
(1984) 11 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 4771 of 1983

Baldeo Choudhary

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 07-11-1984

Acts Referred:

Motor Vehicles Act, 1939 — Section 47, 47(3), 62, 62(1), 63

Citation : AIR 1986 Patna 84

Hon'ble Judges : S.K. Jha, J;A.K. Sinha, J

Bench : Division Bench

Advocate : Basudeva Prasad, J.N.P. Sinha, Karuna Nidhan Keshav, Maheshwardhari Dwivedi and Mukul Sinha, for the Appellant; J.P. Shukla, Govt. Pleader II and S.C. Jha, Jr. Counsel to Govt. Pleader II, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sinha, J.—By this writ application under Articles 226 and 227 of the Constitution of India, the writ petitioner has prayed for issuance of an appropriate writ, order or direction prohibiting and restraining the-respondent No. 2 (The Darbhanga Regional Transport Authority) (hereinafter referred to as D.R.T.A.) from illegally assuming jurisdiction of the Regional Transport Authorities and arbitrarily issuing temporary/ permanent permits on inter-regional Route without determining the number of services on the inter-regional Routes by agreement of the Regional Transport Authorities concerned The writ petitioner has also prayed for prohibiting the respondent No. 2 (D.R.T.A.) from issuing any temporary/permanent permits on inter-regional Routes in contravention of the Schemes approved u/s 65D of the Motor Vehicles Act (hereinafter referred to as "the Act"), which, according to the petitioner, had the force of law. The writ petitioner, in his reply to the counter-affidavit (filed on behalf of the respondents) also prayed for quashing the resolution dated 16-11-1983 and has prayed that this resolution be declared as void and non est. This resolution dated 16-11-83 was passed after issuance of notice to the respondents by this Court on 11-10-83

to show cause as to why the writ petition should not be admitted. This meeting, according to the petitioner, was held for granting the permits which were already under challenge in the main writ application. According, to the petitioner, his counsel appeared on 16-11-83 before the respondent No. 2 and objected to the grant of Inter-regional permits which were already under challenge in the writ petition and had submitted that the respondent No. 2 (D.R.T.A.) had no jurisdiction to grant permits in the absence of agreement for the grant of permanent permits and in absence of concurrence for the grant of temporary permits on the inter-regional Routes; more so, in violation of the Scheme approved u/s 68D of the Act. According to the petitioner, the respondent No. 2 (D.R.T.A.) proceeded with the meeting on 16-11-83 and granted the permits mala fide, in spite of the objection raised by the petitioner and also for extraneous reasons.

2. According to the petitioner, even though in the meeting dated 14-9-83 the number of proposed vacancies on the routes Kusheshwar Asthan to Muzaffarpur, Madhawapur to Muzaffarpur and Harlakhi to Muzaffarpur was only 5 being in items No. 3, 7 and 8 and for which number the agreement was sought for from the North Bihar Regional Transport Authority which was not accorded, yet in the meeting dated 16-11-1983, according to the petitioner, the respondent granted 7 permits on the route Kusheshwar Asthan to Muzaffarpur, 9 permits on the route Madhawapur to Muzaffarpur and 6 permits on the route Harlakhi to Muzaffarpur even more than what was proposed in the meeting dated 14-9-1983 for agreement from North Bihar Regional Transport Authority. The respondent No. 2 on 16-11-1983 also granted permits for Inter-regional Routes to 6 persons though their applications were received without any advertisement. The respondent No. 2 also extended 5 permits making them Inter-regional permits without any consent and concurrence of the other Authorities which, according to the petitioner, amounted to granting fresh permanent permits on Interregional Routes. According to the petitioner, on 16-11-1983, a supplementary agenda was further introduced for the grant of temporary permits on 16 routes out of which 11 routes were Inter-regional Routes and permits for those routes were also granted without any concurrence or consent of the other Regional Transport Authorities (a copy of the agenda dated 16-11-1983 is marked Annexure 14 to the writ petition).

