
(1985) 02 PAT CK 0023

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 4312 of 1981

Bishwanath Nag

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 28-02-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 43A

Citation : AIR 1986 Patna 59

Hon'ble Judges : Lalit Mohan Sharma, J; Binodanand Singh, J

Bench : Division Bench

Advocate : Amla Kant Chaudhary, Udayan Chaudhary, Raj Kishore Prasad and Swapna Sarkar, for the Appellant; K.P. Verma, A.G. and Maheshwar Dwivedi, for the Respondent

Final Decision : Allowed

Judgement

Lalit Mohan Sharma, J.

1. The petitioner is an applicant for grant of a stage permit and has challenged the validity of the State Government's decision issued u/s 43A of the Motor Vehicles Act as contained in Annexure 3. The impugned annexure limits the eligibility of a family to a single road permit.

2. In response to an advertisement by the East Bihar Regional Transport Authority inviting applications for grant of a road permit for the route Dumka to Mihijam, the petitioner made an application. The same was rejected on the ground that the petitioner had already been granted three permits. The petitioner appealed before the State Transport Appellate Tribunal. The Tribunal remanded the matter for reconsideration by the Regional Transport Authority. The petitioner contended before the Authority that he had already surrendered two of the permits and was thus within the permissible limit fixed in regard to the issuance of road permits. The Authority dismissed his application again by the order as contained in Annexure 2. The petitioner appealed to the Tribunal

again. The Tribunal did not agree with the reasonings of the Transport Authority in dismissing the petitioner's application, but refused to remand the matter for a fresh consideration on the ground that the petitioner who had a stage permit from before could not get another permit in view of the State Government's decision, as contained in Annexure 3 to the writ petition. In the impugned annexure, the State Government directed that a family consisting of husband, wife and their minor children will not be allowed more than one stage permit. The Tribunal accordingly dismissed the appeal by its order in Annexure-4. By the present writ application, the petitioner has prayed for holding the Government's direction in Annexure 3 as ultra vires and for quashing the orders in Annexures 2 and 4.

3. Mr. Amla Kant Chaudhary, appearing in support of the application contended that the powers of the Transport Authorities in dealing with the applications for road permits is judicial in nature and the State Government has no jurisdiction to entrench upon the quasi judicial functions of the Transport Authorities and the direction in Annexure 3 is therefore, illegal. Reliance was placed on several decisions of the Supreme Court.

4. In *B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others*, the appellant along with 117 other bus operators including the respondents 2 and 3 before the Supreme Court applied for two stage carriage permits and the State Transport Authority granted the permits to the appellant. A number of appeals were preferred by unsuccessful applicants including the respondents 2 and 3 and the Appellate Tribunal allowed the claims of the respondents 2 and 3 and set aside the order of the State Transport Authority in favour of the appellant. The decision was based on a direction issued by the State Government u/s 43A of the Act laying down criteria for grant of permits. The appellant unsuccessfully moved the Madras High Court under Article 226 of the Constitution and then approached the Supreme Court by an application for special leave. The Supreme Court granted leave and allowed the appeal. After a thorough examination of the relevant provisions of the Motor Vehicles Act, 1939, the Court held that the field covered by Section 43A is administrative in nature and does not include the area which is the subject-matter of the exercise of quasi judicial authority by the relevant Tribunals in the matter of grant of road permits. This decision has been followed in numerous decisions of the Supreme Court and the High Courts. The provisions of Section 43A introduced by the Bihar Act, 27 of 1950, which are in the following terms, are similar to Section 43A introduced by Madras Amendment Act 20 of 1948 which was under consideration by the Supreme Court :

"43A-- 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 concerned; and such Transport Authority shall give effect to all such orders and directions."

5. The considerations which weighed with the Supreme Court while deciding the aforementioned case are fully applicable to the present case and, accordingly, 1

hold that the order in Annexure 3 is outside the purview of Section 43A inasmuch as it purports to give direction in respect of matters which have been entrusted to the Tribunals constituted under the Act and which have to be dealt with by them in a quasi judicial manner. Since the order in Annexure 4 is entirely based on the impugned State Government's direction in Annexure 3, the same is quashed. According to the finding of the Appellate Tribunal, the decision of the Transport Authority in Annexure 2 was erroneous and but for Annexure 3 the petitioner's application required a fresh consideration on merits. The prayer for quashing Annexure 2 is also, therefore, allowed and the case is remitted back to the East Bihar State Regional Transport Authority for fresh disposal of the petitioner's application.

6. Mr. Amla Kant Chaudhary also raised several other points which, in the circumstances, do not require consideration.

7. The writ application is allowed, but without costs.

Binodanand Singh, J.

I agree.