

Constitutional Writ
PRESENT: The Hon'ble Justice Debasish Kar Gupta
Judgment On: 12th FEBRUARY, 2010.
C.R.R. No. 4501 of 2008
W. P. No.9049(W) of 2009
Ranjit Kr. Mallick,
versus
The State of West Bengal & Ors.

Point:

PRECEDENT: Question not fall for its consideration-Decision whether a precedent-Constitution of India, Art 141

Fact: The petitioner, by filing the instant writ application, has challenged the resolution whereby the prayer of the petitioner for renewal of State Carriage Permit was rejected in terms of a notification, wherein it was mentioned that no new stage carriage permit should be issued which may originate/terminate in Kolkata and Howrah, and in view of a judgment of Hon'ble Division Bench in the matter of FMA 604 of 2004(Sujata Ganguly & Ors. Vs. State of West Bengal & Ors.), which confirmed the said notification.

Held: Law is well settled that where a power is given to do certain thing in certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. Paragraph - 14

While delivering the judgment dated September 27, 2005 in the matter of Sujata Ganguly and Ors. vs. State of West Bengal (in re. FMA 604 of 2004) the cases and consequence of making an application for renewal of a permit were not dealt with. The law is well settled that a decision is not an authority for the proposition which did not fall for its consideration.

Paragraph - 17

Cases cited: Nazir Ahmed Vs King Emperor, reported in AIR 1936 PC 253

Ramphal Kr. Vs. Kamal Sharm, reported in (2004)2 SCC 759

Zee Telefilms Ltd. Vs. Union of India reported in (2005) 4 SCC 649

For Petitioner : Mr. Rameswar Bhattacharya,
Mr. Ram Uday Bhattacharya.

For State : Mr. Dilip Kr. Dey,
Mr. Arunava pati.

The Court:

1. This writ application is filed by the petitioner assailing the resolution dated April 6, 2009 adopted by the respondent no.2 in its meeting rejecting the prayer of the petitioner for renewal of his State Carriage Permit being P.St.P. No.1135 for plying his vehicle(Bus) on the route from Howrah Station to Gopijunj.

2. The facts of this case in a nutshell are discussed below:

3. The above Stage Carriage Permit was granted in favour of the petitioner on June 21, 1995 by the respondent no.2. The date of expiry of the above permit was June 20, 2000. The petitioner submitted an application dated August 1, 2007 for renewal of the above permit as also for replacement of the existing vehicle(Bus) by a new BS-III vehicle bearing no. WB 11A/8407. The above application of the petitioner was rejected by a resolution adopted in the meeting of the respondent no.2 held on September 12, 2007 on the following grounds:-

“1. Permit has already been expired more than five years back.

2. Replacement can not be allowed against expired permit.

3. As per Act. U/S 86 of MV Act and Rule 186 of WBMV Rules RTA decides not to allow his prayer.”
4. The petitioner filed an application under article 226 of the constitution of India bearing W.P. No.26030(W) of 2007 (in re Ranjit kr. Mullick Vs. State of West Bengal & Ors.,) and the above writ application was dismissed as withdrawn on December 10, 2007.
5. After withdrawal of the above writ application, the petitioner deposited an amount of Rs.48,520/- in the office of the respondent no.2 on March 13, 2008 towards renewal fees.
6. The aforesaid application of the petitioner for renewal of his permit was again considered by the respondent no.2 in its meeting held on April 28, 2008 and was rejected treating the same as an application for grant of a new permit.
7. The above resolution was challenged by the petitioner by way of filing of an application under article 226 of the constitution of India bearing W.P. No.12590(W) 2008 (in re Ranjit Kr. Mallick Vs. State of West Bengal & ors.). The aforesaid writ application was disposed of on February 11, 2009 with the following directions:-

“For these reasons, I dispose of the writ petition ordering as follows. The impugned decision is hereby set aside. The petitioner will be at liberty to submit a detailed representation raising all questions of fact and law in support of his application seeking renewal of the permit. After giving the petitioner a reasonable opportunity of hearing and within eight weeks from the date of communication of this order, the RTA shall give an appropriate reasoned decision in the matter dealing with every question of fact and law that the petitioner may raise in his representation. The reasoned decision once taken shall be communicated to the petitioner without any delay. There shall be no order for costs.”

