

(2006) 07 CAL CK 0065

In the Calcutta High Court

Case No : F.M.A. No. 815 of 2005 and C.A.N. No. 4442 of 2005

State of West Bengal and Others

APPELLANT

Vs

Shyamal Banik

RESPONDENT

Date of Decision : 13-07-2006

Acts Referred:

Motor Vehicles Act, 1939 — Section 51, 51(2)

Motor Vehicles Act, 1988 — Section 59, 72, 72(2)

West Bengal Motor Vehicles Rules, 1989 — Rule 115, 115(2), 141

Citation : (2006) 4 CHN 798

Hon'ble Judges : Prasenjit Mandal, J;P.K. Samanta, J

Bench : Division Bench

Advocate : N.I. Khan, for the Appellant;Arun Kanti Bera and Arun Kumar Ghosh, for the Respondent

Judgement

1. This is an application for stay of operation of the judgment and order dated 13th April, 2005 passed by the learned Single Judge in W.P. No. 160(W) of 2005. The writ petitioner applied for Permanent Stage Carriage Permit (Express Service) on the route DN-18(Express) Shyambazar to Hasnabad before the Regional Transport Authority (R.T.A in short). The said R.T.A. upon consideration of the application of the writ petitioner issued an offer letter dated 15th June, 2004 under its memo No. 807/MV/RTA/BST, directing him to place a vehicle with the specification and on the terms and conditions as noted therein within 120 days from the date of issue of the said offer letter. The said offer letter contained various terms and conditions out of which the condition No. 3 is of relevance for the purpose of disposal of this application. The said condition reads as under:

"The age of the vehicle must not be more than three years from the date of issue of offer letter and subject to observation of serial No. 1 referred to above.

2. Serial No. 1 of the conditions refers to the emission standard of the vehicle that may be put on the route by the writ petitioner on the strength of the offer letter.

3. It is not disputed that pursuant to the said offer letter the petitioner by its letter dated 25th June, 2004 produced before the Regional Transport Authority all relevant documents of the vehicle in question that was sought to be put in the route in terms of the said offer letter. It is also evident there from that the said vehicle was registered with the Motor Vehicles Department of the Government of West Bengal some time in the year 1988. The registration certificate also discloses that the vehicle in question was manufactured in the year 1988. As the said vehicle did not fulfil the condition No. 3 of the offer letter, no permanent stage carriage permit was issued to the writ petitioner.

4. The writ petitioner accordingly moved a writ petition in this Court for a writ in the nature of mandamus commanding the Regional Transport Authority to issue stage carriage permit in the said route to the writ petitioner in respect of the said vehicle as it failed to issue the same on the basis of the said offer letter, interestingly, the said writ petition was moved in this Court after a long lapse of ten months from the date of issue of the said offer letter. The learned Trial Judge disposed of the writ petition by commanding the Regional Transport Authority to issue the permanent stage carriage permit to the writ petitioner in respect of the said vehicle on the basis of the said offer letter with specific direction that the said offer letter should be treated as valid for the purpose of grant of a Permanent Stage Carriage Permit even though the same lapsed its force in terms of the provisions of Rule 141 of the West Bengal Motor Vehicles Rules, 1989. The learned Trial Judge passed such an order only because the petitioner produced necessary certificate from the competent authority to the effect that the vehicle in question conformed to the standard of emission as contained in the amended Rule 115(II), Clause D, Note-4 of the Central Motor Vehicle Rules, 1989. The learned Judge relaying upon a decision of this Court held that for conforming to the emission standard and in terms of the provision of amended Rule 115 of the West Bengal Motor Vehicles Rules, for the purpose of granting permit in a route in respect of a vehicle, alternative acceptable standard of emission of BS II is permissible. On the face of the said order it does not appear that the learned Trial Judge dealt with the question as to whether the vehicle in question fulfilled the condition No. 3 of the offer letter for the purpose of grant of a permit.

5. Mr. Khan, learned Advocate appearing on behalf of the Regional Transport Authority has seriously challenged the said judgment and order of the learned Trial Judge on two-fold grounds. First, the learned Trial Judge made such an order without taking into consideration the condition No. III of the said offer letter vis-a-vis the make of the vehicle in question which of the year 1988. According to him the condition No. III as stipulated therein, having not been fulfilled the petitioner was not entitled to a permanent route permit.

