

(1964) 11 PAT CK 0008

In the Patna High Court

Case No : Misc. Judl. Case No's. 927 and 983 of 1961

Lakhi Prasad Agarwal and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-11-1964

Acts Referred:

Motor Vehicles Act, 1939 — Section 47(3), 48, 57(3), 57(5), 64

Citation : AIR 1965 Patna 142

Hon'ble Judges : V. Ramaswami, C.J.;Untwalia, J

Bench : Division Bench

Advocate : B.P. Sinha and Surendra Prasad Sinha, in M.J.C. No. 983 of 1961 and S.K. Jha, in M.J.C. No. 927 of 1961, for the Appellant; Standing Counsel and Saptami Jha, for the Respondent

Final Decision : Allowed

Judgement

1. One vacancy for the stage carriage service in the route Karhagola-Purnea-Forbesganj was advertised by the East Bihar Regional Transport Authority on the 29th June, 1960. Applications for permit were invited for that route and in response to that advertisement, sixteen applications were filed. By the resolution dated the 18th January, 1961, the East Bihar Regional Transport Authority granted three permits to respondents 6, 7 and 8, though there was only one vacancy advertised for the route. Respondents 4 and 5 took the matter in appeal before the Appeal Board of the State Transport Authority. On the 15th of April, 1961, the Appeal Board cancelled the permit granted in favour of respondent No. 6 and instead granted a permit to respondent No. 4; otherwise the order of the Regional Transport Authority was maintained by the Appeal Board.

Against the order of the Appeal Board, respondents 5 and 6 made representations to the State Government u/s 64A of the Motor Vehicles Act. By his order dated the 5th July, 1961, the Minister of Transport allowed the representations and restored the order of the Regional Transport Authority in its entirety. In other words, the Minister of Transport held that permits had been

properly granted to respondents 6, 7 and 8. But the Minister of Transport proceeded to say that,

"in view of the importance of the route there has been increase in the volume of traffic and as it connects many important places public convenience would best be served if some more additional permits are given in this route" He accordingly felt that "justice would best be served by issuing two additional permits for the route to Shri Sohan Singh and Mohan Singh"

2. In this case the petitioner has obtained a rule from the High Court calling upon the respondents to show cause why the order of the Minister of Transport dated the 5th July, 1961 should not be set aside by the High Court under Article 227 of the Constitution.

3. Cause has been shown by the learned Standing counsel on behalf of respondents 1 to 3 and also by other learned counsel on behalf of respondents 4 to 7. There is no appearance on behalf of respondent No. 8.

4. On behalf of the petitioner the argument was stressed that the Regional Transport Authority having advertised and invited applications for grant of one permit for the route Karhagola-Purnea-Forbesganj, it is not open to it to grant two additional permits in the course of the same proceedings. It was also submitted that the power of the State Government u/s 64A (Bihar Amendment) was coextensive with and was of the same quality as the power granted to the Regional Transport Authority or the Appellate Authority and, therefore the Minister of Transport had no legal authority to grant two more additional permits to respondents 4 and 5 after hearing the representations u/s 64A (Bihar Amendment) and neither the Regional Transport Authority nor the Appellate Board had jurisdiction to increase the number of stage carriage permits in the course of hearing. In support of this argument, learned Counsel relied upon the decision of this High Court in Ram Kailash Pandey v. Abdul Mateen 1961 PLR 136 and the later decision of this High Court in Lakshmi Narain Sahu and Others Vs. State Transport Appellate Authority and Others, .

In our opinion, the argument advanced on behalf of the petitioner is well founded and must be accepted as correct. As we have pointed out in Lakshmi Narain Sahu and Others Vs. State Transport Appellate Authority and Others, , it is not open to the Regional Transport Authority as a matter of law to grant more permits than the number decided upon u/s 47(3) of the Motor Vehicles Act in the course of the same proceeding and having taken a decision u/s 47(3) and after having invited representations u/s 57(3) and disposed of the representations u/s 57(5) at a public hearing, it is not open to the Regional Transport Authority to create an additional permit in the course of the same proceeding. On behalf of respondents 4 to 7 it was conceded that this was the correct legal position with regard to new routes.

