

(1969) 02 CAL CK 0031

In the Calcutta High Court

Case No : Civil Revision No. 1025 (W) of 1965

Shib Kumar Dutta

APPELLANT

Vs

Appellate Sub-Committee of the State Transport Authority,
W.B. and Others

RESPONDENT

Date of Decision : 19-02-1969

Acts Referred:

Bengal Motor Vehicles Rules, 1940 — Rule 108

Motor Vehicles Act, 1939 — Section 59, 59(3), 60, 60(1), 60(2)

Citation : AIR 1970 Cal 174

Hon'ble Judges : A.K. Sinha, J

Bench : Single Bench

Advocate : S.K. Biswas, for the Appellant; D.N. Lahiri, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sinha, J.—In this Rule, the petitioner prays for quashing certain orders made by the Regional Transport Authority, respondent No. 2 and affirmed by the Appellate sub-committee of the State Transport Authority, the respondent No. 1 cancelling the petitioner's permit relating to his vehicle No. WBT 1709 (Landmaster Baby Taxi) as a contract carriage. The facts briefly are:

2. The petitioner was granted the above permit some time in August 1956. Since then he had been using the said Taxi Cab for the purpose of serving the public convenience. By a notice dated October 28, 1964, the Secretary of the respondent No. 2 directed the petitioner to show cause against a proposed cancellation of the said permit u/s 60(1)(a) & (c) of the Motor Vehicles Act, 1939 (referred to herein as the Act).

3. The petitioner furnished an explanation in which he denied that he ceased to own the vehicle but admitted that he had changed the garage from 137/3, Upper Circular Road No. 7. Ganapat Bagla Lane, without prior permission of the concerned authority for which he regretted. Thereafter, by a memorandum dated March 26, 1965, the secretary of the respondent No. 2 informed the petitioner

that his explanation was found to be "thoroughly unsatisfactory" by the Regional Transport Authority, Calcutta which in its meetings held on January 18, 1965 passed a resolution for cancellation of the said permit and directed the petitioner to surrender the permit in respect of the above vehicle within seven days from the cancellation.

4. As against this resolution, the petitioner preferred an appeal before the State Transport Authority. The appellate Sub-Committee dismissed the petitioner's appeal and thus affirmed the resolution passed by the respondent No. 2.

5. Upon these facts several grounds were taken but Mr. Biswas, learned Advocate for the petitioner, in the first place, contended that since in the resolutions of respondent No. 2 no reason was given it could not be sustained as valid. Then, the decision taken by respondent No. 1 regarding change of ownership of the vehicle was based not on any evidence but on report never disclosed to the petitioner. The petitioner made it clear that the disputed car stood in his name duly registered under the Act. He possessed the Registration Certificate, Insurance Certificate etc. in his own name. There were no other relevant materials excepting so called report by which any reasonable conclusion could be drawn that the petitioner ceased to own his vehicle or parted with its ownership in any way. This report, Mr. Biswas submitted, was totally inadmissible and extraneous and the respondent went beyond its jurisdiction in drawing such a conclusion against the petitioner on the question of ownership of the car solely relying on such a report. I think there is substance in what Mr. Biswas contends. It cannot be denied that the respondent No. 2 while exercising its power u/s 60 for cancellation of the permit is supposed to act quasi-judicially. If that be so, the conclusion drawn by the concerned Regional Transport Authority must be reached not by a subjective process but on an objective basis. Clearly, therefore, such a conclusion must be based on some evidence on which it is reasonably possible to come to a conclusion that such a charge made against the petitioner for the proposed cancellation of his permit stood established. If, such a conclusion is not based on any evidence or material, *prima facie*, appearing on the resolution. I do not think that such resolution can be sustained as valid. In the instant case, the petitioner has denied that he sold the car or parted with his ownership in any way relating to that car and he also produced the registration certificate (Blue book) and gave all particulars relating to his ownership and possession as required under the Act As against these, there is nothing to indicate as to how the Regional Transport Authority could hold that the petitioner's explanation was thoroughly unsatisfactory. The Transport Authority did not also give any reason as required under Sub-section (2) of Section 60 of the Act. It is not possible to hold that simply because the petitioner was keeping his car in another garage without the permission of the concerned authority, a reasonable conclusion could be drawn from that fact alone without more that the petitioner parted with the ownership of the car. This transfer of garage without permission of the concerned authority may no doubt raise some suspicion but that fact by itself cannot be accepted as proof of the fact that the petitioner ceased to be the owner of the

vehicle.

