
(2007) 09 CAL CK 0031

In the Calcutta High Court

Case No : APO No. 55 of 2007 with WP No. 1393 of 2006

State of West Bengal and Others

APPELLANT

Vs

Sankar Automobiles and Others

RESPONDENT

Date of Decision : 14-09-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 71(3)

Citation : (2008) 1 CHN 598

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

Bench : Division Bench

Advocate : N.I. Khan, for the Appellant;S.N. Mukherjee and Niroj Gupta, for the Respondent

Final Decision : Allowed

Judgement

Pratap Kumar Ray, J.—Heard the learned advocate for the parties.

2. Challenging the judgment and order dated 20th September, 2006 passed by the learned Trial Judge in W.P. No. 1393 of 2006, this appeal has been preferred. By the impugned judgment under appeal learned Trial Judge extended the life of the offer letter dated 12th January, 2004 as was issued and thereby by a mandatory order directed grant of route permit in a route which is touching/ originating from the prohibiting zone, central business district, Kolkata in view of the prohibitory notification dated 6th August, 2004. The logic as advanced to grant mandatory order by the learned Trial Judge is that since in the case of Sujata Ganguly v. State of West Bengal, being F.M.A. No. 604 of 2004 there was an injunction order restraining to grant any permit as passed on 25th July, 2004 which subsequently after final hearing stood modified to this extent that the permit could be issued in respect of the routes irrespective of the fact that may traverse the prohibitory zone in the cases where offer letter was earlier issued. It is the contention of the appellant before us that the offer letter as was issued on 12th January, 2004 with a rider of its expiry after 30 days faced a natural death. But the writ petitioner/respondent moved a writ application in the High Court at

Calcutta praying for extension of such offer letter to produce the vehicle in W. P. No. 6120(w) of 2003 in which by the judgment and order dated 26th April, 2004 Bhaskar Bhattacharya, J. passed an order extending the time of the offer letter by a further period of two months with another direction of placement of a vehicle having Bharat Stage II compliance norms. The relevant portion of the order of Bhaskar Bhattacharya, J. passed in the writ application aforesaid reads thus:

In view of such fact I dispose of this application by extending the time of the offer letter by a further period of two months from today within which the petitioners must comply with all the terms mentioned in the offer letter. It is needless to say that the vehicle must not be more than three years old and it must comply with the Bharat Stage-II norms.

3. On the basis of the said order it is the submission of the learned Advocate for the appellant that the offer letter in terms of the order of the High Court dated 26th April, 2004 accordingly got its life for a further period of two months, that is upto 25th June, 2004 but the writ petitioner failed to produce the vehicle and as such the permit could not be issued. It is contended further that the order of injunction passed in the case of Sujata Ganguly (supra) as has been considered by the learned Trial Judge as a ground by which the Transport Authority was restrained to grant any permit and as such petitioner should be allowed a chance when by the final judgment in the case the injunction order was vacated, also is not a real state of affairs in view of the fact that the injunction order passed the said appeal Sujata Ganguly (supra) restraining grant of any permit was passed on 26th July, 2004 whereas the writ petitioner failed to produce the vehicle even in terms of the order of the High Court dated 26th April, 2004 within 25th June, 2004 upto which offer letter had life. Hence, with that contention it is the submission that the judgment under appeal is not sustainable. The writ petitioner/respondent has reiterated their contention as made in the writ application and supported the judgment by contending that in view of the injunction order passed in the case Sujata Ganguly (supra) dated 26th July, 2004 as the Transport Authority had no right to issue any permit, once the interim injunction was lifted the writ petitioner accrued the right to place his vehicle as per earlier offer letter. Having regard to the rival contention of the parties the only point is required to be considered whether in terms of the case of Sujata Ganguly (supra) whereby and whereunder the Court directed that the permit could be granted irrespective of affecting the Central Business District Zone, Kolkata in the event offer letter as already issued now to be tested so far as its legal implication. To check the air pollution as well as congestion of the vehicle in the Central Business District of Kolkata a prohibitory notification was issued banning grant of permit in respect of the routes as would traverse through the said prohibitory zone either by originating and/or terminating its route and/or by passing through the said area in question. The notification of 6th August, 2004 reads thus:

