

(1975) 02 PAT CK 0007

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 882 of 1973

Gangotri Prasad Narain Sinha and Another

APPELLANT

Vs

Bihar State Road Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 10-02-1975

Acts Referred:

Bihar Motor Vehicles Rules, 1992 — Rule 68
Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1939 — Section 48(3)

Citation : AIR 1975 Patna 349

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

Bench : Division Bench

Advocate : Ramnandan Sahai Sinha and Lala Scahindra Kumar, for the Appellant; Saptmi Jha, B. Pandey and Anil Kumar Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Lalit Mohan Sharma, J.—The petitioners are holding permanent permits for plying stage carriage service from Muzaffarpur to Debaria Bazar via Kanti and Sayee covering a distance of about 34 miles. Respondent No. 3 also has been Plying a stage carriage on another route between Muzaffarpur and Fatehabad covering a distance of 36 miles, under a permanent permit granted in 1966. The permits of the petitioners and Respondent No. 3 have been renewed from time to time. Respondent No. 3 made a prayer before the North Bihar Regional Transport Authority (Respondent No. 21 for extension of his service from Muzaffarpur to Debaria Bazar covering a distance of 26 miles. The petitioners filed an objection to this as a portion of this extension overlapped with the route on which the petitioners were plying. The local police recommended the prayer for extension, but Respondent No. 2 rejected the same on the ground that the extension sought for was for more than 15 miles, which was not permissible and that the proposed route was a separate and distinct route. The order was passed on the 15th September, 1972, a copy whereof is annexed to the writ application as annexure "1". Respondent No 3 filed a revision application u/s 64-A of the Motor Vehicles

Act before Respondent No. 1 on the 16th December, 1972. Even after excluding the time taken in obtaining the certified copy of the impugned order, the application was barred by limitation by one day. Respondent No. 3 filed an application u/s 5 of the Limitation Act to condone the delay. After considering the grounds mentioned therein. Respondent No. 1 condoned the delay and allowed the application on merits holding that the prayer for extension was proper, reasonable and fit to be allowed. A copy of this order is annexed to the writ application as Annexure "2". The petitioners have challenged this order by the present writ application.

2. Mr. Ram Nandan Sahai Sinha learned Counsel for the petitioners, contended that the application for extension was filed under the provisions of Section 57(8) of the Motor Vehicles Act (hereinafter referred to as the Act") and the view taken by Respondent No. 2 in Annexure "1" is correct. The extended distance must be, learned counsel contended considered to be a new route and the entire procedure applicable for grant of any permit have to be adopted by the authorities before the prayer could be granted. It was further contended that no extension beyond an additional distance of 24 kilo meters was permissible in view of the proviso to Clause (xxi) of Section 48(3) of the Act, Mr. Sinha also challenged the jurisdiction of Respondent No. 1 to condone the delay in filing the revision application.

3. In support of his argument on the question of limitation Mr. Sinha relied upon the decision in Ramnath Prasad Vs. State Transport Appellate Authority and Others, . This case was decided u/s 5 of the old Limitation Act which applied to any appeal or any application for a review of judgment or for leave to appeal or "any other ap-plication to which this section was made applicable" by or under any enactment. It was held in Ramnath's case that Section 5 had not been made applicable to applications under Motor Vehicles Act. The present application before Respondent No. 1 was governed by Section 5 of the new Limitation Act which states that the provision would apply to any appeal or any application other than one under Order 21 of the Code of Civil Procedure. It is manifest, therefore, that the aforesaid decision has no application whatsoever after the new Limitation Act has come into force. There is no merit in the point raised by the petitioners that Respondent No. 1 was not vested with power to condone the delay.

4. Mr. Saptami Jha, learned counsel for Respondent No. 3. in reply in the other argument on behalf of the petitioners, submitted that the prayer for extension was sranted by Respondent No. 1 under Rule 68 of the Bihar Motor Vehicles Rules, and although the application might have been wrongly labelled u/s 57(8) of the Act. this provision did not apply. Reliance was placed on the case of Basudeo Tiwary v. Bagun Sumbrui. AIR 1971 Pat 2011. The respondent in that case had a permit for the route Piro-Behea, which was extended up to Buxar and the petitioner in that case who was operating on Arrah-Buxar route objected to the extension. Reliance was placed by the petitioner in that case on Section

48(3). proviso (xxi), as has been done by the petitioners in the present case The respondent in Basudeo Tiwary's case contended that the provision was not attracted inasmuch as the condition mentioned in Clause (xxi) of Section 48(3) of the Act was not attached to the permit of the respondent. The relevant provisions had been introduced in the Act on the 2nd March, 1970 and the permit in that case had been granted on an earlier date and there was no question of attaching the condition to the permit. The Division Bench accepted the contention which was supported by a Supreme Court decision and after considering the provision of Rule 68 of the Bihar Motor Vehicles Rules held that the extension could be validly granted under the said rule. In the pre-sent case also, the original permit was granted in 1966 and the condition mentioned in Clause (xxi) of Section 48(3) of the Act has not been attached to it. The present case, therefore, is clearly governed by the decision in Basudeo Tiwary's case and the contention raised on behalf of the petitioners must, therefore, be overruled.

5. In the result, this writ application fails and is dismissed with costs. Hearing fee Rs. 100/-.

Shambhu Prasad Singh, J.

I agree.