
(1997) 02 PAT CK 0038
In the Patna High Court
Case No : C.W.J.C. No. 2037 of 1995

Bihar Transport Association and Another	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 04-02-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 88

Citation : (1997) 1 BLJR 792 : (1997) 1 PLJR 623

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Aftab Alam, J.—Bihar Transport Association and its honorary General Secretary are petitioners 1 and 2 respectively in this writ petition. They seek a declaration from this Court that having regard to the facts and circumstances of this case the action of the respondent authorities in realising late fine at the rate of Rs. 100/- per month for each State for the issuance of authorisation slips under Rule 87 of the Central Motor Vehicles Rules was with out any legal sanction; the petitioners consequently further seek a direction to the authorities for the refund of the money realised as late fee.

2. For operating a goods carriage vehicle in other States the operator requires a national permit as provided under Sub-section (12) of Section 88 of the Motor Vehicles Act, 1988. Further, for grant of permit for operating a goods carriage vehicle outside the State, an authorisation is issued by the State Transport Authority. The authorisation is issued for a period not exceeding one year at a time and an application for its renewal is required to be made not less than 15 days before the date of its expiry. Rule 87 of the Central Motor Vehicles Rules provides the form and the manner in which an application is to be made for the grant of an authorisation and also lays down that the application for the grant of authorisation, must be accompanied by a fee of Rs. 500/- per annum in the form of Bank Draft. In view of the relevant legal provisions it is obvious that in respect

of authorisations expiring on December 31, 1994, applications for renewal were to be made by mid December so as to be 15 days before the date of their expiry.

3. It is stated in the writ petition that the members of the Association whose authorisations were expiring at the end of December, 1994 and who intended to make applications for their renewal had accordingly got Bank Drafts made for the requisite fee few days prior to the last date for filing the applications for renewal. In support of this statement copies of a few Bank Drafts dated December 6 and 8, 1994 are enclosed as Annexure-1 to the writ petition. It is further stated that their applications for issuance of authorisation slips were complete in all respects and were only waiting to be filed before the competent authority in the office of the state Transport Authority on the due date. However, the non-gazetted employees of the State Government went on strike from 14.12.1994 as a result of which the office of the State Transport Authority was closed and became disfunctional from that date. It is asserted in the writ petition that when the petitioners went to the office for submitting the applications they were unable to do so as the office was closed due to the strike of the non-gazetted employees. The applications could be finally submitted on 15.2.1995 only after the strike was withdrawn on 13.2.1995 and the petitioners came to learn that the government offices had started functioning normally. At the time of submission of the applications the petitioners were not asked to make payment of any late fine but when they went to the office to collect the authorisation slips they were told that the authorisation slips would be issued only on payment of late fine @ Rs. 100/- per month for each State. The petitioners made representations before the State Transport Commissioner protesting against the demand for the payment of late fine but not getting any favourable response from him they came to this Court and filed this writ petition. However, as there was some delay in this application being taken up and in the meanwhile for want of the authorisation slips their business suffered from day to day the applicants deposited, under protest, the late fine as demanded by the authorities. Thereupon the authorisation slips were duly issued. On account of this subsequent development taking place after the filing of the writ petition the petitioners modified the reliefs prayed for in the writ petition and they now seek the reliefs as stated at the" opening of this order.

4. During the pendency of this writ petition the Transport Commissioner rejected the representation (s) filed before it by his order dated 23.2.1995 a copy of which has been brought on record as Annexure-A to the counter affidavit. From this order it appears that the demands for the payment of late fine was not founded on any provisions either in the Act or in the Rules but the impugned demand was made on the basis of a form issued by the Transport Department of the Central Government. Curiously, even that form was not available in the office of the State Transport Commissioner while he was considering the petitioners" representation against realisation of late fine, further, in that order the petitioners" plea that they were prevented from submitting the applications in time as the office was closed due to the strike of the non-gazetted employees is brushed aside with the observation that the petitioners could have sent the

applications by registered post.

