

(2021) 09 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 21017 Of 2019

Nirbhay Prashant

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 03-09-2021

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(8), 39, 40, 41, 42, 43, 44, 58, 60, 146, 192

Citation : (2021) 09 PAT CK 0016

Hon'ble Judges : Sanjay Karol, CJ; Partha Sarthy, J

Bench : Division Bench

Advocate : Nirbhay Prashant, Ajay Kr. Rastogi, Sunil Kumar Singh, Jaweb Gaffar Khan

Final Decision : Disposed Of

Judgement

Heard learned counsel for the petitioner and learned counsel for the respondents through video conferencing.

The petitioner has filed the instant application by way of a public interest litigation for the following reliefs:

"a. to issue writ of Mandamus or any other writ, rule or direction to the Respondent no.3 to ensure registration and insurance of vehicles about 925 of Patna Municipal Corporation (hereinafter referred to as 'Corporation') which are using for the purpose of collecting garbage from its jurisdiction and may also direct Respondent authorities to ensure the collection of revenue loss caused by non- registration and non-insurance of the vehicles of the Corporation.

b. And may give any other relief/reliefs for which the petitioner is entitled in law."

The case of the petitioner in brief is that he came across a news article in the hindi daily newspaper namely, 'Dainik Bhaskar' on 29.3.2019 and 22.7.2019 which contained a news that the Municipal Corporation, Patna was operating its vehicle on road for collecting garbage without registration and insurance.

Pursuant to the said news article, the petitioner filed a representation before the Municipal Commissioner and the Secretary, Transport Department, Government of Bihar bringing to his notice the violation of the Motor Vehicles Act by the Corporation. No action was taken by the authorities. Once again the petitioner came across another news article in the hindi daily 'Hindustan' on 14.9.2019 with respect to the same subject matter. On no action being taken by the authorities of the Corporation, the petitioner has filed the instant writ application for the reliefs as stated above.

Counter affidavits were filed in the case on behalf of the Principal Secretary, Urban Development and Housing Department, Government of Bihar, the Chief Executive Officer-cum-Municipal Commissioner, Patna Municipal Corporation (respondent no.3) and the District Transport Officer, Patna (respondent no.5). The District Transport Officer, Patna, in his counter affidavit has stated that the Department of Transport having received information from different sources that many Government vehicles were being plied on road without getting their registration, the Secretary, Transport Department, Bihar, Patna vide his letter dated 16.7.2019 (Annexure-A to the counter affidavit of respondent no.5) wrote to all the District Magistrates, Senior Superintendent of Police, Superintendent of Police, Municipal Commissioners and Executive Officers of the State of Bihar for registration of their official vehicles. It was further stated that a meeting was convened in the matter on 27.9.2019 wherein the Municipal Commissioners as also the District Transport Officers (hereinafter referred to as 'the DTO') were also requested to attend. The District Magistrates, the Municipal Commissioners and the DTOs were informed that no vehicle can be plied on any public road without getting its registration and its insurance, the same being in violation of section 39 of the Motor Vehicles Act (hereinafter referred to as the 'M.V. Act'). They were requested to submit a list of vehicles which were being plied in their respective regional offices and municipalities without getting registration and insurance. It is stated that the DTO, Patna wrote to the respondent no.3 that consequent to non-registration of the official vehicle of the Corporation as per the newspaper report, large number of vehicles of the Corporation were still running without registration. He was requested to get the registration of the vehicles done immediately. The Municipal Corporation made available the required papers/ information to the DTO, Patna on which the tax and registration fee were attached and information provided to the Corporation. In response thereto the Corporation deposited a sum of Rs. 2.01 crores (approx) in the office of the District Transport for registration of its official vehicles. It may be stated here itself that as informed by the learned Additional Advocate General appearing on behalf of the Transport Department, the registration of all but one vehicle of the Corporation has been done and it was further stated that the registration of the remaining one vehicle would also be completed in course of the day itself i.e 11.12.2020 itself.

