
(1992) 09 PAT CK 0035
In the Patna High Court
Case No : C.W.J.C. No. 299 of 1992

Bihar Chamber of Testing Stations and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 28-09-1992

Acts Referred:

Citation : (1992) 09 PAT CK 0035

Judgement

B.K. Roy, J.—Bihar Chamber of Testing Stations, 310, Radio Ground, New Sitaramdera, Jamshedpur and its Secretary Shri Shekhar Bhushan Nag, through this writ application assert that the respondent No. 2 (the Motor Vehicles Inspector, Jamshedpur) cannot inspect the vehicles and/or suspend or cancel the certificate of fitness and interfere with the business of the Testing Stations.

The Matrix:

2. Petitioner No. 1 is an association deeply interested not only in smooth functioning of the letter of authority holders but also for the enforcement of their legal rights. The Secretary of the petitioner No. 1 has been authorised by other members of the association to file this writ application, who is also proprietor of M/s Auto Testing Station having letter of authority issued by the registering authority, as contained in Annexure-1. The certificate of fitness has duly been issued by the authority belonging to respondent No. 2. For ulterior reasons respondent No. 2 has been pressurising the vehicle owner not to take certificate of fitness from petitioner No. 2 who, on their refusal or on their carrying fitness certificates issued by the Testing Station, has gone to the extent of suspending the certificate of fitness granted by the authorised Testing Stations. Respondent No. 2 has threatened openly to various vehicle owners that their certificates of fitness granted by the Testing Stations can be cancelled by him. From perusal of letter of authority it will be evident that a Motor Vehicle Inspector does not have any jurisdiction to inspect any motor vehicle on the road contrary to the provisions of the Act. Photocopy of one of the certificates of fitness suspended by respondent No. 2 in relation to vehicle bearing registration No. BRX 3645 has

been appended as Annexure-3 to the writ application. A chart, as contained in Annexure-4 to the writ application, shows the amount and number of illegalities committed by respondent No. 2. The driver of vehicle bearing registration No. BRX 3645 wrote a letter to the Testing Station (as contained in Annexure-5) requesting petitioner No. 2 to take whatever action he feels necessary stating the illegality committed by respondent No. 2. A complaint of the highhandedness of respondent No. 2 through complaint dated 7-12-1991, as contained in Annexure 6, has been made to the State Transport Commissioner stating that even though respondent No. 2 is not the registering authority he is checking vehicle which is evident from one of his inspections made in regard to vehicle bearing registration No. OAX 9754, as contained in Annexure-4. Petitioner No. 2 received another complaint on 21-11-1992 (as contained in Annexure-8) from the owner of the vehicle bearing registration No. BRS 9832. High-handedness and illegality of respondent No. 2 has also been highlighted in various newspapers. His action is mala fide, arbitrary and contrary to the provisions of the Articles 14 and 19(1)(g) of the Constitution of India besides to the provisions of Rule 63 read with Section 39 and 40 of the Act.

3. In their counter affidavit and its supplementary respondent Nos. 2 and 3 assert to this effect: The Motor Vehicle Inspectors have been empowered under Rule 28(A) of the Bihar Motor Vehicles Rules, 1940 and the Bihar Motor Vehicles (Amendment) Rules, 1989 read with Section 38 of the Motor Vehicles Act, 1939 as also Section 56(2) of the Motor Vehicle Act, 1988 to grant and renew a certificate of fitness of the Motor vehicle. They have also got power to cancel or suspend any certificate of fitness, if satisfied that the vehicle to which it relates no longer complied with all the requirements of the Act and the Rules framed thereunder. Thus, it cannot be said that respondent No. 2 has taken liberties with the certificates of fitness issued by the Testing Stations more so with the petitioners. The vehicles referred to were trucks which did not comply with all the requirements of the Act at the time of their checking and hence respondent No. 2 suspended their certificate of fitnesses, besides he has also cancelled the certificate of fitnesses of some other trucks, which is evident from Annexure-A series. Respondent No. 2 has not interfered with the business of Testing Stations. He has simply performed his duties u/s 56(4) of the Act for the safety of the public by stopping the defective vehicles plying on the road. The certificate of fitness of a truck granted by respondent No. 2 was even cancelled by the Motor Vehicle Inspector, Baripada, West Bengal as the vehicle did not comply with the requirements of the Act and the Rules. Other Motor Vehicle Inspectors are also suspending cancelling the certificates of fitnesses, when they think necessary to do so for the point of view of safety and, thus, there was nothing illegal or abnormal on the part of the respondent No. 2 in doing so. Unless the defects indicated are not removed there is no question of revocation of suspension and/or cancellation of certificates of fitnesses granted to the vehicles by the petitioners and in fact after the removal of defects pointed out by him certificate of fitnesses of truck bearing registration No. BRX 3645, which was suspended by

