

(2006) 06 CAL CK 0001
In the Calcutta High Court

Case No : GA No. 3177 of 2005, APOT 368 of 2005 and WP No. 222 of 2005

Sri. Ujjal Deb Ray

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-06-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 100, 100(2), 100(3), 103, 104
West Bengal Motor Vehicles Rules, 1989 — Rule 141

Citation : (2007) 1 ILR (Cal) 123

Hon'ble Judges : Pinaki Chandra Ghose, J; Japan Kumar Dutt, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Pinaki Chandra Ghose, J.—This appeal is directed against an order dated 31st August, 2005 whereby the Hon"ble First Court was pleased to dismiss the writ petition. The said writ petition was dismissed by His Lordship on the ground that the Petitioner being an existing operator has no legal right to oppose the plying of the vehicle in the notified route.

2. Facts of the case briefly are as follows:

The Petitioner/Appellant is a permanent State Carriage Permit holder in respect of the route Kolkata to jalpaiguri via VIP Road, Barasat, Karimpur, Berhampore Malda, Siliguri (TNBT) and the said permit is valid upto 18th March, 2008. The grievance of the writ Petitioner/Appellant that the Petitioner came to learn that on the basis of an offer letter bearing No. STA/77/05/SC/7E-1237/ 04 dated 10th January, 2005, the Deputy Secretary, State Transport Authority, West Bengal issued a permit in favour of the Managing Director, West Bengal Surface transport Corporation (hereinafter referred to as WBSTC) on the same date. In the offer letter there are certain conditions to be fulfilled and no fulfillment of the same the permit can be ganted after one month thereafter. But it is stated by the Appellant that it would be evident from the said letter that grant of permit has been effected on the date of the offer letter issued and furthermore, the said

offer letter was issued in violation of a notification issued by the State of West Bengal on 6th August, 2004.

Other point which has been stated by the Appellant/Petitioner that the vehicles which have been placed in the route are not belonging to the WBSTC, but the said vehicles belong to private individual, it is also stated that a lease agreement has been entered between the said private individual and the WBSTC.

3. Learned Advocate appearing on behalf of the Appellant/Petitioner contended that the Hon''ble First Court has failed to construe the provisions laid down in Chapter VI of the Motor Vehicles Act, 1988 (hereinafter referred to as the said Act). He further submitted that the provisions of law as laid down in Chapter V of the said Act has to be followed by the authorities before the grant of a new permit in favour of the State Transport Corporation or any other undertaking and the said Chapter VI has no manner of application and the same completely de hors the statute.

He further contended that the Hon''ble First Court has erred in holding that the existing operator has no locus standi to challenge the same, even if the grant has been made in contravention to the provision of Rule 141 of the West Bengal Motor Vehicles Rules, 1989. According to him, Section 104 of the said Act has no manner of application in the present facts and circumstances of this case. Hence, he submitted that the order so passed by the Hon''ble First Court is liable to be set aside.

He further relied upon the following decisions- (i) unreported decision of the Hon''ble Single Judge of this Court in W.P. No. 6229 (W) of 2002 (Manaranjan Mukherjee V. State of West Bengal and Ors.); (ii) an unreported decision delivered by the Hon''ble Single Judge of this Court in W.P. No. 8013 (W) of 2003 (Amirul Islam Mullick V. State of West Bengal and Ors.); (iii) a decision of the Hon''ble Supreme Court reported in Mithilesh Garg, Vs. Union of India and others etc. etc., ; (iv) a decision reported in 2000 (2) CLJ 376 (Sushil Kumar Daga and Anr. V. The State of West Bengal and Ors.); (v) decision reported in 2003 (1) CLJ 236 (Dilip Kumar Palmal and Ors. v. State of West Bengal and Ors.); (vi) an unreported decision of this Court in M.A.T. No. 1017 of 2003 (Mrityunjon Transport Company and Anr. V. The State of West Bengal and Ors.); (vii) an unreported decision in F.M.A.T. No. 2002 of 1996 (Secretary, Route No. 56 Bus Association V. Champadanga Dakshineswar Bus Association and Ors.) dated February 20, 1997 and he submitted that the Court came to the conclusion that there is no doubt that a rival operator cannot ordinarily challenge the grant of permit merely on the ground of business competition, but it can be challenged if a permit is granted illegally or arbitrarily or in violation of any statutory provisions, Rules and Regulations and/or authorized administrative order.

