
(2011) 06 JH CK 0030

In the Jharkhand High Court

Case No : Writ Petition (C) No. 747 of 2011

Sobha Nath Jha

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 30-06-2011

Acts Referred:

Constitution of India, 1950 — Article 14
Motor Vehicles Act, 1988 — Section 80, 89

Citation : (2011) 3 JCR 450

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Judgement

D.N. Patel, J.—Learned counsel for the petitioner submitted that an order passed by the respondents dated 12th March, 2008 was under challenge and by the impugned order, an application, preferred by the present petitioner for getting permanent permit u/s 80 of the Motor Vehicles Act, 1988 (hereinafter to be referred to as "the Act, 1988") has been dismissed. Learned counsel appearing for the petitioner has pointed out that Annexure 3 is thoroughly a non-speaking order and the whole application of the present petitioner has been brushed aside by using only one word "dismissed". The said order must be set aside with an exemplary cost by this Court, as per the submission made by the learned counsel for the petitioner. It is submitted by the learned counsel for the petitioner that the officer, who has passed the order, is so lethargic that he has not properly appreciated that the dismissal order is an appellable order u/s 89 of the Motor Vehicles Act, 1988 and unless, the reasons are given, nothing can be appreciated by the Appellate Authority under the Act, 1988. Whenever any order is an appellable order, a reasoned order must be passed. Simple proposition of law is not known to the officer, who has passed the order and, therefore, let the impugned order be quashed with cost and the matter may be remanded to the respondents for taking a fresh decision, within stipulated time.

2. I have heard learned counsel appearing for the respondents, who has submitted that the respondents have no much objection, if the matter is

remanded for a fresh decision, upon an application of the petitioner u/s 80 of the Motor Vehicles Act, 1988 and the said application will be decided by the competent authority, within two weeks.

3. In view of the aforesaid submissions and looking to the facts and circumstances of the case, I hereby quash and set aside the order, passed by the respondents dated 12th March, 2008 at Annexure 3 to the memo of petition, mainly for the following facts and reasons :

Looking to the impugned order, it appears that no reasons have been assigned. Only one reason assigned is "dismissed". This is not a method, in which an order should be passed by the respondent authorities. This is thoroughly a non-application of mind and it reveals absolute arbitrariness, which leads to inequality. By this type of attitude, the authority may allow the application, whereas, in rest of the cases, he may dismiss by one word like the present impugned order. The impugned order is an appellable order u/s 89 of the Motor Vehicles Act, 1988 and therefore also, the reasons ought to have been assigned by the concerned respondent. Reasons are the soul of the order. Unless the reasons are given, higher authorities cannot appreciate why the application was allowed or dismissed. This is a bare minimum requirement, which the respondent authorities ought to have kept in mind. Not to assign any reason and to dismiss the application is a non-application of mind and arbitrariness.

4. As a cumulative effect of the aforesaid facts and reasons, I hereby quash and set aside the order passed by the respondents dated 12th March, 2008 at Annexure 3 to the memo of petition. I hereby also direct the concerned respondent to decide afresh the application of the petitioner u/s 80 of the Act, 1988, by a speaking order, within a period of four weeks from the date of receipt of a copy of the order of this Court. This writ petition is, accordingly, allowed with a cost of Rs.5,000/- (five thousand). The amount of cost will be paid by the respondents to the petitioner, within a period of four weeks from the date of receipt of a copy of this order of this Court.

5. Earlier also the very same officer had passed similar order u/s 80 of the Act, 1988 in a one word "dismissed" and his action was under challenge in W.P.(C) No. 808 of 2009, which was allowed by this Court vide order dated 7th May, 2010, with a cost of Rs.5,000/-. The order, passed by the officer of the respondents, is an appellable order u/s 89 of the Act, 1988. Despite this fact, no reason has been assigned and thus, the impugned order is absolutely a non-speaking order.

6. It appears that the officer of the respondents, who has passed repeatedly this type of order, is in habit of passing such orders, and, therefore, all care ought to have been taken by the higher authorities. I, therefore, direct the Registry of this Court to send a copy of the order, passed in this writ petition, as also the order dated 30th June, 2011, passed in W.P.(C) No. 740 of 2011, as well as the order, passed by this Court in W.P.(C) No. 808 of 2009 dated 7th May, 2010 along with

the order of the Division Bench of this Court in L.P.A. No. 273 of 2010, which was dismissed vide order dated 19th January, 2011, to the Secretary, Transport Department, Government of Jharkhand, who, in turn, will look into the matter and the aforesaid orders, confirmed in L.P.A. No. 273 of 2010. so that the officer i.e. respondent No. 2, who has passed the impugned order dated 12th March, 2008 at Annexure 3 to the memo of petition, may not repeat this error again and again, so as to avoid the multifariousness of the litigations before this Court, by way of writ petition and, thereafter, by way of Letters Patent Appeal. Executives of the State ought to have kept in mind that whenever they are passing any order under the specific law, deciding the rights and liabilities of the applicant, it ought to be decided by giving some reasons. If the application of an applicant is decided without any reason, it will always tantamount to an arbitrariness, especially when the order, passed by the Executive, is an appellable order under the specific statute. The appellate Court/authority must know the reasons, running in the mind of the lower Court/authority. Not to give the reasons and to pass an order in one word "dismissed" is absolutely an arbitrariness on the part of the said authority. Whenever, arbitrariness is present, equality is absent and whenever equality is present, arbitrariness is absent. Arbitrariness and equality are sworn enemies of each other. If no reasons are to be given, then in a case of Mr. "X" the application can be allowed and with the same set of circumstances, the application preferred by Mr. "Y" can be dismissed. This leads to violation of Article 14 of the Constitution of India.

7. I, therefore, direct the Secretary, Transport Department, Government of Jharkhand, Ranchi to take note of this order alongwith the orders passed in the earlier writ petition as well as the Letters Patent Appeal, so that proper direction may be issued upon his subordinates, in view of the aforesaid decisions, in the form of circular. The Secretary, Transport Department, will also keep in mind that every time error is being committed by the officer concerned and the State is to pay heavy cost.