Whereas the Hon''ble Division Bench presided over by His Lordship the Hon''ble Mr. Justice D.K. Seth of the Hon''ble High Court at Calcutta by an order dated 21.1.2003 in G.A. No. 568 of 2002/A.P.O.T. No. 83 of 2002 was pleased to direct the Transport Department, Government of West Bengal, that a committee be constituted to examine the position relating to availability of road space, halting space/terminus, extent of accommodation of buses in such terminus and such other related matters in connection with issue of permits to the transport vehicles vis-a-vis the prevailing traffic congestion and automobile pollution in and around the cities of Kolkata and Howrah, to enable the State Government frame a comprehensive passenger transport policy for the city of Kolkata and its outskirts on the basis of the recommendation of the said committee;

And whereas the said committee, constituted vide notification No. 44-WT/7E-1497/2003 dated 2.1.2004 of the Transport Department, has submitted its report with recommendations for control of traffic congestion and vehicular pollution to the Government in July, 2004;

And whereas the Government of West Bengal in the Transport Department has considered the entire report and decided to accept the recommendations of the said committee for better control of traffic congestion and reduction in automobile pollution in the city of Kolkata in the interest of citizens;

Now therefore, in compliance of the aforesaid order of the Hon''ble High Court and in pursuance to the powers vested upon the State Government as per provisions of the Motor Vehicles Act and Rules framed thereunder, the Governor is hereby pleased to direct the State Transport Authority, West Bengal and all the Regional Transport Authority in the State, that:

1. No new bus route be formulated and permits be issued which may pass through the Central Business District, viz., Esplanade and Band Stand in Kolkata and Howrah station and approach areas of Howrah Bridge (Rabindra Setu); till further orders;
2. No new permit for Stage carriage shall be issued which may originate/terminate in Esplanade and Band Stand in Kolkata and Howrah stations;
3. No new bus route shall also be created/formulated in Kolkata and Howrah without creating any appropriate parking place having requisite amenities for both the passengers as well as the transport workers;
4. No new permit shall be issued for autorickshaw operating within Kolkata Metropolitan area.

This order shall take immediate effect.

4. The legality and validity of said notification became the subject-matter in the case of Sujata Ganguly (supra) and it was upheld in Sujata Ganguly (supra) when final judgment was passed. There was an injunction order dated 26th July, 2004 passed in the said case restraining grant of any permit till disposal of the

matter, but it was relaxed in the final judgment only in respect of those cases where offer letters were issued. The relevant portion of the judgment Clause 5.1 reads thus:

The State Transport Authority and Regional Transport Authority of Kolkata and Howrah may issue stage carriage permits against offer letters already issued by the concerned authorities prior to the issue of the notification No. 3438-WT/BM-139/2004 dated 2nd August, 2004 published on 6th August, 2004 subject however to the notification dated 20th May, 2003 issued u/s 71(3)(a) of the Motor Vehicles Act, 1988. No offer letter or permit shall be issued in violation of the policy decision notified on 6th August, 2004. In cases where offer letters have been issued after 6th August, 2004, no permit shall be granted in respect of such offer letters so issued.

5. The words "may issue permit against offer letter issued predated to prohibitory notification dated 6th August, 2004" irrespective of the fact that such grant would cause the air pollution and congestion of the vehicle for which a protective umbrella was formulated by notification in the nature of prohibition, should be read in the angle of tenor and purpose of the judgment delivered in the case of Sujata Ganguly (supra). In the case of Sujata Ganguly (supra) the issue involved therein was to test the legality of notification dated 6th August, 2004 on the issue of great important factors of air pollution and congestion of the vehicle as would traverse through the Central Business District, Kolkata and approach road of Howrah and Howrah station for which the notification was issued. Though the Court upheld the legality and validity of notification the Division Bench considered that offer letters already issued prior to the issuance of said prohibitory notification which could not be acted upon as because there was an injunction order passed this case, granting of permit should not suffer and in the angle an order was passed under Clause 5.1 of order that in terms of offer letters already issued, permit could be granted subject to condition that same would not breach the notification dated 20th May, 2003 being a notification in respect of the routes as were notified by fixing the total number of stage carriage permit u/s 71(3)(a) of the Motor Vehicles Act, 1988. Hence, having regard to such we are of the view that the words "offer letter" as used in Clause 5.1 for all purposes should be deemed as a valid offer letter which had its life prior to the order of injunction as passed on 26th July, 2004 and whose life expired during the pendency of the matter in the High Court at Calcutta in the said case, that is Sujata Ganguly (supra) but the offer letters already suffered the natural death prior to the date of injunction order aforesaid due to lapse of time, naturally were not given any further life by the said order of Division Bench. This is clear from purpose and purport of the judgment delivered in the case of Sujata Ganguly (supra), on reading the entire judgment whereby there is a total ban to grant any permit touching Central Business District. The relevant portion of judgment reads such:

