
(2008) 07 PAT CK 0099
In the Patna High Court

Manoj Kumar

APPELLANT

Vs

The State of Bihar and Others
 Sheo Kumar Singh Vs
Chairman, State Transport Appel

RESPONDENT

Date of Decision : 08-07-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 117

Citation : (2008) 07 PAT CK 0099

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mridula Mishra, J.—Both these writ applications arise out of order dated 16.3.2007 passed by the Chairman, State Transport tribunal in Transport Revision No. 37 of 2006 and 39 of 2006.

2. Prayer of the petitioners in both the writ applications is for quashing the order dated 16.3.2007 passed by the Chairman, State Transport Tribunal rejecting the revision filed by them under section 90 of the Motor Vehicle Act and against the order dated 11.19.2006/21.9.2006 passed by North Bihar Regional Transport Authority. The Regional Transport Authority had rejected the claim of the petitioners for operating Bus stand at Mahua in the district of Vaishali. Petitioner in Transport Revision No. 37 of 2006 is Shiv Kumar Singh (C.W.J.C. No. 6744 of 2007) and petitioner in Transport Revision No.39 of 2006 is Manoj Kumar (C.W.J.C. No. 6666 of 2007). The Chairman State Transport Tribunal has dismissed both the revision applications by a common order against which afore mentioned writ applications have been preferred. Both writ applications were heard analogous and are being disposed of by a common order.

3. Facts as revealed in the pleadings of the writ application is that at Mahua within the district of Vaishali there was no bus stand and for this, vehicles used to be parked at road side, which was hazardous for people residing in the locality as well as caused congetion. In the year 1988 the administration decided for

establishing a bus stand at Malum considering the needs of local people. Coming to know about the intention of administration Shiv Kumar Singh (petitioner in C.W.J.C. No. 6744 of 2007) respondent in (C.W.J.C. No. 6666 of 2007) offered his land for operating bus stand. Accordingly after due enquiry and recommendation an agreement was executed on 1.3.1988 in between Shiv Kumar Singh and District Administration. Thereafter Shiv Kumar Singh started operating the bus stand. It seems that from its very inception the operation of Mahua Bus stand became the subject matter of dispute. One Saryug Singh challenged the settlement with Shiv Kumar Singh and the matter came up to the High Court however it was finally decided that the bus stand will run over the land of Shiv Kumar Singh. Shiv Kumar Singh after sometime was named as accused in a criminal case as such he executed a power of attorney in favour of one Ramaprit Rai to manage the bus stand on his behalf.

4. Complaints were received by the authorities regarding the sub letting of the management of bus stand by Shiv Kumar Singh in favour of Rampriti Rai in violation of the terms and conditions of the agreement. When the matter came into the knowledge of the administration, show cause notice was issued to Shiv Kumar Singh. The District Magistrate after due enquiry and considering the show cause of Shiv Kumar Singh cancelled the agreement in favour of Shiv Kumar Singh by order dated 17.12.1998 with a further direction to find out suitable candidate and land for running the bus stand. Manoj Kumar petitioner in C.W.J.C. No. 6666 of 2007 taking advantage of this situation became aspirant for running the bus stand and offered land situated in village Chitwara Khapura Thana No. 307 R.S. Plot No. 2999 measuring 1 Bigha 4 Kathas for this purpose. This land belonged to one Urmila Devi, who had executed a registered deed of lease in favour of Manoj Kumar for 20 years. Enquiry conducted by the authorities revealed that no government land is available for running the bus stand and the land offered by Manoj Kumar is suitable for running the bus stand. The District Magistrate, Vaishali considering the report of the Additional Collector, Vaishali at Hajipur referred the matter to Deputy Transport Commissioner cum Secretary, North Bihar Regional Transport Tribunal, Muzaffarpur with his recommendation to execute agreement in favour of Manoj Kumar for running the bus stand

5. The recommendation of the District Magistrate, Vaishali dated 19.6.1999 was approved by the North Bihar Regional Transport Authority in its meeting dated 28.10.1999. Shiv Kumar Singh challenged the recommendation of the District Magistrate Vaishali as well as the resolution of the North Bihar Regional Transport Authority dated 28.10.1999 before the State Transport Tribunal, Bihar, Patna. The North Bihar Regional Transport authority in the mean time directed the District Magistrate to issue notification in favour of Manoj Kumar as per provision under the Bihar Motor Vehicle Rules 1992 and to allow him to operate the bus stand. An agreement was executed in between Manoj Kumar and the authorities on 2.12.1999. The agreement in between the authorities and Manoj Kumar was also challenged by Shiv Kumar Singh before the State Transport Appellate Tribunal, Bihar, Patna. One of the ground for challenging the agreement entered

into in between the authorities and Manoj Kumar was that he had been appointed as Assistant Teacher and has also joined on the post as such being a government servant he was not entitled to enter into an agreement for running the bus stand. after he entered into an agreement for running the bus stand.