4. He submitted that in WP No. 6875 (W) of 2003 (Prosad Kumar and Ors. v. State of West Bengal and Ors.) the Hon''ble Single Judge of this Court held that an existing operator may not have the right to prevent lawful permit holder from

entering the field and business competition, but it will be illogical to extend the same principle to case of illegal entry. If an existing operator is denied the right to challenge illegal or unauthorized grant of permit on the ground that he is doing so to prevent business competition, then on the same logic he will have no right to object to operation of motor vehicles without any permit. There is no difference between an operator with an illegal permit and an operator without any permit. Learned Counsel appearing in support of this application/appeal submitted that an operator shall have the right to challenge the actions on the part of the authorities if such action is illegal or arbitrary and/or in violation of the provisions of law. He submitted that in the instant case the permit has been granted illegally and arbitrarily in violation of the statutory provisions, Rules and Regulations regulating such exercising of power. Hence, he submitted that the Appellant/ writ Petitioner has a right to file an application challenging such illegal order so passed by the authorities.

5. In the light of these decision it is necessary for us at this stage to find out the grievance of the writ Petitioner/Appellant herein as it appears that the writ Petitioner/Appellant herein filed the writ application being aggrieved by the issuance of the permanent Stage Carriage permit in favour of the WBSTC. The writ Petitioner has raised the challenge on grant of permit contending that after lapse of validity period of the offer letter in contravention of the Rule 141 of the said Rules, authority had no right to extend the same and thereby the grant of permit is bad in law.

6. Learned Counsel appearing on behalf of the Respondent pointed out that the permit was dealt with under Chapter VI of the said Act which relates to special provisions relating to State Transport undertaking. u/s 98 of the said Chapter VI, it provides that the provisions of Chapter to override Chapter v. and other Laws. Therefore, according to Learned Counsel appearing in support of the order passed by the Hon'ble First Court that the Hon'ble First Court after construing the said Chapter VI and the Rules made under the said Act came to the conclusion that the said Chapter,VI relates to special provisions relating to State Transport undertakings and Section 98 of the said Chapter VI provides that the said Chapter has overriding effect over Chapter v. and other laws. Hence, according to him, the Hon'ble First Court correctly came to the conclusion that the authority has a right to issue the said permit in favour of the WBSTC.

7. Now, let us consider the Chapter VI of the said Act. It appears to us that Chapter VI deals with special provisions relating to State Transport Undertakings. Section 98 of the said Act is reproduced hereunder:

98. Chapter to override Chapter v. and other Laws. - The provisions of this Chapter and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter v. or in any other law for the time being in force or in any instrument having effect by virtue of any such law.

It further appears that Section 99 of the said Act deals with the preparation of proposal regarding road transport service of a State transport undertaking. Section 100 of the said Act is reproduced hereunder:

100. Objection to the proposal. - (1) On the publication of any proposal regarding a scheme in the Official Gazette and in not less than one newspaper, in the regional language circulating in the area or route which is to be covered by such proposal any person may, within thirty days from the date of its publication in the Official Gazette, the objections to it before the State Government.

(2) The State Government may, after considering the objections and after giving an opportunity to the objector or his representatives and the representatives of the State transport undertaking to be heard in the matter, if they so desire, approve or modify such proposal.

(3) The scheme relating to the proposal as approved or modified under Sub-section (2) shall then be published in the Official Gazette by the State Government making such scheme and in not less than one newspaper in the regional language circulating in the area or route covered by such scheme and the same shall thereupon become final on the date of its publication in the Official Gazette and shall be called the approved scheme and the area or route to which it relates shall be called the notified area or notified route.

Provided that no such scheme which relates to any inter-State route shall be deemed to be an approved scheme unless it has the previous approval of the Central Government.

