

(2007) 06 CAL CK 0042

In the Calcutta High Court

Case No : F.M.A No. 787 of 2005 and M.A.T. No. 660 of 2005

State of West Bengal and Others

APPELLANT

Vs

Nilima Nag

RESPONDENT

Date of Decision : 12-06-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 340

Citation : (2007) 4 CHN 218

Hon'ble Judges : S.S. Nijjar, C.J.;D.P. Sengupta, J

Bench : Division Bench

Advocate : N.I. Khan and Debasish Kar, for the Appellant;None, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Nijjar, C.J.—This appeal has been filed by the State of West Bengal challenging the order dated 11.02.2004 as well as the subsequent order dated 04.02.2005 passed by the learned Single Judge in W.P. No. 1773(W) of 2004 with C.A.N. No. 1947 of 2004 respectively.

2. We may notice briefly the facts. The writ petitioner/respondent (hereinafter referred to as "applicant") filed writ petition No. 19638(W) of 2003 in which it was claimed that the petitioner had applied before the Regional Transport Authority (hereinafter referred to as "RTA"), 24-Parganas (South), for grant of a permanent stage carriage permit on 26th September, 2002 and, subsequently, the aforesaid application was considered by the RTA on 01.11.2002 but the result has not been communicated to the petitioner. When the writ petition came up for hearing, it was not disputed by the learned Advocate for the State that the result of the application had not been communicated to the petitioner. The writ petition was therefore disposed of by the direction to the RTA to communicate the result of the application to the writ petitioner/respondent positively within one month from the date of communication of the order. Instead of communicating the decision in terms of the aforesaid order, the RTA gave fresh hearing to the

application and rejected the same on two-fold grounds. The grounds of rejection are as follows:

(a) The Regional Transport Authority, 24-Parganas (South) is unable to grant fresh permits on the route- SD-30 (Jagannathpur - Marine College) on the ground of construction of a road overbridge (fly-over) at Taratola. Due to which severe traffic congestion is occurring throughout the day causing great inconvenience to the travelling/ commuting public. The Regional Transport Authority, 24-Parganas (South) had in its meeting held on July 21, 2003 unanimously resolved not to grant fresh permits in the route in view of flyover construction;

(b) The Regional Transport Authority, 24-Parganas (South) has adopted a resolution in its meeting held on July 21, 2003 to the effect that permits relating to the routes where originating and terminating points are in Kolkata City, would be discouraged as a general rule, keeping in mind the extreme traffic congestion and state of the roads in the area.

3. Challenging the aforesaid two grounds the applicant filed Writ Petition No. 1773(W) of 2004. At the time of hearing the learned Advocate for the applicant placed before the Court the resolution of the meeting held by RTA on 1st October, 2002 indicating that the application of the applicant, which was at serial No. 13, had already been allowed. It was submitted that there was no reason for not communicating the order to the applicant. It was further submitted that ground No. 1 assigned in the impugned order is not tenable in the eye of law in view of the fact that the route for which application was made is not terminating within Kolkata City and, secondly, construction of flyover at Taratola More which is far away from terminal Taratola point of the route cannot be a ground of refusal of permit. Even the notification in the Official Gazette as required under the Motor Vehicles Act had not been published. The learned Single Judge held that since the application of the applicant had already been allowed in the meeting dated 01.10.2002 there was no just reason for not communicating such decision to the applicant and to consider the application afresh. The writ petition was allowed on 11th February, 2004 and the impugned order was quashed.

4. The RTA was directed to immediately issue offer letter in terms of the resolution dated 1st October, 2002 to the applicant within fortnight from the date of communication of the order of the High Court. Being aggrieved against the aforesaid order, the State of West Bengal filed an application for recalling the aforesaid order of C.A.N. No. 1947/2004 in W.P. No. 1773(W) of 2004.

5. This application was filed on the allegation that the writ petitioner (applicants) had practised a fraud upon this Court by producing a fabricated order dated 1st October, 2002 showing that on that day a decision was allegedly taken to issue offer letter in favour of the applicant. The application for recalling was opposed by the original writ petitioner (applicant) contending that the xerox copy of the order produced earlier was genuine, but it is the RTA who has changed the

resolution. It was strongly argued on behalf of the writ petitioner (applicant) that the RTA should be directed to produce offer letter issued to the persons whose name appeared along with the writ petitioner in the copy of the resolution dated 01.10.2002 produced by her. It was submitted that if those offer-letters are produced it would be apparent that the offer-letters were issued pursuant to the resolution dated 01.10.2002.

