

(2008) 06 CAL CK 0065
In the Calcutta High Court
Case No : F.M.A. No. 2763 of 2007

State of West Bengal and Others

APPELLANT

Vs

Burdwan District Bus Association and Others

RESPONDENT

Date of Decision : 20-06-2008

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1)
Motor Vehicles Act, 1988 — Section 96, 96(2)

Citation : AIR 2009 Cal 32 : (2008) 3 CALLT 489 : (2008) 3 CHN 251

Hon'ble Judges : Tapas Kumar Giri, J;Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : N.I. Khan and Debasish Kar, for the Appellant;Prabhat Kumar Chattopadhyay, for Respondent Nos. 1 and 2, Sanat Kumar Roy and Mahima Ranjan Mukhopadhyay, for the Respondent

Final Decision : Allowed

Judgement

Ashim Kumar Banerjee, J.—The respondent No. 1 is an association of Bus operators in the District of Burdwan. They challenged a notification issued by the State imposing colour restriction on State Carriage. Similar challenge was also made through various writ petitions by different bus operators. The learned single Judge disposed of altogether eight writ petitions by common judgment and order impugned in this appeal. Learned single Judge allowed the writ petition and quashed the impugned notification. Being aggrieved and dissatisfied with the judgment and order of the learned single Judge State preferred the instant appeal in connection with W.P. No. 13191(W) of 2005. In respect of other seven writ petitions State did not prefer any appeal. We, however, directed notice to be given to the respective writ petitioners. Accordingly notice was served upon the learned advocates. We also heard Mr. Sanat Kumar Roy appearing for the writ petitioners in W.P. No. 11685(W) of 2005 and 13676(W) of 2005. Others, however, did not make any submission.

2. On perusal of the writ petition we find that the challenge thrown by the writ

petitioner was principally on two counts:

(i) The State had no authority to issue such notification as Central Rules already provided for colour restrictions.

(ii) In case State Carriage Vehicles were painted with a uniform colour combination it would be difficult to identify a particular vehicle if after causing accident fled from the spot.

3. The writ petitioners also contended that similar notifications were quashed by the learned single Judge earlier. Hence, subsequent notification was illegal being contrary to the order of the learned single Judge.

4. It was also contended that vehicles having State Carriage permit through Regional Transport Authority and the vehicles plying on the same route under the permit of State Transport Authority if asked to have uniform colour combination it would cause disastrous effect as it would be difficult for the commoners to identify the vehicle under whose permit it was running.

5. The learned single Judge upon hearing the rival conventions framed three issues for consideration which are as follows:

(7) The meaning of the word "regulating" as it appears in Clause (xviii) Sub-section (2) of Section 96 of the Motor Vehicles Act, 1988, whether could empower the State Government to legislate by framing a rule stipulating a particular colour scheme.

(2) Is there any justification to identify a particular colour Scheme in respect of all the public transport plying in the State on the basis of permit Granting Authority, namely, State Transport Authority and/or Regional Transport Authority.

(3) By such introduction of a colour scheme whether the general commuters would face the consequential effect of failure to identify the vehicle in the event of motor accident and/or in identifying the route, which he intends to travel.

6. While answering the issues so framed His Lordship ultimately held that the word "regulating" did not empower the State to prohibit use of any other colour combination apart from the suggested one. His Lordship also held that amendment of Rule 88B was beyond the legislative competence of the State and it affected the fundamental rights of the transport operators as guaranteed under Article 19(1)(g) of the Constitution of India. His Lordship also held that there was no reasonable Justification behind issuance of the said notification. His Lordship ultimately quashed the said notification holding the same beyond legislative competence. The judgment and order of the learned single Judge was reported in Asoke Chowdhury and Others Vs. State of West Bengal and Others, Hence, this appeal by the State.

7. Mr. N.I. Khan, learned Counsel appearing for the appellant contended before us thf v. at the State was empowered to suggest a particular colour combination for the benefit of the members of the public so that they could identify a Stage

Carriage Vehicle and distinguish the same from others. Such restriction was reasonable and could not be assailed. On the issue of legislative competence Mr. Khan contended that identical issue was dealt with by the Division Bench of the Kerala High Court in the case of G. Balakrishna Pillai Vs. The Joint Regional Transport Officer and Another, wherein it was held that such restriction was reasonable and could not be called in question. Mr. Khan prayed for setting aside the judgment and order of the learned single Judge as well as dismissal of the writ petition.

8. Mr. Prabhat Kumar Chattopadhyay, learned Counsel appearing for the respondent No. 1, while opposing the appeal contended that the decision of the Kerala High Court did not have any application in the instant case as the said decision dealt with school buses which formed a separate class by itself. Stage Carriage Vehicles could not be equated with the school buses. Mr. Chattopadhyay further contended that the statute permitted the State to regulate painting so that it was not mixed up with any mail carrying vehicle having a distinctive colour suggested in the statute itself. According to Mr. Chattopadhyay, "regulation" did not give any right to the State to issue prohibition for using of colour save and except the suggested one provided in the impugned notification. He also contended that the Central rules already dealt with the subject and there was no necessity for the State to issue separate notification which was beyond the legislative competence.

9. Mr. Chattopadhyay also contended that earlier at least on three occasions the State attempted to impose such restrictions and on each occasion this Court set aside the notifications and the last one was quashed by the learned single Judge by order dated March 9, 2005. Hence, the State was not entitled to issue a fresh notification to circumvent the Court order. On merits Mr. Chattopadhyay also contended that the rural vehicles could only be identified by colours and if uniform colouring was used for Stage Carriage Vehicles it would be difficult for the illiterate public to identify the vehicle in case it was involved in an accident.

