

Dhananjoy Sharma Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: April 8, 2002

Acts Referred: Motor Vehicles Act, 1988 " Section 43, 44, 44(3), 44(3)(9b), 44(3)(b)

Citation: 106 CWN 748

Hon'ble Judges: Ashok Kumar Banerjee, J

Bench: Single Bench

Advocate: Dilip Samanta, Ms. Mala Dutta and Ashish Kr. Pal, for the Appellant; Rabilal Moitra and Dilip Kr. Dey, for the Respondent

Judgement

Ashim Kumar Banerjee, J.

Short question herein is whether the State Transport Authority can issue stage carriage permit in interregional

routes without being referred to by the Regional Transport Authority or without having any reference made to them. Writ petitioners are the

existing operators in the route Siliguri to Bakshirhat which covers two districts being the District of Darjeeling and District of Coochbehar. In a

meeting scheduled to be held on September 26, 2001, September 27, 2001 and September 28, 2001 the State Transport Authority was

supposed to issue permanent permits in various routes covering the district of Darjeeling and Coochbehar. It was contended by the writ petitioner

that the Regional Transport Authority is empowered to issue permit in various inter-regional routes until and unless the State Transport Authority is

called upon by the Regional Transport Authority and until and unless there is a dispute between the two Regional Transport Authorities or in case

where the State Transport Authority thinks it fit, the State Transport Authority has no authority to issue permits in inter-regional routes.

2. Mr. Dilip Kumar Dey, led by Mr. Rabilal Moitra, learned counsel for the respondent, referred to various sections of the Motor Vehicles Act

being Section 66, 68(3)(b), 80(2), 87(1), 88(2) and 69(1) of the Motor Vehicles Act. 1988 as well as Rule 86 of the Motor Vehicles Rules,

1989. Since the aforesaid sections being relevant herein, are quoted below:

SECTION - 66 - Necessity for permits : (1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any

public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or

countersigned by a Regional or State Transport Authority or any prescribed authority authorizing him the use of the vehicle in that place in the

manner in which the vehicle is being used:

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorize the use of the vehicle as a

contract carriage:

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorize the use of the vehicle as a

goods carriage either when carrying passengers or not;

Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the

vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2) The holder of a goods carriage permit may use the vehicle, for drawing of any trailer or semi-trailer not owned by him, subject to such

conditions as may be prescribed;

(Provided that the holder of a permit of any articulated vehicle may use the prime-mover of that articulated vehicle for any other semi-trailer.)

(3) The provisions of sub-section (1) shall not apply -

(a) to any transport vehicle owned by the Central Government or a State Government and used for government purposes unconnected with any

commercial enterprise;

(b) to any transport vehicle owned by a local authority or by a person acting under contract with a local authority and used solely for road cleaning,

road watering or conservancy purposes;

(c) to any transport vehicle used solely for police, fire brigade or ambulance purposes;

(d) to any transport vehicle used solely for the conveyance of corpses and the mourners accompanying the corpses;

(e) to any transport vehicle used for towing a disabled vehicle or for removing goods from a disabled vehicle to a place of safety;

(f) to any transport vehicle used for any other public purpose as may be prescribed by the State Government in this behalf;

(g) to any transport vehicle used by a person who manufactures or deals in motor vehicles or builds bodies for attachment to chassis, solely for

such purposes and in accordance with such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf;

* * *

(i) to any goods vehicle, the gross vehicle weight of which does not exceed 3,000 kilograms;

(j) subject to such conditions as the Central Government may, by notification in the Official Gazette, specify, to any transport vehicle purchased in

one State and proceeding to a place, situated in that State or in any other State, without carrying any passenger or goods;

(k) to any transport vehicle which has been temporarily registered u/s 43 while proceeding empty to any place for the purpose of registration of the

vehicle;

(l) to any motor vehicle which is operated by electric battery, compressed natural gas or solar energy;

(m) to any transport vehicle which, owing to flood, earthquake or any other natural calamity, obstruction on road, or unforeseen circumstances, is

required to be diverted through any other route, whether within or outside the state, with a view to enabling it to reach its destination;

(n) to any transport vehicle used for such purpose as the Central or State Government may, by order, specify;

(o) to any transport vehicle which is subject to hire-purchase, lease or hypothecation agreement and which owing to the default of the owner has

been taken possession of by or on behalf of, the person with whom the owner has entered into such agreement, to enable such motor vehicle to

reach its destination; or

(p) to any transport vehicle while proceeding empty to any place for purpose of repair,

(4) Subject to the provisions of sub-section (3). sub-section (1) shall, if the State Government by rule made u/s 96 so prescribes, apply to any

motor vehicle adapted to carry more than nine persons excluding the driver.

