

(2011) 01 CAL CK 0005

Calcutta High Court

Case No: Apot No. 450 of 2010 and W.P. No. 214 of 2005

State of West Bengal

APPELLANT

Vs

Nitish Saha

RESPONDENT

Date of Decision: Jan. 25, 2011

Citation: (2011) 4 CHN 701

Hon'ble Judges: Shukla Kabir (Sinha), J; Pinaki Chandra Ghose, J

Bench: Division Bench

Advocate: N.I. Khan, for the Appellant; Sankar Nath Mukherjee, for the Respondent

Final Decision: Allowed

Judgement

Pinaki Chandra Ghose, J.

This appeal is directed against an order passed by the Hon"ble First Court on 11.6.2010 whereby the learned Trial Judge modified the order passed on 4.3.2005 on the writ petition filed by the writ petitioners/respondents herein. The learned Trial Judge has directed the State Transport Authority to make endorsement on the permit of the petitioners allowing the petitioners to operate the vehicle in the route in question through Eastern Metropolitan Bye-pass. It has further been directed by the learned Trial Judge that the State Transport Authority shall make necessary endorsement within three weeks from the date of communication of that order. The writ petition as well as the application were disposed of finally by the learned Trial Judge on 11.6.2010. Being aggrieved, this appeal has been filed by the State authorities, inter alia, on the ground of suppression of material facts as well as on other grounds.

2. It appears that the writ petitioners applied for a stage carriage permit which was granted in their favour on 17.4.2008 by which the State Transport Authority issued an offer letter. The said offer letter was issued for grant of permanent stage carriage permit on the inter regional route (inter state) Barasat to Garia via Madhya gram, VIP Road, Sealdah, Gariahat, Bijon Setu, Santoshpur More, Garia Bus Stand avoiding E.M. Bye pass, After receipt of such offer letter, the writ petitioners filed a

writ petition praying for the following reliefs:

- a) A writ in the nature of Mandamus commanding the respondents, their men, agents and subordinates to show cause as to why the said impugned resolution adopted in the meeting dated 11.1.2005 should not be quashed and/or set aside;
- b) A writ in the nature of certiorari calling upon the respondents, their men or agents to transmit all the records pertaining to the case in particular so that the conscionable justice may be done;
- c) Rule NISI in terms of prayer (a) and (b) above;
- d) Rule be made absolute should respondents fail to show cause or sufficient cause;
- e) An interim order to the effect in the event the respondents has continued to issue permit ignoring the notification dated 4.8.1994 in the route Barasat to Garia to the other intending operators, then the petitioners should be issued permit first before others;
- f) Ad interim order in terms of prayer (e) above;
- g) Costs;

3. The grounds mentioned in the writ petition are that the State authorities have allowed the prayer of the writ petitioners even in the year 2004 and allowed them to use E.M. Bye pass and to make the E.M. Bye pass as a part and parcel of the permit so granted by the State authority in favour of various other operators. On the said writ petition, it has further been alleged that the State authorities had granted permits to the persons of their own choice. On the said application, an order was passed by the Court on 4.3.2005 in W.P. No. 214 of 2005 whereby the Court passed the following order.

After having considered the above application, it is made clear that the State Transport Authority, West Bengal shall be at liberty to issue the necessary permit in favour of the above applicants in terms of the offer letters already issued in their favour on the route "Barasat to Garia" and the vehicles of the petitioner in plying and/or in operating on the above routes shall not touch any part of the "Eastern Metropolitan Bye Pass" on the basis of the permits to be issued in their favour in terms of this order. The above order naturally will be subject to the final disposal of the above writ application. The above order is made as an interim measure to enable the above applicants to operate their vehicles in the meantime, meaning thereby, until the final adjudication of this writ application or until further orders.

The authority concerned, however, shall be at liberty to mention in the permit or permits, those are to be issued in favour of the above applicants, that their vehicles shall not touch any part of the Eastern Metropolitan Bye Pass in operating on the above two routes. The applicants, however, will comply with other formalities of this offer letter for obtaining permits in their favour.

4. It further appears that thereafter the writ petitioners filed an application being G.A.No.3665 of 2008 before the Court, inter alia, praying for modification of the order, which is set out hereunder:

An order commanding the respondent No.3 to endorse in the permit being P.St.P.No.244/08(I/R) Eastern Metropolitan Bye-Pass as a temporary measure by modifying the order dated 4.3.2005.

5. The averments made in the said writ petition, in particular, in paragraph 10 reads as follows:

Your petitioners state that he has a bona fide and unless an order is passed directing the respondents to allow the petitioners to ply their vehicle through E.M. Bye-pass they will suffer irreparable loss and injury as the passenger are not availing their bus because for the self-same route all other buses are plying through E.M. Bye-pass except their bus.

