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Soumen Maity Vs The State Of West Bengal and Others
 Sridhar Kumar Sahu Vs State Of West Bengal and Others

Writ Petition No. 1849 of 1998 and 12726 (W) of 1998

Court: Calcutta High Court

Date of Decision: April 22, 1999

Acts Referred:
Motor Vehicles Act, 1988 â€" Section 88(5)

Citation: 104 CWN 64

Hon'ble Judges: Altamas Kabir, J

Bench: Single Bench

Advocate: Molay K. Bose, Kaushik Banerjee, Dilip K. Samanta and Mala Dutta, for the Appellant;K.K. Maitra, Aurobinda Chatterjee, Kaberi Raychaudhuri, S.C. Panja, N.I. Khan, Dilip Dey and Gautam Shome, for the Respondent

Final Decision: Dismissed

Judgement

Altamas Kabir, J.
The two aforesaid writ applications have been taken up for consideration together as common questions of fact and law

are involves therein and both the writ applications relate to the Interstate Reciprocal Transport Agreement entered into between the State of West

Bengal and the State of Orissa and published in the Calcutta Gazette on 10th December, 1996 regarding grant of stage carriage permits on the

routes indicated in the agreement, including the route from Calcutta to Singpur. The petitioner in W. P. No. 12726(W) of 1998 was granted a

permanent stage carriage permit on the inter-state route: Calcutta to Singpur via Olavar and extended upto Rajkanika. while the petitioner in W. P.

No. 1849 of 1998 was granted a permanent permit on the route: Calcutta to Rajkanika via Jaipur Town. The challenge thrown in both the writ

applications is identical and concerns the grant of temporary permits to Rajendra Kumar Shau and Shau Transport Corporation, the respondent

Nos. 8 and 9 in both the applications, on the route Singpur to Calcutta.

2. Appearing in support of the writ petition filed by the Agreement published in the Calcutta Gazette on 10th December, 1995. provided for two

permits to be granted by the State Transport Authority, West Bengal, and two permits to be granted by the State Transport Authority, Orissa. on

the route: Calcutta to Singpur and permits had already been granted on the said route in keeping with the prescribed quota.

3. Mr. Bose submitted that Reciprocal Agreements of the above nature are governed by the provisions of Sub-section (5) and (6) of Section 88 of

the Motor Vehicles Act, 1988. but Sub-section (7) thereof empowered the Regional Transport Authority of any region or the State Transport

Authority to issue special permits for the purposes indicated therein Mr. Bose, however, submitted that such power under Sub-section (7) of

Section 88 of the above Act could only be exercised subject to the provisions of Sub-sections (5) and (6) thereof.

4. Mr. Bose urged that no temporary" permit could be issued on the basis of the Reciprocal Agreement on any of the inter-state routes indicated

therein unless a vacancy existed on the said route and without the concurrence of the other State Government. A temporary permit granted in

contravention of the above, would render the said invalid. Mr. Bose submitted that Sub-section (7) of Section 88 of the above Act is not an

independent provision but is dependent upon the other provisions Section 88 and is also subject to compliance of the statutory formalities as

provided in Section 87 of the said Act.

5. Mr. Bose submitted that prior to publication of the aforesaid Agreement, a detailed survey was undertaken with regard to the traffic load and

the necessity of introducing separate services between Calcutta and Rajkanika and draft notifications in this regard were published both by the

State of West Bengal as also the State of Orissa and the general conclusion was that there was no need to enhance the number of permits agreed

to be granted on the said route. A further survey was conducted in respect of the route: Calcutta to Singpur and by its report dated 22nd

February, 1998. the State Transport Authority, Orissa, came lo a finding that there was no requirement for additional stage carriage permits to be

granted on the said route.

6. Mr. Bose contended that despite the above, the State Transport Authority, Orissa, issued a temporary permit to the respondent No. 8 on the

route-Singpur to Calcutta, which was beyond the quota agreed upon in the Reciprocal Agreement and was valid from 20th December, 1997, to

19th March, 1998. Mr. Bose submitted that since the said permit was not countersigned by the State Transport Authority, West Bengal, the said

respondent moved a writ petition, being W. P. No. 48(W) of 1998. which was disposed of on 2nd March, 1998, inter alia, with a direction upon

the State Transport Authority, Orissa, to consider the objections raised and with a further direction upon the State Transport Authority, West

Bengal, to act in accordance with and subject to any order that may be passed by the State Transport Authority, Orissa, with regard to

countersignature.

7. Mr. Bose submitted that pursuant to the directions contained in the order dated 2nd March, 1998, passed by this court on the writ application

filed by Sri Rajendra Kumar Shau, the Chairman, State Transport Authority, Orissa, conducted a hearing on 8th March, 1998, and came to the

conclusion that there was no public need to intensify the route: Singpur to Calcutta. It was also observed that since the temporary permit granted to

Sri Shau was expiring on 19th March, 1998, the same was not required to be countersigned.

