
(1962) 08 PAT CK 0008

In the Patna High Court

Case No : Misc. Judicial Case No's. 339, 340, 341, 364 and 380 of 1961

Lakshmi Narain Sahu and Others

APPELLANT

Vs

State Transport Appellate Authority and Others

RESPONDENT

Date of Decision : 08-08-1962

Acts Referred:

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

Citation : AIR 1963 Patna 81

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

Bench : Division Bench

Advocate : U.C. Prasad Sinha, Dindayal Sinha, P.R. Das and Saptami Jha, for the Appellant; Addl. Govt. Pleader, Umesh Chandra Prasad Sinha, Gokulanand Prasad, Keshari Kishore Sharan and Brajeshwar Prasad Sinha, in Nos. 339, 340 and 341 and Addl. Govt. Pleader, Brajeshwar Prasad Sinha and Keshari Kishore Sharan, in Nos. 364 and 380 of 1961, for the Respondent

Final Decision : Allowed

Judgement

1. In all these applications which have been heard together a common question of law arises for determination, namely, whether the order of the Appeal Board of the State Transport Authority dated the 17th September, 1960, setting aside the order of the North Bihar Regional Transport Authority dated the 3rd May, 1960, and remanding the case to it is ultra vires and without jurisdiction and ought to be set aside by the High Court in exercise of its authority under Article 227 of the Constitution.

2. It appears that on the 21st October, 1959, the North Bihar Regional Transport Authority (hereinafter referred to as " Regional Transport Authority") published a notice in the Bihar Gazette inviting applications for grant of a stage carriage permit on the Muzaffarpur-Pusa-Darbhanga route, In response to the notice there were 32 applications which were taken up for consideration by the Regional Transport Authority at its meeting held on the 3rd May, 1960. But before hearing the respective claims of the applicants the Regional Transport Authority decided

that eight permits should be granted instead of one permit advertised for "in view of the volume and importance of the traffic needs on the said route". Thereafter the Regional Transport Authority considered the claims of the various applicants and selected eight of them for the grant of permits. Some of the applicants to whom permits were not granted preferred appeals u/s 64 (a) of the Motor Vehicles Act before the Appeal Board of the State Transport Authority.

On the date fixed, for hearing, that is, on the 17th September, 1960, all such appeals were withdrawn except one, appeal filed by Sri Bishun Lal. The Appeal Board proceeded to hear the appeal of Bishun Lal and thereafter set aside the order of the Regional Transport Authority granting eight permits on the ground that it was improper for the Regional Transport Authority to grant eight permits after having advertised for only one permit on the particular route. The Appeal Board observed that it would make a mockery of the whole procedure of advertisement, calling for applications and making selection which public interest, no less than the language of Section 47 of the Motor Vehicles Act requires. Therefore the Appeal Board were of the opinion that it was fit and proper that the order of the Regional Transport Authority should be set aside and that the Regional Transport Authority should now determine on a proper assessment of the traffic needs of the route with reference to such available statistics as may be at their command as to how many services should be introduced on this route and then call for applications and reconsidered the matter de novo and dispose of it in accordant with law.

3. On behalf of the petitioners in all these applications the main argument put forward by learned Counsel is that the order of the Appeal Board of the State Transport Authority is ultra vires because the Appeal Board should itself have decided which of the eight permit-holders are the fittest for the grant of permits and have taken a decision on the point and should not have remanded the case to the Regional Transport Authority for advertising the route afresh and inviting fresh applications for the grant of the requisite number of permits, in view of the principle laid down by Section 47 of the Motor Vehicles Act. It is pointed out in this connection on that nine appeals were filed before the Appeal Board but all were withdrawn except the appeal of Sri Bishun Lal. The submission on behalf of the petitioners is that the Appeal Board was competent in these circumstances only to consider the case of Bishun Lal vis a vis the eight applicants who had already been granted permits and then decide whether Bishun Lal should be granted a permit in preference to any of the other eight persons to whom permits had already been ordered to be given by the Regional Transport Authority.

