

(1989) 08 PAT CK 0029
In the Patna High Court
Case No : C.W.J.C. No. 6342 of 1988

Bangali Prasad Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 11-08-1989

Acts Referred:

Constitution of India, 1950 — Article 245, 246

Motor Vehicles Act, 1939 — Section 43A(1), 47, 48

Citation : AIR 1990 Patna 131 : (1990) 38 BLJR 385 : (1990) 1 PLJR 264

Hon'ble Judges : S.B. Sanyal, J; R.N. Lal, J

Bench : Division Bench

Advocate : K.N. Keshava and Mukul Sinha, for the Appellant; J.N.P. Sinha and Subodh Prasad, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sanyal, J.—The moot question in this writ petition is as to the interpretation and vires of Section 43-A of the Motor Vehicles Act as has been enacted by the Amending Act, namely, Bihar Act 4 of 1979, a State amendment,

2. The petitioner is a Bus operator and Secretary of Muzaffarpur District Transport Association. He has prayed for quashing Memo No. 7236 dated 23rd June, 1988, which is purported to be issued by the State Government in exercise of the power conferred u/s 43-A empowering the State Transport Authority, Bihar, Patna, to grant permit for inter-regional routes covering more than two regions and counter-signature of all inter-regional permits by the State Transport Authority, Bihar.

3. The learned lawyer appearing on behalf of the petitioner raises the following questions of law:

(a) Section 43-A of the Motor Vehicles Act as amended by Bihar Act 4 of 1979 is invalid because it confers unguided and unbridled power on the executive to the extent of even nullifying the express legislative provisions and policy of the Act.

(b) Whether the State of Bihar could create a new jurisdiction in favour of the State Transport Authority by depriving the Regional Transport Authorities of their quasi-judicial functions by an executive direction contrary to the specific provision of the Act?

(c) Whether the power to issue executive direction could clothe the State of Bihar with the legislative functions for creating jurisdiction and divesting authorities of their statutory functions?

(d) Whether the power exercisable by the executive u/s 43-A of the Act should be restricted to the executive field without encroaching upon the quasi-judicial or legislative field?

4. The respondent-State, on the other hand, contends that Section 43-A of the Act is constitutionally valid. The said section authorises the State Government to issue orders and directions of general character only in respect of administrative matters which is required to be dealt with by the State Transport Authority under the relevant provisions of the Act in their administrative capacity. The impugned notification is an administrative direction changing the forum of filing applications for grant of permit from Regional Transport Authority to State Transport Authority. After applications are filed and received by the State Transport Authority the question of consideration of merit or evaluation of merit for grant or otherwise of the permit concerned only can arise. The impugned direction, therefore, only changes the forum of filing applications for grant of permit beyond two regions by the State Transport Authority, hitherto the said power is exercisable by Regional Transport Authority. The filing of application for grant of permit is covered by Section 45 of the Motor Vehicles Act, and therefore, as held by the Supreme Court in the case of B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others, to be not of one of the quasi-judicial powers of the Transport authorities. The quasi-judicial functions under the Act is confined to Sections 47,48, 57,60,64 and 64-A of the Act -- see B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others, . Section 43-A as amended is constitutionally valid and directions to be issued under the said section are all of administrative nature. The impugned notification is also of administrative nature, as it only seeks to change the forum of filing applications. Before I start considering the respective submissions of the learned counsel for the parties I propose to give a legislative history of this section.

5. Original Section 45 of Act 4 of 1939 provided as follows: --

"Every application for a permit shall be made to the Regional Transport Authority of the region or one of the regions in which it is proposed to use the vehicle and if the applicant resides or has his principal place of business in any one of those regions, to the Regional Transport Authority of that region."

This section underwent an amendment by Bihar Act 27 of 1950 and Section 6 provided as follows: --

"To Section 45 of the said Act the following proviso shall be added namely, provided that the State Government may, by notification, direct that the application for such class of permits and in such regions as may be specified in the notification, shall be made to the State Transport Authority."

Section 45 of the Act, however, was drastically amended by Central Act 100 of 1956 and the State Amendments which were in conflict with the Central Act including the Bihar Amendment stood repealed in view of the provisions of Article 254 of the Constitution of India. Section 45 by virtue of Central Act 100 of 1956 reads as hereunder:

"Every application for a permit shall be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle or vehicles;

Provided that if it is proposed to use the vehicle or vehicles in two or more regions lying within the same State, the application shall be made to the Regional Transport Authority of the region in which the major 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;

Provided further that if it is proposed to use the vehicle or vehicles in two or more regions lying in different States, the application shall be made to Regional Transport Authority of the region in which the applicant resides or has its principal place of business."