5. In the counter affidavit, it is further stated that during the period between 14/21.12.1994 to 13.2.1995 when the employees of the Transport Authority were on strike alternative arrangement was made for collection of composite fee and the connected papers and it was quite false to assert that the transporters including the petitioners were prevented from making deposit of the composite fee due to the strike of the non-gazetted employees. It is reiterated in a supplementary counter affidavit filed on behalf of the 2nd respondents that in order to facilitate the deposit of permit fee and authorisation fee, alternative counter was established which was manned by the staff of the computer cell. It is further stated that during the aforesaid strike period 39814 Bank Drafts were received for a total sum of Rs. 7, 34, 31, 962 only. It is further stated that during that period 12 new permits and 1450 authorisation letters (for national permit) were issued by the department; further inter-State and intra-State permits were issued for Buses and counter signatures were also done.

6. I find it very difficult to accept the respondents' denial of the petitioners' allegation that the strike of the non-gazetted employees had so badly affected the office of the State Transport Authority that they were unable to file the applications. I would not go so far as to suggest that the respondents' statements are incorrect; but the two contradictory versions are clearly the result of different points of view. From the Transport Commissioners point of view his office might be functioning and he might also cite some official business which were transacted by his office during the strike period. But it must be realised that the issue in this case is not whether on account of the strike of the non-gazetted employees the office had closed down absolutely and its functioning had stopped totally; the issue is whether on account of the strike it was no longer possible to submit applications in the office easily and normally and in case that was the position whether it was reasonable for the respondent authorities to realise late fine for the period of strike? On this issue I find that the petitioners' case is not without substance.

7. It is the general perception that government offices, at least in this State, even in normal times are not among the most inviting places where one would go wholly free from trepidation that one's legitimate work will be done without any hitch or hassle. It may further be stated that the non-gazetted employees' strike is only two years' old and it has not completely faded away from memory. It is well known that on account of the strike the functioning of the government departments had been severely affected and no government department had remained immune from its debilitating effect. In those circumstances if the petitioners were not able to file the applications for issuance of authorisation slips in time, they were certainly not liable to pay any late fines. It may further be added that in the facts and circumstances of this case the realisation of late fine from the applicants would amount to the government doubly punishing a citizen for no fault on his part; first by not doing his work in time and secondly

by making him pay fine for the delay for which not he but the government was responsible.

8. As regards the receipt of the Bank Drafts amounting to a sum of Rs, 7, 34, 31, 962/- as stated in the supplementary counter affidavit Mr. V.N. Sinha, G, P. VIII with great fairness stated that most of the Bank Drafts were received through post and related to applications from outside the State. He also admitted that the Authority did not issue any public advertisements making it known to the general public that applications and Bank Draft etc. were being received in the department by post or that any special counter (s) was established for receiving those applications. It also cannot be disputed that the normal practice in the office of the Transport Authority is for the transporters to submit their applications by hand and the applications are received from post mostly from the transporters outside the State.

9. Having regard to the facts and circumstances of this case I am of the opinion that the authorities were clearly in error in realising late fine for not submitting the applications during the period of the Non-gazetted employees' strike. In this application I do not wish to make any observation regarding the practice of levying late fine when the applications are not submitted in time during normal times but to insist for payment of late fine for the period of strike of the Non-gazetted employees appears to me to be wholly unreasonable and arbitrary and the money collected by the State as late fine in this case must, therefore, be held to be an appropriation with out any sanctions of law. Let a declaration be made accordingly. Following this it is directed that all those transporters who under protest made payment of late fine for not submitting the applications during the period of the Non-gazetted employees' strike (14.12.1994 to 13.2.1995) will be entitled to refund/adjustment of the amount paid by them. It will be open to them to claim adjustment of the amount while making applications for future renewals.

10. In the result, this application is allowed with the aforesaid observations and directions.