

State of W.B. and ors. Vs. Poly Das

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Court : Kolkata

Decided On : Jun-06-2007

Reported in : 2007(3)CHN699

Judge : Pratap Kumar Ray and ;Prasenjit Mandal, JJ.

Acts : [Motor Vehicles Act, 1988](#) - Section 71(3); ;Motor Vehicles Rules

Appeal No. : GA No. 828 of 2007, APOT No. 143 of 2007 and WP No. 1423 of 2006

Appellant : State of W.B. and ors.

Respondent : Poly Das

Advocate for Def. : P. Deb Roy, Adv.

Advocate for Pet/Ap. : N.I. Khan, Adv.

Disposition : Appeal allowed

Judgement :

1. Heard learned Counsel for the parties.
2. The stay application is taken up for hearing. The stay application with reference to the appeal arose out of the challenge of the judgment and order dated 21.9.2006 passed by the learned Trial Judge in WP No. 1423 of 2006 whereby

and whereunder the learned Trial Judge passed a mandatory order directing issuance of the offer letter in the concerned route namely, Howrah New Bus Stand to Sealdah instead of the original route for which the application was filed for the route Howrah Station to Sealdah. In adjudicating the stay application we are of the view that the entire appeal could be disposed of on merit. Hence the appeal is taken up for final hearing. All formalities stands dispensed with.

3. Parties have argued at length on the questions of fact and law as involved in the appeal. It is the submission of the learned Advocate for the appellant before us that in view of the congestion of vehicles in the city of Kolkata and the nearby twin city at Howrah and to control the pollution, the State Government took a policy decision published in the Kolkata Gazette in its publication dated 6.8.2004 by a Notification No. 34335 dated Kol. 2.8.2004 to this effect that no new bus route should be formulated and permit be issued through the Central Business District viz. Esplanade and Band Stand in Kolkata and Howrah Station and approach areas of Howrah Bridge until further orders, no new permit for stage carriages shall be issued which may originate/terminate in Esplanade and Band Stand in Kolkata and Howrah Station and, further, that no new bus route shall also be created/formulated in Kolkata and Howrah without creating any appropriate parking place having requisite amenities for both the passengers as well as the transport workers. This notification is quoted hereinbelow:

PART- 1: Orders and Notifications by the Governor of West Bengal, the High Court, Government Treasury etc.

GOVERNMENT OF WEST BENGAL

Transport Department

NOTIFICATION

No. 34335-WT/BM-139/2004 Kolkata 2nd August, 2004 Whereas the Hon'ble Division Bench presided over by His Lordship the Hon'ble Justice D. K. Seth of the Hon'ble High Court at Calcutta by an order dated 21.11.2003 in GA No. 568 of 2002/A.P.O.T. No. 83 of 2002 was pleased to direct the Transport Department,

Government of West Bengal that a committee be constituted to examine the position relating to availability of road space, halting space/terminus, extent of accommodation of buses in such terminal and such other related matters in connection with issue of permits to the transport vehicles vis-a-vis the prevailing traffic congestion and automobile pollution in and around the cities of Kolkata and Howrah to enable the State Government frame a Comprehensive Passenger Transport Policy for the city of Kolkata and its outskirts on the basis of the recommendations of the said committee.

And whereas the said committee, constituted vide Notification No. 44-WT/7E-1497/2003 dated 2.1.2004 of the Transport Department has submitted its report with recommendations for control of traffic congestion and vehicular pollution to the Government in July, 2004;

And whereas the Government of West Bengal in the Transport Department has considered the entire report and decided to accept the recommendations of the said committee for better control of traffic congestion and reduction in automobile pollution in the city of Kolkata in the interest of citizens;

Now therefore in compliance of the aforesaid order of the Hon'ble High Court and in pursuance to the powers vested upon the State Government as per provisions of the Motor Vehicles Act and rules framed thereunder, the Governor is hereby pleased to direct the State Transport Authority, West Bengal and all the Regional Transport authorities in the State, that:

1. No new bus route be formulated and permits be issued which may pass through the Central Business District, viz. Esplanade and Band Stand in Kolkata and Howrah Station and approach areas of Howrah Bridge [Rabindra Setu]; till further orders;
2. No new permit for stage carriage shall be issued which may originate/terminate in Esplanade and Band Stand in Kolkata and Howrah Station;
3. No new bus route shall also be created/formulated in Kolkata and Howrah without creating any appropriate parking place having requisite amenities for both

the passengers as well as transport workers;

4. No new permit shall be issued for autorickshaw operating within Kolkata Metropolitan area.

This order shall take immediate effect.

