

(1995) 07 CAL CK 0053
In the Calcutta High Court
Case No : Matter No. 760 of 1994

M/s. B.D. Motors and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 06-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 2 CALLT 433

Hon'ble Judges : Samaresh Banerjea, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Samaresh Banerjea, J.—In the instant writ application, the writ petitioner has challenged a resolution of the State Transport Authority dated 8th March, 1995 rejecting the application of the writ petitioner for grant of a permanent permit in the route Calcutta to Solepatta on the ground that a major part of the route is aligned with Calcutta to Digha route which is a notified one.

2. It is the contention of the petitioner that in the year 1986, he made an application before the State Transport Authority, West Bengal, prayer's for grant of permit on the route Calcutta to Chandnali via Contai, Balasore, whereupon the petitioner was informed that the said inter-State route had not been published in the official gazette and the question of issuance of permit, as applied for, may be taken up for further consideration after the relevant notification is published in the Calcutta Gazette. After receiving such communication, the petitioner made a representation before the State Transport Authority, West Bengal, for allowing them to ply up to Bengal border, i.e., up to Solepatta till the route is officially established as indicated in the aforesaid letter by the Secretary, State Transport Authority, West Bengal. But as the petitioner did not receive and communication, he moved this Hon'ble Court under Article 226 of the Constitution, which was disposed of by N. K. Mitra, J., after directing the State Transport Authority, West Bengal to send the proposal to State Transport Authority, Orissa, for grant of

permit of the route from Calcutta to Chandnali via Contai and Solepatta with a further direction that in the meantime, the petitioner would be granted a temporary permit on ad hoc basis for running its buses from Calcutta to Solepatta via Contai for a period of four months from the date of issuance of such permit. It was also made clear by the aforesaid order passed by N. K. Mitra, J. that such grant of temporary permit would not give the petitioner any right to get temporary permit or permanent permit in the said route as a matter of course.

It is the further case of the petitioner that the State Transport Authorities thereafter issued successive temporary permits till 16.1.93 and on the basis of the same, the petitioner had been plying its vehicle uninterruptedly. It is further contended by the petitioner that after the new Motor Vehicles Act, 1988 came into operation on 22.5.89 the petitioner made an application for a permanent stage permit for the route Calcutta to Solepatta on 2.1.92 along with all requisites. As the said application was not disposed of, the petitioner moved this Hon'ble Court once again under Article 226 of the Constitution, which was disposed of by Haridas Das, J. on 8.6.92 directing inter alia that the respondents nos. 2 to 4 shall, consider and dispose of the application of the petitioner for permanent stage carriage permit made by the petitioner in respect of the aforesaid route in accordance with law and in the light of direction given hereinbefore after giving the petitioner an opportunity of hearing and by passing a reasoned order within four weeks from the date of communication of the said order and the respondents shall go on granting temporary permits until the application for permanent stage carriage permit is finally decided and the decision thereof is communicated to the petitioner and status quo as regards plying of the vehicle shall be maintained till the last decision is communicated. Thereafter by the impugned order the application of the petitioner was rejected on the aforesaid ground.

3. The grievance of the writ petitioner is that the State Transport Authority cannot refuse the permit of the petitioner on the aforesaid grounds, namely that the same is aligned with the major part of the route which is notified. It has been contended that even after the said notification in respect of the said route, other permits have been issued after the so-called nationalisation and accordingly, the respondents cannot reject the application of the petitioner on the aforesaid grounds. It has been further contended that the petitioner has been plying his vehicle in the said route since 1986 and has acquired a right of plying and the same cannot be taken away in the manner aforesaid.

The respondents on the other hand in their affidavit-in-opposition has contended, inter alia, that in terms of the order passed by this Hon'ble Court in the earlier proceedings, the State Transport Authority has considered the application of the petitioner for granting permit in accordance with law and after careful consideration has rejected such application, as the proposed route of the petitioner is aligned with the major apart of the notified route. It has further

been contended in the affidavit-in-opposition that initially the route Calcutta to Digha was notified in favour of Calcutta State Transport Corporation to the total exclusion of other operators and the route Digha to Howrah was notified in favour of South Bengal State Transport Corporation to the partial exclusion of others. Subsequently, the scheme was framed which was published by the Notification dated 15th September 1988, whereby the previous notification was modified. In respect of the route Calcutta/Howrah to Digha in the greater interest of the public it was modified to the extent that notwithstanding the said scheme published u/s 68D(3) of the Motor Vehicles Act 1939, the Regional Transport Authority, Howrah-Midnapore and the Director, Public Vehicle Department of the Regional Transport Authority, Calcutta and 24-Parganas may grant temporary or permanent permit in respect of such area or routes within the respective District/region of Howrah/Midnapore/Calcutta and 24-Parganas in respect of the services in the inter-regional routes to other persons and such number of carriage permits to secure or maintain adequacy of such services in such area or permits which may touch or over-lap the notified routes and also in such approved existing inter-regional routes excepting Howrah/Digha, Calcutta-Digha, which were in existence as on 15th September 1988 and were being maintained under permanent or temporary permits.

4. There was a rider in the aforesaid notification to the effect that the aforesaid modification will not apply in respect of permits granted pursuant to any orders passed by any Court and pursuant to such order, the said permit so granted under the orders of Court shall be effective strictly in terms of such order until such orders remain in force.