This section was again amended by Central Act 56 of 1969, which is now in force and reads as follows:--

45. General provisions as to the applications for permits:--

"(1) every application for a permit shall be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle or vehicles;

Provided that if it is proposed to use the vehicle or vehicles in two or more regions lying within the same State the application shall 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 of 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;

Provided further that if it is proposed to use the vehicle or vehicles in two or more regions lying in different States, the application shall be made to the Regional Transport Authority of the region in which the applicant resides or has his principal place of business;

(2) Notwithstanding anything contained in Sub-section(1), the State Government may, by notification in the official gazette, direct that in the case of any vehicle or vehicles proposed to be used in two or more regions lying in different States, the applications under that Sub-section shall be made to the State Transport

Authority of the region in which the applicant resides or has its principal place of business."

Section 76 of Act 56 of 1969 had a repeal and saving clause in Section 135 which reads as hereunder along with the schedule :

"135, Repeal and saving:--(1) Enactments specified in the Twelfth Schedule are hereby repealed to the extent mentioned therein :

XX XX XX XX XX

"(The Twelfth Schedule) "(See Section 135)

Repeal of Certain Enactments

S.No. Short Title Extent of repeal

1 2 3

xx xx xx

5. Motor Vehicles (Bihar Amendment) Act 1949 (27 of 1950) The whole except Sections 1 and 3.

6. Motor Vehicles (Bihar Amendment) Act 1953 (1 of 1954) The whole

I will now give a brief legislative history of 5. 43-A, as it stood before Bihar Act 4 of 1979.

6. As we have seen, Sections 1 and 3 of the Motor Vehicles (Bihar Amendment) Act 1949 (27 of 1950) were not repealed. Under Sections 3, 43-A was inserted in Act 4 of 1939 by the said Bihar Amendment Act of 1949. Old Section 43-A reads as hereunder:

"43-A. Power of State Government to issue orders and directions to Transport Authorities :

The State Government may issue such orders and directions as it may consider necessary, in respect of any matter relating to road transport, to the State Transport Authority or a Regional Transport Authority; and such Transport Authority shall give effect to all such orders and directions."

By Bihar Act 4 of 1979, Section 3 of Bihar Act 27 of 1950 was substituted by new Section 43-A, with which we are concerned in the present writ petition. It reads as follows:

"43-A. Power of State Government to issue orders and directions to Transport Authorities -

(1) Notwithstanding anything contained in Section 47 or in any other provisions of this Act the State Government may issue such orders and directions as it may consider necessary in respect of any matter relating to road transport, to the State Transport Authority or Regional Transport Authority and such Transport

Authority shall give effect to all such orders and directions.

(2) In particular and without prejudice to the generality of the foregoing provisions contained in Sub-section (1) the State Government may from time to time issue such directions to Regional Transport Authority as it may consider expedient in the interest of promotion of economic welfare of the weaker sections of the people and to give priority to applicants of such class or category in granting permits.

7. It will be relevant to state that a new Act, known as the Motor Vehicles Act, 1988, which has received the assent of the President of India on 14th October, 1988, has been enacted, and u/s 17 of the present Act, Motor Vehicles Act, 1939, has been repealed. In the State of Bihar, the Central Government by S.O.368 dated 22nd of May, 1989, appointed first day of July, 1989 as the date on which the Motor Vehicles Act 1988, has been brought into force. It may be stated here that the new Act has no equivalence to Section 43A of the Act under consideration. The general provision as to application for permits, as envisaged u/s 45 of the old Act, has been provided for in Section 69 of the Motor Vehicles Act, 1988, almost in same language. The procedure for considering the grant of permit by the Regional Transport Authority, which has a quasi-judicial function u/s 47 of the old Act, has been substituted by Section 71 of the Motor Vehicles Act, 1988. But there has been considerable changes in their provisions.

8. On a comparison of Section 43A as it stood before the amendment by Bihar Act 4 of 1979, and as it stood thereafter, a remarkable departure is discernible, namely :

"Notwithstanding anything contained in Section 47 or in any other provisions of this Act the State Government may issue...."