By order of the Governor,

Sd/-

Sumanta Choudhury

Principal Secretary to the

Government of West Bengal

4. The restriction/ban regarding opening of a new bus route as well as grant of permit was judicially considered by the Division Bench of Calcutta High Court while hearing the appeal FMA No. 604 of 2004 under the cause title Sujata Ganguly and Anr. v. State of West Bengal and Ors. along with other appeals as mentioned thereof and by the judgment dated 27.9.2005 the Division Bench (quorum D. K. Seth, J, as His Lordship then was sitting with Soumitra Pal, J.] held in paragraph 5.1 of the said judgment that the notification was valid save and except the grant of permit in respect of the number of vehicles as were duly notified relating to the concerned routes in terms of the notification dated 20.5.2003, on exercise of the power Under Section 71(3)(a) of the [Motor Vehicles Act, 1988](#) and no further offer letter or permit should be issued in violation of the policy decision notified on 6.8.2004. Clause 5.1 of the said judgment reads as follows:

5.1 The State Transport Authority and Regional Transport Authority of Calcutta and Howrah may issue stage carriage permits against offer letters already issued by the concerned authorities prior to the issue of the Notification No. 3438-WT/BM-139/2004 dated 2nd August, 2004 published on 6th August, 2004 subject however to the notification dated 20th May, 2003 issued Under Section 71(3)(a) of the [Motor Vehicles Act, 1988](#). No offer letter or permit shall be issued in violation of

the policy decision notified on 6th August, 2004. In cases where offer letters have been issued after 6th August, 2004 which violates the policy decision dated 6th August, 2004, no permit shall be granted in respect of such offer letters so issued.

5. The emission of carbon dioxide, lead oxide and the other injurious gases due to burning of the fuel namely, diesel and/or petrol while the vehicle is in operation, has caused serious consequential environmental effect not only in the city of Kolkata but also in adjoining town namely, the Howrah and considering the pollution issue and the environmental aspects which is causing a direct impact on health of the citizens residing within the periphery of the twin city of Kolkata and Howrah, the Government took a policy decision regulating the grant of route permit as well as opening of the new route in question unless some preventive measures are taken to that effect which is reflected in the Notification dated 06.08.2004, as already quoted above.

6. The respondent-writ petitioner, filed an application praying grant of permit in the concerned route Howrah Station to Sealdah prior to issuance of the said notification of 6.8.2004 but mere filing of an application ipso facto is not vesting of any right to an applicant to have an offer letter. During pendency of the matter the aforesaid notification of 6.8.2004 was published and it got a judicial sanction by the order of the Division Bench as already discussed and referred to. On the teeth of the said notification there was no scope to issue any offer letter by the appellant. Learned Trial Judge, however, held as the application was filed prior to issuance of the notification dated 6.8.2004 and-, as such, offer letter should issued by changing and/or varying the route Howrah New Bus Stand to Sealdah instead of original route for which application was filed. The judgment under appeal to this respect directing to issue offer letter by formulating a new route Howrah New Bus Stand to Sealdah by the High Court itself is absolutely beyond the jurisdiction of the High Court to pass such an order. The power of High Court in exercise of its judicial review on the administrative action and/or decision and/or inaction of the administrative body to act as per the statute, is limited to a very small extent and its contours of judicial review is subject to the well known judicial discipline and principle viz. in the event of violation of principles of natural justice, in the event of breach of any statutory provision of the law and/or; in the event of breach of any

legal right as already crystallized in between the parties, the High Court may interfere with the decision by way of judicial review of the decision making process itself. But under no circumstances the High Court can act as an authority to pass a mandatory order directing issuance of an offer letter and that too on creating a new route. Creation of the new route is within the domain of the concerned body and/or authority under the [Motor Vehicles Act, 1988](#) and such creation is dependent upon the factors viz., the route congestion in view of grant of different permits in the routes in question, congestion of the route and other factors as would specify the test of pollution free control of vehicles taking care of the health factors and environmental pollution issue. On that score High Court also accordingly had no jurisdiction to open a new route which has yet not been declared by the appellant. From the impugned judgment under appeal it appears that the learned Trial Judge opened a new route and directed to issue an offer letter. For this particular new route there was no application pending and, as such, the logic as advanced by the learned Trial Judge that prior to the notification of 6.8.2004, the application was pending has no legal basis. The application as was pending before 6.8.2004 was an application in respect of a different route viz., Howrah Station to Sealdah but the writ petitioner respondent himself changed its views to have an offer letter in respect of the said route and prayed for change of the route viz., Howrah New Bus Stand to Sealdah for which there was no creation of a route nor there was any invitation for filing up any application and there was also no application in fact filed by the writ petitioner respondent seeking grant of permit in the said route. In view of the notification dated 6.8.2004 and the Division Bench judgment Sujata Ganguly (supra) as referred to, accordingly, we are of the view that there was no scope before the appellant to issue any new permit on breach of the policy decision framed on protecting the health condition of the commuters and the citizens, who are living in the twin city of Kolkata and Howrah.

7. Under such state of affairs the impugned judgment under appeal is not legally sustainable and, accordingly, the same is set aside and quashed.

8. The writ application stands dismissed. Accordingly, the appeal is allowed. The stay application is also disposed of.

9. No order as to costs.

10. Urgent xerox certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

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