8. The petitioner submitted a representation dated April 6, 2009 before the respondent no.2. The respondent no.2 rejected the prayer of the petitioner by adopting the impugned resolution in its meeting held on April 6, 2009. The operative portion of the above resolution is quoted below:

“Accordingly RTA heard the Ld. Advocate who appears on behalf of the petitioner. RTA finds that the permit expired on 20.06.2000. Applicant applied for renewal of the permit after more than five years from its expiry. As per Sec.81 of M.V. Act. Permit shall be renewed for a period of five years and such renewal shall have effect from the date of such expiry. As per notification no.3438-WT/3M-139/2004 dated 02.8.2004 where it is clearly mentioned that no new stage carriage permit shall be issued which may originate/terminate in Kolkata and Howrah which was confirmed by the Hon’ble Division Bench in the matter of FMA 604 of 2004(Sujata Ganguly & Ors. Vs. State of West Bengal & Ors.). Since the permit has already expired in the year 2000, after 9 years, the renewal of the said permit tantamount sot violation of the notification dated 02.08.2004 and the judgment of Hon’ble Division Bench dated 27.9.2005 Where in the Hon’ble division Bench passed an order with a direction that no new permit shall be issued by STA or RTA in violation of the notification dated 02.8.2005. The RTA is not in a position to allow the prayer of the petitioner for renewal of permit as the route touches Howrah Station which is restricted zone as per notification dated 2.8.2004 and grant of renewal of permit will tantamount to violation of the order of Hon’ble Division Bench. After going through the representation submitted by the petitioner, RTA considers and rejects the prayer of the petitioner.”

9. It is submitted on behalf of the petitioner that in accordance with the provisions of Section 81 of the Motor Vehicles Act, 1988 there was no bar or impediment to file an application for renewal of a State Carriage Permit after its expiry. It is submitted on behalf of the petitioner

that the fees submitting the application for renewal amounting to Rs.48,520/- was accepted by the respondent authority in accordance with the provisions of Rule 151 read with Schedule E3 of the West Bengal Motor Vehicles Rules, 1989. According to him it was not open to the respondent to reject his prayer for renewal of his Stage Carriage Permit after accepting the above fees. It is also submitted by him that his application for renewal of the Stage Carriage Permit could not be treated as an application for a new Stage Carriage Permit. It is further submitted by him that the notification no.3438-WT/3M-139/2004 dated August 2, 2004 of the Government of West Bengal, Transport Department, or the judgment dated September 27, 2005 passed by a Division Bench of this court in the matter of Sujata Ganguli and Ors. Vs. State of West Bengal (in re. FMA 604 of 2004) were not relevant for considering the application of the petitioner for renewal of his Stage Carriage Permit.

10. On the other hand it is submitted by Mr. Dilip Kr. Dey, learned Senior Government Advocate, High Court, Calcutta that in view of the provisions of sub-section (1) of Section 81 the State Carriage Permit of the petitioner expired on June 20, 2000. Had it been renewed for a subsequent period of five more years that should have been expired on June 20, 2005. After expiry of eight years there was no scope for considering the application of the petitioner for renewal of his Stage Carriage Permit. Consequent thereupon the application of the petitioner was treated as an application for new Stage Carriage Permit. A new Stage Carriage Permit could not be granted on a route originating or terminating in Esplanage, Band stand in Calcutta or Howrah Station in view of the notification No.3438/WT/3M-13904 dated August 2, 2004 of the Government of West Bengal, Transport Department. According to him the above notification was upheld by a Division Bench of

this court by its judgment dated September 27, 2005 delivered in the matter of Sujata Ganguli and Ors, Vs. State of West Bengal and Ors, (in re. FMA 604 of 2004). Accordingly the application of the petitioner could not be allowed granting new permit on the proposed route.

