
(2007) 08 CAL CK 0085

In the Calcutta High Court

Case No : Writ Petition No. 20544 (W) of 2006

Rama Pada Ghosh

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 06-08-2007

Acts Referred:

West Bengal Motor Vehicles Rules, 1989 — Rule 141

Citation : (2007) 4 CHN 423

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Sanat Kumar Roy, for the Appellant; Dilip Kumar De and Suehashis Bela, for the Respondent

Judgement

Debasish Kar Gupta, J.—The subject-matter of challenge in this writ application is the resolution dated May 5, 2006 adopted in the meeting of the respondent No. 2 rejecting the prayer of the petitioner to extend the period of producing the vehicle by the petitioner as mentioned in the offer letter.

The facts in the case in a nutshell is this the Employment Officer-in-Charge of District Employment Exchange, Serampore, Hooghly as per his communication issued under memo No. SRP/SE-Auto/99/2000/97 dated June 21, 2006 informed the respondent No. 3 that the UCO Bank, Uttarpara Branch had sanctioned provisionally a loan proposal of the petitioner as a beneficiary under other Backward Classes for auto rickshaw under the SESRU Scheme (a self-employment scheme for unemployed youths) and requested him to issue route permit for plying auto-rickshaw in favour of the petitioner on priority basis.

2. Since no such permit was issued in favour of the petitioner, he moved a writ application being W P No. 1136(W) of 04 which was disposed of on March 9, 2004 with a direction upon the respondent No. 2 to consider the application of the petitioner for grant of permit in the route applied for and to allow the same unless the petitioner had any deficiency or shortfall.

3. Thereafter, an offer letter dated March 17, 2005 was issued by the respondent No. 4 in favour of the petitioner granting permanent permit for contract carriage (auto-rickshaw) on the route from Uttarpara Station to Dankuni subject to fulfilment of the conditions mentioned therein. The period of validity of that offer letter was extended subsequently till September 17, 2005. Before expiry of the validity of the above offer letter, the petitioner by a communication dated September 6, 2005 requested the respondent authority to extend the period of validity of the offer letter for 15 days. That was not extended. By a communication dated October 5, 2005 the petitioner informed the respondent authority that after obtaining the loan from the West Bengal Backward Classes Development and Finance Corporation, the petitioner could deposit the same with Calcutta Auto Works Pvt. Ltd. for purchasing the auto-rickshaw in question. Due to the delay on the part of the aforesaid Calcutta Auto Works Pvt. Ltd., he got the delivery of that auto-rickshaw on October 4, 2005 without getting the same registered in his name by the authority. As such, the petitioner prayed for issuance of permit in favour of the petitioner to ply that auto-rickshaw in the route from Uttarpara Railway Station to Dankuni by extending the period of validity of the offer letter after getting the above vehicle registered in his name.

4. Since, the respondent authority was sitting tight over the matter, the petitioner had to move second writ application being W.P. 21190(W) of 2005 which was disposed of on November 29, 2005 with a direction upon the respondent No. 2 to consider the above representation of the petitioner taking a pragmatic view for extension of the period of validity of the offer letter. That direction was given in the above writ application after coming to a conclusion that the bar beyond six months as provided by the third proviso to Rule 141 of the West Bengal Motor Vehicles Rules had been removed by virtue of the amended notification dated December 23, 2004.

5. The relevant portions of the above decision are quoted below:

Prior to amendment, the third proviso to Rule 141 provided as follows:

"Provided further that the Transport Authority granting the permit may, for reasons to be recorded in writing, relax the condition as to possession by ownership for such period as it might consider reasonable but in any case not beyond six months from the date on which the permit is granted. In such contingency also, the condition as regards transfer or change of address shall not be relaxable."

Prior to amendment there was a complete prohibition on relaxation of the condition as with regard to possession of the vehicle after expiry of six months from the date of grant of permit.

After amendment by the notification dated 23rd December, 2004, the Transport Authority granting the permit may, for reasons to be recorded in writing, extend the validity of the offer letter up to six months from the date of issue of the same in exceptional cases.

The change in language indicates that a different intention was intended. While before amendment there was a prohibition as is evident from the use of the words "in any case not beyond six months", the aforesaid words have now been substituted by the words "may extend the validity of the offer letter upto six months from the date of issue of the same in exceptional cases."

