
(1968) 08 PAT CK 0012

In the Patna High Court

Case No : C.W.J.C. No's. 86 and 150 of 1968

Gauri Shankar Sharma and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 20-08-1968

Acts Referred:

Motor Vehicles Act, 1939 — Section 57(8), 68A, 68B, 68C, 68D

Citation : AIR 1969 Patna 192 : (1969) 17 BLJR 559

Hon'ble Judges : S. Wasiuddin, J;N.L. Untwalia, J

Bench : Division Bench

Advocate : Saptami Jha, in No. 86/68 and Lal Narayan Sinha and Lakshman Saran Sinha, in No. 150/68, for the Appellant; Lal Narayan Sinha, K.P. Verma, Standing Counsel, Lakshman Sharan Sinha and S.R. Ghosal, in No. 86/68 and Basudeva Prasad and Saptami Jha and K.P. Verma, Standing Counsel in No. 150/68, for the Respondent

Judgement

1. An identical question of law is involved in these two cases and, therefore, they have been heard together and are being disposed of by a common judgment.

C. W. J. C. No. 150 of 1968.

2. The facts of this case are that Ram Sanehi Singh, respondent No. 1, who was holding a permit for a route Bihar-Nqor-sarai-Chandi-Daniawan, filed an application for extension of the said route up to Agamkuan, Patna. The State Road Transport Corporation, the petitioner, in this case objected to the said extension on the ground that a portion of the route from Fatuha to Agamkuan forms part of the route Patna-Nawadah, which is a notified route since 1957 under an approved scheme, a copy of which is An-nexure "D" to the writ application. According to the notified scheme the petitioner has got absolute monopoly over the said route to run stage carriage service, including portions thereof, to the complete exclusion of private operators The South Bihar Regional Transport Authority, respondent No. 4, granted the extension by its order dated the 2nd September, 1966, a copy of which is An-nexure "C".

The petitioner went in appeal before the Appeal Board, respondent No. 3, which set aside the aforesaid order of the South Bihar Regional Transport Authority, by its order dated the 1st June, 1967. A copy of the order of the Appeal Board is Annexure "B" to the writ application. Respondent No. 1 went up in revision u/s 64A of the Motor Vehicles Act, 1939, as it stands under the Bihar amendment, to the Minister in charge of the Transport Department, State of Bihar, respondent No. 2. The Minister by his order dated the 25th December, 1967, set aside the order of the Appeal Board and restored the order dated the 2nd September, 1966, of the Regional Transport Authority. The petitioner has obtained a rule for calling up and quashing of the order of Minister by grant of a writ of certiorari.

C. W. J. C. No. 86 of 1968.

3. The facts of this case are that Gauri Shankar Sharma, the petitioner, was holding a permanent stage carriage permit to ply his stage carriage on the route Banka-Belhar via Katoria, which was granted by the East Bihar Regional Transport Authority, Bhagalpur. The petitioner filed an application u/s 57 (8) of the Motor Vehicles Act, 1939, before the East Bihar Regional Transport Authority to vary the condition of his permit as his case is, by including Banka to Luxmipur via Dacca and Bounsa route to his existing route. Apart from others, the Bihar State Road Transport Corporation, respondent No. 3, objected to the grant of the application filed by the petitioner. The Regional Transport Authority by its order dated the 3rd November, 1966, (a copy of which is Annexure "A" to this application) overruled the objections and granted the extension asked for. The objectors, including respondent No. 3, filed appeals against the said order of the Regional Transport Authority and the State Transport Appellate Authority, respondent No. 2, set aside the order of the Regional Transport Authority. The order of the Appeal Board is dated the 1st April, 1967, a copy of which is Annexure "B".

The petitioner went up in revision u/s 64A of the Motor Vehicle; Act, as it stands under the Patna amendment, to the Minister in charge of Transport Department. But in this case the same Minister, who had allowed the revisional application in the other case, dismissed this revisional application by his order dated the 5th December, 1967 a copy of which is Annexure "D" to his writ application. The private operator has obtained a rule from this Court for calling up and quashing the orders of the Appeal Board and the Minister in charge of the Transport Department.

4. The admitted position in both the cases is that a portion of the extension of the route, if not wholly asked for, falls on a part of the notified route. The question is whether in view of the provisions of law contained in sections 68A to 68F in Chapter IVA of the Motor Vehicles Act such an extension, as asked for by the private operators, one of whom is the petitioner and the other respondent, could be granted by any authority either the Regional Transport Authority or the Appeal Board or the Minister.

