

(2001) 09 CAL CK 0029
In the Calcutta High Court

Case No : Writ Petition No's. 746, 755, 764, 930 and 1008 of 2001

Rina Maity and Others

APPELLANT

Vs

State Transport Authority, West Bengal and Others

Dipak Dey and Another Vs State of West Bengal and Others

 Suman Travels and Another Vs State of West Bengal
and Others
 Shyamananda Kundu Vs State of West
Bengal and Others
 Avijit Raha Vs State of West
Bengal and Others

RESPONDENT

Date of Decision : 14-09-2001

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 109
Constitution of India, 1950 — Article 14, 16, 21, 226, 38
Motor Vehicles Act, 1988 — Section 69, 71(3), 80(2)

Citation : (2002) 2 ACC 167 : (2001) 3 CALLT 472

Hon'ble Judges : Ronojit Kumar Mitra, J

Bench : Single Bench

Advocate : Arabinda Chatterjee, Manasij Dasgupta, Dipankar Dutta and Amal Kr. Sen, for the Appellant; Manik Das Asoke Dey, Dilip Kr. Samanta, A.K. Bera, Samin Akhter, Partha Sarathi Bhattacharya, Mala Das, N.I. Khan, Tapn Banerjee and Asim Chatterjee, for the Respondent

Final Decision : Allowed

Judgement

The Court

1. A question somewhat complex in nature, would appear to have been raised in this case. This country is reeling under the strain of population explosion. Whenever applications are invited by authorities, applications received by them are always several times the number of vacancies. The concerned authorities are often at a loss as to how they should select the required few, especially, as often is the case, when on merit and other considerations, at least twice the number of the vacancies are found to be eligible. Where there was appropriate statutory provision as to the methodology to be followed in performing a public duty, the

authority concerned was of course well protected. In the absence of valid guidelines in the statute, however, the task of the concerned authorities in conducting and concluding duties such as a process of selection, was often quite hazardous and their decisions were liable to be scrutinised and reviewed by the law Courts. As a result the States of course stood to suffer financially, as regards expenses for advertisements and other costs and charges, in the event the Courts should decide to set aside the selection.

2. There were five writ petitions in the cause list. A joint prayer was made by advocates for the parties that the five petitions may be heard analogously and disposed of by one Judgment, as because the respondents as also the cause of action, were the same in all the five petitions. The prayer was allowed. Some of the candidates, in whose favour offer-letters had been issued by the respondent authorities, but were not impleaded in these writ petitions, applied and by consent of the advocates for the parties their applications were allowed. They were added as party respondents in the writ petitions. In this Judgment I shall refer to them as the added respondents. The common grievance of the petitioners was, that the authorities wrongfully acted in violation of specific statutory provisions, had refused to grant stage carriage permits in favour of the petitioners. The added respondents, some of whom had filed affidavits, of course contended that the selection was quite in accordance with law and no intervention by Court was called for. It was their further case that should the Court deem it fit, the STA be directed to intimate the unsuccessful candidates with the reasons for the refusal of their applications.

3. The facts of the case, in short, were that in pursuance of an advertisement published on January 14, 2001 in a Bengali daily newspaper, the Secretary, State Transport Authority, West Bengal (hereinafter referred to as "the STA", had invited offers from those who were interested to obtain permanent stage carriage permits. In the Calcutta-Siliguri route. There were 18 vacancies. Applications had been made and received by the STA from 206 intending operators. Almost 200 applicants had been interviewed individually, by the STA between March 5, 2001 and March 22, 2001. The petitioners came to learn, that on March 26, 2001 offer-letters had been issued in favour of the successful candidates. Admittedly, the STA had disposed of the application on the basis of its policy decision which had been taken on March 22, 2001, The policy decision being, that those applicants who were already the holders of route permits, would not be considered to be eligible to obtain permits in the selection process.

4. It was alleged by the petitioners that the STA had received from the petitioners the necessary application forms including the requisite application-fees, together with the necessary security deposits, yet, till date they were unaware as to the reasons for the purported rejection of their applications. The STA was bound to comply with the relevant statutory provisions, as contained in the second proviso to sub-section(2) of Section 80 of the Motor Vehicles Act 1988, to which I shall refer as "the Act". It was argued by advocates for the

