
(1970) 11 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jur. Case No. 239 of 1968

Dilraj Singh

APPELLANT

Vs

The Minister of Transport and Others

RESPONDENT

Date of Decision : 16-11-1970

Acts Referred:

Bihar Motor Vehicles Rules, 1940 — Rule 50
Motor Vehicles Act, 1939 — Section 47(1)

Citation : AIR 1971 Patna 409

Hon'ble Judges : S.N.P. Singh, J;Kanhaiyaji, J

Bench : Division Bench

Advocate : K.D. Chatterji and S.B.N. Singh and Rana Pratap Singh, No. 2, for the Appellant; Saptami Jha, for the Respondent

Final Decision : Dismissed

Judgement

Kanhaiyaji, J.—This is an application under Articles 226 and 227 of the Constitution for quashing two orders, namely, one passed by the Chairman of the State Transport Appeal Board, Bihar, dated the 27th September, 1965, and the other passed by the Minister in-charge of the Transport Department of the Government of Bihar u/s 64-A of the Motor Vehicles (Bihar Amendment) Act, 1949 (hereinafter referred to as "the Bihar Amendment Act), dated the 8th March, 1968. The State Transport Appeal Board, Bihar (Respondent No. 2) and the Minister of Transport, Bihar (respondent No. 1) by the above orders rejected the application of the petitioner challenging the order of revocation passed by the South Bihar Regional Transport Authority (to be referred to hereinafter as "S.B.R.T.A." for the sake of brevity).

2. The petitioner and some other persons applied to the S.B.R.T.A. for grant of a stage carriage permit on the route Bhabhua to Buxar via Chausa, covering a distance of 50 miles. The S.B.R.T.A. by its resolution No. 7 dated the 13th February, 1965, decided to grant the permit to the petitioner subject to production of all valid documents of 1965 model bus within one and a half

months from the date of the order, that is, upto the 30th March, 1965, failing which the sanction of permit in his favour would stand automatically revoked, and the permit was to be given to title next deserving candidate, Shri Nand Kishore Prasad (respondent No. 4), on production of all valid documents of 1965 model bus along with clearance certificate of transport tax within one week and of 1965 model bus within one month from the date of revocation of sanction.

3. On the 30th March, 1965, the petitioner filed an application before the Chairman, S.B.R.T.A., stating therein that he was granted a permanent stage carriage permit for the route Bhabhua-Buxar on the 13th February, 1965, and the order had been communicated to him on the 16th February, 1965. In substantial compliance of the aforesaid order, the petitioner filed (a) Registration certificate of 1965 model bus being R.J.P. 998, (b) tax token, (c) insurance certificate and (d) Challan showing deposit of Rs. 90/- only. In paragraph 3 of the said application, it was stated that the petitioner had already deposited fitness certificate fees and the formal fitness certificate was to be granted within a fortnight by the authority concerned. Therefore, it was prayed that permit may be issued and the petitioner may be permitted to file fitness certificate within a fortnight. It appears that the sanction of the permit was revoked because of the petitioner's failure to comply with the imperative terms of the resolution. Against the order of revocation, the petitioner preferred an appeal before the State Transport Appeal Board, respondent No. 2, and the said authority dismissed the appeal of the petitioner holding that in absence of certificate of fitness in view of Section 38(1) of the Motor Vehicles Act (hereinafter referred to as "the Act") on the relevant date the petitioner could not have put the vehicle on the road without any let or hindrance, and there was non-compliance of the imperative order passed by the S.B.R.T.A., because the petitioner failed to produce another valid document, namely, tax token. The petitioner, being aggrieved by the above order of the appellate authority, filed a revisional application before the Transport Minister u/s 64-A of the Bihar Amendment Act which was rejected. In paragraph 13 of the petition, it is stated that the petitioner had no notice of the hearing of his revision application by the Minister of Transport and, as such, he or any one on his behalf was not present at the said hearing. The petitioner heard from other people that his application had been dismissed.

4. Mr. Chatterji, appearing in support of the petition, questioned the authority of the S.B.R.T.A. to make a conditional order and he further contended that the order of the Transport Minister passed u/s 64-A of the Bihar Amendment Act was bad as the petitioner was not given an opportunity of being heard.

5. After service of the notice, Nand Kishore Prasad (respondent No. 4) has shown cause. In the counter-affidavit, it is stated that the petitioner in his anxiety to file the papers of the said bus before the 30th March, 1965, got the vehicle registered in Rajasthan, because Rajasthan is the only State where certificate of fitness was not required for registration of the vehicle, and further it was denied that the petitioner was not heard by the Transport Minister before passing the

impugned order (Annexure "4"). In a petition filed On behalf of "Nand Kishore Prasad (respondent No. 4) for vacating an order of this Court, it is stated that the agent of Sri Dilraj Singh with an advocate was present and the parties were heard by the Transport Minister and the order was reserved.