him, was revoked and he has no objection to the revocation of fitness certificates to the vehicles, if the defects, are removed. Respondent No. 2 has been appointed by the Government of Bihar as Motor Vehicle Inspector in accordance with the Act and Rules. By notification No. 8361 dated 4th August, 1988 Government of Bihar, Transport and Aviation Departments, he was empowered to exercise the powers and discharge the functions of an officer as laid down u/s 11 of the Bihar and Orissa Motor Vehicle Taxation Act, 1930. u/s 11 of the said Act any officer of the Transport Department, if specially authorised by notification, may require the driver of any motor vehicle to stop a vehicle in any public place for the purpose of satisfying himself as to whether the tax has been fully paid or not. It is not a fact that respondent No. 2 has interfered with the business of Testing Stations by checking the same or by forcing the vehicle not to get certificate of fitnesses from the Testing Stations. Even according to paragraph K of Annexure-2 Motor Vehicle Inspectors, if they so desire, can at any time inspect the Testing Stations, Any Motor Vehicle Inspector is competent to suspend/cancel the certificate of fitnesses granted by a Testing Stations/Motor Vehicle Inspectors of any Transport Department, which fails to comply with the requirement of the Act as provided by Rule 28(1) of the Bihar Motor Vehicles Rules, 1940 and Rule 28(4) of the Bihar Motor Vehicle (Amendment) Rules, 1989 at the time of checking. It is wholly baseless to say that respondent No. 2 had given threats to any staff of any Testing Station or the staff of vehicle Nos. BRX 3645 and OAX 9754. The letter (described as complaint by the petitioners) is untrue and concocted, besides certificate of fitness of the vehicle concerned i. e. BRS 9832 was neither suspended nor was cancelled by respondent No. 2. The allegation that respondent No. 2 has given threat or persuaded the vehicle owner not to take certificate of fitness from the petitioners is totally baseless nor has any ulterior motive or intention in suspending/cancelling the certificates of fitness granted by the petitioners. Testing Stations have also power to renew the certificate of fitnesses and that is why at the time of checking several vehicles on the road, certificate of fitnesses granted by petitioner No. 2 were also accepted by respondent No. 2, when he found no defect in the vehicles at the time of their checking, which shows that respondent No. 2 has accepted the validity of fitness certificates granted by Petitioner No. 2. The chart as contained in Annexure 4 has been prepared with the help of supporters and well wishers of petitioner No. 2 to substantiate his contentions. Respondent No. 2 has no idea at all about the vehicle bearing registration No. BRX 3730. There is no truth or merit in the complaint made by the petitioners. Petitioner No. 2 has manoeuvred matters in his favour and highlighted in papers to demoralise respondent No. 2 so that he may not discharge his duty properly and efficiently. Respondent No. 2 has not acted in any manner which is contrary to the provisions of Articles 14 and 19(1) (g) of the Constitution of India, Motor Vehicle Inspectors are gazetted Officers. Their appointment, transfer and posting are made by the Governor of Bihar. By virtue of notification No. 5055 dated 19-2-1983 respondent No. 2 was appointed and posted as Motor Vehicle Inspector. Pay and salary of the gazetted officers were issued from the office of the Accountant General, Bihar till 1987-88 and

thereafter the same, in respect of gazetted officers within the salary of Rs. 1810 are being issued by the Department in view of 4th Pay Revision Committee Report. Motor Vehicle Inspectors are empowered to grant fitness certificates as provided u/s 56 of the 1988 Act read with Rule 63 of the Central Rules read with Rules 28 of the Bihar Motor Vehicles Rules which is evident from various letters issued by the Transport Commissioner, as contained in Annexures K and L. Rule 94(d) of the Bihar Motor Vehicles Rules also empowers Motor Vehicle Inspectors to seize certificate of fitness besides it is a settled law that the authority which has jurisdiction to grant certificate shall have jurisdiction to suspend or cancel the same.

