(2002) 08 CAL CK 0026

Calcutta High Court

Case No: Writ Petition No. 86 of 2002

Rina Maity		APPELLANT
	Vs	
State of West Bengal and Others		RESPONDENT

Date of Decision: Aug. 23, 2002

Acts Referred:

- Constitution of India, 1950 - Article 226
- Motor Vehicles Act, 1988 - Section 107, 71, 89
- West Bengal Motor Vehicles Rules, 1989 - Rule 108

Citation: AIR 2003 Cal 124

Hon'ble Judges: Kalyan Jyoti Sengupta, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Kalyan Jyoti Sengupta, J.
All the aforesaid batch of writ petitions were heard analogously as the question of fact and law in all the cases

are almost identical and similar. All the writ petitioners being the unsuccessful candidates in the matter of obtaining Stage-Carriage Permit for

operating passenger vehicles on the route from Calcutta to Siliguri have challenged the decision of the State Transport Authority (STA). A number

of per sons who have been added or allowed to Intervene in these writ applications were granted stage-carriage permits by and under a resolution

dated 26th November 2001 by the State Transport Authority (hereinafter in short STA). The decisions taken by the STA purported to be in

compliance with a judgment and order of Justice Ronojit Kumar Mitra (as His Lordship then was) passed on 14th September 2001, in a number

of writ petitions, wherein the previous decision of the STA was also challenged. Previously as it has been observed by Justice Mitra, principle of

natural justice was not followed and no decision was rendered under the provision of the statute as such the decision was set aside and STA

concerned was directed to take a decision afresh in accordance with the law. A number of Learned Lawyers in each and every writ petitions

argued separately, assailing the decision of the STA. Their argument in substance is as follows :

No reason has been communicated nor any opportunity of being heard was given by the STA in considering the applications of the respective

unsuccessful petitioners. So the entire selection process made by the STA for grant of permit for the route from Kolkata to Siliguri is wholly bad in

law and void ab initio, as Section 80(2) of the Motor Vehicles Act (hereinafter referred to as the said Act) clearly envisages that the Authority

concerned while rejecting the prayer for grant of permit has to give reasons or to give opportunity of being heard. It is contended that upon bare

perusal of the broad sheet prepared by STA it would reveal that out of 17 candidates, 8 candidates had not submitted any evidence in relation to

payment of current Income Tax and Professional Tax receipts although in the advertisement inviting applications it clearly stipulated that all the

applications must be accompanied by current Professional Tax and Income Tax certificates. Therefore, applications of the ineligible candidates

have been taken into consideration; consequently concerned respondents selected those candidates leaving out eligible candidates being petitioners

who though fulfilled all the criteria as mentioned in the advertisement. It is submitted by all the Learned Lawyers in support of the petitions, in

chorus, that the STA has manifestly misinterpreted the law relating to preference to be given to certain categories, when other conditions being

equal. Such conclusion being an error of law can be corrected by a writ of certiorari as this Hon''ble Court is well within Jurisdiction to set aside

the impugned selection process. Reliance has been placed in this question on the two decisions reported in Syed Yakoob Vs. K.S. Radhakrishnan

and Others, .

2. It is further contended by the learned Lawyers that the conclusion as reached by the STA are patently irrational and unreasonable. On the basis

of the fact and materials produced before the STA no person of reasonable prudence, acting in similar circumstances, should have reached the

conclusion, which the STA has arrived at. The STA in the instant case has not only acted in disregard to the advertisement issued by it, inviting

specific application but has also defied the statutory provisions with impunity.

3. It is further contended by the Learned Counsels of the petitioners that the provisions of the Act and the Rules framed there under do not

provide, how selection is to be made in case of situation where the STA has to choose amongst several applications, who have fulfilled all the

statutory considerations and who are, otherwise equally placed. In such a situation it is obvious that the STA must lay down norms or rules and

publish by advertisement. The relative merit of all the suitable candidates must be judged and in doing so must base its decision on factors, which

are rationally related to the objects of the Act and without any oblique motive or extraneous consideration. In this connection reliance has been

placed on 1997 (1) CHN 378.

4. The Learned Lawyers for the petitioners submit that existence of alternative remedy by way of appeal under the statute is not a bar against

entertaining these writ petitions. Firstly, because no point in the affidavit-in-opposition has been taken in this regard. Secondly, no appeal could be

preferred in view of the delayed communication of the decision as the petitioners were not aware of passing of any order, so that they could apply

for certified copy of the impugned decision to enable themselves to prefer an appeal within the prescribed period of limitation as on today or on the

date of making writ petitions, the appeal had become barred by limitation.