3. Thus, according to the petitioner, by resolution dated 16-11-1983, 51 persons were ordered to be granted permanent permits and 11 temporary permits on different Interregional Routes. This resolution was passed during the pendency of the writ application in this Court and the petitioner, as already stated above, has also prayed for quashing this resolution and has prayed for declaring the same as void and non est.

4. The main question for determination in the instant writ application is whether the Regional Transport Authority, Darbhanga (Respondent No. 2) was entitled in law to issue any temporary/permanent permit on any Inter-regional Route

without determining the number of services for the Inter-regional Routes by agreement for permanent permits and concurrence for temporary permits of the other Regional Transport Authorities through whose jurisdiction the Inter-regional Routes pass. The next question to be considered in the instant case is whether in the absence of determination of the number of services on Inter-regional Routes in agreement with the Regional Transport Authorities concerned, does a particular temporary need as prescribed by section 62(1)(a)(c) of the Act, legally entitle D.R.T.A. (respondent No. 2) to grant temporary permit on the Inter-regional Routes.

5. In fact, the questions arising in the instant case, as referred to above, are interlinked and are answered hereinafter.

6. In order to answer the points involved in the instant case, it is necessary to state some relevant facts.

7. The writ petitioner in paragraph 24 of the writ petition asserted that the portion of the route Darbhanga-Muzaffarpur falling on those routes, there were 90 services of B.S.R.T.C. and 70 of the private operators. By adding 5 services for each of the routes, there was going to be further addition of 45 services on this portion of the routes even then, according to the writ petitioner, the D.R.T.A. unilaterally and illegally created 5 vacancies for each of these routes. The petitioner's further case was that on other Regional Routes vacancies were created in accordance with the number of applications received and permits were granted to 26 applicants for Interregional Routes even though there was no agreement or vacancies created after following the provision of Section" 53 of the Act (the words have been underlined by me for emphasis).

8. On 14-10-1982, the respondent No. 2 (D.R.T.A.) invited applications for grant of permanent permits for 71 routes by its Memo No, 481 dated 14-10-82. The number of vacancies for the grant of such permanent permits, as required u/s 47(3) of the Act was stipulated to be determined at the time of consideration of the grant of permits. This notification was duly published in the local Newspapers as required under the Act (a copy of this notification has been marked as Annexure-1 to the writ application). Out of the aforesaid 71 routes notified for the grant of permanent permits, 17 routes were Interregional Routes falling within the region of D.R.T.A. and North Bihar Regional Transport Authority, Muzaffarpur, being serial Nos. 8, 9, 19, 24 to 29, 32, 36 to 39, 41, 45, 51 and 53 of the aforesaid notification. On 23rd of December, 1982, further applications were invited by the respondent No. 2 for grant of permanent permits on 66 more routes out of which 2 routes were Inter-regional, namely, Sl. Nos. 24 and 58 (a copy of the Memo No. 607 dated 23-12-82 has been marked as Annexure-2 to the writ application).

9. In response to the notifications, as contained in Annexures 1 and 2 above, large number of applications were received by the respondent which were published in a local Newspaper "Pradeep" on 8th of April, 1983, u/s 57(3) of the

Act.

10. According to the writ petitioner, as the grant of permits for the Inter-regional Routes was going to be made without following the procedures of law, the writ petitioner filed an objection on 15-6-1983 on which date a meeting was to be held (copy of the objection filed by the writ petitioner is marked Annexure-3 to the writ application). In short, the objection was that permits (temporary or permanent) on Inter-regional Routes could not be granted without determining the number of services by agreement. However, the meeting of the Regional Transport Authorities was adjourned to 2-7-83 and on 2-7-83 the writ petitioner again made specific and categorical objection to the grant of any permanent permit for the routes connecting Muzaffarpur Darbhanga and gave a list of 8 such routes and objected to the jurisdiction of the Regional Transport Authority for granting any further permit without complying the provisions of the Act, viz., without determining the number of vacancies for the grant of permit. According to the writ petitioner, the Regional Transport Authority was giving a complete go-by to the provisions of law and was acting without jurisdiction (the copy of the objection dated 2-7-83 is marked Annexure-4 to the writ application).

