

Hiralal Chatterjee Vs. Indra Narayan Chatterjee and anr.

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Court : Kolkata

Decided On : Sep-03-1974

Reported in : AIR1975Cal171

Judge : Salil Kumar Datta and ;B.C. Ray, JJ.

Acts : [Motor Vehicles Act, 1939](#) - Section 47 and 47(1); ;Motor Vehicles (Amendment) Act, 1956; ;[Constitution of India](#) - Article 39

Appeal No. : A.F.O.D. No. 650 of 1968

Appellant : Hiralal Chatterjee

Respondent : indra Narayan Chatterjee and anr.

Advocate for Def. : Anil Chandra Sen and ;Sushil Kumar Banerjee, Adv.

Advocate for Pet/Ap. : Tapas Chandra Ray, Adv.

Disposition : Appeal dismissed

Judgement :

Salil Kumar Datta, J.

1. This is an appeal against the judgment and order of D. Basu, J. dated June 20, 1968 in Civil Rule No. 122 (w) of 1966. The facts as appearing from the petition are as follows: The Regional Transport Authority. Bankura (hereinafter referred to

as 'R.T.A.') declared one vacancy on Bankura to Golabari via Indpur and Khatra Road and applications were invited for permits. The petitioner as also the opposite party No. 2 and others applied for the same and altogether 78 applications were received. The police verifications were made in respect of the said candidates. About opposite party No. 2 the police report stated that he was holding permits in other routes, solvent to purchase bus, though he had no knowledge of driving motors. About the petitioner the police report said that he had experience of motor transport business for ten years, held no permit in any route and was solvent to purchase bus. It was further stated that the opposite party No. 2 had also share in other passenger transport firms in other routes of the district. It was stated in the petition that the persons who were drivers like the petitioner were given special consideration. In spite of the fact that the opposite party No. 2 was holding share in businesses and firms that were granted permits in the two routes of the district and he was not a driver, he was given permit in the disputed route by a resolution of the R. T. A dated September 21, 1963 in violation of Rule 57A of the Bengal Motor Vehicles Rules on the ground that the said opposite party did not hold permit exclusively. The petitioner filed an appeal before the appellate sub-committee of the State Transport Authority and the grant of the permit to the opposite party No. 2 was set aside and the case was remanded for reconsideration from the stage prior to September 21, 1963. Again, at the meeting of September 27, 1965 the R. T. A granted one permit to the opposite party No. 2 in Bankura to Suri via Ilambazar. The application in respect of the disputed route was considered by the R. T. A. on November 17 and 20, 1965 and the R. T. A. again granted permit to the said opposite party No. 2. This grant of the permit was challenged by the petitioner in the connected Rule on the ground inter alia that it was in violation of Rule 57A as the said opposite party was also a shareholder in the two firms who had permits in other routes of the district. Further the petitioner himself was a driver and conductor and thus had considerable experience in passenger transport business and he was a more suitable candidate. On these allegations and contentions the petitioner moved this Court under Article 226 of the Constitution praying for a writ in the nature of Mandamus forbearing the respondents from giving effect to the proceeding granting permit to the said opposite party and also for a writ in the nature of certiorari quashing the same.

2. The Rule was opposed by the opposite Party No. 1, the Secretary of the R. T. A. who filed an affidavit-in-opposition stating that experience as driver has never been accepted as requisite experience in passenger transport business. Rule 57A applies only when other conditions are equal, preference is to be given to the persons who hold no permits. Permit was granted to the opposite party No. 2 who in view of his long experience and sufficient funds to place adequate vehicle was selected by the R. T. A. after full consideration as he was found most suitable candidate for the grant and Rule 57A had no application. It was accordingly submitted that the permit was granted to the said opposite party in accordance with law and all allegations contrary thereto were denied. There was an affidavit-in-opposition on behalf of the opposite party No. 2 who also denied all allegations against him in the petition. It was submitted that he had some two annas share in Kalika Company and one-third share in Lakshmi Transport Company which had the said transport permits. It was also stated that he had permit exclusively in his name in a different route by a resolution of the R. T. A. of September 27, 1965. It was submitted that Rule 57A had no application as there was no doubt that he was a more suitable candidate.

