

(1982) 04 OHC CK 0008
In the Orissa High Court

Sukadev Singh

APPELLANT

Vs

The State Transport Authority and Others

RESPONDENT

Date of Decision : 13-04-1982

Acts Referred:

Constitution of India, 1950 — Article 22, 226, 227

Contempt of Courts Act, 1971 — Section 12

Motor Vehicles Act, 1988 — Section 47

Citation : (1983) CriLJ 528

Hon'ble Judges : R.N. Misra, C.J.;B.K. Behera, J

Bench : Division Bench

Judgement

R.N. Misra, C.J.—Public Transport Services Association, an association registered under the Societies Registration Act. XXI of 1860, and the owner of a public carrier, filed a writ application under Article 22(5) of the Constitution which came to be registered as O. J. C. No. 1352 of 1980. Nine public carrier operators including Sukadev Singh (petitioner in the contempt proceedings) were added on their application as intervenors in the writ application by order dt. 19-1-1981. Petitioners in the writ application alleged that adequate notice had not been given by opposite party No. 3, the State Transport Authority, of the notification bearing No. 1001 dt. 4-7-1980 inviting applications from intending applicants for inter-State routes under the Central Zone Permit Scheme and, therefore, applications submitted by operators pursuant to the notification under Annexure-1 should not be considered and a mandatory direction be given for wide publication of the notice in the official Gazette as also in local newspapers. The said writ application was disposed of by a Division Bench of this Court on 16th of March, 1981 = (Reported in ILR (1981) Cut 295). This Court indicated:

There is no clear rule under the Motor Vehicles Act as to the manner in which notices inviting applications of this type should be published. It is, however, not disputed that wide publicity should be given so that all persons "interested in making applications should have the opportunity of coming to know about the actual state of facts. That such should be the position is not disputed even by

counsel appearing for the opposite parties. So far as Annexure-1 is concerned, we do not think we can vacate it. It has already operated and about 800 applications are said to have been received in answer to the notice. Those applications should be dealt with and cleared in accordance with law by the permit-granting authority...

It was further said:

... While not interfering with Annexure-1 and action already taken, we would dispose of this writ application with a direction that henceforward wide publicity should be given to all such advertisements and notices and for convenience such notices should be given publicity in at least two newspapers with wide circulation.

It is appropriate to indicate here that there has been already loss of some time on account of the order of status quo issued from this Court in disposing of the applications made pursuant to Annexure-1. The Transport Authority would do well to dispose them of in accordance with law within one month from now.

An application was made to this Court at the instance of the Chairman and the Transport Authority on 24-4-1981 asking for extension of time till 15-6-1981 for giving effect to the Court's direction in the writ application. After hearing parties on 13-5-1981, the following order was made:

Time is extended till 25-6-1981 for compliance as prayed for. We have been assured by learned Standing Counsel that no further extension would be asked for.

On 23-6-1981, the Secretary of the Transport Authority made the following order:

The applications for grant of Central Zone permits received in this office in pursuance of the Notice No. 1001 dated 4-7-1980 issued by this authority are hereby rejected. The intending applicants whose applications have been rejected now, may apply afresh for grant of such Central Zone Permits along with requisite application fees and M.V. documents as required vide this office Notice No. 7136 dated 19-5-1981.

Sukadev Singh filed a writ application being O. J. C. No. 1460 of 1981 challenging the rejection of his application by the impugned order. On 15-7-1981 while issuing a rule in the writ application, the Court called upon the opposite parties - Chairman and Secretary of the Transport Authority - to show cause as to why a proceeding under the Contempt of Courts Act may not be initiated against them for rejecting the applications when the Court had passed an order asking disposal of the applications on their own merit. The Chairman and the Transport Authority through its Secretary took the stand that the State Government directed rejection of all the applications and, therefore, the applications had been rejected on 23-6-1981. The Transport Authority while showing cause disclosed the order dt. 22-6-1981 made by the Minister of State for Transport which was to the following effect : _

The entire process for issue of the above Central Zonal Permits suffers from irregularities which in the interest of natural justice and fairplay should be quashed and the entire exercise should be undertaken afresh, since the matter is already delayed it must be given topmost priority and concluded expeditiously. It is, therefore, directed that steps as indicated above may be taken immediately.

