
(1998) 04 OHC CK 0003
In the Orissa High Court
Case No : O.J.C. No. 3158 of 1998

Atanu Patnaik

APPELLANT

Vs

State Transport Authority, Orissa and Others

RESPONDENT

Date of Decision : 16-04-1998

Acts Referred:

Motor Vehicles Act, 1988 — Section 87(1), 87(2), 89(1), 89(2)
Orissa Motor Vehicles Rules, 1993 — Rule 41(1), 42(2)

Citation : AIR 1999 Ori 30

Hon'ble Judges : P.K. Mohanty, J;A. Pasayat, J

Bench : Division Bench

Advocate : S.C. Parija and P. Behera, for the Appellant; D. Nayak, Standing Counsel (Transport) and D.B. Das, for the Respondent

Final Decision : Allowed

Judgement

1. Some cases have no end to their litigative battles and the present case, as it appears, is one such case. Right from December, 1993 a dispute relating to fixation of timings and change of alignment is continuing. The unabated impugned Order dated 10-2-1998 as at Annexure-13 has provided considerable fuel to the battle fire. Without tracing the litigative history in detail, it would suffice to take note of the actions taken and the orders passed by the opposite parties which form subject-matter of dispute in the present case.

2. The case of the petitioner in essence is that on 10-12-1997 the Secretary of the State Transport Authority (shortly called "the S.T.A.") passed a reasoned Order directing inter-change of timings between the petitioner and opposite party No. 3 by giving the latter preference and a stipulation that the petitioner will not have any stoppage at the F.C.L site. The timings and the route have been indicated in the temporary permit issued under the Motor Vehicles Act, 1988 (in short "the Act") and the Orissa Motor Vehicles Rules, 1993 (in short "the Rules"). On 18-12-1997 an application was filed by opposite party No. 3 before the Chairman, S.T.A. for re-hearing of the objection dated 1-12-1997 filed by him

before the Secretary, S.T.A. and for recalling the Order dated 10-12-1997 passed by the Secretary and to change the timings of the petitioner and also the alignment of his existing route. Petitioner filed objection to the maintainability of the application on the ground that the Chairman had no power to entertain the application and/or the prayer made.

3. By the impugned Order dated 10-2-1998 the Chairman, inter alia, passed the following Order :---

"xxx xxx xxx Be that as it may, without interfering with the order dt. 10-12-97 passed by the Secretary, S.T.A. in M.V. Misc. Case No. 351/97, I hereby under that the Opp. Party shall make stoppages at Samal and NTPC after Talcher for the interest and convenience of the travelling public. Accordingly kilometers covered by the vehicle of Opp. Party be calculated and timings of the petitioner is restored to 14.20 PM and that of Opp, party at 14.00 P.M. from Cuttack.

4. As regards timings, both the parties should ply their vehicles as per Central timings as supra in para-3 approved by this authority as any change therein would cause serious regional imbalance between the sectoral operators.

xxxxxx xxx"

4. Shri S.C. Parija, learned counsel for the petitioner, submitted that the Chairman took note of a decision of this Court wherein it was Observed that the Chairman, S.T.A. cannot vary an Order passed by the Secretary. S.T.A. Therefore, while observing that the application was not to be entertained, he should not have given any further direction which had resulted in the change of timings and/or alignment.

Shri D.B. Das, learned counsel for opposite party No. 3, submitted that the Order passed by the Secretary, S.T.A. was not factually correct, because there was never any concession and the said authority proceeded as if there was a concession made by opposite party No. 3.

5. In the present writ petition the short question that falls for determination is whether the Chairman can recall/re-consider an order passed by the Secretary, S.T.A. For resolution of the controversy, reference to few provisions of the Act and the Rules is necessary.

Section 87 of the Act makes provision for grant of temporary permit to be effective for a period not exceeding four months for conveyance of passengers on special occasions or for the purpose of a seasonal business or to meet a particular temporary need. In granting such a permit the authorities are not required to follow the procedure laid down in Section 80 of the Act. Section 89(1) (a) provides that any person aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit may prefer appeal to the State Transport Appellate Tribunal constituted under Sub-Section (2). Section 90 of the Act makes provision for filing a revision before the State Transport Appellate Tribunal against any order of the State Transport Authority against which no appeal lies.