5. In any event question herein involved, is of illegal and arbitrary exercise of Jurisdiction and in this situation decision-making process can be

scrutinized and/or examined, consequently the decision itself can be corrected by filing the writ petition. Thus the remedy in the public law field is

not barred at all. In support of their contention they have relied on a number of decisions namely, Ram and Shyam Company Vs. State of Haryana

and Others, , Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, , Syed Yakoob Vs. K.S.

Radhakrishnan and Others, .

6. Mr. Bikash Bhattacharjee, Senior Advocate, appearing on behalf of the STA contends that the present writ petitions are not maintainable as the

decision has been taken by the statutory authority in exercise of its statutory power conferred upon it u/s 71 Sub-section3 of the Act, such decision

is rendered under the Act itself. Any grievance against it can only be remedied under the mechanism provided in the Act itself. No writ petition can

be maintained and further more the provisions of Article 226 of the Constitution of India cannot be extended to the limit of filing of writ petition in

or over the decision of the statutory authority. In support of his contention he has relied on a decision of the Supreme Court reported in Veerappa

Pillai Vs. Raman and Raman Ltd. and Others, .

7. He argued further that while evaluating the respective cases and the qualifications of the candidates under the provisions of the law the State

authority has taken a decision on subjective satisfaction with an idea to fulfil the objective of the Act, such subjective satisfaction cannot be

questioned by the writ Court, even if it appears that the decision has been taken wrongly. He has produced the records before me and has drawn

my attention to the same. He submits that no illegality has been committed. There are candidates who belonged to the category of Scheduled Caste

and Scheduled Tribe, physically handicapped and the ex-service army men, the STA can lay down the policy for selecting the suitable operators.

The law permits to meet out leniency in case of physically handicapped candidates. Scheduled Caste candidates and ex-service army men.

8. Mr. Malay Basu, Learned Senior Advocate, appearing and spearheading argument on behalf of the grantees being added respondents and/or

the party intervener supports the contention of the STA and contends that inasmuch as they have been granted permits after having been selected

by the impugned decision the petitioners ought to have preferred appeal. While arguing on the question of maintainability Mr. Basu has drawn my

attention to two decisions (1) AIR 1955 Raj. 19 and {ii} Gopal Chandra De Vs. State of West Bengal and Others, . In addition to the argument

of Mr. Basu the other Learned Lawyers submit that one of the selected candidates is physically handicapped person having 70 per cent hearing

impediment and the Handicapped Board of West Bengal issued a Certificate to that effect. Under the provisions of Equal Opportunities Protection

Rights and Full Participation Act 1995 the disabled person is entitled to get certain protection. These handicapped persons are entitled to get

certain preferential treatment and as such the Government is bound to reserve certain percentage of number of permits. In this case the aforesaid

Act was taken into consideration for the category of the physically handicapped candidates. The selection has been made applying beneficially

legislative mandate. So there is no illegality in taking decision in favour of the physically handicapped candidates. Similarly, in case of Scheduled

Caste candidates the preferential treatment has been meted out in view of the policy framed by the STA in this regard.

9. Having heard respective contention of the Learned Counsels of the parties including the party intervener the preliminary point in this case is

whether the writ petitions can be maintained in view of the specific statutory provision for preferring an appeal. In the Supreme Court decision

reported in Veerappa Pillai Vs. Raman and Raman Ltd. and Others, , the Constitution Bench while dealing with the provisions of the old Motor

Vehicles Act namely Act of 1939 had occasion to deal with the aforesaid subject. In paragraph 20 it has been observed by the said Bench as

follows :

20. Such writs as are referred in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate

Tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or In violation of the principles of natural Justice or refuse to

exercise a Jurisdiction vested in them, or there is an error apparent on the face of the record and such act, omission, error, or excess has resulted

in manifest injustice. However extensive the Jurisdiction may be, it seems to , us that it is not so wide or large as to enable the High Court to Court

itself into a court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the

order to be made.