6. On the other hand, Mr. N.I. Khan, learned Counsel appearing on behalf of the RTA (respondents in writ petition), produced the original records being the computerised copy of the resolution indicating that the one filed the writ petition does not tally with the same. It was further submitted by the learned Counsel for the RTA that the persons mentioned in the xerox copy of the alleged resolution dated 01.10.2002 were given permits but, according to him, those were given on the basis of resolutions taken on different dates and not on October 1, 2002. It was also submitted before the learned Single Judge that at the relevant time there was no practice of issuing offer-letters to the selected persons. The successful applicants' names were published in the notice board of the office. It was only in cases where applicants wanted to purchase vehicle on getting loan from bank or financial institution that the authority used to issue offer-letters. The learned Single Judge dismissed the application for recalling with the following observations:

In view of the aforesaid allegations and counter-allegations, it is very difficult to decide such disputed question without taking oral evidence of the parties. However, the fact remains that the earlier writ application was disposed of in the presence of the learned Advocate for the State respondent and he did not dispute the fact that on October 1, 2002 the resolution was taken. Even at the time of hearing of the present writ application, Mr. Khan did not point out that on October 1, 2002, there was no such resolution.

Be that as it may, since this Court set aside the order impugned not only on the ground of non-compliance of the earlier order passed by this Court but also on merit holding the same is not tenable in law, I do not propose to recall my earlier order. Even if it is assumed for the sake of argument that on October 1, 2002, no such resolution was taken, since this Court has set aside the order passed by the Regional Transport Authority on merit holding that the reason assigned by the authority for refusing the permit was wrong, and this is a fit case where permit should be granted to the writ petitioner, there is no just ground of recalling of my earlier order.

I, thus, find that by way of affidavit it is not possible to verify the allegations made by the respondent but this Court on the merit hearing set aside Annexure P-6 to the writ application, there is no just ground for recalling my earlier order. This application is, thus, dismissed. Interim order granted earlier stands vacated. In view of the disputed question indicated above, the applicant is not required to pay costs awarded earlier.

In the facts and circumstances, there will be, however, no order as to costs.

Sd/ B. Bhattacharya, J.

(Bhaskar Bhattacharya, J.)

7. Aggrieved against the aforesaid orders passed at the motion stage the State of West Bengal has filed present appeal. The appellants had filed CAN No. 2014 of 2005 and CAN No. 2015 of 2005 seeking condonation of delay in filing the appeal as well as stay of the judgments of the learned Single Judge.

8. Both the applications were allowed by order dated 20th June, 2005. It was submitted by the learned Counsel for the RTA that the writ petitioner (applicants) had obtained the order dated 11th February, 2004 by misleading the Court. Since the writ petition was disposed of on the date when it was moved, the learned Counsel for the RTA could not obtain necessary instruction, therefore, the order should have been recalled. It was pointed out that in the resolution dated 01.10.2002 against serial No. 13, the name of one, Jahanara Sk., is mentioned in respect of vehicle No. 19A/3866. On the basis of the aforesaid submission both the orders of the learned Single Judge dated 11th February, 2004 and 4th February, 2005 were stayed.

9. The Division Bench observed as follows:

In the circumstances, it appears that the respondent had obtained the order dated 11th of February, 2004 by misleading the Court and that too long after one and a half year.

In that view of the matter, we grant stay of operation of both the orders dated 11th of February, 2004 and 4th February, 2005 and refrain the appellant from granting any permit to the respondent.

The department shall serve a copy of this order upon the respondent, Smt. Njlina Nag, W/o. Sri Dilip Nag, residing at 168/1, Roy Bahadur Road, Behala, Kolkata - 700034. On the returnable date she shall show cause as to why a proceedings u/s 340 of the Code of Criminal Procedure shall not be initiated against her.

10. We have heard the learned Counsel, Mr. N.I. Khan, appearing for the appellant at length. It has been vehemently argued by learned Counsel that even if the earlier decision of the RTA was held to be illegal and the impugned order and judgment had been set aside, no direction could have been given for granting of permit to the writ petitioner (applicant) in view of the subsequent decision of the authority dated 21.07.2003. In its meeting the authority had unanimously resolved not to grant fresh permit on the concerned route in view of the flyover construction. It was further submitted that such a direction was also not possible in view of the resolution of the RTA, which has been adopted by the RTA, 24-Parganas (South) in its meeting held on 21.07.2003 relating to the routes wherein the originating and terminating points are in Kolkata city. This

resolution has been passed keeping in mind the extreme traffic congestion and state of the roads in the area.