Several counter affidavits were filed on behalf of the Chief Executive Officer-cum-Municipal Commissioner, Patna Municipal Corporation (respondent no.3). It was

stated therein that all vehicles under the Patna Municipal Corporation has been insured in the month of May-June, 2019 itself. It was further stated that so far as registration of the vehicles are concerned, the same were under process in the District Transport Office. In the different counter affidavits filed from time to time, the number of vehicles already registered and those which remained to be registered were provided.

In the counter affidavit filed on behalf of the Principal Secretary, Urban Development and Housing Department, Government of Bihar it was stated that a three Member Committee under the Chairmanship of the Joint Secretary-cum-Assistant Director, Urban Development and Housing Department, Government of Bihar was constituted on 27.12.2019 for holding an inquiry in the matter of negligence in performance of statutory duty by allowing the vehicle of the Corporation to be plied on public roads without registration. The Inquiry Committee issued notice to the Municipal Commissioner, Patna Municipal Corporation and on receipt of reply, the Committee submitted its report dated 3.1.2020 to the department. It has been stated that the said report is being examined by the Urban Development and Housing Department and action in terms of the report shall be taken in accordance with law.

It may be stated here that consolidating the amendments in law relating to motor vehicles which have taken place over the years, the Motor Vehicles Act, 1988 was enacted. Chapter IV of the M.V. Act deals with registration of Motor Vehicles. Sections 39 and 40 of the M.V. Act are being quoted hereinbelow for ready reference:

39. Necessity for registration. - No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner:

Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.

40. Registration, where to be made.- Subject to the provisions of section 42, section 43 and section 60, every owner of a motor vehicle shall cause the vehicle to be registered by in whose jurisdiction he has the residence or place of business where the vehicle is normally kept.

Further section 42 of the M.V. Act deals with special provision for registration of Motor Vehicle of diplomatic officers, etc. section 43 deals with temporary registration, section 58 with special provision in regard to transport vehicle and section 60 with registration of vehicle belonging to the Central Government, and the same is quoted hereinbelow:

60. Registration of vehicles belonging to the Central Government. - (1) Such authority as the Central Government may, by notification in the Official Gazette, specify, may register any motor vehicle which is the property or for the time being under the exclusive control of the Central Government and is used for Government purposes relating to the defence of the country and unconnected with any commercial enterprise and any vehicle so registered shall not, so long as it remains the property or under the exclusive control of the Central Government, require to be registered otherwise under this Act.

(2) The authority registering a vehicle under sub-section (1) shall assign a registration mark in accordance with the provisions contained in the rules made in this behalf by the Central Government and shall issue a certificate in respect of that vehicle to the effect that such vehicle complies for the time being with all the requirements of this Act and the rules made thereunder and that the vehicle has been registered under this section.

(3) A vehicle registered under this section shall carry the certificate issued under sub-section (2).

(4) If a vehicle registered under this section ceases to be the property or under the exclusive control of the Central Government, the provisions of sections 39 and 40 shall thereupon apply.

(5) The authority registering a vehicle under sub-section (1) shall furnish to any State Government all such information regarding the general nature, overall dimensions and axle weights of the vehicle as the State Government may at any time require.

Thus from the provision of the Motor Vehicles Act quoted hereinabove it would transpire that section 39 of the M.V. Act is very categorical when it states that no person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with the Chapter and the certificate of registration of the vehicle has not been suspended or cancel and the vehicle carries registration mark display in the prescribed manner. The Chapter mentioned in the section refers to Chapter IV which deals with registration of motor vehicle and as stated above, section 40 provides as to where the registration is to be made, section 41 as to how the registration is to be made, section 42 with respect to special provision for registration of motor vehicles of diplomatic officers and section 43 with respect to temporary registration which is to be valid for a period not exceeding one month. Section 44 provides that the vehicle has to be produced before the registering authority at the time of registration or renewal of the certificate of registration. It would be relevant to refer to section 192 of the M.V. Act which deals with the penal consequences of using a vehicle without registration. Section 192 of the M.V. Act is quoted hereinbelow:

192. Using vehicles without registration.-

(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of section 39 shall be punishable for the first offence with a fine which may extend to five thousand rupees but shall not be less than two thousand rupees for a second or subsequent offence with imprisonment which may extend to one year or with fine which may extend to ten thousand rupees but shall not be less than five thousand rupees or with both:

Provided that the Court may, for reasons to be recorded, impose a lesser punishment.