11. Objections as raised by the writ petitioner (and as referred to above) the R.T.A. in the meeting dated 2-7-83 relating to Interregional permits, in Agenda No. 21 decided to grant permanent permits to all such operators who were operating on the Inter-regional permits on temporary basis and thereafter for creating the vacancies it was decided to enquire from the Bihar State Road Transport Corporation as well as from the concerned Regional Authorities.

12. In furtherance of the resolution dated 2-7-83, the respondent No. 2 sent a letter on 16-7-83 to the North Bihar Regional Transport Authority, Muzaffarpur, and also to the South Bihar Regional Authority, Patna, asking for the information as to how many services were being operated by them on the relevant routes (the copy of this letter dated 16-7-83 is marked as Annexure-6 to the writ application). Thereafter, it is relevant to state that on 3rd of September, 1983, the Chairman, D.R.T.A. requested the State Transport Authority, Bihar, Patna, as also the North Bihar Regional Transport Authority, Muzaffarpur, not to grant any further permit for the various Inter-regional Routes extending to the region of Darbhanga Regional Transport Authority, as they were already over-crowded on those routes (the copy of this letter is marked as Annexure-7 to the writ application). It is more surprising that even though the respondents requested the State Transport Authority, Bihar, Patna, and the North Bihar Regional Transport Authority, Muzaffarpur, not to grant any further permit for the routes mentioned in the letter dated 3-9-83, still on 6th of September, 1983 (i.e. only three days after) 6 applications for the grant of permanent permits for those very routes were sent suo motu for publication even though such applications were received without any advertisement and were liable to be rejected by the Authority under proviso to Sub-section (3) of Section 57 of the Act (copy of the letter dated 6-9-83 is marked Annexure-8 to the writ application).

13. According to the petitioner, in the meeting dated 14-9-83, respondent No. 2 again proceeded to consider the applications which were before it in the Agenda dated 15-6-83 and 2-7-83. The petitioner again objected to the grant of any permit on Inter-regional Routes in the absence of an agreement about the number of vacancies on those routes. The D.R.T.A. despite the objection declared unilaterally 5 vacancies on all such routes which were connecting Darbhanga and Muzaffarpur. Even though, as stated earlier, a request was sent in the letter dated 3-9-83 to the State Transport Authority not to grant further permits a supplementary agenda was introduced in the meeting dated 14-9-83 proposing grant of temporary permits to 20 applicants all for temporary Inter-regional permits. According to the petitioner, all the 20 applicants were granted temporary permits without complying with the provisions of Section 63(4) of the Act and also without assigning any reason for the same (a copy of the proceeding dated 14-9-83 is marked Annexure-10 to the writ application).

14. The respondents filed a counter affidavit. The main stand of the respondents was that the Authority was fully entitled in law to issue any temporary or permanent permit on any Regional or Inter-Regional Routes u/s 45 of the Act. According to the respondents only the number of services was to be determined by agreement for permanent permits and concurrence for temporary permits granted on Inter-State Route, as provided u/s 63 of the Act. The respondents in their supplementary counter look the step that the permits were granted in accordance with the provisions under the Act and there was no order of prohibition passed by this Court, but the respondents, at the same time, stated that the D.R.T.A. (respondent No. 2) after the receipt of the order of the High Court on 10-12-1983 had sought for the prior concurrence from the concerned Authorities and during the pendency of the concurrence of the other Transport Authorities, the issuance of the permits on Inter-regional Routes was being held up.