6. Manoj kumar had joined as Assistant Teacher on 23.6.2000 i.e. after he entered into an agreement for running the bus stand on 2.12.1999. However on account of Manoj Kumar joining as Assistant Teacher his agreement to run the bus stand at Malua was terminated without issuing him any show cause notice. This order was challenged by Manoj Kumar by filing C.W.J.C. No. 16472 of 2001 which was disposed of by order dated 5.7.2002. The order terminating the lease agreement was quashed holding that it should not have been cancelled unilaterally without giving any opportunity to Manoj Kumar. However it was also held that he can not continue to run a bus stand being government servant. He will have to decide on the basis of doctrine of selection whether he wants to continue with his job as Assistant Teacher or would like to run the bus stand on the basis of lease agreement. Manoj Kumar was directed to appear before the authorities and to submit his option. Manoj Kumar as per the observation in writ application resigned from his service and produced his resignation certificate before the Regional Transport Authority with a prayer to allow him to continue with the license for running the bus stand for a period of 20 years for which it has been granted. Since the order canceling the lease was issued in violation of rule of natural justice the prayer was to reinstate immediately his license.

7. The land which was offered by Manoj Kumar for running the bus stand for 20 years period was not his own land but it was of one Urmila Devi. This land was taken by Manoj Kumar on the basis of registered deed of lease executed by Urmila Devi for 20 years. Urmila Devi filed L.P.A. No. 892 of 2002 challenging the order dated 5.7.2002 passed in C.W.J.C. No. 16472 of 2001. L.P.A. was allowed with a direction that Manoj Kumar should be put under the same position where he was before cancellation of settlement in his favour. However, if the authorities intend to take action in the matter it can be done only after complying with the requirement of principle of nature justice.

8. The case of Manoj Kumar is that Urmila Devi was instigated by Shiv Kumar Singh to create trouble and accordingly she filed title suit for cancellation of lease deed. She also represented her case before the North Bihar Regional Transport Authority (hereinafter to be referred as the N.B.R.T.A.) N.B.R.T.A. after hearing the parties resolved in its meeting dated 19.9.2004 communicated vide Memo No. 875 dated 23.9.2004). that the bus stand is rightly running on the suitable land offered by Manoj Kumar unless the lease deed executed by Urmila Devi is cancelled by a court of competent jurisdiction. This order was not challenged by Urmila Devi before the superior authority and it became final. Shiv Kumar Singh's application challenging the recommendation of the District Magistrate as well as resolution of N.B.R.T.A. for issuing license in favour of Manoj Kumar for running the bus stand filed before State Transport Appellate Tribunal was

numbered as T. Rev. No. 3 of 2000. The Chairman, State Transport Tribunal allowed the application and remanded the matter to the North Bihar Regional Transport Authority, Muzaffarpur for fresh consideration. North Bihar Regional Transport Authority called for a fresh report from the District Magistrate, Vaishali and in the meeting dated 14.3.2005 case of Manoj Kumar, Shiv Kumar Singh, and objections filed by Urmila Devi were considered analogous.

9. The objection Urmila Devi and claim of Shiv Kumar Singh were rejected. Manoj Kumar was allowed to operate the bus stand. Shiv Kumar Singh again preferred an appeal before the State Transport Authority numbered as Tr. Rev. No. 8 of 2005. which was again remanded to N.B.R.T.A. for fresh consideration. A fresh report was again called from the District Magistrate, in the mean time Urmila Devi filed an application with a prayer to allow her to get possession of her land, over which bus stand is being operated by Manoj Kumar. The N.B.R.T.A. at this time by a common order dated 11.9.2006/21.9.2006 rejected claim of Manoj Kumar for running the bus stand on the ground that the land is under dispute. Claim of Shiv Kumar Singh was also rejected holding that he has violated the terms and conditions under the agreement and he has a criminal antecedent.

10. This order was challenged by Manoj Kumar as well as Shiv Kumar Singh by filing T.R. No. 37 and 39 of 2006. Both revisions have been rejected, against which these two writ applications have been filed.

11 Four I.A. applications have been filed, in C.W.J.C. No. 6666 of 2007. I.A. No. 6154 of 2007 has been filed by one Binod Ram. He has been impleaded as respondent No. 6. I.A. No. 6166 of 2007 has been filed by Raj Kumar Singh. He is impleaded as respondent No. 7. I.A. No. 5515 of 2007 has been filed by one Bipin Kumar. He has been impleaded as respondent No. 8. I.A. of Dayanand Singh is rejected as it was not filed properly.

12. Case of all intervenors is that they are necessary party on account of development which has taken place during the pendency of the writ applications.

13. Specific case of respondent No. 7 Rajesh Kumar Singh is that the S.D.O. has submitted report in his favour for the purpose of running and operating the bus stand and the report of the S.D.O. is still pending before the N.B.R.T.A.

14. During the pendency of C.W.J.C. No. 6666 of 2007 I.A. No. 7138 of 2007 has been filed by Manoj Kumar for quashing the order dated 27.11.2007 passed by N.B.R.T.A. Muzaffarpur whereby the proposal of respondent No. 6 Binod Ram for establishing the bus stand on his land has been accepted. Considering the report of the S.D.O. the District Magistrate, Vaishali has been asked to execute necessary agreement. The operation of the order dated 27.11.2007 was stayed by order dated 20.2.2008 and the respondents were directed to maintain status quo till the disposal of the writ application.