Submissions

4. Mr. Tapan Sen, learned Counsel appearing on behalf of the petitioners has submitted as follows:

(i) u/s 56 of the Act a certificate of fitness can be issued either by the prescribed authority or by any authorised Testing Station viz. petitioner No. 1 subject to a condition that both are equally competent and have expertise. A Motor Vehicle Inspector cannot be said to have an expertise or competence equal to that of petitioner No. 1 for two reasons:

(a) A Motor Vehicle Inspector has no such experience, training and ability of. an authorised Testing Station or garage and Testing equipments and Testing Personnel aid (b) under Rule 63 (3) (e) of the Central Motor Vehicle Rules (herein-after referred to as the "Rules") working condition of the items mentioned therein are not in his possession.

(ii) Under Rule 21 of the Bihar Motor Vehicle Rules (hereinafter referred to the "Bihar Rules") a Motor Vehicle Inspector, on being authorised by the registering authority performs duties under the Act and the Rules. There would be an element of interestedness in the Motor Vehicle Inspector and thus he should not be appointed as an inspecting officer. Such power should be entrusted to a person, who is not a rival in business. In this regard reference was made by him to a decision of the Supreme Court in Krishna Bus Service Pvt. Ltd. Vs. State of Haryana and Others, .

(iii) A Motor Vehicle Inspector is not a Gazetted Officer and accordingly he cannot search, inspect or seize in view of the proviso to Sub-section (5) of Section 213 of the Motor Vehicles Act.

(iv) Even assuming that a Motor Vehicle Inspector has jurisdiction, in that event he should not be allowed to act as a rival of petitioner No. 1 in regard to its reason of activity. Respondent No. 2 has interfered with the certificates issued by petitioner No 2 which shows his bias, arbitrariness, interstedness and mala fide and, thus, should be restrained from interfering with the business of petitioner No. 2 who has freedom of trade and business as guaranteed under Article 19(1) (g) of the Constitution of India.

5. Mr. Eqbal, learned G. P. I. appearing on behalf of the respondents, on the other hand, submitted with reference to the counter affidavit and its supplementary, that there is no merit in the writ application; that the facts stated in the counter affidavit and its supplementary not having been denied by the petitioners should be accepted as true and the Rule issued be discharged and the writ application be dismissed with cost. The question raised herein were raised earlier by petitioner No. 1 and its Joint-Secretary Parvinder Singh in C.W.J.C. No. 2481 of 1991 (R) which was dismissed by Division Bench through its judgment dated 4th February, 1991, negating the contentions made by Mr. Sen himself, which operates as res judicata/constructive res judicata. The provisions of the Act and the Rules referred to by Mr Sen do not support his submissions. Respondent No. 2 is a Gazetted Officer and has full jurisdiction to search, inspect or seize any vehicle or can look into the certificate of fitness granted by petitioner No. 2 and/or cancel it, though in accordance with law. The allegation of interestedness, bias, arbitrariness and mala fide against respondent No. 2 is wholly baseless.

6. Mr. Sen in reply reiterated his submissions and added that in C.W.J.C. No. 2481 of 1991 (R) it was held by this Court that a Motor Vehicle Inspector has been authorised merely to inspect any public vehicle at a public place at any reasonable time and seize the certificate of fitness granted by any service station and that finding is not res judicata/constructive res judicata as petitioner No. 2 and respondent No. 2 of that case were different besides the decision was rendered sub silentio. A State Motor Vehicle Inspector is different from a District Motor Vehicle Inspector. He also referred to Rule 176 (3) of the Bihar Motor Vehicle Rules and relied upon a judgment of the Supreme Court in Municipal Corporation of Delhi Vs. Gurnam Kaur, .

My Findings

7. Section 56 of the Act runs as follows:

(1) Subject to the provisions of Sections 59 and 60, a transport vehicle shall not be deemed to be validly registered for the purposes of Section 39, unless it carries a certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority; or by an authorised testing station mentioned in Sub-section (2) to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder.

Provided that where the prescribed authority or the authorised testing station refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal

(2) The "authorised testing station" referred to in Sub-section (1) means a vehicle service station or public or private garage which the State Government, having regard to the experience, training and ability of the operators of such station or garage and the testing equipment and the testing personnel therein

may specify in accordance with the rules made by the Central Government for regulation and control of such stations of garages.

(3) Subject to the provisions of Sub-section (4), a certificate of fitness shall remain effective for such period as may be prescribed by the Central Government having regard to the object of this Act.

