

(2007) 12 CAL CK 0039

In the Calcutta High Court

Case No : Writ Petition No. 28268 (W) of 2006

Probodh Chandra Ghose and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-12-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 72(3), 81(3)
West Bengal Motor Vehicles Rules, 1989 — Rule 103, 105

Citation : (2008) 3 CHN 451

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Amal Sen, for the Appellant; Sajal Kr. Chakraborty, for the Respondent

Judgement

Debasish Kar Gupta, J.—The subject-matter of challenge in this writ application is the resolution dated January 5, 2006 adopted in the meeting of the respondent No. 2 and the order passed by the respondent No. 3 under memo No. 855(2) dated October 10, 2006.

2. The fact of the case in a nutshell is this the petitioners were the owners of vehicle (bus) bearing registration No. WGA/5410 and the same was attached to the Stage Carriage Permit on the route from Malda to Chanchal (1 up and 1 dn) and from Malda to Gang Rampur (1 up and 1 dn). The respondent No. 2 as per notice issued under memo No. 1214 (5) M.V. dated September 7, 2005 invited applications from the intending owners of the vehicles having Stage Carriage Permit in their favour for addition curtailment or alteration of their routes. Pursuant to the above notice dated September 23, 2005 the petitioners submitted an application before the respondent No. 2 for changing alignment of the existing route attached to the above Stage Carriage Permit of the petitioners to allow them to ply their aforesaid vehicle on the route from Nalagola to Malda (2 up and 2 dn). The respondent No. 2 in its meeting dated January 5, 2006 considered the above application of the petitioners dated September 23, 2005

and rejected the same. The petitioners filed an application under Article 226 of the Constitution of India being W.P. No 7081 (W) of 2006 challenging the above decision of the respondent authority and the aforesaid writ application was disposed of on August 2, 2006 directing the respondent authority to consider the application of the petitioners dated September 23, 2005 afresh. Thereafter, the respondent authority rejected the application on the following grounds:

- i) If the application of the petitioners along with other ten similar applications were allowed the route from Malda to Nalagola would be congested of the number of vehicles on the route Malda to Chanchal and Malda to Gang Rampur would be decreased.
- ii) The route claimed by the petitioners (Malda to Nalagola) had been filled up by other vehicles and no further vehicle could be accommodated on that route.
- iii) If the petitioners were allowed to withdraw their vehicle from the route from Malda to Chanchal via Manikchak, the passengers of that route would suffer due to insufficiency of the vehicles on that route.
- iv) As the route from Malda to Chanchal via Manikchak came within the jurisdictions of two regions, the respondent No. 2 could not take a decision of withdrawal of the permit without the consent of its counterpart.
- v) Unless an application was submitted by the petitioner for a new permit the application of the petitioner could not be granted in view of the petitioner could not be granted in view of the provisions of Sub-section (3) of Section 72 of the Motor Vehicles Act, 1988 read with Rule 105 of the West Bengal Motor Vehicles Rules, 1989.
- vi) The petitioners did not process three year's experience to ply the vehicle in question on the existing route.
- vii) In view of the decision of Veerappa Pillai Vs. Raman and Raman Ltd. and Others, , granting of permit is fully within the discretion of the transport authority depending on several circumstances to be taken into account.

3. Appearing on behalf of the petitioner Mr. Amal Sen learned Advocate submits that none of the ground mentioned in the impugned order dated October 10, 2006 can be sustained in law. Drawing the attention of this Court towards the pleading of the writ application Mr. Sen submits that the respondent authority allowed the vehicle being Registration No. WB-65/ 5303 (existing route : Ashrampur to Malda and Malda to Nalagola) to ply on the route from Nalagola to Malda (2 up and 2 dn) by adopting a resolution in its meeting dated January 5, 2005. Two other vehicles being Registration Nos. WB-73/2347 and WB-57/1010 (existing route Nalagola to Raghunathganj) were also allowed to ply their vehicle on the route from Malda to Nalagola (2 up and 2 dn) adopting resolution in its meeting dated January 5, 2006 so the petitioners were discriminated. Mr. Sen further submits that ground of non-existence of the vacancy on the route in question cannot be sustained in law in view of the above fact. With regard to the

