
(2003) 12 CAL CK 0059
In the Calcutta High Court
Case No : Writ Petition No. 18082 (W) of 2003

Sanjit Chakraborty

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 24-12-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Motor Vehicles Act, 1988 — Section 68(3)

Citation : (2004) 2 ACC 740 : (2004) 3 CALLT 549 : (2004) 1 CALLT 627

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Advocate : Dilip Kr. Samanta and Mala Dutta, for the Appellant; Dilip De, for the Respondent

Final Decision : Dismissed

Judgement

B. Bhattacharya, J.—By this writ application, the writ petitioner, an existing permit holder, has prayed for direction upon the Secretary, Transport Department and the Secretary, State Transport Authority to dispose of the objection raised by the petitioner against issue of Stage Carriage Permits in the routes covering the area within the regions of Jalpaiguri and Darjeeling by the State Transport Authority.

2. Mr. De, the learned counsel appearing on behalf of the State/ respondent, has raised a preliminary objection as regards maintainability of the instant writ application on the ground of absence of locus standi of the petitioner, an existing permit holder, in view of the decision of the Supreme Court in the case of Mithilesh Garg, Vs. Union of India and others etc. etc., . According to Mr, De, the petitioner, an existing permit holder, cannot dispute the grant of permit to other permit holder in the route even if the same is in contravention of the provisions contained in Motor Vehicles Act.

3. Mr. Samanta, the learned counsel appearing on behalf" of the petitioner, has opposed the aforesaid contention of Mr. De and has contended that the petitioner

being an existing permit holder has right to oppose grant of illegal permit in the route. Mr. Samanta contends that the decision of the Supreme Court in the case of Mithilesh Garg (*supra*) cannot stand in the way of the petitioner in challenging permit granted by an authority having no jurisdiction. Mr. Samanta contends that in the concerned route only the Regional Transport Authorities, Darjeeling and Jalpaiguri, can grant such permit but State Transport Authority cannot grant any such permit unless a prior specific resolution is taken by the State Transport Authority to grant such permit notwithstanding existence of Regional Transport Authorities over the area in question. According to Mr. Samanta no such prior decision has been taken. Mr. Samanta, thus, submits that if the grant of permit by State Transport Authority is without jurisdiction, his client has a right to question such grant and for that reason his client made representation before the authority pointing out its want of authority.

4. After hearing the learned counsel for the parties and after going through the materials on record, I am of the opinion that in view of the decision of the Supreme Court in the case of Mithilesh Garg (*supra*), an existing permit holder cannot dispute illegal grant of permit in the selfsame route to others in violation of the provision of the Act. I am, however, prepared to accept the contention of Mr. Samanta that an existing permit holder can challenge the grant of permit to others if such grant is made by an authority having no legal sanction. In such a case, such grant is to be treated as nullity and plying of vehicle on the basis of such a grant will amount to "running of vehicle with no permit". An existing permit holder who has obtained permit from a competent authority can legitimately can complain before the authority that no person having obtained permit given by a competent authority can ply in the route.

5. Therefore, the locus standi of the present petitioner to dispute illegal grant of permit in favour of third parties is limited to this extent that where such permits are granted by an authority having no jurisdiction, he can challenge such illegal permit. But there is a difference between illegal grant of permit and a permit by an authority having inherent lack of jurisdiction. In case of the former nature, those are merely irregular but not a nullity whereas the descriptions of the second type are nullity.

6. According to the provisions contained in Sections 68(3)(b) of the Motor Vehicles Act, State Transport Authority, if it thinks fit, can perform the duties of the Regional Transport Authority in respect of any route common to two or more regions and, thus, for the purpose of grant of a permit covering two regions, although, Regional Transport Authority having jurisdiction over the area over which the maximum portion of the route falls, can grant such permit, the State Transport Authority is not divested of its right to grant permit, in such a case, if it thinks fit. Therefore, if in a given case, the State Transport Authority decides to grant permit covering two regions notwithstanding existence of Regional Transport Authority in those two regions, the same cannot by any stretch of imagination be called to be without jurisdiction. As pointed out by the Supreme

Court in the case of State of Rajasthan and Others Vs. Shri Noor Mohammad, there is no illegality in issue of such permit by State Transport Authority.