6. Second, such condition has been laid down by the Regional Transport Authority in the public interest. The Regional Transport Authority in terms of the provision of the Motor Vehicles Act, 1988 and the rules framed thereunder is absolutely competent to stipulate such condition irrespective of norms for

standard of emission fixed by it in condition No. 1 in the said offer letter.

7. Incidentally, it has also been submitted that condition No. 1 and condition No. 3 though may apparently appear to have some sort of co-relation but they are two distinct features of a vehicle. Compliance of condition No. 1 will not imply automatic compliance of condition of No. III. Mr. Khan in support of his contention as above referred to the decision of the Supreme Court reported to Subhash Chandra and Others Vs. State of U.P. and Others, wherein it has been held that condition that vehicle should be not more than seven years old from the date of registration during validity of permit is not ultra vires Section 51(2) of the Motor Vehicles Act, 1939. It is not in dispute that Section 51(2) is pari materia with Section 72 of the Motor Vehicles Act, 1988. For better understanding of the proposition as laid down by the Supreme Court in the aforesaid decision paragraph 4 of the said report is quoted hereunder:

Section 51(2)(x) authorizes the impost of any condition, of course, having a nexus with the statutory purpose. It is undeniable that human safety is one such purpose. The State's neglect in this area of policing public transport is deplorable but when it does act by prescribing a condition the Court cannot be persuaded into little legalism and harmful negativism. The short question is whether the prescription that the bus shall be at least a seven-year-old model one is relevant to the condition of the vehicle and its passengers' comparative safety and comfort on our chaotic high ways. Obviously, it is. The older the model, the less the chances of the latest safety measures being built into the vehicle. Every new model incorporates new devices to reduce danger and promote comfort. Every new model assures its age to be young, fresh and strong, less likely to suffer sudden failures and breakages, less susceptible to wear and tear and mental fatigue leading to unexpected collapse. When we buy a car or any other machine why do we look for the latest model? Vintage vehicles are good for centenarian display or the curious and cannot but be mobile menaces on our notoriously neglected highways. We have no hesitation to hold from the point of view of the human rights of road users, that the condition regarding the model of the permitted bus is within jurisdiction, and not to prescribe such safety clauses is abdication of statutory duty.

8. The Division Bench of Madhya Pradesh High Court much before to the decision as above rendered by the Supreme Court laid down the similar proposition of law in a case reported in Sheelchand and Co. Vs. State Transport Appellate Authority and Another, . In the said decision it was held words "stage carriage of a specified description" cover the condition requiring it to be of a particular year of manufacture.

9. The Division Bench of our High Court in a recent decision reported in 2004(1) CLJ 121 Ranjit Kumar Lahiri v. State of West Bengal and Ors. has held in no uncertain terms that Section 72 of the present Act being part materia with Section 51 of the 1939 Act, the decision of the Supreme Court in the case of S. Chander (supra) is very much applicable even while interpreting the present

Section 72 of 1988 Act notwithstanding the fact that u/s 59 of the 1988 Act, the Central Government has been so empowered. It has been held therein that the power of the Central Government u/s 59 of the Act does not exclude the power of the Regional Transport Authority to impose such condition in the interest of travelling public u/s 72 of the Act. Power u/s 59 of the Central Government and the power of the Regional Transport Authority u/s 72 of the Act are not mutually, exclusive or inconsistent with each other but are complementary to each other.

10. Upon such observation it has accordingly been held that the legislature in its wisdom has also empowered the transport authority to issue a permit and also to lay down the conditions as to the description and type of the vehicle which will be produced and in exercise of such power the Regional Transport Authority can ask for production of a new model Bus for safety, convenience and comfort of the travelling public which is also a matter of public interest, as held by the Supreme Court in the aforesaid decision.

11. The above Division Bench decision of this Court answers the arguments put forward by Mr. Bera appearing on behalf of the writ petitioner/respondent. Mr. Bera, however, has seriously contended that similar condition stipulated by Regional Transport Authority in its offer letter in respect of another person was challenged in this Court under writ jurisdiction. A learned Single Judge of this Court upon consideration of the relevant provision of the Act and the rules framed thereunder held that stipulation of such condition is not permissible which decision was affirmed by the Division Bench of this Court.

