

Narayan Kumar Mitra and Others Vs. State of West Bengal and Others

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Court : Kolkata

Decided On : Sep-27-1994

Reported in : AIR1995Cal119,(1995)1CALLT166(HC)

Judge : Shree Rang Mishra, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 80 and 87;; [Constitution of India](#) - Articles 19(1) and 226;; Motor Vehicles (Amendment) Act, 1972 - Section 47;; West Bengal Motor Vehicles Rules - Rule 105

Appellant : Narayan Kumar Mitra and Others

Respondent : State of West Bengal and Others

Advocate for Def. : M.M. Das and ;S.K. Niamatull, Advs.;Delip Seth, Adv.

Advocate for Pet/Ap. : Kashi Kanta Mitra and ;Ashok Banerjee, Advs.

Judgement :

ORDER

1. Petitioners who are said to be temporary permit holders in respect of Route No. SD-4 were issued permit by respondent No. 4 have approached this Court under Art. 226 of the Constitution seeking a relief of Mandamus directing the respondents not to issue or grant any further stage carriage permit in respect of route in question in excess of the existing fleet strength of 26 buses. They have further claimed to withdraw the resolution passed by the Regional Transport

Authority to increase the strength and to issue permit on the basis of the said resolution.

2. Brief facts stated in the writ petition are as follows:

Petitioners allege themselves to be the holders of temporary stage carriage permit purchased their vehicles and they were plying their vehicles on the route in question. According to them there is a sanctioned fleet strength of 26 vehicles. Petitioners were granted permit which was renewed from time to time extending the period of validity of the permit. Subsequently, while issuing renewal certain restrictions were imposed by the respondents and petitioners Nos. 7 to 16 operated their vehicles in between Bibirhat, to Garfa covering Via Thakurpukur, Behala, Taratolta, Tollygunge Phari, Rashbehari Avenue, Goriahat, Jadavpur.

3. Aggrieved by the action of the respondents, petitioners Nos. 7 to 16 jointly filed the writ petition on 10th of March, 1994 and the learned single Judge of this Court asked for an affidavit-in-opposition. His order is as follows:--

'Let affidavit-in-opposition be affirmed within three weeks and reply, if any, be affirmed two weeks thereafter and the matter be listed for hearing eight weeks hence.

There will be an interim order permitting the petitioner to ply their vehicles between Garfa and Thakurpukur in Route No. Sd-4'.

4. It was further alleged that on account of the stay order in a mala fide manner respondent No. 4 is going to grant further stage carriage permit to other outsider for the said route in excess, of the existing fleet strength of 26 bus services. It has been pointed out by them that so far the strength has not been increased. Petitioners having come to know that the Respondent No. 4 proceeding and proposing to issue stage carriage permit in the route in question, the Secretary of the petitioners' Association made a representation to the respondent No. 4 with a request not to grant any further permit in the said route in question. But respondent No. 4 has failed to take any action on the said representation. According to them, there was no public demand and in particular of the locality nor

there was any dissatisfaction by the general public in respect of the existing operators. Petitioners having purchased the vehicles, if fresh permits are issued, they will suffer irreparable injury and their income will also be reduced. According to them, the purported action on the part of the respondents increasing the strength of the stage carriage permit on the route in question is in violation of Section 80 sub-clause (2) of the [Motor Vehicles Act, 1988](#).

5. I have heard the learned Counsel appearing for the petitioners and also the learned Counsel appearing for the respondents.

6. As agreed between the parties since pure question of law is involved it is not necessary to call for an affidavit-in-opposition and with the agreement of the parties the writ petition may be disposed of. Accordingly, the writ petition is heard and decided.