(4) The prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and the rules made thereunder; and on such cancellation the certificate of registration of the vehicle and any permit granted in respect of the vehicle under Chapter V shall be deemed to be suspended until a new certificate of fitness has been obtained.

(5) A certificate of fitness issued under this Act shall, while it remains effective, be valid throughout India.

A bare perusal of Sub-section (4) of Section 56 aforesaid shows that the prescribed authority can cancel a certificate of fitness any time if it is satisfied that the vehicle to which it relates no longer complies with all the requirements of the Act and the Rules made thereunder provided he records his reasons in writing for doing so. In this view of the matter, the real issue to be decided is as to whether a Motor Vehicle Inspector is the prescribed authority or not.

8. Rule 21 of the Bihar Motor Vehicle Rules runs as follows:

21. Registering Authority.--The District Transport Officer shall be the Registering authority:

Provided that the Superintendent of Police, Bokaro shall be the Registering Authority in Bokaro:

Provided further that a Motor Vehicle Inspector may on being authorised by the registering authority perform any of the duties of the registering authority under the Act and the Rules.

The provision shall come into force in such district from the date to be determined by Government.

9. I have called for the records of C.W.J.C. No. 2491 of 1981 (R) and perused the writ application as well as judgment. Respondent No. 4 of that writ application was Motor Vehicle Inspector, Giridih. Petitioner No. 2 of that writ application was the Joint Secretary of petitioner No. 1 who is petitioner No. 1 in the instant case also. The State of Bihar was respondent No. 1 in that writ application and is respondent No. 1 in this writ application as well. The State Road Transport Commissioner who is respondent No. 3 in the instant writ application was respondent No. 3 in that writ application. The petitioners of that case had asserted, Inter alia, therein that neither under the Act nor under the Rules a Motor Vehicle Inspector has been conferred powers/any authority or jurisdiction to make seizure of certificate of fitness and accordingly seizure made by the

Motor Vehicle Inspector of Giridih is wholly illegal and without jurisdiction and is liable to be quashed being totally illegal, without jurisdiction, arbitrary, mala fide and violative of Articles 14 and 19(1)(g) of the Constitution of India. In paragraph 12 of the judgment in regard to jurisdiction of a Motor Vehicle Inspector submission of Mr. Sen was noticed which for the sake of gravity is reproduced as follows:

It has further been contended that the action on the part of the respondent No. 4 in seizing the certificate of fitness issued by petitioner No. 2 is also illegal inasmuch as there is no rule which authorises him to seize the certificate of fitness granted to the licencees.

The reply of the Advocate General, who appeared on behalf of the respondents in the aforementioned case stated in paragraph 13 of the judgment, is being reproduced for the sake of gravity:

In reply to the fourth contention of the petitioner, it was submitted by the learned Advocate General that respondent No. 4 had the jurisdiction to seize the certificate of fitness in view of rule 94(d) of the Bihar Rules.

In paragraph 15 of the judgment Section 56 of the Act was taken into account. In paragraphs 16 and 17 of the judgment relevant Rules were also taken into account. The question raised herein, which was contention No. 4 in the aforementioned writ application, was considered and answered in paragraphs 43 and 44 of the judgment which are being reproduced for the sake of gravity;

43. As indicated hereinbefore, whereas Mr. Tapan Sen submitted that there is no rule which authorises respondent No. 4 to seize a certificate of fitness, learned Advocate General submitted that such a power must be held to be implicit under rule 94(d) of the Bihar Rules which reads as follows:

Filing of objection/Procedure.--(i) Any person, concern or authority affected by the Scheme published u/s 68C or 68-E and wishing to file any objection thereto, shall, within 30 days from the date of publication of the Scheme in the Official Gazette addressed to the Minister in Political (Transport) Department. The objection petition shall be signed by the objector or his authorised agent as the case may be. The Memorandum shall set forth concisely the grounds for objections to the Scheme and shall in addition contain the following particulars namely:

(a) The name and address of the objector;

(b) whether the objector is a holder of any permit or permits under the provisions of Chapter IV of the Act, together with particulars of the route or routes or area specified in such permit;

(c) the manner in which the object is affected by the Scheme; and

(b) whether he desires, any alternative route or area to have a permit in accordance with Sub-section (2) of Section 68G.

(il) Any person filing objection shall send a copy thereof simultaneously to the Bihar State Road Transport Corporation.

