
(2012) 07 CAL CK 0130
In the Calcutta High Court
Case No : Writ Petition No. 5449 (W) of 2012

Sri Godadhar Roy and Another	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 04-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 72, 88, 88(4)

Citation : (2012) 07 CAL CK 0130

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Saktipada Jana, for the Appellant; Pantu Deb Roy and Mr. Biswajib Ghosh, for the State, for the Respondent

Judgement

The Hon'ble Mr. Justice Jayanta Kumar Biswas

1. The petitioners in this WP under art.226 dated March 12, 2012 are questioning a decision of the State Transport Authority, West Bengal (in short STA WB) dated February 15, 2012 (WP p.46). The decision dated February 15, 2012 is quoted below:-

Decision taken in the meeting dated 15.2.2012

One of the Permit Holders, Gadadhar Roy was present with Ld. Advocate, Shakti Pada Jana. They were duly heard and the reciprocal transport agreement between Jharkhand and W.B. is also examined. As per the said agreement, provision of allowing two vehicles under one permit does not exist.

Hence, STA decided not to allow two vehicles under the permit in question.

2. With a view to encouraging the movement of Transport Vehicles on interstate routes between West Bengal and Jharkhand, regulating and controlling their operation, providing facilities to travelling public and infrastructural support for the growth of industry and trade and also creating scope of employment, the

State of West Bengal and the State of Jharkhand entered into a Reciprocal Transport Agreement.

3. The Reciprocal Transport Agreement was published in the Kolkata Gazette on March 29, 2004. Clause 2(g) of the agreement is as follows:-

g) It is agreed upon between the two states that a Single pennit with 4(four) trips per day (2ups X 2 downs) may be granted where lengthh of the route is up to 100 kms. And single permit with 2(two) trips per day (1 up X 1 down) may be granted where the length of the route is more than 100 kms. But not more than 300 kms. If the length of the route is more than 300 kms, one single permit with one trip may be granted.

4. One of the routes to which the agreement was and is applicable is Dumka-Tata. The length of the route is 290 kilometres. Under the agreement two permits were to be issued for the route - one allocated to each State.

5. The State Transport Authority, Jharkhand (in short STA Jhar) granted one permit covering two vehicles for two trips per day (1 up & 1 down) on June 21, 2007, and STA WB that duly countersigned the permit under sub-s.(4) of s.88 of the Motor Vehicles Act, 1988 granted the other permit to the petitioners on October 13, 2009 covering one vehicle for two trips per day (1 up & 1 down).

5. On March 30, 2010 the petitioners applied to STA WB for allowing their permit to cover a second vehicle. Their case was that they were facing serious problems in giving two trips per day plying one vehicle on the 290-kilometre route. They cited the decision of STA Jhar that permitted the other permit to cover two vehicles for the same route for two trips per day (1 up & 1 down).

6. Mr. Jana appearing for the petitioners and relying on the provisions of s.72 of the Motor Vehicles Act, 1988 and r.99A of the West Bengal Motor Vehicles Rules, 1989 has submitted that, on the facts, STA WB was wrong in rejecting the petitioners' application on the grounds that the Reciprocal Transport Agreement would not allow the permit to cover two vehicles.

7. Mr. Deb Roy appearing for the State and relying on the provisions of sub-ss. (5) and (6) to s.88 of the Motor Vehicles Act, 1988 has submitted that the Reciprocal Transport Agreement does not allow the permit to cover more than one vehicle; and that if the permit is allowed to cover two vehicles, that is likely to encourage illegal operation of one vehicle that may not at all be plied on the route for daily trip.

8. The questions are whether there is any prohibition against permitting the petitioners to ply on the route two vehicles covered by their single permit; and if not, whether STA WB was justified in refusing the permission.

9. There is nothing to show that any thing in the Act, in the rules, or in the Reciprocal Transport Agreement prohibited against permitting the petitioners to ply on the route two vehicles covered by their single permit granted by STA WB.

10. The Reciprocal Transport Agreement was between the State of West Bengal and the State of Jharkhand. It was to create rights and obligations only of the contracting States. It could not and actually did not create any right and obligation of any person applying for grant of a stage carriage permit for a route to which it was applicable.

11. The holders of a stage carriage permit such as the petitioners, not parties to the agreement, could not get any right or incur any disqualification under the agreement. The agreement only provided them an opportunity to apply for grant of permits for the routes to which it was applicable.

12. Hence STA WB was wrong in saying that since the agreement did not provide for permission to cover two vehicles by one permit for a route, the petitioners were not entitled to apply for permission to ply on the route two vehicles covered by the permit already covering one vehicle.

13. There is no dispute that the provisions of s.72 of the Motor Vehicles Act, 1988 and r.99A of the West Bengal Motor Vehicles Rules, 1989 were and still are applicable to the permit granted to the petitioners by STA WB.

14. It is evident from the provisions of s.72 that a holder of a stage carriage permit can be permitted to use more than one vehicle on the specified route for which the permit is granted; that even more than one vehicle can be kept as reserve by a holder of a permit to maintain the operation and to provide for special occasions; and that conditions of a permit can be varied.

15. The provisions of r.99A of the West Bengal Motor Vehicles Rules, 1989 are as follows:-

99A. In respect of stage carriage permit, if the permit holder intends to ply two vehicles for two single trips under one under one stage permit, holder shall pay double the amount of permit fee:

Provided that in no case two round trips or four single trips for the two vehicles shall be allowed.

16. It is evident from the provisions of r.99A that a holder of a single permit can be permitted to ply two vehicles for two single trips, provided he pays the requisite permit fee.

17. There is no dispute that in this case the petitioners offered to pay double the amount of permit fee; and that making this offer they requested STA WB to allow their permit to cover a second vehicle. The apprehension that if the permit is allowed to cover two vehicles, then one vehicle may be misused or illegally used for purposes other than plying on the route for giving daily trip cannot be a ground to reject the request.

18. I am, therefore, of the view that STA WB possessing the power to allow the request has wrongfully rejected it. It is evident that STA WB has completely disregarded the decision of STA Jhar permitting the other permit holder to ply

two vehicles on the same route under a single permit. It is not disputed that the permit granted by STA Jhar was duly countersigned by STA WB under s. 88(4) of the Motor Vehicles Act, 1988. For these reasons, I set aside the impugned decision, allow the WP and command STA WB to permit the petitioners to ply a second vehicle on the route under the permit already covering a vehicle plying on the route. Compliance within four weeks from the date the order is served. The CAN (not appearing and treated as on the day's list) is disposed of. Costs remission request is allowed. No costs. Certified xerox.