Mr. Daphtary, who appeared for the respondent said nothing to controvert this position. His argument was that if all along the authorities and the

Government had proceeded upon a particular footing and dealt with rights of the parties on that basis it was not open to them afterwards to change

front and give the go by altogether to the conception of the rights of parties entertained by them till then. According to him, there was manifest

injustice to his client in allowing to do so and this was the reason which impelled the High court to make the order which is the subject matter of

challenge in this appeal.

10. Again it has been observed in paragraphs 21 and 22 as follows :

The Motor Vehicles Act is a statute creates new rights and liabilities and prescribes an elaborate procedure for their regulation. No one is entitled

to a permit as of right even if he satisfied all the prescribed condition the grant of a permit is entirely within the discretion of the transport authorities

and naturally depends on several circumstances which have to be taken into account. The Regional Transport Authority and the Provincial

Transport Authority are entrusted u/s 42 with this power. They may be described as administrative bodies exercising quasi-judicial functions in the

matter of the grant of permit under Rule 3 of the Madras Motor Vehicles rules, the Regional Transport Authority is called the Central Road Traffic

Board. These bodies or authorities are constituted by the Provincial Government.

The matters which are to be taken into account in granting or refusing a stage carriage permit are specified in Section 47. By delegation under Rule

134-A, the Secretary of the Road Traffic Board may exercise certain powers as permits & under Rule 136, there is an appeal to the board from

these orders. Similar powers of Central Board and an appeal lies to the Central Board under Rule 148(1). From an original order of the Road

Traffic Board there is an appeal to the Central Board and from the original orders of the Central Board to the Government, vide rules 147 and

148. An amendment introduced by the Madras Act XX(20) of 1948 and found as Section 64-A in the Act vests a power of revision in the

Provincial Government.

Besides this specific provision, there is a general provision in Section 43-A, that the Provincial Government may issue such orders and directions of

a general character as it may consider necessary to the Provincial Transport Authority or a Regional Transport Authority in respect of any matter

relating to road transport; and such transport shall give effect to all such orders and directions. There is therefore a regular hierarchy of

administrative bodies established to deal with the regulation of Transport by means of motor vehicles.

22. Thus we have before us a complete and precise scheme for regulating the issue of permits, providing what matters are to be taken into

consideration as relevant, and prescribing appeals and revisions from subordinate bodies to higher authorities. The remedies for the redress and

grievances or the correction of errors are found to the statute itself and it is to these remedies that reports must generally be had. As observed

already, the issue or refusal of permit is solely within the discretion of the transport authorities and it is not a matter of right.

11. From the combined reading of the aforesaid paragraph of the said judgment it would emerge that challenge in the writ jurisdiction against the

decision of the STA or for that matter any decision of Motor Vehicles Authority are not altogether ruled out rather it has been observed in

paragraph 20 in certain cases challenge by the writ under Article 226 of the Constitution of India is quite possible. There are large number of

decisions of Supreme Court including Constitution Bench, subsequently, which lay down amongst other that under the statutory Tribunal or the

statutory authority whether it is a quasi judicial authority or administrative authority can be challenged under writ jurisdiction if they act without

jurisdiction or in a situation when the decision has been arrived at in violation of principle of natural justice and not within the four corners of the

statute. I do not wish to quote those on this point. I find herein one of such decisions cited by one of the Learned Lawyers for the writ petitioner

reported in Syed Yakoob Vs. K.S. Radhakrishnan and Others, the majority decision of the Constitution Bench of the said apex Court judgment in

paragraph 7 pronounced that:

A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are

passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise Jurisdiction. A writ can similarly be

issued where in exercise of Jurisdiction conferred on it, the Court or Tribunal acts illegally or Improperly, as for instance, it decides a question

without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is

opposed to principles of natural Justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is supervisory jurisdiction and

the Court exercising it is not entitled to act as an appellate court. This limitation necessarily means that finding of fact reached by the inferior Court

or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on

the face of the record can be corrected by a writ, but not an error of fact, however, grave it may appear to be. In regard to a finding of fact

recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to

admit admissible and material evidence, or had erroneously admitted inadmissible evidence, which has influenced the impugned finding. Similarly, if

a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with

this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings

for a writ of certiorari on the ground that the relevant and material evidence adduced before the tribunal was insufficient or inadequate to sustain the

impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the

exclusive Jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the Jurisdiction

conferred on the High Courts under Article 226 of the constitution to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu

Kamath Vs. Syed Ahmad Ishaque and Others, : Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam

and Others,) and Kaushalya Devi and Others Vs. Bachittar Singh and Others, .

