
(1990) 01 PAT CK 0008
In the Patna High Court

Madheshwar Prasad Singh and Another APPELLANT
Vs
The State of Bihar and Others RESPONDENT

Date of Decision : 16-01-1990

Acts Referred:

Constitution of India, 1950 — Article 19

Citation : (1990) 2 ACC 421

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Judgement

S.N. Jha, J.—This application has been filed by the petitioner who is private bus operators for a direction to respondent No.3 to release the vehicles of petitioners bearing Registration No. BPP-5656 having valid Registration Certificate, Certificate of Fitness, Permit, Insurance and Tax Tokens.

2. From the statements made in this application it appears that on 22-1-1989 the said Vehicle was checked by respondent No.3 near Panel in Bihta within the police station of Bihta and it was seized (the copy of the seizure list is annexed herewith and marked as Annexure I appended to the writ application).

3. According to the case of the petitioner he has valid registration book, permit, certificate of fitness, insurance and tax tokens and he has also valid, permit for plying his bus from Rajipur to Patna. While the bus was plying on the road, it was checked and seized as indicated above.

4. The petitioner has filed this writ application for release of his aforesaid vehicle and vide order dated 28-1-1989, notice was issued to respondent 2 and 3 to show cause as to why this application should not be admitted. During the pendency of this application, the vehicle in question was released to the owner of the vehicle on furnishing sufficient security to the satisfaction of the Roadways Magistrate subject to the condition that the vehicle in question shall be produced before the appropriate authority as and when required.

5. Pursuant to the aforesaid notice, respondents 2 and 3 appeared and filed

counter affidavit in which it has been stated that since the vehicle in question has already been released, this writ application has become infructuous. According to the counter affidavit, the petitioner is private operator and had been given temporary permit No. 480/88 for operating the aforesaid bus exclusively on the route Rajipur to Patna Via Bikram-Sadisopur-Shimela which expires on 26-3-1989.

6. According to the case of the respondents, the petitioner were plying their vehicles not on the route for which permit was granted to them but on some other route. Therefore the said vehicle was seized which was ultimately released in the light of the aforesaid order.

7. Mr. B.N. Singh, learned Counsel appearing on behalf of the petitioner has raised some important question of law to be decided in this writ application, namely:

(i) whether the Sub-Inspector of Police attached with Bihar State Road Transport Corporation (for short Corporation) and deputed by the State Government to the Corporation in the Vigilance, can check or seize the bus of the petitioner or not?

(ii) whether the Executive Magistrate known as Roadways Magistrate deputed to the State Road Transport Corporation by the State Government can try the cases of the private operators and pass any order as they are interested parties to the case?

8. In order to appreciate the points raised by Mr. Singh, learned Counsel for the petitioners, it is necessary to examine some of the provisions of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act"). It may be relevant to mention here that Section 112A of the Act has been introduced in 1979 by which powers were conferred upon the Magistrate and Police Officers to detain the travelling passengers without ticket. Sub-clause (2) of Section 112A of the Act says that if the conductor of a stage carriage, or the driver of a stage carriage where such driver discharges the functions of a conductor in such stage carriage whose duty is to--

(a) to supply a ticket to a person travelling in a stage carriage on payment of fare by such person, either wilfully or negligently,--

(i) fails or refuses to accept the fare when tendered, or

(ii) fails or refuses to supply a ticket, or

(iii) supplies an invalid ticket, or

(iv) supplies a ticket of lesser value, or to check any pass or ticket, either wilfully or negligently fails or refuses to do so, shall be punishable with fine, which may extend to five hundred rupees.

9. In this connection, it is also relevant to mention the provisions of Section 129A of the Act which reads as follows:

129A. Powers to detain vehicles used without certificate of registration or permit--

Any police officer authorised in this behalf or other person authorised in this behalf by the State Government may, if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of Section 22 or without the permit required by Sub-section (1) of Section 42 or contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle, and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicles:

Provided that where any such officer or person has reason to believe that a motor vehicle has been or is being used without the permit required by Sub-section (1) of Section 42, he may, instead of seizing the vehicle, seize the certificate or registration of the vehicle and shall issue an acknowledgment in respect thereof:

Provided further that where a motor vehicle has been seized and detained under this section for contravention of the provisions of Section 22, such vehicle shall not be released to the owner unless and until he produces a valid certificate of registration under this Act in respect of that vehicle.

10. For a bare perusal of the aforesaid provisions of law it is manifest that the power for checking and seizing the vehicle for contravention of any provisions of law has been vested to the officers appointed or authorised in this behalf by the State Government.

11. Chapter VIII of the Bihar Motor Vehicles Rules, 1940 deals with the officers of the Bihar Motor Vehicles (Transport) Department and their function and the uniform to be owned by them. Rule 175 of the aforesaid Rules says that the Motor Vehicles (Transport) Department shall consist of the following classes of officers;

- (1) State Transport Commissioner,
- (2) Deputy State Transport Commissioner (Technical) and Inspector of Motor Vehicles,
- (3) Regional Transport Officers and Secretaries, Regional Transport (authorities),
- (4) Inspectors of Motor Vehicles,
- (5) Enforcement Officer,
- (6) Mobile Squad Inspector,
- (7) Mobile Squad Constable and
- (8) Any other officer, who may be appointed by the State Government from time to time.