7. Mr. Samanta, in this contention, has placed strong reliance upon the decision of Orissa High Court in the case of Dayalal N. Joshi Vs. State Transport Authority and Others, where the Division Bench of that Court while interpreting Section 44(3) of the old Motor Vehicles Act, which *pari materia* with Section 68(3) of the present Act, held that unless material is placed before Court to show that State Transport Authority decided to assume jurisdiction over the route in question, exercise of such jurisdiction without prior decision should be deemed to be illegal exercise of jurisdiction.

8. In this connection, reference may be made to the decision of this Court in the case of Bidhan Hatua v. State of West Bengal and Ors. reported in 1996(1) CLJ 30 where exercise of power by State Transport Authority for consideration of such matter has been approved. Be that as it may, I could not convince myself to accept the finding of the Division Bench of Orissa High Court in Dayalal N. Joshi (*supra*) that in the absence of any prior decision taken by State Transport Authority if permit is granted by such authority for use of vehicle in two or more regions lying within the State, the same will become a nullity.

9. Mr. Samanta, in this connection, has also relied upon a decision of a learned single Judge of this Court in the case of Dhananjay Sharma v. State of West Bengal and Ors., W.P. No. 15432(W) of 2001 disposed of in April 8, 2002 in support of his contention that the writ application is maintainable at the instance of an existing permit holder.

10. After going through the said decision, I find that the learned single Judge ultimately held that the State Transport Authority had the right to issue permit in question but in that case there were irregularities on the part of the State Transport Authority in issuing those permits. However, notwithstanding such findings, His Lordship decided not to interfere with the permits granted in favour of others. A decision, where the Court after recording finding as regards irregular grants of permit does not interfere with such grants, cannot be relied upon as a precedent in support of the proposition of law that in case of irregular grant of permits in favour of others, an existing permit holder can dispute such grant.

11. Mr. Samanta has placed strong reliance upon de Smith's Judicial Review of Administrative Action, Fourth Edition (J.M, Evans) and Administrative Law, Eighth Edition by H.W.R. Wade and C.F. Forsyth in support of his contention that a writ application is maintainable at the instance of a person having sufficient interest in the matter to which the application relates. According to him, a person aggrieved has been understood to mean one "who has a genuine grievance because an order has been made which prejudicially affects his interest". I am not disputing for a moment the aforesaid proposition of law. But the question is whether an existing permit holder is prejudicially affected by increase in number of the competitors in the field by such illegal grant. In my opinion, as pointed out

earlier, if the illegality complained of is of such nature is inherent lack of jurisdiction in the matter of grant, then such grant is to be treated as "no grant" and can be impugned by the existing permit holders for annulling the grant. Apart from that, a third party whose application for permit has been rejected can also dispute the legality of the grant on the ground that being similarly circumstances his prayer was rejected but the authority has granted the prayer of others thereby denying the protection of Article 14. Apart from the aforesaid two circumstances, there is no scope of challenging the illegal grant of permit in violation of the provisions of the Motor Vehicles Act, 1988 in a writ application under Article 226 of the Constitution of India after the decision of the Apex Court in *Mithilesh Garg* (supra).

12. As held by Supreme Court in the cases of (1) *State of Punjab Vs. Suraj Parkash Kapur etc.*, , (2) *State of Orissa v. Ram Chandra* AIR 1964 SC 516 , (3) *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, the existence of a right and infringement thereof are the foundation of the exercise of jurisdiction under Article 226 of the Constitution of India. Such right, the Supreme Court proceeded, may be a fundamental right or an ordinary legal right. The rights that can be enforced under Article 226 of the Constitution of India, must ordinarily be the right of the petitioners except in the cases of habeas corpus, quo warranto or writ involving public interest. Thus, an illegal order can be set aside in the writ application only at the instance of a person whose right has been affected by illegal order.

13. Since in the instant case, petitioner's right to run vehicle by grant of permit in his favour has not been affected in any way, he cannot dispute the legality of permits of others if granted by a competent authority. I have already indicated that the position would have been different, if such grant was made by an authority not vested with jurisdiction and, in such a case, the petitioner could legitimately complain before the authority which granted his permit to take action against persons who were interfering with the business of the petitioner on the basis of "no permit" in the eye of law.

14. On consideration of the entire materials on record, I, thus, find that this writ application is not maintainable at the instance of the petitioner, an existing permit holder.

The writ application is, thus, dismissed on that ground alone.

In the facts and circumstances, there will be, however, no order as to costs.