8. Mr. Bose urged that notwithstanding the aforesaid finding on the basis of the surveys conducted both by the State Transport Authority, West

Bengal and the State Transport Authority, Orissa, the latter authority granted inter-state temporary permits on the route Rajkanika to Calcutta, in

favour of the respondent Nos. 8 and 9. Mr. Bose urged that since no temporary permit could be granted u/s 87(1) of the Motor Vehicles Act,

1988 without prior concurrence under Sub-section (7) of Section 88 thereof, the State Transport Authority, Orissa, acted illegally and in

contravention of the provisions of the said Act in granting temporary permits in favour of the respondent Nos. 8 and 9.

9. In this connection. Mr. Bose also referred to a notification issued by the Commerce and Transport Department, Government of Orissa, on 17th

March, 1998, directing both the State Transport Authority and the Regional Transport Authority that no new temporary permit should be issued or

countersigned in respect of stage carriages for introduction of additional services on any inter-state route, except the existing services operating in

the existing inter-state routes.

10. Mr. Bose also referred to a letter dated 28th March, 1998, written by the Transport Commissioner-cum-Chairman, State Transport Authority,

Orissa, to the Commissioner-cum-Secretary, Government of West Bengal, Transport Department, whereby the earlier decision not to issue any

new temporary permits was sought to be reversed and it was stated that letters had been received from the local M.L.A., the Chairman of the

Panchayat Samity and the President, Nikhila Utkal Oriya Samaj, Calcutta, demanding the introduction of a direct passenger transport service

between Rajkanika and Calcutta as there was heavy demand and necessity for introduction of such service on the said route. The State Transport

Authority, West Bengal, was requested to accord concurrence u/s 88(7) of the above Act for grant of two temporary permits by the State

Transport Authority, Orissa, on the said route in the interest and for the convenience of the travelling public and to meet the growing demand as

assessed by the peoples'' representatives. Mr. Bose urged that the mala fide manner in which the two temporary permits were sought to be issued

would be evident from the fact that despite the decision not to issue any-further permits, a fresh decision was taken on the basis of letters written

by the M.L.A. and other local authorides to issue two temporary permits on the route: Rajkanika to Calcutta.

11. Mr. Bose submitted that the two temporary permits issued by the State Transport Authority, Orissa, in favour in the private respondent Nos. 8

and 9 were liable to be quashed.

12. Appearing on behalf of the private respondents in W.P. No. 1849 of 1998, Mr. Kashikanta Maitra, learned senior counsel submitted that the

issuance of a temporary permit under Sub-section (7) of Section 88 of the Motor Vehicles Act, 1988, was not dependent upon and/or subject to

the provisions of Sub-sections (5) and (6), as had been contended by Mr. Bose. Mr. Maitra urged that if the submissions made on behalf of the

petitioner were to be accepted, the provisions of Sub section (7) of Section 88 of the aforesaid Act would become redundant. Mr. Maitra also

submitted that having regard to the decision of the Hon''ble Supreme Court in the case of Mithilesh Garg vs. Union of India and Ors., reported in

AIR 1992 SC 443, the writ petitioners, who are the existing operators on the route In question, could not raise any objection regading the grant of

a permit in respect of the self-same route. Mr. Maitra urged that the liberalised provisions of the Motor Vehicles Act, 1988, were enacted lo

ensure healthy competition among Intending operators so as to benefit the travelling public which would be entitled to patronise the operator

providing the best service.

13. Mr. Maitra submitted that where a temporary permit is to be issued is within the discretion of the permit granting authority provided that the

conditions for grant of such permit were duly fulfilled.

14. Referring to the provisions of Section 88 of the"" aforesaid Act, Mr. Maitra submitted that under Sub-section (7) the Regional Transport

Authority was empowered to issue a temporary permit merely on the concurrence of the Regional Transport Authority of the other region or of the

State Transport Authority of the Other State. Mr. Maitra submitted that having regard to the non-obstante clause contained in Sub-section (7), no

counter-signature was required to be made by the State Transport Authority of the other State and mere concurrence was sufficient for issuance of

such temporary permit u/s 87 of the aforesaid Act.

15. Mr. Maitra submitted that Sub-section (5) and (6) of Section 88 dealt with a proposal to enter into an agreement between two States in order

to fix the number of permits proposed to be granted or countersigned in respect of each route or area Mr. Maitra submitted that the provisions of

Sub-section (7) were outside the province of the proposed agreement and was not therefore, dependent thereupon. Mr. Maitra submitted that for

the purpose of issuing temporary permits under Sub-section (7) of Section 88 no further agreement was required to be entered into, nor was any

publication required to be made.

