
(2011) 07 PAT CK 0091
In the Patna High Court
Case No : CWJC No. 9076 of 2010

Binod Ram

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Citation : (2011) 07 PAT CK 0091

Final Decision : Dismissed

Judgement

S.N. Hussain, J.—Although Petitioners in both the aforesaid cases are different but these cases have been heard together and are being decided by this common order as the subject matter of both the writ petitions, parties to the dispute as well as the relief"s claimed therein are the same.

2 Both the aforesaid writ petitions have been filed challenging common order dated 20.4.2010 by which the Chairman of the State Transport Appellate Tribunal, Patna (hereinafter referred to as "the Appellate Tribunal" for the sake of brevity) dismissed Transport Revision No. 1 of 2010 and Transport Revision No. 2 of 2010 filed by the Petitioners of both the writ petitions and also challenging order dated 19.12.2009 by which the Chairman, North Bihar Regional Transport Authority, Muzaffarpur (hereinafter referred to as "the Authority" for the sake of brevity) settled the Mahua Bus Stand in favour of private Respondent No. 12 Dayanand Singh, who is common in both the writ cases and for other ancillary relief"s.

3. These cases have cheque history and from the imbroglio of its omnium gatherum certain facts evolve that Mahua is a sub-divisional town situated in the district of Vaishali and from Mahua Chowk several roads branch out to Muzaffarpur, to Darbhanga, to Samastipur and to Hajipur and thus it has assumed enormous importance of magnitude dimensions for vehicular traffic specially for the northern part of this State. In the said circumstances, a bus stand of suitable area situated in the vicinity of Mahua Chowk was required.

4. Previously a bus stand was being operated by one Sheo Kumar Singh on the land offered by him but subsequently North Bihar Regional Transport Authority, Muzaffarpur allowed operation of bus stand on the land offered by one Manoj Kumar. After some time there was a bitter fight between Smt. Urmila Devi who was the owner and lesser of the said land and Manoj Kumar who was the lessee and the licensee of the bus stand. There was another fight between erstwhile licensee Sheo Kumar Singh and the then licensee Manoj Kumar who filed Transport Revision No. 37 of 2006 and Transport Revision No. 39 of 2006 respectively before the Transport Appellate Tribunal, which vide order dated 16.3.2006 set aside the decision of the authority and remanded the matter to it for fresh decisions. This order was affirmed by the High Court vide its order dated 8.7.2008 passed in C.W.J.C. No. 6744 of 2007 and C.W.J.C. No. 6666 of 2007 filed by Sheo Kumar Singh and Manoj Kumar and also by a Division Bench of this court in LP.A. No. 662 of 2008* and L.P.A. No. 664 of 2008 filed by the objectors which were similarly disposed of.

5. However, on remand the above-mentioned revision cases revived and the Appellate Tribunal considered the matter in detail and vide order dated 11.9.2006 rejected both of the aforesaid claims of Sheo Kumar Singh and Manoj Kumar and observed that bus stand must be operated on another land for which fresh proposal should be called for from the District Magistrate, Vaishali. Thus the claims of Sheo Kumar Singh and Manoj Kumar stood concluded and closed.

6. In view of the directions of the Appellate Tribunal given in its order dated 11.9.2006 fresh proposals were invited by the authorities, in response to which 12 applications were received including the applications of Binod Ram (Petitioner of C.W.J.C. No. 9076 of 2010), Bipin Kumar (Petitioner of C.W.J.C. No. 10798 of 2010) and Dayanand Singh (Respondent No. 12 in both the cases) which were all sent by the District Magistrate, Vaishali to the Sub-Divisional Officer and Circle Officer, Mahua for local inspection whereafter both the said authorities submitted their joint report dated 29.12.2006 in which the land offered by Bipin Kumar was found more suitable for the operation of Muhua Bus Stand.

