

(1994) 05 CAL CK 0013
In the Calcutta High Court
Case No : A. No. Nil of 92

Smt. Mira Sur

APPELLANT

Vs

State of West Bengal and others

RESPONDENT

Date of Decision : 19-05-1994

Acts Referred:

Constitution of India, 1950 — Article 141, 144

Motor Vehicles Act, 1939 — Section 47, 47(3), 57

Motor Vehicles Act, 1988 — Section 71(1), 71(3)(a), 71(4), 80(2)

Citation : AIR 1994 Cal 212

Hon'ble Judges : Gitesh Ranjan Bhattacharjee, J

Bench : Single Bench

Advocate : Arabinda Chatterjee and Miss Amrita Singha, R. Bhattacharjee, for the Appellant; D.K. Seth and R. Bhattacharjee, for the Respondent

Judgement

1. In this writ petition the petitioner has challenged the decision of the State Transport Authority (S.T.A.), West Bengal dated the 30th December, 1992 Annexure-P to the writ petition rejecting the prayer of the petitioner for stage carriage permit. The petitioner on 5th August, 1989 made an application before the S.T.A., West Bengal for a permanent stage carriage permit in respect of the route Calcutta to Siliguri. Subsequently the petitioner moved this court by a writ petition which was disposed of by a learned single Judge of this Court by passing the order dated the 2nd May, 1991 requiring the S.T.A. to consider and dispose of the petitioner's application for stage carriage permit on the said route within a specified time. Thereafter the S.T.A. disposed of the application by a resolution dated the 6th June, 1991 by which the petitioner's application was rejected on the ground that the concerned route was a nationalised one and the State Transport Corporations were operating on the said route and it was felt that adequate services had been maintained on the route and no permit had been issued to private operators on the said route after notification. The said decision of the S.T.A. dated the 6th June, 1991 was challenged by the petitioner by a writ petition before this court. The said writ petition was finally heard and disposed of

by Haridas Das, J. on 8th Sept. 1992 requiring the S.T.A. to consider the application of the petitioner for stage carriage permit within a specified time. The petitioner then preferred an appeal against the said order of Haridas Das, J. dated the 8th Sept. 1992 and the said appeal was disposed of by a Division Bench by order dated the 24th Nov. 1992. The Division Bench in disposing of that appeal inter alia directed the S.T.A. to consider the petitioner's application for stage carriage permit within a specified time in terms of the order of the learned trial Judge and by following the principle laid down by the Supreme Court in the case of Mithilesh Garg and also follow the scheme laid down under the new Motor Vehicles Act, 1988 under which there was no maximum number of stage carriage fixed for any particular route. Be it noted that the order passed by the learned trial Judge stood modified by the order passed by the Division Bench in appeal. Pursuant to the direction of the Division Bench the petitioner was given a hearing by the S.T.A. on 30th December, 1992 but thereafter nothing was communicated to the petitioner about the fate of his application for the stage carriage permit. Consequently the petitioner moved this Court again by another writ petition. In that writ proceeding Kalyanmoy Ganguly, J. passed an order on 23rd April, 1993 adjourning the case for a fortnight for giving further opportunity to the State Transport Authority to produce the records and also directed that if in the meantime the petitioner applied for a temporary permit the S.T.A. would forthwith issue the same. On 13th May, 1993 the S.T.A. however preferred an appeal against the said order of Kalyanmoy Ganguly, J. dated the 23rd April, 1993. The S.T.A. also moved an application for stay of the impugned order and the stay application was disposed of on 13th May, 1993 by the Division Bench by directing the S.T.A. to grant temporary permit for a period of 4 months subject to the decision taken by the learned trial Judge on merits of the writ application. The appeal was also disposed of. Then on 14th May, 1993 the existing operators being Shri Pravash Chandra Sinha and others moved an application before the Division Bench inter alia for modification/clarification of the order passed on 13th May, 1993 and the Division Bench passed certain interim order on that application. Thereafter the S.T.A. moved an application before the Division Bench for recalling the order dated the 13th May, 1993 and the Division Bench disposed of the said application by recalling the order dated the 13th May, 1993 and also directed the S.T.A. to take steps on the basis of resolution, if any already taken and to dispose of the application filed by the petitioner for the grant of permanent permit in respect of the said route and implement the same within six weeks without prejudice to any order that may be passed in any other proceeding. The S.T.A. was also directed to grant temporary permit. The said order was passed by the Division Bench on 3rd August, 1993 which is Annexure-N to the writ petition. The petitioner was thereafter granted temporary permit for four weeks on that route. Subsequently, the petitioner was informed of the resolution of the S.T.A. taken in their meeting held on 30th December, 1992 whereby the petitioner's application for permanent permit was rejected, vide Annexure-P to the writ petition, on the ground that the concerned route was adequately served by State Transport Corporations as well as by the existing

private operators and further grant of permit on the route would cause unhealthy congestion. Being aggrieved by the said resolution the petitioner has now moved the present writ petition.