On 2-11-1981, Sukadev Singh made a formal application to this Court under the Contempt of Courts Act of 1971 asking for action against the Chairman and Secretary of the Transport Authority and the Minister and this application has been registered as Original Criminal Miscellaneous Case NO. 24 of 1981. On 17-11-1981, notice to the opposite parties was issued asking them to show cause why they may not be suitably punished for violating the directions issued from this Court. At the relevant time, Mr. S.K. Basu, I. A. S. was the Chairman of the said Transport Authority but by the time appearance was directed, he had been transferred and Mr B. C. Patnaik, I. A. S., was in office. The Court by order dt. 7-12-1981 relieved Mr. B. C. Patnaik from the proceedings and directed notice to issue to Mr. S.K. Basu. Mr. S.K. Basu appeared in the proceeding and learned Government Advocate appearing for him took the stand that there was no personal allegation of violation of the order against Mr. Basu. On 1-3-1982, this Court made the following order:

Heard counsel for the petitioner and learned Government Advocate. It is conceded by Mr. G. P. Mohanty, the learned Counsel for the petitioner, that there is no specific allegation against Mr, Basu who was then Chairman of the State Transport Authority. In view of the concession and non-mention of any fact in the notice of the contempt proceeding, let this proceeding be dropped as against Mr. Basu. The proceeding shall continue as against the other two...

The other two contemnors Sri Khirod Chandra Patnaik, Secretary of the Transport Authority and Sri Krushna Charan Patnaik, the Minister, have appeared through different counsel and have shown cause. The Secretary of the State Transport Authority filed an application on 4-12-1981 praying that the cause shown by him in the writ application (O. J. C. No. 1460 of 1981) may be taken as his return Jo the rule. He had shown cause in the writ application on 14-9-1981. In para 5 thereof, he had stated:

... Final orders had been passed approving the list of successful applicants eligible for getting Central Zone permits on 15-6-1981. Government, however, desired to see the file and, therefore, the same was endorsed to Government on 21-6-1981. Thereafter order of the Government dated 22-6-1981 was communicated to the State Transport Authority under U. O. I. No. 324 dated 23-6-1981 to cancel the order and take up the entire exercise afresh. The Government have powers to issue general instructions u/s 43-A of the Motor Vehicles Act, 1939, Hence, the list was cancelled and was published in Order No. 8784 dated 23-6-1981.

In para 6, the Secretary further stated:

That as regards averments made in para 9 of the petition, the opposite parties further submit that the necessary guidelines have been evolved for selecting 100 Central Zone Permits out of 830 applicants. While effective steps were being taken to issue 100 Central Zone Permits, the Government in Transport Department wanted to see the file and. therefore, the file was endorsed to the Secretary, Transport Department, on 21-6-1981 indicating therein the last date for disposal of the applications as has been fixed by this Hon''ble High Court.

(underlining is ours)

The relevant file of the Transport Department has been placed before us. On the note furnished by the Secretary, the Chairman had passed orders On 15-6-1981 indicating how the disposal should be made. On 21-6-1981, there is an endorsement of the Secretary of the Transport Authority to the following effect:

As desired, the file is submitted for favour of perusal. According to the orders of the Orissa High Court in O. J. C. 1352 of 1980 under Articles 226 and 227 of the Constitution of India, grant of permits in C/Z Scheme should latest be published by 22-6-1981.

On the same day, the Chairman who happens to be also the Transport Secretary, endorsed:

As desired. I called for this file from the S.T. A. today. My order dated 15-6-1981 has not yet been implemented. The file is put up as desired.

The entire file thus seems to have been placed before the Minister. We may note here on the basis of a statement made to us from *he Bar that Sri K. C. Patnaik, Minister of Transport had a change of his portfolio with effect from 14-7-1981. In his show cause he stated that he had no occasion to go through the entire Judgment delivered by this Court. Having come across certain news items making allegations regarding grant of permits, he had, in exercise of the powers conferred on Government u/s 43-A of the Orissa Amendment to the Motor Vehicles Act (Orissa Act 3 of 1981), given the direction without being aware of this Court''s decision.

It is conceded by Mr. Rath, learned Counsel for the Minister, that the judgment of the High Court in the connected writ application required disposal of the pending applications on merit. The request made in the writ application that action may not be taken by the Transport Authority under Annexure-1 had been specifically rejected. This had been done after hearing parties including the State Government and the State Government were, therefore, bound by the order. In the absence of challenge to the judgment by appeal, it became final and the Transport Department and the Transport Authority had obtained an extension of time to implement the direction.

2. There is no dispute before us that the Minister was aware of an existing judgment. In fact, the notings in the very file which was sent to him from the Transport Authority clearly indicated that there was a decision which required

disposal of the applications by a particular date. The Minister of Transport at the relevant time was also Minister of Law. Sri Patnaik before becoming Minister had put in more than 25 years of practice at the Eerhampur Bar. His plea in para 4 of his show cause is.:

That the opposite party understands that on account of the laches of the parties, no writ was issued against the State Government in pursuance of the Judgment of the Hon''ble High Court in O. J. C. No. 1352 of 1980. This opposite party also had no occasion to go through the entire judgment delivered by the Hon''ble High Court, However, this opposite party passed an order quashing the entire process regarding grant of Central Zone Permits without being aware of the true implications of the judgment delivered by the Hon''ble High Court.