12. The main attack of Mr. Singh, learned Counsel for the petitioners is that the police officer who is attached to the Bihar Road Transport Corporation or the Roadways Magistrate attached the rein, cannot seize the bus of a private operator as they are an interested parties.

13. Before dealing with this aspect of the matter, I may further state some of the fact of the present case. According to the petitioner, he was plying his vehicle on the route for which permit was granted to him. But in the counter affidavit, this fact has been controverted and it has been asserted that the petitioner was not strictly playing on the route for which he was granted permit but he had digressed to some portions of the route situated in the Maner-Danapur route for which the petitioner has no permit. Thus, there has been a gross violation of the conditions given in the permit and as such, the vehicle in question was seized. Since the matter is pending in the court below and it is a disputed question of fact with cannot be determined in this writ application, this point will be examined by the authority concerned and he will give his finding on the material available on the record as to whether the petitioner has digressed from the route as mentioned in his permit. There is also forum of appeal and if any adverse order be passed against the petitioner, he may avail all the remedies available in the said Act itself.

14. Now, coming to the question of law, Mr. Singh, learned Counsel for the petitioners, in support of his contention, has relied on the decisions in the case of Ishwar Singh Bagga and Others Vs. State of Rajasthan, .

15. In the case of Ishwar Singh Bagga and Ors. (supra) a notification issued by the Rajasthan Government was challenged and the matter went before the Supreme Court in which the Hon"ble Supreme Court held that the officers of the State Road Transport corporation cannot be treated as persons failing within the meaning of the expression "other persons". In Section 129 or Section 129A of the Act, even through some of them may be officers deputed by the State Government, may be officers of the corporation. The expression "other persons" mentioned in Section 129A of the Act which has to be readjusted genesis with the words any police officer which precede with expression in Section 129A, can only refer to an officer of the Government and not to any officer or employee of the statutory corporation, or to any other private person. There fore. in the aforesaid case, the notification issued by the State Government authorising the Deputy General Manager (Traffic), Assistant Deputy Manager and Traffic Inspector of the State Road Transport Corporation to discharge the powers u/s 129A of the Act, was not sustainable.

16. From a perusal of the aforesaid judgment, it is clear that in the aforesaid case, some of the officers, namely, Deputy General Manager (Traffic), Assistant Deputy Manager and Traffic Inspector who are employees of the State Road Transport Corporation, were authorised to discharge the powers of Section 129 A of the Act by the impugned notification in the said case, which was not approved by the Supreme Court, but the facts in the instant case are otherwise. In the

instant case, power u/s 129A of the Act has not been vested to the employees of the Corporation, but some other persons who are employees of the State Government, have been deputed to discharge the powers of Section 129A of the Act. A reading of Section 129A of the Act shows that "other persons" referred to in Section 129A of the Act who may be empowered to discharge the powers under that section, can only mean an officer of the Government, such as Motor Vehicles Officer appointed u/s 133A of the Act or of any other department of the Government. As I have already indicated above, Rule 175 of the Bihar Motor Vehicles Rules, 1940 deals with the officers of the Motor Vehicles (Transport) Department which consist of number of officers including any other officer who may be appointed or deputed by the State Government from time to time. Therefore, the aforesaid decision of the Hon"ble Supreme Court will not help the petitioner and is quite distinguishable from the facts of this case. Quite apart, the rules of the said Act of the Rajasthan Government was not produced before me. Therefore, it is not possible to hold as to whether the observation made by the Hon"ble Supreme Court is strictly applying to the facts of the present case in the absence of the aforesaid Rajasthan Motor Vehicles Rules.

17. So far as the decision reported in AIR 1989 Karn 157 is concerned, it has been held in the aforesaid case that the power of search, seizure or detention of vehicles given in the Rule 336 of Kamataka Motor Vehicles Rules (1963) to the police officers, not below the rank of a sub-Inspector of police, deputed from the State Police Department to the Kamataka State Road Transport Corporation, is violative of Article 19(1)(g) of the Constitution. Mr. Singh, learned Counsel for the petitioners strongly relied on this decision and vehemently argued that after deputation, the police officers are directly under the control of the authorities of the corporation. Therefore, they cannot be a prosecutor and the judge at the same time.

18. On the other hand, it was contended on behalf of the State that they are the employees of the State Government and they draw their salaries from the exchequer of the State Government. They are never the employees of the Transport Corporation and they have been deputed and attached to the Roadways Magistrate to check the vehicles and to take proper action as provided under the provisions of Section 129, 129A and 112A of the said Act.

19. As I have mentioned above that Section 112A of the Act deals with the penalty for travelling without pass or ticket and for dereliction of the duties of the conductor or the driver, it was incumbent upon the State Government to depute some of the officers of the Executive department or the police department to discharge their duties properly and diligently in accordance with law. Since Mr. Singh, learned Counsel for the petitioner has relied upon the decision of the Supreme Court which dealt with the Rajasthan State Road Transport Corporation and the decision reported in AIR 1989 Kam 157 which dealt with the Kamataka State, the rules of those two states were not placed before me at the time of hearing. Therefore it is not possible for me to decide as to whether the decisions

pronounced in those two cases will apply strictly to the facts of the present case which is under the Bihar Motor Vehicles Rules.

20. I do not find much force in the contentions of Mr. Singh. If, he is so advised, he may raise these points in the appropriate writ application pending before this Court as stated by Mr. Singh himself.

21. Since he has prayed in this application for the release of the said vehicles which have already been released, this application becomes in fructuous and accordingly it is dismissed.