The bar on extension beyond six months have been removed. It prima facie appears to this Court that the validity might be extended for a period of six months at a time and not for a longer period of time. In exceptional cases, the Transport Authority might at its discretion grant further extension for a period not exceeding six months at a time.

In the instant case, a vehicle has been procured but two weeks late. Having regard to the fact that such vehicles are operated by unemployed persons under a scheme of self-employment by obtaining loans, it is expected that the Regional Transport Authority will take a pragmatic approach and consider the representation of the petitioner for extension of the period of validity of the offer letter within two weeks from the date of communication of this order.

The writ application is disclosed of.

There will be no order as to costs.

Urgent xerox plain copy of this order, duly countersigned by the Assistant Registrar (Court) be made available to the learned Advocates-on-record of the appearing parties subject to their undertaking to apply for and obtain certified copy of this order, failing which this order shall stand vacated.

6. The petitioner received a copy of the communication issued to General Manager, West Bengal Backward Classes Development and Finance Corporation under Memo No. 1037/BCDFC/ST-2/2005 dated December 13, 2005 addressed to the respondent No. 3 with a request to condone the delay in producing the vehicle (auto-rickshaw) by the petitioner before the respondent authority within September 17, 2005. The above communication is quoted below:

WEST BENGAL BACKWARD CLASSES DEVELOPMENT AND FINANCE CORPORATION (A State Govt. Undertaking) Hemanta Bhaban 12, B.B.D. Bag (East), Kolkata - 700001 2210-7023, 2210-7022, 2210-8940, 2210-7352(Fax) No. 1037/BCDFC/ST-2 /2005 Date: 13th December, 2005 To The District Magistrate & Collector, Hooghly And Chairman, RTA, Hooghly Sub: Registration of auto-rickshaw in favour of OBC loanees under NBCFDC credit linked programme. Sir,

I would like to draw your kind attention that the following OBC beneficiaries have been sanctioned "auto-rickshaw" under the NBCFDC credit linked programme and accordingly loan amounts have already been released for acquitting the vehicles. At the time of their prayer for sanction of the loan they were able to produce ROUTE PERMIT OFFER LETTER having validity upto 17.09.05 issued from your end. But due to minimum time for normal processing this office was able to

issue delivery order for the vehicles on 15.09.05. But the loanees failed to complete their procedural task within the remaining 2 (two) days and subsequently they failed to obtain extension of validity further.

In the circumstances as a special case I request to you to kindly accommodate the delay that caused not due to their own fault. As the same is related to the recovery of the public money and as the loanees are not able to earn by utilizing their vehicles at present for not getting due registration early action in favour of the loanees may kindly be taken.

----- Name &
Address of Model of the Chasis No. Engine the OBC Beneficiary Vehicle No.
----- Sri Kinsuk
Sadhukhan RE 4S LPG AMF BME AMF S/o Gopal Ch. (Black Colour) 01002 BME
Sadhukhan 13387 76, G. T. Road, PO & PS: Uttarpara. Dt. Hooghly
----- Sri
Rampada Ghosh RE 4S LPG AMF BME AMF S/o Biswanath Ghosh 01013 BME
710/A, Madhusudan (Black Colour) 13419 Banerjee Lane, PO. & PS: Uttarpara,
Dt: Hooghly

----- Enclosure:
1(one) sheet Yours faithfully, General Manager WBBCD & FC No. 1037/1(2)/
BCDFC/ST-2/2005 Date: 13th December, 2005 Copy forwarded to: (1) Sri
Kinsuk Sadhukhan (2) Sri Rampada Ghosh for information and necessary action.

General Manager WBBCD & FC

7. As per communication dated January 25,2006, the petitioner was informed that the prayer of the petitioner for extension of the period of validity of the offer letter in question had been rejected by the respondent No. 2 in its meeting dated December 13, 2005. The relevant portions of minutes of the above decision are quoted below:

(g) The case is taken up in pursuance to the order of Hon''ble Justice Indira Banerjee dated 29.11.2005 in Writ Petition No. 21190(W) of 2005. Applicant Ramapada Ghosh is heard by the R. T. A. As per W. B. M. V. Rules Offer Letter cannot be extended for more than six months. Offer letter issued on 17.3.2005 and it was extended upto 17.9.2005, as per Hon''ble Courts order. Applicant could not produce vehicle within the valid period of offer letter. However, R.T.A. Board decided to give liberty to apply afresh for auto-rickshaw route for non-K.M.A route for consideration and allowing.

