
(2007) 12 CAL CK 0059

In the Calcutta High Court

Case No : G.A. No. 1005 of 2007, A.P.O. No. 181 of 2007 and W.P. No. 1612 of 2006

State of West Bengal and Others

APPELLANT

Vs

Purnima Tikadar

RESPONDENT

Date of Decision : 12-12-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 71(3)

West Bengal Motor Vehicles Rules, 1989 — Rule 141

Citation : (2008) 2 CHN 188

Hon'ble Judges : Pratap Kumar Ray, J;Prasenjit Mandal, J

Bench : Division Bench

Advocate : N.I. Khan, for the Appellant;P. Deb Roy, for the Respondent

Judgement

1. Heard the learned Advocates appearing for the parties.
2. Challenging the judgment and order dated 1st December, 2006 passed by the Learned Trial Judge in W.P. No. 1612 of 2006, this appeal has been preferred by the State respondents. By the impugned judgment under appeal, learned Trial Judge extended the validity period of offer letter for a period of three months and thereby directed the respondent State to issue route permit in route No. 202. The factual matrix of the case for which the writ petitioner moved the writ application in short as follows:

An offer letter was issued on 28th January, 2004 identifying the route No. 202, a route which is notified route u/s 71(3) of the Motor Vehicles Act, 1988 fixing the maximum number of stage Carriage Permit as could be granted as 35 in terms of the gazette notification of such declaration dated 20th May, 2003. In the offer letter, time-limit was fixed by 30 days. Petitioner was required to place vehicle on complying with Bharat Stage II compliance. Petitioner did not place his vehicle within the period of offer letter nor prayed for extension of such time-limit of the offer letter. Rule 141 of the West Bengal Motor Vehicles Rules is acting in the field of issuance of the offer letter which reads thus:

141. Every permit must contain the Registration Mark(s) of the vehicle(s) which shall ply by virtue of the permit granted and during the period prescribed by the Transport Authority granting the permit in the offer Letter which shall not normally exceed one month from the date on which the offer letter is issued, the grantee must produce the documents in respect of the vehicle(s) showing that he is in possession of the vehicle(s) as owner thereof and that the change of address of vehicle(s) concerned has been effected within this State, if previously registered outside this State and that the vehicle (s) is/are not covered by any kind of permit(s):

Provided that the Transport Authority granting the permit may allow time up to a limit of four months in respect of a grantee under the Additional Employment Programme or an Ex-serviceman:

Provided further that the Transport Authority granting the permit may for reasons to be recorded in writing relax the condition as to possession by ownership for such period as it might consider reasonable but in any case not beyond six months from the date on which the permit is granted. In such contingency, also, the condition as regards transfer or change of address shall not be relaxable.

3. Under, the said provision, time-limit for placing the vehicle in terms of the offer letter could be extended following the contingency thereof. Admittedly, the writ petitioner did not avail, such. Accordingly his offer letter has become absolutely dead. After roughly three years the petitioner moved the Writ Court seeking the relief for grant of permit, within three years time, the scenario to grant permit was changed in view of judgment and order dated 27th September, 2005, passed by the Division Bench [Coram: Dilip Kumar Seth, J. (as His Lordship then was) and Soumitra Pal, J.] being F.M.A. 604 of 2004 under cause title Sujata Ganguly and Ors. v. State of West Bengal and Ors. By the judgment dated 27th September, 2005 the Division Bench confirmed the validity and legality of the prohibitory notification dated 6th August, 2004 whereby and whereunder a total ban was imposed regarding grant of any permit as would touch the Central Business District, Kolkata, Band Stand Road and approach area of Howrah Bridge. Furthermore in the said judgment it was held under Clause 5.2 that the permit could be granted in respect of the notified routes following the number of such vacancies in terms of notification dated 20th May, 2003. Clause 5.2 reads thus:

5.2 The Regional Transport Authority, Kolkata and Howrah may fill-up vacancies against the strength fixed in the notification dated 20th May, 2003 issued u/s 71(3)(a) of the Motor Vehicles Act, 1988.

4. The appellant has produced the records to satisfy the Court that at present there is no vacancy at all. We are not concerned about that issue but we only concern with the point as to whether a Writ Court can extend the life of any offer letter which became dead three years back and thereby may direct grant of permit. On that question we are of the view that it is beyond the jurisdiction of

the Writ Court to allow such extension of life of dead offer letter by injecting new life under the statute particularly under Rule 141 as quoted above. The Regional Transport Authority is the appropriate authority to extend the validity period of any offer letter, that too upto a maximum limit of six months. It is an admitted fact that the writ petitioner did not approach the Regional Transport Authority seeking extension of validity period of offer letter before expiry of the 30 days time-limit and/or even thereafter but straightaway came to the High Court seeking extension of life of the offer letter which in our considered opinion is not permissible under the law. By the impugned judgment under appeal learned Trial Judge practically sat as an authority in terms of Rule 141 of the aforesaid provision.

5. However, a supplementary affidavit has been filed by the respondent/writ petitioner. The said affidavit as it appears was signed by one Purmina Tikadar whereas the name of the writ petitioner is Purnima Tikadar. Paragraph 9 of the said affidavit reads thus:

I say that out of six number of vacancies there are only five buses being Nos. WB-04C/2712, WB-04C/3571, WB-04C/2352, WB-04C/2628 and WB-04C/2852 have been placed in respect of route No. 202, the route in question. As such there is one vacancy still exists in respect of the said route in terms of the notice dated 17th August, 2003.

6. Paragraph 9 has been affirmed as true to her knowledge. Nowhere in this paragraph it is mentioned wherefrom the knowledge was derived. Without disclosing the source of the knowledge, this affidavit cannot be accepted. Furthermore this affidavit has not been signed by the writ petitioner but by another lady whose name is Purmina Tikadar claiming herself as writ petitioner/respondent. It is settled law that until and unless the affidavit is properly verified it has no value. The writ application is disposed of on "affidavit evidence", a settled legal position vide Barium Chemicals Ltd. case reported in AIR 1967 SC 295, the judgment of a Constitution Bench. It is also settled law that unless an affidavit is properly verified the authenticity and genuineness cannot be considered by the Court and no value could be added therein. Reliance may be placed in the judgment of Constitution Bench reported in A.K.K. Nambiar Vs. Union of India (UOI) and Another, .

7. Having regard to such legal position, we are not accepting the authenticity of contention as made in paragraph 9, particularly when the appellant has produced the record to satisfy us that there is no vacancy at all and all the notified vacancies have been filled up. The appellant has produced the names of the permit-holders, their corresponding vehicle numbers and Stage Carriage permit numbers including the date of issue thereof. Let the original document as produced signed by Secretary, Regional Transport Authority, Kolkata be kept with the records.

Considering that, we are of the view that the impugned judgment is not legally

tenable. As such, the same is set aside and quashed. Writ application accordingly stands dismissed. Appeal is allowed. Stay application is also allowed in view of the aforesaid terms.

8. Urgent xerox certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.