

Biplan Das and anr. Vs. State of West Bengal and ors.

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Court : Kolkata

Decided On : Sep-26-2007

Reported in : AIR2008Cal17,2008(2)CHN222

Judge : S.S. Nijjar, C.J. and ;Pinaki Chandra Ghose, J.

Acts : [Motor Vehicles Act, 1988](#) - Section 72(2)

Appeal No. : M.A.T. 2673 of 2007 and C.A.N. 8424 of 2007

Appellant : Biplan Das and anr.

Respondent : State of West Bengal and ors.

Advocate for Def. : Arabinda Chatterjee and ;Bhaskar Nandy, Advs. for Respondent No. 5 and ;Dilip Kumar De and ;Snehashish Bala, Advs.

Advocate for Pet/Ap. : Kalyan Bandyopadhyay, ;Pantu Deb Roy and ;Pannalal Bandyopadhyay, Advs.

Judgement :

S.S. Nijjar, C.J.

1. This order will dispose of MAT 2673 of 2007 with an application for Stay (CAN 8424 of 2007) and AST 1640 of 2007, as both the appeals have challenged a common order dated 31st August, 2007 passed in CAN 7562 of 2007.

2. The petitioners filed a Writ Petition being W. P. No. 713 of 2007 claiming therein that although the petitioners had been granted a stage carriage permit on 18th May, 2007, but the fare table which is an essential part of the permit had been illegally denied. The petitioners claimed that they had made a representation on 6th June, 2007 to the respondent authorities. Even the aforesaid representation was not decided. This inaction of the Regional Transport Authority prompted the petitioners to file the writ petition. This writ petition was disposed of with a direction to the respondent Regional Transport Authority to consider and dispose of the representation dated 6th June, 2007 by passing a reasoned order within two months.

3. Aggrieved by the aforesaid order the petitioners filed an appeal being APOT 332 of 2007. It was pleaded that the learned Single Judge ought to have issued a writ in the nature of mandamus directing the Regional Transport Authority to frame a fare table. The appeal was allowed with the observation that the fare table is a part of the permit and the Regional Transport Authority cannot, refuse to issue a fare table. The Trial Judge, therefore, erred in not issuing the mandatory order directing issuance of the fare table. The judgment of the learned Single Judge was, therefore, modified to the extent that the Regional Transport Authority would issue fare table in respect of the permit which had been specified, i.e. Route No. 17 being Belgachia to Salt Lake and back via Posta, Vivekananda Road, A. P. C. Road, Hemanta Bose Setu and Ultadanaga. It was also observed that save and except on the specified route aforesaid, no other fare table should be issued and in doing so, the Regional Transport Authority need not hear any of the parties either the petitioners or the respondents who opposed the writ application. We may also notice that the Division Bench had categorically observed that there is no scope of hearing of any other existing operator on the said route and/or on any other route which is overlapping with the route in question.

4. Pursuant to the aforesaid order, the Regional Transport Authority issued the fare table of mini bus Route No. 17 with effect from 21st June, 2007. Subsequently thereto a resolution was passed on 29th June, 2007 by the Regional Transport Authority modifying the earlier decision. Giving reasons for the modification it has been stated that in the Regional Transport Authority Board meeting dated 4th

April, 2007 and 22nd May, 2007, the Regional Transport Authority decided to issue offer letter for the Route No. 17. Accordingly offer letters/permits were issued to the permit holders as per the priority list. Thereafter, fare chart was prepared in accordance with the orders of the Division Bench in Appeal No. APOT 332 of 2007 dated 15th June, 2007. The fare chart was issued on 19th June, 2007. Thereafter the alignment of Route No. 17 has been reconsidered and a fresh resolution has been passed on 29th June, 2007. According, to this resolution the previous alignment which was allowed in the meeting dated 19th June, 2007 was erroneous as it had been issued without touching Hemanta Basu Setu as per notification. The Regional Transport Authority Board therefore unanimously decided to change the existing alignment. Hence the alignment of the route has been changed as indicated in the resolution. A fresh direction dated 31st July, 2007 has been issued to the Motor Vehicles Authority to prepare a fare chart of Route No. 17 as per new alignment on 31st July, 2007. The resolution dated 29th June, 2007 and the direction dated 31st July, 2007 have been challenged by the petitioners in the present writ petition being W. P. 16910 (W) of 2007. The prayer made is for issuance of a Writ in the nature of Certiorari quashing the resolution dated 29th June, 2007 and the direction in the Memo dated 31st July, 2007. In this writ petition an application being CAN No. 7562 of 2007 was filed by an existing operator of route No. 18 for being impleaded as a party-respondent. This prayer has been allowed by order dated 31st August, 2007. Hence the present appeal. In the same order the learned Single Judge who disposed of the prayer for ad interim relief which had been made by the petitioners. It was urged before the learned Single Judge that no effect should be given to the resolution as it had been passed without hearing the petitioners. Hearing upon notice of one month is mandatory in view of Section 72(2)(xxii) of the [Motor Vehicles Act, 1988](#). No relief was granted to the petitioners. It was observed by the learned Single Judge that this matter cannot be decided without giving an opportunity to the respondents for filing an affidavit. The matter stood adjourned for filing of affidavits. The aforesaid portion of the order has been challenged by the petitioners by filing an appeal being A.S.T. 1640/ 2007.