petitioners, and that if their applications were refused then they were entitled to be intimated by the STA as to the reasons, and to be given an opportunity to be heard by the authority. It was contended, by advocates, that the proviso was mandatory, and that failure to comply with the provisions vitiated the entire selection process, and the selections were therefore bad in law. It was argued, that in selecting the added respondents the STA had given preference, in accordance with the provisions contained Rule 109 of the W.B. Motor Vehicles Rules 1989, to which reference shall be made as "the Rules", though the selected candidates were not entitled to such preference at all. The policy decision which the STA had followed, in disposing of the applications it was the case of the petitioners, was non-existent on the date of the publication of the advertisement or on the date when the Interviews were taken, and that it was without any force of law. It was argued, that there was no scope to grant permit on grounds of compassion or charity. Where there was a clear provision, in the statute, as to how the authority was to act, it was submitted on their behalf, by advocates, that such provision must be considered to be mandatory and not directory. In support of these submissions they cited and relied on the decisions reported in *State of Haryana and Another Vs. Raghubir Dayal*, ; *The Municipal Corporation of Greater Bombay Vs. M/s. New Standard Engineering Co. Ltd.*, , *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others*, ; *A.P. Aggarwal Vs. Govt. of N.C.T. of Delhi and Another*, ; AIR 2000 1706 (SC); *S.V. Sivaswami Servai Vs. Hafez Motor Transport (Firm) and others*,, ; *Satya Narayan Transport Co. Ltd. Vs. Secretary, State Transport Authority, West Bengal and Others*, ; *Patiala Bus (Sirhind) Pvt. Ltd. Vs. State Transport Appellate Tribunal, Punjab and Others*, and AIR (1956) Cal. 419 . It was contended, by advocates for the petitioners, that in view of the relevant provisions of the Motor Vehicles (Amendment) Act 1994, an operator today was entitled in law to have more than one road permit. In support of this contention he cited and relied on a decisions reported in ; *E.I. Narayanan and Others Vs. The Regional Transport Authority, Trichur and Others*, : and *Eskey Roadways (Firm) Vs. Anandhakrishnan Bus Service*, .

5. Submission made on behalf of the State Transport Authority and the added-respondents, were similar on principles of law. It had been submitted on their behalf, by advocates, that the decision of the, State Transport Authority, was not challenged by the petitioners and that the only allegation in the petition was that the STA did not intimate the petitioners as to the refusal of the petitioners' applications. It was argued, that the provisions in Sub-section (2) of Section 80 of the Act. did not contain any penal consequence, in the event of non-compliance by the authority, and that it was the unanimous view of the law Courts that in those circumstances, the provision must be understood to be directory and not mandatory. In support of the submissions advocates for the respondents cited and relied on the decisions reported in *Sharif-ud-din Vs. Abdul Gani Lone*, ; *M/s. Hindustan Zinc Ltd. etc. Vs. Andhra Pradesh State Electricity Board and others*, ; *State of U.P. Vs. Manbodhan Lal Srivastava*, and *State of Andhra Pradesh and another Vs. Dr. Rahimuddin Kamal*, . The Act did not provide

any time limit within which reasons for refusal were to be communicated, it was submitted by advocates for the added respondents, and that it would be fit and proper for this Court to dispose of the application by directing the respondent authority to communicate to the petitioners, in writing, the reasons for their refusal of the respective applications of the petitioners. It was argued, that the petitioners' application forms were silent as to their educational qualifications, quantum of income or as to whether they were educated-unemployed-youths, and therefore, there was, nor could be any question of the respondent authority violating the provisions of Section 71(3)(d) of the Act. or Rule 109 of the Rules. It was contended, that u/s 69 of the Act the petitioner was at liberty to obtain a certified copy of the decision of the STA, and refer its alleged grievances before the State Transport Appellate Tribunal. According to the advocates for the added respondents, who were the successful candidates, the Appellate Tribunal was empowered to set aside, modify or amend the order of the STA and in support of his submissions he cited and relied on the decisions reported in Madan Lal Vs. Meena, and an unreported decision of this Court dated July 26, 1986. In C.A. 2822(W) of 1985 which it was submitted, had been upheld by the Appeal Court. It was contended on behalf of the STA by advocate, that in view of the large number of applicants, and there being only 18 vacancies, the STA was well within its powers and in accordance with law, to have bona fides adopted the policy decision in order to do justice to the general public and also the applicants. In support of his submissions he cited and relied on the decisions reported in 2001(3) SCC 6357 and (1996)3, All ER. 131. According to him, the authority had complied with the provisions of Sub-section (2) of Section 80 of the Act. as because each and every applicant had been heard in the form of interviews, and especially in view of the fact that in the Act there was no provision as to the consequences on the failure to communicate the reasons. The word "give" appearing in Sub-section (2) of Section 80 of the Act, it was submitted by advocates, clearly envisaged that upon an application by the Intending party the authority would furnish the certified copy of the decision. It was argued in particular, by advocate for the STA, that unless the policy decision was adopted, there would have been a violation of the provisions of Articles 38 and 39 of the Constitution of India and the public would be denied its right of enjoyment of the public transport system.