6. It was urged by Mr. Chatterji that the S.B.R.T.A. had no jurisdiction while granting a permit to the petitioner to impose a restriction to the effect that he must produce valid documents, like certificate of fitness and tax token. He contended that the action of the authority in ordering to produce valid documents and later in proceeding to examine as to which of the documents could be valid documents was not permitted in law. In this connection, Mr. Chatterji also attacked the order passed by the authority on the ground that it was vague and arbitrary. Before dealing with this point raised by Mr. Chatterji, it will be better to mention that the S.B.R.T.A. passed the order granting permit to the petitioner on the 13th February, 1965, and in the letter dated the 16th February, 1965 by which the above order was communicated to the petitioner in pursuance of the resolution dated the 13th February, 1965, list of the following documents was given, viz., (1) registration certificate of a transport vehicle with a certificate of fitness, (2) valid tax token and the insurance certificate, and (3) a treasury challan showing deposit of Rs. 90/-. The order of the S.B.R.T.A. granting permit to the petitioner was made dependent on the production of the valid documents by the deadline fixed, that is, the 30th March, 1965, which was not fully complied with. On non-production of the certificate of fitness and the tax token, the Chairman of the S.B.R.T.A. revoked the sanction of permit granted to the petitioner. It was urged that the only condition that could be imposed ought to have come within scope of Section 47(1) of the Act, and, as such, the requirement about the production of a certificate of fitness and a tax token was wholly outside the scope of this section. There are, however, two handicaps in giving effect to this argument, namely, (I) that the petitioner subjected himself to those conditions, and (2) that he has substantially fulfilled the same. This will be clear from the statement made in paragraph 8 of the petition that the petitioner, submitted a petition to the Chairman, S.B.R.T.A., praying for the formal order for issue of the permit by holding that there was substantial compliance with the order dated the 13th February, 1965. If the petitioner thought that the imposition of such a condition by the S.B.R.T.A. was itself invalid, he should have challenged it before the superior authority in appeal or revision. Having accepted the condition as valid and having attempted to claim the benefit of the order on the ground that he had fulfilled these conditions, he cannot now be permitted to take up the plea that the conditions themselves were invalid as being outside the scope of the Act. This view is supported by a Bench decision of this Court in Arbind Kumar Singh Vs. Nand Kishore Prasad and Another, .

7. Moreover, it cannot be said that the grant of permit made subject to production of the certificate of fitness and tax token was invalid and that the condition was liable to be ignored. Section 47(1) of the Act in so far as it is

material provides as under:

"A Regional Transport Authority shall, in considering an application for a stage carriage permit, have regard to the following matters, namely :--

(a) the interest of the public generally;

(b)

(c)

(d)

(e)

(f)

It was urged that u/s 47(1) of the Act, the Regional Transport Authority is bound to consider only the matters which are generally in Clauses (a) to (f) of subsection (1) of Section 47, and if the applicant is found qualified for the permit, no condition or conditions may be imposed by the Regional Transport Authority. The condition in regard to the production of the certificate of fitness, while granting a permit under the Act, could be valid as being in the interest of the public generally as required by Clause (a) of Sub-section (1) of Section 47 of the Act. The production of a certificate of fitness in respect of a transport vehicle is vitally connected with the interest of the public. Unless a vehicle is certified to be fit by the prescribed authority, permit cannot be granted for putting it on road, once it is conceded that in granting a permit the Regional Transport Authority shall have regard to the interest of the travelling public using the vehicle, it must be held that the condition imposed by the S.B.R.T.A. for production of a certificate of fitness before the vehicle is put in service of the passengers is neither outside the scope of the Act nor unreasonable. The next condition for production of tax token is also not foreign to the ambit of Section 47 of the Act. The petitioner did not produce among the papers submitted by him the tax token as required under the Bihar and Orissa Motor Vehicles Taxation Act, and, therefore, he could not in any case be said to have complied with the terms of the resolution which required the production of all valid documents.