7. Learned Counsel appearing for the petitioners has urged that the petitioners having purchased the vehicles for plying on the route in question after having spent huge amount if respondents are allowed to increase the fleet strength of the buses on the route in question it will affect the right of the petitioners. They have complained in this regard to the respondents regarding the issuance of the permit but no heed has been paid by the authorities and in these circumstances petitioners entitled to a suitable writ in the nature of mandamus directing the respondents not to issue fresh temporary permit. Learned Counsel appearing for the respondents has primarily urged that an existing operator has no right or interest and locus standi to maintain an objection in respect of the grant of the permit. Specially, a temporary permit holder cannot maintain an objection as it is in between the applicants and the R.T.A. or the S.T.A. as the case may be for applying for a fresh permit. In view of the liberalised policy under the provisions of [Motor Vehicles Act, 1988](#) hereinafter referred to as th'e Act learned Counsel has placed reliance on the following decision:

(1) : AIR 1992 SC443 , Mithilesh Garg v. Union of India; (2) : AIR1976 All286 , Mithan v. State Transport, Appellate Tribunal U.P., Lucknow; (3) : AIR1966 All455 , Sardar Surendra Singh v. State of Uttar Pradesh; (4) (1993) 2 Cal LJ 99, Siliguri Inter District Minimus Owners' Association v. Bijon Krishna Bhowmick; (5) F.M.A.T.

2464 of 1992; (6) F.M.A.T.635 of 1993.

8. Having heard the arguments of the learned Counsel for appearing for the parties and having perused the provisions of the Motor Vehicles Act it is clear that a liberalised view has been taken in the grant of permit by the R.T.A. or S.T.A. in accordance with the Act in the matter of grant of permit one way or other -- An existing operator has no locus standi to object such a permit. In *Mithilesh Garg v. Union of India* reported in : AIR 1992 SC443 a question arose regarding the maintainability of the objection by an existing operator. The Supreme Court has observed as follows (at p. 448 of AIR):

'They are plying their vehicles on the routes assigned to them under the permits. They are in the full enjoyment of their fundamental right guaranteed to them under Art. 19(1)(g) of the [Constitution of India](#). There is no threat of any kind whatsoever from any authority to the enjoyment of their right to carry on the occupation of transport Operators. There is no complaint of infringement of any of their statutory rights. Their only effort is to stop the new operators from coming in the fields as competitors. We see no justification in the petitioners' stand. More operators mean healthy competition and efficient transport system. Over-crowded buses, passengers standing in the aisle, clinging to the bus-doors and even sitting on the roof-tops are some of the common sights in this connection. More often one finds a bus which has noisy engine, old upholstery, uncomfortable seats continuous emission of black-smoke from exhaust pipe. It is, therefore, necessary that there should be plenty of operators on every route to provide ample choice to the commuter-public to board the vehicle of their choice and patronise the operator who is providing the best service. Even otherwise the liberal policy is likely to help in the elimination of corruption and favouritism in the process of granting permits. Restricted licensing under the old Act led to the concentration of business in the hands of few persons thereby even giving rise to a kind of monopoly, adversely affecting the public interest. The apprehension of the petitioner that too many operators on a route are likely to affect adversely the interest of weaker section of the profession is without any basis.'

9. In : AIR1976 All286 Section 47 of the Amending Act 1972 was considered by a Division of Allahabad High Court and there the question for consideration was the right of representation of an existing operator and according to the said decision the right of an existing operator has ceased to exist and the limitation on the number of a stage carriage permit in the region or any specified area or route between the region has also dis-appeared. The Bench observed as follows (at p. 288 of AIR):

'As a consequence of these changes an existing operator has neither a right of representation nor he is Considered an aggrieved person competent to maintain an appeal against the grant of permit. The legislation now does not recognise any right in the existing operator with regard (o the grant of a permit. The rule relating to the number of permits admittedly does not apply to an inter regional route. If an existing permit holder has no right of representation before the Regional Transport Authority and has absolutely no say in the number of permits that may be granted on an inter-regional route, he cannot assume the character on an aggrieved person entitled to maintain a petition in this Court under Art. 226 of the Constitution and challenge the legality of the order of the Regional Transport Authority or the Tribunal.'