6. I have considered the submissions by advocate for the parties. As there were many more equally eligible candidates, than there were vacancies, the STA had adopted the resolution in the Interests of justice and to prevent the selection process from being frustrated. The decision was perhaps, humane and expeditious. Yet it was certainly a pertinent query, as to whether in adopting the policy decision the STA had acted in accordance with law. Indeed, these were difficult times and the fittest shall survive. There was no power conferred on the STA to conduct selection process, in the matter of granting permits, on grounds of compassion or charity. A permit holder was, in law, entitled to obtain further permits. The STA was a creature of the statute, and it was bound to comply with

the provisions of statutes. The petitioners had submitted their application forms with the STA in earnest, together with the requisite fees. The STA was quite aware of the number of applications it had received even before the interviews had commenced. No policy decision was contemplated by the STA even after the interviews had commenced. It was on March 22, 2001 after the last Interview had been completed that the STA chose to take the policy-decision. On the same date the STA completed the selection. The policy decision admittedly was not intimated to the petitioners. On March 26, 2001 the successful candidates had received the offer-letters. It was significant, that between March 22 and March 26, 2001 there was one single working day, which was March 23, 2001. The address of many of the successful candidates were in far away districts. There was no evidence as to whether the alleged successful candidates had at all been served with any notice or alternatively how such notice was served or received. I have no hesitation to find that there were more than indications, that the STA had acted surreptitiously and with ulterior motive. There was no denial, on behalf of the STA, that it was not supported by any statutory sanction in taking the policy decision. The process of elimination, purported to have been resorted to by STA was arbitrary and in violation of the principles of natural justice.

7. In terms of the provisions contained in Sub-section (2) of Section 80 of the Act. the STA was bound to communicate to the applicants, its reasons in writing for its refusal to grant permits. It was not denied by the STA that it did not comply with the statutory provisions. In deciding as to whether the statutory provision was mandatory or directory, primarily Courts in my view shall endeavour to ascertain the likely object with which the legislators had inserted the proviso in the enactment. Should the statute have conferred a right on the citizen, then in that event of non-compliance, by the authority, of any of the provisions in the statute, which would be in effect a denial of the citizen's right, the provision must be Interpreted to be mandatory. The popular proposition that unless a statutory direction on the authority was followed with a penal or consequential clause, the direction would not be mandatory but only directory, I am afraid would be quite unacceptable, where non-compliance by the authority amounted to the denial of a statutory right of the citizen. The right in the case before this Court was of course, the right to obtain in writing the reasons for the refusal by the authority and an opportunity of being heard in the matter. Denial of such right by the authority, I am inclined to hold, went to the root of the principles of natural justice which the law Courts have always jealously guarded. Violation of such statutory duty infringing a right of the applicant, also provided in the statute, must be interpreted to mean that the duty cast upon the authority was mandatory. Acting on the basis of a surreptitiously adopted policy decision, and deliberately choosing not to comply with the provisions of the second proviso to Sub-section (2) of Section 80 of the Act, both the acts being in violation of the statute, the process of selection followed by the STA had been rendered bad, illegal and wholly ineffective. Further, there was no submissions on behalf of any of the respondents, as to how the authority was able to serve the successful

applicants, in far away districts, and offer-letters to them within the course of a day and a half. I would not therefore, totally disregard the contention, by advocates for the petitioners, that the added respondents who were the successful applicants were the favoured candidates of the respondent authority, or that the selection process was a mere eyewash. Offer-letters, if at all, issued by the authority or received by the respondents were in pursuance of an illegal and bad selection process. It was frivolous to contend, that the added respondents were entitled to be Issued with the respective permits, because a right had accrued to them on the basis of the offer-letters. It was significant, that inspite of repeated directions the STA did not care to produce any part of the records relating to the selection process. As there were so many applicants and since all of them had been Interviewed, the STA was required in accordance with the settled principles of law, to have made a comparative analysis on the merits of the applicants which would be reflected in a broad sheet to be prepared and maintained by the authority. in the affidavit-in-opposition, filed on behalf of the STA there was not a whisper as to the broad-sheet, or of having made any comparative analysis of the merits of the applicants. This was a further indication of the mala fides of the STA in having decided not to consider the applications of the unsuccessful applicants from the very outset.

8. For those reasons the writ-petitions are allowed. The STA shall be permanently restrained from giving any effect to the offer-letters, already issued to the added respondents in pursuance of the Impugned selection, being the subject matter of this petition. Those offer-letters shall stand cancelled and have no effect from the date of issue. The STA shall take appropriate steps to cancel the permit which it has Issued wrongfully and illegally in pursuance to the impugned selection results. Interim order made in this application shall stand vacated.

Parties shall be at liberty to obtain a xerox of this judgment counter signed by the Assistant Registrar (Court) of this Court upon an undertaking by the advocates to obtain a certified xerox upon the usual terms.

After the Judgment had been delivered, advocates appearing for the added respondents who were present in Court, and heard portions of the judgment, which I had read out, and it was prayed by them that since the STA was the permit granting authority and there was no challenge as to the advertisement by the STA inviting Intending operators, this Court would be pleased to direct the STA to consider afresh the applications of those who had been Interviewed by the STA upon taking fresh interview. Such prayer was not objected to by advocates for the petitioners. In that view, the matter is remanded back to the STA and the STA shall consider the applications of those who had been Interviewed upon publishing a notice to that effect, once in any of the Sunday news papers published in Bengali, and interview them afresh and consider their applications in accordance with law. The STA shall complete this process within a period of four weeks from the date of being communicated with a xerox of this order.

9. Petitions allowed