

(1956) 07 PAT CK 0005
In the Patna High Court
Case No : Mis Judl Case No. 225 of 1956

Sarju Prasad Singh

APPELLANT

Vs

South Bihar Regional Transport Authority and Others

RESPONDENT

Date of Decision : 16-07-1956

Acts Referred:

Evidence Act, 1872 — Section 115

Motor Vehicles Act, 1939 — Section 44, 44(2), 57(3)

Citation : AIR 1957 Patna 732

Hon'ble Judges : Ramaswami, C.J.; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : B.C. Ghose and Ramji Sharan, for the Appellant; Govt. Advocate and Purnendu Narayan, for the Respondent

Final Decision : Dismissed

Judgement

Raj Kishore Prasad, J.—In this case, the High Court, on the application of the petitioner under Article 226 of the Constitution of India, has issued a rule on the opposite party to show cause why an appropriate writ should not be issued quashing the orders of the South Bihar Regional Transport Authority passed on the 11th October, 1955, and, on the 12th November, 1955, refusing to renew the permit of the petitioner to ply stage carriage services over the routes specified, in his affidavit. The Government Advocate has shown cause on behalf of the opposite party, but has not filed any counter-affidavit in the case.

2. The facts leading up to the present application may shortly be stated thus:

3. The petitioner had been carrying on the business of stage carriage services in the district of Gaya for a very long time. He had been granted stage carriage permits in the past, and, these permits had been renewed from time to time by the Regional Transport Authority. The petitioner's last permit was to expire on the 31st December, 1953, and, therefore, he made an application, u/s 58(2) of the Motor Vehicles Act, 1939 (Act IV of 1939), hereinafter mentioned as "the Act", for renewal of his permit.

On this application, a notice, as required by Section 57(3) of the Act, was published in the Bihar Gazette of November 18, 1953, inviting objection, if any, to the applications of the petitioner, and, others, for renewal of the stage carriage permits, within one month from the date of publication of the notice in the Bihar Gazette, which were to be considered at the next meeting of the South Bihar Regional Authority, Patna, to be held after thirty days. No objection or representation was filed either by the Rajya Transport or any person within the specified time.

4. In accordance with the Government scheme of nationalisation of road transport, the State Government, which had started operating its buses in the name of Rajya Transport from the 26th January, 1953, in a portion of the district of Gaya on certain routes, also made an application for stage carriage permits over the routes for which the petitioner had also applied. On the application of the Rajya Transport, Government of Bihar, Patna, a notice was published in the Bihar Gazette of November 4, 1953, inviting objections and representations, if any, u/s 57(3) of the Act, within thirty days from the date of publication of the notification, as the applications for grant of permits in respect of service of stage carriages on the routes mentioned in the notification were to be considered at a meeting of the Bihar Regional Authority, Patna to be held after thirty days from the date of the publication of this notification.

5. On the 23rd February, 1954, the application of the petitioner, for renewal of his permit, was rejected, on the ground that Government proposed to run their own services in these areas, by the Regional Transport Authority, herein after mentioned as "R. T. A." but it directed that temporary permits for these routes may be issued to the applicant till the nationalisation of the service.

6. Against the above order, the petitioner, along with several other persons, whose applications also for renewal of permits had. been rejected on similar grounds, moved this Court, under Article 226 of the Constitution of India, for quashing those orders. These miscellaneous judicial cases were considered by a Division Bench of this Court presided over by Das, C. J., and Imam, J., and, their Lordships on the 26th April, 1955, allowed the applications of the petitioner and others, and quashed the orders (original or appellate) of the Transport Authorities, by which the application of the petitioner for renewal of his permit was rejected, and, the R. T. A. concerned was asked to reconsider the application of the petitioner and others and deal with them in accordance with law. The decision of their Lordships is reported in S.M. Islam and Others Vs. The State of Bihar and Others, . His Lordship Das C. J., in a separate but concurring judgment, observed as follows:

"It is well-settled that the power, which the Regional Transport Authorities exercise u/s 47 and other related sections, is a quasi judicial power, and the power must be exercised within the ambit laid down by those sections. The Regional Transport Authority cannot travel beyond that ambit and refuse to renew a permit on a ground which does not come within any of the clauses of

Section 47 or which violates the provisions of Sections 57 and 58 of the Act. It appears to me that the Regional Transport Authority concerned in all these cases has passed the orders complained of on a ground which does not fall within Section 47, and, furthermore, the orders violate the clear provisions of sub-section (2) of Section 58 of the Act."