SECTION - 68(3): The State Transport Authority and every Regional Transport Authority shall give effect to any directions issued u/s 67 and the

State Transport Authority shall, subject to such directions and save as otherwise provided by or under this Act, exercise and discharge throughout

the State the following powers and functions, namely :

(a) to co-ordinate and regulate the activities and policies of the Regional Transport Authorities, if any, of the State;

(b) to perform the duties of a Regional Transport Authority where there is no such Authority and, if it thinks fit or if so required by a Regional

Transport Authority, to perform those duties in respect of any route common to two or more regions;

(c) to settle all disputes and decide all matters on which differences of opinion arise between Regional Transport Authorities;

[(ca) Government to formulate routes for plying stage carriages; and]

(d) to discharge such other functions as; may be prescribed.

SECTION - 69(1) : Every application for a permit shall be made to the Regional Transport Authority of the region in which it is proposed to use

the vehicle or vehicles;

Provided that if it is proposed to use the vehicle or vehicles in two or more regions lying within the same State, the application shall be made to the

Regional Transport Authority of the region in which the major portion of the proposed route or area lies, and in case the portion of the proposed

route or area in each of the regions is approximately equal, to the Regional Transport Authority of the region in which it is proposed to keep the

vehicle or vehicles :

Provided further that if it is proposed to" use the vehicle or vehicles in two or more regions lying in different States, the application shall be made to

the Regional Transport Authority of the region in which the applicant resides or has his principal places of business.

SECTION - 60 (2) : A [Regional Transport Authority, State Transport Authority or any prescribed authority referred to in sub-section (1) of

section 66] shall not ordinarily refuse to grant an application for permit of any kind made at any time under this Act:

Provided that the [Regional Transport Authority, State Transport Authority or any prescribed authority referred to in sub-section (1) of section 66]

may summarily refuse the application if the grant of any permit in accordance with the application would have the effect of increasing the number of

stage carriages as fixed and specified in a notification in Official Gazette under clause (a) of sub-section (3) of Section 71 or of contract carriages

as fixed and specified" in a notification in the Official Gazette under Clause (a) of sub section (3) of Section 74.

Provided further that where a [Regional Transport Authority, State Transport Authority or any prescribed authority referred to in sub-section (1)

of Section 66] refuses an application for the grant of a permit of any kind under this Act, it shall give to the applicant in writing its reasons for the

refusal of the same and an opportunity of being heard in the matter.

SECTION - 87(1) : A Regional Transport Authority and the State Transport Authority may without following the procedure laid down in section

80, grant permits, to be effective for a limited period which shall, not in any case exceed four months, to authorize the use of a transport vehicle

temporarily -

(a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or

(b) for the purposes of a seasonal business, or

(c) to meet a particular temporary need, or

(d) pending decision on an application for the renewal of a permit, and may attach to any such permit such condition as it may think fit

Provided that a Regional Transport Authority or, as the case may be State Transport Authority may, in the case of goods carriages, under the

circumstances of any exceptional nature, and for reasons to be recorded in writing, grant a permit for a period exceeding four months, but not

exceeding one year.

SECTION - 88(2) : Notwithstanding anything contained in sub-section (1), a permit granted or countersigned by a State Transport Authority shall

be valid in the whole State or in such regions within the State as may be specified in the permit

3. According to Mr. Dey the State Transport Authority being superior body is entitled to issue any permit within the State whether it is interregional

or inter-state or a regional permit. That right is, according to Mr. Dey, unfettered in view of provision of Section 69 of the said Act, 1988. In

support of his contention Mr. Dey relied upon Apex Court decision reported to State of Rajasthan and Others Vs. Shri Noor Mohammad, of the

said judgment had been referred to by Mr. Dey is quoted below:

It is clear from the above provisions that the State Transport Authority is a superior Authority with jurisdiction over the whole of the State while the

Regional Transport Authority is subordinate to it with its jurisdiction generality confined to the region for which it is appointed. It is also clear from

sub-section (3) clause (b) that the State Transport Authority can perform the duties and functions of the Regional Transport Authority under certain

circumstances. The High Court has held on the construction of clause (b) aforesaid that the State Transport Authority is entitled to perform the

duties of a Regional Transport Authority in only two cases namely (1). Where there is no Regional Transport Authority in a region and the State

