
(1955) 03 CAL CK 0010

Calcutta High Court

Case No: Matter No. 167 of 1954

Bisakha Rani Ghose

APPELLANT

Vs

Satish Chandra Roy
Singha and Others

RESPONDENT

Date of Decision: March 10, 1955

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 19 Rule 1
- Motor Vehicles Act, 1939 - Section 47, 47(1)

Citation: AIR 1956 Cal 496 : 60 CWN 355

Hon'ble Judges: Sinha, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Sinha, J.

The facts in this case are shortly as follows:

2. The petitioner had a permit for plying a state carriage between Berhampore and Khagra Bazar, Murshidabad in 1950. That route was found unremunerative. In the same year she was also granted a temporary permit for the route between Ghantala Ghat and Radha Ghat which was also found unremunerative. In June, 1952, a temporary permit was granted to the petitioner in the Berhampore-Jalangi route and it was an express term of the grant that the petitioner should also run her bus in the town service which was unremunerative. In May, 1953, the R.T.A., Murshidabad invited applications for one permanent permit on the Berhampore-Kharimpore route via Jalangi. The petitioner made an application and the respondent No. 14 also made an application and there were other applicants. A Sub-committee was appointed to go into the matter and it appears that a report was made. That report is not before me, nor has it been disclosed to the petitioner. On 15-2-1954, the Regional Transport Authority, Murshidabad resolved that the

permanent route should be granted to the respondent No. 14, Sri Meghendra Narayan Singha. So far as the order is concerned nothing is said about other applicants. Against this order, the petitioner appealed to the State Transport Authority, West Bengal. It was pointed out in the petition that the petitioner had been carrying on a remunerative service together with an unremunerative service and was actually running a temporary service in what was practically the same route in respect of which a permit was about to be granted. The State Transport Authority allowed the appeal and set aside the order of the R.T.A., Murshidabad mainly on the ground that the R.T.A. had failed to consider the provisions of Section 47(1)(e) of the Motor Vehicles Act, and looked at from that point of view, the petitioner had a better claim to the grant of the permit than Meghendra Narayan Singha. The S.T.A. directed the R.T.A. to grant a permit to the petitioner. Against this order, the respondent "Meghendra Narayan Singha appealed to the Appellate Tribunal which consists of three members including Dr A. D. Mukherjee. The Appellate Tribunal went into the matter and allowed the appeal of the respondent Meghendra Narayan Singha. The first ground was that the S.T.A. had no jurisdiction to entertain the appeal because the application of the petitioner had not been refused by the R.T.A. and as such there was no right of appeal u/s 64 of the Motor Vehicles Act. Secondly, it is stated that the records did not show that the petitioner had ever complained of her unremunerative services either in the town or elsewhere, nor was there any inspection by the R.T.A. to find out the truth thereof, and in the absence of any such evidence it was difficult to give relief u/s 47(e). The Appellate Tribunal set aside the order of the Sub-Committee of the S.T.A. and of the R.T.A. and directed that the R.T.A. would hold the selection afresh and issue orders according to the provisions of the Act. This Rule was issued on 21-12-1954 upon the respondents to show cause why a writ in the nature of certiorari should not issue quashing the order of the Appellate Tribunal, and/or a writ in the nature of mandamus should not issue directing the respondents not to give effect to the said order on behalf of the petitioner, Mr. Dutt has taken three points. The first point is that at the hearing of the Appellate Tribunal, one of the members Dr. A. D. Mukherjee was not present. It appears from the copy of the Minutes annexed to the petition that the Minutes start by saying that Dr. A. D. Mukherjee, State Minister (Medical) was present at the hearing on 20-8-1954. The Minutes have been signed at the bottom by all the three members, and as appears from the annexure to the petition, it is signed by Dr. Mukherjee on the 12th October, by Mr. Dhur on the 8th November. The signature of Mr. S. C. Roy Singha is undated. In the petition there is distinct allegation, which is verified true to the knowledge of the petitioner, that the appeal was heard on 20-8-1954 but Dr. Amulya Dhan Mukherjee, one of the members of the Appellate Committee was not present when the appeal was heard. In answer to it, there is no affidavit from Dr. Mukherjee, but one B. K. Sen describing himself as "Secretary, State Transport Authority, Government of West Bengal of Writers Buildings" has affirmed an affidavit on 3-2-1955. Paragraph 15 is as follows:

"With reference to paragraph 20 (a) of the said petition I deny the allegation that the respondent Dr. Amulya Dhan Mukherjee, one of the members of the Appellate Committee was not present when the appeal was heard. The said respondent, Dr. Amulya Dhan

Mukherjee, was present during the hearing of the said appeal. The contention of the petitioner in paragraph 20(b) is erroneous."