15. According to the respondents, the object of section 63(4) of the Act was served when the temporary stage carriage permits are counter-signed by the concerned Transport Authorities under the provisions of section 63(1). The respondents, in reply to the violation of the Scheme approved u/s 68D of the Act, stated that there was no violation of the Scheme in the instant case. According to the respondents permanent and temporary stage carriage permits on Regional or Inter-regional Routes are granted by the Authority under the direction of the Government of Bihar, Transport Department's notification No. 825 dated 10-6-81, which is a delegated power of the State Govt. under the provisions of section 68E(2) of the Act.

16. It is relevant to state here that the writ petitioner, in his reply to the counter affidavit, annexed the notification dated 10-6-81 as Annexure-16.

17. It is well settled that a limit has been fixed u/s 47(3) of the Act by the Regional Transport Authority and thereafter if the said Authority proceeds to consider applications for permits u/s 48, read with Section 57, the Regional

Transport Authority must confine the number of permits issued by it within those limits. And it is not open to issue permits beyond the limits so fixed under that section. Though it is true that the Regional Transport Authority can revise the general order passed by it u/s 47(3) of the Act, this revision is a separate power in the Authority and is a power arising when it is dealing with the individual permits.

18. It is also well settled that when a new route is advertised for the first time and advertisement is issued calling for applications for such a new route specifying the number of vacancies for it, it is reasonable to infer that when the number of vacancies was specified that shows that limit which must have been decided upon by the Regional Transport Authority u/s 47(3) of the Act. It is also well settled that where the advertisement is with respect to an old route, the fact that the advertisement mentions a particular number of vacancies would not necessarily mean that that was the number fixed u/s 47(3) of the Act as the number fixed may be much more and there may be only few vacancies because a few permits had expired.

19. Section 47(3) of the Act relates to a Regional Transport Authority limiting the number of stage carriages for which stage carriage permits may be granted in the region or in any specified area or on any specified route within the region. In other words, Section 47(3) of the Act is confined in its operation in or within the region.

20. In the case of Inter-regional permits, an application u/s 45 of the Act has to be made to the Regional Transport Authority of the region in which the major portion of the proposed route or area lies and in case the portion of the proposed route or area in each of the regions is approximately equal, to the Regional Transport Authority of the region in which it is proposed to keep the vehicle or vehicles. Then u/s 63 of the Act a permit granted by the Regional Transport Authority of one region shall not be valid in any other region unless the permit is counter-signed by the Regional Transport Authority of that other region. Section 63(3) of the Act makes the provision of Chapter-IV applicable relating to the grant, revocation and suspension of permits and to the grant, revocation and suspension of counter-signature of permits. The result is that sections 47 to 68, which occur in Chapter-IV, are, therefore, attracted in case of Inter-regional permits. In view of the fact that Section 47(3) of the Act is restricted in its field in or within the region, the provisions in terms do not become applicable to Inter-regional permits. Section 68 of the Act contemplates rules and conditions subject to which and the extent to which, a permit shall be valid in another region within the State without counter-signature. The learned counsel for the respondents has not shown any rule to that effect.

21. Thus, I hold that the relevant Authorities in the two regions are to ensure agreement and act in concert as the case may be. The number of services in the region can, of course, be fixed by the Regional Transport Authority but they will be for the region only. I have already held above that sections 47 to 68 which

occur in Chapter-IV are attracted in case of Inter-regional permits. On a harmonious reading of the sections occurring in Chapter-IV of the Act, I further hold that the number of services for the Inter-regional Routes beyond the frontier of the region will have to be determined by agreement.

22. In the instant case permits (temporary/permanent) on Inter-regional Routes have been granted by the respondents without there being an agreement with the other Regional Transport Authorities. As already stated above, the respondents' stand in their counter affidavit is that concurrence has been sought for from the concerned Authorities and during the pendency of the concurrence of the other Transport Authorities the issuance of the permits on Inter-regional Routes was held up. In other words, according to the respondent, even subsequent concurrence from the concerned other Transport Authorities would validate the grant of the permits on Inter-regional Routes. In my opinion, such a stand taken on behalf of the respondents is not valid and correct in law. Though it will be repetition, I have already held above that the relevant Authorities of the two regions are to ensure agreement and act in concert and the number of services for Inter-regional Routes beyond the frontier of the region have to be determined by agreement which, in the instant case, has not been done.