6. The other question that has been raised that this policy decision prohibits

grant of permit only on routes originating from or terminating at CBD of Kolkata and Howrah as notified but also prohibits both the notified and non-notified routes touching CBD, Kolkata and Howrah. Such a decision is perverse and ultra vires the statute.

6.1. We do not think that if such a decision is taken the same can be said to be perverse or ultra vires the statute. Such routes can be operated without touching CBD and in such cases no such permit shall henceforth be granted apart from the permits already operating since prior to 6th August, 2004. In respect of permits granted after 6th August, 2004 the routes should be modified so as not to touch CBD, Kolkata and Howrah in terms of the policy declared by the notification published on 6th August, 2004.

6. Furthermore in the instant case another very vital point is to be considered that when any offer letter's validity became the subject-matter of a decision by the Writ Court and the life of such offer letter was extended by the Writ Court granting further time of only two months, whether there is any scope to extend the time-limit further by anybody including the Writ Court again. From the judgment delivered by Bhaskar Bhattacharya, J. as already quoted, the offer letter's life was extended further for a period of two months more and that expired prior to the order of injunction dated 26th July, 2004 as issued restraining the grant of any permit by the Division Bench in Sujata Ganguly (supra). Hence, in the present case where offer letter once became the subject-matter of the writ proceeding and the Court extended the time for two months, there is no scope for extension of further time which has been done by the learned Trial Judge while passing the impugned judgment under appeal. In that view of the matter since there is no life of the offer letter which breath last even on extension of such life by the order of this Court on 25th June, 2004, a date prior to the injunction order as issued restraining the grant of permit dated 26th July, 2004, we are of the view that the logic as advanced by the learned Trial Judge to grant a mandatory order for grant of permit with due respect is not legally sustainable.

7. Learned Advocate for the writ petitioner/respondent has pressed before us a document annexed at page 48 of the paper book to submit that before expiry of the life of the offer letter in terms of the judgment of Bhaskar Bhattacharya, J. on 23rd June, 2004, an application was filed expressing its desire to produce the vehicle. The letter reads thus:

To

The Deputy Secretary,

State Transport Authority,

West Bengal,

Writers Buildings,

Kolkata-1.

Sub: Offer Letter being No. STA/203/04/SC/7E-3/2000 Pt. Dt. 12.01.04 in respect of the Route Esplanade (Central Bus Terminus) to Khurshida via. Barasat, Malda, Chanchol.

Sir,

I am to inform you that the aforesaid offer letter was issued by you for grant of permit in respect of the route in question. On 5th March, 2004 an application was filed for extension of the offer letter. As the said extension was not made, accordingly, a writ application was filed being W.P. No. 6320 (W) of 2003 before the Hon'ble High Court at Calcutta and the said writ application was taken up for hearing by the Hon'ble Justice Bhaskar Bhattacharya on 26th April, 2004 and after hearing both the sides His Lordship was pleased to extend the time of offer letter for a further period of 2 months from 26th April, 2004 and was pleased to direct that the petitioner must produce the vehicle which should not be more than 3 years" old and it must comply with Bharat Stage-II norms.

In this aspect I would like to inform you that I want to place two vehicles of 2003 model, Bharat Stage-II compliance for having the permit in the route in question. But at the present moment I cannot produce the papers relating to one vehicle which can be placed on or before 1st July, 2004. In respect of other vehicles I am placing all the papers before you so that you can produce with the offer letter as aforesaid for granting permit in my favour. I am also giving word that the papers of the other vehicle would be placed immediately after returning of the said vehicles on or before 1st July, 2004.

