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State of West Bengal and Others Vs Madan Kumar Pyne

A.P.O. No. 180 of 2007 and W.P. No. 1891 of 2006

Court: Calcutta High Court

Date of Decision: Sept. 28, 2007

Acts Referred:
Motor Vehicles Act, 1988 â€" Section 89, 89(2), 90

Citation: (2008) 3 CHN 587

Hon'ble Judges: Pratap Kumar Roy, J; Prasenjit Mandal, J

Bench: Division Bench

Advocate: N.I. Khan and Madhumita Dutta, for the Appellant;Amal Sen, for the Respondent

Final Decision: Dismissed

Judgement

Pratap Kumar Roy, J.
Heard the learned Advocate appearing for the parties.

2. Challenging the order dated 1st December, 2006 passed by the learned Trial Judge in W.P. No. 1891 of 2006 whereby and where under the

learned Trial Judge directed grant of permit, this appeal has been preferred.

3. It appears from the writ application that the petitioner raised a grievance for non-grant of permit despite the issuance of the offer letter in the

year 2003 prior to issuance of prohibitory notification dated 6th August, 2004 prohibiting grant of any route permit touching Central Business

District namely, Esplanade, Band Stand, Howrah Station and approach areas of Howrah Bridge. The route admittedly is touching Howrah Station

and approach area of Howrah Bridge in terms of the Notification dated 6th August, 2004. Learned Trial Judge, however, allowed the writ

application and directed grant of permit.

4. Before looking into the matter of legality and validity of the judgment under appeal, it appears to us that the writ application is not maintainable in

the High Court at Calcutta as because there is a specific appeal provision in the Motor Vehicles Act, 1988. u/s 89, Clause (1) Sub-clause (g)

whereby and where under if someone is aggrieved by refusal to grant permit may prefer an appeal within the prescribed time-limit as mentioned

thereon. The relevant provision of the! appeal under the said Act reads such:

(g) Aggrieved by any other order which may be prescribed, may, within the prescribed time and in the prescribed manner, appeal to the State

Transport Appellate Tribunal constituted under Sub-section (2), who shall, after giving such person and the original authority an opportunity of

being heard, give a decision thereon which shall be final.

5. It is a clear of non-grant of permit. Accordingly, appeal is maintainable. Even if in the finer sense, it is considered that once the offer letter is

issued which pre-supposes a grant of permit, the only action remains is to issue permit which has been refused, still, then the writ petition is not

maintainable under such a situation in view of alternative forum order Section 90 of the said Act. The provision of revision reads such:

90. Revision. The State Transport Appellate Tribunal may, on an application made to it, call for the record of any case in which an order has been

made by a State Transport Authority or Regional Transport Authority against which no appeal lies, and if it appears to the*State Transport

Appellate Tribunal that the order made by the State Transport Authority or Regional Transport Authority is improper or illegal, the State Transport

Appellate Tribunal may pass such order in relation to the case as it deems fit and every such order shall be final:

Provided that the State Transport Appellate Tribunal shall not entertain any application from a person aggrieved by an order of a State Transport

Authority or Regional Transport Authority, unless the application is made within thirty days from the date of the order:

Provided further that the State Transport Appellate Tribunal may entertain the application after the expiry of the said period of thirty days, if it is

satisfied that the applicant was prevented by good and sufficient cause from making the application in time:

Provided also that the State Transport Appellate Tribunal shall not pass an order under this section prejudicial to any person without giving him a

reasonable opportunity of being heard.

6. Having regard to the said statutory provision, it appears that the Motor Vehicles Act, 1988 is a complete code so far as redressal of any

grievance of any operator on issue of route permit. This redressal forum being an alternative forum is a sufficient forum. It is settled legal

proposition that when there is alternative appellate forum, avoiding such hierarchical forum of appeal under statute, writ application is not

maintainable. Reliance may be placed in the cases of Veerappa Pillai Vs. Raman and Raman Ltd. and Others, , Assistant Collector of Central

Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, , Shri Ramendra Kishore Biswas Vs. The State of Tripura and Others, ,

Punjab National Bank Vs. O.C. Krishnan and Others, , U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another, and Uttaranchal Forest

Development Corpn. and Another Vs. Jabar Singh and Others, .

7. Having regard to such legal proposition whereby the Apex Court has settled the law that where there is hierarchical of appeal in the statute

without exhausting that forum being a statutory remedy, writ application is not maintainable. We are of the view that writ application itself is not

maintainable and as such, writ application stands dismissed. Appeal and the application also stand disposed of accordingly. Impugned judgment

under appeal stands quashed.

Urgent xerox certified copy of this judgment be made available to the parties, if applied for, upon compliance of all requisite formalities.