

(2007) 12 CAL CK 0010

Calcutta High Court

Case No: A.P.O. No. 197 of 2007 and W.P. No. 1262 of 2006

State of West Bengal and Others

APPELLANT

Vs

Jahangir Ali Mallick

RESPONDENT

Date of Decision: Dec. 5, 2007

Acts Referred:

- Motor Vehicles Act, 1988 - Section 71(3)

Citation: (2008) 3 CHN 434

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

Bench: Division Bench

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

Final Decision: Dismissed

Judgement

1. Heard the learned Advocate for the parties.

2. Challenging the judgment and order dated 14th September, 2006 passed in WP No. 1262 of 2006 this appeal has been preferred by the State respondents. By the impugned judgment learned Trial Judge directed grant of temporary route permit during pendency of the decision by the Transport Authority, Government of West Bengal regarding enhancement of number of State Carriage Permit in terms of Section 71(3)(a) of the Motor Vehicles Act, 1989 as per direction of Court and in the event of such enhancement of the number of route permits in terms of the said section to grant of permanent permit to the writ petitioner. The impugned judgment reads thus:

The Court: Since the petitioner has already been selected to be a fit candidate to operate the vehicle on the route covering the District of Howrah and also Kolkata, the concerned authority is directed to issue a temporary permit wholly without prejudice to the rights and contentions of the parties to the writ petition and purely as an interim measure within a period of two weeks from the date of communication of this order.

In the meantime, the Regional Transport Authority is directed to send a proposal to the Transport Authority, Government of West Bengal suggesting how the number of existing vacancies can be enhanced on the route in question and the Transport Department will take a decision on the proposal to be made by the Regional Transport Authority, Howrah, in terms of this order for the purpose of issuing necessary notification if issuance of such notification is found to be necessary. The above will be done within ten weeks from the date of communication of this order.

Needless to mention, if the proposal is accepted the petitioner will be entitled to obtain permanent permit.

The writ petition is disposed of as above.

There would be no order as to costs.

All parties concerned are to act on a xeroxed signed copy of this dictated order on the usual undertaking.

3. The writ application was moved by the writ petitioner by averting the following facts:

That the writ petitioner got an order of the High Court at Calcutta in its writ application being W.P. No. 11574(W) of 2003 for consideration of his application seeking route permit in the route No. 27 (Bankra to Park Circus) for plying the vehicle (Mini Bus). The authority considered the matter and made a priority list but thereafter has informed the writ petitioner a decision dated 15th July, 2004 that though the writ petitioner was in the priority list of concern route in serial No. 11 and the vacancy of the route due to "enhancement was 13 but no offer letter could be issued to the petitioner due to lack of vacancy as already four offer letter were issued in terms of the mandatory order of the High Court resulting no vacancy at the present moment. The said decision became the impugned order of the writ application which reads thus:

Government of West Bengal Office of the District Magistrate, Howra

Motor Vehicles Department

Memo No. M.V. Dated, Howrah the day of July, 2004."

From: Secretary,

R.T.O. Howrah.

To: Jahangir Ali Mallick

Gabberia. Howrah.

Sub: W.P. No. 11574 (W) of 2003 (Jahanhir Ali Mallick v. State of West Bengal and Ors.)

In compliance of the order of the Hon"ble Justice Pradipta Roy dated 12.9.2003 in connection with W.P. No. 11574CW) of 2003 in the petitioner Jahangir Ali Mallick was heard by the RTA Howrah on 05.7.2004 through the Id. Advocate Md. Rajjak Ali Gazi.

The RTA considered the application for offer letter/permit on the Route No. 27 (Bankra to Park Circus) and resolved that the petitioner name already in the priority list of concern route in the serial No. 11. As per notification dated 20.5.2003 enhance vacancy is 13. But four offer letters have already been issued in favour of four persons as per mandatory order of the Hon"ble High Court, Calcutta in W.P. No. 939 of 2000(2) 17932(W) of 2003(3) W.P. No. 1966KW) of 2003 and (4) W.P. 19473(W) of 2004.

So there is no scope for issuance of offer letter/permit in favour of the petitioner. At present all vacancy has been filled up.

Yours faithfully,

Sd/-

Secretary

Regional Transport Authority

Howrah

3. In the writ application nowhere the petitioner has assailed the grant of permit to those four candidates whose writ applications were mentioned in the impugned decision by the Regional Transport Authority by making them parties in the proceeding on seeking review of the earlier mandatory order of the High Court whereby and whereunder those writ petitioners were granted route permit, save and except mentioning of the fact that other four writ petitioners were granted permit. No materials averred to identify the name of those writ petitioners for appropriate relief by the High Court as for example cancelling of the grant of permit in favour of the persons who were not in the priority list or who were in position Nos. 12 and 13 of the priority list as the case may be. The petitioner simply prays in this writ application the following reliefs:

a) A writ of and/or writs in the nature of Mandamus, commanding the respondents, each one of them, their agents, subordinates and/or assigns to forbear from giving any effect and/or further effect to and/or taking any step or further step pursuant to and/or acting or further acting on the basis of the impugned Memo No. 2591/1/MV dated 15th July, 2004 being Annexure "P-4" to this application rejecting the prayer of the petitioner for grant of Permanent Stage Carriage (Mini Bus) Permit in respect of Route No. 27, Bankra to Park Circus in favour of the petitioner in any manner whatsoever;

b) A writ of and/or writs in the nature of Mandamus, commanding the respondents, each one of them, their agents, subordinates and/or assigns to forthwith cancel,

