
(1972) 07 PAT CK 0027

In the Patna High Court

Case No : Civil Writ Jursdn. Case No. 1324 of 1970

Marwari Motor Service

APPELLANT

Vs

Chotanagpur Regional Transport Authority and Others

RESPONDENT

Date of Decision : 25-07-1972

Acts Referred:

Motor Vehicles Act, 1988 — Section 58

Citation : AIR 1973 Patna 273

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

Bench : Division Bench

Advocate : Saptmi Jha and Yajneshwar Singh, for the Appellant; Lakshman Sharan Sinha and Ram Kumar Sharma, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner firm in this writ application has obtained a rule from this Court against the respondents to show cause Why the order dated 14-8-1969, a copy of which is Annexure 3 to the writ application, made by the Chotanagpur Regional Transport Authority, respondent 1, refusing renewal of the petitioner's stage carriage permit for the route Hazaribag-Hazaribag Road, order dated 24-11-1969 of the Appeal Board of the State Transport Authority, respondent 2, a copy of which is Annexure 4, and the order of the State Government, respondent 4, communicated to the petitioner in their letter dated 7-4-1970 (annexure 5) be not called up and quashed by grant of a writ. The 3rd respondent is the Bihar State Road Transport Corporation which has objected to the grant of renewal of the petitioner's permit. Cause has been shown on behalf of respondent 3 alone.

2. For several years past the petitioner had been running a stage carriage from Hazaribagh to Hazaribagh Road and back on grant of permits to it. The Bihar State Road Transport Corporation proposed a scheme u/s 68-C of the Motor Vehicles Act hereinafter called the Act. With some modifications it was approved and the approved scheme was published in the Bihar Extraordinary Gazette

dated July 29, 1960. A copy of the relevant portion of the scheme is Annexure 1 to the writ application. The petitioner's case is that in absence of a statutory definition of the phrase "direct services" a dispute arose sometime in the year 1962 between the Corporation and some private operators as to the meaning of the said phrase, which led to the filing of representations, u/s 64-A of the Act, as it stood under the Bihar Amendment. The then Minister, Transport, took a decision by his order dated 7-9-63, a copy of which is Annexure 2 to the writ application, that the said phrase meant that only those private operators who were operating their services between the two termini were excluded; the others were not excluded. The petitioner's case further is that accordingly its permit was renewed for the year 1964 for five years, and the renewed permit was valid till 25-3-69. For a further renewal of this permit, the petitioner filed an application before respondent 1 u/s 58 of the Act. It came up for consideration in the meeting of the Regional Transport Authority held on 14-8-1969. The said authority by the order (Annexure 3) took the view that since major portion of the route Hazaribagh-Hazaribagh Road was a notified one, the balance of weight was in favour of the Corporation. It was, therefore, resolved that the Corporation be asked to place more buses on the route Hazaribagh-Hazaribagh Road via Bagodar by a certain date up to which the temporary permit issued to the petitioner was to expire failing which another temporary permit was to issue to the petitioner in public interest.

3. The petitioner went up in appeal. The Chairman of the Appeal Board affirmed the order of the Regional Transport Authority and dismissed the appeal. The said order is Annexure 4. The petitioner's revision application u/s 64-A of the Act was dismissed in limine by the State Government and the dismissal was communicated by Annexure 5.

4. Mr. Saptmi Tha, learned Counsel for the petitioner submitted that reading the approved scheme with reference to the scheme proposed by the Corporation, it would be clear that private operators who were operating directly on the route Hazaribagh-Bagodar were completely excluded but there was no exclusion of a private operator operating on a longer or a shorter route than Hazaribagh Bagodar. Mr. Lakshman Sharan Sinha appearing for the Corporation refuted this argument and submitted that since the scheme was approved for the route Hazaribagh-Bagodar to the complete exclusion of the private operators, they could not be allowed to operate on any portion of this route irrespective of the fact whether they were operating on a longer or a shorter route. The question is: which of the rival contentions is correct? It does not seem to be covered by any direct authority.

