

SUPREME COURT OF INDIA

State of West Bengal

Vs.

S.K.Nurul Amin

C.A.No.1961 of 2006

(R.V.Raveendran and P.Sathasivam JJ.)

05.07.2010

JUDGEMENT

R.V.Raveendran, J.

1. These two appeals arising from order dated 27.4.2001 in MAT No.1100 of 2001 and order dated 2.4.2001 in MAT No.586 of 2001 passed by the Calcutta High Court, raise a common question relating to interpretation of sub-section (1) of section 72 of Motor Vehicles Act, 1988 ('Act' for short).

2. The respondent made two applications to the State Transport Authority, West Bengal ('Authority' for short) for grant of permanent stage carriage permit, the first on 7.11.1997 for a permit for the route Dhulian Bazar to Kolkata (via Raghunathganj and Barasat), and the second on 30.11.1998 for a permit for the route Raghunathganj to Kolkata (via Barasat). As the said applications were not disposed of, the respondent approached the High Court by filing separate writ petitions and the said petitions were disposed of with a direction to the Authority to consider and dispose of the pending applications of the respondent. Thereafter, the Authority, by communications dated 18.12.2000 and 3.11.2000, offered permits for the routes Dhulian Bazar to Barasat and Raghunathganj to Barasat respectively, by curtailing/excluding the last portion of the two applied routes from Barasat to Kolkata (26 kms.).

3. Feeling aggrieved, the respondent filed two writ petitions which were disposed of by a learned Single Judge by orders dated 5.3.2001 and 13.2.2001 respectively. The orders directed the Authority to consider the applications of the respondent afresh as the communications of the Authority did not give reasons as to why the permits were not granted up to Kolkata.

“The Authority was also directed to pass reasoned orders after giving an opportunity of hearing to the respondent.”

4. The orders of the learned Single Judge were challenged by the respondent by filing intra-court appeals before a Division Bench. The Division Bench allowed the appeals by the impugned orders dated 27.4.2001 and 2.4.2001. The Division Bench noted that the routes, for which the permits were sought, were not notified ones. The Division Bench held that when permits were sought for the routes - Dhulian Bazar to Kolkata and Raghunathganj to Kolkata, the Authority could not have offered permits by curtailing the routes, thereby changing one of the termini from Kolkata to Barasat. The division bench held that the orders of the Authority violated Section 72(1) of the Act. The said orders are challenged in these appeals by special leave.

5. Section 72 of the Act deals with grant of stage carriage permits. Sub-section (1) thereof which is relevant, is extracted below:

“72. Grant of stage carriage permit.--(1) Subject to the provisions of section 72, a Regional Transport Authority may, on an application made to it under section 70, grant a stage carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit;

Provided that no such permit shall be granted in respect of any route or area not specified in the application.”

6. A careful reading of sub-section (1) of section 72 makes it clear that the Authority is not bound to grant a stage carriage permit as sought. The Authority could either grant the stage carriage permit in accordance with the application or refuse to grant such stage carriage permit or grant the stage carriage permit with such modifications as it deemed fit. The only restriction on the power of the Authority is that it could not grant a permit for a route not specified in the application.

7. In this case, what the Authority has done is to grant the permanent stage carriage permits in regard to the routes for which the applications were made, but with a modification, by curtailing the routes for which the permits were applied, only up to Barasat. The Authority in effect therefore refused to grant the permit for the last leg (Barasat to Kolkata) of the two routes applied. Though the communications from the Authority to the respondent did not contain the reason for curtailing the routes, it is stated that the resolutions of Authority (which led to the issue of the impugned communications) assigned the reason for curtailment. The reason was that in view of the heavy traffic congestion and vehicular pollution in Kolkata, there was restriction of entry of new passenger vehicles into Kolkata and, therefore, the permits were granted only up to Barasat.

8. The Division Bench proceeded on the basis that when one of the termini is altered by the Authority, then the permit is not granted in respect of the route applied, and it would amount to granting a permit in respect of a route not specified in the application. On a careful consideration, we are of the view that the interpretation by the High Court is without basis. What is prohibited by the proviso to sub-section (1) of section 72 is granting of a permit in

respect of any route or area not specified in the application. The said proviso does not prohibit curtailment in regard to portion of the route applied for, for any valid reason. In fact sub-section (1) specifically authorizes the Authority to grant the stage carriage permit with such modifications as it deems fit. Curtailment of a route would be a modification as contemplated under sub-section (1). We may clarify this by an illustration where the application is made for grant of a permit in regard to a route A to D through points B and C. If the grant is made for the route A to C through B, excluding the last portion C to D, it will be a modification which is contemplated and provided for under sub-section (1) of Section 72 of the Act. On the other hand, if the grant is made in regard to route E to F or in regard to route A to E, the grant will be in regard to a route not specified in the application and consequently the permit will be violative of the proviso to sub-section (1) of Section 72 of the Act.