7. When the matter went back, in pursuance of the above order of this Court and before the application of the petitioner for renewal of his permit was reheard, the Rajya Transport authorities on the 20th July, 1955, filed an objection in the matter of reconsideration of the application for renewal of permanent permit of the petitioner and others before the R. T. A; and served its copy on the petitioner on the 21st July, 1955. The application of the petitioner for renewal of his permit was reconsidered, and, he was heard on the 23rd July, 1955, by the R. T. A.

The R. T. A., on the 11th October, 1955, again rejected the petitioner's application for renewal having regard to the fact that the Rajya Transport, as existing operator, was operating in the sections and plying buses over the routes for which the petitioner had applied for renewal of his permit. Against this order, the petitioner has moved this Court by the present application under Article 226 of the Constitution of India for an appropriate writ to call up and quash the aforesaid order and the proceedings connected with it.

8. Mr. B. C. Ghose, appearing for the petitioner, has challenged the order of the R. T. A. dated the 11th October, 1955, on three grounds:

9. First, that the R. T. A. had no jurisdiction to entertain the objection of the Rajya Transport, which had been filed long after the expiry of the limitation provided for such an objection or representation u/s 57 (3) of the Act;

10. Secondly, Mr. S. Akhouri, I. P, who is the State Transport Commissioner and as such the administrative head of the Rajya Transport, was also one of the members of the R. T. A, which considered the application of the petitioner for renewal of his permit as also the objection of the Rajya Transport and decided in favour of the Rajya Transport on the 11th October, 1955. The State Government have acquired "financial interest" in the Rajya Transport undertaking, and, as such, Mr. Akhouri had also "financial interest" in the Rajya Transport, as an employee of the State, and, therefore, he could not continue as a member of the R. T. A. because of the existence of this "bias" against the petitioner and in favour of the Rajya Transport;

11. Thirdly, the permit for such carriages granted to the Rajya Transport by the R. T. A. was illegal, because of the order of this Court quashing (ho order of the R. T. A. refusing the application for renewal of permit made by the petitioner, and therefore, the Rajya Transport was not a person interested within the meaning of Section 47 of the Act so as to entitle it to be heard or to make any representation.

12. I may at once dispose of the first and the last contentions of Mr. Ghose, as

they would not detain us long.

13. The objection filed by the Rajya Transport on the 20th July, 1955, was admittedly beyond the period of limitation prescribed for such an objection by Section 57 (3) of the Act. If this objection had been considered by the R.T. A. and then the application of the petitioner for renewal of his permit had been rejected on the basis of the objection of the Rajya Transport, then there would have been some force in the contention of Mr. Ghose, but, as rightly pointed out by the learned Government Advocate, this, objection has not been taken notice of by the R. T. A. as will appear from the order of the R. T. A. dated the 11th October, 1956.

The mere fact, that the Rajya Transport, which was represented by the Government Advocate before the R. T. A. also and was heard, will not amount to a consideration of the objection of the Rajya Transport.

The R. T. A. in paragraph 5 of its order has made it clear that without going into the question whether the Rajya Transport has got the right to be legally heard by the R. T. A., it considered it expedient to hear the Rajya Transport, because it was the existing operator.

It will appear from the subsequent order of the R. T. A. dated the 12th November, 1955, that similar objections of the Rajya Transport against other persons in regard to the renewal of their applications were not considered as they were time-barred. In my opinion, therefore, it is clear from the order of the R. T. A. dated the 11th October, 1955, that the time-barred objections of the Rajya Transport have not at all been considered and relied upon. The first contention of Mr. Ghose, therefore, is rejected.

14. As regards the last contention of Mr. Ghose, I find that there is no substance in this contention also. The Rajya Transport was granted a permit separately and not as a result of the rejection of the application of the petitioner for renewal of his permit. This Court quashed the order of the R. T. A. rejecting only the application, for renewal of a permit, of the petitioner, but it did not say anything about the permits granted to the Rajya Transport, nor did it reject the order of the R. T. A. granting permits to the Rajya Transport. In such circumstances, it cannot be said that the permit granted to the Rajya Transport was illegal.

15. Section 47 of the Act provides that a Regional Transport Authority shall, in deciding whether to grant or refuse a stage carriage permit, have regard to the matters mentioned in Clauses (a) to (f), and shall also "take into consideration any representations made by persons already providing road transport facilities along or near the proposed route or routes,".

