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Abani Kumar Bhattacharjya Vs Presiding Officer, State Transport Appellate Tribunal and Others

F.M.A.T. No. 703 of 1989

Court: Calcutta High Court

Date of Decision: May 9, 1989

Acts Referred:
Motor Vehicles Act, 1988 â€" Section 62(1)(c)

Hon'ble Judges: Susanta Chatterji, J

Bench: Single Bench

Advocate: Kashi Kanta Moitra, Mr. Moloy Kumar Basu and Mr. Murari Mohon Das, for the Appellant;Dilip Seth and Mr. Rameshwar Bhattacharjee, for Respondent Nos. 2 and 3 and Mr. Saktinath Mukherjee, Asoke Dey and Mr. Tapan Roy (II) for Respondent Nos. 4 and 5, for the Respondent

Final Decision: Dismissed

Judgement

Susanta Chatterji, J.
The present Mandamus Appeal has been preferred against the Order, dated 9.3.89 passed by the Learned Single

Judge rejecting the writ petition filed by the petitioner/appellant. Being aggrieved by and dissatisfied with the judgment and order, dated March 2,

1989 passed by the State Transport Appellate Tribunal, West Bengal, in State Transport Appeal No. 6 of 1987, the petitioner moved the writ

petition before the Learned Single Judge stating inter alia that the petitioner is engaged in the passenger transport business since 1967 and is in

possession of 2 (two) Road Stage Carriage vehicles of 1985 model plying on the route Asansol to Tata since July 1985 on the basis of temporary

permit granted by the State Transport Authority, Government of West Bengal. It is further stated that from time to time temporary permits were

granted to the petitioner u/s 62(1) (c) of the Motor Vehicles Act to enable the petitioner to ply the vehicles in the Inter-state route of Asansol to

Tata. On or about 13th of September, 1986 an advertisement was made in the daily newspaper at the instance of State Transport Authority, West

Bengal, inviting applications for grant of Enter-state Permanent Stage Carriage Permit in the route of Asansol to Tata (Express) besides other

routes. Pursuant to the said advertisement, the petitioner applied far permanent permit in the route in question and by Resolution, dated 17.1.87

passed by State Authority, West Bengal, the petitioner was selected for the grant of one express permit on the aforesaid route on the ground that

he had already been plying on that route for the last one year and a half on the basis of High Court''s order and that it would not be fair to deprive

him of this route and other candidates, however, were not suitable also. It was observed that each application was considered and rejected.

Against the said resolution, dated January 17, 1987 the respondent No. 4, ""Jaytara Cooperative Transport Society Limited"", a registered co-

operative society, preferred an appeal before the State Transport Appellate Tribunal, West Bengal. Upon consideration of all the materials on

record, the State Transport Appellate Tribunal allowed the appeal by order, dated March 2, 1989 and thus set aside the resolution of the meeting

dated January 17, 1987 of the State Transport Authority, West Bengal and cancelled the permit granted in favour of the present appellant/writ

petitioner, directed grant of a state carriage permit in the route in favour of the present respondent No. 4, Jaytara Transport Co-operative Society

Limited, being the appellants before the Tribunal.

2. Against the said judgment and order the present appellant came to the Writ Court on the ground that the Learned Tribunal failed to consider that

the appellant has been plying his vehicle on the route in question since 1985 on the basis of temporary permit granted by the respondent No. 2

after due selection. It was strenuously contended that the granting of permit to an existing owner/operator on the route or near the route is held to

be a relevant consideration for the grant of permanent permit and that in the present case the permanent permit was granted by the authority to the

appellant who is an existing operator on the route in question and that the order to set aside the said resolution is wholly illegal by applying the

reservation rule in favour of respondent No. 4 though there is no such reservation made by the State Government u/s 47(1-A) of the Motor

Vehicles Act. The appellant further urged that the holding in favour of respondent No. 4 Co-operative Society formed with Scheduled Caste and

Scheduled Tribe members virtually on the basis that the vacancy is reserved for them and that the said Society should, therefore, be selected is

erroneous in law though it would appear from the broad sheet that the said Co-operative Society did not fulfil all the conditions and even otherwise

all the things were not equal within the meaning of the proviso to Section 47(1).

