

(1952) 12 PAT CK 0008

In the Patna High Court

Case No : Misc. Judicial Case No. 63 of 1951

Mathura Prasad Prabhudeyal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-12-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 64

Citation : AIR 1953 Patna 75 : (1953) 1 BLJR 40

Hon'ble Judges : Sarjoo Prasad, J; Ramaswami, J

Bench : Division Bench

Advocate : T.K. Prasad, for the Appellant; Govt. Pleader, for the Respondent

Judgement

Sarjoo Prasad, J.—This application under Article 226 of the Constitution is directed against the State of Bihar, the Bihar State Transport authority, & the Chota Nagpur Regional Transport Authority (hereinafter called Regional Authority) all of whom are the respondents to this application.

2. The material facts are that the petitioner is a firm running a joint family business in foodgrains sugar, cement, cloth etc. For the purpose of carrying on business in the various commodities the petitioner obtained from the Regional Authority permit No. 21 (1) for a private carrier BRM 1341. The permit was granted by the Regional Authority on 18-12-1944, and the nature of the goods to be carried as specified in the permit was "transporting goods for their business". The permit appears to have been last renewed on 9-2-1948, for a period of three years and was due to expire on 18-12-1950. In the meantime the Regional Authority on 19-7-1950, required certain information from the petitioner which the latter supplied on 24-7-1950. In September 1950, the petitioner applied to the Regional Authority for renewal of the permit on deposit of the necessary fees. The authority again required certain information from the petitioner regarding his business & the Income Tax paid by him, & by a letter D/- 25-9-1950, the

petitioner supplied the information required. But the Regional Authority on 30-9-1950, rejected the petitioner's application for renewal of his permit without assigning any reason whatsoever.

3. It appears from an extract copy of the proceedings of the meeting of the Regional Authority held on the date in question that the petitioner's application for renewal of the permit was considered along with a number of other applications, and the only order passed in respect of BR1VI 1341 was "Heard. Rejected". The petitioner then on 4-10-1950 filed a petition for a copy of the order passed on his application for renewal but he failed to obtain the same; nor did the Regional Authority communicate to him writing its reasons for refusing to renew his permit. The petitioner then sent a letter on 10-10-1950 to the Authority aforesaid stating the above facts to which the latter vouchsafed a reply. In this reply it was observed that the renewal of the permit was refused because the Regional Authority did not consider the grant of the permit "essential". It further directed the petitioner to surrender his permit, both Parts A and B, for immediate cancellation. The petitioner then presented an appeal to the State Transport Authority. This appeal was eventually heard on 9-1-1951 and the State Authority rejected the appeal ob serving as follows:

"Admitted and heard. The Board does not see any strong ground to interfere with the orders of the R. T. A. Rejected."

4. On the above facts the petitioner has moved for a writ of certiorari for quashing the above orders. The main contention of the petitioner is that the Regional Authority in refusing to renew the permit acted in excess of the jurisdiction conferred on it by the law. To be able to appreciate the point, it is necessary to refer to some of the relevant provisions of Motor Vehicles Act, 1939 (Act 4 of 1939). Section 52 of the Act provides for an application for a private carrier's permit and mentions the particulars which are to be specified in that application; namely, the type and carrying capacity of the vehicle; the nature of the goods which the applicant expects normally to carry in connection with his trade and business; the area for which the permit is required; and any other particular which may be prescribed. Section 53 lays down the procedure to be observed by the Regional Authority in considering an application for a private carrier's permit. The Regional Authority, in deciding whether to grant or refuse such a permit, should have regard to two factors: (1) the condition of the roads to be used by the vehicle or vehicles in respect of which the application is made, and (2) the fact that the vehicle or vehicles for which the permit is required will not be used except in connection with the business of the applicant. It is also open to the said Authority to impose conditions in granting the permit and specify those conditions in the permit itself in relation to the description of goods which may be carried, or the area in which the permit should operate and also in regard to some other matters. The contention is that the order in question does not state any reasons for refusing to grant the permit in question, and there is nothing to show that the factors which had to be considered by the Regional

Authority were not amply met by the petitioner. On the contrary, it asserts that it had given all the information required by the Regional Authority in order to satisfy the requirement of the law.

