

Prabir Chatterjee Vs. State of West Bengal and ors.

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Court : Kolkata

Decided On : Nov-28-2003

Reported in : II(2004)ACC514,AIR2004Cal111

Judge : Bhaskar Bhattacharya, J.

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

Appeal No. : W.P. Nos. 1399, 1433 and 1540 of 2003

Appellant : Prabir Chatterjee

Respondent : State of West Bengal and ors.

Judgement :

ORDER

Bhaskar Bhattacharya, J.

1. All these three writ applications were heard together as common questions of law are involved herein.

2. By these writ applications the writ petitioners, the existing holders of Stage Carriage Permit in the concerned route, have challenged notification issued in exercise of power conferred under Section 71(3)(a) of the [Motor Vehicles Act, 1988](#) pursuant to the direction of the Central Government thereby enhancing the number of Stage Carriage Permits in those routes.

3. The grievance of the writ petitioners in these writ applications is that while increasing the number of permits in the concerned routes the respondent/authorities did not take into consideration the existing road condition, pollution factors, scope of parking the vehicles etc. According to them, there should be no further increase in number of permits.

4. After hearing the learned counsel for the parties and after going through the materials on record, I am of the opinion that in view of the decision of the Supreme Court in the case of *Mithilesh Garg v. Union of India*, reported in : AIR 1992 SC443 the existing permit holders have no locus standi to maintain an application challenging legality of a notification in terms of Section 71(3)(a) of the Act. The existing permit holders have no right to complain against the grant of further permit in the route which financially affect them. In the Act itself, there is no provision authorizing existing permit holders to raise objection in the matter of considering the maximum number of vehicle in a particular route. The State Government as per direction of the Central Government having taken decision as regards fleet strength of a particular route after taking into consideration of the relevant factors, the existing operator cannot dispute its correctness.

5. Mr. Bhattacharya, the learned Senior Advocate appearing on behalf of petitioners has in this connection placed strong reliance upon the decision of S. B. Sinha, J. (as His Lordship then was) in case of *Howrah Bus Syndicate v. R.T.A., Howrah*, reported in 1996 (100) Cal WN 545 in support of his contention that the case of *Mithilesh Garg* (supra) cannot be an impediment in entertaining writ applications at the instance of the petitioners. He specifically relies upon the observations of His Lordship at paragraphs 33 and 34.

6. After going through the said decision I find that His Lordship after taking note of the case of *Mithilesh Garg* (supra) made the following observations at paragraph 33:

'It, however, does not mean that any other person has also no right to question the grant of permit by Regional Transport Authority or the State Transport Authority if it acts in violation of the mandatory provisions of law.'

7. Again in paragraph 34, His Lordship held that 'this Court in exercise of its jurisdiction under Article 226 of the Constitution of India issue a writ of certiorari in the event a statutory authority has exceeded its jurisdiction or has usurped a jurisdiction when it has none or on such similar grounds.'

8. With great respect to His Lordship, I am unable to accept those observations as a general proposition of law.

9. It is now settled law that existence of a right and infringement thereof are the foundation of the exercise of Jurisdiction under Article 226 of the Constitution of India. Such right may be a fundamental right or an ordinary legal right. The rights that can be enforced under Article 226 of the Constitution of India, must ordinarily be the right of the petitioners except in the case of habeas corpus, quo warranto or writ involving public interest. The present cases do not fall under any of the aforesaid exceptions. In this connection, reference may be made to the decision of the Supreme Court in the cases of (1) State of Punjab v. Suraj Prakash. : [1962]2SCR711 ; (2) State of Orissa v. Ram Chandra, AIR 1964 SC 516 (sic); (3) Calcutta Gas Co. v. State of West Bengal, : AIR 1962 SC1044 .

10. As pointed out by the Apex Court in the aforesaid cases, an illegal order can be set aside in the writ jurisdiction only at the instance of a person having locus standi to maintain such application. Otherwise, a rickshaw puller of Jalpaiguri will be entitled to file writ application challenging illegal enhancement of fleet-strength in Kolkata or Howrah notwithstanding the fact that such rickshaw puller is in no way affected by such increase nor will such decision infringe the right of such a rickshaw puller.

11. I, thus, find that these writ applications are not maintainable at the instance of the existing permit holders in the route. Those are accordingly dismissed on that ground alone. I make it clear that I have otherwise not gone into the merit of the decision taken by the respondent/authorities.

12. All the writ applications are disposed of accordingly.

13. In the facts and circumstances, there will be, however, no order as to costs.