16. Mr. Maitra urged that both the writ applications were wholly misconceived and were liable lo be dismissed with appropriate costs.

17. in support of his submissions. Mr. Moitra referred to the decision of the Hon"ble Supreme Court in the case of Chandavarkar S. R. Rao vs.

Ushalaw S. Gutam, reported in 1966 (4) SCC 447. where the import of a non-obstance clause was considered by the Hon"ble Supreme Court

and it was observed that use of such clause would be equivalent to saying that inspite of the provisions of the Act or any other Act mentioned in the

non-obstante clause or any contract or document mentioned, the enactment following it will have its full operation and that the provision referred to

in the non obstante clause would not be an impediment for operation of the enactment.

18. In this context, Mr. Maitra also referred to the decision of the Hon"ble Supreme Court in the case of Union of India vs. G. M. Kokil reported

in 1984 (Supp.) SCC 196. wherein it was observed that a non obstante clause is a legislative device which is usually employed to give overriding

effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say.

to avoid the operational effect of all contrary provisions.

19. Mr. Maitra lastly referred to a Bench decision of this Court in the case of Ashoke Kr. Mondal vs. State of West Bengal & Ors., reported in

1995 (1) CLJ 537, wherein the same question being considered in these two applications had also been considered and it was observed that the

agreement contemplated u/s 88(5) of the Motor Vehicles Act 1988, was for the purpose of fixing the number of permits proposed to be granted

or countersigned in respect of each route or area and that the same does not and cannot stand in the way of granting temporary permits where

such temporary permits can be granted by one transport authority with the concurrence given generally or for a particular occasion of the State

Transport Authority of the other State.

20. Mr. N. I. Khan, learned advocate, appearing for the State Transport Authority. West Bengal, submitted that subject to compliance with the

provisions of Section 87 of the Motor Vehicles Act 1988. there could be no objection to the grant of temporary permits in respect of inter-state

routes covered by a Reciprocal Agreement Mr. Khan urged that Subsection (7) of Section 88 was independent of the other provisions of Section

88-and the other provisions, particularly Sub-sections (5) and (6), would have no application for the purpose of grant of such temporary permits.

21. Mr. Khan, however, urged that although counter-signature was not required in the case of a temporary permit issued under Sub-section (7),

the concurrence of the State Transport Authority of the other State was compulsory in the matter of issuance of such temporary permit.

22. Mr. Dilip Dey. appearing for the State Transport Authority. Orissa, has produced the records from which it appears that on re-assessment of

the situation revealed by the initial survey, it was felt that there was need for additional permits to be issued on the route in question.

23. In the letters written by the local M.L.A. and the Chairman Panchayat Samity. Rajkanika, it was indicated that a route from Rajkanika. to

Calcutta via Jaipur town would be to the interest of the general public. Mr. Dey submitted that in view of the recommendation and/or request made

by the local representatives of the people living in the area in question, a decision was taken by the Chairman, State Transport Authority, Orissa, to

grant two temporary permits on the said route in favour of the respondent Nos. 8 and 9.

24. Mr. Dey also reiterated Mr. Kashikanta Maitra"s submissions that Sub-section (7) of Section 88 was neither dependent upon nor subject to

the provisions of Sub-sections (5) and (6) thereof.

25. Mr. Dey submitted that, in any event, as existing operators, the writ petitioners could raise no objection to grant of permits on the route in

question and the writ applications were liable to be dismissed.

26. Mr. Dilip Samanta, who appeared for the writ petitioner in W.P. No. 12726 (W) of 1998. adopted Mr. Bose"s submissions and submitted

that the case of Mithilesh Garg (supra) did not specifically debar an objection being raised by an existing operator when a permit was sought to be

granted without complying with the provisions of the Motor Vehicles Act 1988.

27. Mr. Panja, who appeared for the private respondents in W.P. No. 12726(W) of 1998. who to fact, are the same respondents represented by

Mr. Kashikanta Maitra, adopted Mr. Maitra"s submissions and added that the fallacy of the submission-, made on behalf of the petitioner

regarding Sub-section (7) of Section 88 of the above Act being subject to the provisions of Sub-sections (5) and (6) thereof would be evident

from the fact that even under Sub-sections (3) and (9) the same non-obstante clause had been included, but it could not be argued that in the said

cases as well as provisions of sub-sections (5) and (6) would have application.

28. Mr. Panja submitted that grant of a temporary permit under Subsection (7) of Section 88 was not dependent on the provisions of Subsections

(5) and (6) and, as submitted by Mr. Maitra, except for obtaining concurrence no other formalities were required to be fulfilled for grant of a

temporary permit under Sub-section (7) of Section 88.