15. The pleadings of the parties and the submissions made by their counsels

indicate that running of Malum bus stand has been a chronic case of controversy and litigations since long. It is also clear that at the first instance when Shiv Kumar Singh was allowed to run the bus stand, applications were not invited from all desirable persons as per the rules. Similar is the case of Manoj Kumar. His offer was accepted when the case of Shiv Kumar was still pending for consideration before the appropriate authority. At this juncture also applications were not invited from the interested persons as per rule. This is the reason that since its inception Mahua bus stand has been a matter of controversy and litigations.

16. Mr. J.P. Shukla counsel appearing for petitioner Manoj Kumar has submitted that in view of the order passed by the High Court in the writ application it was not open for the authority to reconsider claim of any other persons till the expiry of the period. I find that this is not a correct stand as High Court in L.P.A. had observed that the authorities, if so desire, may take appropriate steps fulfilling the principle of natural justice. In that view it was not a close matter rather legality and propriety of the order was open for consideration by the authorities. Another ground which has been taken by counsel appearing for Manoj Kumar is that the revisional authority has exceeded his jurisdiction by rejecting his case on the ground of cancellation of lease deed by Urmila Devi. Such cancellation cannot have any legal effect until and unless the lease deed would have been cancelled and declared void, inoperative by a court of competent jurisdiction.

17. What I find that the revisional court has considered each and every aspect of the matter and considering the fact that the land offered on which Manoj Kumar has been permitted to operate has virtually been transferred to a battle field on account of pendency of many litigations including some criminal cases. This fact has been admitted by the petitioner in his supplementary affidavit that the land holder Urmila Devi has virtually ousted him from the land dismantling the structure standing over the land. As the bus stand was established for facilitating comforts of the passenger. If the passenger will have to face ugly seen on account of controversy in between the land holder and the lessee, the entire purpose for running the bus stand will be frustrated. The revisional court has rejected claim of Manoj Kumar considering the interest of passengers which is supreme in any circumstances. The petitioner Manoj Kumar by filing supplementary affidavit has offered another piece of land which was not the subject matter of earlier decisions either by the High Court or by the authority as such claim of petitioner Manoj Kumar for running the bus stand offering a new piece of land cannot be allowed. I do not find any error in the resolution of N.B.R.T.A. as well as the State Transport Appellate Tribunal in revision application.

18. On the other hand petitioner Shiv Kumar Singh's case is that the revisional authority has not considered his case on merit and it has been rejected on a technical ground of non joinder of necessary party. It has also been submitted that on account of pendency of a criminal case he cannot be debarred from running the bus stand under the provisions of M.V. Act. What I find that

pendency of the criminal case is one of the consideration for canceling license of licence of Shiv Kumar Singh. The prime consideration was violation of terms and conditions of agreement. Shiv Kumar Singh without taking consent of the authorities sub-letted the management of the bus stand in favour of one Ram Pril Rai. This was the ground for canceling his licence as well as agreement. It has also been submitted by Mr. Yogendra Mishra counsel appearing for Shiv Kumar Singh that since the matter was remanded by S.T.A. to N.B.R.T.A for deciding either in favour of Manoj Kumar or Shiv Kumar Singh, as such claim of both could not have been rejected by taking a resolution, which is beyond the perview of remand order. N.B.R.T.A. has exceeded its jurisdiction and committed error of law. Since the revisional authority has passed order on the basis of such erroneous resolution as such the order passed by the revisional authority is also erroneous and fit to be quashed.

19. I have already stated that in which circumstance the case of the petitioner Shiv Kumar Singh has been rejected by the authorities. I do not find any error in the order.

20. However, what I find that during the pendency of these two writ applications the offers were invited by the authorities for running Mahua bus stand. On account of pendency of criminal case Shiv Kumar Singh did not fulfill eligibility criteria as such he did not submit his offer. However, Manoj Kumar participated and submitted his offer. Other persons who are intervenors also submitted their offers and enquiry was conducted as per rule under the provisions of M.V. Act. The District Magistrate submitted its recommendation to the N.B.R.T.A. whereby offer of respondent No. 6 Binod Ram was found suitable for running the bus stand and it was accepted. The District Magistrate, Vaishali reconsidered his case and the N.B.R.T.A. by dated 7.11.2007 directed the District Magistrate to take steps for executing agreement with respondent No. 6 for running the bus stand. This order on account of stay order dated 22.2.2008 has not been implemented. N.B.R.T.A. is the competent authority for passing any order under the provisions of Section 117 of Motor Vehicles Act read with Rule 1999 of M.V. Rules. A bus stand can be established only by Regional Transport Authority, as he is only competent to declare an area as bus stand after observing the provisions under the M.V. Act. Since this exercise has already been done by the competent authority and land of respondent No. 7 Binod Kumar has been found to be suitable for declaring as bus stand, I find that it should not be disturbed going into the technicalities. The respondent authority can proceed in this matter in accordance with law.

In the result both the Writ applications are dismissed.