10. He also contended that the draft notification was not widely circulated inviting objections from the members of the public and/or the operators on the issue of notification. Mr. Chattopadhyay relied on two Apex Court decision reported in Collector of Central Excise Vs. New Tobacco Co. Etc. Etc., and Garware Nylons Ltd. Vs. Collector of Customs and Central Excise, Pune,

11. On the issue of natural justice Mr. Chattopadhyay relied on the Apex Court decisions reported in K.I. Shephard and Others Vs. Union of India (UOI) and Others, and 1973 Appeal Cas Page 254 (TARR v. TARR).

12. On a plain reading of the judgment of the learned single Judge we find as follows:

(i) Since the Central Government already regulated painting and prohibited a particular colour to avoid confusion in identifying mail vehicle State was not competent to impose separate restrictions and amendment of Rule 88B was thus

beyond legislative competence.

(ii) Right to use a particular colour in a contract carriage was a right to carry on business freely as guaranteed under Article 19(1)(g) of the Constitution of India. Hence, restrictions imposed by the State violated under Article 19 of the Constitution of India.

(iii) Assuming the State was entitled to impose restrictions such imposition could only be permitted provided it was reasonable. On examining the impugned notification reasonableness could not be found.

(iv) There was no justification or rational foundation behind the impugned notification and as such it was arbitrary and without any logic and was hit by Wednesbury principle of arbitrariness.

(v) Suggesting a particular colour and imposing ban on using any other colour in the stage carriage could not come within the power of "regulating" and as such was illegal and beyond the legislative competence.

13. The learned single Judge on the above logic allowed the writ petitions and quashed the notification. Hence, this appeal by this State.

14. Under the appropriate provisions of the Motor Vehicles Act anybody can apply for a stage carriage permit and he is entitled to be considered for grant except on cogent ground in case of refusal. The Apex Court decided this issue in the case of *Mithilesh Garg, Vs. Union of India and others etc. etc.*, We, however, feel that grant of permit had nothing to do with the terms and conditions imposed by the State for running a stage carriage vehicle under the said permit. The grant of permit presupposes imposing conditions and rules and procedures for running the same otherwise anybody and everybody can purchase a vehicle and ply the same for commercial purpose. Permit means permission to run and permission to run must be on conditions imposed therein. We are only concerned as to whether such condition and/or restriction was reasonable. In the case of *G. Balakrishna Pillai (supra)*. Kerala High Court considered the identical condition imposed by Kerala Government in respect of the vehicle used by and for educational institutions carrying students and teaching staff. It was contended before the High Court that the buses plying under other organisations did not have any such colour restrictions. Hence, imposition of a condition for using a particular colour in respect school buses was unreasonable. The Kerala High Court held that Section 96 of the Motor Vehicles Act, 1988 empowered the State Government to make rules for the purpose of Chapter V. Chapter V contained various provisions for control of transport vehicles including display of advertising matters and/or prohibiting painting or marking transport vehicles in such colour to avoid confusion in identifying mail vehicles. The Government felt it is necessary to have more precautions with regard to the school buses carrying school children. Hence, imposition of a particular colour could not be said to be unreasonable. This decision was not cited before His Lordship. Hence, His Lordship did not have occasion to consider the same. We have carefully perused the judgment of the

Division Bench of the Kerala High Court and we do not find any scope to disagree with the same on this issue.

15. Let us now decide on the legislative competence. We have considered Section 92(2) of the said Act of 1988. Section 96(2)(xviii) empowers the State to regulate paining or marking of transport vehicles and in particular prohibiting the paining of the vehicle identical with mail vehicle. The learned single Judge observed that restriction of a particular colour to separate the mail vehicle was the true purport of the said provision and it did not empower the State to suggest a particular colour in the guise of "regulating". We have considered the logic so canvassed by His Lordship. With deepest regard we have for His Lordship and with all humility may we record our note of dissent on that score. His Lordship held that the word "regulating" is not apt to include power to prohibit. We respectfully disagree. "Regulation" means control and control can only be done by imposing conditions. If we presume that "regulating painting" does not empower the State to suggest a particular colour for a particular class of vehicle then in what mode it can "regulate the painting" apart from prohibiting a particular colour to segregate the mail vehicles is not known to us. We are of the view that the State was entitled to impose conditions while grant of permit and one of such condition could be suggesting a particular colour for a particular class of vehicles. Such restriction was imposed in terms of the power conferred under 96(2)(viii) i.e. "regulation of painting". Only question which could be logically raised was to test whether the impugned notification was reasonable or whether the State could reasonably justify such notification suggesting a particular colour for a particular class of vehicle. Such issue was squarely decided by the Kerala High Court and we have already expressed our agreement on that score.

16. Mr. Sanat Roy, learned Counsel appearing for the some of the writ petitioners tried to contend that since no appeal was preferred by the state in respect of the other writ petitions including those who were represented by Mr. Roy the judgment and order impugned in this appeal attained finality and in case such judgment is upset by us it would not be binding upon those writ petitioners.

17. The submission of Mr. Roy as recorded above does not have any justification. It is true that identical notification was challenged in various writ petitions. All were disposed of by a common judgment. Considering the factual matrix and the effect of the said Judgment it would appear that the said judgment was a judgment in remand the notification once quashed by His Lordship could not be applied by the State in respect of any other operator irrespective of the fact whether he challenged the same or not. Similarly, our decision on the said notification would be binding upon all the transport operators in the State irrespective of the fact whether he was a party to the proceeding before His Lordship or not.

The appeal thus succeeds. The order under appeal is set aside. The writ petition is dismissed. There would be no order as to costs.

Urgent xerox certified copy would be given to the parties, if applied for.

Tapas Kumar Giri, J.

I agree.