
(2003) 04 JH CK 0084
In the Jharkhand High Court
Case No : CWJC No. 4356 of 2001

Subodh Prasad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 29-04-2003

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 68
Motor Vehicles Act, 1988 — Section 68, 88(1)

Citation : (2004) 2 ACC 340 : (2003) 2 ACC 346 : (2003) 3 JCR 254

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : Rajiv Ranjan, for the Appellant; S.K. Singh, J.C. to A.A.G. and S.N. Lal, for the Respondent

Final Decision : Allowed

Judgement

Vikramaditya Prasad, J.—Heard both the sides.

2. The petitioner has challenged an-nexure-13 of the writ petition whereby and whereunder the respondent no. 5 rejected the representation of the petitioner, which was to be disposed of in compliance of the order passed in CWJC No. 10106 of 2000.

3. The main question is whether this writ can be disposed of on a preliminary point of jurisdiction of the authority passing the impugned order. On perusal of paragraph 7, 8, 9 and 10, it appears that the petitioner was objector in the impugned proceeding his case was that the permit stands in the name of petitioner from Tata to Hazaribagh in which time of departure from Tata is 09.5 am.

4. I revert to maintainability of the impugned order on the point of jurisdiction Admittedly this matter is covered under the provision of Motor Vehicle Act, 1988, Section 88 Clause (1) reads as follows :

Except as may be otherwise prescribed, a permit granted by the Regional

Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that State or by the Regional Transport Authority concerned.

Provided that a goods carriage permit, granted by the Regional Transport Authority of any one region, for any area in any other region or regions within the same State shall be valid in that area without the counter signature of the Regional Transport Authority of the other region or of each of the other regions concerned.

Provided further that where both the starting point and the terminal point of a route are situate within the same State, but part of such route lies in any other State and the length of such part does not exceed sixteen kilometers, the permit shall be valid in the other State in respect of that part of the route which is in that other State notwithstanding that such permit has not been counter signed by the State Transport Authority or the Regional Transport Authority of that other State.

Provided also that-

(a) where a motor vehicle covered by a permit granted in one State is to be used for the purposes of defence in any other State, such vehicle shall display a certificate, in such form, and issued by such authority, as the Central Government may, by notification in the Official Gazette, specify, to the effect that the vehicle shall be used for the period specified therein exclusively for the purposes of defence, and

(b) any such permit shall be valid in that other State notwithstanding that such permit has not been counter signed by the State Transport Authority or the Regional Transport Authority of that other State.

5. Under this provision the permit is to be counter signed by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that State concerned.

6. u/s 68 the manner of constitution of Transport Authority is prescribed. Rule 68 provides for delegation of power by the State Transport Authority, it provides that the State Transport Authority may, by general or special resolution recorded in its proceedings, and subject to the restrictions and limitations and conditions herein specified delegate to the Chairman or State Transport Commissioner or Additional Transport Commissioner or Joint Transport Commissioner, all or any of its following powers. For our purposes Rule 68 (ii) is important which reads as follows :

(ii) Power to countersign or refuse to countersign permits granted in any other State, u/s 88 and the power to attach conditions or vary the conditions so

attached.

7. From the aforesaid provision of law it is clear that Joint Transport Commissioner is not State Transport Authority and therefore he can not exercise the power and functions that vests in the State Transport Authority unless he is delegated with such power. The delegations as per the aforesaid provision (supra) has to be given to him under resolution recorded, in a proceeding by the State Transport Authority and in that proceeding the extent of delegation has also to be stated. Thus with regard to power as given in Rule 68 which of the power has to be exercised by him has to be clarified, thus unless this delegation is proved the Joint Transport Commissioner is not an authority exercising any power under the aforesaid provision. Therefore in the circumstances the State was directed to file affidavit whether or not the Joint Transport Commissioner was delegated with such a power. The State has filed supplementary affidavit, a copy of that being served upon the petitioner today. In paragraph 6 of the affidavit following averments have been made. That with regard to the statement made in para 6 of the supplementary affidavit, it is submitted that the Joint Transport Commissioner heard and decided on the objections against time table by having been authorized by the then. Transport Commissioner Jharkhand who has been delegated power by the STA. The JCA has no separate delegation of power in this point by the STA.

8. However, as the petitioner did not object on the point of jurisdiction at the time of hearing, therefore, now his objection on this point is not maintainable and fit to be dismissed. Annexure-A was attached to show that on a office note as to who will hear this objection, the Transport Commissioner approved the proposal of the office and also ordered that Sri Minz will hear the matter.

9. Obvious it is that even this power to Sri Minz was given by the Transport Commissioner who himself was not even the STA. Now a question has been raised by the learned counsel for the respondent no. 4 that if the petitioner has submitted to the jurisdiction of Joint Transport Commissioner and was awaiting a final order and only when he did not succeed now it is not open to the petitioner to challenge the impugned order on the ground of jurisdiction. He relied on a decision reported in 1974 BBCJ 715 . To the contrary the learned counsel for the petitioner argued that on perusal of the impugned order itself it will appear that he had raised objection before the JTC still the order was passed and the order is further vitiated because he was not delegated with the powers. In this context he relied on a decision of the Apex Court reported in Sahni Silk Mills (P) Ltd. and Another Vs. Employees" State Insurance Corporation, .

10. Annexure 13, therefore again requires to be perused to find out whether the petitioner has made any objection. At page-3 of the impugned order the JTC has recorded as follows :

"Is Bich Appatikarta, Subodh Prasad Ke Vidwan Adhivakta Ne Hastchep Karte Hue Kaha Ki Bhaya Tata Hoka Samay Sarani Ke Vivad Ko Rajya Pariwahan Pradhikar

Ke Samach Rakha Jay Ewm Jab Tak Is Par Nirnay Nahain Ho Jata Hai Pasari Ke Samay Sarini Ko Nilambit Rakha Jay."

11. The learned counsel for the petitioner argued that this was objection raised by him before the authority concerned. The question is whether in absence of any enabling provision in the Act and even in absence of observance of a particular formality, the order is curable ? There is no such enabling or curing provision in the Act.

12. If two parties who decide that a particular case of murder should be in the jurisdiction of the Gram Kachari and both concerned parties consented that this is jurisdiction vested in him. I think no body can say that this statement of wrong jurisdiction will vest that authority with that power. Thus I find that the office note is not a resolution of a person who gave a delegation to the JTC. Moreover the authority which gave this order himself was not competent to pass such order of delegation. Therefore the impugned order suffers for want of jurisdiction, consequently on this preliminary point the writ succeeds and the impugned order is quashed.

13. In the circumstances, the STA is directed to hear both the parties and pass a reasoned order within one month from the date of receipt/production of a copy of this order. Both parties should appear before the STA within 15th of May 2003 and the authority will pass the order within next 15 days.