29. Referring to the notification issued by the Commerce and Transport (Transport] Department Government of Orissa, in the Orissa Gazatte on

17th November, 1998, to the effect that no new temporary permit was to be issued or countersigned by the State Transport Authority or any

Regional Transport Authority in respect of stage carriages for introduction of additional services on any inter-state route, Mr. Panja submitted that

one Rajkishore Prasad Jaiswal had moved a writ application, being O.J.C. No. 2066 of 1993. before the Orissa High Court challenging the said

notification and the same was disposed of with a direction upon the concerned authority to consider the petitioner"s application for grant of

temperary permit without being Influenced by the said notification of 17th November, 1998. Mr. Panja submitted that the contents of the said

notification of 170- November, 1998. were considerably watered down by the order passed to the aforesaid writ application and the private

respondents were also entitled to the benefit thereof.

30. Mr. Panja urged that the writ application was misconceived and was liable to be dismissed.

31. The main point which falls for determination in this case is whether exercise of powers under Sub-section (7) of Section 38 of the Motor

Vehicles Act, 1988, is conditioned by the provisions of Sub-sees. (5J and (6) thereof.

32. It is the common case of the parties that a Reciprocal Agreement was entered into between the State Transport Authority. West Bengal, and

the State Transport Authority. Orissa, with regard to certain inter state routes and the fixation of the number "of permit to be issued in respect

thereof and the same was published in the Calcutta Gazette on 10th December, 1996. Pursuant thereto, permits, as per the quota, on the route

Calcutta to Singpur and Singpur to Calcutta, had been duly granted and without enhancing the number of permits to be granted, the State

Transport Authority, Orissa, issued two temporary permits in favour of the respondents Nos. 8 and 9 in both the writ applications.

33. It has been urged on behalf of the writ petitioners that such permits could not have been issued without complying with the provisions of

Subsections (5) and (6) of Section 88 of the Motor Vehicles Act, 1988.

34. In my view, such submission is without substance, inasmuch as, sub-section (7) of Section 88 does not limit the number of permits which may

be granted u/s 87 of the above Act. Grant of temporary permits depend on the exigencies contemplated in Section 87 and cannot, therefore, be

limited to any particular number and cannot also be linked with a Reciprocal Agreement as contemplated in Sub-section (5) of Sec. 88. The

question of publication under Sub-section (6) thereof cannot also arise.

35. Temporary permits to be issued under Sub-section (7) of Section 88 of the above Act are outside the purview of the Reciprocal Agreement,

as clearly indicated by the non-obstante clause, and may be issued merely on concurrence of the authorities of the other State.

36. The Bench decision of this Court in the case of Ashoke Kumar Mondal (supra), cited by Mr. Maitra, supports the aforesaid view.

37. The other objection taken regarding the manner in which the temporary permits were granted in favour of the respondent No. 8 and 9 upon a

reversal of the view taken by the State Transport authority, Orissa, regarding the need for enhancing the service on the route in question, should in

my view, be left to the authorities who are required to evaluate such traffic need and are competent to do so. While the earlier view that the

number of permits on the route in question was not required to be increased was watered down by the requests made by the local M.L.A. and

Panchayat Samity, it is for the authorities at the local level to make an assessment which could require the State Transport authority to review and

revise its earlier decision as it has done in the instant case. Mala fides can hardly be attributed to such an exercise.

38. Furthermore, the Orissa High Court had on the writ application of Rajkishore Prasad Jaiswal directed the concerned authority to consider the

writ petitioner''s application for grant of temporary permit notwithstanding the notification dated 17th November, 1998 published by the

Commerce and Transport (Transport) Department, Government of Orissa, indicating that no new temporary permits were to be issued or

countersigned by the State Transport Authority or any Regional Authority.

39. The only objection of substance is that the temporary permits had been granted to the private respondent Nos. 8 and 9 by the State Transport.

Authority, Orissa, without obtaining the concurrence of the State Transport Authority, West Bengal, since such concurrence had been made a

condition for grant of a temporary permit under Sub-section (7) of Section 88 of the Motor Vehicles Act, 1988. However, in the Affidavit-in-

opposition affirmed by Shri Rajendra Kumar Shan in W.P. No. 1849, it has been stated to paragraph 6 that concurrence had duly given by the

State Transport Authority, West Bengal, to the proposal for grant of temporary permits mooted by the State Transport Authority. Orissa. In fact, it

has also been stated that both the States have granted concurrence for grant of two permits from earlier side.

40. In such circumstances, even the aforesaid objection fails, as the authorities appear to have acted within the parameters of Sub-section (7) of

Section 88 and Section 87 of the Motor Vehicles Act, 1988. The writ applications, therefore, fail on all counts and are dismissed.

All parties to act in a signed copy of the operative part of this judgment on usual undertakings.

If an urgent xerox certified copy of this judgment is applied for, the same is to be supplied to the applicant expeditiously, subject to compliance

with all the required formalities.