5. It has been further contended in the affidavit-in-opposition that no operator including the writ petitioner has any right to apply in respect of a notified route when there is total exclusion of other operators, but when modification is made making a partial exclusion, operators have a right only to such extent and not otherwise. In the instant case because of the aforesaid notification, the petitioner could have been granted permit if his route would have over-lapped or touched with the notified route, but since his route is aligned with a major portion of the notified route, no permit can be granted to him.

6. The learned Counsel appearing for the petitioner, has contended that "over-lapping" would also include "alignment with the major portion" inasmuch as in the scheme, it has never been mentioned that over-lapping can be allowed only in respect of a part and not in respect of a major portion and, therefore, rejection of the application of the petitioner on the aforesaid ground is wholly arbitrary and illegal. The learned Counsel appearing for the respondent on the other hand, submitted that the very expression "overlapping" connotes overlapping at a point or at part and not in a major portion and, therefore, the application of the petitioner was rightly rejected.

7. It will thus appear from the rival contentions of the parties, what is the meaning of the expression of "over-lapping" is really the matter for

consideration, the same not having been defined in the said scheme.

8. There cannot be a dispute, however, that once a route is notified to the absolute exclusion of all operators, none can have any right to operate in such routes and a permit in respect thereof can be granted after the passing of a scheme only in terms of the same if in such scheme, a partial exclusion is made.

9. Such a proposition is well-settled and is not disputed by the parties, but the dispute which has arisen and is required to be resolved by this Court as pointed out herein before, is as to the meaning of the word "over-lapping" and whether in spite of the fact that after the modification of the notification in question, the scheme permits operation by such operators whose route touches or over-laps the notified route, they can be prevented from plying or can be refused permit on the ground that the route is aligned with the major portion of the notified route.

10. Since the word, "over-lapping" has not been defined, the meaning of the same will be what it is understood in common parlance.

11. As per Chambers' Twentieth Century Dictionary, "over-lap" means, "to extend over and partly rests on the, to coincide any part with the, and over-lapping part". As per Random House Dictionary of the English language, College Edition, "over-lap" means, "to extend over and cover a part, to coincide any part with the, an over-lapping part". As per Shorter Oxford English Dictionary on Historical Principles, 3rd Edition, reprinted 1919, "over-lap" means, "to lap over; to over-lie partially; to cover and extend beyond". As per Words & Phrases Permanent Edition, the term "over-lapping" means "either to extend over a part of or to extend over and beyond". As per Corpus Juris Secundum, "over-lap" as a verb means, "either to extend over a part of or to extend over and beyond".

12. As per the New English Dictionary overlapping means an occurrence or incidence of overlapping; a partial super-position or coincidence; the part or place at which one edge or things overlaps another.

13. It will, thus, appear from various dictionaries the very word or expression "overlap" connotes coincidence or extension in respect of a part or on a particular point or may be beyond that. In that view of the matter, if it has been found, as it has been alleged by the respondent, that the route of the writ petitioner is aligned with the major part of the notified route, in my view, because of the aforesaid meaning of overlapping it cannot, certainly, be said that the route of the petitioner merely overlaps with the notified routes and, therefore, he will be entitled to operate his vehicle and, therefore, also entitled to grant of permit under the said scheme.

14. It was held in the Constitution Bench decision of the Supreme Court in the case of Adarsh Travels Bus Service and Another Vs. State of U.P. and Others, that no private operator having valid permit for a different route has right to operate stage carriage over that part of his route which overlaps the notified route even

without picking up or dropping passengers on the overlapping part if the scheme does not permit such position.

15. The Supreme Court in the case of Karnataka State Road Transport Corporation v. Secretary, Karnataka State Transport Authority reported in 1987 SCC 728 following the said decision of the Constitution Bench in the case Adarsh Travel (supra) held inter alia that when admittedly the inter-state route covered under the Scheme and the interstate route in question overlaps for a major portion, the principle indicated in section 68FF of the Motor Vehicle Act 1939 as accepted by the Constitution Bench would bar the grant of permit unless it was in accordance with rule of law of the provisions of the scheme.

16. In the instant case the impugned scheme permits such overlapping, but such overlapping cannot amount to alignment with major portion of the notified route in as much as in that event the very purpose of notifying a particular route may become frustrated.

17. Under such circumstances, I am of the view that no illegality has been committed by the respondents by rejecting the application of the petitioners for grant of permanent permit as the proposed route of the petitioner is found aligned with the major part of the notified route and not merely overlapping with the same.

18. The other contention, although sought to be raised by the respondents, but not indicated in the order of the State Transport Authority namely that the case of the petitioner will also be hit by the proviso to the modification and, therefore, he will not be entitled to grant of permits as he had been operating by virtue of a temporary permit granted under the order of the Court, however, cannot be substantiated. This very aspect was considered in another case by the Hon'ble Mr. Justice Altamas Kabir and His Lordship has already held that the respondents cannot make such restriction in the case of operators operating under the court's order.

19. It is also pertinent to note in this connection that a Division Bench of this Hon'ble Court in an unreported decision of M/s. Man Kali Motors & Ors. v. The State of West Bengal & Ors. being Appeal No. 678 of 1993 (arising out of the Matter No. 2141 of 1993) has held, inter alia, that in the said case the Regional Transport Authority was within its jurisdiction to refuse to grant permit since most of the route was covered by the nationalized route.

In the result, the writ application fails and the same is, hereby, dismissed.

The Rule Stand discharged.

All interim orders stand vacated.

There will be no order as to costs.

Xerox certified copy of this dictated order will be given as expeditiously as possible.

All parties concerned are to act on a Xerox certified copy of this dictated order on the usual undertaking.

Application dismissed.