23. Though, it is true that a Regional Transport Authority of one region may issue a temporary permit under Clause (a) or Clause (c) of Sub-section (1) of section 62 to be valid in another region, I hold that this power with the Regional Transport Authority of one region to issue a temporary permit on the Interregional Routes is circumscribed by Clause (4) of section 63, which necessitates concurrence of the Regional Transport Authority of that other region either given generally or for the particular occasion. In my opinion, the subsequent concurrence of the other Regional Authority concerned would not validate the grant of even the temporary permit by one Regional Transport Authority on the Interregional Routes. In the instant case a perusal of Annexure-6, letter sent by respondent No. 2 (D.R.T.A.) dated 16-7-83, would show that no concurrence as contemplated u/s 63(4) of the Act was asked for either from the North Bihar Regional Transport Authority, Muzaffarpur, or from the South Bihar Regional Transport Authority, Patna, for the grant of any temporary permit. It further shows that there was no proposal as to what number of permits the respondent No. 2 (D.R.T.A.) was proposing to grant, and as such no proposal was made regarding the number of services for an agreement between the two Regional Transport Authorities as contemplated under section 68 of the Act. Provisions of Section 47(3) of the Act were not available to the respondent No. 2 (D.R.T.A.) for fixing the number of vacancies on Inter-regional Routes as it involved extra territorial jurisdiction and the only way by which such number of vacancies could be fixed was by a reciprocal agreement between the two concerned Regional Transport Authorities.

24. The respondents also took the stand that there had been no violation of the Scheme approved u/s 68D of the Act and relied upon the Notification No. S.O.

825 dated 10-6-81. This Notification dated 10-6-81 is marked as Annexure-16 in reply to the counter affidavit. The State Government by this Notification amended Clause (1) of the Notification No.S.O.294 dated 19th March, 1981, and the amendment as given in Annexure 16 was as follows : --

"(1) The Transport Authority may permit private buses to pass through or traverse stretches of notified routes meant for exclusive plying of State Transport undertaking to the maximum extent of 401 forty (kilometer with a view to connect the services with their natural termini the public interest provided that either the starting or terminating point falls on the notified route. The buses of the private operators also pick-up or drop the passengers on the notified portions of the routes but only for journey original from or terminating at places which do not lie on the route notified for exclusive operation of the State Transport undertaking."

25. Thus, it seems that by notification dated 10-6-81 the State Government further modified the approved Scheme u/s 68E(2) of the Act. A perusal of this notification shows that this notification authorised the transport Authorities to grant permits to private operators in appropriate cases allowing them to traverse the notified routes up to a distance of 40 kilometers only with a view to connect their services with their natural termini. This, in my opinion, only means that the exemption was not meant for grant of a fresh permit and. therefore, in granting temporary/permanent permit on inter-regional Routes, the respondents could not take shelter under the notification dated 10-6-81.

26. The number of services for the inter-Regional Routes has to be determined by agreement before granting the permits and not after. It would be, in my opinion, pulling the cart before the horse if the question of agreement relating to number of services for inter-Regional Routes is considered after the actual grant of the permit.

27. Thus, I hold that the respondent No. 2 D.R.T.A. in granting permanent permits on inter-Regional Routes without determining the number of services by an agreement with the other Regional Transport authorities concerned and in granting temporary permits on inter-Regional Routes without there being concurrence of the other Regional Transport Authorities concerned has acted against the provisions of the law and hence such permits on inter-Regional Routes, as have been granted either permanent or temporary by resolution dated 16-11-83, are inoperative.

28. This application is accordingly allowed and the respondents are directed to proceed in accordance with law and in consonance with the directions and observations made above. However, there will be no order as to cost.

S.K. Jha, J.

I agree.