It was rightly contended by the counsel for the petitioner that this wide power on the dele-gatee empowers even to replace the Act by merely issuing orders and directions, affecting administrative and quasi-judicial functions of the statutory authorities. This power could nullify the legislative enactment and legislative policy of the Act without any control over it by the Legislature. In the case of B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others, , the Supreme Court observed while considering the provisions of Section 43 A, as it stood prior to the Bihar Act 4 of 1979, that even though prima facie there are no words of limitation in this clause:

".....We are reluctant to hold that in enacting section 43A, Madias Legislature intended to confer power on the State Government to invade the domain of exercise of judicial power. In fact, such had been the intention of the Madras Legislature and had been the true effect of the provision of Section 43A. Section 43A itself would amount to an unreasonable contravention of fundamental rights of citizens and may have to be struck down as unconstitutional.

The Apex Court endorsed the view of the Madras High Court to the effect that

Section 43A purported to clothe the Government with authority to issue directions of an administrative character, and nothing more. The Supreme Court after considering the scheme of the Act and the hierarchy of the Transport Authority contemplated by several provisions of the Act, stated that the authorities have been clothed both with administrative and quasi-judicial functions and powers, but at the same time, reiterated their earlier decisions by observing (at p. 1578 of AIR):

"It is well settled that Sections 47, 48, 57, 60, 64 and 64A deal with quasi-judicial powers and functions. In other words, when applications are made for permits under the relevant provisions of the Act and they are considered on merits, particularly in the light of evaluation of the claim of the respective parties, the transport authorities are exercising quasi-judicial powers and discharging those functions as quasi-judicial order which are subject to the jurisdiction of the High Court under Article 226....."

9. Similar view has also been taken in the cases of *Ravi Roadways Vs. Asia Bi and Others*, and *R.M. Subbaraj Vs. Kodaikanal Motor Union (P) Ltd.*, where their Lordships were considering Section 42A as it stood prior to the Bihar Amendment of 1979. In the case of *Bishwanath Nag Vs. State of Bihar and Others*, , their Lordships were considering a direction of the State Government purported to have been made u/s 43 A of the Act directing that a family consisting of husband, wife and their minor children will be allowed one stage carriage permit. It was held that the direction purported to interfere with the quasi-judicial power of the Tribunal and, therefore, beyond the purview of Section 43A, as inserted by Bihar Act 27 of 1950. It may, however, be stated here that their Lordships were considering the old Section 43A and the attention of the Court was not drawn to Section 43A as it stood then. Be that as it may, this is the consistent view of the power of the State Government for issuing orders and directions.

10. There is another way of looking at the matter, particularly the non-obstante clause of the amended Section 43A. The Scheme of the impugned Section 43 A is to delegate certain powers to the State Government to pass orders and directions bearing in view the legislative intent and policy. Even the Legislature, it is now well-settled, has not the unlimited right of delegation. See *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. Vs. The Asstt. Commissioner of Sales Tax and Others*, . The Legislature has to retain in its own hand the essential legislative functions which consist in declaring the legislative policy and lay down the standard to be followed. Even the rules which are subordinate legislation, by their very nature, are ancillary to the statute which delegates the power. The amended Section 43-A seems to confer unlimited and unguided power notwithstanding any provision of the Act to issue directions and orders, as it may consider necessary, and the authorities are mandated to give effect to those orders and directions. Section 43-A(1) even does not say that those orders or directions will be to carry out the objects and purposes of the Act. But the Court may construe it to be so since it is a delegated power. The amended Section 43-A(1), however, goes a

step further by stating "notwithstanding anything contained in Section 47 or in any other provisions of this Act issue such orders and directions as it may consider necessary". Thus in exercise of this power, the delegated authorities may efface all the provisions of the Motor Vehicles Act and may re-enact law as they like by issuance of orders and directions. This, in my opinion, is impermissible. The non-obstante clause "Notwithstanding anything contained in Section 47 or in any other provisions of of this Act...." suffers from the vice of excessive delegation of legislative power and, therefore, invalid. It further suffers from the vice of encroaching upon the quasi-judicial power of different authorities constituted under the Act. It makes a particular reference to Section 47 which has already been held to be a quasi-judicial power in the case of *B. Rajagopala Naidu v. State Transport Appellate Tribunal, Madras AIR 1964 Mad 1573* (supra).