12. We have gone through both the judgments of the learned Single Judge and the Division Bench of this Court. Upon going through the said two judgments, in between the lines we are of the clear view that the same did not lay down a proposition of law that the Regional Transport Authority in exercise of its power under the provisions of the Act and the rules framed thereunder is incompetent to stipulate any such condition for placing a vehicle which is not old for more than some particular years. At the same time the said two judgments have been rendered by the Single Bench and the Division Bench of this Court without taking notice of the aforesaid Supreme Court decision and as such are held to be in per incuriam. The aforesaid Supreme Court Decision and the Division Bench judgment of this Court in the case of Ranjit Lahiri (supra), therefore clearly answers the point that the Regional Transport Authority in issuing an offer letter is absolutely competent to stipulate any condition like the condition No. 3 in the present case for the best interest of the travelling public in the State.

13. Mr. Bera further upon reference to the various judgments of this Court has contended that since the vehicle of the writ petitioner conforms to the emission standard as prescribed by this Court the same which has been certified as fit by the Motor Vehicles Department, should be deemed to have been complied with the condition No. 3. We are unable to accept such contention. The rules framed under the Motor Vehicles Act with regard to the emission standard or such emission norms as may have been fixed by a Rule of Law is absolutely different

and distinct from the age of a vehicle. For example it may so happen that a new vehicle which may be one or two years old may not conform to the emission standard whereas a vehicle which may be of ten years old may still conform to the emission standard if properly maintained. Emission norm is in relation to automobile pollution of the air whereas the condition of the vehicle is in relation to the body part of the vehicle. Therefore, the condition Nos. 1 and 3 in the offer letter though may appear to have some co-relation but are totally different and distinct and fulfilment of the condition No. 1 does not imply the fulfilment of condition No. 3.

14. Lastly, Mr. Bera has contended that such condition No. 3 has not been imposed by the Board of the Regional Transport Authority as no documents has been produced by the appellant/R.T.A to show that imposition of such condition was adopted in its resolution for issuing an offer letter to the petitioner. Mr. Bera has accordingly contended that such a condition has been incorporated by the Secretary of the R.T.A. while issuing the offer letter and as such the same is not a valid one and cannot be enforced in a Court of Law. We are also unable to accept such contention. The Regional Transport Authority has come up in appeal against the judgment and order of the learned Trial Judge thereby commanding the R.T.A. to issue permit to the writ petitioner pursuant to the offer letter. On behalf of the R.T.A the condition No. 3 has been seriously urged in support of this appeal, which clearly indicates the R.T.A's resolution to impose such condition No. 3 and till today it is seeking strict enforcement of such condition No. 3 for the purpose of granting stage carriage permit in the route concerned.

15. In this connection it is worthwhile to mention that Clauses (xxii) and (xxiv) of Sub-section (2) of Section 72 of the Motor Vehicles Act, 1988 prescribes that the Regional Transport Authority may after giving notice of not less than one month vary the conditions of the permit; attach to the permit further conditions which may be prescribed. So the Regional Transport Authority is thus empowered to attach any conditions subject of course in terms of the provisions of the aforesaid Act and the rules framed thereunder. It, therefore, cannot be said at this stage that the condition No. 3 as stipulated in the offer letter dated 15th June, 04 is not a condition stipulated by the R.T.A. but a condition incorporated by the Secretary of R.T.A. on its own without concurrence of the R.T.A.

16. Last but not the least Rule 115 of the West Bengal Motor Vehicles Rules, 1989 prescribes that an offer letter remains valid for a maximum period of six months from the date of issue of the same. In this particular case the offer letter was issued on 15th June, 2004. The writ petitioner challenged the same on the ground as above in a writ petition on 30th April, 2005 i.e., after expiry of more than four months from the date on which the validity of the offer letter ceased. It may, therefore, be said that the writ petitioner was guilty of delay and laches. For the foregoing reasons we are of the view that the judgment and order as passed by the learned Trial Judge cannot be sustained. Therefore, the same is set aside.

17. The application for stay is accordingly allowed.

18. On the reasonings as above we are of the view that no useful purpose will be served by keeping the appeal pending for hearing on merits. The same is treated as an day's list and allowed accordingly by setting the impugned judgment and order dated 13th April, 2005 passed in W.P. No. 160(W) of 2005.

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