

(2005) 08 CAL CK 0058

Calcutta High Court

Case No: A.S.T. No"s. 1139, 1140, 1141, 1142 and 1147 of 2005

State of West Bengal and Others
and Alpana Banerjee

APPELLANT

Vs

Balaram Halder and Others

RESPONDENT

Date of Decision: Aug. 29, 2005

Citation: (2006) 1 CHN 532

Hon'ble Judges: Maharaj Sinha, J; D.K. Seth, J

Bench: Division Bench

Advocate: Balai Chandra Roy, N.I. Khan and Dilip Dey, in AST 1139 of 2005, for the Appellant; R.N. Das, D.P. Dutta and S. Sen, Moloy Kumar Bose, Arabinda Chatterjee and Kakali Dutta, in AST 1139 of 2005 and Prabhat Kumar Chattopadhyay and Tapan Kumar Mahapatra for respondent No. 8 in AST 1141 of 2005 and for respondent No. 7 in AST 1139 of 2005, for the Respondent

Judgement

1. Let the appeal be registered and the stamp reporter is to append the report within 48 hours.

2. In pursuance of an order passed by this Court to consider the prayer for grant of permit in the route Calcutta - Purulia to the petitioner, the State Transport Authority took a resolution for grant of permit in the route Howrah - Purulia. But at the time of granting the permit, it was granted in the route Calcutta - Purulia. The learned Single Judge, in the order dated 8th of August, 2005 was pleased to find that this was done in connivance with some of the officers who have been named in the said order as it was evident from the report submitted by the Secretary, State Transport Authority on 5th of August, 2005. In the circumstances, the learned Single Judge was pleased to direct an investigation by the CBI and also for initiation of a departmental proceedings against the officers named in the said report prohibiting plying of the vehicle by the respondent/applicant. Against the said order dated 8th of August, 2005 these two appeals have been filed; AST 1141 of 2005 has been filed by the State of West Bengal and AST 1139 of 2005 was filed by the respondent/applicant/

permit holder. It appears that the learned Single Judge had found that the department was negligent in taking appropriate steps.

3. Mr. Roy, the learned Advocate General, appearing on behalf of the State, submitted that this is not a case fit for directing investigation by the CBI. He next contended that until and unless a case is initiated against an offence, no investigation is permissible. However, there is no bar in causing an enquiry in the matter. He also pointed out that unless the Court comes to a conclusion that the State machinery has not been vigilant or has not been activated, it is not open to the Court to direct CBI enquiry. According to him, the matter was brought to the notice only on 4th of August 2005 whereon the letter dated 5th of August, 2005 was placed before the learned Single Judge. Therefore, it is not that the department was very negligent. At the same time, he pointed out that there is a direction for filing of affidavit by the Secretary, State Transport Authority. Therefore, the decision could have been taken, if at all, after the said affidavit was filed. Such order can be passed only after giving opportunity which the learned Single Judge was pleased to give by giving direction for affidavit. Therefore, the direction to cause an investigation by the CBI was passed in a little haste. However, Mr. Roy makes it clear that in appropriate cases, he cannot oppose enquiry by CBI and the High Court has power to direct such an enquiry. He relied on the decision in [Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another](#), in support of his contention. He also points out to the resolution which was for the purpose of granting of permit in the route Howrah - Purulia. He also drew our attention to the subsequent resolution at page 32 of the petition where the State Transport Authority had taken a decision through a subsequent resolution to recall the permit in the route Calcutta - Purulia and to allow the permit holder to ply on the route Howrah - Purulia and also to initiate a departmental enquiry on the subject and the decision was subject to further decision that might be taken by the Principal Secretary, subject to the CBI enquiry. In these circumstances, Mr. Roy contends that there are certain guidelines which are supposed to be followed. Therefore, he prays that the part of the order directing CBI investigation be stayed.