2. Although in the impugned resolution of the S.T.A. dated the 30th December, 1992 nothing has been mentioned (as a ground of rejection of the petitioner's application for stage carriage permit) that the concerned route, namely, the route Calcutta-Siliguri is a nationalised one, and in spite of the finding of Haridas Das, J, in the order dated the 8th Sept. 1992 as confirmed by the Division Bench in the order dated the 24th Nov. 1992 Annexures-G and H to the writ petition, that the route has not been declared as nationalised in accordance with the provision of the Motor Vehicles Act, the learned Advocate for the respondents tried very strenuously to show that the route is in fact a nationalised one but ultimately he had to abandon his effort in this respect for want of materials. In this connection, I would however, like to put it on record that this time the S.T.A. has not rejected the petitioner's application on the ground that the route is a nationalised one and as such it is not open to the learned Advocate for the respondents to import a new ground in support of the rejection of the petitioner's application when no such ground appears in the resolution of the S.T.A. for rejecting the petitioner's application. Moreover this point has been already settled by the decision of the learned single Judge as well as of the Division Bench as noted above. Any way, the zeal of the learned Advocate for the respondents in this respect once again proved abortive on point of fact also.

3. In the order of the Division Bench dated the 24th Nov. 1992 it has been held in effect that in considering the question as to whether the stage carriage permit is to be granted the question whether there are sufficient number of vehicles on the concerned route will not be a matter for decision of the S.T.A. in view of the liberalised policy adopted in the new Motor Vehicles Act of 1988. Under the M.V. Act, 1988 there is indeed a provision which provides for limiting the number of stage carriage on city routes in towns with population of not less than five lakhs. That provision is contained in Section 71(3)(a) of the M. V. Act, 1988 which is reproduced below:--

"71.(3)(a) The State Government shall, if so directed by the Central Government having regard to the number of vehicles, road conditions and other relevant matters, by notification in the Official Gazette, direct a State Transport Authority and a Regional Transport Authority to limit the number of stage carriages generally or of any specified type, as may be fixed and specified in the notification, operating on city routes in towns with a population of not less than five lakhs."

Obviously, the concerned route Calcutta-Siliguri is not covered by any such notification under the said Section 71(3)(a) and consequently there is no question of limiting the number of stage carriage permits in respect of that route.

4. It is submitted by the learned Advocate for the petitioner that after the

decision of the Supreme Court in *Mithilesh Garg, Vs. Union of India and others* etc. etc., there is no scope of refusing stage carriage permit on the ground of congestion on the route. On the other hand, it is submitted by the learned Advocate for the respondents that the decision in *Mithilesh Garg* has not been properly appreciated or understood as a result of which it is being generally assumed that the Transport Authorities have no power now to reject application for stage carriage permit on the ground of congestion on the concerned route. In the case of *Mithilesh Garg* the Supreme Court made a comparative study of the relevant provisions of the Motor Vehicles Act, 1939 (old Act) and the Motor Vehicles Act, 1988 (the Act). The Supreme Court also took note of the policy of liberalisation introduced into the Act. In paragraph 5 of the decision in *Mithilesh Garg* the Supreme Court has observed thus:

"A comparative reading of the provisions of the Act and the old Act makes it clear that the procedure for grant of permits under the Act has been liberalised to such an extent that an intended operator can get a permit for asking irrespective of the number of operators already in the field."