Transport Authority thinks it fit to perform the duties of the Regional Transport Authority, and (2) where the Regional Transport Authority is

functioning the State Transport Authority can discharge the functions of the Regional Transport Authority only in respect of inter-regional routes

and on the request of the Regional Transport Authority. In thus construing Section 44(3)9b) the learned Judges have departed from the view taken

by that High Court earlier in Ponam Chand vs. State of Rajasthan, ILR (1961) 11 Raj 1031. It was held in that case that the provision in Section

44 (3)(b) contemplated three contingencies under which the State Transport Authority can act to perform the duties of the Regional Transport

Authority, viz. (1) Where there is no such authority; (2) Where the State Transport Authority itself thinks fit to perform those duties in respect of

any route common to two or more regions; and (3) where the State Transport Authority is so required by the Regional Transport Authority to

perform those duties in respect of any such common route. We do not think that there was any sufficient reason for the learned Judges in the

present case to depart from the view which had been taken by an earlier Division Bench of that court. Moreover, neither grammar nor convenience

compels the construction adopted by the learned Judges. The State Transport Authority is a superior Authority, and if for any reason no Regional

Transport Authority is functioning, one does not see why the duties and functions of the Regional Transport Authority should not be left to be

performed by the State Transport Authority. The provisions in the Act with regard to the issue of permits and the like are made in the public

interest and it will lead to great inconvenience if in the absence of a Regional Transport Authority the public should be entirely left to the mercy of

the State Transport Authority whether it will exercise its discretion to perform the duties and functions of the Regional Transport Authority or not.

In our opinion, the first contingency is the one when a Regional Transport Authority is not functioning. In that contingency, all the duties and

functions of the Regional Transport Authority are expected to be carried out by the State Transport Authority. Then we have two more

contingencies in which the State Transport Authority may take over the duties and functions of the Regional Transport Authority. Both these

contingencies arise in a situation where the duties of the Regional Transport Authority have to be performed in respect of any route common to two

or more regions. These two contingencies are (2) if it thinks fit, or (3) if so required by the Regional Transport Authority, to perform those duties in

respect of any route common to two or more regions. In other words, we have to read the words "'to perform those duties etc.'" once after the

word "'fit'" and a second time after the words "'Regional Transport Authority'". That will explain the importance of the conjunction "'and'" which is

found in sub-clause (b) after the words "'such authority'". The first contingency brooks of no limitation while contingencies (2) and (3) are limited in

scope. Since these two types of contingencies--one unlimited and the other limited were combined into one place, the word "and" has been used

after the first contingency. The second contingency takes into account the authority of the State Transport Authority to take over the specific duties

of Regional Transport Authority with regard to a common route if it thinks fit. Since the State Transport Authority is for the whole State and has a

wider jurisdiction than the separate regional authorities, it is only to be expected that the State Transport Authority may, in a fit case, take over the

functions of the Regional Transport Authority with regard to any route common to two or more regions. The third contingency is also a matter of

convenience. A Regional Transport Authority, though clothed with the powers to issue permits with regard to a route common to two or more

regions, may for several reasons think it appropriate that his function may be more conveniently performed by the State Transport Authority being

a superior Authority with jurisdiction over the several regions and in such a case when a request is made by the Regional Transport Authority, the

State Transport Authority should be entitled to perform the duties of the Regional Transport Authority. In our opinion, the view which found favour

with the learned Judges with regard to the construction of clause (b) is erroneous, and the State Transport Authority is entitled to perform the

duties of the Regional Transport Authority (i) where there is no such authority; (ii) when the State Transport Authority thinks it fit to perform the

duties of the regional Transport Authority in respect of any route common to two or more regions or (iii) where the State Transport Authority is

required by the Regional Transport Authority to perform those duties in respect of any route common to two or more regions.

4. Mr. Rabilal Moitra, leading Mr. Dey, learned counsel for the respondent, supplemented the submission made on behalf of the State by citing

two decisions being AIR 1992 Supreme Court page 440 and AIR 1992, Andhra Pradesh, page 333.

5. Relying on the aforesaid decisions Mr. Moitra lastly contended that unfettered right of the State Transport Authority can not be called in

question and in any event petitioner being an existing operator had no right to challenge issuance of permit in accordance with the provisions of the

Motor. Vehicles Act, 1988.

