
(1993) 09 PAT CK 0026
In the Patna High Court
Case No : C.W.J.C. No. 2758 of 1992 (R)

Dwarika Prasad Rajak

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-09-1993

Acts Referred:

Citation : (1993) 09 PAT CK 0026

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—This application is directed against an order dated 4-8-1992 (Annexure-I) passed by the respondent No. 1 Transport Appeal No. 38 of 1989, as also the minutes of the meeting dated 14-9-1989 of the respondent No. 2 as contained in Annexure-2 to the writ application.

2. The facts of the matter lie in a very narrow compass.

3. The petitioner was granted permit for Bokaro Korba route by the respondent No. 2 in its meeting dated 21-7-1989 in respect of a bus bearing No. B. I. N. 965. A complaint was made by the respondent No. 5 to the effect that the petitioner has obtained the said permit by committing fraud. The chairman of the respondent No. 2 thereafter directed the State Transport Commission to inquire into the matter whereupon one Shri Bhola Singh was deputed by the State Transport Commissioner, According to the petitioner no fraud had been committed by him in relation to the aforementioned vehicle. According to the petitioner/respondent No. 2, however, without awaiting the inquiry report, in its meeting dated 14-9-1989 review its earlier order and directed cancellation of the permit granted in favour of the petitioner and granted the same in favour of respondent No. 3. The petitioner preferred an appeal against the said order before respondent No. 1 being Transport Appeal No. 38 of 1989. An appeal was also preferred by respondent No. 6 against the said order which was registered as Transport Appeal No, 43 of 1989 and 44 of 1989, The said appeals were heard together and by a common judgment dated 4-8-1992, the said appeals have been dismissed.

4. Mr. V. Shivnath, learned Counsel appearing on behalf of the petitioner, submitted that the permit having been granted in favour of the petitioner, the same could have been cancelled upon initiation of a proceeding and only upon giving an opportunity to the petitioner of being heard. Learned Counsel further submitted that the respondent No. 2 has no power of review as held by, this Court in J. N. Sahu v. South Chotanagpur Transport Authority 1986 ELT 51 as also in Trilok Singh Dutta and Others Vs. State Transport Authority, Bihar, . The learned Counsel further, submitted" that a permit can be cancelled only for the reasons arise enumerated in Sub-section (4) or" Section 86 of the Motor Vehicles Act, 1988 and as in the instant case, it has not been found that the petitioner has contravened the conditions of the permit, the question of cancellation thereof did not arise.

5. In this case, a counter-affidavit was filed by respondent No. 4, wherein it has been Inter alia stated that the petitioner has filed the writ application before this Court against the order as contained in Annexure-2 to the writ application being CWJC No. 8409 of 1989 which was dismissed as withdrawn by order dated 2-1-1990. According to the said respondent, the petitioner has deliberately suppressed the said fact. It has further been stated that the petitioner has practised fraud and made representation before respondent No. 2 and obtained permit thereupon. It has therefore been submitted that in view of the fraud practised by the petitioner, the permit granted in favour of the petitioner was , vitiated and he did not derive any legal right to continue to hold the permit aforementioned, , The learned Counsel produced before us a certified copy of the order passed in the aforementioned CWJC No. 8409 of 1989 (R). It has, however, been submitted that the said writ application was filed in a different situation. The respondent No. 1 in his impugned order dated 4-8-1992 inter alia, held as follows:

10. I find from the impugned order that the matter regarding the forgery and fraud was taken into consideration by the Authority in detail and it was found that the bus of 1979 model was made a bus of 1989 model by doing forgery in the papers and also in a very fraudulent manner the same could be got registered at Hazaribagh. Being satisfied with the forgery and fraud the Authority had cancelled the permit of Dwarika Prasad Razak. Thus I do not find that the Authority had gone in detail and after being satisfied the impugned order was passed.