11. I have gone through the facts and circumstances of this case carefully and I have given my anxious consideration to the submissions made by the learned counsels appearing for the respective parties. Before examining the decision making process of the respondent authority in passing the impugned order the relevant provisions under the Motor Vehicles Act, 1988 has also those of the West Bengal Motor Vehicles Rules 1989 are required to be taken into consideration. For that purpose the provisions of section 81 of the Motor Vehicles Act, 1988 are quoted below:

“81. Duration and Renewal of permits. – (1) A permit other than a temporary permit issued under Section 87 or a special permit issued under sub-section (8) of section 88 shall be effective [from the date of issuance or renewal thereof] for a period of five years:

Provided that where the permit is countersigned under sub-section (1) of section 88, such counter-signature shall remain effective without renewal for such period so as to synchronise with the validity of the primary permit.

(2) A permit may be renewed on an application made not less than fifteen days before the date of its expiry.

(3) Notwithstanding anything contained in sub-section (2), the Regional Transport Authority or the State Transport Authority as the case may be, entertain an application for the renewal of a permit after the last date specified in that sub-section if it is satisfied that the applicant was prevented by good and sufficient cause from making an application within the time specified.

(4) The Regional Transport Authority or the State Transport Authority, as the case may be, may reject an application for the renewal of a permit on one or more of the following grounds, namely:-

(a) the financial condition of the applicant as evidenced by insolvency, or decrees for payment of debts remaining unsatisfied for a period of thirty days, prior to the date of consideration of the application;

(b) the applicant had been punished twice or more for any of the following offences within twelve months reckoned from fifteen days prior to the date of consideration of the application committed as a result of the operation of a stage carriage service by the applicant, namely:-

(i) plying any vehicle-

(1) without payment of tax due on such vehicle;

(2) without payment of tax during the grace period allowed for payment of such tax and then stop the plying of such vehicle;

(3) on any unauthorised route;

(ii) making unauthorised trips:

Provided that in computing the number of punishments for the purpose of clause(b), any punishment stayed by the order of an appellate authority shall not be taken into account:

Provided further that no application under this sub-section shall be rejected unless an opportunity of being heard is given to the applicant.

(5) Where a permit has been renewed under this section after the expiry of the period thereof, such renewal shall have effect from the date of such expiry irrespective of whether or not a temporary permit has been granted under clause (d) of section 87, and where a temporary permit has been granted, the fee paid in respect of such temporary permit shall be refused.”

12. The provisions of Rule 151 of the West Bengal Motor Vehicles Act are also quoted below:

“151. Application for renewal of permit or of renewal of counter-signature of permit may be received after the date of expiry thereof provided a fee in the scale as prescribed in Schedule E3, for condonation of delay is paid in the manner as prescribed.”

Under the provisions of sub-section 3 of section 81 of the above act there was a scope for filing an application for renewal of a Stage Carriage Permit after the last date specified in sub-section (2) of that Section. No time limit was prescribed for making such an application. In accordance with the provisions of Rule 151 of the West Bengal Motor Vehicles Rules, 1989 read with Schedule E3 to the above Rule, the application for renewal of a permit must be accompanied by a prescribed fee. Once such an application had been submitted, the authority was under obligation to consider the same for the purpose of ascertaining whether good and sufficient cause was shown in support of preventing from making an application within the time specified in sub-section(2) of that section.