6. Mr. Dilip Kumar Samanta, learned counsel for the petitioner, in reply submitted that it was true that the State Transport Authority had power to

issue any permit. However, the legislature thought it fit to segregate the areas to avoid confusion. Accordingly to Mr. Samanta such segregation is

apparent on a plain reading of Section 69 of the said Act, 1988. This has been done to avoid confusion and conflict. Mr. Samanta in furtherance

contended that in case the State Transport Authority issued permit without any reference to Regional Transport Authority then it would be very

much difficult to the Regional Transport Authority to regulate the transport in a particular region. Mr. Samanta in support of his contention relied on

an unreported decision of Barin Ghosh, J. in the matter of Dhananjoy Sharma vs. State of West bengal & Ors., [W.P.No. 9174(W) of 1999]

dated 12th January, 2000 as well as the decision reported in AIR 1973 Orissa, Page 39 paragraph 7 of the said judgment being relevant herein

and is quoted below:

The opposite parties take the stand (hat u/s 44(3) of the Act, the State Transport Authority would assume jurisdiction to deal with the matter. That

sub-section as far as material reads thus:

A State Transport Authority shall give effect to any directions issued u/s 43 and subject to such directions and save as otherwise provided by or

under this Act shall exercise and discharge throughout the State the following powers and functions namely-

(b) to perform the duties of a Regional Transport Authority where there is no such Authority, and, if it thinks fit or if so required by a Regional

Transport Authority in regard to the route in question. No material has been placed before us to show that the State Transport Authority had never

decided to assume jurisdiction over the route in question in terms of Section 44(3)(b) of the Act. We cannot accept the contention that while under

the statute power would vest in the Regional Transport Authority to deal with the matter, it would be open to the State Transport Authority in

exercise of Section 44(3)(b) of the Act to simultaneously exercise such jurisdiction without prior decision to that effect. That would not only lead to

administrative chaos but would introduce uncertainties which would frustrate the purposes of the Act. It may be open to a State Transport

Authority in exercise of the powers vested in Clause (b) of sub-section (3) of Section 44 of the Act to resolve and assume such jurisdiction as was

indicated in the case of Ratanlal vs. Chairman, R.T.A. Bikaner Region, AIR 1970 Raj 25. We have already indicated that no documents have

been placed before us to show that there was a prior resolution of the State Transport Authority to that effect. We must, therefore, assume that the

State Transport Authority had never decided to assume jurisdiction to perform the duties of the Regional Transport Authorities of Sambalpur and

Bolangir in respect of this route.

7. Following the Apex Court decision in the case of State of Rajasthan and Others Vs. Shri Noor Mohammad, I hold that since the State

Transport Authority had right to issue permit in respect of any inter regional route if they thought it fit and proper, there was no illegality perpetrated

in issuance of the special permits. However, from the facts of this case as pleaded by the petitioner and not controverted by the State it appears to

me that there had been irregularity on the part of the State Transport Authority in issuing those permits. It is true that the law permitted the State

Transport Authority to issue such permit, at the same time the State Transport Authority should have assigned reasons as to why they thought it fit

to issue such permits. No such attempt was made by the State to refute such allegation. No affidavit-in-opposition had been filed by the State in

this regard. It is not clear to me as to whether before issuance of such permit any intimation was sent to the concerned Regional Transport

Authorities. It is also not clear to me as to whether even after the issuance of such permits the concerned Regional Transport Authorities were

informed by the State Transport Authority.

8. The statutory authorities are expected to act not only strictly in accordance with the statute but also in a fair and logical way. In the instant case

the State Transport Authority usurped the power of the Regional Transport Authorities by virtue of the power conferred upon them u/s 69 of the

said Act of 1988 without having reference to its sub-ordinate authority. Why it had been done is also unknown to this court. It is most unfortunate

when a State action was challenged in the court of law it was expected from the State that an affidavit refuting the allegation would be filed to

dispel the doubt of the court. Even at the hearing stage the learned counsel appearing for the State argued on the basis of their statutory power no

attempt was ever made to justify the action of the State on merits. No attempt was made to produce the records before the court pertaining to

such issuance of permits.

9. Hence, I am constrained to hold that there was no transparency in the action of the State Transport Authority in issuance of those permits.

10. The permits had been issued to various operators. The are now plying their buses and if I direct to recall those permits it would cause

unnecessary hardship on the said operators as well as common public at large. Hence, I do not wish to nullify such action of the State Transport

Authority.

11. Writ petition is thus disposed of. There would be no order as to costs. Registrar General, Appellate Side, High Court, Calcutta is directed to

send a copy of this judgment and order to the Transport Secretary, Government of West Bengal with a direction to place the same before the

Hon"ble Transport Minister, State of West Bengal for necessary action so that such irregularity may not occur in future.