withdraw and rescind the impugned Memo No. 2591/ 1/MV dated 15th July, 2004 being Annexure "P-4" to this application;

c) A writ of and/or writs in the nature of Mandamus, commanding the respondents, each one of them, their agents, subordinates and/or assigns to forthwith issue offer letter for grant of Permanent Stage Carriage (Mini Bus) permit in respect of Route No. 27, Bankra to Park Circus, in favour of the petitioner on the basis of his application dated 26th November, 2002 being Annexure "P-I" to this application;

d) A writ of and/or writs in the nature of certiorari directing the respondents, each one of them, their agents, subordinates and/or assigns to forthwith transmit the entire records of this case forming the basis of issuing the impugned Memo No. 2591/1/MV dated 15th July, 2004 being Annexure "P-4" hereto rejecting the prayer for grant of Permanent Stage Carriage (Mini Bus) Permit in respect of Route No. 27, Bankra to Park Circus in favour of the petitioners before this Court and to certify them and on being so certified quash the same;

e) A writ of and/or writs in the nature of prohibition prohibiting the respondents, each one of them, their agents, subordinates and/or assigns from giving any effect or further effect to and/or taking any step or further steps pursuant to and/or acting or further acting on the basis of the impugned Memo No. 2591/1/MV dated 15th July, 2004 being Annexure T-4" to this application rejecting the prayer of the petitioner for grant of permanent Stage Carriage (Mini Bus) permit in respect of Route No. 27, Bankra to Park Circus in favour of the petitioner in any manner whatsoever;.

4. In the writ application there was no whisper about the mandatory order as passed by the High Court earlier which was taken as a shield to refuse the petitioner's claim by the Transport Authority. Petitioner ought to have assailed that order of the High Court and ought to have made the other four persons as parties in the proceeding seeking review of the earlier order of the High Court and praying cancellation of the grant of route permit for the purpose of fresh grant of permit in his favour following the priority and seniority list. In the writ application there is no such pleading, no averment and no prayer to that effect, but only prayer for not to give effect of the impugned decision and to grant permit in his favour.

5. Under 71(3)(a) of the Motor Vehicles Act, 1988 the statute provides that as per direction of the Central Government, the State Government shall notify the number of vacancies in a particular route for plying of the vehicle in the city routes or in town with a population of not less than 5 lakhs. The relevant provision reads thus:

71(3)(a) The State Government shall, if so directed by the Central Government having regard to the number of vehicles, road conditions and other relevant matters, by notification in the Official Gazette, direct a State Transport Authority and a Regional Transport Authority to limit the number of stage carriage generally or of any specified type, as may be fixed and specified in the notification, operating on

city routes in towns with a population of not less than five lakhs.

6. Under 71(3)(b) after such fixation, the State Government is required to reserve certain percentage of Stage Carriage Permits in the same ratio as in the case of appointments made by direct recruitment and there is a further provision for reservation of scheduled castes and scheduled tribes candidates. Under Clause (d) there is a provision for consideration of the application on the basis of financial stability and other particulars as mentioned thereof. Clauses (3)(b) and (3)(c) of the aforesaid Section 71 read thus:

(3)(b) Where the number of stage carriage are fixed under Clause (a), the Government of the State shall reserve in the State certain percentage of stage carriage permits for the scheduled castes and the scheduled tribes in the same ratio as in the case of appointments made by direct recruitment to public services in the State. (c) Where the number of stage carriage are fixed under Clause (a), the Regional Transport Authority shall reserve such number of permits for the scheduled castes and the scheduled tribes as may be fixed by the State Government under Sub-clause (b).

7. In the writ application petitioner nowhere has urged as to whether the other four persons in whose favour mandatory order was passed whether they belong to the reserved category in terms of Section (3(b)) and (c) as mentioned for which the High Court passed a mandatory direction directing grant of permit or not.

8. Hence it appears that writ petitioner failed to disclose the relevant particulars and also did not seek the appropriate relief on disclosing material facts. Learned Trial Judge on the said scenario ought to have rejected the writ application but learned Trial Judge passed a different direction of grant of temporary permit for the time being and consideration of permanent route permit directing to send a proposal for enhancement of vacancy. There is no such prayer in the writ application that there should be a direction to the State Government and the Central Government to enhance a vacancy by making necessary pleading in the writ application that such enhancement is required for the purpose to facilitate the commuters easy travelling in the vehicle on the route in question and/or identifying the need of such enhancement of further number of vacancies. Without any basis thereof in the pleading. Learned Trial Judge passed order directing enhancement which in our view was not permissible under the law. Furthermore, enhancement of a vacancy in terms of the said provision, even if it is made, on assuming that there is a need, still then the Clauses (b) and (c) of Sub-section (3) of Section 71 which is staring on our face requires reservation of route permit for reserved categories, which issue has also not been considered by the learned Trial Judge, as it might be that due to enhancement of such vacancy a reserved category candidate would be entitled to get the vacancy not the writ petitioner.

9. Having regard to such state of affairs, we are of the view that on the basis of the writ application as filed in the High Court at Calcutta the Trial Judge ought not to have passed such judgment which is impugned before us. Accordingly, we are not finding any merit in the writ. Impugned judgment is de hors of the statutory provision and it was passed without any pleading and the prayer thereof, the same, accordingly, stands set aside and quashed.

The writ application stands dismissed. Appeal is allowed.

No order as to costs.

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