6. On the said application the Court was pleased to pass an order on 17th April, 2009 whereby the Court permitted the writ petitioners to approach the State Transport Authority, West Bengal for obtaining necessary modification of his existing permit which has granted in his favour pursuant to the order dated 4th March, 2005. The Court further made it clear that the writ petitioners will make necessary application to the State Transport Authority, West Bengal within two weeks from date and if such application is made, the Transport authority concerned will consider the same on its merits upon giving the writ petitioners a reasonable opportunity of hearing before passing its order or to make the necessary modification, as the case may be, of the existing permit in favour of the writ petitioners/applicants. His Lordship further made it clear that such steps to be taken by the said authority within four weeks from the date of receipt of such application so filed by the writ petitioners/applicants (the respondents herein).

7. From such order, it appears that the writ petitioners did apply before the Transport authority and the said authority after giving them a chance of being heard passed an order on 17th June, 2009 and the said authority held as follows:

In view of the existing notification of the Transport Department, STA, WB resolved to reject the prayer of the petitioner for inclusion of the point E.M. Bye-pass in the detail alignment of the route.

8. Thereafter, the writ petitioners filed a second writ application without specifically mentioning the fact that in terms of the earlier order dated 17th June, 2009, the authority gave a hearing to the writ petitioners and passed an order by recalling the prayer of the writ petitioners for inclusion of E.M, Bye pass in the detailed alignment of the route. It is to be noted that in the second application, the writ petitioners even averred the same pleading which is set out hereunder:

Your petitioners state that the said circular banning the plying of stage carriage through E.M. Bye-pass has no manner of application in the instant case as the application made prior to the said notification dated 18.02.2005. Your petitioners further state that it is well settled principle that the order, circular, notifications has no retrospective effect.

9. It further appears that the prayers in the second application is also similar to that of the first application so filed by the writ petitioners in the earlier application. The said prayer in the second application being G.A. No. 1198 of 2010 is set out hereunder:

A Writ in the nature of Mandamus commanding the respondent No.3 to endorse in the permit being P. St. P. No. Eastern Metropolitan Bye-pass as a temporary measure by modifying the order dated 04.03.2005.

10. Mr. N.I. Khan, learned Advocate appearing for the appellants drew our attention to the similarity in the averments and prayers made in the said two applications and further made it clear that the writ petitioners/applicants purposely suppressed the said fact that the matter has specifically taken up by the authority in terms of the earlier order dated 17th June, 2009 and passed a reasoned order.

11. According to Mr. Khan, the writ petitioners/applicants have suppressed the said material facts from the Court. It appears that in the second application, the Court finally disposed of the writ petition being W.P. No. 214 of 2005 and the application being G.A. No. 1198 of 2010 by the impugned order dated 11th June, 2010, which reads as under:

However, having regard to the facts that the State Transport Authority is now allowing the operators in general to operate through Eastern Metropolitan Bye-pass, the State Transport Authority is directed to make the endorsement on the permit of the petitioners, which is valid till 2013, allowing the petitioners to operate their vehicles on the route in question through Eastern Metropolitan Bye-pass. The necessary endorsement to the above effect shall be made by the authority, namely, State Transport Authority within three weeks from the date of communication of this order. The writ petition and the application are disposed of accordingly.

12. According to Mr. Khan the said writ petition and the second application should have been dismissed in limine for suppression of material facts.

13. At the time of hearing, we have asked the learned Advocate appearing for the writ petitioners/respondents as to why the writ petitioners have suppressed such material facts from the Court, but he could not answer such question. Mr Khan further submitted that the said order was obtained by the respondent by perpetrating fraud on Court. Therefore, the said order should be set aside and/or to be recalled.

14. In our opinion suppression of material facts entitles the appellants herein to get an order in their favour. Furthermore, the order so passed by the Hon"ble First Court on 11th June, 2010 without comparing the facts which are brought to our notice by the appellant.

15. After scrutinizing the facts, we find that the Court was misled by the writ petitioners at the time of obtaining the order dated 11th June, 2010 and the said order was obtained suppressing the material facts from the Court. We, therefore, of the considered opinion that if at any point of time it appears to the Court that some fraud has been perpetrated on the Court to obtain an order by any party or if there is any suppression of material facts, then it would be a ground to dismiss the application. The said position in law has been settled by the Supreme Court.

16. On the given facts, we hold that the writ petitioners/respondents have suppressed material facts from Court.

17. Therefore, in our considered opinion, this appeal must be allowed by setting aside the order dated 11th June, 2010 so passed by the Hon"ble First Court.

18. We further hold that the notification which has been issued by the authority has not yet been struck down by any Court of law and in view of that we are of the considered opinion that there is no arbitrariness on the part of the State authority in refusing the prayer for adding the Eastern Metropolitan Bye-pass in the main alignment of the route in question can be granted in favour of the writ petitioners.

19. For the reasons stated hereinabove, the appeal is allowed and the order passed by the learned Trial Judge dated 11th June, 2010 is set aside.

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

Shukla Kabir (Sinha), J.

20. I agree.