
(1967) 03 PAT CK 0006
In the Patna High Court
Case No : C.W.J.C. No. 459 of 1966

Ram Autar Lal Jain

APPELLANT

Vs

Sardar Sohan Singh and Others

RESPONDENT

Date of Decision : 24-03-1967

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1968) 16 BLJR 630

Hon'ble Judges : R.L. Narasimham, C.J;U.N. Sinha, J

Bench : Division Bench

Judgement

U.N. Sinha, J.—This application under Articles 226 and 227 of the Constitution of India has been filed by a firm called Messrs. Ram Autar Lal Jain and the prayer is to the effect that the orders contained in Annexure D, passed by the Appeal Board under the Motor Vehicles Act, 1939 (Central Act No. 4 of 1939), dated the 27th November, 1965, and in Annexure E passed by the Minister of Transport, dated the 21st June, 1966 may be quashed.

2. The facts necessary for the decision of the case are as follows: Sri Ram Autar Lal Jain had filed an application u/s 46 of the Act for grant of a stage carriage permit for Daltonganj Mahuadanr Road, but before this application could be disposed of, he died on the 1st June, 1964. After the death of Sri Ram Autar Lal Jain, his son Kamal Kumar Jain made an application to the Chotanagpur Regional Transport Authority, Ranchi, which was the authority concerned in this case, stating that the application filed by his deceased father may be treated to be one on behalf of himself and on behalf of his two minor younger brothers, Raj Kumar Jain and Bijoy Kumar Jain, who were under his guardianship. It was stated in this application that Sri Ram Autar Lal Jain had died leaving his sons as heirs. Thereafter, on the 4th August, 1964, another application was filed before the same authority by Sri Kamal Kumar Jain, praying that the application filed by his deceased father may be treated as the application of a firm called Messrs. Ram Autar Lal Jain. It was stated in this application that the three sons of Sri Ram

Autar Lal Jain had succeeded their father, and it was decided that the business should be carried on in partnership between Sri Kamal Kumar Jain and the widow of Sri Ram Autar Lal Jain named Srimati Sarbati Devi, under the name and style of Messrs. Ram Autar Lal Jain. It was further stated that the two minor sons of Sri Ram Autar Lal Jain had been admitted to the benefit of the partnership. On receipt of this application, the matter was notified in the Bihar Gazette on the 9th September, 1964 for the purpose of inviting objections, if any. No objections were filed and on the 24th July, 1965 the Transport Authority passed an order to the effect that a permit should be granted to Messrs. Ram Autar Lal Jain. It may be mentioned that the application of opposite party Nos. 1 and 2 were rejected. Appeals were carried to the Appeal Board. By the impugned order incorporated in Annexure D it was held that as the firm Messrs. Ram Autar Lal Jain was not the legal representative of the deceased applicant, Sri Ram Autar Lal Jain, the original application filed by Sri Ram Autar Lal Jain could not have been allowed in favour of the firm called Messrs. Ram Autar Lal Jain. Thus the order of the Regional Transport Authority in favour of the firm was set aside and permit was ordered to be granted to opposite party No. 1 of this Court. This order of the Appeal Board has been affirmed by the Minister concerned.

3. The substantial contention raised by learned Counsel for the petitioner firm is that the Appeal Board erred in holding that the petitioner firm could not be equated with the legal representatives of deceased Sri Ram Autar Lal Jain and that the firm was fully competent to continue the proceeding which had commenced on the original application filed u/s 46 of the Act by Sri Ram Autar Lal Jain. Reliance is placed on the case of *Meenakshi v. Presiding Officer Mysore State Transport Appellate Tribunal* and *Ors.* AIR 1963 Mys 278, reported in learned Counsel for opposite party No. 1 has, on the other hand, relied upon the case of *Ratan Lal Gupta Vs. State Transport Authority and Another*, reported in arguing that no right survived after the death of the original applicant, beyond the time within which applications for grant of stage carriage permits could be made (the last date for making such application was the 7th October, 1963). Having considered the authorities relied upon by learned Counsel for the parties. I am of the opinion, that, even if the decision of the Mysore High Court is taken to be correct, the order of the Appeal Board is not wrong, on the facts of the instant case. I have referred to the applications filed by Sri Kamal Kumar Jain, which have been placed before this Court at the time of the hearing of the case and it is clear from these two applications, that the first one filed in June, 1964 could have been termed as an application for substituting the legal representatives of the deceased Sri Ram Autar Lal Jain. But, the second application dated the 4th August, 1964 was clearly not an application filed on behalf of the legal representatives of the deceased. That application, having stated that the three sons of Sri Ram Autar Lal Jain had succeeded him, stated as follows:

Now it has been decided to carry on the inherited business in partnership between myself and Smt. Sarbati Devi (W/o late Babu Ramautar Lal Jain) under

the name and style of M/s. Ramautar Lal Jain. The other two minor sons of late Babu Ramautar Lal Jain have been admitted to the benefit of the partnership.

On these facts it is not possible to hold that the Appeal Board was in error in holding that the firm was a different entity from the heirs of Sri Ram Autar Lal Jain. For these reasons this Court cannot hold in favour of the petitioner and quash the order of the Appeal Board dated the 27th November, 1965.

4. In connection with the order of the Minister of Transport, it has been urged that the original application filed by Sri Ram Autar Lal Jain could not have stated, because the Motor Vehicles Act does not contain any provision under which it could abate. Thus it is argued that the conclusion of the Minister to the effect that on the death of the original applicant his successors could not claim any right was erroneous. According to the learned Counsel for the petitioner, there was a bar on Sri Ram Autar Lal Jain in plying a carriage unless he had got a permit under the Act, and when he had applied for a permit, his heirs could continue with the application as of right. On this point, learned Counsel for opposite party No. 1 has argued that the original applicant in this case had no right at all and he could only hope for a permit (reference has been made to the case of Director of Public Works and Anr. v. Ho po Sang and Ors. 1961 A.C. 901, and the order of the Minister upholding the order of the Appeal Board is correct. But, this aspect of the contention need not be dealt with in any further particular, as the Minister had agreed with the Appeal Board's order and I have indicated above that the reasons given by the Appeal Board cannot be said to be wrong at all. It has also been argued that as no objections were raised after the notification was published in the Gazette on the 9th September, 1964 (Annexure B), the objection that the firm could not represent the original applicant could not have been raised any longer. I do not think that the contention is valid. There is no indication in the Act that the appellate authority a power can be fettered by the fact that no objection of the kind under consideration had been taken before the Transport Authority had granted a permit.

6. A preliminary objection was taken on behalf of opposite party No. 1 to the effect that a firm cannot move this Court by an application under Article 226 of the Constitution and reliance was placed on the case of Roller Flour Mills, petitioner v. Income Tax Officer, "A" Ward, Patiala, Respondent AIR 1953 Pep 88. As the application fails on merit, this point need not be decided in this case.

7. Opposite party No. 2 has also appeared in this Court through Counsel, but if the contentions raised on behalf of the petitioner fail, no relief can accrue in favour of opposite party No. 2. The application fails and it is dismissed with cost, assessed at Rs. 100 payable to opposite party No. 1 only.

R.L. Narasimham, C.J.

8. I agree.