7. Against the said report, some applicants including Binod Ram and Dayanand Singh raised objections upon which the "Ed.-Reported in 2009(1) PUR 496. District Magistrate, Vaishali constituted a Committee, headed by Additional Collector, for consideration of the objections and the said Committee submitted its report, dated 27.2.2007 finding the land of Dayanand Singh (Respondent No. 12 in both the cases) to be more suitable than the others. This report was transmitted by the District Magistrate, Vaishali to the Authority on 28.2.2007.

8. After considering the objections of the parties and divergent opinions in the two reports of the authorities concerned, the Chairman of the Authority directed its Secretary to submit a report on the point of selection of the land for establishment of Mahua Bus Stand, whereupon the Secretary submitted his report on 26.3.2007 approving the land offered by Dayanand Singh (Respondent No. 12 in both the cases) for the said purpose. However, the Chairman of the

Authority seeing the controversies as well as urgencies with respect to Mahua Bus Stand passed order dated 31.3.2007 allowing operation of bus stand on the land offered by Binod Ram (Petitioner of C.W.J.C. No. 9076 of 2010) as an interim measure. Against the said order, the other contestants, namely Dayanand Singh and Bipin Kumar filed Transport Revision Case No. 13 of 2007 and Transport Revision Case No. 14 of 2007 respectively before the Appellate Tribunal, which vide its order dated 11.7.2007 allowed the revision petitions, set aside order dated 31.3.2007 of the Chairman of the authority and directed it to take steps in accordance with law.

9. When the matter was remitted to the Authority, its Secretary on the direction of Chairman sent letter dated 16.5.2007 calling for a report from the Superintendent of Police, Vaishali who in his turn called for a report from the Sub-Divisional Police Officer, Mahua who sent his report dated 4.6.2007 to the Superintendent of Police, Vaishali who in turn submitted the said report to the Secretary of the Authority on 10.6.2007. This report was in favour of Binod Ram (Petitioner of C.W.J.C. No. 9076 of 2010). The said report was considered by the Authority on 12.11.2007 and 13.11.2007, on the basis of which it was resolved to grant license to Binod Ram and letter to that effect was issued by the Chairman of the Authority on 27.11.2007.

10. Against the said order of the authority dated 27.11.2007 Bipin Kumar (Petitioner of C.W.J.C. No. 10798 of 2010) and Dayanand Singh (Respondent No. 12 in both the cases) filed revisions bearing T.R. No. 34 of 2007 and T.R. No. 35 of 2007 respectively before the Appellate Tribunal, under the provision of Section 90 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act" for the sake of brevity) and the Appellate Tribunal vide its order dated 30.10.2009 allowed the revisions, set aside order dated 27.11.2007 regarding settlement of bus stand in favour of Binod Ram and the matter was remitted to the Authority for fresh consideration.

11. Against the said order of the Appellate Tribunal dated 30.10.2009, C.W.J.C. No. 15129 of 2009 was filed by Binod Ram (Petitioner of C.W.J.C. No. 9076 of 2010) in which Bipin Kumar (Petitioner of C.W.J.C. No. 10798 of 2010) was also impleaded as one of the Respondents and the said writ petition was disposed of by a Bench of this court vide order dated 10.11.2009 finding that there was no legal infirmity in the order of the Appellate Tribunal and hence the Authority was to consider afresh all aspect with due dispassion and objectivity.

12. On the very next day i.e. 11.11.2009 the matter was placed before the Authority and it resolved to settle the Mahua Bus Stand in favour of Dayanand Singh (Respondent No. 12 in both the cases) without giving any opportunity to be heard either to Binod Ram or to Bipin Kumar (Petitioners of both the writ cases). The said order was set aside by a Bench of this court vide order dated 18.11.2009 passed in C.W.J.C. No. 15759 of 2009 which was filed by Binod Ram in which Bipin Kumar was also one of the Respondents and the matter was remitted to the Authority for passing a fresh order.

