
(2008) 04 CAL CK 0008

Calcutta High Court

Case No: A.P.O. No. 209 of 2007, G.A. No. 1275 of 2007, W.P. No. 1211 of 2005

State of West Bengal and Others

APPELLANT

Vs

Abul Kalam

RESPONDENT

Date of Decision: April 7, 2008

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Motor Vehicles Act, 1988 - Section 100(2), 99

Hon'ble Judges: Surinder Singh Nijjar, C.J; Indira Banerjee, J

Bench: Division Bench

Advocate: N.I. Khan, Debasish Kar, for the Appellant; Sankarnath Mukherjee, for the Respondent

Final Decision: Allowed

Judgement

The Judgment of the Court was as follows:

1. Admittedly, the writ petitioner-respondent applied for grant of permanent stage carriage permit on the route from Barasat Central Bus Terminus to Baruipur via VIP Road Bypass and Garia on 2nd of September, 2003. The State Transport Authority considered the application in its Board meeting held on 18th of February, 2004 and resolved that the application of the writ petitioner/respondent cannot be allowed. It was rejected on the ground that further entry of stage carriage permit in Howrah and Kolkata will aggravate the traffic congestion and vehicular pollution. This decision was duly communicated to the writ petitioner/respondent vide office memo dated 12th of May, 2004. Aggrieved by the aforesaid decision, the writ petitioner/respondent had moved a writ application in this Court.

By order dated 14th of March, 2005, a Single Judge of this Court has been pleased to dispose of the writ petition by setting aside the resolution of the State Transport Authority with a direction to the State Transport Authority to consider the application of the writ petitioner/respondent. Pursuant to the aforesaid direction,

the application of the writ petitioner was again considered. However, in the meeting held on 8th of April, 2005 the application was again rejected in view of the promulgation of the Notification No. 1010WT/3M-154/2004 dated 11th February, 2005 18th of February, 2005. Aggrieved against the aforesaid resolution, the present writ petition has been filed.

2. The writ petition has been allowed by the learned Single Judge vide judgment and order dated 8th of February, 2007. It has been held by the learned Single Judge that the notification dated 18th February, 2005 cannot have any retrospective effect. Therefore, the resolution dated 6th April, 2005 has been set aside. Aggrieved against the aforesaid judgment, the present appeal has been filed by the State of West Bengal.

3. We have heard the Counsel for the parties. Mr. Khan submits that the learned Single Judge has erred in law in holding that the claim made by the writ petitioner/respondent would not be covered by the notification dated 18th of February, 2005. On the other hand, learned Counsel appearing for the respondent/writ petitioner submits that since the application of the writ petitioner for grant of the permit had been made prior to the promulgation of the notification dated 11th of February/18th of February, 2005, the writ petitioner/respondent would be entitled to a stage carriage permit. We have considered the submissions made by the learned Counsel for the parties. We are of the considered opinion that the claim made by, the writ petitioner/respondent is squarely covered by the notification dated 18th of February, 2005. In this notification it is clearly-mentioned that from the aforesaid date, the Scheme formulated u/s 99 of the Motor Vehicles Act shall come into operation. The Scheme has been duly approved u/s 100(2) of the Act. It has been duly published. The Scheme also provides that it has been formulated for the purpose of providing efficient, adequate, economical and properly coordinated road transport service. It is also provided that Calcutta State Transport Corporation shall operate on all the specified routes under the notification to the exclusion of all other passenger transport services. An exception has, however, been made in clause (1) of the notification as under:

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"(1) The existing permanent stage carriage permit holders as on the date of the publication of the approved scheme in the route/area specified in the schedule hereto or in any portion thereof.

4. In our opinion, the claim of the writ petitioner/respondent would not fall within the aforesaid exclusion clause. In this clause it is provided that the Scheme shall not be applicable to the existing permanent stage carriage permit-holders, as on the date of publication of the approved Scheme in the route/area specified in the Schedule thereto or in any portion thereof. Merely by making an application the writ petitioner did not become entitled to the grant of a permit. Certain other formalities

were required to be fulfilled before the permit could be granted to the petitioner. No material was placed before the Trial Court to show that the petitioner had taken any steps or incurred any expense, on the directions of the R.T.A. Therefore, no right of the petitioner can be said to have been infringed even on the principle of promissory/equitable estoppel. Admittedly, no permit had been granted to the writ petitioner/respondent till the publication of the Scheme. Therefore, in the peculiar facts and circumstances of this case, it would appear that no legal or equitable right of the petitioner has been infringed to enable the writ petitioner/respondent to seek the remedy under Article 226/227 of the Constitution of India. Since no legal or equitable right of the petitioner has been infringed, a writ of mandamus could not have been issued.

5. The appeal is allowed. The judgment of the learned Single Judge is set aside.

6. Xerox certified copy of this order be made available to the parties, upon compliance of usual formalities.