
(1953) 11 GAU CK 0005
In the Gauhati High Court

Mohanlal Bakliwal

APPELLANT

Vs

Secretary Regional Transport Authority and Others

RESPONDENT

Date of Decision : 25-11-1953

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1954 Guw 155 : (1954) CriLJ 1180

Hon'ble Judges : Ram Labhaya, J;Deka, J

Bench : Division Bench

Judgement

Deka, J.—This Rule was obtained by Mohanlal Bakliwal by a petition under Article 226, Constitution of India for a writ of the nature of Mandamus or Certiorari restraining the opposite parties from giving effect to an order passed by opposite party No. 1, the Secy., Regional Transport Authority, Gauhati on 3-10-53 covered by his office Memo. No. 5265. The impugned order conveyed to the petitioner is reproduced below:

Taxi No. ASK-1456 is plying without valid Fitness Certificate for the last 3 (three) months and thus you have violated the Permit condition and, therefore, the offence is compounded at Rs. 50/- which should be deposited into the Treasury within 12-10-53, on receipt of which necessary arrangement will be made for the inspection of the vehicle; else, action will be taken to suspend the Permit without making further reference. In the meantime, the vehicle should be stopped from plying.

Sd/- Secretary, R.T.A., Gauhati Region, Gauhati.

2. The petitioner admits that he was the proprietor or owner of the Taxi bearing taxi cab No. ASK 1456 and that the fitness certificate obtained by him expired on 30-6-1953 and that it was not renewed till the date of the order that has been impugned nor had the vehicle been produced for inspection as was required under the Motor Vehicles Rules.

3. The contention of the learned Advocate for the petitioner is two-fold : (1) that

the Secretary, Regional Transport Authority had no authority under the Motor Vehicles Act or the Rules framed thereunder to pass any order for composition even if the licence for vehicle was liable to suspension or cancellation; (2) that in the circumstances of the case, the order passed by the Secretary, Regional Transport Authority, Gauhati was not justified under the Act nor supported by the Rules framed under the Motor Vehicles Act.

4. In support of Mr. Choudhuri's first contention, he relied on the decision of this Court reported in - "Labanya Chandra v. The State of Assam" AIR 1953 Assam 199 (A) and there it was held that the note added to Rule 84 (c) of the Assam Motor Vehicles Rules, 1940, whereby the Secretary was authorised to act on behalf of the Regional Transport Authority with respect to certain matters covered by Rule 84 was illegal and ultra vires because the Government had not the power to delegate such authority or functions to the Secretary of the Regional Transport nor was the earlier resolution passed by the Regional Transport Authority itself valid under the circumstances of the particular case.

Here also we must hold that strictly speaking Secretary had not the power to impose any fine for composition but Mr. Goswami, Junior Government Advocate appearing on behalf of the opposite parties Nos. 1 and 2 supports the order on the ground that those directions as laid down in the order impugned were subsequently endorsed by the Regional Transport Authority itself and that the Secretary passed no such order which may be said to be an executive order but he only directed the party to take such steps as were provided under the rules and for assistance of the petitioner himself.

5. In regard to the second contention of Mr. Chaudhuri that the circumstances would not justify such an order of imposing fine for composition, we are against him and we are clearly of opinion that the circumstances would justify an order of the sort that was passed as the petitioner had been at fault for not having the fitness certificate as was enjoined under the Motor Vehicles Rules and the Motor Vehicles Act itself. Section 59 (3), Motor Vehicles Act says that the following shall be conditions of every permit, and Clause (a) of that sub-section says that the vehicle or vehicles to which the permit relates are at all times to be so maintained as to comply with the requirements of Chapter 5 and the rules made thereunder. Section 70 which comes under Chapter 5 of the Act lays down that the State Government may make rules under this section governing any of the following matters either generally in respect of motor vehicles or trailers or in respect of motor vehicles of a particular class and with regard to, amongst other things, the periodical testing and inspection of vehicles by prescribed authorities.