question of insufficiency of the vehicle on the occasion of withdrawn of the petitioner's vehicle from the route in question. Mr. Sen relied upon an unreported decision dated June 24, 1993 in the matter of Shankar Kumar Dey v. State of West Bengal and Ors. (In re : Matter No. Nil of 1992) that the branding of a vehicle with the existing route rejecting the prayer to change the route was contrary to law. With regard to the question of taking decision for withdrawal of a permit attached to more than one region. Mr. Sen submits that in accordance with the provisions of Rule 103 of the West Bengal Motor Vehicles Rules, 1989, no permission was required to be obtained in case of withdrawn of a permit. Regarding the experience of the petitioners, to ply the vehicle in question on the existing route for three years. Mr. Sen submits that the above condition had been fulfilled because the experience was required to ply the vehicle in question and the permit in question being No. PSTS 1459/88 had been issued as bad as in the year 1988. It was irrelevant consideration whether permit was transfer from one person to another. With regard to the law laid down in the matter G. Veerappa Pilai (supra) Mr. Sen submits that the same was not applicable in the instant case. In view of the fact that the petitioners satisfied all the conditions for changing the route in connection of their Stage Carriage Permit in question.

4. Relying upon the decision of Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, , submits that the Court is competent to pass a mandatory order in the instant case. On the basis of the above submission Mr. Sen also relies upon the decision of Smt. Mira Sur Vs. State of West Bengal and others, . Relying upon the decision of Gouranga Barik v. State of West Bengal reported in 1993(2) CLJ 229, Mr. Sen submits that the congestion on the route in question cannot be a ground for rejecting the application of the petitioners. Relying upon an unreported decision date June 24, 1993 in the matter of in re: Shankar Kr. Dey v. State of West Bengal and Ors. (In re : Matter No. Nil of 1992) Mr. Sen submits that branding of a vehicle with the route on which it had been plying was contrary to law.

5. Appearing on behalf of the respondents Mr. Sajal Kr. Chakraborty learned Junior Government Advocate, High Court, Calcutta submits that the permit in question was transferred in favour of the petitioner on July 22, 2005. With regard to allowing three other similar applications, Mr. Chakraborty submits that those were running within the area covered by the proposed route so the number of vehicles were not increased on the changed route for allowing them to ply on the route from Malda to Nalagola. Regarding the question of road condition Mr. Chakraborty submits that since the number vehicles were not increased in allowing the aforesaid three vehicles to ply on the changed route that was not taken into consideration. Mr. Chakraborty further submits that the respondent authority was competent to take into consideration the convenience and or inconvenience of the passengers on the route in question. So the inconvenience of the passengers on the existing route and the changed route were taken into consideration in rejecting the application of the petitioners. The consent of two concerned regional transport authorities was required in view of the provisions of

Rule 103 of the West Bengal Motor Vehicles Rules, 1989. Relied upon the provisions of Sub-section (3) of Section 80 of the Motor Vehicles Act, 1988 Mr. Chakraborty submits that in view of the facts and circumstances of the case the petitioner was required to apply for a new permit. Mr. Chakraborty submits that the writ application is liable to be dismissed.

6. I have given my anxious consideration to the submissions made on behalf of the respective parties and I have taken into consideration the materials on record. It is an admitted fact that the petitioners submitted the application for change of alignment of the route attached to the vehicle bearing No. WGA/5410 plying on the basis of a Stage Carriage Permit on the route from Malda to Chanchal (1 up and 1 dn) and from Malda to Gang Rampur (1 up and 1 dn). It is an undisputed fact that the above application was submitted on the basis of the notice dated September 7, 2005 which was issued inviting applications for consideration of the cases for change of alignment of route. All the applications received pursuant to the above notice dated September 7, 2005 were considered by the respondent No. 2 in its meeting dated January 5, 2006. It is also not in dispute that while rejecting the applications of the petitioners for changing the alignment of the route, at least three application were allowed changing the alignment of the route for plying those vehicles on the route from Nalagola to Malda (2 up and 2 dn).

7. In examining the decision making process of the decision of the respondent No. 2 in rejecting the above application of the petitioners, the congestion of the route from Malda to Nalagola was taken as the first ground. But the respondent No. 2 considered the application of the petitioners amongst other applications for changing the alignment of the route as aforesaid on the basis of the applications submitted pursuant to a notice held by the respondent No. 2. Had the route been already filled up by other vehicles notice dated September 7, 2005 would not have been issued by the respondent authority. The respondent No. 2 also allowed three applications for changing the alignment of the route involved in those Stage Carriage Permit to ply their vehicles on the route from Nalagola to Malda (2 up and 2 dn). Therefore, congestion of the route cannot be a ground for rejection of the application of the petitioners.