5. It is well settled by now that if a route has been nationalised to the complete exclusion of private operators then such operators cannot operate on any portion of the route in any manner. Schemes may be approved or permits may be granted on the conditions that the private operators may operate on longer routes but they will not be allowed to pick up or drop passengers on the

nationalised route. But if on an interpretation of the approved scheme it appears that private operators have not been completely excluded then the Corporation cannot object to the grant or renewal of permits to them on the ground that a portion of the route on which they are operating is nationalised. The then Transport Minister, in his order (Annexure 2), had interpreted the phrase "direct services" to mean the exclusion of the private operators for the direct services only and not exclusion of the private operators on longer or shorter routes. Our attention was drawn by learned Counsel for the petitioner to the gazette notification No. 9699 published in the Bihar Gazette dated 13th September, 1967, which shows that the Corporation wanted to exclude private operators completely from the nationalised routes including Hazaribagh-Bagodar irrespective of the fact whether they wanted to operate on longer or shorter routes, and we were further informed at the Bar that such a proposed scheme was not approved by the Government. Be that as it may, this much is clear that the petitioner in spite of the approved scheme which was approved in the year 1960 was granted renewal of permits for operating upon the route Hazaribagh-Hazaribagh Road and it did so operate up to the year 1969, but on objection by the Corporation further renewal was refused. The question is: was it justified in law?

6. The view taken by the Regional Transport Authority in its impugned order (Annexure 3) cannot at all be sustained. It may be mentioned here that the distance of the route Hazirabagh-Bagodar is 32 miles and Hazaribagh Road is 8 miles further ahead of Bagodar. Merely because a major portion of the route was nationalised, renewal of permit could not be refused until and unless the Transport Authority found that in the approved scheme there was a complete exclusion of private operators from nationalised route. There is no such finding in (Annexure 3), and it seems to be a peculiar order asking the Corporation to run its buses on the route Hazaribagh-Hazaribagh Road and granting temporary permits in the meantime to the petitioner. Such order is not warranted in law.

7. The Chairman of the Appeal Board seems to have taken the view that the approved scheme is to the complete exclusion of the private operators and, therefore, the order of the Regional Transport Authority refusing renewal of petitioner's permit was justified. But, in my opinion, the order (Annexure 4) also suffers from an obvious error of law. In annexure 5 no reasons are given and the State Government merely seem to have approved the view taken by the lower authorities.

8. It would appear from annexure 2 that the Corporation's proposed scheme was for running stage carriage on the route "Hazaribagh-Bagodar or portions thereof" and the service was to be "All services" The approved scheme (Annexure 1) mentions "Hazaribagh-Bagodar route is approved for direct services only". In the later portion it is said that--

"The Bihar State Road Transport Corporation shall run and operate stage carriage services relating to routes or portions thereof specified below to the complete

exclusion of other persons except those who, on the dates specified below held permanent permits to run stage carriages on these routes and are hereby allowed to operate them until the date of expiration of the existing permits.....

Thereafter from the schedule appended below, it would appear that in most of the routes portions were also mentioned, and that is the reason for the use of the words "or portions" in the earlier portion of the approved scheme. Item 7 relates to Hazaribagh-Bagodar route and against this it is mentioned "Direct services only". If the argument put forward on behalf of the Corporation were to be accepted as correct then there would be absolutely no difference between the proposed scheme and the approved scheme. If private operators were to be excluded from a portion of Hazaribagh-Bagodar route or from routes of which Hazaribagh-Bagodar route forms a part then there was no sense in approving the scheme for the route Hazaribagh-Bagodar for direct services only. Then this also ought to have been approved for all services for this route or portions thereof. But it was not so done. There must be a clear and distinct meaning behind it, and the only reasonable and legitimate meaning which can be attributed to the modification brought about in the approved scheme is the one which is given by the then State Transport Minister in (Annexure 2). The correct meaning is that private operators who were operating directly on Hazaribagh-Bagodar route were excluded, private operators having these two termini were not allowed to operate but private operators having only one terminus out of these two termini or passing through this route having different termini were not excluded in the approved scheme. That being so, the view taken in (Annexures 3, 4 and 5) is not sustainable in law. The said orders must be quashed and the case has to go back to the Chotanagpur Regional Transport Authority, respondent 1, for a fresh consideration of the petitioner's application for renewal of its permit for the route Hazaribagh-Hazaribagh Road.

9. For the reasons stated above, the writ application is allowed, the orders contained in (Annexures 3, 4 and 5) are quashed and the case is sent back to the Chotanagpur Regional Transport Authority for a fresh disposal of the petitioner's application for renewal of its stage carriage permit for the route Hazaribagh-Hazaribagh Road in the light of this judgment. There will be no order as to cost.

Akbar Hussain, J.

10. I agree.