
(2013) 10 CAL CK 0007
In the Calcutta High Court
Case No : Writ Petition No. 26449 (W) of 2012

Sri. Subrata Ghosal

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 08-10-2013

Acts Referred:

Citation : (2014) 2 ACC 368 : AIR 2014 Cal 54 : (2014) 1 CHN 195

Hon'ble Judges : D. Datta, J

Bench : Single Bench

Advocate : Arabinda Chatterjee and Ms. Prodosh Kumar Basu, for the Appellant;
Subhabrata Datta and Mr. Sankar Prashad Dalapati, for the Respondent

Judgement

D. Datta, J.—The petitioner is a permit holder providing stage carriage service on the inter regional route Baharampur to Suri via Lalbag, Jiaganj, Lalgola, Jangipur, Raghunathganj, NH - 34, Moregram, Lohapur, Nalhati etc. and back (express service), issued by the State Transport Authority, West Bengal. He is aggrieved by the decision of the Regional Transport Authority, Murshidabad (hereafter the RTA) dated July 26, 2012 to issue 123 permanent contract carriage permits in respect of trekkers, maxi cabs, auto rickshaws etc. having seating capacity ranging from 3 + 1 to 9 +1. The basic premise of challenge is that the applicants intending to provide contract carriage services on the respective routes/areas proposed by them did not specify particulars of the contracts entered into by and between them and the individuals seeking to avail such services. Accordingly, prayer has been made by the petitioner for quashing the impugned resolution dated July 26, 2012.

2. The sole contention of Mr. Chatterjee, learned advocate for the petitioner, is that while deciding to grant permits, the RTA did not consider the provisions of Sections 2(7) and 74 of the Motor Vehicles Act 1988 (hereafter the Act) as well as Rule 115 of the West Bengal Motor Vehicles Rules, 1989 (hereafter the Rules) and acted illegally for which judicial interference is necessary to set things right. According to him, one desirous of obtaining a permit to provide contract carriage

service must provide the names of the passengers with whom a contract had been entered for being carried from one destination to the other at the time the application for permit is presented before the permit issuing authority.

3. Reliance was placed on the decision of the Supreme Court reported in *Nirmala Jagdishchandra Kabra Vs. The Transport Commissioner and others*, .) by Mr. Chatterjee. It was observed therein as follows:

4. *** It is true that if the holder of the vehicle obtains a contract carriage, the owner may carry a passenger or passengers for hire or reward on contract, whether express or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum. In other words, the very permit which grants the contract for carriage of the passengers should contain the names of the passengers to carry from one destination to another destination without picking up or setting down en route for hire or reward but when the holder of a permit is another and permits them to carry the passengers and makes the contract dehors those mentioned in the list of passengers enclosed to the permit as contract carriage and takes the passengers from one destination to another, even without picking up or setting down en route the necessary consequence would be that the vehicle has been or is being used as a stage carriage but not a contract carriage.***

4. Mr. Chatterjee stressed on the point that the very permit which grants the contract for carriage of the passengers should contain the names of such passengers to be carried from one destination to another destination without picking up or setting down passengers en-route for hire or reward. Clearly, he seems to be inspired by the portion of the decision extracted supra.

5. It has been brought to the Court's notice by Mr. Chatterjee that the decision in *Nirmala Jagdishchandra Kabra* (supra) has been followed by the Supreme Court in its subsequent decision reported in *State of Andhra Pradesh and Others etc. Vs. B. Noorulla Khan and Another etc.*,

6. In the passing, Mr. Chatterjee referred to a fact which is not too unusual in present day Bengal. Having obtained a contract carriage permit, the permit-holder because of the apathy and indifference of the administration is encouraged to operate the vehicle covered by the contract carriage permit as a stage carriage and thereby violate the law with impunity. The auto-rickshaws operating on city routes, according to him, present a glaring example of such violation.

7. It has, accordingly, been prayed that the RTA ought to be commanded by a mandamus to recall all the permits that have been issued in pursuance of the impugned resolution since it is clearly contrary to the provisions contained in the Act and the Rules.

8. Mr. Datta, learned advocate representing the respondents raised a preliminary objection to the maintainability of the writ petition. According to him, the petitioner is an existing operator and, therefore, has no right to question grants made in favour of the other operators by the RTA. It was also his submission that the RTA in deciding to grant contract carriage permits has not committed any illegality. Furnishing the names of passengers for incorporation in the permit to provide contract carriage service is not envisaged by the Act or the Rules. Several decisions were cited by him in support of the objection regarding maintainability and based thereon, he prayed for dismissal of the writ petition.

9. Having heard learned advocates for the parties, I am of the view that the decision of the RTA to grant permits cannot be held to be illegal on the ground urged by Mr. Chatterjee. The writ petition is liable to fail on merits and, therefore, I see no reason to examine the preliminary objection and deal with the judgments cited by Mr. Datta.