It was, however, submitted on their behalf that the route Karhagola-Purnea-Forbesganj as advertised in this case was an old route. Reference was then made

on behalf of respondents 4 to 7 to the decision of the Supreme Court in *Abdul Mateen v. Ram Kailash Pandey* AIR 1963 SC 64 which affirmed the judgment of this High Court 1961 PLR 136. In the course of the judgment, the Supreme Court observed that in the case of a new route which is being opened for the first time and an advertisement is issued calling for applications for such a new route specifying the number of vacancies for it, it is reasonable to infer that when the number of vacancies was specified that shows the limit which must have been decided upon by the Regional Transport Authority u/s 47(3) of the Motor Vehicles Act, but it may not be reasonable where the advertisement is with respect to an old route and in such a case the particular number of vacancies mentioned in the advertisement may not necessarily mean that that was the number fixed u/s 47(3), for the number fixed may be much more and there may be only a few vacancies because a few permits had expired.

On behalf of the petitioner there is an affidavit filed in this Court on the 11th November, 1964 which states that Karbagola-Purnea-Araria-Forbesganj was specified for the first time by the advertisement in Bihar Gazette dated 29-6-1960 and before that date there was no such specified route at all. There is a counter-affidavit on behalf of respondent No. 4 wherein it is said that this route was open to traffic by motor vehicles prior to 18th January, 1961. But it is not denied by respondent No. 4 that this particular route was not advertised u/s 57 of the Motor Vehicles Act at any time before 29th June, 1960.

Having regard to the affidavits filed by the parties in this case, we are satisfied that the route Karbagola-Purnea-Forbesganj duly advertised on the 29th June, 1960 was a new route on that date. It follows, therefore, that the present case falls within the principle laid down in the decision of this High Court in 1961 PLR 136 and in the later decision in *Lakshmi Narain Sahu and Others Vs. State Transport Appellate Authority and Others*, , and also within the principle laid down by the Supreme Court in AIR 1963 SC 64 and that the present case does not fall within the exception pointed out by the Supreme Court in that case.

5. Acting, therefore, in exercise of our authority under Article 227 of the Constitution, we set aside the order of the Minister of Transport dated the 5th July, 1961, the order of the Appellate Board dated the 15th April, 1961 and also the order of the East Bihar Regional Transport Authority dated the 18th January, 1961 (Annexures C, B and A to the writ application) and order that the case should go back to the Regional Transport Authority who will now take up the proceeding at the stage at which it stood before the 18th January, 1961 and grant a hearing to all the sixteen applicants u/s 57(5) of the Motor Vehicles Act and thereafter bring the proceeding to a conclusion in accordance with law.

6. We accordingly allow this application to the extent indicated above. There will be no order as to costs.

7. In M. J. C. 983 of 1961 the petitioner Sardar Sohan Singh has obtained a rule against the order of the Minister of Transport dated the 5th July, 1961 and the

main argument advanced on his behalf is that the Minister of Transport should have considered the merits of the petitioner's case and should have granted him a regular permit for the route in question and not merely an additional permit. For the reasons we have given in M. J. C, 927 of 1961, not only the order of the Minister of Transport but the order of the Appellate Board and the order of the Regional Transport Authority must be set aside. It is manifest, therefore, that this application, namely M. J. C. 983 of 1961 should also be allowed and the order we make in this case is identical with the order we have already passed in M. J. C. 927 of 1961.

8. We desire to make it clear that if the Regional Transport Authority considers that the number of vacancies on the route should be increased having regard to the matters mentioned in Section 47(1) of the Act, it is open to it to pass a resolution in accordance with Section 47(3) of the Act, increase the number of stage carriage permits to any specified extent and thereafter advertise the increased number of vacancies under Section 57 of the Act and follow the procedure mentioned in that section for the disposal of the representations invited under 57(3) of the Motor Vehicles Act.