Explanation: Authorised agent referred to in this rule shall mean a person who holds a valid power of attorney from his principal.

44. From a plain reading of the said rule, it appears that an Inspector of a Motor Vehicle has been authorised merely to inspect any public vehicle at a public place at any reasonable time and seize the certificate of fitness granted by any service station. In fact, there is also no requirement therefore inasmuch as if a certificate of fitness has been granted by any authorised service station, in respect of a vehicle, the same may be ignored by the registering authority at the time of registration or renewal thereof.

10. In paragraph 43 of the aforementioned judgment by the mistake of stenographer Rule 94(d) has not been typed rather Rule 94-D has been typed; In this view of the matter, it is not necessary for us to refer this case for doubting the correctness of the judgment aforementioned.

11. Rule 94(d) runs as follows:

Any Inspector of Motor Vehicle shall be entitled at any reasonable time to inspect any public service vehicle in a public place.

12. It is a settled law that an authority which has jurisdiction to grant a certificate shall be deemed to have jurisdiction to suspend or cancel the san as well, The respondents have referred to the notification by which respondent No. 2 was appointed and posted as Motor Vehicle Inspector. I do not find any substance in the contention of Mr. Sen that respondent No. 2 is not a Gazetted Officer. Though not brought on the record by way of any affidavit but reference has been made to a letter bearing Memo No. El-277/ SOT 10132 Patna, the 23rd November, 1991 issued by the Under-Secretary to the Government of Bihar to the Accountant General, Bihar through Department of Finance describing the posts of the Motor Vehicle Inspectors as Gazetted posts.

13. In view of the findings recorded by this Court aforementioned that an Inspector of Motor Vehicle has jurisdiction to inspect a vehicle and seize the certificate of fitness granted by any service station, I do not see any merit in the submission of Mr. Sen and reject it. Perusal of different rules referred to in the counter affidavit also leads me to agree with the afore-mentioned findings.

14. I do not find any merit in the contention of Mr. Sen that this judgment is sub silentio or incorrect and not binding on us. I do not think that the decision of the Supreme Court reported in Krishna Bus Service Pvt. Ltd. Vs. State of Haryana and Others, and Municipal Corporation of Delhi Vs. Gurnam Kaur, are of any help to him. On the contrary what I find is that the decision of this Court in the aforementioned case operates as res judicata constructive res judicata. Seen in this context the five judges Constitution Bench decision of the Supreme Court in The Direct Recruit Class-II Engineering Officers" Association and others Vs. State

of Maharashtra and others, where-in it was observed as follows:

It is well established that the principles of res judicata are applicable to writ petitions. The relief prayed for on behalf of the petitioner in the present case is the same as he would have, in the event of his success, obtained in the earlier writ petition before the High Court.... The binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much emphasised by the Constitution, is founded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution. The decision in *Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others*, , further clarified the position by holding that an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the Parties might and ought to have litigated and have decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the CPC was applied to writ case.

15. In *Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another*, , it was held to the effect that if a question of law is related to a fact in issue, an erroneous decision on such a question of law operates as res judicata between the parties, if the cause of action is the same and that when a particular decision has become final and binding between the parties, it cannot be set at naught on the ground that such a decision is violative of Article 11 of the Constitution of India. In *A.R. Antulay Vs. R.S. Nayak and Another*, , it was clearly laid down that between the parties even an erroneous decision operates as res judicata. See also in this regard yet another decision of the Supreme Court in the *State of West Bengal Vs. Hemant Kumar Bhattacharjee and Others*, .

16. The earlier writ application was filed by petitioner No. 1 and sued through its Joint Secretary in a representative capacity. Simply because the instant application has been sued through its Secretary impleading a Motor Vehicle Inspector belonging to different place, this will be of no help to the petitioners to escape the rigour of applicability of the principles of res judicata/constructive res judicata. The declaration of the law by this Court is binding on all concerned whether a person is party or not.

17. In the aforementioned view of the matter, I do not find any substance in the contention of Mr. Sen that the decision aforementioned is not binding on the petitioners.

18. I do not find any merit in the submission of Mr. Sen in regard to the alleged mala fide of respondent No. 2 and I reject this part of his submission as well.

19. Having found no merit in any of the submissions of Mr. Sen, I hold that this

writ application is liable to be dismissed.

20. In the result, this writ application is dismissed but in the peculiar facts and circumstances there shall be no order as to cost.

21. I agree.