3. Having heard the Learned Advocates appearing for the respective parties, the Learned Single Judge did not interfere with the judgment of the

State Transport Appellate Tribunal mainly on the ground that the Tribunal considered the following facts and circumstances:

(a) The respondent No. 4 is a registered co-operative Society having 17 members of whom some belonged to the Scheduled Tribe and most of

them came from weaker sections of the community;

(b) The Society has been formed with some unemployed youths of the District of Purulia and it has been given financial assistance by the District

Co-operative Bank Limited, D.R.D.A. and I.R.D.P. subsidized scheme with which it has purchased a bus;

(c) the Society possesses a brand new luxury bus of a model later than of the petitioner;

(d) The Society has experienced mechanics and garage;

(e) Like the petitioner, the Society has also experience in running buses;

(f) Other things being equal, the Society is entitled to get preference over the petitioner, who is an individual operator, under the amended proviso

to Section 47(1) of the motor Vehicles Act;

(g) The reason given by the Authority is untenable as Section 47(1) (e) of the Motor Vehicles Act does not imply that preference should be given

to a person who holds a permit.

The learned Single Judge found that the reasons assigned by the Learned Tribunal were just, proper, legal and relevant and the judgment of the

Tribunal did not suffer from any legal infirmity and as a consequence thereof the Writ petition was rejected.

4. The subject matter of the present appeal is the aforesaid order of the learned Single Judge. This Court has heard at length the Learned Lawyers

appearing for the respective parties. Although only the application for stay was limited, the entire matter is being disposed of by this judgment by

treating the same as having been included in the day"s cause list since the whole appeal as such has been argued before us.

5. Mr. Kashi Kanta Moitra, the Learned Counsel appearing for the appellant/writ petitioner, has mainly submitted that the writ petition ought not to

have been summarily rejected and that the matter ought to have been considered comprehensively inasmuch as the appellant is otherwise entitled to

have the permanent permit in the Inter-State Route Asansol to Tata and the judgment, and order dated March 2, 1989 passed by the Learned

State Transport Tribunal is erroneous in law. The entire background of the case ought to have been considered as for a long time the appellant is

plying the vehicle on the route in question by obtaining several temporary permits granted by the orders of the Court. The resolution, dated January

17, 1987, is neither contrary to nor inconsistent with the materials on record On the other hand, the order of the Tribunal dated March 2, 1989

suffers from various infirmities. The attention of the Court was drawn to Section 47 of the Motor Vehicles Act and to a case reported in Sher

Singh Vs. Union of India (UOI) and Others, and it was urged that when an application for Stage Carriage Permit is being processed as required by

Section 47, the application of a registered Co-operative Society for Inter-State route shall be examined as application of any other individual

operator. Their merits and demerits must be judged keeping in view the requirements of Clauses (a) to (f) of Section 47(1) and after weighing the

merits and demerits of both in light of those considerations, only if other things are equal the applications of a registered Co-operative Society will

have preference over individual owner. He laid much emphasis on the fact that qualitative and quantative comparison of broad features of transport

facility, travelling public and other relevant considerations may be undertaken and, after balancing all the factors, other things being equal, the

application of the Co-operative Society may be given preference over the application of individual owners. According to him, in the instant case,

the appellant stands on a better footing and there is no question of any reservation in favour of the co-operatives or for Scheduled Caste and

Scheduled Tribe candidates. Moreover, the petitioner has two vehicles and by comparative study the petitioner''s case stands in a better position.

Mr. Moitra has also drawn the attention of the Court to the reciprocal transport agreement as published in the Calcutta Gazette dated May 27,

1988 and, in particular Clause 1(g), indicating, inter alia, that the number of trips against each permit for the short routes, the total distance of which

by one round trip is below 100 Kilometres, shall be so fixed as to enable a bus to run a total round trip distance 200 Kilometres daily with a view

to making operation of the service in question economically viable. It is argued that this aspect of the case has not been considered and since, in

fact, the petitioner is possessed of 2 (two) vehicles, it will not be economically viable to grant the permanent permit in favour of the respondent No.