Section 22, Motor Vehicles Act, speaks about the necessity of registration of motor vehicles more particularly the vehicles for carrying passengers or goods and Section 38 of the said Act says that subject to the provisions of Section 39, a transport vehicle shall not be deemed to be validly registered for the purposes of Section 22, unless it carries a certificate of fitness in Form H as set forth in the First Schedule, issued by the prescribed authority, to the effect that the vehicle

complies for the time being with all the requirements of Chapter 5 and the rules made thereunder. It is clear from a perusal of the relevant provisions of the statute that the certificate of fitness is essential for a taxi cab to ply and driving a taxi cab for the purpose of carrying passengers would be illegal in case it is not furnished with certificate of fitness as dealt with in Section 38. It is therefore clear that the petitioner violated the provisions, of the Motor Vehicles Act when he was plying the vehicle after expiry of the terms of the fitness certificate without obtaining a fresh one.

Rule 84 of the Assam Motor Vehicles Rules says that whenever a permit is liable to suspension or cancellation under Sub-rule (b) the prescribed authority granting the permit may allow the permit holder the option of retaining it on payment of such sum as the authority may think fit to fix or in other words, assessment of composition fee is allowed under this clause provided there be laches which comes under Rule 84 (b) and plying a taxi cab without a fitness certificate would be one of the laches as contemplated under the above clause. The assessment of composition fee therefore would not be illegal if it was assessed by a competent authority. The case as already mentioned reported in - Labanya Chandra and Another Vs. The State of Assam and Others, does not say that Rule 84 (c) is bad in law.

We have it from the affidavit in opposition filed on behalf of the opposite parties that subsequent to the order impugned before us, the Regional Transport Authority in its meeting of 29th and 30th of October 1953 approved of the action taken by the Secretary to the Regional Transport Authority with regard to the Taxi cab owned by the petitioner and after discussion had approved the compounding of the offences for plying vehicles without fitness certificate... and has further decided that if the fines imposed have not yet been paid, the parties concerned should be asked to show cause why their permits should not be cancelled. Mr. Chaudhuri for the petitioner argued that this order though passed subsequently by a competent authority cannot validate the order that was passed by the Secretary, opposite party No. 1 nor give retrospective effect to the resolution.

To us, it seems that this objection is technical. The power of issuing a high prerogative writ is enjoyed by the High Court only to be used in circumstances that necessitate issuing of such writs for meeting the ends of justice and where the objection is only technical and as a matter of fact, the petitioner was at fault, the High Court enjoys the discretion to refuse the writs under such circumstances and it is a fit case where the High Court does not feel justified to issue a writ of the nature as prayed for and quash the order of the Secretary, Regional Transport Authority even if it be treated as an order. The party might take an appeal as they say against the order of the Regional Transport Authority and this Court has no opinion to express with regard to the validity or otherwise thereof.

6. Another of Mr. Chaudhuri's objection was that assuming there was some violation of the rules or conditions of the permit for driving the taxi cab,-that

could only be treated or tried under Chapter 9, Motor Vehicles Act and there could be no imposition of fines as has been done in this case. So long as Rule 84 of the Motor Vehicles Rules is not shown to us to be ultra vires, we do not propose to say anything against the imposition of any such fine and more strictly when the petitioner has a right of appeal against that order, it will be in his interest that we should not express any opinion as to that. <

7. In consideration of the entire set of facts, even if we hold that no order could have been passed by the Secretary to the Regional Transport Authority, we accept Mr. Goswami's contention that he only suggested a remedy to the petitioner out of the impasse for not carrying out the provisions of the Act as he was enjoined to do under the rules framed under the Motor Vehicles Act, Even if the order was not strictly proper, since it has been rectified subsequently by the Regional Transport Authority itself, we see no reason to vacate the order or issue writs as prayed for.

8. The result is that we discharge the Rule but make no order as to costs.

Ram Labhaya, J.

9. I agree.