

(1995) 08 CAL CK 0022
In the Calcutta High Court

Sanjit Kumar Sardar and others

APPELLANT

Vs

State of West Bengal and others

RESPONDENT

Date of Decision : 24-08-1995

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226

Motor Vehicles Act, 1988 — Section 62, 80, 87

West Bengal Motor Vehicles Rules, 1989 — Rule 123, 123(1), 123(2)

Citation : AIR 1996 Cal 135 : (1996) 1 CALLT 25 : 100 CWN 489

Hon'ble Judges : Samaresh Banerjea, J

Bench : Single Bench

Advocate : Sk. Niamatulla and M.M. Das, for the Appellant; N.T. Khan, for the Respondent

Judgement

1. In each of the 4 writ petitions, which have been heard analogously, the writ petitioner has challenged an order passed by the Regional Transport Authority rejecting the application of the petitioner for grant of temporary permit.

2. Each of the writ petitioners applied for grant of temporary Stage Carriage Permit in route No. 12/C/1/2 before the Regional Transport Authority, Calcutta region. As the said application was not being disposed of, each of the petitioners moved this Hon'ble Court under Article 226 of the Constitution whereupon Shri Rang Mishra, J. was pleased to dispose the writ application by directing the Regional Transport Authority, Calcutta, to consider the question of grant of temporary permit for Stage Carriage to the petitioner in accordance with law within a period of 8 weeks from the communication of the order. Such application was thereafter considered by the Regional Transport Authority, Calcutta, considered and the petitioner was communicated with an order rejecting the application of the petitioner on the ground that no purpose/reason has been mentioned in the application for which a temporary permit can be granted.

3. It is the contention of the petitioner that the self same authority has granted temporary permit to Shri Gopal Seth and to Shri Kuldeep Dhawan, where as the

same is being arbitrarily refused to the petitioner thereby making a hostile discrimination against the petitioner. It is the further case of the petitioner that the impugned order passed by the respondents is not a speaking order and the same is absolutely vague and in view of the liberal policy introduced under the Motor Vehicles Act, 1988 for grant of permit to those who entered into Motor Transport business such permit should have been granted to the petitioner.

4. Mr. Murari Mohan Das, the learned Advocate appearing for the petitioner in support of the writ application has relied on the decision of the Supreme Court in the case of Mithilesh Garg, Vs. Union of India and others etc. etc., and has contended inter alia that it will appear from the said decision that the Supreme Court while interpreting the relevant provisions of the Motor Vehicles Act, 1988 has held that because of the liberal policy introduced by the State, the grant of permit will be the rule and therefore the respondents could not have refused permit. It has been further contended by Mr. Das that in the case of the aforesaid Mr. Gopal Seth and Kuldeep Dhawan to whom temporary permit have been granted by the respondents, such permit have been granted to them even though no purpose or reason for obtaining temporary permit was indicated in the application.

5. The defence of the respondents in their affidavit-in-opposition inter alia is to the effect that temporary permit under the Motor Vehicles Act, 1988 cannot be granted mechanically or as a matter of course but only on fulfilment of conditions laid down in Sec. 87 of the Motor Vehicles Act. It has been further contended that Rule 123(2) of the West Bengal Motor Vehicles Rules provides that an application for Stage Carriage is to be made in the prescribed manner and it will appear from the prescribed form that the purpose of temporary permit is required to be indicated admittedly which was not done in the instant case and therefore the application of the petitioner was rightly rejected.

6. The respondents have also denied the allegation of making any discrimination in respect of the writ petitioner. It has been contended that temporary permit was granted to Shri Gopal Seth after due consideration of his application and after ascertaining the present need of Transport and also in compliance with the order of the Hon"ble Court for consideration of the matter sympathetically. Mr. Kuldeep Dhawan was granted temporary permit from 10th January, 1995 to 8th May, 1995 on consideration of the purpose in respect thereof. It has been further contended that whether temporary permit will be granted or not is entirely within the discretion of the Regional Transport Authority and the same cannot be claimed as a matter of right.