3. This paragraph has been affirmed as "True to the best of my knowledge". I am not aware of any instance in which such a verification has been permitted. My attention has been drawn to the fact that in the copy of the Minutes it is stated that "Sree B. K. Sen, Secretary of the State Transport, was also present as representative of the S. T. A." I do not think, however, that this affects the matter very much. The Minutes on the face of it also show that Dr. A. D. Mukherjee was present. It has been stated, however, on oath by the petitioner that Dr. A. D. Mukherjee was not present. In the petition it was, of course, not necessary to say anything about Sree B. K. Sen. In his affidavit, Mr. Sen does not state that he was present at the hearing, and if he was present at the hearing I do not see why he has verified it "True to the best of my knowledge", because in that event it would be true to his knowledge. The petitioner here is obviously challenging the correctness of the Minutes and there is no satisfactory evidence before me that the Minutes are correct. It has now been held over and over again that affidavits must be either affirmed as true to knowledge or from information received provided the source of information is disclosed, or as to what the deponent believes to be true, provided that the grounds for such belief are stated. It is easy to see that the words "To the best of my knowledge mean nothing. The petitioner does not say whether he was present at that day's hearing or what is the extent of his knowledge upon the subject. If it be based upon information, the source of it has not been disclosed. In my opinion, this kind of verification cannot be accepted and the result is that the allegation in the petition is uncontradicted. The Minutes are, therefore, not correct, and a person has subscribed his signature to the Minutes of the Tribunal in which he was not present at the hearing. The point is, therefore, fatal to the validity of the findings of the Tribunal, and on this point alone the application must succeed. I shall, however, deal with the other two points. With regard to the point taken by the Appellate Tribunal that there was no refusal by the R.T.A. to grant a permit to the petitioner, this is somewhat novel. In this particular case there was one permit to be given, and several applicants. After considering the respective merits, it was, I presume, given to the person who according to the R.T.A. was the most deserving. It follows that the applications of the others were rejected and/or refused. Every citizen has a fundamental right to carry the business of his choice. The provisions of the Motor Vehicles Act imposing restrictions and limitations thereon by way of imposing the requirements of taking out a permit and/or a licence, are reasonable but must be strictly followed. When a person applies for a permit the authorities must either accept it or refuse. They cannot keep it in cold storage or "in the air" so to say. I have no doubt whatsoever that in this particular case the legal position is that the application of the petitioner was refused. Consequently the appeal before the S.T.A. was competent and the S.T.A. had jurisdiction to deal with it. There is therefore an error on the face of the order of the Appellate Tribunal.

4. With regard to the third point, viz., the absence of any records before the R.T.A., that might or might not be a good point. It is not possible for me to decide this point without seeing the records, including the report of the Sub-Committee. These records have not been produced before me and have not been made available to the petitioner. I might only add here that compliance with the provisions of Section 47 is mandatory. In other words, the Regional Transport Authority dealing with the applications for permit is bound to consider the provisions of Section 47. Of course, if nobody raises the question which is relevant to Section 47(1) (e) it does not follow that the R.T.A. would have to act suo motu. But if the point is raised or is obvious from the facts placed before the R.T.A., it is bound to consider it.

5. The respondent Meghendra Narayan Singha has appeared before me, and the learned advocate appearing for him says that he has no objection to the appeal being reheard by the Appellate Tribunal.

6. For the reasons aforesaid, this Rule must be made absolute. There will be a writ in the nature of certiorari issued quashing and setting aside the order of the Appellate Tribunal dated 20-8-1954 mentioned in the petition, and there will be a writ in the nature of mandamus directing the respondents to forbear from acting on the said order. The matter will, therefore, now go back to the Appellate Tribunal, to be dealt with according to law. There will be no order as to costs.