4 and the Writ Court, in the fitness of things, ought to have interfered with the matter, otherwise the petitioner will suffer irreparable loss and injury

and there will be loss of employment of a number of people engaged in his business.

6. Mr. Dilip Seth, the Learned Counsel appearing for the State Transport Authority, has not challenged the judgement and order of the Learned

Tribunal. Although he faintly submitted that it is for him to support the resolution of S.T.A., dated 17th January, 1987, but after the judgment

passed by the Learned Appellate Tribunal, steps will be taken accordingly unless otherwise interfered by this Court.

7. Mr. Sakti Nath Mukherjee, the Learned Counsel appearing for the contesting respondent Nos. 4 and 5, contended that looking to the West

Bengal Amendment of Section 47 Motor Vehicles Act, there may not be any justification in the grievances of the writ petitioner. He drew attention

to the West Bengal Amendment of Section 47(1) of Motor Vehicles Act which are set down hereinbelow:

I. In Section 47, for the proviso to sub-section (1) thereof, substitute the following:

Provided that other conditions being equal, an application for a stage carriage permit from a Partnership Firm or a Private Limited Company or a

Public Limited Company or a Co-operative Society registered or deemed to have been registered under any enactment in force for the time being

or a group of individuals shall, as far as may be, be given preference over applications from individual owners if the group of individuals consists of

not less than four persons of the Partnership Firm, Private Limited Company, Public Limited Company or Cooperative Society consists of less

than four partners, shareholders or members, as the case may be and one of such persons or partners, shareholders or members is a driver and

holds an effective driving licencc of a stage carriage, and another is a conductor holding an effective conductor''s licence to act as a conductor of a

stage carriage and such group of individuals or Partnership Firm or Private Limited Company or Public Limited Company or Co-operative Society

shall be eligible to get permit for one stage carriage:

Provided further that other conditions being equal, a group of individuals consisting of not less than nine persons or a Partnership Firm or a Private

Limited Company or a Public Limited Company or a Co-operative Society having not less than nine partners, shareholders or members, as the

case may be, shall be eligible to get permits for two stage carriages if three of such persons or partners, shareholders or members are drivers and

hold effective driving licences to drive a stage carriage and two are conductors holding effective conductor''s licence to act as conductor of a stage

carriage."" West Bengal Act 26 of 1976, Section 4(24-7-1978).

II. In Section 47(1) (f), for the words ""or area"" substitute the words ""or area"", and the words beginning with ""and shall also take into consideration

and ending with ""route or area lines"" shall be omitted. West Bengal Act 74 of 1978, Section 3.

III. In Section 47(1) (f), the words beginning with ""and shall take into consideration"" and ending with the words ""route or area lines"", as omitted by

W. B. Act 74 of 1978, Section 3 (b), have been inserted by W. B. Act 24 of 1980. Section 3(b) (19-6-1980). Mr. Mukherjee submitted further

that by a reasoned judgment, the Appellate Tribunal has considered the cases of the respective parties and there is a comparative study also and its

decision is based on findings of fact recorded on all material points after taking into account all the relevant factors and as such in exercise of writ

jurisdiction there is no scope for interference. At all material points of time the appellant had taken the advantage of running the vehicle by obtaining

temporary permits and, while the case of granting permanent permit is being considered, the case of the respondent No. 4 cannot be ignored. The

learned Appellate Tribunal has fully considered the case of both the parties in the light of the relevant law and the grievance of the writ petitioner is

not justified.