13. In the instant case it was not in dispute that the petitioner initially submitted an application dated August 1, 2007 for the renewal of the permit in question. It was also an admitted fact that the petitioner deposited an amount of Rs.48,520/- only in the office of the respondent no.2 on March 13, 2008 on the basis of the fees prescribed in Schedule E3 to the West Bengal Motor Vehicles Rules, 1989. Necessary to point out that the above schedule prescribes the scale of fee to be deposited for making an application for renewal of permit. Undisputedly the respondent authority accepted that amount. It was also not in dispute that the petitioner submitted a representation dated April 6, 2009 before the respondent no.2 in support of his application seeking renewal of the permit in terms of and pursuant to the liberty granted by the order dated February 11, 2009 passed in W.P. no.12590(w) of 2008. In view of the above facts and circumstances the respondent authority was under obligation to consider the application of the petitioner for the purpose of ascertaining as to whether good and sufficient cause was shown by the petitioner in support of his claim of preventing him from making an application for renewal of the permit in question within the time prescribed in sub-section(2) of Section 81 of the Motor Vehicles Act, 1988. Instead the respondent no.2 considered the application of the petitioner treating the same as an application for granting a new permit. The scale of fee for making an application for a new permit as mentioned in Schedule E2 of the West Bengal Motor Vehicles Rules, 1989 was much less to that of the scale of fees prescribed in Schedule E3 to the above Act for filing an application for renewal of a permit.

14. Law is well settled that where a power is given to do certain thing in certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily

forbidden. Reference was made to the decision of **Nazir Ahmed Vs King Emperor**, reported in **AIR 1936 PC 253** and the relevant portions of the above decision are quoted below:

“The rule which applies is a different and not less well recognised rule, namely, that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. This doctrine has often been applied to Courts-1 Ch d 426(19) at p.431- and although the Magistrate acting under this group of sections is not acting as a court, yet he is a judicial officer and both as a matter of construction and of good sense there are strong reasons for applying the rule in question to S.164.”
(Emphasis supplied)

Reference can also be made to the decision of **Ramphal Kr. Vs. Kamal Sharm**, reported in **(2004)2 SCC 759** and the relevant portion of the above decision are quoted below:

“12. Paras 13 and 13-A of the Symbols Order lay down the mechanism for ascertaining when a candidate shall be deemed to be set up by a political party and also the procedure for substitution of a candidate. The opening part of para 13 says in unequivocal terms that for the purpose of an election for an parliamentary or assembly constituency a candidate shall be deemed to be set up by a political party if any only if the conditions mentioned in sub-paras (a) to (e) are satisfied. Para 13-A lays down the procedure for substitution of a candidate and also the requirements of a reversed notice in Form B. The second proviso to this paragraph takes care of a situation where more than one notice in form B is received by the Returning officer and the political party fails to indicate in such notices in Form B that the earlier notice or notices have been rescinded. Thus, paras 13 and 13-A are exhaustive any lay down the complete procedure for determining whether a candidate has been set up by a political party. The rule laid down in Taylor V. Taylor that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden, was adopted for the first time in India by the Judicial Committee of the Privy Council in Nazir Ahmed Vs. King Emperor. The question for consideration was whether the oral evidence of a Magistrate regarding the confession made by an accused, which had not been recorded in accordance with the statutory provisions viz. Section 164 Cr. PC would be admissible. The First Class Magistrate made rough notes of the confessional statements of the accused which he made on the spot and thereafter he prepared a memo from the rough notes which was put in evidence. The Magistrate also gave oral evidence of the confession made to him by the accused. The procedure of recording confession in accordance with Section 164 CR PC had not been followed. It was held that Section 164 Cr PC having made specific provision for recording of the confession, oral evidence of the Magistrate and the memorandum made by him could not be taken into consideration and had to be rejected. In State of U.P. Vs. Singhara Singh a Second Class Magistrate not specially empowered, had recorded confessional statement of the accused under Section 164 Cr PC. The said confession being inadmissible, the prosecution