It is not disputed before us that Sri Patnaik was aware of the existence of the judgment. It was his duty to look into it and ensure that his directions did not transgress or overreach the judgment which had become final and binding. If the judgment was not available, it could be obtained from or through the Department. There was no compelling necessity to pass an order in the file no sooner it was obtained from the Secretary without examining the legal position. Sri Patnaik could have taken the advice of the Law Department of which he was also Minister at the relevant time. Unless the intention was to thwart the binding order of this Court, the manner in which the Minister's direction has been given cannot be explained.

3-4. Section 43-A of the Motor Vehicles Act inserted by Orissa Amendment under Act 3 of 1981 provides:

(1) The State Government may issue such orders and directions of a general character, as it may consider necessary, in respect of any matter relating to Road Transport, to the State Transport Authority or to any Regional Transport Authority and such Transport Authority shall give effect to all such orders and direction.

(2) The State Government may on a consideration of the matters set forth in Sub-section (1) of Section 47 direct any Regional Transport Authority to open any new route or to extend any existing route or to permit additional stage carriages to be put, or reduce the number of stage carriages, on any special route.

This provision came into the statute with effect from 3rd Mar. 1981, when the Amending Act 3 of 1981 was first published in the Orissa Gazette. Sub-section (1) is relevant. It empowers the State Government to issue orders or directions of a general character in respect of any matter relating to road transport. It is difficult to comprehend that in exercise of this power, the "State Transport Authority could be asked to reject all the applications that it had received pursuant to an advertisement issued by it. Appellate and revisional powers have been separately conferred on an authority other than the State Government to deal with appeals and revisions relating to the grant or refusal of permits. The Minister should have got the matter examined to find out whether he could make an order of the impugned type in exercise of this power. Conceding that Section

43-A enabled the order to be made, the power could not be exercised after there was a binding decision of the Court in the field which directed otherwise. Within the framework of the Rule of Law which the Constitution has established in our country, harmony can be maintained only when the legal procedure is followed and conflicting avoided. When disputes cognizable in a Court arise, the determination by the Court in the process laid down by law becomes binding subject to change of the law by the appropriate Legislature within the limits set by well-recognised principles or reversal of the decision in appeal or revision. It is the duty of every citizen and the obligation is all the more in respect of people saddled with the responsibility of running the administration to honour binding decisions and allow them to operate; otherwise chaos is bound to enter into the frame of society. The order made by Sri Patnaik has given rise to a situation of direct confrontation with the pronouncement of the Court. There is no material before us for which it can be held that the Minister was absolutely innocent or in making the order, he had committed a bona fide mistake. There is no scope for doubt that in violating the binding direction of this Court and in interfering with the process of execution of this Court's direction, Sri Patnaik committed contempt.

We are inclined to agree with the learned Standing Counsel appearing for the Secretary of the Transport Authority that he was in a dilemma as he had two contradictory orders to execute, one being the order of the Court and the other, the direction of the State Government purporting to be u/s 43-A of the Act. He had been processing the applications for disposal in terms of the Court's order when the Minister intervened and gave a contradictory direction. We are inclined to accept the plea advanced by the Secretary of the Transport Authority that he never had any intention to commit contempt of this Court's order, and placed in the embarrassing situation that he was. He had preferred the Government direction to the Court's order. He has also tendered unconditional apology. In the circumstances, we are prepared to discharge the proceedings so far as he is concerned.

5. Once the Minister is found guilty of contempt, the next question is as to what would be the adequate punishment to impose in the facts of the case.

Section 12 of the Contempt of Courts Act provides for punishment which can be simple imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees or with both. The proviso to Sub-section (1) of that Section of the Act runs thus:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.

The Explanation under Sub-section (1) is to the following effect:

An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

In the cause shown by Sri Patnaik, though he attempted to indicate circumstances in justification of his stand that there was bona fide in his action at the time of making of the order, he has also offered unconditional apology. We have already come to the conclusion that his action at that point of time was not bona fide : but when he received notice from this Court, he appears to have realised his folly and we are of the view that the offer of unconditional apology is bona fide, in these circumstances, while holding that he is guilty of contempt, we do not inflict any punishment on him. We expect that he would behave as a responsible citizen in future wherever he be and as a disciplined Advocate he would contribute to the administration of rule of law in an appropriate way. He will, however, pay the costs of this proceeding to counsel for the petitioner which we assess at Rs. 200/- (Two hundred).

B.K. Behera, J.

I agree with my Lord the Chief Justice.