We are unable to accept the argument put forward on behalf of the petitioners as correct. It is true that the appeal of Bishun Lal only was being dealt with by the Appeal Board, but we see no warrant for the submission that the Appeal Board had no power to remand the case to the Regional Transport Authority after setting aside the order of the Regional Transport Authority dated the 3rd May,

1960, granting eight permits. It cannot be doubted that the power of the Appeal Board to entertain the appeal u/s 64 of the Motor Vehicles Act must comprise within its ambit the power to dispose of the appeal in any manner known to law. The Appeal Board has no doubt a right to set aside the order of the Regional Transport Authority under appeal and substitute its own order. It may, on the other hand, merely quash the order appealed against and require the Regional Transport Authority to restore the original proceeding and decide it afresh. It is equally clear that in disposing of an appeal u/s 64 of the Motor Vehicles Act the Appeal Board has power to remand the case, because the power of remand is ancillary to the power of disposal of the appeal.

This view is supported by the decision of the Supreme Court in *Ram Gopal Vs. Anant Prasad and Another*, where it is pointed out that the power of the appellate authority u/s 64 of the Motor Vehicles Act is not fettered by any statute or restriction and the appellate authority has got all the powers to give the relief to which the appellant is found entitled. In this connection it is also necessary to state that since these applications were admitted there has been a decision of this High Court in *Ram Kailash Pandey v. Abdul Mateen* 1961 PLR 136 in which it was held that as a matter of law it is not open to the Regional Transport Authority 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. It was pointed out in that case that 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. Any other interpretation of Section 47 (3) would result in arbitrariness in exercise of the statutory discretion without giving a hearing to the affected parties and would ultimately lead to government by whim and caprice.

In view of this decision it was conceded by learned Counsel in these applications that the order of the Regional Transport Authority in the present case, dated the 3rd May, 1960, granting eight permits, was illegal and ultra vires. But it was submitted that there was no reason why the Appeal Board should ignore the proceedings of the Regional Transport Authority u/s 47(3) and Section 57 (3) of the Act, so far as advertisement for one permit was concerned. It was contended that the proper course for the Appeal Board was to set aside the order of the Regional Transport Authority dated the 3rd May, 1960, and to direct the Regional Transport Authority to consider grant of one permit after examining the claims of the various persons who had already applied to response to the advertisement in the Bihar Gazette dated the 21st October, 1959.

In our opinion this argument must be accepted as correct. We do not think it was necessary for the Appeal Board to have given a direction to the Regional Transport Authority to make an advertisement afresh for the same route. As we have already pointed out, there was already an advertisement on the 21st October, 1959, in the Bihar Gazette for making applications for the grant of a

stage carriage permit in respect of this route, and 32 applications were received in response to that advertisement. At a meeting of the Regional Transport Authority on the 3rd May, 1960, a decision was taken that eight permits should be granted instead of one permit advertised for. In our opinion, the proceedings of the Regional Transport Authority became illegal from this stage. We think the proper direction to the Regional Transport Authority should be that it will proceed to consider the case of the 32 applicants u/s 57 (5) of the Motor Vehicles Act which provides that the representations shall be disposed of

"at a public hearing at which the applicant and the person making the representation shall have an opportunity of being heard either in person or by a duly authorised agent."

At one stage of the argument it was submitted on behalf of the petitioners in these applications that after the case goes back on remand the choice of the Regional Transport Authority should be confined only to nine persons, namely, Sri Bishun Lal, whose appeal was before the Appeal Board, and the eight persons who have been granted permits by the Regional Transport Authority. We consider that this argument is misconceived. As we have already stated, the proper direction in this case is that the Regional Transport Authority should proceed to consider the case of all the 32 applicants u/s 57 (5) of the Motor Vehicles Act and then proceed in accordance with law to grant a permit to the person whom it considers fit out of the 32 applicants for the grant of the permit.

4. For these reasons we hold that in exercise of our authority under Article 227 of the Constitution the order of the Appeal Board of the State Transport Authority dated the 17th September, 1960, should be modified so far as the terms of the remand order are concerned. The order of the Appeal Board of the State Transport Authority will stand so far as it sets aside the order of the North Bihar Regional Transport Authority dated the 3rd May 1960; and so far as the remand order is concerned, the direction to the North Bihar Regional Transport Authority should be that it will take up the proceedings from the stage at which it stood before the 3rd May, 1960, and grant a hearing to all the 32 applicants u/s 57 (5) of the Motor Vehicles Act and thereafter to bring the proceedings to conclusion in accordance with law.

5. We accordingly allow all these applications to the extent indicated above. There will be no order as to costs.