I hope that you will allow the aforesaid concession in my favour in respect of one vehicle and will take appropriate steps for proceeding with the offer letter for granting permit in the route in question. I am enclosing herewith the xerox copies of the papers relating to the vehicle being No. WB-25B/1195 (contract carriage) which is of 2003 model and Bharat Stage-II compliance and I can produce the original papers in respect of the vehicle as and when required for your ready reference.

Thanking you,

Yours faithfully,

(For Shankar Automobiles)

8. On a bare reading of the said letter it appears that the vehicle was never produced. Only the xerox copies of the papers relating to one vehicle already covered under a contract carriage were annexed. Bhaskar Bhattacharya, J. directed that all necessary compliance in terms of the offer letter must be made within the said period of two months. In the offer letter there were so many conditions imposed as it appears from Clause 2 of the offer letter which reads thus:

If you are willing to obtain the permit you may communicate your acceptance of the officer within 30 days and furnish to this office the following documents within aforesaid 30 days for taking necessary steps by this authority:

- a) The certificate of registration of the vehicle in your possession and that vehicle should not be more than three years old from the date of its initial registration.
- b) The certificate of insurance of the proposed vehicle.
- c) The receipt showing payment of current Road Tax and Addl. Tax in respect of the proposed vehicle.
- d) Pollution under control certificates in respect of the proposed vehicle.
- e) Professional tax clearance certificate.
- f) Income Tax Clearance Certificate.
- g) Idle certificate in respect of the vehicle proposed from the registering authority and a certificate is also to be given to that effect that the proposed vehicle is completely idle.
- h) The detailed alignment of the route in question.
- i) Lease agreement in case of hired vehicle.
- j) There shall be inscriptions "UNDER S.T.A. W.B. PERMIT No.--, on both sides of the vehicles and writing should be clearly visible. A certificate to that effect from the concerned RTA is to be procured by the STA, W.B. before obtaining permit. Permit is to be written in the body of the bus after obtaining the permit from the S.T.A., W.B.
- k) Granting of permit would be considered only after a month on receipt of views on the proposed timetable framed by concerned R.T.A. after submission of related papers by you.
- l) Bharat StageII complaint vehicle is required for grant of permit against this offer letter.
- m) Prop, for the existence of the bus stand in respect of the termini of the route is to be furnished certificate from S.D.O./Municipal Authority/Panchayat in support of the same held be furnished.
- n) Name of the driver and of the conductor to be employees of the bus alongwith an attested copy of the drivers licence and conductor's licence is to be submitted.
- o) Name and address as of the garage including the name of the owner of the garage and also an attested copy of the agreement between the guarantee permit holder and garage owner to be required to be furnished.
- p) All original documents are to be produced before making any permit for the said route or as and when asked for by the authority.

q) Certified copy of the judgment passed by Hon"ble High Court, Kolkata in W.P. No.

You are requested to produce a detailed fare table of the existing approved, rate showing stage wise distance therein and the draw up "suitable time-table avoiding clashes of timings with of the other existing services and to submit the same in six (6) copies for consideration and approval of this authority within 30 (thirty) days from the date of receipt of letter. Failing which this offer letter will automatically stand cancelled after the expiry of the stipulated period of 30 days as mentioned above unless the proper documents showing the reasonable ground for delay in possession of ready vehicle for plying on road to the satisfaction of the S.T.A., W.B. is submitted before expiry of abovesaid 30 days and no further correspondence will be made to you in this regard.

9. From the aforesaid particulars as mentioned which were required to be produced, the writ petitioner did not produce anything but save and except the letter with the contention that he could produce the original papers in respect of vehicle when the said would be required for ready reference.

10. Having regard to such fact and in view of our observation as made so far as the meaning of the word offer letter as appearing in Clause 5.1 of the judgment of Sujata Ganguly (supra), we are of the view that this submission will not help the writ petitioner to have any mandatory order from this Court for grant of permit by confirming the judgment delivered by the learned Trial Court.

11. Having regard to our findings above, the impugned judgment is not legally sustainable, same is quashed and set aside. The writ application stands dismissed. The appeal accordingly is allowed.

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

Prasenjit Mandal, J.

I agree.