In view of such clear observation and interpretation of the Supreme Court it is highly improper for the S.T.A. in this case to reject the petitioner's application for stage carriage permit on the concerned route on the ground that "the route is adequately served by State Transport Corporations as well as by the existing private operators" and further grant of permit on the route will cause unhealthy congestion. How unfortunate it is that the S.T.A. refuses stage carriage permit on ground that the route is adequately served by STCs and existing operators when the Supreme Court, the highest court of the realm, lays down that one can get a permit for asking "irrespective of the number of operators already in the field". It is really very lamentable that the Transport Authorities in this State should venture to ignore the interpretation given by the Apex Court of the country and should arrogate to themselves the liberty to move in their own arbitrary and indecorous way totally ignoring the decision, observation and interpretation coming from the Supreme Court, and should be oblivious, under the toxicity of arbitrariness, of the constitutional mandate of Art. 144 which requires all authorities, civil and judicial, in the territory of India to act in aid of the Supreme Court. Again, Art. 141 of the Constitution ordains that the law declared by the Supreme Court shall be binding on all courts within the territory of India. If that be so and if the law declared by the Supreme Court is binding on all courts within the territory of India, as definitely it is, the same is, it must be appreciated by the Transport Authorities, binding on all civil and executive authorities also including the Transport Authorities. Umpteen number of times this High Court has drawn the attention of the Transport Authorities to the liberalised policy introduced in the 1988 Act in the matter of granting stage carriage permits and to the interpretation and observations of the Supreme Court in *Mithilesh Garg* with the expectation that the Transport Authorities while considering the applications for stage carriage permit will guide themselves properly in tune with the law in the matter as it now stands. Unfortunately that has yielded little result

and an illustration on the point is impugned resolution of the S.T.A. now under challenge in this writ petition.

5. If only the Transport Authorities had a little regard for the law declared by the Supreme Court and if they had the discipline to honour the constitutional mandate that all civil authorities are required to act in aid of the Supreme Court they could not have rejected the petitioner's application for stage carriage permit on a ground which is directly opposed to the interpretation of law as lucidly given by the Supreme Court in *Mithilesh Garg*, particularly where the Division Bench specifically directed the S.T.A. to follow in this case the principle laid down by the Supreme Court in the case of *Mithilesh Garg* and inter alia also to follow the scheme which had been laid down under the new Act under which there was no maximum number of stage carriage fixed for any particular route. The S.T.A. in this case could not have rejected the petitioner's application for stage carriage permit on the assigned ground unless they considered themselves a super authority above the level of the Supreme Court. The Supreme Court in paragraph-6 of the decision in *Mithilesh Garg* (supra) observed thus:

"The Parliament in its wisdom has completely effaced the above features, The scheme envisaged under Sections 47 and 57 of the old Act has been completely done away with by the Act. The right of existing operators to file objections and the provision to impose limit on the number of permits have been taken away. There is no similar provision to that of Section 47 and Section 57 under the Act. The Statement of Objects and Reasons of the Act shows that the purpose of bringing in the Act was to liberalise the grant of permits. Section 71(1) of the Act provides that while considering an application for a stage carriage permit the Regional Transport Authority shall have regard to the objects of the Act. Section 80(2), which is the harbinger of Liberalisation, provides that a Regional Transport Authority shall not ordinarily refuse to grant an application for permit of any kind made at any time under the Act. There is no provision under the Act like that of Section 47(3) of the old Act and as such no limit for the grant of permits can be fixed under the Act. There is, however, a provision u/s 71(3)(a) of the Act under which a limit can be fixed for the grant of permits in respect of the routes which are within a town having population of more than five lakhs."

Again, in paragraph 7 of the said decision in *Mithilesh Garg* (supra) it has been observed thus:

"It is, therefore, necessary that there should be plenty of operators on every route to provide ample choice to the commuter-public to board the vehicle of their choice and patronise the operator who is providing the best service. Even otherwise the liberal policy is likely to help in the elimination of corruption and favouritism in the process of granting permits. Restricted licensing under the old Act led to the concentration of business in the hands of few persons thereby giving rise to a kind of monopoly adversely affecting the public interest.

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In any case the transport system in a State is meant for the benefit and convenience of the public. The policy to grant permits liberally under the Act is directed towards the said goal."

The above observations of the Supreme Court are so clear and lucid in their purport that there is no scope of misunderstanding the same. Nothing can be more lamentable than that the Transport Authorities of West Bengal are impervious to the unambiguous purport and import of the observations and interpretation of the Supreme Court. It definitely requires no much exercise of intellect to understand the meaning of the clear expressions and observations of the Supreme Court in *Mithilesh Garg* as quoted above unless the intellectual aspect of the decision-making process is carefully kept segregated from the instinctive sincerity of approach or unless one is opposed to elimination of corruption and favouritism in the process of granting permits which has been pronouncedly spelt by the Supreme Court in the quoted observation to be a likely effect of the newly introduced policy of liberalisation. It is menacingly unfortunate that the S.T.A. in taking the impugned resolution should have remained carefully oblivious of the decision of the Supreme Court in *Mithilesh Garg* in spite of specific direction of the Division Bench to take the same into consideration. The S.T.A. in taking the impugned decision did not consider it necessary even to render at least a lip-service to the direction of the Division Bench to take the decision of *Mithilesh Garg* into consideration. *Mithilesh Garg* is conspicuously absent in the impugned resolution of the S.T.A.