13. In the light of the aforesaid directions of this court when the matter was placed before the Authority in its meeting dated 9.12.2009 it was resolved to settle the Mahua Bus Stand in favour of Dayanand Singh (Respondent No. -12 in both the cases) after canceling the settlement order of Binod Ram and rejecting the claim of Bipin Kumar. However, the said resolution was signed by the Commissioner of the authority on 19.12.2009 (Annexure-8 in C.W.J.C. No. 9076 of 2010 and Annexure-11 in C.W.J.C. No.10798 of 2010).

14. Against the said order, Bipin Kumar (Petitioner of C.W.J.C. No. 10798 of 2010) filed Transport Revision No. 1 of 2010 whereas Binod Ram (Petitioner of C.W.J.C. No. 9076 of 2010) filed Transport Revision No. 2 of 2010. Both the aforesaid revisions were heard together by the State Transport Appellate Tribunal, Patna and were disposed of by a common order dated 20.4.2010 affirming the order of the authority dated 9.12.2009/ 19.12.2009. Now the said orders of the Authority and the Appellate Tribunal are challenged in both the instant writ petitions.

15. Learned counsel for Binod Ram (Petitioner of C.W.J.C, No. 9076 of 2010) vehemently challenged the aforesaid order of the Appellate Tribunal claiming that under Rule 191 of the Bihar Motor Vehicles Rules, 1992 (hereinafter referred to as "the Rules" for the sake of brevity) the appropriate authority was the Collector before whom the Petitioner could have moved but he was never even consulted and the applications were wrongly filed by the Respondents before the Commissioner who was the head of the authority, hence the Commissioner wrongly entertained objections. In this connection, he relied upon a decision of a Bench of this court in case of Mitrynjay Kumar Vs. The State of Bihar and Others,

16. He further submitted that Respondent No. 12 Dayanand Singh had wrongly claimed to be absolute owner of the plots in question in view of his own document, namely affidavit of his brother Pawan Kumar Singh who gave his "No Objection" to the bus stand being given to his brother. He further submitted that leaseholds were also legally allowed to be given for bus stand and hence the Petitioner's claim was legal and proper and hence the impugned orders were violative of Rules 117 and 191 of the Rules which are silent with regard to the terms of work settlement.

17. Learned counsel for the Petitioner Binod Ram also claimed that the offer of Respondent No. 12 Dayanand Singh was of 2006 and inspection report in his favour was of 2007 whereafter much substantial changes had occurred due to lapse of three years and hence the authority concerned was not justified in passing the impugned order cursorily in favour of Respondent No. 12 without any fresh inspection report in favour of Dayanand Singh. He further argued that originally Respondent No. 12 had offered plot No. 3824 (73 decimals) and plot No. 3833 (67 decimals) on the basis of which inspections were made by the authorities and reports were submitted and even in order dated 26.3.2007 there is no mention of plot No. 3823, but subsequently Dayanand Singh filed an application for change of plot No. 3833 to be replaced by plot no, 3823, which

was allowed without any spot verification and without any report of the authority concerned with respect thereto. In this connection he relied upon a decision of this court in case of Hindusthan Petroleum Corporation Ltd. Vs. The State of Bihar and Others

18. Learned counsel for Bipin Kumar (Petitioner of C.W.J.C. No. 10798 of 2010) adopted the arguments of learned counsel for Binod Ram (Petitioner of C.W.J.C. No. 9076 of 2010) and submitted that his offer was the best offer and his land was situated at the best place, but in spite of that his offer had been rejected illegally by the impugned orders. He further submitted that the arbitrary and whimsical attitude of the authorities concerned would also be imminent from the fact that the bus stand has been allotted to Respondent No. 12 for indefinite period without providing any time limit, although Government circular dated 28.8.1995 (Annexure-13) provides one year for such settlement. In this connection he relied upon a decision of the Apex Court in case of Sant Ram Sharma Vs. State of Rajasthan and Another,

19. Learned counsel for Respondent No. 14 of C.W.J.C. No. 9076 of 2010, namely Shiv Dayal Roy, who had been added after his intervention application was allowed, submitted that he was also one of the applicants for settlement of Mahua Bus Stand on his land in pursuance of the resolution of the authority. He also stated that no notice was given to him by the Tribunal before passing the impugned order, in spite of order dated 11.11.2009 issued by the Authority. He also adopts the arguments of the Petitioners of both the cases.