11. Both the decisions of the learned Single Judge dated 11.02.2004 and 04.02.2005 are based on alleged resolution of the RTA Board dated 01.10.2002 which, in fact, does not exist. The resolution was unsigned and could not have been relied upon. The learned Single Judge has erroneously ignored the pleadings of the appellant that the application of the writ petitioner was not considered at all by the RTA in its Board meeting dated October 1, 2002, therefore, there was no question of communicating decision of the RTA Board meeting dated 01.10.2002.

12. It has been vehemently argued by the learned Counsel for the appellant that the learned Single Judge has erroneously ignored the plea that the writ petitioner had obtained the order dated 11.02.2004 by producing a fabricated resolution. The appellant was not given any chance by the learned Single Judge to verify the authenticity of the resolution dated 01.10.2002 as the writ application was disposed of on the very first day, relying on the copy of the resolution produced by the writ petitioner/appellant.

13. We have considered the submission made by the learned Counsel for the appellant. The observations made by the learned Single Judge clearly show that the existence of the resolution dated 01.10.2002 was not challenged by the respondents by challenging the order passed by the learned Single Judge in W.P. No. 13638(W) of 2003. This writ petition was based on the resolution dated 01.10.2002. The grievance made by writ petitioner/applicant, was that in spite of the decision taken to grant a permit to the applicant in the resolution dated 01.10.2002 the same had not been communicated to her. This order was passed in the presence of the Advocate for the respondents. But there was no dispute about the existence of the resolution dated 01.10.2002. The existence of the resolution was not disputed even at the hearing of the present writ petition. In our opinion, the learned Single Judge has rightly observed that in view of the allegations and counter-allegations it would not be appropriate to recall the earlier order. We are also not inclined to accept the submission of the learned Counsel that the judgment dated 11.02.2004 suffers from any legal infirmity. The order passed in W.P. No. 13638(W) of 2003 directed the respondent No. 2, RTA to communicate the result of the application of the petitioner/applicant. Instead of complying with the aforesaid order the respondent decided to take a fresh decision and adjudicated the application of the petitioner/applicant. This decision could not have been taken by the RTA without challenging the order passed by the learned Single Judge on 11.02.2004 in W.P. No. 13638(W) of 2003. The appellant/RTA were also unsuccessful in persuading the learned Single Judge about the falsity or fabrications of the resolution dated 01.10.2002.

14. In our opinion, the learned Single Judge correctly observed that complicated and disputed question of facts could not be decided in an application for recalling of the order. Such disputes which are allegedly based on fraud and forgery could

not have been adjudicated merely on the basis of the affidavits. It is the settled position of law that the allegations being in criminal nature would have to be proved beyond reasonable doubt. Such allegations cannot generally be accepted merely on the basis of the affidavits. We have also perused the affidavits-in-opposition of the writ petitioner against the application filed by the appellant for recalling of the order of the learned Single Judge dated 11.02.2004. In this affidavit it is categorically stated that the applications have been filed by the appellants to support the resolution of the RTA dated 01.10.2002 which has been subsequently prepared with a view to file the application for recall.

15. It was also pointed out that writ petition No. 1773(W) of 2004 had been moved upon notice to all the respondents. It is further pleaded that the permits have been issued to all the persons mentioned in the resolution dated 01.10.2002 and one of the permits has even been transferred in the name of some other person. The RTA did not produce the permits granted to other person mentioned in the resolution dated 01.10.2002 although, it was admitted that such permit had been issued. It was emphatically stated that resolution which has been attached with the application for recalling of the order is manufactured by the authorities concerned by wiping out the portion in the resolution dated 01.10.2002. Even in the computer copy, the Secretary of RTA has signed as a member of the Board but, the person who affirmed the affidavit and termed himself as Secretary of the RTA has never been appointed as Secretary. We are of the opinion that it would not be necessary for us to notice the entire averments made in the affidavit. The application for recalling of the order and the affidavit-in-opposition which state the disputes raised by both the sides in the proceedings are such that could not have been decided without taking oral as well as expert evidence. Therefore, the learned Single Judge, in our opinion, has correctly held that it would not be appropriate to decide such disputed questions of fact without taking oral evidence.

16. We may also notice that all the three orders have been passed by the same learned Single Judge, i.e., Justice Bhaskar Bhattacharya. At all three stages the orders have been passed in presence of the Advocate for the State. It would, therefore, not be possible to discard the allegations made by the petitioner/applicant that a valuable right which have been accrued in favour of the petitioner is sought to be taken away arbitrarily and for extraneous considerations.

17. In view of the above, we find no merit in this appeal. The same is hereby dismissed. Interim order dated 20th June, 2005 stands automatically vacated.

Urgent xerox certified copy of this order, if applied for, be given to the appearing parties on priority basis.

D.P. Sengupta, J.

18. I agree.