
(2009) 01 CAL CK 0042
In the Calcutta High Court
Case No : Writ Petition No. 3487 (W) of 2007

Smt. Dipali Chakraborty

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 15-01-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 71(3)(a), 80(2), 89

Citation : (2009) 01 CAL CK 0042

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Amal Sen, for the Appellant; Dilip Kumar De for the State, Mr. P. Deb Roy for Fifth Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Jayanta Kumar Biswas, J.—The petitioner in this writ petition dated February 20th, 2007 is aggrieved by the decision of the RTA, Kolkata dated May 25th, 2006 rejecting her prayer for grant of a special stage carriage permit for route No. S-158 on the ground of her inadequate financial capability. The decision was communicated by the secretary of the RTA by his letter dated January 5th, 2007.

2. In para 7 the petitioner has stated that sometime in December, 2005 the RTA put up a notice inviting applications for permit for the route, a route covered by a notification issued u/s 71(3)(a) of the Motor Vehicles Act, 1988. In response to the notice she applied on January 12th, 2006. By a letter dated January 27th, 2006 the RTA asked her to appear for personal hearing on February 21st, 2006, and produce all relevant documents in original. She appeared, was heard, and produced the documents. However, by the impugned decision her prayer for permit was rejected.

3. In para 23 she has stated as follows:- "23. The petitioner submits that she has no alternative, suitable remedy and the remedy hereinafter prayed for would give the petitioner complete redress." Her this assertion is incorrect. In view of

the provisions of section 89 of the Motor Vehicles Act, 1988, aggrieved by the refusal of the RTA to grant her permit, she was entitled to appeal to the State Transport Appellate Tribunal constituted under provisions of the Act.

4. When this was pointed out to Mr. Sen, counsel for the petitioner, he made two submissions:- (i) at the material point of time the tribunal was not functioning; and (ii) in any case, the alternative remedy could not bar the petitioner from filing a writ petition, since her fundamental right to carry on transport business was infringed by the RTA by its whimsical decision. In support of this submission he has relied on *Mithilesh Garg, Vs. Union of India and others etc. etc.*, .

5. I do not find any merit in these submissions. The petitioner has not stated a case that at the relevant point of time the tribunal was not functioning. Arguments at the bar cannot be the substitute for a case that was to be stated by the petitioner in her pleadings. There is no dispute that availability of alternative remedy is not a bar to the maintainability of a writ petition. But this question does not arise in the present case, because the petitioner has stated that she has no alternative remedy at all. Besides, she does not have a fundamental right to get a permit. She has only a legal right to get a permit according to law.

6. But then, I do not think today it will be appropriate to dismiss the writ petition on the ground that the alternative remedy of statutory appeal was available. Since the writ petition was admitted, in my opinion, the validity of the impugned decision should be examined keeping in mind the scope of the power of judicial review of decision of statutory authority by the writ Court. What has to be examined is the decision making process; not the correctness of the decision.

7. Mr. Sen has argued that by not communicating the decision till the letter dated January 5th, 2007 was written, the RTA defeated the petitioner's right available u/s 80(2) of the Motor Vehicles Act, 1988 in that before she could exercise her right to question the decision, the authority had issued permits to the private respondents. In support of this he relies on *Rina Maity & Ors. v. State Transport Authority, W.B. & Ors.*, 2001 (2) CLJ 533.

8. I do not see how this decision can be of any assistance in this case. There the decision of the STA, WB was not communicated to the applicant concerned, and on such fact the Court was examining whether the provisions of section 80(2) were mandatory or directory. In the present case no such question has arisen. It is not the case either that the decision of the RTA was not communicated to the petitioner at all. True it is that it was communicated belatedly. But I find no reason to hold that the delay defeated her right to appeal u/s 89.

9. I find no reason to accept the contention that the decision is violative of the principles of natural justice. It was given by the RTA after giving the petitioner an opportunity of hearing, and the authority communicated the reasons why it decided to reject her prayer for permit. Hence it cannot be said that the decision making process is vitiated by violation of any principle of natural justice.

10. Mr. Sen has argued that the cryptic decision leading to rejection cannot be sustained, and for this he has relied on an unreported single bench decision dated August 23rd, 2002 in W.P. No. 86 of 2002 (Rina Maity v. State of West Bengal & Ors.). In that case the applications of the petitioners therein were rejected by the STA, WB saying, "they are found unsuitable", and such decision, his Lordship held, was cryptic and unsustainable.

11. As is known, it is not the length of the decision, but the merit of the decision, what is relevant. In the present case, the prayer was rejected on the ground of the petitioner's inadequate financial capability. I find no reason to say that this is a cryptic decision in the sense that its vagueness left the petitioner to guesswork and confusion.

12. Regarding merits of the reason, Mr. Sen has argued at length. He has said that there is no statutory provision or guidelines indicating what should be considered the adequate financial capability of an applicant. According to him, in the absence of any provision of law or guidelines specifying what should be understood by the expression "adequate financial capability", the authority was under an obligation to disclose by filing affidavit how the financial capabilities of the respective applicants were examined and determined. His submission is that since the respondents have chosen not to file any opposition, it should be presumed that the RTA arbitrarily determined the financial capabilities of the applicants, some of whom have been favoured with permits.

13. What he says, it seems to me, is that in exercise of writ powers I should examine the sufficiency of the reason given by the RTA for rejecting the petitioner's prayer for permit. In the process, he is inviting me to say that since the respondents have chosen not to file any opposition, there is no scope to make a comparative assessment of the financial capabilities of the candidates whose applications were considered by the RTA.

14. In my opinion, such an exercise is absolutely beyond the scope of the power of judicial review by the writ Court. Nothing prevented the petitioner from appealing to the tribunal inviting it to re-appreciate the evidence and give its independent findings on the comparative financial capabilities of the candidates. The process that could be undertaken by the tribunal in exercise of appellate powers, cannot be exercised by me in exercise of writ powers. As I have already said what is to be examined here is whether the decision making process is vitiated, and not the correctness of the decision. There is no reason to say that the decision making process is vitiated in any manner.

15. For these reasons, I dismiss the writ petition. There shall be no order for costs.

Urgent certified xerox of this order, if applied for, shall be supplied to the parties within three days from the date of receipt of the file by the section concerned.