The Rajya Transport was the existing operator on the routes in question at the time when the renewal applications were being reconsidered by the R. T. A. and, therefore, the Rajya Transport would be a person interested within Section 47 of the Act, and, their representations, if any, made within the period of limitation

prescribed by Section 57 (3) of the Act, shall be considered by the R. T. A. But, as I have said before, the representations made by the Rajya Transport, being time-barred, were not considered by the R. T. A., and, therefore, there is no illegality in the order complained of on this account. This contention also is, therefore, overruled.

16. The second point raised by Mr. Ghose. as stated above, is the main contention which requires consideration.

17. In order to appreciate the contention raised by Mr. Ghose, it is necessary to state a few more facts. Section 44 deals with "Transport Authorities". Clause (2) of Section 44, on which reliance is placed, is in these terms :

"A State Transport Authority or a Regional Transport Authority shall consist of such number of officials and non-officials as the State Government may think fit to appoint; but no person who has any financial interest whether as proprietor, employee or otherwise in any transport undertaking shall be appointed as or continue as a member of a State or Regional Transport Authority, and if any person being a member of any such Authority acquires a financial interest in any transport undertaking, he shall, within four weeks of so doing, give notice in writing to the State Government of the acquisition of such interest and shall vacate office".

18. The State Government, in pursuance of Section 44 (2), has appointed a Regional Transport Authority, consisting of a number of officials and non-officials. Amongst them is the State Transport Commissioner, Bihar. also. He is there, because he is in charge of the road transport in the State of Bihar. At the time when Section 44 (2) was enacted, the scheme of nationalisation of the road transport was not under contemplation, and, therefore, the State Transport Commissioner, as an independent person in charge of the State Road Transport, was also appointed a member of the R. T. A.

On the date, when the petitioner's application for renewal of his permit was being reconsidered, as ordered by the High Court, the Rajya Transport, which had come into existence earlier, was also running buses, on behalf of the State. The State Transport Commissioner was the administrative head of the Rajya Transport. On the date, when the R. T. A. considered and decided the renewal application of the petitioner on the 11th October, 1955, six members of the R. T. A. were present, of whom two were non-officials and four were officials. Out of these six was also Mr. S. Akhouri, the State Transport Commissioner, who also sat on the Tribunal to decide the question. According to paragraphs 19 to 21 of the affidavit of the petitioner, to which there is no counter-affidavit in reply on behalf of the State, the State Government have acquired financial interest in the Rajya Transport undertaking; and Mr. Akhouri, being the Transport Commissioner, is its administrative head.

19. On the above facts, it is contended that as the State Government have "financial interest in the Rajya Transport, and, as Mr. Akhouri is an employee of

the State Government, he also has directly "financial interest" in the Rajya Transport, and, as such, as provided by Section 44 (2) of the Act, he could not be a member of the R. T. A., or, at any rate, sit on it, when his own objections were being considered along with the application for renewal of the permit of the petitioner.

20. In Clause (2) of Section 44 of the Act, which has been reproduced in extenso before, it is provided that: ""no person who has any" "financial interest" whether as a proprietor, employee or otherwise in any transport undertaking shall be appointed as or continue as a member of a State or Regional Transport Authority. The words "financial interest" occurring in Clause (2) of Section 44 mean that if an employee personally has any financial interest in any transport undertaking, he shall not be appointed as or continue as a member of the R. T. A.

They do not mean that if the employer of the member concerned has a "financial interest", his employee will also be considered to have financial interest in the transport undertaking, even though personally he has none. In the present case, there, is no allegation, nor, is it contended by Mr. Ghose, that Mr. Akhouri has personally any ""financial interest" in the Rajya Transport. The State Government have financial interest, but that would not mean that all their employees will also have financial interest in the undertaking.

The construction sought to be placed by Mr. Ghose on the words "financial interest" of the employer as meaning and amounting to "financial interest" of his employees also cannot be accepted. What Clause (2) of Section 44 provides is that the employee should personally have financial interest in the transport, and, if he has such an interest, then he would be disqualified from being appointed or from continuing as a member of the R. T. A. Simply because his employer has financial interest in the transport undertaking would not in the least disqualify him as his employee to be appointed as or to continue as a member of any such R. T. A. The contention of Mr. Ghose, therefore, fails.

21. It was next argued by Mr. Ghose that Mr. Akhouri was disqualified from being a member of the R. T. A. and sitting on the Tribunal on the day when the renewal application of the petitioner was considered and decided on account of "bias", because he was the head of the transport administration of the State, and, as such, he was vitally interested in getting his own objection upheld and getting the renewal application of the petitioner rejected. I am unable to accept this argument as correct. The petitioner has not at all made any allegation of "bias" anywhere in his affidavit in this Court, apart from only mentioning that Mr. Akhouri had also "financial interest" which point I have dealt with earlier.