12. It is therefore, clear from the above in which Cases and what situation one has to approach appellate Tribunal with the appeal under the statute

and when one may come to Superior courts in public law field. In all the cases from the petition I find the challenge is not on factual alone, but

founded on illegal exercise of the power as it has been alleged in all the petitions that the STA could not reach to such findings on the material

placed before them, and further they did not adher while dealing with all the applications, to the published norms in the process they have selected

ineligible candidates. Moreover, no reason has been given specifically and individually to all the discredited and unsuccessful applicants and there

by principle of natural justice has I been flouted.

13. Under those circumstances I am of the view that the contention of the respondents including added respondents and the party intervener that

the writ is not maintainable in view of the provisions of appeal is not sustainable. The decisions of the Calcutta High Court cited by Mr. Basu and

the Rajasthan High Court though rendered on this statute but then I am of the view factually in those cases there was no allegation and challenge as

to illegal or improper exercise of jurisdiction. I am of the further view that if the Court while making enquiry into findings, forms opinion that the

decision has been rendered without conforming to the principle of natural justice or adhering to the provision of law on the subject, such a decision

is not within the provision of the statute. The appellate provision in my view would be exclusively applicable only when it is found the decision has

been rendered in proper and appropriate exercise of the statutory power and Jurisdiction. As such I hold the writ petitions are perfectly

maintainable.

14. I am not unmindful of the principle laid down in the Supreme Court decision reported in Syed Yakoob Vs. K.S. Radhakrishnan and Others,

and also in Veerappa Pillai Vs. Raman and Raman Ltd. and Others, that the decision completely on the factual basis and findings cannot be

examined by the writ Court and the power of writ Court is not stretched to that extent. I have gone through the records produced before me and I

have examined the affidavit-in-opposition filed by the officials of the STA. I with all scruple and careful scrutiny tried to find out whether the

decisions reached by the STA concerned on the material placed before them could have reached by any person of ordinary prudence or not and

further whether the decisions has been taken in accordance with the provision of Section 71 of the said Act and also Rule 108 of the Motor

Vehicles Rules or not.

15. Before I discuss this subject in detail I feel it necessary to set out the provision of Section 71 of the said Act.

71. Procedure of Regional Transport Authority in considering application for stage carriage permit--(1) Regional Transport Authority shall, while

considering an application for a stage carriage permit, have regard to the objects of this Act.

Provided that such permit for a route of fifty kilometres or less shall be granted only to an individual or State transport undertaking.

(2) A Regional Transport Authority shall refuse to grant a stage carriage permit if it appears from any time-table furnished that the provisions of this

Act relating to the speed at which vehicles may be driven are likely to be contravened:

Provided that before such refusal an opportunity shall be given to the applicant to amend the time-table so as to conform to the said provisions.

(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 regional Transport authority to limit the number of

stage carriages 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.

(b) Where the number of stage carriages 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 carriages 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 clause (b).

(b) After reserving such number of permits as is referred to in clause (c), the Regional Transport Authority shall in considering an application have

regard to the following matters, namely :--

(i) financial stability of the applicant;

(ii) satisfactory performance as a stage carriage operator including payment of tax if the applicant is or has been an operator of stage carriage

service; and

(iii) such other matters as may be prescribed by the State Government.

Provided that, other conditions being equal, preference shall be given to applications for permits from -

(i) State Transport undertakings;

(ii) Co-operative societies registered or deemed to have been registered under any enactment for the time being in force; or

(iii) Ex-servicemen.

(4) A Regional Transport Authority shall not grant more than five stage carriage perits to any individual or more than ten stage carriage permits to

any company (not being a State transport undertaking).

(5) In computing the number of permits to be granted under Sub-section(4), the permits held by an applicant in the name of any other person and

the permits held by any company of which such applicant is a director shall also be taken into account.

16. In exercise of the power under the said Act the rules has also been framed and Rule 108 of the Motor Vehicles Rules will also be a guiding

factor while considering an application for grant of permit. It appears from the aforesaid section that STA or the RTA as the case may be has been

empowered to provide for reservation to a certain extent of the grant of stage-carriage-permits for the Scheduled Caste and Tribe candidates. It

further appears from the aforesaid Section that certain guidelines have been mentioned while granting such permit.