5. Section 57 describes the procedure in applying for and granting permits, and Sub-section (7) enjoins that when a Regional Transport Authority refuses an application for a permit of any kind, it shall give to the applicant in writing its reasons for the refusal. It is urged that in the order itself, no such reasons have been given, but when the petitioner wrote to the Regional Authority, it was informed that the Authority did not consider the grant of a permit "essential." According to the learned Counsel, there is nothing in the law to justify the refusal of a permit or the renewal thereof on this ground. This, the petitioner submits, was wholly without jurisdiction, inasmuch as the renewal of the permit could not be refused on a ground unwarranted by the law. Section 58 shows that the considerations which apply to an application for the grant or refusal of a permit also apply to the renewal thereof. This is clear from Section 58(2) wherein it is enacted that a permit may be renewed on an application made and disposed of as if it were an application for a permit. It is true that the order of the Regional Authority is quite unhelpful and does not convey any impression as to why the renewal of the permit was refused. The petitioner had been running the truck in connection with its business ever since 1944 for which the Regional Authority had issued a permit to him & it is somewhat incomprehensible that the renewal of the permit which should ordinarily have been granted in due course, as it had been done on earlier occasions, should have been declined on the present occasion. The statement in reply to the petitioner that the renewal of the permit was not considered "essential" does not advance the matter any further and throw any adequate light on the reasons for the refusal. Indeed Section 53 lays down only two main considerations which ought to weigh in the refusal or grant of a permit, namely, the condition of the road or roads and the fact that the vehicle would not be used save in connection with the applicant's business. I have serious misgivings about the correctness of the order passed by the Regional Transport Authority, and I wish the Authorities concerned had paid greater attention to the claim of the petitioner which "prima facie" appears to be just and well-founded.

6. The Act, however, provided a right of appeal against the order of the Regional Authority, and the petitioner had the advantages of preferring an appeal which was heard and dismissed by the State Transport Authority. The State Authority was of the view that it did not see any strong ground for interference. There is no complaint that the petitioner was not allowed to be heard in the matter. It is true that these Transport Authorities are bodies exercising quasi-judicial functions and have to act within the framework of the law in deciding matters which are placed before them and which "affect valuable rights of parties; but when the appellate body has dealt with the matter on merits, it is perhaps too late now for this Court to interfere by a writ of certiorari to quash the orders of those Authorities. There is nothing to show that the appellate authority acted without jurisdiction, or in violation of fundamental principles of justice. It may be

conceded that the Regional Transport Authority did not act in a legal or regular manner in deciding the question of renewal of the permit; but, as it has been repeatedly pointed out, there is a basic difference between want of jurisdiction and illegal and irregular exercise of jurisdiction. Where there is illegality or irregularity in the exercise of jurisdiction, the defect, if any, can be corrected according to the procedure established by the law by way of appeal or revision; and where the appellate Court has pronounced its decision against the petitioner, the matter having been finally decided, it should not be ordinarily reopened in a proceeding by way of a writ. This view is supported by various authoritative decisions; see, for instance, -- Janardan Reddy and Others Vs. The State of Hyderabad and Others, .

7. A case more in point is the decision of Chandrasekhara Aiyar J. in -- "Veerappa v. Raman and Raman Ltd. AIR 1952 SC 193. This was a case which arose out of a proceeding for grant of permit under the Motor Vehicles Act. The High Court under Article 226 of the Constitution interfered with the orders of the Transport Authorities, and the matter was taken up on appeal to the Supreme Court by special leave. It was held that the writs in Article 226 of the Constitution were obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals, or bodies or officers acted wholly without jurisdiction or in excess thereof or in violation of the principles of natural justice, and however extensive that jurisdiction may be, it was not wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned. It was also held that the Motor Vehicles Act was a statute which created new rights and liabilities and proscribed an elaborate procedure for their regulation; no one was entitled to a permit as of right even if he satisfied all the prescribed conditions, and the grant of a permit was entirely within the discretion of the Transport Authorities and naturally depended on various circumstances to be taken into account by them.

8. In view of what has been stated above, I cannot entertain the submission of the petitioner and do not find myself sufficiently persuaded to interfere with the decision of the Transport Authorities in the present case. I accordingly discharge the rule obtained by the petitioner. There will be, however, no order for costs of this application as "prima facie" the orders of the Transport Authorities leave much to be desired.

Ramaswami, J.

9. I agree.