(2000) 05 PAT CK 0042

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 97 of 2000 (R)

Rajendra Sharma and Others APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 17-05-2000

Acts Referred:
Motor Vehicles Act, 1988 — Section 86(5)

Citation : AIR 2001 Patna 92

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : A.K. Sinha and Nilesh Kumar, for the Appellant; A. Sahay, Government Advocate and Ritu Kumar, JC to GA, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioners have prayed for issuance of appropriate writ in the nature of certiorari for quashing the impugned order dated 14-8-99 issued by the respondent No. 2, the Divisional Commissioner, South Chhotanagpur Division, Ranchi by which a direction has been issued to the authority concerned to ask the vehicle owners to deposit Rupees 5,000/- as a cost before issuing a fresh permit or for renewal of permit. The said order has been annexed as Annexure-3 to the writ application.

2. The petitioners are the vehicle owners and transporters in the district of Jamshedpur. It is stated that they always deposited all the taxes, challans and other requisites through one Gopal Bose (Agent) and the petitioners used to give money to said Gopal Bose to deposit the challans in lieu of pay-in-slip for the issuance and/or renewal of permit with regard to their vehicles. It was detected that some bungling have been done by said Gopal Bose in depositing the challans. Not only with regard to vehicles of the petitioners but it was found that about 125 pay-in-slips were fake and fabricated. Accordingly an enquiry was conducted and FIR and complaint have been lodged by several transporters against said Gopal Bose. However, when the petitioner approached the

respondent-authority for renewal of permit then they came to know that their permits cannot be renewed without payment of cost of Rs. 5,000/-. The contention of the petitioners is that they have deposited all the required amount according to the rule but in spite of that permits have not been issued by the respondents,

3. A counter-affidavit has been filed by the respondents in which it is stated, inter alia, that when the respondents detected that several vehicle owners were plying their vehicles on fake and forge road permit, an enquiry was made by the Regional Transport Authority and it was found that such type of permit had been taken by several transport vehicle owners. Accordingly the show cause notices were issued to such vehicle owners to submit their explanation as to why necessary legal step should not be taken against them for committing forgery and they were also directed to deposit the amount involved in the fake pay-in-slip. A further decision was also taken that permit may not be issued to such vehicle owners unless they deposit the required fee afresh by fresh pay-in-slip in lieu of fake and forge pay-in-slip deposited by them earlier. It is further stated that the Secretary, Regional Transport Authority, Ranchi had taken the steps to stop the mala fide intention of the transport owners, who succeeded to get the permit on depositing fake and forge pay-in-slip and the Manager, State Bank of India was directed to follow the guidelines regarding acceptance of pay-in-slip and to send the statements of deposits. The Chairman then requested the Secretary-cum-State Transport Commissioner, Bihar, Patna to interfere into the whole matter by a Committee headed by Sr. Officers of the Transport Department and also to audit the working of Regional Transport offices by the audit party of Finance Department. It is further stated in the counter-affidavit that the petitioners themselves have accepted the fact that the requisite fees for the issuance of permit for the vehicle of the petitioners were deposited by the agent and that is why the petitioners agreed in writing to pay cost/fine of Rs, 5,000/- in terms of the impugned order passed by the respondent-authority.

4. Mr. A.K. Sinha, learned Sr. Counsel appearing for the petitioners, assailed the condition put in the impugned order by respondents as being illegal and wholly without jurisdiction. Learned counsel firstly submitted that the respondent No. 2 has no jurisdiction to direct the vehicle owners to deposit Rs. 5,000/- as cost and the said direction is contrary to the provisions of Motor Vehicles Act. Learned counsel submitted that there is no provision either in the Motor Vehicles Act or the Rules or even under the Bihar Motor Vehicles Taxation Rules to force the vehicle owners to deposit Rs. 5,000/- as cost. Learned counsel submitted that for the bungling committed by the agent namely, Gopal Bose. a criminal case has already been instituted against him. Learned counsel referred various provisions of the Motor Vehicles Act particularly Sections 81 and 86 and submitted that when the petitioners fulfil all the requisite conditions then the authorities have no option but to grant or renew permit of the vehicles.

5. On the other hand, learned Government Advocate submitted that the

impugned order has been passed in exercise of power conferred by Section 86(5) of the Motor Vehicles Act. Learned counsel submitted that the impugned order as contained in Annexure 3 to the writ application is not a general order rather this order applies only against those persons who submitted forged and fake challans and pay-in-slip. Learned counsel further submitted that all the transporters have agreed in writing to pay the cost so imposed by the respondent No. 2. A copy of the said agreement/undertaking given by the petitioners have been annexed as Annexure B to the counter-affidavit.