6. Then again, the Appellate Subcommittee introduced an enquiry report made by the Special Officer of the Public Vehicles Department and relying on this report it came to the conclusion that the car was transferred to some other person some time in 1962. This, I think, is not permitted under the Act Even assuming that the Appellate Sub-Committee is competent to take additional evidence then also proper opportunities are to be given to the aggrieved party, in the present case, the petitioner, to contradict such evidence taken or relied on at the appellate stage by the Appellate Sub-Committee. It is an admitted fact that this report of the Special Officer of the public vehicles department was never disclosed to the petitioner; nevertheless the conclusion that the petitioner transferred his car some time in 1962 was solely based on this report. This is opposed to fundamental principles of all judicial procedure. So, the conclusion drawn by the Appellate Sub-Committee on the view that there had been a transfer of the car some time in 1962 cannot be sustained as valid.

7. In the second place, Mr. Biswas contended that so far as the breach of Section 60 (1) (a) was concerned, the specific allegation was that the petitioner kept the car in another garage without the permission of the authority but this was not one of the conditions contemplated in Section 59 (3) of the Act, on breach of which alone, the petitioner's permit might be liable to be cancelled. The transfer of a garage without the permission of the authority, in other words. Mr. Biswas submitted, did not come within chapter V of the Act or the Rules made thereunder as contemplated in Sub-section (3) Clause (a) Section 59 of the Act The relevant Rule, namely, Rule 108 of the Bengal Motor Vehicles Rules relating to transfer of garage is framed under chapter IV of the Act; clearly therefore, such a transfer from a garage to another garage without the permission of the concerned authority, did not entail cancellation of the permit u/s 59 (3) (a) read with Section 60 (1) (a) of the Act. I think having regard to the above provisions of the Act and the Rule the correctness of the contentions made by Mr. Biswas cannot be doubted. It seems to me quite clear that it is only on breach of the conditions u/s 59 (3) (a), namely, failure to comply with the requirements of chapter V or the Rules made thereunder that the permit holder may be deprived of his rights to hold such permit. So, if the Rules relating to transfer of garage under Rule 108 is a Rule framed under chapter IV of the Act, then there cannot be any question of violation of such a condition so as to make the petitioner liable to cancellation of the permit. Mr. Lahiri on behalf of the respondents also could not seriously oppose this position, in law.

8. There is yet another aspect of the matter. u/s 60 (3) of the Act before cancellation or suspension of the permit if the Transport Authority which granted the permit is of opinion that "having regard to the circumstances of the case, it would not be necessary or expedient so to cancel or suspend the permit if the holder of the permit agrees to pay a certain sum of money", then "notwithstanding anything contained in Sub-section (1) the Transport Authority

may, instead of cancelling or suspending the permit, as the case may be, recover from the holder of the permit the sum of money agreed upon". I find that this aspect of the matter was not considered at all by the Transport Authority, namely, respondent No. 1. It cannot be denied that this Sub-section casts a duty upon the transport authority to form an opinion having regard to the circumstances of each particular case as to whether the petitioner should be directed to pay a certain sum of money before cancelling or suspending the permit. In my view, failure to consider this aspect of the matter has introduced another infirmity in the impugned resolutions passed by the respondents Nos. 1 and 2. Considering all these, it must be held that both the impugned resolutions passed by the respondents Nos. 1 and 2 are invalid.

9. The result is, the petition succeeds. Both the impugned resolutions are quashed.

10. I make it clear, however, that the Regional Transport Authority will be at liberty to decide the matter afresh if it so likes in accordance with law and in the light of the observations made above. Before I part with this case I must notice one argument made by Mr. Lahiri. His argument was that transfer of garage without permission of authority is a condition attached to the permit and, therefore, the petitioner's permit, in any case, was liable to be cancelled.

11. The original permit was produced before me and no such condition was found attached to the permit. This argument has, therefore, no substance. Let a true copy of this permit be kept with the record.

12. The Rule is made absolute to the extent indicated above.

13. Let a writ both in the nature of mandamus and certiorari issue accordingly.

14. There will be no order as to costs.