7. Mr. Khan appearing for the Regional Transport Authority, Calcutta, has submitted inter alia that Section 87 of the Motor Vehicles Act, 1988 laid down the conditions under which a temporary permit can be granted and, therefore, no temporary permit can be granted unless the conditions laid down in the aforesaid Section 87, State Act is fulfilled. It has been submitted that in the application made by the petitioner for temporary permit, the purpose of the permit was not

stated and there was nothing in the said application to indicate that the temporary permit was required to be granted for fulfilment of any of the purpose laid down u/s 87 of the said Act. Mr. Khan also drew the attention of the Court to Rule 123 of the West Bengal Motor Vehicles Rules, 1989 and has submitted inter alia the said Rules prescribe Form No. IX for the purpose of making an application for temporary permit. It has been further submitted that the aforesaid Form No. IX will indicate that the purpose for temporary permit is required to be indicated, and therefore, it is a statutory requirement that in the application for temporary permit such purpose is to be indicated, but the petitioner has not fulfilled such statutory requirement and his application was rightly rejected by the Regional Transport Authority. In support of his contention, Mr. Khan has relied on the decision of the Supreme Court in the case of Andhra Pradesh State Road Transport Corporation v. K. Venkataramireddy, 1971 (3) SCC 803 and in the case of Veerappa Pillai Vs. Raman and Raman Ltd. and Others, and in the case of Anil Bus Service and Another Vs. Appellate Tribunal of State Transport Authority and Others, .

8. In my view no one has right to obtain a temporary permit under the Motor Vehicles Act, 1988 by mere asking or as a matter of course unless the purpose laid down u/s 87 of the said Act for grant of temporary permit is fulfilled.

9. Section 87 of the Motor Vehicles Act, 1988 clearly lays down the conditions on the purpose for which a temporary permit can be granted by the Regional Transport Authority. The very expression "temporary permit" connotes a permit for a temporary period and for a temporary need or purpose and what can be such temporary need or purpose for which such a permit can be granted has clearly been laid down by the Legislature under aforesaid Section 87 of the said Act. Neither an operator, therefore, has a right to obtain any temporary permit dehors the provision of Section 87 of the said Act nor the Regional Transport Authority which is a statutory authority can grant a temporary permit dehors the provisions laid down in Section 87 of the said Act. The position of law in this regard has been settled by the Supreme Court in the case of Andhra Pradesh State Road Transport Corporation v. K. Venkataramireddy, 1971 (3) SCC 803 . Although such decision was rendered by the Hon"ble Supreme Court while interpreting the provisions of the Motor Vehicles Act, 1939, the principles of law laid down therein will clearly be applicable under the present Act also. Under the previous Motor Vehicles Act, 1939, Clauses (a) to (d) of Section 62 laid down the purposes for which a temporary permit could be granted by the Regional Transport Authority. In the application which was filed by the operator in the said case for grant of a temporary permit, which was to be made in statutory form No. 32, the operator did not disclose the purpose for which the temporary permit was required. In view of such fact Supreme Court without going into any other question was pleased to hold that in absence of any purpose or reason for which temporary permits were asked for, the Regional Transport Authority ought to have dismissed the application for temporary permit in limine as temporary permit can be granted only for the purpose or reasons mentioned in Clauses (a)

to (d) in Section 62 of the Act.

10. Admittedly Section 87 of the present Act lays down the purposes under which a temporary permit can be asked for and under such circumstances no temporary permit can be granted except for any of such purposes as indicated in Section 87 of the said Act,

11. Rule 123(1)(d) of the West Bengal Motor Vehicles Rules, 1989 provides that every application of the temporary permit is to be made in Form No. IX. Such Form IX having been prescribed by the said rules for the purpose of making application for temporary permit, the same is a statutory form and the said Form IX requires that the purpose for which the permit is required is to be indicated. Admittedly in the application for such temporary permit none of the writ petitioners indicated the purposes for which such permits were required. The petitioners therefore, while making such application, for temporary permit failed to fulfil such statutory requirement of indicating the purpose for temporary permit in the application.

