
(1998) 07 OHC CK 0030
In the Orissa High Court
Case No : O.J.C. No. 12728 of 1997

Smt. Sushila Chand

APPELLANT

Vs

State Transport Authority, Orissa and Others

RESPONDENT

Date of Decision : 09-07-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115
Motor Vehicles Act, 1988 — Section 214, 88

Citation : AIR 1999 Ori 1 : (1999) 87 CLT 6

Hon'ble Judges : S.N. Phukan, C.J.; P.K. Tripathy, J

Bench : Division Bench

Advocate : Y. Das, for the Appellant; Standing Counsel (Transport) and S.C. Parija, for the Respondent

Judgement

S.N. Phukan, C.J.—Being aggrieved by the decision taken by the State Transport Authority, Orissa, in its meeting held on 18-8-1997, the petitioner has filed the present writ petition. By the impugned decision, as at Annexure-5, the application of the petitioner for stage carnage permit in the inter-State route Phulbani-Tata was rejected. Permits for the said route were granted in favour of opposite parties 3 and 4. It may be stated here that the petitioner and one Dr. Magani Sahoo were granted temporary permits in respect of the said route, against which cases were filed in this Court as well as before the Transport Appellate Tribunal. It is not necessary to go into that aspect of the matter.

2. Opposite parties 3 and 4, in whose favour permits were granted, have filed preliminary counter affidavit jointly. Their plea is that as alternative efficacious statutory remedy of appeal u/s 89 of the Motor Vehicles Act, 1986 is available to the petitioner and as the petitioner has not availed of the same, the present writ petition is not maintainable. It has also been urged that the present writ petition involves pure questions of fact and that evaluation of comparative merits and demerits cannot be reassessed or re-valued by this Court in a writ petition. It has been pleaded that the petitioner is operating his stage carriage in the Balasore-

Bhubaneswar route under a temporary permit. According to these opposite parties, there is no impropriety or illegality in the decision of the State Transport Authority.

3. It may be stated that the petitioner in her additional affidavit has taken the plea that the S. T. A. was not properly constituted because of the participation of the Additional Commissioner of Transport (Enforcement) in the meeting of the S. T. A. held on 30-7-1997, and, therefore, the whole proceeding of the meeting has been vitiated. According to the opposite parties, this plea is erroneous as the Additional Commissioner of Transport, who was in-charge Secretary had participated as member convenor. That apart, the petitioner having participated in the said meeting cannot take such a plea before this Court. Reference has been made to Rule 2(2)(i) of the Orissa Motor Vehicles Rules, 1993, which defines "Secretary" . Reference has also been made to Rules 38 and 40 (6) of the said Rules.

4. At the time of hearing, it was brought to our notice that another unsuccessful person, namely, Bijay Kumar Nayak, has filed an appeal before the State Transport Appellate Tribunal, which has been registered as M. V. Appeal No. 36 of 1997 and notices have been issued. When this was pointed out, learned counsel for the petitioner did not press his argument on the facts of the case as any finding by this Court on facts would prejudice the person who is not before us, who has filed the appeal before the Tribunal.

Learned counsel for the petitioner confined his argument to only two points, namely, (i) constitution of the S.T. A. as a body was improper and illegal in view of participation of the Additional Commissioner of Transport in the meeting as Secretary, which has vitiated the proceedin; and (ii) the S. T. A. in the said meeting heard the applicants including the petitioner individually and considered their respective merits without hearing all the applicants together and this has prejudiced the petitioner inasmuch as principles of natural justice have been violated.

5. In view of the plea taken on behalf of the opposite parties that the present petition is not maintainable as there is efficacious alternative remedy available, let us first consider this point.

6. In Veerappa Pillai Vs. Raman and Raman Ltd. and Others, it was held that the writs referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the Subordinate tribunals or bodies or officers acted wholly without jurisdiction or in excess of it, or in violation of the principles of natural justice, or refused to exercise a jurisdiction vested in them, or there was an error apparent on the face of the record, and such act, omission, error or excess has resulted in manifest injustice. It was also held that High Court cannot convert itself into a Court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made.

In *A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another*, the apex Court considered as to how far the existence of alternative remedy would be a bar to entertain writ petitions. It was held that the rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, have to exhaust other remedies open to him under the law is not one which bars the jurisdiction of the High Court to entertain a petition or to deal with it, but is rather a rule which courts have laid down for the exercise of their discretion. The wide proposition that the existence of an alternative remedy is a bar to the entertainment of a writ petition under Article 226 of the Constitution is not applicable if (i) there is a complete lack of jurisdiction in the officer or authority to take the action impugned, or (ii) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void or non est. It was laid down that the above two exceptions to the normal rule are not exhaustive and even beyond them a discretion vests in the High Court to entertain a petition and grant relief to the petitioner notwithstanding the existence of an alternative remedy.

In *Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others*, it was held that it is well established that an alternative remedy is not an absolute bar to the maintainability of a writ petition. When an authority has acted wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Article 226 of the Constitution on the ground of existence of alternative remedy.

In *Sewa Papers Ltd. v. Assistant Collector, Central Excise and Customs, Sambalpur Division* (1988) 1 OLR 602 this Court held, inter alia, that existence of an alternative remedy per se does not take away the writ jurisdiction of the High Court and no rule of absolute bar to such jurisdiction even if the High Court finds that an adequate alternate remedy is available.

In *Indulal Nautamlal and Co. Vs. Collector, Central Excise and Customs, Bhubaneswar*, this Court took note of two well recognised exceptions to the requirement of exhaustion of the statutory remedies the extraordinary jurisdiction of the High Court under Article 226 can be invoked. Those are ;-- (1) where the order is passed without jurisdiction, and (2) where the Order is passed in violation of natural justice.