3. An affidavit-in-reply was filed by the petitioner reiterating the allegation made in the petition.

4. The learned Judge held that the opposite party No. 2 had experience in passenger transport business and had better solvency. In discussing the basis of Rule 57-A he referred to Section 47(1) (e) of the Motor Vehicles Act as also Article 39(c) of the Constitution. It was observed that the directive principles of State Policy laid down in Part IV of the Constitution served as a beacon light to the judiciary for furtherance of the objectives of the Constitution which is to secure social and economic equality. Law accordingly should be interpreted so that it may be in conformity with the directive principles. Article 39(c) ensures that the State is to direct its policy so that a part of the economic system does not result in concentration of wealth and means of production to the common detriment. Section 47 (1) (e) is to be interpreted in the light of the provisions of the said Article. It was held that while Rule 57A speaks of preference in a particular contingency Section 47 (1) (e) of the Motor Vehicles Act provides a general

directive. The Court further found that the opposite party No. 1 in the meantime had been granted another permit exclusively by a resolution dated September 27, 1965 by the same R. T. A. and on this ground many applications had been rejected. This factor was not taken into consideration by the R. T. A. in the impugned resolution. It was further found that neither Section 47 (1) (e) nor Rule 57A excludes a collective permit from the mischief of their operation. The Court was of opinion that the R. T. A. has not considered the application for permit in the light of those statutory provisions after remand by the appellate authority. The Rule was accordingly made absolute and the R. T. A. was directed to dispose of the application in the light of the directions given in the judgment indicated above, though the order was not to be taken as an inclination in favour of the petitioner.

5. The opposite party No. 2 has challenged the propriety of this order in this appeal. Mr. Tapas Chandra Ray, learned Advocate appearing for the appellant, submitted that on its own finding that the petitioner and the opposite party No. 2, appellant before us, are not equal, the Court should have held that Rule 57A had no application. Further the other observations on Article 39(c) or Section 47 (1) (e) are redundant and unnecessary. Further Section 47 (1) (e) does not predicate the possession of a permit as a disqualification but as a qualification for grant of further permit.

6. It is to be noted that when a matter is remanded to a Judicial or Quasi-judicial Authority for disposal of the same in accordance with law, the High Court, not sitting as an appellate authority, should not impose its views on the merits of the claims which should be left to the appropriate authority. As was observed in *Thakur Birendra Singh v. State of Madhya Pradesh*, : (1969)3SCC489 when the High Court is not sitting on appeal over a decision of a Tribunal or authority no direction should be given by it in the matter when the case is remanded for fresh consideration and as such it should be left at large.

7. Section 47 (1) provides for matters to be taken into consideration by a Regional Transport Authority in considering an application for grant of stage carriage permit. Clause (e) of Section 47 (1) prior to its amendment in 1956 provided as follows:

'the operation by the applicant of other transport services and in particular of unremunerative services in conjunction with remunerative services.'

The clause after the amendment reads as follows:--

'the operation by the applicant of other transport services including those in respect of which applications from him for permit are pending.'

It has been held in *Gopal Chandra v. State of West Bengal*, : AIR1962 Cal183 that the provision as amended does not indicate that any preference should be given to the applicant on that ground. On the contrary it is a relevant factor as a ground for refusing permit to the permit holder and according permit to the non-permit holder.

8. The law as it was before the amendment seems to suggest that the operation of other transport services by the applicant should be taken into consideration particularly of unremunerative service in conjunction with remunerative service. The obvious implication seems to be that if the applicant had a remunerative service in conjunction with unremunerative service in other route he was not to be given any preference and the amended Clause (e) does not alter the basic position.

9. The provisions in the Motor Vehicles Act relating to grant of permits' is to be considered in the context of the rapid growth and huge expansion of motor transport service and it has long become a potent source of income. In Part IV of the Constitution. Articles 38 and 39 provide:

'38. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may be a social order in which justice, social, economic and political, shall inform all institutions of the national life,

39. The State shall, in particular, direct its policy towards securing.

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to common detriment.'

There can be no dispute that means of production include motor transport service for public which is a potent source of income. Accordingly in granting permits to

private applicants or operators the Regional Transport Authority, consistent with the directive principles of state policy, has to see that there is no concentration of the source of income from the motor transport service to the common detriment. Clause (e) of Section 47 (1) of the Act is a general directive in this respect and the authority in considering applications for a stage carriage permit shall have regard to the above and also other matters referred to in Section 47 (1). The proviso to Section 47 (1) which gives preference to Co-operative Societies over an individual applicant for grant of stage carriage permit does not alter the position as contended. We also agree with the learned Judge that Section 47 (1) (e) provides a general directive while Rule 57A is a directive in a contingency. We are also in agreement that neither Section 47 (1) (e) nor Rule 57A excludes a collective permit from the operation, of the said provisions. The interpretation of law as set out in the judgment under appeal as also in this judgment will be binding on the R. T. A. in considering the applications for grant of permit.

10. It must, however, be made clear that while interpretation of law involved is binding on the subordinate Tribunal or Authority as indicated, the position will be completely different on questions of fact relating to applications before the R. T. A. As held by the Supreme Court in the decision cited above it would not be proper for the High Court to impose its finding on the respective merits of the claim of which the R. T. A. is the sole Judge. The R. T. A. accordingly will proceed and dispose of the applications in accordance with law untrammelled by any observation or opinion expressed in the judgment under appeal or in this judgment on the merits of the respective cases of the parties. Subject to the above observations this appeal is dismissed. There will be no order as to costs.

B.C. Ray, J.

11. I agree.