(2) Nothing in this section shall apply to the use of a motor vehicle in an emergency for the conveyance of persons suffering from sickness or injuries or for the transport of food or materials to relieve distress or of medical supplies for a like purpose:

Provided that the person using the vehicle reports about the same to the Regional Transport Authority within seven days from the date of such use.

(3) The Court to which an appeal lies from any conviction in respect of an offence of the nature specified in sub-section (1), may set aside or vary any order made by the Court below, notwithstanding that no appeal lies against the conviction in connection with which such order was made.

From perusal of section 192 of the M.V. Act it would transpire that the same categorically provides that whoever drives a motor vehicle or causes or allows the motor vehicle to be used in contravention of the provision of section 39, shall be punished with the fine as prescribed therein.

Thus it is clear from a reading of the relevant provision of the M.V. Act that any motor vehicle, as defined under section 2(8) of the M.V. Act, can be driven in any public place only after the same has been registered in accordance with Chapter IV of the M.V. Act and not otherwise. Exceptions to the same is provided in proviso to section 39 itself and for some of the vehicles of the Central Government under section 60 of the Act.

It goes without saying that once a statute provides for an act to be done in a particular manner, the same has to be done in that manner alone. No exception having been provided to any class of vehicle except to a motor vehicle in possession of a dealer and a vehicle belonging to the Central Government which is being used for Government purpose relating to defence of the country, no other category of vehicle can claim exemption from registration under the M.V. Act.

The next question which would arise is as to whether the statutes are binding against the State. Though in the case of Director of Rationing versus Corporation of Calcutta (AIR 1960 SC 1355) it was held that the Director of Rationing could not be prosecuted for failure to obtain a licence for storing rice etc., but this decision was overruled by the judgment in the case of State of West Bengal versus Corporation of Calcutta (AIR 1967 SC 997). Paragraph no.23 of the

judgment is quoted herein below for ready reference:

"23. The next question is whether this Court should adopt the rule of construction accepted by the Privy Council in interpreting statute vis-a-vis the Crown. There are many reasons why the said rule of construction is inconsistent with and incongruous in the present set-up. We have no Crown: the archaic rule based on the prerogative and perfection of the Crown has no relevance to a democratic republic; it is inconsistent with the rule of law based on the doctrine of equality. It introduces conflicts and discrimination. To illustrate: (1) State "A" made a general Act without expressly making the Act binding on the said State. In the same State, States "B", "C" and "D" and the Union have properties. Would the rule of construction apply only to the properties of State "A" or to the properties of all the States and the Union? (2) The Central Act operated in different States; the rule of construction was accepted in some States and rejected in other States. Is the Central Act to be construed in different States in different ways? (3) Acts in general terms might be made in different States—States where the said rule of construction was accepted and the States where it was not so accepted. Should different States construe the general Acts in different ways, some applying the presumption and some ignoring it? There is, therefore, no justification for this Court to accept the English canon of construction, for it brings about diverse results and conflicting decisions. On the other hand, the normal construction, namely, that the general Act applies to citizens as well as to State unless it expressly or by necessary implication exempts the State from its operation, steers clear of all the said anomalies. It prima facie applies to all States and subjects alike, a construction consistent with the philosophy of equality enshrined in our Constitution. This natural approach avoids the archaic rule and moves with the modern trends. This will not cause any hardship to the State. The State can make an Act, if it chooses, providing for its exemption from its operation. Though the State is not expressly exempted from the operation of an Act, under certain circumstances such an exemption may necessarily be implied. Such an Act, provided it does not infringe fundamental rights, will give the necessary relief to the State. We, therefore, hold that the said canon of construction was not 'the law in force' within the meaning of Art. 372 of the Constitution and that in any event having regard to the foregoing reasons the said canon of construction should not be applied for construing statutes in India. In this view it is not necessary to express our opinion on the question whether the aforesaid rule of construction would not apply to the trade activities of the State, even if it applied to its sovereign activities."