6. The learned Advocate for the respondents however heavily relies upon paragraph 15 of the decision in *Mithilesh Garg* (supra) in support of his argument that in spite of all the observations made by the Supreme Court in the earlier paragraphs of the said decision the Supreme Court has still recognised the power of Transport Authority to refuse stage carriage permit on the ground of congestion on the route or on the ground of sufficiency or adequacy of existing transport services operating on the route. Such an interpretation of paragraph 15 of the decision in *Mithilesh Garg* is plainly inconsistent with the clear observations and analytical interpretations of the Supreme Court recorded in the earlier paragraphs of the said decision. Paragraph 15 of the decision in *Mithilesh Garg* which has been so heavily relied upon by the learned Advocate for the respondents is reproduced below:

"15. The petitioners have further contended that the conditions of roads, social status of the applicants, possibility of small operators being eliminated by big operators, conditions of hilly routes, fuel availability and pollution control are some of the important factors which the Regional Transport Authority is bound to take into consideration while taking a decision on an application for grant of permit. These are the matters which are supposed to be within the comprehension of the Transport Authorities. The legislative policy under the Act cannot be challenged on these grounds. It is not disputed that the Regional

Transport Authority has the power under the Act to refuse an application for grant of permit by giving reasons. It is for the Authority to take into consideration all the relevant factors at the time of quasi-judicial consideration of the applications for grant of permits. The statutory authorities under the Act are bound to keep a watch on the erroneous and illegal exercise of power in granting permits under the liberalised policy."

The learned Advocate for the respondents wants to interpret the said paragraph 15 to the effect that the Supreme Court has given a mandate in favour of the Transport Authorities to reject an application for stage carriage permit on consideration of conditions of road, social status of the applicants, possibility of small operators being eliminated, conditions of hilly routes, fuel availability and pollution control etc. as mentioned in the said paragraph. A plain reading of paragraph 15 of the said decision would however show that it was the submission on behalf of the petitioners in the said case that those are some of the important factors which the Transport Authority was bound to take into consideration in taking a decision on an application for grant of permit and that was not the observation or finding of the Supreme Court. The sentence these are the matters which are supposed to be within the comprehension of the Transport Authority" in paragraph 15 has been sought to be interpreted by the learned Advocate for the respondents as recognition by the Supreme Court of the factors mentioned in the preceding sentence. This, I must say, is not clearly borne out by the sequence of expressions contained in the said paragraph. No doubt that some factors were mentioned on behalf of the petitioners before the Supreme Court as factors required to be considered by the Transport Authority in taking a decision on an application for grant of permit, but the Supreme Court did not express in the said paragraph 15 any opinion about the admissibility of these grounds for consideration. In recording in paragraph 15 that "these are the matters which are supposed to be within the comprehension of the Transport Authorities" the Supreme Court meant, as is apparent and plain, that what was "supposed" in this connection was supposed by the petitioners of that writ petition and not by the Court. Without recording its own opinion about the validity of what was item-wise supposed by the petitioners as the matters for consideration in taking a decision on an application for grant of permit the Supreme Court only observed in the sentence following thereafter that "the legislative policy under the Act cannot be challenged on these grounds". There is no doubt that Transport Authority has the power under the Act to refuse an application for grant of permit by giving reason as has been observed by the Supreme Court in paragraph 15 but the ground of refusal must be sustainable not only by logic of reason but also by law. Obviously the Transport Authority cannot refuse permit on a ground which is not admissible under law as clearly expounded by the Supreme Court in the earlier paragraphs of the said decision, Rejection of the application for stage carriage permit, as has been done in this case by the S.T.A., on the ground that the route is adequately served by State Transport Corporations as well as by existing private operators and further grant

of permit will cause unhealthy congestion on the route is contrary, nay, antagonistic to the letter and spirit of the observations and interpretations of the, Supreme Court in the said decision of Mithilesh Garg.