11. I have not been able to appreciate the argument of the learned Government Advocate as set out in his written argument that Section 43A confers power on the State Government to issue orders and directions only of administrative character, but at the same breath, learned counsel asks me to hold that the said power is exercisable without any restraint of Section 47 or any other provisions of this Act. It is difficult to reconcile his submission. Section 47 provides the power of evaluation of respective merits of the applicants by the authorities and, therefore, per se a quasi-judicial power. Any direction that the State Government u/s 43A is entitled to issue must be in conformity with all matters regarding which the statute has made provision, as otherwise, the State Government, which is a delegated authority, will "make a mockery of an important economic activity like the motor transport" See *Rameshwar Prasad and Others Vs. State of Uttar Pradesh and Others*, .

12. Non-obstante words of Section 43-A(1) already extracted above is void as it suffers from the vice of excessive delegation of legislative power and suffers further from the vice of encroaching upon quasi-judicial power of statutory authorities. The other part of the section is separable and is saved by the application of the doctrine of severality (see *R.M.D. Chamarbaugwalla Vs. The Union of India (UOI)*,).

13. Now coming to the impugned Notification No. 7236 dated 23rd June, 1988, the submission of the learned Government Advocate is that the impugned notification is an administrative direction changing only the forum of filing applications for grant of permit from Regional Transport Authority to State Transport Authority. This by itself cannot be held to be encroaching upon the respective quasi-judicial functions of the said two statutory authorities. That question would only arise when these authorities would further be required to evaluate the merits of the applicants for grant or otherwise u/s 47 of the Act. In short, the argument of the learned counsel is that Section 45 of the Act is of administrative in nature and the impugned direction only changes the forum envisaged by Section 45 of the Act.

14. In order to appreciate this argument, I would like to set down the official English translation of the Notification dated 23rd June, 1988 (Annexure-1) which reads as follows:

"In exercise of the powers conferred u/s 43A of the Motor Vehicles Act, 1939, it is directed by the State Government that from the date of issue of this notification the permits of Motor Vehicles on such interregional routes within the State, which pass through the jurisdiction of more than one but not more than two Regional Transport Authorities shall be granted by the concerned Regional Authority in accordance with the provisions of the Motor Vehicles Act, 1939 and the provisions of the Rules formulated under them and from Regional Transport Authority the permits should be sent to State Transport Authority for counter-signature u/s 63 A of the Motor Vehicles Act, 1939.

2. It is directed that hereinafter the permits shall be granted and issued by the State Transport Authority to Motor Vehicles for only those inter-regional routes of the State which pass through the jurisdictions of more than two Regional Transport Authorities of the State.

3. It is also ordered that under the provisions of the Act permits for inter-State routes shall be continued to be granted and issued by the State Transport Authority.

Previous order issued vide Notification No. 6093, dated the 2nd May, 1987, is deleted."

(Translated by Uday Prakash Singh)

15. From a bare reading of the aforesaid notification, it is apparent that by the impugned direction, the delegated authority is changing the jurisdiction of the different statutory authorities in the matter of grant of stage carriage permit. It is not a mere filing of applications for stage carriage permits by candidates desirous of it. It is not a ministerial or clerical procedure for reception of the applications. But by this notification it curtails the jurisdiction of one authority to grant permit u/s 47 of the Act and confers larger jurisdiction on another authority for the matter of consideration and grant of permit. Thus the creation of jurisdiction and divestment of jurisdiction of the various hierarchy under the scheme of the Act for the purpose of exercising their quasi-judicial function, which is the policy of the statute, is being interfered with. The expression "shall be granted" by the different authorities receiving the applications is in reality asking those authorities receiving the applications to evaluate the same u/s 47 for the purpose of grant of the stage carriage permit u/s 48 of the Act. It is, therefore, manifest that this cannot be termed as an administrative direction to carry out the purposes of the Act, but much more than that. The impugned direction has been issued by the State Government in exercise of the non-obstante clause of Section 43A(1), which has already been held to be void and invalid. As a corollary, the impugned notification suffers from the same vice and is held to be inoperative, illegal and without jurisdiction and contrary to the

legislative scheme and policy of the Act.

16. In the result, Annexure 1, the order of the State Govt. contained in Notification No. A 2-3039/82-7236 dated the 23rd June, 1988 is quashed and the application is allowed. There will be no order as to costs.

R.N. Lal, J.

17. I agree.