Thereafter, the Hon'ble Apex Court in the case of Union of India versus Jubbi (AIR 1968 SC 360) held as follows:

"4.....

.....The position now thereof is that a statute applies to State as much it does to a citizen unless it expressly or by necessary implication

exempts the State from its operation.

5.....

.....Broadly stated, if the legislature intended to exclude the applicability of the Act to the State it could have easily stated in Section 11 itself or by a separate provision that the Act is not to be applied to the Union or to lands held by it. In the absence of such a provision, in a constitutional set up as the one we have in this country, and of which the overriding basis is the broad concept of equality, free from any arbitrary discrimination, the presumption would be that a law of which the avowed object is to free the tenant of landlordism and to ensure to him security of tenure would bind all landlords irrespective of whether such a landlord is an ordinary individual or the Union."

So far as the Motor vehicle Act is concerned, no provision thereof exempts the State by any express provision or by necessary implication from registration of the vehicles of the State as mentioned in section 60 quoted above. It is not even the case of the respondent-State of Bihar that the Vehicles of the Corporation are in any manner exempt from registration. So far as the instant case is concerned, it is not the case of the respondent- State of Bihar that the vehicles of the Corporation are in any manner exempt from registration.

That being the position, it goes without saying that henceforth no vehicle of the State Government or its authorities would be plied unless and until the same are duly registered under the M.V. Act. As stated by the learned Additional Advocate General, all the vehicles of the Corporation having been registered no further direction is required to be given in the instant application. However, as directed in the earlier order in the instant case the Principal Secretary, Urban Development Department, Government of Bihar would ensure that the action initiated against the erring officers/officials for being negligent in performing of their statutory duty and allowing approximately 925 vehicles to be plied for various purposes on the public roads within the municipal limits of Patna without getting the vehicles registered under the M.V. Act shall be taken to its logical conclusion within a period of 4 months.

The application stands disposed of.

(Partha Sarthy, J)

(Per: HONOURABLE THE CHIEF JUSTICE)

With pleasure, I concur with the scholarly opinion rendered by my learned Brother. The issue of public importance needs highlighting with additional reasons.

It is difficult to fathom that Patna Municipal Corporation, a municipal body originally established in 1922, was oblivious of the factum of the requirement of getting 925 vehicles (Approx.) registered under the provisions of the Motor Vehicles Act, 1988 (referred to as the Act). Such vehicles were allowed to be

plied in public places for a considerable period, thus potentially jeopardizing public and put interest, endangering human life and property.

It is only under the monitoring of this Court from time to time and more particularly interim orders dated 02.12.2019; 08.01.2020; 13.01.2020; 31.01.2020 that the Corporation took steps for complying with the mandate of law and getting the vehicles registered under the Act.

My learned Brother has elaborately dealt with the statutory mandate of getting the motor vehicles registered (Section 39) unless so exempted under the law (Section 60).

Also, Section 146 of the Act mandates all motor vehicles to be plied with a cover of policy insurance, unless under sub-sections (2) and (3) thereof exempted, which could be done only after:-(a) fund is established and maintained by the authority as per the rules for meeting the liability, if any, arising out of use of the vehicle; and (b) such exemption is granted by an appropriate authority. All these stands are not complied with. The Motor Vehicles Act being a welfare legislation, was enacted to ensure road safety, compensation for victims of road accidents, third party insurance and health and safety of vehicles. Registration of vehicles is an essential step in achieving this objective.

The object and purpose of registration being (a) ensuring the persons' ownership of the vehicle and its authority to ply the same; (b) Helps in identification of the vehicle for preparation of statistics and identification of persons involved in accidents; (c) All registered vehicles are coupled with insurance and certificate to establish the fitness of the vehicle, that it meets the permissible limits of pollution etc. A fitness certificate is also essential concerning the lives of pedestrians, persons travelling in other vehicles and properties of persons along the road.

Registration is also followed by relevant permits for vehicles intended to be used as 'transport vehicles.'