Rule 41 (1) (b) (iii) of the Rules lays down that the State Transport Authority may, by general or special resolution recorded in its proceedings, delegate to its Chairman, or Secretary or any other officer not being below the rank of Asst. Secretary, its powers under Sub-Section (1) and Sub-Section (2) of Section 87 to grant a temporary permit provided that such powers may also be delegated to the Addl. Secretary or Asst. Secretary or Addl. Assi. Secretary posted at the check-gate. In pursuance of this rule, the S.T.A., Orissa has delegated its power to grant temporary permit in favour of both its Chairman and Secretary, Sub-Rule (2) of Rule 41 provides that notwithstanding any delegation made in favour of the Secretary or any other officer in pursuance of Sub- Rule (1), the Chairman may call for any record relating to such matter power for disposal whereof has been delegated to the Secretary or any other officer and dispose of the matter and similarly subject to the orders of the Chairman under Clause (i) if any, Secretary also exercise similar powers in relation to such matters, power for disposal whereof, has been delegated to any other officer subordinate to him, Sub-Rule (2) further provides that any other officer subordinate to the Secretary may refer any matter, power for disposal whereof, has been delegated to him to the Secretary for disposal and the Secretary may refer any such matter either referred to him for disposal by any other officer subordinate to him under Clause (iii) or any other matter which are to be disposed of by him under the delegation made in pursuance of Sub-Rule (1) to the Chairman for disposal. In Sub- Rule (4) power is vested in the S.T.A., notwithstanding anything contained in Sub-Rules (1) and (2), to give general instructions as to the manners in which the delegates shall exercise the power delegated to them Sub-Rule (5) lays down that the Secretary of the State Transport Authority shall place before the Authority a statement of the actions taken by the various officers to whom powers have been delegated in pursuance of such delegations, in the next meeting. Rule 43 which lays down the procedure for disposal of applications for permits provides in Sub-Rule (1) that upon receipt of an application for grant, renewal or otherwise a permit, the Secretary of the State or Regional Transport Authority or any other officer authorised in this behalf by the Chairman shall examine whether the powers to deal therewith has been delegated to the Chairman or Secretary or any other officer and shall forward the same to him for disposal if it has been so delegated.

6. From the discussions in the foregoing paragraphs, it is clear that both the Chairman, S.T.A. and the Secretary, S.T.A. exercise powers delegated in their favour by the S.T.A. in dealing with applications for temporary permit, the orders passed by them are appealable or revisable, as the case may be to the S.T.A.T. Therefore, the authorities exercise concurrent powers. The Chairman, S.T.A. is not an appellate or revisional authority against the order of the Secretary, S.T.A. However under Rule 42 (2) he is vested with the power to call for the record in many matters in which the Secretary, S.T.A. is exercising delegated power and dispose of the matter, but such power was to be exercised before the Secretary, S.T.A. disposed of the matter. In view of the clear provisions in the Act and the

Rules and the resolution delegating power in favour of the functionaries of the S.T.A. it cannot be supported that the same application for permit on a route will be dealt with by two delegated authorities, particularly when consideration of the application for permit by the authority is in exercise of quasi-judicial power and the order is appealable, revisable by the S.T.A.T. It is for the S.T.A. or its Chairman to specify in which cases the applications will be placed before the Chairman, the Secretary and other functionaries in whose favour power to grant temporary permit has been delegated. It must be clearly borne in mind that the statutory power exercised by a delegated authority cannot be challenged/questioned before another delegated authority except in accordance with the provisions in the Act and the Rules. In the case of temporary stage carriage permit where successive applications may have to be dealt with. it is desirable that arrangement should be made that if one delegated authority has dealt with the matter on a previous occasion, the same authority should ordinarily consider further applications for temporary permit on that route. This arrangement will help in avoiding uncertainty, inconsistency, anomaly in orders passed relating to a matter. Similar view was expressed by this Court in *M/s. Trasad Travels v. State Transport Authority, Orissa*, O.J.C No. 3362 of 1994, disposed of on 8-8-1994. If the Chairman felt that the Secretary's order granting permit to the petitioner was incorrect he should have directed the opposite party No. 3 to challenge the said order before the Tribunal instead of himself dealing with the matter. In that view of the matter, the directions given by the Chairman as extracted hereinabove cannot be maintained.

7. Learned counsel for opposite party No. 3 stated that the said opposite party shall file an application before the appropriate authority for re-consideration of the matter. If any such application is made, the same shall be dealt with in accordance with law by the concerned authority. We express no opinion in that regard.

8. The writ petition is allowed to the extent indicated above. There shall be no order as to costs.

P.K. Mohanty, J.

9. I agree