.

Furthermore, the appellant cannot overcome the hurdle as has been put forward by the Hon"ble Supreme Court that he is not only an objector but he has a rivalry and engaged in the same profession. Hence, in our opinion, on the question of locus standi, we have to follow the said decision of AIR 1992 SC 443 (supra) and have to reject the contention of the appellant on that ground also.

33. For the reasons stated hereinabove, we do not find there is any merit in this appeal. Hence, the appeal is dismissed.

34. Later:

On the prayer made by Mr. Arabindo Chatterjee, Learned Advocate appearing in support of his appeal being MAT No. 4066 of 2005, the cost which was awarded by the Hon"ble First Court being a sum of Rs. 5,000/-, we only set aside that part of the order passed by the Hon"ble First Court.