20. The main contestant in these cases is Dayanand Singh who is Respondent No. 12 in both the writ petitions and is the allottee in whose favour the impugned orders have been passed by the original Authority as well as by the Appellate Tribunal. His learned counsel submitted that he is the owner of plot nos. 3824 and 3823 which are ancestral land and adjacent plots as is apparent from the Khatiyan which is annexed as Annexure-A to his counter affidavit as well as from the map produced by him. He further submitted that the said plots are situated within 1 kilometer from Mahua Chowk whereas the land of Binod Ram (Petitioner of C.W.J.C. No. 9076 of 2010) is situated 1.5 Kilometers in way from Mahua Chowk and the land of Bipin Kumar (Petitioner of C.W.J.C. No. 10798 of 2010) is situated 3 kilometers away from the Mahua Chowk as is apparent from the map annexed at page-35 of the writ petition bearing C.W.J.C. No. 9076 of 2010 and hence his said plots are nearest to the Chowk.

21. Learned counsel for Dayanand Singh also argued that in the lease deed plot No. 3824 was rightly mentioned but alongwith it plot No. 3823 was wrongly written due to inadvertence although it should have been plot No. 3823 which is the land of Petitioner adjacent to plot No. 3824. He further submitted that plot No. 3833 was small plot measuring 9 decimals only situated at a different place, although it belonged to Petitioner's ancestors but the same was transferred by them to others as far back as in the year 1980-81 by registered deeds and they were accordingly recorded and were in possession of the said plot since much

before initiation of this matter in the year 2006. Hence, there was no occasion for the Petitioner to offer the said plot No. 3833 which was also much smaller in area. Learned counsel for Respondent No. 12 also stated that as soon as he learnt about the said mistake in the lease deed he filed an application before the authority concerned for correction of the plot numbers given in the lease deed and the said mistake was corrected by the authorities which is apparent from paragraphs-3(ii) and 5(i) of order of the Authority dated 19.12.2009 (Annexure-8 to the writ petition) which was also fully considered by the Appellate Tribunal in its impugned order dated 20.4.2010 (Annexure-13 to C.W.J.C. No. 9076 of 2010).

22. Learned counsel for Respondent No. 12 further stated that the joint report of the authorities dated 27.2.2007 also shows that the land offered by Respondent No. 12 was better situated and considering the entire matters and the claims of respective parties, the Authority decided the matter in favour of Respondent No. 12, who is thus running his bus stand in plot nos. 3824 and 3823 since December, 2009 which fact is not in dispute, rather the Commissioner has himself written to the Collector in that regard vide letter dated 13.3.2010 (Annexure-D to the counter affidavit of Respondent No. 12). Thus learned counsel for Respondent No. 12 submitted that Petitioners of both the cases as well as the interveners have neither any locus to challenge the impugned orders nor they have raised any genuine grievance with respect thereto and hence their claims are fit to be rejected.

23. Learned counsel for the Respondent State of Bihar and its authorities submitted that there is no illegality in the impugned orders as they are well considered on facts as well as in law and hence both the writ petitions are fit to be dismissed.

24. From the pleadings of the parties as well as from the materials on record, it transpires that no doubt in his original application Dayanand Singh (Respondent No. 12 in both the cases) had mentioned plot No. 3824 and 3833 measuring 73 decimals and 67 decimals and accordingly the said plot numbers continued in the records of proceeding. It has also come to light that subsequently the said Respondent No. 12 realized the mistake in his application in which plot No. 3833 was wrongly mentioned in place of plot No. 3823. Respondent No. 12 has also been able to show that plot No. 3833 is a small plot measuring 9 decimals only and is quite distant from plot No. 3824 and plot No. 3823. He has also been able to show that although plot No. 3833 was his ancestral land but more than three decades earlier they had sold it by registered document to other persons who are in possession and their names are registered in the Government Records since much before. Realizing the said mistake, Respondent No. 12 was quite justified in filing petitions before the authority concerned for correction of the said mistake much before the order of settlement was passed. In furtherance thereof undisputedly Respondent No. 12 is running his bus stand in adjacent plots bearing nos. 3824 and 3823 since December, 2009 and the authorities settled the Mahua Bus Stand in favour of Respondent No. 12 with respect to plot No.