6. Respondent No. 2 has also found that from a perusal of the relevant records, it appears that the vehicle in question was previously a 1978 model Explosive Van and a fraud had been practised to convert it into a bus purported to be of 1989 Model, In this view of the matter, in our opinion, this Court in exercise of its writ jurisdiction under Article 227 of the Constitution of India should not interfere with the finding of fact arrived at by the statutory Tribunal. It has not been shown before us by the petitioner that the impugned order suffers from any illegality, procedural irregularity or irrationality.

7. Further the petitioner has now admitted that earlier it has filed CWJC No. 8409 of 1989(R) a plaint copy whereof was produced before us by Mr. S. N. Lal, learned Counsel for the respondent Farther it appears that by order dated 27-9-1989, the following order was passed in CWJC No. 8409 of 1989(R):

27-9-1989 Heard learned Counsel for the petitioner, intervenor and the State.

The petitioner shall produce a copy of the order which has been passed on 14-9-1989 as stated by the learned appearing on behalf of the petitioner. If the petitioner applies for a certified copy "of the order, the same shall be granted to him.

8. It is, therefore, evident that the petitioner was aware of the order dated 14-9-1989 as contained in Annexure-2 to the writ application-even during the pendency of the aforementioned writ application. He, " therefore, " in all fairness"; should have mentioned the said fact in this writ application. It is true, as was submitted by Mr. V. Shivnath, that a statutory authority in the absence of a specific provision, has no power of review. In Trilok Singh Dutta and Others Vs. State Transport Authority, Bihar, , a Division Bench of this Court has held that the State Transport Authority has no power of review. Similarly in 1986 BLT 51 , it was held that an order passed under Rule 43(1)"a) is not reviewable under the Motor Vehicles Rules, However, the fact of the matter in those cases were absolutely different. In Trilok Singh Dutta's case (supra), the authority refused to grant permit on the ground that the owner book did not stand in the name of the petitioner alone, but in the joint names of the petitioner and his younger brother. It was found by the Division Bench that before issuance of order granting permit in favour of the petitioner thereof, he had produced the owner book in question, in J. N. Sahu's case (supra), the question which arose for consideration before this Court was whether the Secretary, South Regl. Transport Authority, Ranchi had any jurisdiction to pass an order changing the departure time of the bus in question, contrary to the timings given in the permit. In this situation. It was held that the said Authority has no jurisdiction to review an order granting permit. However, the case in hand stands on a different footing. The permit was granted to the petitioner on his representation that the bus in question was of 1989 Model. Later on, it transpired that in fact a fraud had been practised upon the transport Authority as the engine number and the chassis number of the said bus tallied with those of 1978 Model vehicle. In this situation, the authorities arrived at a finding of fact that the permit had been obtained by the petitioner on the basis of fraud practised upon the respondent No. 2. In Mangilal Sharma Vs. Appellate Tribunal of State Transport Authority, Rajasthan and Others, , it was held as follows in paragraph 8:

8. Fraud is committed wherever one man causes another to act on a false belief by a representation which he does not himself believe to be true. It is apparent from what has been discussed above that the petitioner caused respondent No. 2 to grant a permit to him acting on the false belief that he was granting the permit for a vehicle of the year of 1950. This belief in respondent No. 2 was the

direct result of the representation made by the petitioner which he knew was not true.

9. In this view of the matter, in our opinion the petitioner is not entitled to any relief from this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

10. Further, as noticed hereinbefore, the petitioner has deliberately and wilfully suppressed that earlier he had approached this Court wherein it had directly questioned the validity of the order as contained in Annexure-2 to this writ application. In that writ application, as is evident from a bare perusal of the portion as quoted herein before, the petitioner questioned the jurisdiction of the authority to review its earlier order. The petitioner, therefore, in all fairness should have mentioned the said fact in this writ application. It is well known that this Court may refuse to exercise jurisdiction under Article 226 of the Constitution of India if the conduct of the petitioner is not fair. Reference in this connection may be made to 1993(1) BLJR 505.

11. In view of the foregoing conclusions, it is not necessary to consider the submission of Mr. V. Shivnath with reference to Section 86 of the Motor Vehicles Act, 1988.

12. There is thus no merit in this application, which is accordingly dismissed.

Narayan Roy, J.

13. I agree.