12. No wrong, therefore, has been committed by the Regional Transport Authority by rejecting the application of each of the petitioner for temporary permit for not indicating the purpose for requiring the temporary permit.

13. Mr. Das relying on the judgment of the Supreme Court in the case of *Mithilesh Garg, Vs. Union of India and others etc. etc.*, has sought to argue that in the aforesaid case the Supreme Court has held, inter alia, that the present Motor Vehicles Act of 1988 has liberalised the policy of granting permit and under the new Act grant of permit is the rule and refusal an exception. Mr. Das relying on S. 80 of the present Motor Vehicles Act, 1988 has tried to contend that the expression used therein "any permit", would also include a temporary permit and since the Supreme Court in the said case while interpreting S. 80 has held that permit is to be granted liberally, the respondents could not have rejected the application of the petitioner in the manner as aforesaid.

14. I am unable to accept the contention of Mr. Das that the expression "any permit" used in S. 80 will include a temporary permit as well. The very fact that the Legislature in its wisdom after liberalising the policy of granting permit at the same time has incorporated a different provisions for the purpose of grant of temporary permit in S. 87 of the Act, clearly indicates that permanent permit and temporary permits are not to be treated on the same footing and the expression "any permit" used in S. 80 would obviously mean all kinds of permanent permit like Stage Carriage Permit, Contract Carriage Permit and the like. There is nothing in the decision of the Supreme Court in the case of *Mithilesh Garg v. Union of India* (supra) wherefrom it can be said that the Supreme Court was of the view that even in the case of temporary permit such a permit can be granted on mere asking without examining whether the requirement of S. 87 of the Motor Vehicles Act is fulfilled. On the contrary it will appear from the said judgment that Their Lordships of the Supreme Court while interpreting S. 80 of the Motor

Vehicles Act was really concerned with the question as to whether in granting such permit the existing operators at all have any right to file their objection. Even if temporary permit is also contemplated in S. 80 of the said Act, S. 80 of the said Act will not override S. 87 of the Act which makes special provision for temporary permit.

15. It will appear from the said judgment of the Supreme Court in the case of *Mithilesh Garg v. Union of India* (supra) that in the said case the Supreme Court had no occasion to consider the scope of S. 87 of the Motor Vehicles Act, 1988. Accordingly in my view the said decision of the Hon''ble Supreme Court is not an authority for the proposition, which is sought to be put forward by the learned Advocate appearing for the petitioner, that even a temporary permit should be granted by the RTA on mere asking without satisfying as to the existence of the purposes for grant of such permit as provided for in S. 87 of the Motor Vehicles Act, 1988. In this connection the decision of the Supreme Court in the case of *Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd.*, paragraph 39 may be referred to where it has been held that in applying a decision of the Supreme Court the Court has to examine the context in which the particular judgment was delivered by the Supreme Court and a sentence or a word of the said judgment from here and there, should not be taken into consideration divorced from the context or the question which was under consideration by the Supreme Court as the decision of the Court takes the colour from the question involved in the case.

16. Mr. Das has also tried to lay emphasis on the expression used in Section 87 to the effect that a temporary permit can be granted without following the procedure laid down in Section 80 and has submitted that such expression will indicate that Section 87 will be applicable only when temporary permit is sought to be granted without following the procedures u/s 80.