8. In the aforesaid circumstances, the petitioner was compelled to file the third writ application being W. P. No. 10402(W) of 2006 challenging the aforesaid resolution dated December 13, 2005. During the pendency of the above writ application, the respondent No. 4 as per communication issued under memo No. 586/MV dated July 12, 2006 informed the petitioner that the respondent No. 2 in its meeting dated May 5, 2006 had decided that the period mentioned in the offer letter could not be extended on the following grounds:

(i) No new permit should be issued for auto-rickshaw in K. M. area in view of the notification No. 3438/WT/3M-139/2004 dated August 2, 2004 of the Transport Department, Government of West Bengal.

(ii) The period of six months had been lapsed from the date of issue of the offer letter.

9. In view of the above grounds, liberty was given to the petitioner to apply on any other route in non-K. M. Area for auto-rickshaw for consideration.

10. As a result, the above writ application being W. P. No. 10402(W) of 2006 was dismissed as withdrawn with liberty to the petitioner to take such action as was available to him in law.

11. Hence, this writ application is filed challenging the validity of the above resolution dated May 5, 2006 adopted by the respondent No. 2.

12. Appearing on behalf of the petitioner, Mr. S. K. Roy, the learned Advocate submits that the decision cannot be sustained in law on the following grounds:

(i) It has already been held as per final order dated November 29, 2005 passed in W. P. No. 21190(W) 2005 that after the amendment of the provisions of third proviso to Rule 141 of the West Bengal Motor Vehicles Rules, 1989, there is no bar for extension of the period of validity of the offer letter beyond six months.

(ii) The Notification No. 3438-WT/3M/139/2004 dated August 2, 2004 of the Transport Department, Government of West Bengal was in force at the time of issuing the offer letter dated March 17, 2005 in favour of the petitioner.

13. Therefore, after issuing offer letter on the basis of a resolution adopted by the respondent No. 2 granting permit, the respondent authority cannot reject the prayer of the petitioner for issuing the permit in question on the ground of existence of the above notification.

14. Appearing on behalf of the State-respondents Mr. D. K. De, learned Junior Government Advocate, High Court, Calcutta submits that in view of the provisions of Rule 141 of the West Bengal Motor Vehicles Rules, 1989, the period of validity of the offer letter cannot be extended beyond six months since that is a statutory provision. The respondent authority was not in a position to violate that statutory provision. Mr. De however, submits in his usual fairness that no appeal was preferred against the decision dated November 29, 2005 passed in W. P. No. 21190(W) of 2005. Mr. De further submits that in view of notification dated August 2, 2004, no permit can be issued in favour of the petitioner in the K. M. Area. However, a pragmatic view was taken by the respondent authority in giving him an opportunity to submit an application afresh in respect of any route not falling within the K. M. Area.

15. Having heard the learned Advocates appearing on behalf of the respective parties and after taking into consideration the relevant materials on record, I find that this is an admitted position that an offer letter dated March 17, 2005 was

issued in favour of the petitioner after the petitioner had been selected for granting contract carriage permit in his favour under SESRU Scheme (a self-employment scheme for unemployed youths). It is also an admitted position that the petitioner during the validity period mentioned in the offer letter submitted an application for extension of time by 15 days to produce the vehicle (auto-rickshaw) before the authority. It is also an admitted position that the vehicle (auto-rickshaw) was delivered to the petitioner 15 days after the expiry of the validity of the offer letter. This is an admitted position that the petitioner being an unemployed youth was selected to run the auto-rickshaw for his livelihood under a scheme. On the basis of that scheme, a resolution was taken by the authority for granting a contract carriage permit in his favour in the concerned route. It is also an admitted position that the offer letter dated March 17, 2005 was issued to the petitioner under SESRU Scheme (a self-employment scheme for the unemployed youths) during the existence of notification No. 3438-WT/3M/139/2004 dated August 2, 2004. It is not in dispute that the General Manager, West Bengal Backward Classes Development and Finance Corporation (A State Govt. Undertaking) requested the respondent No. 3 as per communication dated December 13, 2005 to accommodate the petitioner for the delay which had caused due to no fault on the part of the petitioner as the matter related to the recovery of public money and as the loanee was able to earn money by utilizing his vehicle.