10. For facility of reference, Section 2(7) of the Act is set out hereunder:

2(7) "contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum -

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another,

and in either case, without stopping to pick up or set down passengers not included in a contract anywhere during the journey, and includes -

(i) a maxi cab; and

(ii) a motorcab notwithstanding that separate fares are charged for its passengers;

11. The said definition came up for consideration before the Supreme Court in *Brijendra Kumar Chaudhari and Another Vs. State of U.P. and Others*, . Mr. Chatterjee must be given credit for citing this decision too alongwith the others referred to above. The relevant passage from the report reads as under:

10. The definition makes it clear that in order that a vehicle could be used to transport passenger or passengers there must be a prior contract express or implied; that the contract must indicate as to who are the passengers to be carried; that the contract shall have been entered into by a person with the holder of the permit or any person authorised by him; and that the engagement under "a contract" is for use of the vehicle as a whole.

12. An application for contract carriage permit in terms of the Rules is required

to be made in Form II and it is on the basis of the particulars mentioned in such form that a decision is taken either to grant or not to grant permit to the applicant. Rule 115 of the Rules, which prescribes the procedure for placement of an application for contract carriage permit before the authority concerned and the form do not expressly or by implication require that particulars of the contract entered into by an applicant desirous of obtaining a contract carriage permit with the individual seeking to hire the vehicle for carriage of passengers, and the names of the passengers to be carried on the vehicle from one destination to the other, must be indicated in the form itself. Since no such requirement exists, it is not necessary that as and when the permit is granted, the same should contain the particulars of the contract, the hirer, names of the passengers, etc.

13. The words "for the carriage of passengers mentioned therein" appearing in Section 2(7) of the Act is referable to the passengers mentioned in the contract and not in the permit issued for providing contract carriage service. In my humble opinion, if at all the learned Judges of the Supreme Court deciding *Nirmala Jagdishchandra Kabra* (supra) intended to lay down the law that grant of permit to provide contract carriage service ought to be preceded by a contract, as claimed by Mr. Chatterjee, it seemingly is not in sync with the decision in *Brijendra Kumar Chaudhari* (supra).

14. Even otherwise, the contention advanced by Mr. Chatterjee based on such decision appears to me to be absurd. No passenger having some amount of prudence would enter into any contract with a person having a vehicle, when such vehicle is not authorised to be operated on a route/area without a permit in terms of Section 66 of the Act having been obtained. It is only after issuance of a permit authorizing a particular vehicle to provide contract carriage service that the permit-holder or his authorized person may legitimately enter into a contract with a prospective passenger intending to avail the service by hiring the vehicle as a whole for his carriage from one destination to another. If the contract is entered into by one passenger with the permit-holder or his authorized person, or if there are more than one passenger and a contract has been entered into on behalf of all of them by one with the permit-holder or his authorized person, to carry him/them from one destination to another, without picking up or setting down passengers en-route, at a fixed or agreed rate, the vehicle can be used as contract carriage in accordance with the permit on such route/area as is mentioned in the permit itself. No requirement has been stipulated by any law that before obtaining a permit the applicant for a permit must disclose to the RTA the names of the passengers to be carried. It has to be remembered that a permit to provide contract carriage service, once issued, ordinarily remains valid for five years and during these five years there may be hundreds of passengers who might avail of the service intended to be provided by the permit-holder. It is not necessary for the permit-holder to obtain a permit each time he enters into a contract with the prospective passengers. What the law ordains is that there must be a contract between the permit-holder (or his authorized person) and the

passenger(s), and the names and particulars of the passenger(s) should be carried on the vehicle as a proof of the vehicle being operated as a contract carriage and not as a stage carriage. It is equally necessary that the permit-holder or the person(s) in charge of the vehicle at the time of providing service do not allow picking up of passengers not mentioned in the contract and/or setting down of passengers en-route, for, if that is indulged in, there could be a reasonable suspicion that the vehicle covered by a contract carriage permit is being operated as a stage carriage. However, it could well be that the journey may have to be brought to a premature end at a given point en-route, if the need of the passenger(s) to proceed further does not survive. Once the passenger(s) step(s) down, the contract would cease to be operative insofar as the obligation of the permit-holder to cover the entire distance that had been agreed upon when the contract was entered.

15. The decision in Brijendra Kumar Chaudhari (supra) is clear and to my mind, interpretation of "contract carriage" there ought to be taken as a guide. Although technically I am bound by all the decisions of the Supreme Court, but there is no difficulty in not following Nirmala Jagdishchandra Kabra (supra) and in following Brijendra Kumar Chaudhari (supra) for two reasons. First, the decision in Nirmala Jagdishchandra Kabra (supra) did not consider the decision in Brijendra Kumar Chaudhari (supra). Secondly, while the former is a decision rendered by two learned Judges of the Supreme Court, the latter is by a Bench of three learned Judges.

