

(2001) 09 CAL CK 0058
In the Calcutta High Court
Case No : Writ Petition No. 10838 (W) of 2000

Sajal Modak and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 13-09-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Motor Vehicles Act, 1988 — Section 87, 87(1)

Citation : 107 CWN 659

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Advocate : Arobinda Chatterjee and Kakali Dutta, for the Appellant; Dilip Kumar Samanta for the Respondents and D.K. Dey for the State, for the Respondent

Judgement

Bhaskar Bhattacharya, J.—In this writ application, the petitioners, some of the existing permanent stage carriage permit holders have challenged a temporary permit granted by the Regional Transport Authority in favour of the private respondent No. 4 on the ground that such permit was granted in violation of Section 87(1) of the Motor Vehicles Act, 1988 ("Act"). There is no dispute that in the past Sengupta. J. in a different writ application set aside the order of the Regional Transport Authority granting permanent permit in favour of the respondent No. 4 and the said Authority was asked to consider the said application afresh in accordance with law. During the pendency of such application, the aforesaid temporary permit has been granted to the respondent No. 4.

2. The only illegality pointed out in this application is that it would appear from the offer-letter to the respondent No. 4 that the permit was issued for regular use of the vehicle although Section 87(1) prescribes grant of such permit only under the circumstances mentioned in Clauses (a) to (d) of that Section. The offer-letter, however, has not been annexed to this application.

3. In my view, this writ application should fail not only on the ground of vague

and insufficient averments but also of incompetency of the petitioners to maintain this application.

4. It is true that a temporary permit u/s 87(1) of the Act can be granted only under the circumstances mentioned in Clauses (a) to (d) of that sub-section; but there is no allegation in the application asserting that the respondent No. 4 did not apply for any of the aforesaid four reasons. All that has been averred is that in the offer letter issued by the Regional Transport Authority it was mentioned that the said permit was for regular use of the vehicle. The petitioners have made such allegations in the "grounds" taken which are their submissions. However, in paragraphs 6 and 7 of the application they have said that it had come to their knowledge that the private respondent was plying his vehicle on the basis of a temporary permit which had been issued by the Regional Transport Authority on 29th/30th June and that the same was issued "in clear and complete violation of the provision contained in Section 87 of the Act." I am thus of the view that in the absence of sufficient averments this writ application should not be entertained.

5. Apart from the aforesaid reason, the petitioners have no locus standi to maintain this application.

6. It is now settled law that existence of a right and the infringement thereof are the foundation of the exercise of jurisdiction under Article 226 of the Constitution of India. Such right may be a fundamental right or an ordinary legal right.

7. The rights that can be enforced under Article 226 of the Constitution of India, must ordinarily be the right of the petitioner except In the case of habeas corpus, quo warranto or writ involving public interest. The present case does not fall under any of the aforesaid exceptions. In this connection, reference may be made upon the decisions of the Apex Court in the cases of State of Punjab Vs. Suraj Parkash Kapur etc., ; State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo, ; Bokaro and Ramgur Ltd. Vs. The State of Bihar and Another, ; The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, .

8. As pointed out by the Supreme Court in the case of Mithilesh Garg, Vs. Union of India and others etc. etc., , grant of a new permit cannot prejudicially affect the right of the existing permit holder to run his business infringing his fundamental right to carry on business. Therefore, even if I assume for the sake of argument that in this case temporary permit has been granted to the respondent No. 4 in violation of Section 87 of the Act, the petitioners, existing permanent permit holders cannot impugn such act of the Regional Transport Authority in this application; because by such act neither the fundamental nor any other existing right of the petitioners has been violated. Position however would have been different, if inspite of being similarly placed, the petitioner's application for similar permit was rejected but the authority granted such permit to the respondent No. 4. In such a situation, the petitioners could allege

infringement of Article 14 of the Constitution.

9. Mr. Chatterjee, the learned advocate appearing on behalf of the petitioners In this connection strongly relied upon the observation of S. B. Sinha, J. in the case of Howrah Bus Syndicate vs. R. T. A., Howrah reported in 1996 (1) CLJ 397 at paragraphs 32 and 33 of the said decision.

10. After going through the said decision I find that His Lordship after taking note of the case of Mithilesh Garg (supra) made the following observation at paragraph 33:

"It however, does not mean that any other person has also no right to question the grant of a permit by Regional Transport Authority or the State Transport Authority if it acts in violation of the mandatory provisions of law."

11. Again in the next paragraph His Lordship held that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India can issue a writ of certiorari in the event a statutory authority has exceeded its jurisdiction or has usurped a jurisdiction when it has none or on such similar grounds".

12. With great respect to His Lordship, I am unable to accept those observations as a general proposition of law. As pointed out by the Supreme Court in the decisions referred to above, an illegal order can be set aside in writ jurisdiction only at the instance of a person having locus standi to maintain such application: otherwise, a grocer of Calcutta can file a writ application challenging an illegal order of grant of temporary permit by the Regional Transport Authority, Purulia notwithstanding the fact that such grocer is in no way affected by such grant nor will such grant infringe the right of such a grocer.

13. Since I propose to dismiss this application not only on the ground of locus standi but also on other ground mentioned earlier, I do not find any reason to refer the matter to the Hon"ble Chief Justice for constituting a Division bench in view of my disagreement with the views of Sinha, J. The writ application thus fails.

No costs.