4. Mr. Bose, the learned Counsel appearing on behalf of the permit holder/appellant in AST 1139 of 2005, submits that he has nothing to do with the CBI enquiry or investigation; but the permit holder has been prevented from plying his vehicle on the basis of the route permit Calcutta - Purulia. In view of the subsequent resolution at page 32 of the petition in AST 1142 of 2005 in connection with AST 1141 of 2005, the said order cannot affect the subsequent plying of the vehicle by the permit holder in the route Howrah - Purulia. Therefore, he prays that the order of the learned Single Judge, prohibiting plying of the vehicle, should be set aside.

5. Mr. Das, learned Counsel appearing for the writ petitioner/respondent in both the appeals, pointed out that the case that has been brought to the notice of the Court

is the tip of the ice-berge and that despite a resolution being taken to grant permit in the route Howrah - Purulia, a permit was granted in the route Calcutta - Purulia and the permit holder cannot feign ignorance with regard to the resolution and accept a permit in the route Calcutta - Purulia which was never granted in her favour. According to him, that there are materials to presume that there is something wrong and which the authorities were unable to detect or were reluctant to detect; and this weighed with the Court to pass an order for CBI enquiry. The circumstances were such that the Court was free to draw an inference to the extent that it was a grave situation which can be adequately dealt with only by the CBI though it has not been stated in the order in so many words but from the arguments made before the learned Single Judge, it created such an impression. He also contended that so far as the question as to whether the petitioner should be permitted to ply the vehicle in the route Howrah - Purulia is concerned, his client cannot have any grievance if it is so done in accordance with law.

6. After having heard the learned Counsel for the parties it appears that after the order was passed, it is submitted by Mr. Das that the CBI has carried on and is continuing with the investigation, as the case may be. Be that as it may, at the moment, there is nothing on record to show that such an offence was committed inviting any investigation. At best, there could be an enquiry. In the circumstances, we feel that the situation could be met by substituting the word "investigation" in the order dated 8th of August, 2005 appearing at the 4th line of the new paragraph at page 4 and the word "investigation" appearing at the 3rd line from bottom in the 2nd paragraph at page 4 of the order and wherever it so appears by substituting with the word "enquiry". At the moment we do not think that this Court should pre-judge the issues. We are keeping all points open and leave the matter to be decided in accordance with law and according to the wisdom and discretion as the learned Single Judge may think fit and proper. The question that has been posed by Mr. Roy may be agitated before the learned Single Judge and the decision cited shall also be considered by the learned Single Judge in respect of passing further order on the subject- matter having regard to the contention that this is not a fit case for directing CBI investigation or enquiry and that after having given opportunity to place the materials on affidavit such a direction could have been given afterwards and that there is no material to hold that the State machinery had failed to discharge its function. All these questions may be considered by the learned Single Judge at appropriate stage.

7. We are given to understand that this matter has been fixed on 8th of September, 2005 on which date the parties shall not take any adjournment and the matter is expected to be decided by the learned Single Judge.

8. It would be open to Mr. Bose's client to ask for appropriate relief on the basis of the resolution, appearing at page 32 of the petition, by which it was decided by the State Transport Authority to allow the permit holder to ply in the route Howrah

-Purulia on the basis that the order of prohibition of plying the vehicle was related to the route permit Calcutta - Purulia. It may be noted that Mr. Das has no objection to the plying of the vehicle by the permit holder in the route Howrah - Purulia provided the same is granted in accordance with law.

9. It would be open to Mr. Bose to contend that the subsequent resolution was taken after the order was passed by the learned Single Judge. In fact, it was for this reason, we did not pass any order with regard to the subsequent resolution and we leave the same to be decided by the learned Single Judge.

10. With the above observation all the applications, being AST 1142 of 2005, AST 1140 of 2005 and AST 1147 of 2005, stand disposed of. After the above order is passed, nothing remains to be decided in the appeals. The appeals, being AST 1141 of 2005 and AST 1139 of 2005, be treated as on day's list for hearing by consent of the parties and the same are also disposed of accordingly.

11. This order is passed without prejudice to the rights and contention of the parties and we keep all the points open to agitated before the learned Single Judge.

12. Plain copy of this order, duly countersigned by Assistant Registrar (Court), be given to the learned Counsel for parties, on their usual undertaking.