
(1972) 07 OHC CK 0001
In the Orissa High Court
Case No : O.J.C. No. 489 of 1969

Benu Mohanty

APPELLANT

Vs

Chairman State Transport Authority and Others

RESPONDENT

Date of Decision : 11-07-1972

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Motor Vehicles Act, 1988 — Section 44, 44(1), 44(2), 58

Citation : (1972) 38 CLT 897

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Advocate : G.P. Mohanty, for the Appellant; D.P. Mohapatra, Standing Counsel (Transport), for the Respondent

Judgement

K.B. Panda, J.—The Petitioner, a transport operator, was running a state carriage (ORP. 540) from Puri to Balanga, under permanent permit No. 10/53. The permit was to expire on 30.9.1964 (Annexure-A). The Petitioner, therefore, applied for renewal of the said permanent permit duly, as per provisions of Section 58 of the Motor Vehicles Act (hereinafter called the Act) and deposited the permit fee also. But the Regional Transport Authority (R.T.A), Puri (Opp. Party-2) did not renew the said permanent permit but granted temporary permits only from time to time till 9-12-1967 when, it completely stopped granting any permit (Annexure-8) in respect of the said vehicle on the ground that on inspection of the vehicle by the R.T.A. it was found to be too old to sustain the traffic load of the route and that there had been complaints from the villagers of Balanga and Rupadeipur regarding irregular plying. This refusal of the R.T.A. to renew the permit is being challenged before us in this application under Articles 226 and 227 of the Constitution on various grounds inter alia that it is unauthorised, arbitrary, discriminatory and against natural justice. Be it stated that the Petitioner filed an appeal (M.V. Appeal No. 6/68) before the Board of Revenue but without any success.

2. In the counter filed by the opposite parties it is asserted that the Petitioner has no right to claim renewal of his permit; that the R.T.A., Puri, on inspection of the concerned vehicle came to the conclusion that it was too old to stand the rigors of the journey of the route and, therefore, did not renew the permanent licence which has confirmed by the Appellate authority; and that in view of this concurrent finding of fact, that decision cannot be challenged in this writ application. It was further asserted that certificate of fitness is granted under Chapter V of the Act for the purpose of registration for the limited purpose of road worthiness of the vehicle which cannot fetter the discretion of the Transport Authority whose main consideration is to look to the interest of the traveling public. Regarding the constitution of the R. T.A. on 9-12-1967, which the Petitioner challenged to be an unauthorised body, it is stated that the Inspector of Motor Vehicles, Puri, attended the same on special invitation to assist the R.T.A. but did not take part in its deliberations. Further the Regional Transport Officer (R.T.O.) Puri and the Additional R.T.O. Bhubaneswar have been declared as the Member Secretary and Executive Officer and non-Member Additional Secretary and Executive Officer respectively by Government Notification dated 2-10-1967 (Annexure-1) and further a Notification has been made by the Government on 12.4.1968 appointing Sri Biharilal Patnaik, O.A.S., Touzi Officer, Puri, as the R.T.O., Puri with effect from 1.12.1967 (Annexure.II). Factually it was asserted that the allegation of the Petitioner that he was willing to replace the concerned vehicle with a better one was untrue and there had been no violation of natural justice since the Petitioner himself had participated in the deliberations of the R.T.A held on 9.12.1967.

3. At the first instance we think it worthwhile to address ourselves to the main question whether there had been properly constituted R.T.A. on 9.12.1967 which stopped granting any permanent or temporary permit to the concerned vehicle as per Annexure-II. In this Annexure it would be seen that the members present were shown 8 in number and-the Motor vehicle Inspector, Puri attended the same on special invitation. The 7th and 8th members were R.T.O. Puri and Addl. R.T.O., Bhubaneswar respectively. Under notification dated 12.4.1968 Shri Patnaik, Touzi Officer, Puri, was appointed R.T.O., Puri in addition to his own duties with effect from 1.12.1967 until further orders. Obviously, therefore, Shri Patnaik had attended the R.T.A. on 9-12-1967 when he was not designated as R.T.O., Puri and the notification dated 12-4-1968 has been made retrospective from 1.12.1967 so as to validate his participation in the said meeting on 9.12.1967.

4. Mr. Mohanty. appearing for the Petitioner, strongly urged that such a body with such unauthorised members was incompetent to decide the fate of the Petitioner that being not a properly constituted legal body. The learned Standing Counsel on this score contended that the office of the R.T.O. was not defunct but only Shri Patnaik was declared to be so by name. Under Annexure. I it is said the R.T.A., Puri, shall constitute the following members, namely,

District Magistrate, Puri Chairman.

Supdt of Police, Puri. Member.

Executive Engineer, Public Works Puri. Member.

Sri Nilamani Setha, M.L.A. Member.

Sri Bhabagrahi Nayak, M.L.A. Member.

Sri Durga prasanna Patnaik, Advocate Member.