(4) Notwithstanding anything contained in this section, where a scheme is not published as an approved scheme under Sub-section (3) was held up on account of any stay or injunction by the order of any Court shall be excluded.

It further appears that Section 103 of the said Act deals with the issue of permits to State Transport undertakings and it would be necessary for us to reproduce the said section hereunder:

103. Issue of permits to State transport undertakings. - (1) Where in pursuance of an approved scheme, any State transport undertaking applies in such manner as may be prescribed by the State Government in this behalf for a stage carriage permit or a goods carriage permit or a contract carriage permit in respect of a notified area or notified route, the State Transport Authority in any case where the said area or route lies in more than one region and the regional Transport Authority in any other case shall issue such permit to the State transport undertaking, notwithstanding anything to the contrary contained in Chapter V.

Section 104 of the said Act is reproduced hereunder:

104. Restriction on grant of permits in respect of a notified area or notified route. - Where a scheme has been published under Sub-section (3) of Section 100 in respect of any notified area or notified route, the State Transport Authority or the

Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme.

Provided that where no application for a permit has been made by the State Transport Undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport Authority or the Regional Transport authority, as the case may be, may grant temporary permits to any person in respect of such notified area or notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State transport undertaking in respect of that area or route.

8. After considering the submissions made before us and also after construing the sections and the Chapter VI, it appears to us that under Chapter VI special provisions have been created by the Legislators in relation to the State Transport undertakings and it further appears that if there are any objections to the proposal so published by the State authority, any person shall have the right to file an objection in respect of such proposal before the State Government and which has to be decided by the State Government after giving a chance of being heard to the said objectors.

9. We have also considered the facts of this case as it appears to us that WBSTC duly applied that the Stage Carriage service in different routes including the said route Kolkata to Alipurduar before the State Transport authorities. It also appears that in a meeting held on 30th July, 2003 State Transport Authority duly adopted a permit route Kolkata to Alipurduar via Barasat, Berhampore, Malda, Siliguri in favour of WBSTC among other routes. On the basis of the said decision an offer letter was issued to the WBSTC dated 10th January, 2004. Subsequently, WBSTC furnished the documents and fresh offer letter dated 10th January, 2005 was issued to WBSTC and it has been stated on affidavit that such fresh offer letter was issued to maintain the formalities. It further appears that WBSTC upon receipt of information on the selfsame date duly satisfied with the conditions laid down by the authorities before the said date. It also cannot be brushed aside that during July, 2003 till January, 2005 no objection was raised in respect of the said decision of the State Transport Authority for the grant of permit in favour of the WBSTC. It further submitted that the said decision has already been given effect to with the grant of permit. We have also considered the said fact and it appears to us that this is nothing but a continuous process of the offer letter which was issued by the authorities in respect of their decision dated 30th July, 2003. Hence, we do not find that there is any illegal action on the part of the said authorities which can call for an interference by this Court. We also do not find that even the writ Petitioner/Appellant herein during that period ever raised any objection before the said authorities at any point of time. Hence, in these circumstances and on these facts in our opinion, authorities acted in accordance with the provisions of law and furthermore, Petitioner as it appears from the facts only raised an objection at this stage which would be evident from the conduct of the Appellant is nothing but a rivalry and hence such action on behalf

of the Appellant also cannot be accepted by us. We further hold that the Hon''ble First Court has correctly held that Chapte VI of the Motor Vehicles Act, 1988 is a self-contained Chapter and it has the over-riding effect in respect of the laws as laid down in Chapter V of the said Act. The common concept of filing of an application and thereafter an offer letter to be issued by the authorities and validity period of the aid offer letter shall not have any application in respect of a notified route with the grant of a permit to the individuals and/or the Applicants. Such concept is not applicable in granting of a permit in favour of the State Transport Undertakings as specifically dealt with under Chapter VI of the said Act. Hence, we do not find any ground to interfere with the order so passed by the Hon''ble First Court.

For the reasons and discussions held by us we dismiss this appeal.

Tapan Kumar Dutt, J.

I agree.