22. The principle which applies to such a case has been stated, if I may say so with respect, with great clarity and eloquence, after a consideration of all the cases on the point, by my Lord the Chief Justice, in *Gurudeva Narayan Srivastava Vs. State of Bihar and Another*, in these terms:

""What are the legal principles applicable to this case? It is the basic principle of

jurisprudence that no one is allowed to be a judge in his own cause. This rule applies and has been asserted not only in the case of Courts of justice in the proper sense but also in the case of administrative tribunals who are required to act judicially

A consequence of the rule is that the least pecuniary interest in the subject-matter of the litigation will disqualify any person from acting as a judgeBut there is a sharp distinction between a case of pecuniary interest and a case of non-pecuniary interest. In the case of pecuniary interest, the smallest interest in the subject matter of the enquiry would result in the disqualification of the judge as a matter of course. But if the interest alleged is any other kind of interest, it must be shown by the petitioner that the interest is substantial so as to make it highly probable that the judge has a real bias. A mere possibility of bias is not enough to disqualify the judge."

23. This case has been followed by another Division Bench of this Court in *Mukhlal Gir v. The State* 1955 BL J. 416 (c).

24. What is meant by "bias" Blackburn, J. in *R. v. Queen's County*, Judges 1908 2 IR 285 (D) has expressed himself as follows :-

"By "bias" I understand a real likelihood of an operative prejudice, whether conscious or unconscious. There must, in my opinion, be reasonable evidence to satisfy us that there was a real likelihood or bias. I do not think that the mere vague suspicion of whimsical, capricious, and unreasonable people should be made a standard to regulate our action here. It might be a different matter if suspicion rested on reasonable grounds was reasonably generated but certainly mere flimsy, elusive, morbid suspicions should not be permitted to form a ground of decision."

In the words of Blackburn, J. therefore, there must be a real likelihood of bias.

25. The leading case on the point is *Reg. v. Rand* (1866) 1 Q. B. 230 (E). My Lord, the Chief justice, in a subsequent case *Ramnath Prasad Vs. The Collector of Darbhanga and Others*, , has again reviewed all the cases on the point, such as, (supra) (1866) 1 Q.B. 230 (E); *Reg. v. Meyer* (1875) 1 Q.B. 173 (G) ; *Rex v. County Cork JJ.* (1910) LIR 271 (H); *Eckersely v. Mersey Docks and Harbour Board* (1894) 2 Q.B. 667 (I); and *Reg. v. Cam-borne Justice* (1954) 2 AH E 850: 218 L. T. 94 (J), and observed as follows :

"It is well-settled that there must be a real likelihood of bias and not mere suspicion of bias before proceedings can be quashed on the ground that the person conducting the proceeding is disqualified by interest."

26. The principle, therefore, which has been applied, and, which should be applied to cases like the present is, that a real likelihood of bias must be shown in order to disqualify a person from acting in a judicial or quasi-judicial capacity on the ground of interest. Applying this principle to the present case, I find apart from the fact that there is no allegation of any "bias" by the petitioner in his

affidavit, that there was no real bias or even a real likelihood of bias in Mr. Akhouri to disqualify him. from being or continuing a member of the R. T. A.

The mere fact that he was the administrative head of the Rajya Transport will not establish the existence of a real bias in him against the petitioner. It should be remembered that the objections filed on behalf of the Rajya Transport had not been taken into consideration and were not considered by the R. T. A. as they were time-barred on the day when the petitioner was heard and, when the matter was decided by the R. T. A. It is true as observed by Lord Justice Blackburn in *Reg. v. Rand (E)* (supra) :

"Wherever there is a real likelihood that the judge would, from kindred or any other cause, have a bias in favour of one of the parties, it would be very wrong in him to act, and we are not to be understood to say that, where there is a real bias of this sort, this Court would not interfere."

The mere possibility of bias in Mr. Akhouri did not ipso facto avoid the decision of the R. T. A. because though there was a possibility of bias, yet it was not real. This question can be considered from another point of view also. The R. T. A. which considered and decided the renewal application of the petitioner considered of six members, one of whom was Mr. Akhouri. Even if Mr. Akhouri be considered to have some bias, it was not likely to affect the majority decision of the R. T. A, one way or the other, because there were two non-officials, besides three other officials, constituting the R.T.A. and, therefore, Mr. Akhouri was in the minority, and, it cannot be imagined that he would have influenced in the least the majority decision.