The Apex Court in National Insurance Co. Ltd. v. Swaran Singh (2004) 3 SCC 297, Lakshmi Chand v. Reliance General Insurance (2016) 3 SCC 100, held that - (a) The prescription of Certificate of Registration, the existence of valid Permit and availability of Fitness Certificate, throughout the use, are closely interlinked in the case of a vehicle, and one requirement cannot be segregated from the other. (b) Any breach in the requirements shall be considered a fundamental breach and not a technical breach that can be remedied later. (c) The safety of passengers and the general public was of serious concern and consideration for the law makers.

The Hon'ble Apex Court, way back in 2014, in Narinder Singh v. New India Assurance Co. Ltd., (2014) 9 SCC 324, had elaborately discussed the need to register vehicles under the Act. Despite the same, the respondent-Corporation, with audacity, took a stand of there being no requirement for the vehicles to be

registered, purportedly under a misconception that they are above the law. Realizing its erroneous stand taken vide affidavit dated 27.11.2019 the error was corrected informing the Court of such fact vide supplementary affidavits, more so specifically dated 08.01.2020. In this endeavour, role played by Shri Ajay Kumar Rastogi, learned Additional Advocate General- 10 (since designated as Senior Advocate) is highly appreciable.

The concept of the rule of law, simply put, is that none is above the law irrespective of its rank, position, status and composition. It inheres to the three core principles of (1) supremacy of law, (2) Equality before the law and (3) Predominance of legal spirit.

The concept of the rule of law, as enunciated by Hon'ble the Apex Court in Chief Settlement Commissioner, Punjab v. Om Prakash & Ors., AIR 1969 SC 33, equally binding the State and its instrumentalities are as under:

".....With all its defects delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations." In our constitutional system, the central and most characteristic feature is the concept of the rule of law which means, in the present context, the authority of the law courts to test all administrative action by the standard of legality. The administrative or executive action that does not meet the standard will be set aside if the aggrieved person brings the appropriate action in the competent court. The rule of law rejects the conception of the Dual State [(This term is derived from Frankel, The Dual State (1941)] in which governmental action is placed in a privileged position of immunity from control by law. Such a notion is foreign to our basic constitutional concept."

Further in Rajeev Suri v. Delhi Development Authority and Ors. 2021 SCC Online SC 7, Hon'ble the Apex Court held that:

"Rule of Law inter alia posits four universal tenets. It is a system of laws, institutions, norms and community commitment that envisages-Accountability of Government and private actors alike under the law; The laws must be just, clear, publicized and stable and applied evenly, protect fundamental rights and human rights; Open Government-meaning thereby the processes by which the laws are enacted, administered and enforced are accessible, fair and efficient; and Accessible justice-to include timely delivery of justice by competent, ethical, and independent representations and neutrals who are accessible, have adequate resources and mirror the traits of the communities they serve."

The direction for taking appropriate action against the erring officers/officials, negligent in performing of their statutory duty may not be construed to be only of civil nature, but also in relation to the one envisaged under Section 192 of the Act, of which my learned Brother has taken note of.

The directions are crystallized as under:-

(i) No vehicle of the Municipal Corporation, Patna; the State Government or its authorities would be plied in derogation of the provisions of the Motor Vehicles Act, 1988.

(ii) The Principal Secretary, Urban Development Department, Government of Bihar would have an enquiry conducted and take appropriate action against the erring officers/officials who were negligent in complying with the statutory provisions by allowing the vehicles to be plied for various purposes in public roads.

(iii) The disciplinary proceedings must be completed within four months from today.

(iv) Simultaneously, the proceedings under Section 192 of the Act would be initiated against the erring officers/officials within a period of four months from today.

(v) The petition needs to be allowed with cost payable by the Patna Municipal Corporation. Fine quantified at Rs.5,00,000/- (Rupees Five Lacs) to be deposited in the fund created by the State Government under Section 146 of the Act. Liberty reserved to the Corporation to recover the same from the erring officers/officials.

(vi) We place on record with appreciation the efforts put in by Shri Ajay Kumar Rastogi, learned Senior Advocate in convincing his client making mends and assisting the Court in a fair manner. Equally, we place on record with appreciation the assistance rendered by Sri Nirbhay Prashant, petitioner in person, who is an advocate of this Court.

The Writ petition stands disposed of in the above terms.

Interlocutory Application, if any, shall stand disposed of.