8. We have heard lengthy arguments advanced on behalf of the appellant and the contesting respondents. It needs no reiteration that the Writ

Court is not sitting in appeal over the judgment of the State Transport Appellate Tribunal. If there is any cue of perverse finding resulting in any

manifest injustice or that there is misconception of law and there is lack of jurisdiction to adjudicate the matters in dispute or breach of natural

justice, the Writ Court may interfere to set things in order, and pass a necessary order to protect the rights of the parties. In the instant case, after

going through the judgment of the Tribunal as well as of, the Learned Single Judge, we do not find any law or defect in the decision. We are unable

to appreciate that at the time of granting a permanent stage carriage permit the sole consideration should be that only because an applicant had the

occasion to ply the vehicle with temporary permit he is entitled as a matter of course to be selected since he will be deprived of a benefit by not

getting the permit on the said route. If, without any invitation an application, is filed for the grant of temporary permit, or a, writ application is made

before the Court and upon a mere direction to consider the case in accordance with law the temporary permit is granted, the same would not be

deemed to be the sole credential or overriding consideration to obtain a permanent permit, especially when a proper advertisement inviting

applications for grant of permanent permit is issued and applications fulfilling all the requisites are made and considered in accordance with law. It

is needless to observe that the State Transport Authority has the power to grant temporary permits under the provisions of Section 62 of the

Motor Vehicles Act but such power of grant of temporary permit is different from the power of granting permanent permit in accordance with the

provisions of Section 47 of the Motor Vehicles Act. Repeated grant of temporary permit, where there is a need of granting permanent permit, has

been deprecated by the Apex Court. A number of times the provisions as laid down in Sections 47, 57 and 62 of the Motor Vehicles Act have

been considered and interpreted in the proper perspective in the context of grant of temporary permit, and permanent permit. Reference may be

made to Basant Roadways Vs. State Transport Appellate Tribunal and Others, . In many cases the grant of temporary permits had led to

undesirable results. In all such cases, the proper action to be taken is to grant regular permits in accordance with law. This principle has also been

elaborated in another decision reported in A. Viswanathan Vs. State Transport Appellate Tribunal, Pondicherry and Another, . It has clearly been

observed that where the State Transport Authority does not take steps to issue regular permits on several routes, even though the need for issuing

those permits is established beyond doubt, but on the other hand it continues issuing temporary permits for years together in respect of those

routes, the persons belonging to Scheduled Caste, Scheduled Tribes and the economically weaker section of the community would obviously

suffer disadvantages by such procedure adopted by the State Transport Authority. The revalidation or renewal of a temporary permit or extension

of the period for which a temporary permit is issued is not contemplated in law. This point has been stressed further in Jagjit Bus Service (Regd.),

Amritsar through its Managing Partner Shri Jagjit Singh Vs. State Transport Commissioner, Punjab and Another, . The more fact, therefore, that

temporary permit(s) was issued in favour of the writ petitioner cannot be taken to be the decisive fact. Whether or not reservation has been made

by the State Government in exercise of the powers conferred by Section 47(1A) loses its significance in the present case in view of the fact that it

has been substantially found by the Tribunal, as a matter of fact, that respondent No. 4, Cooperative Society, possesses a brand new luxury bus of

a model latter than that of the writ petitioner and that it has experienced mechanics and also a garage and that it has the experience of running the

business. Besides, it has been found that some of its members are conductor(s), clearner(s) and driver(s). The Tribunal found that respondent No.

4, Co-operative Society was thus better qualified than the writ petitioner and as such it was to be preferred under the amended provision of

Section 47(1) of the Motor Vehicles Act. The finding of fact accordingly recorded cannot be upset except on one of the limited grounds none of

which exists in this case. The Tribunal, in our opinion, correctly applied the test when it held that ""as between rival claimants who can serve the

travelling public the best is to be chosen as the deserving candidate"" and having satisfied itself of the relevant factual aspects held in favour of

respondent No. 4, Co-operative Society on the basis of such test.

9. For the foregoing reasons we find that the writ petitioner/appellant cannot have any grievances since his case has been considered in accordance

with law by the Appellate Tribunal and the reasons assigned by the Tribunal do not appear to be perverse or irre1evant and there is no manifest

injustice. The Learned Single Judge was thus justified in not interfering with the judgment of the Appellate Tribunal. There being no merit in appeal,

the same is dismissed without any order as to costs.

P.D. Desai, Chief Justice

10. I agree.