9. In this case, the route applied for was Dhulian Bazar to Kolkata, via Raghunathganj and Barasat in one case and Raghunathganj to Kolkata via Barasat in the other case. Permits were granted from Dhulian Bazar to Barasat and Raghunathganj to Barasat, excluding the portion from Barasat to Kolkata. Such curtailment was a modification which was permitted and authorized by section 72(1) of the Act. The Division Bench of the High Court was not therefore justified in holding that the grant of a permit for a route with any curtailment would be a violation of Section 72(1) of the Act.

10. The next question is whether the Authority was justified in curtailing the route and granting the permits only up to Barasat thereby deleting the last leg of the route from Barasat to Kolkata. Though no reason was given in the communications of the Authority about the grant of permits, the resolutions of the Authority gave the reason that the curtailment was necessitated due to the need to restrict entry of new passenger transport vehicles into Kolkata on account of heavy traffic congestion and increasing vehicular pollution.

11. The respondent contended that the said reason was not a valid reason, as during the pendency of these matters, long after the curtailment of routes in his case, several permanent stage carriage permits were granted on various inter-regional routes, all up to Kolkata, without any curtailment.

12. The appellant-State responded by contending that in view of the traffic congestion and automobile pollution in Kolkata reaching alarming proportions, entry of vehicles in Kolkata was being restricted in a phased manner as a matter of policy; that the State Government constituted a technical committee on 2.1.2004 as per directions of the Division Bench of the High Court dated 21.11.2003 in *M/s. Sankar Automobiles v. State of West Bengal - CA No. 568/2002/APOT No. 83 of 2002*) to examine inter alia the road space, availability of halting space, terminus and related matters; that in accordance with the recommendation of a Technical Committee, the State Government issued a notification dated 2.8.2004 (gazetted on 6.8.2004) directing the Authority and all Regional Transport Authorities in the State as follows:

“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 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 appropriate parking place having requisite amenities for both the passengers as well as the transport workers.

The appellants submitted that the validity of the said notification was upheld by the Division Bench of the High Court by order dated 27.9.2005 in FMA No.604 of 2004 (Sujata Ganguly v. State of West Bengal). The State Government admitted that it had granted some permits up to Kolkata during the pendency of these matters, but that was in pursuance of specific directions of the High Court in some writ petitions and before issue of the notification dated 2.8.2004. The appellants have furnished the particulars of the orders of the High Court which directed grant of permit up to Kolkata. It was submitted that as the issue of notification (which was ultimately issued on 2.8.2004) was under process, and as these matters were still pending, the appellants complied with the orders of the High Court in those cases.”

13. The respondent replied by contending that the prohibition under a notification dated 2.8.2004 would not apply to him as his applications were of the years 1997 and 1998 and the grant of permit for curtailed routes were by orders passed in 2000 long prior to the said notification and therefore, the said notification was not relevant.

14. The notification dated 2.8.2004 was pressed into service by the State Government only to counter the argument that some permits for routes up to Kolkata were granted during the pendency of these matters. The question for decision in these appeals is whether the Authority had the power to grant stage carriage permits with modification by curtailing a part of the routes applied. We have already held that the Authority has the power to grant a stage carriage permit in accordance with the application or with such modifications as it deems fit. So long as the reason for the modification is not found to be arbitrary or unreasonable, the question of interfering with the order of the Authority does not arise. The grant of some permits to others for routes touching Kolkata during the pendency of these matters, would not affect the validity of the orders of the Authority, nor be a ground for interfering with the orders of the Authority, as appellants have explained the reason why in some cases, during the pendency of the matter it had to issue permits.

15. In view of the subsequent events, the question of directing the Authority to consider the applications of respondent afresh does not arise.

These appeals are allowed, the orders of the High Court are set aside, the orders of the Authority are restored and the curtailment of routes is upheld.