16. Ultimately due to delay of 15 days in producing the vehicle, the representation of the petitioner was rejected and the petitioner was compelled to file as many as four writ applications.

17. It is not in dispute that the following grounds were taken by the respondent authority for rejecting the prayer of the petitioner for extension of time to produce the vehicle:

(i) Due to the existence of the notification No. 3438/WT/34/139/2004 dated August 2, 2004 issued by the Transport Department, Government of West Bengal, no new permit should be issued for auto-rickshaw in K. M. area.

(ii) The validity of the offer letter could not be extended beyond the six months.

18. So far as the first ground is concerned, it is not in dispute that the above notification No. 3438/WT/34/139/2004 dated August 2, 2004 was in existence at the time of issuing the offer letter dated March 17, 2005 in favour of the petitioner in respect of the concerned route. On the basis of that offer letter, the petitioner being an unemployed youth made an application for a loan and that was sanctioned by the West Bengal Backward Classes Development and Finance Corporation (A State Govt. Undertaking). Now, the petitioner has been possessing a vehicle (auto-rickshaw) without a contract carriage permit. The burden of loan is on his shoulder on one hand and on the other hand the auto-rickshaw has become a liability for the petitioner. Because without a contract carriage permit, he cannot ply the same on the road.

19. Admittedly the petitioner applied for loan on the basis of the offer letter dated March 17, 2005 issued to him during the existence of the notification No. 3438/WT/139/04 dated August 2, 2004. Admittedly, the petitioner had not been informed before purchasing the vehicle in question that the respondent authority was not in a position to act upon their own offer letter dated March 17, 2005 due to existence of the notification No. 3438/WT/3M-139/2004 dated August 2, 2004. It was not disclosed before the Court at the time of disposal of the writ applications being W. P. No. 1136(W) of 2004 and W.P. No. 21190(W) of 2005. Therefore, that ground is liable to be quashed and set aside.

20. With regard to the second ground mentioned in the impugned resolution dated May 5, 2006 in respect of extension of period of validity and the offer letter beyond the period of six months, I find that this issue has already been decided as per final order dated November 29, 2005 in W.P. No. 21190(W) 2005 (in re: Ramapada v. State of West Bengal and Ors.)

21. It is not in dispute as submitted by Mr. D. K. De that the above decision has not been challenged by the respondent authority by way of preferring an appeal. Therefore, in view of the above decision, the provisions of Rule 141 of the West Bengal Motor Vehicles Rules, 1989 has been interpreted in the above writ application and there is no bar to extend the period of validity of the offer letter beyond the six months on the basis of such interpretation.

22. In view of the above, the second ground of the impugned resolution dated May 5, 2006 cannot be sustained in law.

23. In view of the above, the impugned resolution dated May 5, 2006 as communicated to the petitioner by the respondent No. 4 under his memo No. 586/MV dated July 12, 2006 stands quashed and set aside.

24. The respondent authority is directed to issue permit in question in favour of the petitioner within four weeks from the date of communication of this order, if he is otherwise eligible.

25. In view of the aforesaid facts and circumstances of the case as discussed hereinabove, the petitioner being an unemployed youth is entitled to adequate cost taking into consideration burden of payment of EMI (Equal Monthly Instalment) in connection with the loan obtained for purchasing the vehicle in question (auto-rickshaw) for the period from October, 2005 without utilizing that vehicle in addition to the maintenance cost of that vehicle with a view to get rid of unemployment under a scheme framed by the Government. Let there be a cost of 3000 G. M. i.e. Rs. 51,000/- to be paid to the petitioner by the respondent No. 2 within 30 days from the date of communication of this order.

26. The writ application is thus disposed of.

Later:

27. After delivery of the judgment, Mr. D. K. De, the learned Advocate appearing

on behalf of the respondents prays for stay of operation of this order.

28. Such prayer is refused in view of the fact that a period of 30 days from the date of communication of this order is available to the respondents for taking steps in the matter.

29. Urgent xerox certified copy of this order be given to the parties, if applied for.