17. I accept the argument of Mr. Bhattacharjee that the STA is free to lay down any standard or basis while exercising their discretion in

considering application for grant of permit and such discretion is absolutely of the subjective satisfaction of the authority concerned but having

regard to object of the Act. In this case an advertisement was issued in exercise of their statutory power while inviting application stipulating the

following norms among other norms and eligibility criteria:

(a) Current professional Tax Certificate.

(b) Current Income Tax certificate.

18. It is also mentioned that applicants having vehicles of latest model may be given preference. Preference may also be given to those favoured by

Motor Vehicles Act 1988 and West Bengal Motor Vehicles Rules 1989 thereunder. In the said advertisement it was not mentioned whether there

is any reservation for the Scheduled Caste or for that matter physically handicapped candidates, or any other reserved category or minority or

otherwise. The intentions of the STA was very clear that there shall not be any reservation at all though the statute permits to make reservation.

From the broad sheet I find that the reservation policy has been followed not only in case of Scheduled Castes candidates but also in case of ex-

servicemen, physically handicapped and minority community. Therefore, I am of the view that while taking decision the STA has followed such

norms and procedures, which were not published nor made known to the public in any manner whatsoever. The STA cannot stipulate any

percentage reserved for the Scheduled Castes candidates or for that matter to make provision for reservation of certain percentage of number of

permits in case of, persons with disabilities under the provision of 1995 Act or ex-defence servicemen or minority community without adopting

norms or policies. But in that case it is necessary to express the intention of the STA concerned before the public that the reservation policy would

be followed so much so that all the candidates within the reserved category may come and participate in this selection process. Here without such

notification few candidates from reserved category were facilitated to participate. Had there been proper publication, perhaps large number of

physically handicapped and disabled person and Scheduled Caste candidates, ex-service men candidates or minority community candidates could

have come. So I have no hesitation to hold that the statutory authority cannot exercise its jurisdiction adopting secret and unpublished policy or

norms. Transparency in action either in executive field or quasi-judicial field is one of the facets of observance of principal of natural justice. The

judicial approach of the superior courts in recent time is leaning in favour of law of transparency in every State action. Law of transparency in my

view is one of the means to protect the right of information over such action in which the State largess are distributed amongst public or in any

decision or action having civil consequences must be with a reasonable degree of transparency and informed reasons. I am constrained to record

such course of action was not followed. So I am unable to uphold the decision without any hesitation.

19. I accept the argument of learned lawyer for the writ petitioners that no reason has been assigned individually to the applicants, though separate

applications were filed mentioning separate sets of facts. I am of the opinion in this case decision of rejection should have been accompanied with

separate reasons not by way of stereo typed printed letter with a laconic words ""they are found unsuitable."" So I think that the STA did not apply

their mind nor do they consider each and every application of the writ petitioners. Apparently I have examined the records and in the broad sheet I

find successful candidates in some cases did not even fulfil the published conditions, and in certain cases Professional Tax Certificate and Income

Tax clearance certificate were not furnished. Yet, they selected on the so-called subjective satisfaction of the STA. The aforesaid infirmities in my

view have gone to the very route of exercise of their quasi-judicial power. Can the Court allow the aforesaid infirmities to be held legal and valid?

The answer obviously is negative. As and when serious procedural lapses is detected in decision making process consequently decision, it cannot

be upheld in any way. Judicial pronouncements in support of this proposition consistently so numerous and often spelt that need no citation though,

yet Tata Cellular Vs. Union of India, decided by the Apex Court comes in my mind to bring support. In paragraph 93 therein it has summarized

inexhaustively where Judicial review will lie in a case of this nature.

20. Under the facts and circumstances of this case I cannot uphold the decision of the STA and set aside the same. I direct the STA to take fresh

decision in accordance with law and for this purpose they will be liberty to public again in the newspaper as to their policy and norms based on

law. Nothing shall be hidden to lay down the policy of reservation whether for Scheduled Caste candidates or Physically Disabled candidates or

Ex-Defence servicemen candidates. Anything short of such procedure can again invite intervention of this court, which should be avoided. The

STA should take all possible steps to avoid such recurrent feature in this case. The original records are returned and to be taken back by the STA.

21. The decision shall be arrived at upon publication as above within a period of three (3) weeks from the date of receipt of the fresh applications.

The candidates who have already submitted their applications need not submitted afresh their applications shall be considered along with fresh

ones. These applications are thus allowed. No order as to costs. Urgent xerox certified copy shall be supplied within 7 days.