10. While considering the question that whether an existing operator is entitled to a particular amount of money by Way of profit he cannot agitate for the grant of a permit that it will affect his financial aspect. The Division Bench in : AIR1966 All455 observed as follows:

'No operator on a particular route is entitled to a particular amount of money by way of profits and cannot be heard to say that if the strength of the route is increased, his financial interest would suffer and consequently the increase should not be allowed. The transport services exist to serve the public and not to allow people to make profits at the cost of the public interest. Therefore, even if by increase in the number of operators on the route the profits of the existing operator would be reduced, that does not confer on him a right of action and on that ground he has no right to maintain the writ petition.

11. In (1993) 2 Cal LJ 99 the Division Bench observed as follows:

['Motor Vehicles Act, 1988](#) did not provide any right upon the association of operators to file objection and/or to make a representation and that is not requirement of law that such association is to be heard before the Regional Transport Authority can make a decision in the matter.'

12. In F.M.A.T. No. 2464 of 1992 a Division Bench of this Court on 12th of August, 1992 while considering the question whether an existing operator having a temporary permit could object the grant of a permit. The Division Bench has observed as follows:--

'But so far as grant of temporary permit is concerned the only relevant Section 87 of the new Act and the Regional Transport Authority can grant temporary permit for limited days within the scope of power conferred under Section 87 of the Act. Accordingly, we make it clear that the order passed by the learned trial Judge in so far as applicability of Rule 105 of the West Bengal Motor Vehicles Rules should only be made applicable in case of permanent permit and not in case of temporary permit.'

13. In F.M.A.T. No. 635 of 1993 a Bench of this Court was considering an application of stay rejected by the learned single Judge for addition of party on the ground that the existing operator has no locus standi to challenge the validity of the grant of a permit issued in respect of another operator. The Bench has observed as follows:

'We do not find any reason to interfere with the order passed by the learned trial Judge in view of the fact that the locus standi of the existing operators to challenge the validity of the order and move writ application is already covered by the Division Bench judgment of this Court on which one of us was a party following the decision of the Supreme Court in AIR 1991 SC 246 (sic) and also the decision of the Supreme Court in : [1976]3SCR58 as well as : AIR 1992 SC443 Mithilesh Garg v. Union of India.'

14. In view of the decision referred to above it leaves no room for doubt that the petitioners who are temporary permit holders have no locus standi or any right to object to the grant of permit to respondents under the provisions of the [Motor](#)

[Vehicles Act, 1988](#). While considering the question of increase of the strength of the route in question when the petitioners have no right to object the grant of such a proposed permit question of restraining the respondent No. 4 for increasing the strength of the route by issuing fresh permit is without any substance. It was urged by the learned Counsel for the petitioners that if the judgment of the Apex Court in *Mithilesh Garg v. Union of India* reported in : AIR 1992 SC443 be read as a whole it is clear that an existing operator could maintain an objection. This argument is without any substance. A perusal of the judgment of the Apex Court leaves no room for doubt that an existing operator has no right to object to the grant of a permit to other persons and the authorities are entitled to increase the strength as provided under the Act and the Rules.

15. So far as the question of maintaining an objection by a temporary permit holder is concerned as referred to above a Division Bench of this Court having taken the view that an existing operator having a temporary permit is not entitled to an objection nor his objection is maintainable under Rule 105 of the Rules.

16. In view of what has been stated above taken into consideration the provisions of the [Motor Vehicles Act, 1988](#) and the cases referred to above leave no room for doubt that an existing operator has no right to object for the grant of a permit and any interpretation that an existing operator has a right to object to the grant of a permit will go against the spirit and the provisions of the Act and also in the teeth of the decision of the Apex Court as well as the cases referred to above.

17. Accordingly, there is no merit in the writ petition and it fails and is dismissed in the light of the observations made above.

18. There will be no order as to costs.

19. Let a Xerox copy of the order be given to the learned Counsel for the petitioners on furnishing usual undertaking.

20. Petition dismissed.