Besides, the R.T.O., Puri, shall be Member Secretary & Executive Officer and the Addl. R.T.O, Bhubaneswar as a nonmember Addl. Secretary and Executive Officer of the R.T.A., Puri. In this context, it was further contended on behalf of the department that attendance of three members only constitutes a quorum and on that day there were six members present at least and so there was nothing wrong in the deliberations made on that occasion. Besides the Petitioner himself having participated in the deliberations on that day and being present in the said meeting, is precluded from challenging the validity of the deliberations.

5. Though there might be some point in what the learned Standing Counsel urges, yet we are unable to concur with the view that there were no unauthorised persons taking part in the R.T.A. held on 9.12.1967. Admittedly Shri Patnaik was appointed, as R.T.O. Puri on 12.4.1968 retrospectively from 1.12.1967. It follows, therefore, that on the relevant date there was no legally appointed R.T.O. member of the R.T.A. We entertain serious doubt if persons can be clothed with powers by any notification to operate retrospectively:

In the case of *Sudhir Kumar Barua v. State Transport (Appellate) Authority Assam* AIR 1962 Allam 94 their Lordships decided that.

Where a District Transport Officer, who acts as an ex-officio Secretary in the meeting of the Regional Transport Authority as constituted u/s 44 of the Motor Vehicles Act, hands over charge of his office to another officer, he ceases to be a member of the Regional Transport Authority. If thereafter he attends the meeting of the said authority held for considering the application of the Applicant for grant of contract carriage permit, the meeting is one held not by the properly constituted Regional Transport Authority, but by a body consisting of the members of the Regional Transport Authority and the non-member also. Under these circumstances the proceedings are entirely without jurisdiction.

In a Division Bench of the Kerala High Court in the case of *Rajalekshmi Motor Service, Kozhikode Vs. Govt. of Kerala and Others*, it has been held thus Appointment of members of Transport Authority constituted under Sub-section (1) of Section 44 is in pursuance of a power conferred by the legislature and is not in pursuance of the executive power of the State under the Constitution. The power to constitute the Transport Authority is derived from Sub-section (1); this is in the realms of a delegated statutory power, and in such cases there is no right to retroactive action unless the legislature by express words or necessary

intendment had authorised the same.

The retrospective operation of the notification dated 23-12-58 (of Kerala Govt.) under Sub-section (1) and (2) of Section 44 sanctioning "the continuance of the State Transport Authority and the Regional Transport Authorities as on 1-8-1958 from the dates of expiry of their term till their successors are appointed" is of no effect and the result is that there was no Regional Transport Authority in existence on 13.11.1958 and if the Authority was non-existent there could have been no de facto members of that Authority. A de facto office is not a concept known to law. There can (sic) facto officers, but there can be no de facto office. There must be a legal office in existence in order to protect the acts of the incumbent.

In the above case it has been held that a Petitioner submitting to the jurisdiction of a Tribunal which has no such powers, can be interfered with under Article 226 by the High Court.

6. The learned Standing counsel cited certain authorities which are not direct on the point excepting the case of G.T. Venkataswamy Reddy v. R.T.A. Bangalore. AIR 1966 May. 55. In it it is said that where a Petitioner who had been aware of the defect of the constitution of the R.T.A did not raise any objection on that score but, on the contrary, took the chance of his succeeding the proceedings before it, he was barred by his own conduct from raising contention in the writ petition that the Tribunal had not been properly constituted. We would like to distinguish this case inasmuch as after the writ petition in that case against the order of the R.T.O. was partly heard, the Petitioner raised the contention that the R.T.A. was not properly constituted so its order should be quashed. It was held therein that even if the Authority was not properly constituted, the Petitioner was precluded-by his conduct from questioning the validity of the meeting in question. But such is not the case here. Even in the petition in para 6 the plea has been taken specifically.

7. In view of the discussions made here to force and relying on the decisions in the Assam and Kerala Cases, referred to above, we would hold that there was no properly constituted Regional Transport Authority that refused granting of a permit to the vehicle in question of the Petitioner. As such, the order is quashed. Let a writ of certiorari be issued accordingly.

8. However, we wish to make it clear that we do not express any opinion as to the road worthiness or otherwise of the vehicle in question. It would be open to a properly constituted Regional transport Authority to reconsider the matter along with the prayer of the Petitioner to put in a new carriage according to the required standard that can stand the stress and strain of that route.

9. Before leaving this judgment we may observe that it strikes us to be something anomalous that though the vehicle had been declared to be unworthy by the R.T.A. on 9-12-1967 with the wordings "that this vehicle is completely unworthy for the road", it is strange that even after that date, temporary permits

had been granted to the same vehicle on 16.1.1968, 23.2.1968 and 21.3.1968 under Annexures-C, C/1 and 0/2. These temporary permits were to carry passengers and not goods. Of course they were for particular purposes, such as, "JAGAR" festival and the like. Still then, if the safety and convenience of the passengers are the primary concern of the Regional Transport Authority, as already asserted by the department, It becomes difficult to reconcile how the same unworthy vehicle would be safe for the passengers on any particular occasion. Be that as it may, on the main ground we allow this writ petition, namely, that the Regional Transport Authority held on 9-12-1967 was not a properly constituted body and, as such, the writ petition is allowed but in the circumstances without costs.

R.N. Misra, J.

10. I agree.