3824 and plot No. 3823 which is apparent from the impugned order of settlement passed by the Authority and the impugned order of the Appellate Tribunal.

25. So far the various reports with respect to the land of Respondent No. 12 are concerned, no doubt in the said reports plot nos. 3824 and 3833 are mentioned, but it is quite apparent from the aforesaid materials on record as well as the pleadings of the parties that the inspection was made on plot nos. 3824 and 3823 only which is apparent from the report itself as it speaks about the two adjacent plots, whereas plot No. 3833 is situated at a far of place. In the said circumstances, it is quite apparent that the said inspection was made with respect to plot No. 3824 and plot No. 3823, but due to confusion plot No. 3833 was noted in place of 3823. Hence, objection of the Petitioners that plot No. 3823 was not inspected is factually incorrect. In the said circumstances, this court does not find any illegality in the impugned orders with respect to the above matter.

26. So far the objection of the Petitioners that the approach road to the bus stand of Respondent No. 12 is only 10 feet wide is concerned, the map produced by the Petitioner at page 35 of the petition bearing C.W.J.C. No. 9076 of 2010 clearly shows that the said bus stand of Respondent No. 12 is situated on the main road from Mahua Chowk to Patepur leading to Darbhanga. The said bus stand is easily approachable from Mahua Chowk-Muzaffarpur Main Road; Mahua Chowk-Hajipur Main Road; and Mahua Chowk-Samastipur Main Road. So far the width of 10 feet is concerned, it is only with respect to some link road which does not affect the approachability to the bus stand of Respondent No. 12 from the said main roads as it is itself situated on a main road. Furthermore, the bus stand of Respondent No. 12 is situated within 1 kilometer from Mahua Chowk, whereas the lands of Binod Ram and Bipin Kumar (Petitioners of the two writ petitions) are situated at a distance of 1.5 kilometers and 3 kilometers respectively from Mahua Chowk. In the said circumstances, it is quite apparent that the land of Respondent No. 12 is better suited for the purposes of running Mahua Bus Stand.

27. So far the reliance of learned counsel for the Petitioners on a decision of a Bench of this court in case of M/s Hindustan Petroleum Corporation Ltd. and Another (supra) is concerned, it is merely with respect to the right and interest of a lessee. In the instant case by order dated 31.3.2007 settlement was directed to be made in favour of Binod Ram (Petitioner of C.W.J.C. No. 9076 of 2010) and accordingly settlement was made in his favour on 27.11.2007, but the said settlement was cancelled by the Authority vide order dated 1T.11.2009 after considering the reports and other materials on record. Against the, aforesaid order, Binod Ram filed C.W.J.C. No. 15759 of 2009 and vide order dated 18.11.2009 the High Court remitted the matter to the Authority for fresh consideration and only thereafter the Authority considered the mater in detail and passed its impugned order dated 19.12.2009 in favour of Respondent No.

12. In the said circumstances, the aforesaid case law relied upon by learned counsel for the Petitioners is not applicable to the facts of this case.