7. Some of the grounds on which stage carriage permit may be refused have been enumerated in the Act itself. For example, where a limit of the number of stage carriages has been fixed u/s 71(3)(a) the Transport Authority may summarily refuse permit under the first proviso to sub-sec. (2) of Section 80 if the grant of any permit in accordance with the application would have the effect of increasing the number of stage carriages as fixed u/s 71(3)(a). u/s 71(4) the Regional Transport Authority has been given the power and is rather required to refuse stage carriage permit in favour of any individual in excess of five such permits or in favour of any company not being a State Transport Undertaking in excess of ten such permits. Section 71(2) requires the R.T.A. to refuse stage carriage permit if it appears from the time-table furnished that the provisions of the Act relating to speed are likely to be contravened. The proviso to Section 71(1) bars grant of stage carriage permit in favour of any company not being a State Transport Undertaking for a route of 50 kms. or less. There may also be other valid grounds for refusing stage carriage permit but such refusal must be based on valid and spelt out reasons based on consideration of all relevant factors. Indeed the power to refuse permit on valid ground has been recognized by the Supreme Court in paragraph 15 of the decision in Mithilesh Garg but nothing in paragraph 15 can be construed as specific enumeration by the Supreme Court of the grounds of valid refusal of permit. This much is however certain that the decision of the Supreme Court in Mithilesh Garg has settled the point that permit cannot be refused on the ground that the route is already adequately or sufficiently served by existing operators and any further addition to the existing strength of stage carriages on a route will lead to congestion.

8. That the question of congestion of vehicles on a route has been deliberately kept by the legislature outside the pale of consideration of Transport Authority in connection with the matter of grant or refusal of permit will be evident also from a study of sub-sec. (3) of Section 71 of the M.V. Act, 1988 which contains provision for limiting the number of stage carriages generally or of any specified type on city routes in towns with population of not less than five lakhs. But the number of stage carriages on such routes cannot be limited by Transport Authority at their discretion. They have been given no such discretion in the matter at all. The number can be limited only by the State Government by notification and that too only if so directed by the Central Government. Again the Central Government in giving any such direction is required to have regard to "the number of vehicles, road conditions and other relevant matters", and that too only with reference to city routes in towns with a population of not less than five lakhs. The main purpose of introducing sub-section (3) (a) of Section 71 is to provide a measure for avoiding unhealthy congestion on city routes in thickly populated towns. Such measure however can be taken only under the direction of the Central Government and not otherwise. It has also to be noticed in this

connection that the legislature did not at all empower even the Central Government or any authority whatsoever to limit the number of stage carriages on other routes not being city routes in town with a population of not less than five lakhs. A Transport Authority cannot assume jurisdiction to refuse permit on ground of congestion on a route in respect of which even the Central Government has not been empowered to direct for limiting the number of stage carriages on ground of congestion or on a route in respect of which the Central Government in spite of being so empowered has not yet chosen to issue any direction for limiting the number of stage carriages. Transport Authority being itself a creature of statute cannot override the statute and usurp jurisdiction defying the statute, defying the Parliament that made the statute and defying the Supreme Court that interpreted the statute. Legislature will take care of the problem of congestion in future if so considered necessary, but at present the legislature has not chosen to give any power in this respect to the Government, far less to Transport Authority beyond what has been provided in Section 71(3) (a).

9. That apart if discretion could at all be attributed, even then mere ipse dixit of the Transport Authority that grant of permit on a route will cause unhealthy congestion would not suffice as a ground of refusal of permit where such a conclusion is not shown to be based on sustainable figures and materials relevant to the purpose. In the impugned resolution of the S.T. A. nothing is mentioned or considered as to the number of buses plying on the route, the frequency of services and the approximate number of passengers generally travelling in the average on that route. In the absence of necessary statistics in these respects and in the absence of consideration of such statistics the Transport Authority cannot be allowed to reject an application for permit by merely saying that the route is already adequately served by existing operators and further grant of permit will lead to congestion. In the present case the impugned decision of the S.T.A. is not shown to be based on any facts and figures that could sustain the conclusion of the S.T. A. that grant of permit will lead to unhealthy congestion in the concerned route in view of the existing services operating there. In the circumstances, it must be held that the impugned resolution of the S.T.A. dated the 30th December, 1992 as communicated to the petitioner under its No.5943-STA dated the 2nd Sept. 1993 Annexure-P to the writ petition being opposed to the decision of the Supreme Court in *Mithilesh Garg* is per se illegal and the same not being based on materials and figures factually relevant for the purpose, is wholly arbitrary and is, therefore, bad in law. The said impugned decision therefore cannot be sustained in any view of the matter and the same is hereby quashed. The S.T.A., West Bengal is directed to grant permanent permit to the petitioner on the said route within three weeks from the date of communication of this order. The writ petition accordingly stands allowed with costs to the petitioner.

10. Petition allowed.