

Shankar Kumar Dey Vs State of West Bengal

Court: Calcutta High Court

Date of Decision: June 24, 1993

Acts Referred: Motor Vehicles Act, 1988 " Section 80

Citation: (1993) 1 ILR (Cal) 461

Hon'ble Judges: Ajoy Nath Ray, J

Bench: Single Bench

Advocate: Amal Kumar Sen, for the Appellant;N.I. Khan, for the Respondent

Judgement

Ajoy Nath Ray, J.

The writ Petitioner has been operating on the route 47/1 from 1983. He found the said route to be not so lucrative and thus made an application on October 16, 1992, for being given the transferred permit to route 47/A or 47/B. He wrote a letter of reminder on

October 26, 1992.

2. The Petitioner has explained that he. desires simply to take his bus off route 47/1 and place his bus on route 47/A or 47/B upon being granted

the permanent permit for any of the two latter routes. Naturally, his present authorization to run on route 47/1 shall cease immediately upon being

granted the permanent permit for route 47/A or 47/B as the operator cannot have two permits for two routes for the same bus.

3. In the affidavit-in-opposition the Respondents have annexed a resolution dated September 7, 1991, in regard to the transfer of routes. The said

resolution notes that the transfer application would be considered only ""if the bus remains idle for two years or more"".

4. The said resolution is seriously significant. It lays down by way of an administrative direction that the Transport authorities will not entertain an

application for a route from an owner unless his bus, which has at all plied in any other route has remained idle for two years. This seeks to create

a class of bus owners, namely that class which has used their vehicle in one route at some time or the other. These persons cannot be allowed to

make an application for a fresh route without keeping their vehicle idle for 2 years if this resolution is valid.

5. The resolution is flatly contrary to Section 80 of the Motor Vehicles Act, 1988. If the permit has expired today on one route the bus owner can

immediately make an application for putting his bus on a completely different route and such application must ordinarily succeed.

6. The Motor Vehicles Act does not permit branding of buses with routes and keeping the buses blocked in particular routes. Learned Counsel

appearing for the writ Petitioner has relied upon no fewer than three Division Bench judgments of this Court which clearly held that such route

branding upon buses is wholly contrary to law and that administrative directions for such route branding have no validity and cannot be enforced.

The three judgments are respectively delivered in F.M.A.T. No. 706-1986 F.M.A.T. No. 706 of 1986 by M. N. Ray and Mahitosh Majumder

JJ. dated April 29, 1986 in appeal from Original Order tender No. 2746- 19S6 and in the Matter No. 3407-1988, on the respective dates April

29, 1986, September 9, 1986, and September 20, 1988, the two latter cases being the State of West Bengal v. sin. Sati Nandy F.M.A.T. 2746

of 1986 by Ganendra Narayan Ray and Paritosh Kumar Mukherjee JJ. dated September 9, 1986 and Debashish Chakraborty v. State of West

Bengal and Ors. Matter No. 3407 of 1988 by Ajit Kumar Sengupta and K. M. Yusuf JJ. dated September 20, 1988 The three respective

Division Benches being those comprised of M.N. Ray and Mahitosh Majumder J., Ganendra Narayan Ray and Paritosh Kumar Mukherjee JJ.,

and Ajit Kumar Sengupta and K.M. Yusuf JJ.

7. I respectfully follow Their lordships' judgments in the above three unreported decisions and I come to the conclusion that the resolution dated

September 7, 1991, to keep out of consideration buses which have plied in one route from being granted permits for other routes is wholly

unauthorised and illegal and the Respondents are not permitted to do the same.

8. The next question which arises is if the writ Petitioner is plying on an authorised permit in route 47/1 can he take his bus off the route at any time

he pleases during the continuance of his present permit ?

9. The answer must be in the affirmative. A permit is no more than a permission granting the owner of a bus the right to ply his vehicle for transport

business. There is no compulsion in the matter of a mere permission. A person who is permitted to occupy land is not compelled to occupy the

land but can leave it at his own choice. Nothing has been pointed out from the Motor Vehicles Act whereby it can be shown that it is obligatory

upon the permit-holder to exhaust the period of his permit by running the bus on the route whether he wishes it or not or whether he finds it to be

economical or not. He can stop at any time he pleases. He can stop if he so pleases as soon as he is granted a permit for some other route. And

that he wishes to stop plying on his present route as soon as he is granted a permit on another route cannot be a consideration for the authorities

not to consider him for the grant of the permit on the fresh route because that would be branding his bus with the present route number which, as I

have said, is contrary to law.

10. The writ petition accordingly succeeds. The Respondents are directed to consider the writ Petitioner's application for grant of a permit of a

permanent nature for five years on route 47/A or 47/B made by letters written in October 1992 and the Respondents shall, after giving the writ

Petitioner a hearing, communicate a reasoned decision in that regard within six weeks of service of a copy of the present order.

11. The Respondents are directed to maintain status quo in regard to the operation of the writ Petitioner in route 47/1 in which he is presently

operating until the decision in the above matter is made known to him by way of a reasoned order.

12. Even at the cost of repetition it is clarified that if the Petitioner's application for putting his bus on the basis of a permanent permit on route

47/A or route 47/B is rejected, the same must be done in accordance with law and neither the writ Petitioner's presently operating his bus on route

47/1 nor such other improper considerations as congestion shall be made any ground for refusal. The present policy of the Motor Vehicles Act is a

liberal policy of free economic competition and it is quite possible that by reason of such economic factors buses from one route will gravitate to

some other more economic route. The transport authorities are not permitted to stop this process of movement of buses from one route to another

because their rights in that regard have been completely abrogated by the present Motor Vehicles Act. The case of Mithilesh Garg, Vs. Union of

India and others etc. etc., is quite clear on this point and paras. 6 and 7 from the said judgment might be referred to in this regard.

13. The writ application is thus disposed of with the above directions and there shall be a Rule Absolute commanding the Respondents to make the

above consideration and communication and there shall be a Rule Absolute in the nature of prohibition restraining them from interfering with the

writ Petitioner's operation on the present route also as directed above.

14. All parties and others concerned to act on a signed copy of the dictated order on the usual undertaking.