8. The next ground for rejecting the application of the petitioners was that the possibility of insufficient of vehicles on the route from Malda to Chanchal. The Motor Vehicles Act do not permit branding of vehicles with routes and keeping the vehicles blocked in particular routes. In this regard the decision of relevant portions of an unreported decision of Shankar Kumar Dey v. State of West Bengal and Ors. (In re : Matter No. Nil of 1992) are quoted below:

The Motor Vehicles Act does not permit branding of buses with routes and keeping the buses blocked in particular routes. Learned Counsel appearing for the writ petitioner has relied upon no fewer than three Division Bench judgments of this Court which clearly held that such route branding upon buses is wholly contrary to law and that administrative directions for such route branding have

no validity and cannot be enforced. The three judgments are respectively delivered in FMAT No. 706-1986, in appeal from Original Order tender No. 2746-1986 and in the Matter No. 3407-1988, on the respective date 29.4.86, 9.9.86 and 20.9.88, the two latter cases being the State of West Bengal v. Sati Nandy, and Debasish Chakraborty v. State of West Bengal and Ors. the three respective Division Benches being those comprised of M.N. Ray and Mahitosh Majumder, JJ. Ganendra Narayan Ray and Paritosh Kumar Mukherji, JJ. and Ajit Kumar Sengupta and K.M. Yusuf, JJ.

I respectfully follow Their Lordship's judgments in the above three unreported decisions, and I come to the conclusion that the resolution dated 7. 9. 91 to keep out of consideration buses which have plied in one route from being granted permits for other routes is wholly unauthorised and illegal and the respondents are not permitted to do the same.

9. The next question of obtaining consent from the other Regional Transport Authority for changing the alignment of a route involved in the Stage Carriage Permit of the petitioners since the same was concerned with two Regional Transport Authorities. I find that the validity of such ground should be examined in the light of the provisions of Rule 103 of the West Bengal Motor Vehicle Rules, 1989 which are quoted below:

10. In my opinion, the above provision relates to grant of a new permit and not in case of withdrawal of a vehicle from any route:

103. Before deciding to grant permit on any route or in any area which falls within the jurisdiction of two regions, the Regional Transport Authorities concerned shall meet at a joint conference and decide the issue. In case there is no unanimity, the matter shall be referred to the Commissioner of the Division if they fall within the same Division and in all such cases, the decision of the Commissioner shall be final. In all other cases, the matter shall be referred to the State Transport Authority and the decision of the State Transport Authority shall be final.

Therefore, no permission was required to be obtained in accordance with the above provisions for withdrawal of the vehicle of the petitioner from the existing route for changing the proposed alignment of the same.

11. Further, after issuing the notice dated September 7, 2005 inviting application for the existing permit holders to change the alignment of the routes attached to their permits to Nalagola to Malda (2 up and 2 dn) it was not open for the respondents to reject such application for want of fresh application to obtain new permit. Therefore, that ground was also not sustainable in law.

12. With regard to the question of having less than three years" experience of the petitioners to ply the vehicle on the existing route, I find that it was not in dispute that the stage carriage permit No. P. St. P 1459/88 was issued in respect of the vehicle in question bearing registration No. WGA/5410.

The name of the person in whose favour the permit was issued originally might be changed. But the permit being valid one the length of experience should be counted by the respondent authorities taking into consideration the period for which the vehicle in question was plying on the route on the strength of that stage carriage permit. Therefore, that ground was also not a valid ground for rejecting of the application of the petitioner.

13. It is an admitted position on the basis of the materials available on record that change of alignment of the route to ply the vehicle from Nalagola to Malda (2 up and 2 dn) was allowed at least in respect of three vehicles. Existing routes of those vehicles were either from Ashrampur to Malda, and Malda to Nalagola or from Nalagola to Raghunathganj. Therefore, it was not open for the respondent No. 2 to take a stand that by allowing the change of alignment of the routes in aforesaid cases, there was no question of congestion of the route in question did not arise.

14. The decision of G. Veerappa Pilai (supra) has no matter of application in this case. It was held in that case that granting of permit was fully within the discretion of the Transport Authority depending upon several circumstances to be taken into account. In my opinion on that plea an application for changing of alignment could not be rejected on a ground which was not sustainable in law. I fully agree with the submissions made by Mr. Amal Sen learned Advocate appearing for the petitioners that the decisions of Comptroller & Auditor General v. K.S. Jagannathan (supra) is fully applicable in this case.

15. In view of the above I quash and set aside the impugned resolution dated January 5, 2006 adopted in the meeting of the respondent No. 2 and the order passed by the respondent No. 3 under memo No. 855 (2) dated October 10, 2006. The respondent No. 2 is further directed to take a decision with regard to the application of the petitioners dated September 23, 2005 in accordance with law as also in the light of this decision by passing a reasoned order within six weeks from the date of communication of this order. The respondent No. 3 is further directed to communicate such decision to the petitioners within two weeks from the date of such decision.

This writ application stands disposed of accordingly.

There will be, however, no order as to costs.

16. Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.