8. In this connection, I would now refer to Rule 50 (b) of the Bihar Motor Vehicles Rules, 1940 (hereinafter to be referred to as "the Rules") which runs as follows:

"No permit shall be issued until the registration mark of the vehicle to which it relates has, if the form of permit so requires, been entered therein and in the event of any applicant failing to produce the certificate of registration within the period prescribed by Rule 50 or such longer period as the Regional Transport Authority may revoke its sanction of the application." It is apparent that in this case the S.B.R.T.A. has revoked the sanction of the permit of the petitioner for non-production of a valid certificate of registration within the period prescribed by it. According to Section 38 of the Act, "a transport vehicle shall not be

deemed to be validly registered for the purposes of Section 22, unless it carries a certificate of fitness in form as set forth in the first schedule, issued by the prescribed authority." Section 22 of the Act prohibits a vehicle to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless it is registered in accordance with Chapter III and the certificate of registration is in operation. The legal effect of these two sections read together is that a transport vehicle cannot be deemed to be validly registered unless it carries a certificate of fitness. A "transport vehicle" means a public service vehicle or a goods vehicle. Therefore, I am of opinion that there was no compliance with the order of the S.B.R.T.A. as claimed by the petitioner in his application filed before the Chairman on the 30th March, 1965.

9. u/s 6A of the Bihar and Orissa Motor Vehicles Taxation Act, 1930, "no motor vehicle plying under a permit granted by a competent Transport Authority of any other State under the provisions of the Motor Vehicles Act, 1939 (IV of 1939) shall be used or kept for use in Bihar unless there has been paid in respect thereof, a tax on fortnightly basis, calculated at the appropriate rate specified in the second Schedule to this Act." The tax is of compulsory nature, and its collection is connected with the transport system in the State and the user of the roads by the public service vehicles. Hence, the requirement of payment of Bihar Tax and the production of tax token before stage carriage permit can be given to an applicant cannot be struck down as being wholly unconnected with the subject. Mr. Chatterji, however, urged that the petitioner could have paid the tax before putting the transport vehicle on the road. This argument is, however, beside the point. I have already held that the tax is connected with the transport system. It is always open to the authority to insist on payment of such tax before granting the permit, because such a condition shall be in the interests of the general travelling public using motor vehicles. The petitioner, could if so advised, have challenged the validity of the imposition of the conditions relating to the production of tax token, but he could not ignore the conditions subject to which the permit was granted.

10. In *Saligram Singh v. The State of Bihar*, Civil Writ Jur. Case No. 145 of 1968 (Pat.) disposed of on the 3rd May, 1968, the main controversy between the parties was regarding the true effect of the peremptory order passed by the East Bihar Regional Transport Authority (respondent No. 5). The main question to be decided was whether the Regional Transport Authority, after passing the order, became functus officio. The order under consideration in that case was as follows:

".... It was, therefore, resolved that Sl. 2 Sri Ram Nagina Singh be granted a permit on this route as an experienced Bus-operator for a period of five years on the condition that he will produce R.C. Book with valid certificate of fitness of a 1952 Model bus within a week from the date of the order which shall be replaced by a 1966 model bus within four months from the date of the order failing which the permit will stand automatically revoked."

The resolution passed by S.B.R.T.A. in this case is similar to that considered in

Arbind Kumar Singh Vs. Nand Kishore Prasad and Another, after a review of different types of final orders and a large number of decisions, it has been held that in a case like this the authority has no jurisdiction to grant extension of time when the peremptory order is not complied with within the period fixed.

11. It was somewhat faintly contended that there has been a violation of the principle of natural justice inasmuch as the petitioner had no notice of the hearing of his petition nor was he or his agent heard by the Transport Minister exercising revisional jurisdiction u/s 64-A of the Bihar Amendment Act. This submission is clearly untenable. The statement made in paragraph 13 of the writ application that the petitioner heard from other people that the Minister of Transport held his revisional court and passed the order against the petitioner on the 8th March, 1968, of which he had neither notice nor was he present at the hearing, is obviously reckless and incorrect. In the order of the Transport Minister enclosed to the writ application, it is stated:

"Heard the learned Advocates of both the parties, that is, Dilraj Singh v. Nand Kishore Prasad through their learned advocates. It deals with the route of Bhabhua-Chausa, Buxar, for granting permit." In the application filed by Nand Kishore Prasad (respondent No. 4) for vacating an order of the Court, it is stated that by a notice dated 20-2-68 the revision petition was fixed for hearing on 5-3-68. A copy of the notice is annexed as Annexure "b" ". The notice is addressed to the petitioner and its copy had been forwarded to Sri Nand Kishore Prasad (respondent No. 4). In the application, it is also stated that "at the time of hearing according to the above notice, the agent of Sri Dilraj Singh with an advocate was present and the parties were heard and the order was reserved". In the circumstances, I hold that the revision application filed by the petitioner before the Transport Minister had been heard after notice in presence of the parties. I am, therefore, of the opinion that the rules of natural justice were duly observed when the said revision application was considered by the Transport Minister after giving notice to the petitioner and his counsel an opportunity of making his submission.

12. For these reasons, I see no merit in this application. It is, accordingly, dismissed with costs; hearing fee Rs. 200/- (two hundred) payable to respondent No. 4 who alone seriously contested this application.

S.N.P. Singh, J.

13. I agree.