17. Such submission can hardly be tenable. The language of Section 87 is absolutely clear and unequivocal and there is no ambiguity whatsoever. At no point of time Motor Vehicles Act ever provided that for the purpose of granting temporary permit, the procedures for permanent permits are required to be followed. Under the 1939 Act also Section 62 provided the purpose for which temporary permit could be granted and that the same could be granted without following the procedure for granting of permanent permit. Although elaborate procedures were required to be followed at the time of granting permanent permit, R.T.A. was free not to follow such procedure in case of temporary permit, and exactly the same position has been retained by the Legislature in its wisdom in the present Act of 1988. The reason is obvious, a temporary permit can only be for a temporary need and for a temporary period, and therefore, to follow the procedures for grant of permanent permit may frustrate the purpose of grant of a temporary permit to meet a temporary need.

18. It is true that in the case of *Shri Gopal Seth and Shri Kuldeep Dhawan* the Regional Transport Authority, Calcutta granted temporary permit although in their

application also the purpose for granting of such temporary permit was not indicated. But the same cannot create any right for the present writ petitioners to obtain a temporary permit without fulfilling the statutory requirement of indicating the purpose of the same in the application for the temporary permit, for the simple reason that once illegality committed by the Regional Transport Authority, Calcutta, cannot justify the commission of another illegality. The Regional Transport Authority in their Affidavit-in-Opposition has given certain explanation for granting temporary permit to the said two persons. But I accept the submission of the learned Advocate of the present petitioner that such permit should not have been granted to them when in their application for temporary permit, the purpose for granting of such permit was not indicated.

19. I am unable to accept the submission of the Regional Transport Authority that it be sole discretion of the Regional Transport Authority to grant or not to grant a temporary permit. The Regional Transport Authority is a statutory body and its powers and functions are circumscribed by the provisions of the statute namely Motor Vehicles Act, 1988 and the Rules made thereunder. Under such circumstances in exercising its discretion the Regional Transport Authority is certainly duty-bound to Act in consonance with the provision of the Act and the Rules made thereunder and not arbitrarily or whimsically or in violation of the provision of the Act or the Rules.

20. As pointed out hereinbefore a temporary permit can be granted for the purposes indicated in Section 87 of the Motor Vehicles Act and under Rule 123(b) of the West Bengal Motor Vehicles Rules, the purpose for obtaining the temporary permit is required to be indicated in the application for the same and non-disclosure of such purpose certainly entitles the Regional Transport Authority to reject the application for temporary permit, as it has been done in the instant case. But if the Regional Transport Authority which is a statutory body rejects the application of some applicants on such ground, namely nondisclosure of the purpose for obtaining temporary permit in an application for the same, but it allows the application of some other persons although such purpose is not indicated in their application, certainly such action of the Regional Transport Authority can be termed as arbitrary and the same can also certainly create a reasonable apprehension, in the mind of applicant that the Regional Transport Authority is making discrimination in the matter of such grant of permit and is allowing application of some other persons on extraneous reasons. The Regional Transport Authority being a statutory body and also being a State within the meaning of Article 12 of the Constitution, it must be for public purpose and must be free from arbitrariness. However, such permits not being subject-matter of challenge before the instant writ petition and the said grantees not being parties in this writ petition, no order is called for against the same.

21. But since it has come to the notice of this Court that in case of aforesaid Gopal Seth and Kuldeep Dhawan the Regional Transport Authority has granted them temporary permit even though the purpose of the same was not indicated

in their application, the Court is constrained to make such observations.

22. But as pointed out hereinbefore, one's illegality cannot justify another, the fact that in case of the aforesaid two persons temporary permit was granted even though in their applications the purpose of the same was not indicated, cannot entitle the writ petitioner to obtain a temporary permit even though the purpose of the same was not indicated in his application for temporary permit.

23. In the result each of the writ application fails and the same is hereby dismissed without any order as to costs.

24. It is, however, made clear that this order will not prevent each of the writ petitioner to apply afresh for grant of temporary permit if he is so advised in the prescribed form indicating therein the purpose for which the temporary permit is needed and if such application is made the same shall be considered and disposed of in accordance with law and in the light of this judgment by the Regional Transport Authority.

25. Application dismissed.