7. Powers of writ Court vis-a-vis alternative remedy can be summarised as follows :--

(1) Writs as referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act without jurisdiction or in excess of it, or in violation of the principles of natural justice, or refuse to exercise jurisdiction vested in them, or there is an error apparent on the face of the record, and, such act, omission, error or excess has resulted in manifest injustice. But, the High Court cannot convert itself to a

Court of appeal and examine the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made.

(2) It is the rule that the party who applies for the issue of a high prerogative writ should, before he approaches the High Court, has to exhaust other remedies open to him under the law. But, this is subject to two exceptions, namely, (i) where there is a complete lack of jurisdiction in the officer or authority to take the action impugned, or (ii) where the order prejudicial to the person has been passed in violation of the principles of natural justice and, therefore, could be treated as void or non est.

8. The above are the exceptions to the normal rule for issuing writ where there is efficacious alternative remedy. But these are not exhaustive.

9. Coming to the case in hand, if the petitioner can establish that the constitution of the S. T. A. as a body was improper and illegal, this Court can issue an appropriate writ as in that case, the impugned Order would be without jurisdiction. Writ can also be issued if it is found that the S. T. A. while considering the case of the petitioner did not follow the principle of natural justice.

10. From the impugned order, as at Annexure-5, we find that three persons were present in the meeting of the S. T. A. held on 18-8-1997, namely, the Chairman, Sri R.C. Pradhan, M L. A., Member, Sri Rabi Bhusan Kanungo, Member, and Sri Balakrushna Sehoo, Additional Transport Commissioner, Orissa, in charge of Secretary, Member-Convenor. The petitioner has alleged that the Additional Transport Commissioner was in charge of the Secretary and is not the Secretary, and, therefore, the S. T. A. was not properly constituted. The term "Secretary; State Transport Authority" has been defined in Clause (i) of Rule 2 of the Orissa Motor Vehicles Rules. 1993, which runs as follows :--

"Secretary, State Transport Authority" means an officer appointed as such by the State Government to exercise the powers, discharge the duties and perform the functions of the Secretary of the State Transport Authority provided under these rules and includes Special Secretary/Additional Secretary/Assistant Secretary/Additional Assistant Secretary. Additional Commissioner, Transport shall function as Special Secretary, State Transport Authority and Additional/Assistant Regional Transport Officers posted to check gates shall function as Additional/Assistant Secretary. State Transport Authority."

11. Thus, it would appear that the Secretary, State Transport Authority includes Special/Additional Secretary/Assistant Secretary/Additional Assistant Secretary. Additional Commissioner, Transport, who can also function as Special Secretary. Therefore, the contention raised on behalf of the petitioner is not tenable inasmuch as by virtue of the above definition. Additional Commissioner, Transport comes within the definition of "Secretary". We may state here that the proceedings as at Annexure-5 was signed by the Chairman, State Transport Authority, who was also present, and the Additional Commissioner, Transport, as

Special Secretary of the S. T. A. Sub-Rule (6) of Rule 38 of the above Rules provides that the Chairman or the member nominated under Sub-Rule (2) to act as the Chairman, as the case may be, and two members shall constitute the quorum for the meetings of the State Transport Authority. From Annexure-5, we find that in addition to the Chairman, two other members, namely, R.C. Pradhan and Rabi Bhusan Kanungo, were present. Therefore, the meeting in question of the S. T. A. had the quorum.

12. A similar situation arose before the Kerala High Court in *N. Gopalan Vs. Central Road Traffic Board, Trivandrum*, In paragraph 22 of the judgment the Court opined that the minimum number to constitute the authority is only three, but two other members also participated in the meeting of the Authority. It was held that participation of two other members along with the three members will not make the decision an ab initio void one.

13. The petitioner did not raise the point that the S. T. A. was not properly constituted at the time of consideration of her petition, thereby taking a chance of succeeding in the proceedings before it. Therefore, she is now debarred by her own conduct from raising the contention before this Court. This view was also expressed in *G.T. Venkataswami Reddy Vs. Regional Transport Authority, Bangalore* and *Another*, with which we are in respectful agreement.

14. Be that as it may, Section 214(3) of the Motor Vehicles Act, 1988 provides that no order made by a competent authority under this Act shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings, unless it appears to the appellate authority or revisional authority, as the case may be, that such error, omission or irregularity has, in fact, occasioned a failure of justice. We have perused the impugned proceedings and we do not find any illegality or irregularity on the face of it. Therefore, we reject the contention raised on behalf of the petitioner.

15. The second point is violation of the principles of natural justice. It is the settled position of law that how and in what manner principle of natural justice has to be followed cannot be put in a strait jacket formula, The basic requirement is that the petitioner shall be given opportunity of being heard. In this case, the petitioner was heard. However, her grievance is that all the applicants for stage carriage permit were not heard together, thereby depriving her of the right to substantiate her claim against the objection raised on her application for stage carriage permit. We are unable to accept the contention as we find from the records that the petitioner was heard through advocate, We, therefore, hold that there was no violation of the principles of natural justice.

16. For the reasons slated above, the writ petition is liable to be dismissed. However, we grant liberty to the petitioner to approach the appellate authority, if so advised. In case there is delay in filing the same, it shall be condoned provided the appeal is filed within fifteen days from today. The appeal shall be heard and disposed of on merit without being influenced by any observation

made by us in this judgment and order.

17. With the above observations and directions, the writ petition is disposed of.
No costs.