5. Mr. Bandyopadhyay, learned Counsel appearing for the appellants in both the appeals submits that in view of the law laid down by the Supreme Court in the

case of *Mithilesh Garg v. Union of India* reported in : AIR 1992 SC443 , the existing operators, i.e. the added respondents had no locus standi to be heard either in the writ proceedings or before the Regional Transport Authority in matters concerning Route No. 17. Therefore, the application ought to have been dismissed at the threshold. The learned Single Judge had erred in law in directing that the applicants be added as the respondents. On the other hand, Mr. Chatterjee submits that the rights of the petitioners will be vitally altered in case the fare chart determined on 19th June, 2007 is permitted to continue in operation. Learned Counsel further submits that the resolution passed by the Regional Transport Authority on 29th June, 2007 is in fact in accordance with the notification as well as the directions issued by the Division Bench.

6. We have considered the submissions made by the learned Counsel for the parties. We are of the considered opinion that in view of the law laid down by the Supreme Court in the case of *Mithilesh Garg (supra)*, the applicants, now the added respondent would not have any locus standi to interfere with the operation of the mini bus by the petitioner on Route No. 17. The Division Bench order dated 15th June, 2007 makes it clear that no permit holder was required to be heard before the fare table was issued. The fare table dated 19th June, 2007 having been issued pursuant to the orders of the Division Bench in Appeal being APOT 32 of 2007 was not open to challenge on the ground that the added respondent had not been heard. We are, therefore, satisfied that the added respondent is neither a necessary nor a proper party in the writ application filed by the petitioners. Even otherwise in view of the law laid down by the Supreme Court in the case of *Mithilesh Garg (supra)*, it would have no locus standi, on the ground of financial implications.

7. We are also of the opinion that the learned single Judge had committed an error in holding that no opportunity of hearing was required to be given to any party in passing the resolution dated 29th June, 2007. Once the fare chart had been issued on 19th June, 2007 pursuant to the order passed by the Division Bench dated 15th June, 2007, the petitioner was entitled to rely on the same and to operate the mini bus on Route No. 17 in accordance therewith. Any subsequent change in the fare chart could only be made in accordance with the provisions

contained in Section 72(xxii) which is as under:

(xxii) that the Regional Transport Authority may, after giving notice of not less than one month,

(a) vary the conditions of the permit;

(b) attach to the permit further conditions;

Provided that the conditions specified in pursuance of Clause (i) shall not be varied so as to alter the distance covered by the original route by more than 24 kilometers, and any variation within such limits shall be made only after the Regional Transport Authority is satisfied that such variation will serve the convenience of the public and that it is not expedient to grant a separate permit in respect of the original route as so varied or any part thereof;

8. A bare perusal of the aforesaid provision would show that before the conditions of the fare chart as well as the permit granted to the petitioner on Route No. 17 could be varied, a notice ought to have been issued for a period of not less than one month to the petitioner. Admittedly no notice was issued to the petitioner. On this short ground the resolution dated 29th June, 2007 and the direction dated 31st July, 2007 cannot be sustained. This apart it is evident that the variation of the alignment to the detriment of the petitioner/appellant would entail adverse civil consequences to the petitioner. It is a settled proposition of law that any order causing civil consequences cannot be passed without observing rules of natural justice. This view of ours will find support from the observation of the Supreme Court in the case of *S.L. Kapoor v. Jagmohan and Ors.* reported in : [1981]1SCR746 , wherein it has been held as follows:

The old distinction between a judicial act and an administrative act has withered away and we have been liberated from the psittacine incantation of 'administrative action'. Now, from the time of the decision of this Court in *State of Orissa v. Dr. (Miss) Binapani Dei* : (1967)1ILLJ266SC , 'even an administrative order which involves civil consequences...must be made consistently with the rules of natural justice'. What are civil consequences? The question was posed and answered by

this Court in Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi : [1978]2SCR272 , Krishna Iyer, J. speaking for the Constitution Bench said (at pp. 308-309):But what is a civil consequence, let us ask ourselves, by passing verbal booby-traps? 'Civil consequence', undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil justice inflicts a civil consequence.

9. As we have observed earlier, re-alignment and modification of the fare table would adversely affect the permit of the petitioner on Route No. 17. Therefore, in view of the aforesaid observations of the Supreme Court the order is clearly violative of the rules of natural justice and as such cannot be sustained.

10. In view of the aforesaid the resolution of the Regional Transport Authority dated 29th June, 2007 and/or the Memo No. 2240/20/MV dated 31st July, 2007 are declared illegal, null and void and are, therefore, quashed. The judgment of the learned Single Judge dated 31st July, 2007 is hereby set aside. The added respondent is at liberty to pursue its remedy, if any, against the fare table dated 19th June, 2007 in accordance with law.

11. With the above observations, this appeal along with the connected appeal being AST 1640 of 2007 are disposed of treating the same as on day's list and the writ petition as also the stay application are also disposed of.

Xerox certified copy of this order, if applied for, be given to the learned Counsel for the parties.