6. After having heard the learned counsels for the parties, the only question falls for consideration is as to whether respondent No. 2 has jurisdiction to pass the impugned order imposing cost as a condition for grant of permit. For better appreciation the impugned order passed by the respondent No. 2 is reproduced hereinbelow:--

"Gyapank 217- C.C.

Dinank 14-8-99

Sachiv

Kshetriy Pariwahan Pradhikar Jali challan pay slip ke chalte jin gariyon ke permit nirgat karne navinikaran karne ka mamla vicharadhin hai unme kripya nimn prakar karwayi karen:--

(1) Jail challan/pay slip ki rashi jama kara li jaye.

(2) Bus, truck ewam mini bus ke liye 5,000/-rupye cost jama karalijaye, Auto ke liye yeh rashi 1,000/- Rupye hogi.

(3) Cost jama karne ke liye wahan malik taiyar hein aur sahmati paksh likhit de.

Uparyukt warnit karwayian puri hone ke baad permit nawikaran kiye ja sakenge."

7. Before coming to the question it would be worth to refer the relevant provisions for grant of permit as contained in Motor Vehicles Act, 1988. Chapter V of the said Act lays down the provisions with regard to control of transport vehicles. Section 66 provides that no owner of the motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place except in accordance with the condition of permit granted by the Regional or Slate Transport Authority. Section 67 deals with the power to the State Government to control road transport. Section 68 prescribes the details of the Transport Authorities. Section 69 lays down general provisions as to the application for permits. Sections 70 to 72 deals with the procedure for filing application in the stage carriage permit, Similarly Sections 73 to 79 deal with the grant of contract-carriage permit. Section 80 lays down the procedure for grant of permit. Section 81 prescribes the duration and renewal of temporary permit issued u/s 87 or special permit issued u/s 88 of the Act. For better appreciation Section 81 reads as under :--

"81. Duration and renewal of permits.--(1) A permit other than a temporary permit issued u/s 87 or a special permit issued under Sub-section (8) of Section 88 shall be effective from the date of issuance or renewal thereof for a period of five years.

Provided that where the permit is counter-signed under Sub-section (1) of Section 88, such counter-signature shall remain effective without renewal for such period so as to synchronise with the validity of the primary permit.

(2) A permit may be renewed on an application made not less than fifteen days before the date of expiry.

(3) Notwithstanding anything contained in Sub-section (2), the Regional Transport Authority or the State Transport Authority, as the case may be, may entertain an application for the renewal of a permit after the last date specified in that sub-section if it is satisfied that the applicant was prevented by good and sufficient cause from making an application within the time specified.

(4) The Regional Transport Authority or the State Transport Authority, as the case may be, may reject an application for the renewal of a permit on one or more of the following grounds, namely:

(a) the financial condition of the applicant as evidenced by insolvency, or decrees for payment of debts remaining unsatisfied for a period of thirty days, prior to the date of consideration of the application;

(b) the applicant had been punished twice or more for any of the following offences within twelve months reckoned from fifteen days prior to the date of consideration of the application committed as a result of the operation of a stage-carriage service by the applicant, namely:

(i) plying any vehicle-

(1) without payment of tax due on such vehicle.

(2) without payment of tax during the grace period allowed for payment of such tax and then stop the plying of such vehicle;

(3) on any unauthorised route;

(ii) making unauthorised trips: Provided that in computing the number of punishment for the purpose of Clause (b), any punishment stayed by the order of an appellate authority shall not be taken into account:

Provided further that no application under this sub-section shall be rejected unless an opportunity of being heard is given to the applicant.

(5) Where a permit has been renewed under this section after the expiry of the period thereof, such renewal shall have effect from the date of such expiry irrespective of whether or not a temporary permit has been granted under Clause (d) of Section 87, and where a temporary permit has been granted, the fee paid

in respect of such temporary permit shall be refunded."

8. Section 82 lays down the provisions with regard to transfer of permit. Section 84 prescribes the general conditions attaching to all the permits. Section 85 provides that every permit shall be issued in a prescribed form containing all the necessary particulars of the permit and the condition attached thereto. Section 86 prescribes the procedure for cancellation and suspension of permit. The provision of Section 86, which is relevant for the instant case, is reproduced hereinbelow :--

"86. Cancellation and suspension of permits.-

(1) TheTransport Authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit.-

(a) on the breach of any condition specified in Section 84 or of any condition contained in the permit, or

(b) If the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorised by the permit, or

(c) if the holder of the permit ceases to own the vehicle covered by the permit, or

(d) if the holder of the permit has obtained the permit by fraud or misrepresentation, or

(e) if the holder of the goods carriage permit, fails without reasonable cause, to use the vehicle for the purposes for which the permit was granted, or

(f) If the holder of the permit acquires the citizenship of any foreign country:

Provided that no permit shall be suspended or cancelled unless an opportunity has been given to the holder of the permit to furnish his explanation.