This view is supported by a Division Bench decision of this Court in *Mukhlal Gir v. the State (C)*, (supra) where also it was held that mere allegation of bias is not enough to hold that a person against whom bias is alleged is disqualified to sit as a member of the Tribunal. The ground of interest, other than pecuniary or proprietary, must be a substantial one so as to show a real likelihood of bias. Where prejudice has been caused in a particular way to a party, it will have to be determined with reference to all the circumstances of the case. Where, therefore, a Tribunal consists of more than four members, and, if one of them is interested one way or the other, it is not likely to cause prejudice to a party, and, he is not likely to influence the majority decision of the Tribunal.

27. The learned Government Advocate, in reply to the above contention of Mr. Ghose, submitted, that no objection to the constitution of the R. T. A. on the above ground, was taken by the petitioner when the R. T. A. considered his renewal application, or, when it decided the matter, and, therefore, he was now estopped from raising this objection here. He has relied on the decision of a Division Bench of this Court in *Muhammad Yakub Vs. Abdul Manan and Others*, in which Chatterji, J. observed as follows:

"If the Magistrate acted in excess of his jurisdiction, and the second party felt aggrieved by his order, they could have come up in revision against that order.

But they did not do so and chose to wait and take the chance of judgment in their favour. The proceeding continued for about a year..... Much public time and harassment to the parties would have been saved if objections were promptly taken in this Court against the order initiating the proceeding. The revisional powers of the High Court u/s 439, Criminal Procedure Code, are discretionary, and are exercised for the ends of Justice. The second party having waited for a year and having allowed the order initiating the proceeding to go unchallenged so long, cannot now be heard to complain of excess jurisdiction because the final order has gone against them."

In my opinion, there is a considerable force in the contention of the learned Government Advocate.

28. I would, therefore, for the reasons given above, overrule, the contention of Mr. Ghose based on the ground of "bias".

29. Mr. Ghose has also challenged the decision of the South Bihar R. T. A. dated the 12th November, 1955, which confirmed the proceedings of the meeting of the R. T. A. held on the 11th October 1955. His grounds of attack are: (1) that the decision is mala fide, (2) the objections of the Rajya Transport were barred by limitation, and therefore, they should not have been considered, and (3) the meeting should have been postponed. I do not think there is any substance in any of the these contentions of Mr. Ghosa

Nothing has been shown or even alleged in the affidavit to show how the decision of the R. T. A. dated the 12th November, 1955, is mala fide. This meeting was held immediately after the earlier meeting of the R. T. A. held on the 11th October, 1955, and, therefore, the R. T. A. confirmed the proceedings of that meeting. It will appear from para 2 (ii) of the order complained of that the objections filed by the Rajya Transport were not considered, as they were time barred, having been filed beyond the appointed date.

The R. T. A. which consisted, on that day of eight members including Mr. Akhouri also and five non-officials, considered some renewal applications of some other persons, and, the consideration of other items of the agenda was adjourned to the next meeting. It may be mentioned here that the petitioner was one of the applicants for grant of new public carrier permits for South Bihar Region minus the route Arrah-Saharram. His application also was allowed. In my opinion, there is no merit in any of the above contentions of Mr. Ghose.

30. Before I conclude I wish however, to observe that it would be better if the State Transport Commissioner, or any other member, directly in charge of the administration of the Rajya Transport, does not sit as a member of the R. T. A. where the Rajya Transport is concerned. In similar circumstances, it was observed by Lord Goddard, C. J. in *Reg. v. Camborne Justices (J)*, (supra), thus:

"If the court were asked to express an opinion they would say that it would be better that a member of a country council should not sit as a clerk to justices in

cases where the prosecution is conducted on behalf of the council of which he is a member."

The reminder of Lord Hewart, C. J. in *R. v. Susses, JJ. Ex. p. McCarthy* (1924) 1 K. B. 256 (L), that it is "of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done" should always be kept in view. While endorsing and fully maintaining the integrity, of the above principle reasserted by Lord Hewart, C. J., it was laid down, in *Reg. v. Camborne Justices (J)*, (supra), that it is more important that justice should, in fact, be done than , that it should appear to be done.

31. In the result, the application fails, as no case has been made out for issue of a writ against the opposite party. The application is, accordingly, dismissed with costs, hearing fee Rs. 200/-.

Ramaswami, C.J.

32. I agree.