28. So far the objection of learned counsel for the Petitioners that the matter should have gone to the District Magistrate, Vaishali in view of Rule 191 of the Rules is concerned, they have relied upon a decision of a Bench of this court in case of Mitrynjay Kumar (*supra*). However, in the said decision itself it has been held that if the local authority requires a particular place to be declared as bus stop/halting station then it has to make such application to Regional Transport Authority, who in consultation with the local authority and on consideration of pros and cons would pass an order in accordance with law as per Rule 191 of the Rules. In the instant case, the local authority is the District Magistrate, Vaishali and it is not in dispute that the question of establishment of Mahua Bus Stand was initiated by the said authority on the basis of which the North Bihar Regional Transport Authority passed orders. It is also apparent that on the instructions of the Collector a joint report was submitted by Sub-Divisional Officer and Circle Officer, Mahua on 29.12.2006 to the Collector and when objection was raised against that report, the Collector-cum-District Magistrate, Vaishali constituted a Committee under Additional Collector, Vaishali to report with respect to the suitability of the land offered by the candidates and the said Committee submitted its report on 27.2.2007 in favour of Respondent No. 12. The said report was sent by the District Collector to the North Bihar Regional Transport Authority on 28.2.2007, hence the said objection raised by learned counsel for the Petitioners is absolutely wrong, baseless and misconceived- as the local authority had been throughout consulted and the Authority had passed orders after considering the same.

29. Moreover, the Act has itself given power to the Authority to decide such matters as is apparent from Chapter-V of the Act. Furthermore, since the impugned order of the Authority dated 19.12.2009 was not appeasable u/s 89 of the Act, the Appellate Tribunal had revisional power u/s 90 of the Act to decide such cases and hence exercising that power the Appellate Tribunal was quite justified in passing its impugned revisional order.

30. So far the objection raised by Shiv Dayal Roy (intervener-Respondent No. 14 of C.W.J.C. No. 9076 of 2010) is concerned, he has claimed that no notice was given to him by the Tribunal before deciding the matter on 19.12.2009. It is apparent from the record of the case that earlier when the order was passed in favour of the Petitioner of the writ petition, Respondent No. 14 never raised any objection and the dispute was only between the Petitioners of both the writ petitions Binod Ram & Bipin Kumar and Respondent No. 12 Dayanand Singh. Hence, there was no occasion for the authority to give any notice to Respondent No. 14 as none of the reports were also in his favour, but he never objected to it. Subsequently Shiv Dayal Roy (Respondent no.14) filed C.W.J.C. No. 2580 of 2010 raising his objections, but the said writ petition was dismissed by a Bench of this court vide order dated 16.2.2010 against which he filed L.P.A. No. 522 of

2010 which was also dismissed by a Division Bench of this court vide order dated 26.3.2011 finding the appeal to be frivolous. In the said circumstances, the claim of Respondent No. 14 is absolutely baseless and cannot be entertained.

31. Another objection raised by learned counsel for the Petitioners and Respondent No. 14 is that the impugned settlement in favour of Respondent No. 12 is without any time limit and hence it has been given to Respondent No. 12 for all times to come which cannot be sustained in law. In this connection the provisions of the Act, specially Section 117 as well as the provisions of the Rules, specially Rule 191 are silent. However, the said claimants have relied upon paragraph 3 of Government Circular of the Transport Department dated 30.8.1995 (Annexure-13 to C.W.J.C. No. 10798 of 2010) but that is merely for appointment of an agent for which a period of one year is fixed, where as in the instant cases the matter is with respect to offer and acceptance of land of the applicant for settlement of Bus Stand. Hence, neither the said circular nor the case law relied upon by learned counsel for the Petitioners in case of Sant Ram Sharma (*supra*) are applicable to the instant matter.

32. From the aforesaid facts it is apparent that there is no specific provision in the Act or in the Rules for the said purpose, but that does not mean that till the statutory provisions are made with respect thereto, the Government cannot issue any administrative instruction regarding principle to be followed in such matters. It is true that the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules and provisions are silent on any point, the Government has full authority to fill up the gaps and supplement the rules and issue instructions not inconsistent with the provisions of the Act and the Rules.

33. Considering the aforesaid facts and circumstances as well as the pleadings of the parties and the materials produced by them, this court does not find any illegality in the selection of Respondent No. 12 and settlement in his favour for Mahua Bus Stand by the authorities concerned. Furthermore, the impugned orders are also in accordance with law after following due procedures prescribed. Hence, the claims of Petitioners as well as of Respondent No. 14 are found to be absolutely baseless and frivolous and accordingly both the writ petitions are hereby dismissed.