sought to prove the same by the oral evidence of the Magistrate, who deposed about the statement given by the accused. Relying upon the rule laid down in Taylor V. Taylor and Nazir Ahmad Vs. King Emperor it was held that Section 164 Cr PC which conferred on a Magistrate the power to record statements or confessions, by necessary implication, prohibited a Magistrate from giving oral evidence of the statements or confessions made to him. This principle has been approved by this Court in a series of decisions and the latest being by a Constitution Bench in CIR v. Anjum M.H. Ghaswala(SCC para27). Applying the said principle, we are of the opinion that the question as to who shall be deemed to have been set up by a political party has to be determined strictly in accordance with paras 13 and 13-A of the Symbols Order and extrinsic evidence cannot be looked into for this purpose unless it is pleaded that the signature of the authorised person on Form B had been obtained from him under threat or by plying fraud upon him. Where signature is obtained under threat or by plying fraud, it will be a nullity in the eye of the law and the document would be void.”

15. In view of the aforesaid settled principles of law, I have no hesitation in coming to a conclusion that the decision making process of the respondent no.2 in treating the application of the petitioner as an application for granting a new permit cannot be sustained in law.

16. I do not find any substance in the submissions made on behalf of the respondent that no application could be treated as an application for renewal of a permit beyond the period of five years from the original date of expiry of that permit. There is no such provision in section 81 of the Motor Vehicles Act, 1988 to that effect.

17. Once the respondent no.2 was under obligation to consider the application of the petitioner in question as an application for renewal of the permit under reference, the notification no.3438/WT/3M-13904 dated August 2, 2004 of the Government of West Bengal, Transport Department has no manner of application in the matter that application. While delivering the judgment dated September 27, 2005 in the matter of Sujata Ganguly and Ors. vs. State of West Bengal (in re. FMA 604 of 2004) the cases and consequence of making a application for renewal of a permit were not dealt with. The law is well settled that a decision is not an authority for the proposition which did not fall for its consideration. Reference may be made to the decision of **Zee**

Telefilms Ltd. Vs. Union of India reported in (2005) 4 SCC 649 and the relevant portions of the above decision are quoted below:

“254. Are we bound hands and feet by Pradeep kumar Biswas? The answer to the question must be found in the law of precedent. A decision, it is trite, should not be read as a statute. A decision is an authority for the questions of law determined by it. Such a question is determined having regard to the fact situation obtaining therein. While applying the ratio, the court may not pick out a word or a sentence from the judgment divorced from the context in which the said question arose for consideration. A judgment, as it well known, must be read in its entirety and the observations made therein should received consideration in the light of the questions raised before it.”
(Emphasis supplied)

18. So, the rejection of the application of the petitioner taking the aid of the notification and judgment of a Division Bench of this court under reference cannot be sustained in law.

19. But I do not agree with the submissions made on behalf of the petitioner that once the fee prescribed in Schedule E3 to the West Bengal Motor Vehicles Rules, 1989 had been paid the respondent authority was under obligation to renew the permit. Turning round to the provisions of sub-section(3) of Section 81 of the Motor Vehicles Act 1988 I find that a permit could be renewed on consideration of an application subject to the satisfaction of the authority that the applicant was prevented by good and sufficient cause from making an application within the time. In the event the submissions made on behalf of the petitioner is accepted, the provision for satisfaction of the authority for granting renewal would become nonest in the eye of law. Such an interpretation is not permissible.

20. In view of the above the discussions and observations the impugned resolution adopted by the respondent no.2 in its meeting dated April 6, 2009 is quashed and set aside. The respondent no.2 is directed to consider the aforesaid application of the petitioner for renewal of his permit strictly in accordance with the provisions of sub-section(3) of Section 81 of the Motor Vehicles

Act, 1988 read with the provisions of section 151 of the West Bengal Motor Vehicles Rules, 1989 and Schedule E3 thereof within the period of six weeks.

21. This writ application is thus disposed of.
22. There will be, however, no order as to costs.
23. Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Debasish Kar Gupta, J.)