(2) The Transport Authority may exercise the powers conferred on it under Sub-section (1) in relation to a permit granted by any authority or person to whom power in this behalf has been delegated under Sub-section (5) of Section 68 as if the said permit was a permit granted by the Transport Authority.

(3) Where a Transport Authority cancels or suspends a permit, it shall give to the holder in writing its reasons for the action taken.

(4) The powers exercisable under subsection (1) (other than the power to cancel a permit) by the Transport Authority which granted the permit may be exercised by any authority or person to whom such powers have been delegated under Sub-section (5) of Section 68.

(5) Where a permit is liable to be cancelled or suspended under Clause (a) or Clause (b) or Clause (e) of Sub-section (1) and the Transport Authority is of opinion that having regard to the circumstances of the case, it would not be necessary or expedient so to cancel or suspend the permit if the holder of the

permit agrees to pay a certain sum of money, then notwithstanding anything contained in Subsection (1), the Transport Authority may, instead of cancelling or suspending the permit, as the case may be, recover from the holder of the permit the sum of money agreed upon.

(6) The power exercisable by the Transport Authority under Sub-section (5) may, where an appeal has been preferred u/s 89, be exercised also by the appellate authority.

(7) in relation to a permit referred to in Sub-section (9) of Section 88, the powers exercisable under Sub-section (1) (other than the power to cancel a permit) by the Transport Authority which granted the permit, may be exercised by any Transport Authority and any authority or persons to whom power in this behalf has been delegated under Subsection (5) of Section 68, as if the said permit was a permit granted by any such authority or persons."

9. in the facts of the case and in the light of the provisions of the Act referred to hereinabove, now I shall answer the question formulated hereinabove. As noticed above, the petitioners admitted that the petitioners along with several other transport owners of Jamshedpur used to deposit the taxes and challans through one Gopal Bose, their agent. They have also admitted that said agent Gopal Bose committed bungling inasmuch as he was depositing fake and forged challan and pay-in-slip for the issuance/renewal of the permit. It is, therefore, clear that genuine pay-in-slip and challans were not obtained from the Bank after depositing the taxes and fees but he used to forge those documents. The petitioners further admitted that this forgery was done not only with the petitioners but also with other 125 transport owners, who have lodged FIR against the said agent. The undisputed fact, therefore, is that permits were obtained by the petitioners through their agent on the basis of forge and fabricated pay-in-slip and challans.

10. Section 86 of the Act, quoted hereinabove, lays down the provision for cancellation and suspension of permit. It provides that the transport authority may cancel the permit or suspend it if it is found that the holder of the permit obtained the permit by fraud or misrepresentation. Subsection (5) of Section 86 provides that where a permit is liable to be cancelled on the grounds mentioned in Sub-section (1) and the Transport Authority is of the opinion that having regard to the circumstances of the case, it would not be necessary or expedient to cancel or suspend the permit if the holder of the permit agrees to pay a certain sum of money then Transport Authority, instead of cancelling or suspending the permit, recover the said sum of money agreed upon by the holder of the permit,

11. in the instant case, as noticed above, when this fraud was detected by the Transport Authority and a condition was imposed then the petitioners gave in writing to the Secretary, South Chhotanagpur Regional Transport Authority that they have deposited all the taxes and fees along with a sum of Rs. 5,000/- by

way of penalty and requested the authority to issue permit. Copies of those letters showing deposit of money have been annexed as Annexure-B series to the counter-affidavit. It is, therefore, not a case where the petitioners have been forced to deposit the cost as a condition for issuance of permit.

12. Be that as it may, Sub-section (5) of Section 86 empowers the Transport Authority to recover certain amount from the holders of the permit instead of cancelling or suspending a permit, if it is found that the permit was obtained by the holders of the permit by fraud and misrepresentation. As stated above, it is an admitted case of fraud and misrepresentation committed by the petitioners through their agent inasmuch as they used to obtain permit by depositing forge and fake pay-in-slip and challans. in that view of the matter, I am of the definite opinion that it is well within the jurisdiction of the Transport Authority to impose such cost in exercise of power under Sub-section (5) of Section 86 of the Act. There is no illegality in the impugned order and the direction issued by the Transport Authority directing the transport owners, who have obtained permit by fraud and misrepresentation, to deposit the aforesaid amount as a condition for issuance of permit.

13. For the reason aforesaid, 1 find no merit in this writ application, which is accordingly dismissed.