In our opinion, the answer obviously must be in the negative. The terms of the scheme, as contained in Annexure "D" annexed to the application in C. W. J. C. No. 150 of 1968, clearly show that the scheme to ply buses at the instance of the Rajya Transport was proposed and finally approved "to the complete exclusion of other persons except those who on such dates, may be holding permanent permits to run stage carriages on those routes and are allowed, at the discretion of the State Government, to operate there until the date of expiration of the existing permits." It is undisputed that similar exclusion was provided in the scheme, which was in operation on the notified route of the other case.

5. u/s 68C of the Motor Vehicles Act a provision has been made for the preparation, and publication of a scheme of the road transport service of a State transport undertaking. Sub-sections (1) and (2) of Section 68D provide for dealing with objections to the scheme and thereafter Sub-section (3) of that section says: "the scheme as approved or modified under Sub-section (2) shall then be published in the Official Gazette by the State Government and the same shall thereupon become final and shall be called the approved scheme and the area or route to which it relates shall be called the notified area or notified route." After such a scheme has become final, as pointed out by the Supreme Court in several decisions, to wit: in Abdul Gafoor Vs. State of Mysore, and Sobhraj Odharmal Vs. State of Rajasthan, the grant of such stage carriage permit to the State Transport undertaking under Sub-section (1) of Section 68F and the consequential orders on the private operators under Sub-section (2) of that section are mechanical. In other words they have got to follow as a necessary consequence of giving effect to the approved and final scheme. Sub-section (2) of Section 68F says :--

"For the purpose of giving effect to the approved scheme in respect of a notified area or notified route, the Regional Transport Authority may, by order --

- (a) refuse to entertain any application for the renewal of any other permit;
- (b) cancel any existing permit;
- (c) modify the terms of any existing permit so as to --
- (i) render the permit ineffective beyond a specified date;
- (ii) reduce the number of vehicles authorised to be used under the permit;
- (iii) curtail the area or route covered by the permit in so far as such permit relates to the notified area or notified route."

6. It is manifest, therefore, that in the scheme of Chapter IVA of the Motor Vehicles Act the Regional Transport Authority must, as "may" in the context, will mean "must", exercise its power by an appropriate order either under clause (a), (b) or (c), as the case may be. It has got to refuse to entertain any application for renewal of any other permit in respect of the notified route, cancel any, existing permit or modify the terms of any existing permit in accordance with

clause (c) of Sub-section (2) of Section 68F to allow the approved and final scheme to operate without any hindrance, interference or overlapping.

Of course, as pointed out by the Supreme Court in *Ramnath Verma Vs. State of Rajasthan*, the scheme itself on certain conditions may provide for partial exclusion of the private operators on a portion of the notified route. One of those methods of partial exclusion may be that a private operator will be permitted to ply his stage carriage on a portion of the notified route but upon the condition that he cannot pick up any passenger on that portion of the route. But if the scheme does not provide any such partial exclusion or, to put it in other words, does not permit a private operator to ply its stage carriage on a portion of the notified route even by imposing the condition of not picking up of the passengers, it is not open to any authority to allow a private operator to ply its stage carriage on a portion of the notified route even by imposing such a condition.

Under Section 57(8) an application to vary the conditions of any permit, including granting of extension of the route, has got to be treated as an application for the grant of new permit. If a new permit would have been asked for either for a portion of the notified route or in respect of a route a portion of which was overlapping on a portion of the notified route, it is manifest that such a permit could never be granted. That being so, it follows as a corollary that extension of the route cannot be granted under Sub-section (8) of Section 57 of the Motor Vehicles Act. The position is so clear on interpretation of the relevant provisions of the Act that no second view seems to be possible in this regard and the authorities, who took a contrary view while granting such an extension of the route to either of the private operators committed an error of law of the kind, which, finally if it remained in favour of the private operator, is liable to be quashed by grant of a writ of certiorari. If finally it remains against a private operator, it follows, there is no question of interfering with that order by grant of a writ.

7. In the result, we allow the application in C. W. J. C. No. 150 of 1968. call up and quash the impugned orders of the South Bihar Regional Transport Authority and the Minister by a writ of certiorari. Respondent No. 1 must pay cost of this application to the petitioner. Hearing fee is assessed at Rs. 100/-. We dismiss the application in C. W. J. C. No. 86 of 1968 with costs, maintain the order of the Appeal Board and the Minister in charge of the Transport Department of the Government of Bihar refusing extension of the route to the petitioner. The petitioner must pay cost to respondent No. 3 only. Hearing fee is assessed at Rs. 100/-.