16. Mr. Chatterjee was given adequate opportunity to convince me that the decision in Nirmala Jagdishchandra Kabra (supra) should be followed. It was his submission that since the decision in Nirmala Jagdishchandra Kabra (supra) has been followed by the subsequent decision in B. Noorulla Khan (supra), the Court ought to follow the latter view. The decision in B. Noorulla Khan (supra) has noticed both the earlier decisions and has not laid down any principle of law which runs counter to the interpretation of Section 2(7) made in Brijendra Kumar Chaudhari (supra). I am, therefore, inclined to hold that the decision in Brijendra Kumar Chaudhari (supra) holds the field and since it lays down the law correctly, the decision in Nirmala Jagdishchandra Kabra (supra) cannot come to the rescue of the petitioner.

17. For the reasons aforesaid, I hold that there is no merit in the writ petition and the same stands dismissed, without costs.

18. However, before parting, I cannot resist reproducing below passages from the Constitution Bench decision of the Supreme Court in Shri Roshanlal Gautam Vs. State of Uttar Pradesh and Others, , and B. Noorullah Khan (supra) on the distinction between a stage carriage permit and a contract carriage permit.

19. In Roshan Lal Gautham (supra), it was ruled as follows:

8. By Section 2(3) a contract carriage is defined as a motor vehicle which carries a passenger or passengers on hire or reward under a contract from one point to

another without stopping to pick up or set down along the line of that route passengers not included in the contract. A stage carriage is defined as a motor vehicle carrying or adopted to carry passengers for hire or reward at separate fares paid for the whole journey or for stages of the journey. The distinction between the two is this: the contract carriage is engaged for the whole of the journey between two points for carriage of a person or persons hiring it but it has not the right to pick up other passengers en route. The stage carriage, on the other hand, runs between two points irrespective of any prior contract and it is boarded by passengers en route who pay the fare for the distance they propose to travel.***

20. In *B. Noorullah Khan* (supra), it was observed in paragraph 16 as follows:

16. The distinction between a stage carriage permit or a contract carriage permit as envisaged by the legislature has to be maintained as the two types of permits are intended to meet different requirements. The contract carriages are for those who want to hire the vehicle collectively or individually for a group or a party for their transport to a destination/destinations. The vehicle has to be hired as a whole for the carriage of passengers mentioned in the contract. There has to be only one contract for carrying the passengers mentioned in the contract from one destination to another. An agent or a group of persons/individuals cannot hire a public service vehicle for going from one place to another with passengers having different purposes. If such a construction is put then there would be no distinction between stage carriage or contract carriage permits. If contract carriage permit-holder is permitted to pick up an individual or a few of them from the starting point of the journey and drop them at the last terminus of the route it would virtually be a stage carriage with corridor restriction. Stage carriage is intended to meet the requirements of the general public travelling from one destination to another having different purposes whereas a contract carriage is meant for those who want to hire a public service vehicle as a whole collectively for their transport from one destination to another having the same purpose. The High Court was not right in holding that the travelling party as a whole need not have a common purpose for their travel and it was sufficient if they had a common destination.***

21. I regret to observe that the officers attached to the Motor Vehicles Department all over the State as well as the police administration do not seem to be aware of the distinction between a stage carriage permit and a contract carriage permit; even if they are aware, they tend to turn a blind eye to the violations that could be detected without straining one's eyes. It has rightly been submitted by Mr. Chatterjee that the auto-rickshaws operating on city routes on the basis of contract carriage permits actually operate as stage carriages. The administration is well and truly aware of how such vehicles operate, violating the law with impunity. Since intrusive judicial scrutiny cannot be resorted to in a case of the present nature, the Court may have to wait for a proper case to come up before it to ensure adherence to the law by the administration. However, there

could be no doubt that the respondents ought to activate themselves for preventing instances of contract carriages being operated as stage carriages. They ought to insist that contract carriage services are provided by the permit-holders by adhering to the provisions of the Act, meaning thereby that there must be a contract, express or implied, for carrying passengers from one destination to another destination without picking up and/or setting down passengers en-route. I hope and trust that the officers concerned would rise to the occasion and would not tolerate any instance of violation of the laws by all the stake holders in future. Copy of this judgment and order shall be forwarded to the Principal Secretary, Transport Department, Government of West Bengal for guidance of the members of the State Transport Authority, West Bengal as well as for onward transmission to the Chairmen of the regional transport authorities of the State to ensure compliance with the laws.

Urgent photostat certified copy of this judgment and order, if applied, may be furnished to the applicant at an early date.