wArbind Kumar Singh

Vs

Nand Kishore Prasad & Ors.

Civil Appeal No. 1943 of 1967

(J. C. Shah, V. Ramaswami-I, G. K. Mitter JJ)

26.02.1968

JUDGMENT

SHAH, J.

On January 15, 1965, the South Bihar Regional Transport Authority, Patna, ordered that a permit to ply a stage carriage on Dehri-Bhabua route be granted to Arbind Kumar Singh - hereinafter called 'the appellant' - "on production of all valid documents of 1964 model bus along with clearance certificate of transport tax within one month from the date of order, failing which the sanction of permit in his favour would stand automatically revoked, and permit will then be given to the next deserving candidate Nand Kishore Prasad.....". On application submitted by Nand Kishore Prasad - who will hereinafter be referred to as 'the respondent' - that the appellant had failed to carry out the condition relation to the grant of permit, the Chairman of the Regional Transport Authority by order dared February 20, 1965, cancelled the permit and directed that a permit be given to the respondent. The order of the Chairman was reversed in appeal by the Appellate Board. In the view of the Board "the clearance certificate" filed by the appellant showed that all the taxes due by him were paid.

The respondent then moved the State Government of Bihar under s. 64-a of the Motor Vehicles Act, 1939 as amended by the Bihar Motor Vehicles (Amendment) Act 17 of 1950. The Minister of Transport who heard the petition reversed the order of the Appellate Board, holding that the appellant had failed to carry out the conditions subject to which the Regional Transport Authority had ordered that the permit be given to him. A petition under Art. 226 of the Constitution moved by the appellant in the High Court of Patna against the order of the Minister of Transport was dismissed. The appellant has appealed to this Court with certificate granted by the High Court.

The plea raised by counsel for the respondent that the appeal was liable to be dismissed because the High Court was incompetent to grant a certificate of fitness under Art. 133(1)(a) or Art. 133(1)(b) of the Constitution against the judgment of the High Court exercising extraordinary original jurisdiction under Art. 226 of the Constitution is without substance. This Court has held in S. A. L. Narayan Row & Anr. v. Ishwarlal Bhagwandas & Anr. [[1966] 1 S.C.R. 190.] that the words "civil proceeding" used in Art. 133 of the Constitution cover all proceedings which directly affect civil rights. A proceeding under Art. 226 of the Constitution for a writ to bring up a proceeding for consideration concerning civil rights is therefore a civil proceeding. This Court has further held in Ramesh and Anr. v. Seth General Motilal Patni and Ors. [[1966] 3 S.C.R. 198.] that the High Court is competent to certify on appeal against an order passed by a Division Bench of a High Court in exercise of extraordinary original jurisdiction under Art. 226 of the Constitution if the dispute decided thereby concerns civil rights of the parties. Hidayatullah, J., speaking for the Court observed at p. 203 :

> "Mr. Gupta's contention that under that article (Art. 133) an appeal can only lie in respect of a judgment or decree or final order passed in the exercise of appellate or ordinary original civil jurisdiction but not of extraordinary original civil jurisdiction, is not right. . . . Article 133 not only discards the distinction between appellate and original jurisdiction but deliberately used words which are as wide as language can make them. The intention is not only to include all judgments, decrees and orders passed in the exercise of appellate and ordinary original civil jurisdiction but also to make the language wide enough to cover other jurisdictions under which civil rights would come before the High Court for decision."

The plea raised by counsel for the respondent that the High Court was not competent to grant the certificate must therefore be rejected.

The Bihar Legislature enacted Bihar Act 17 of 1950, imposing tax on passengers and goods carried by public service motor vehicles in Bihar. Validity of this levy was upheld by the High Court of Patna. But after the decision of this Court in Atiabari Tea Co. Ltd. v. State of Assam [[1961] 1 S.C.R. 809.], the appeals filed by the operators who challenged the levy were allowed by this Court. The State of Bihar there after issued Bihar Ordinance II of 1961 which was replaced by Bihar Act 17 of 1961. By that Act the tax was reimposed with effect from the 1st day of April, 1950. That imposition of tax was again challenged in writ petitions filed before the High Court of Patna, but without success, and the order of the High Court was confirmed by this Court in Rai Ramkrishna and Ors. v. State of Bihar [A.I.R. 1963 S.C. 1667.]. Section 1(3) of Act 17 of 1961 declares that the Act shall be deemed to have come into force on the first day of April, 1950. By s. 2(i) 'tax' means tax payable under the Act and includes the fixed amount determined under s. 8. By s. 3 charge of tax is imposed. It provides by sub-s. (1) :

> "On and from the date on which this Act is deemed to have come into force under sub-section (3) of section 1, there shall be levied and paid to the State Government a tax on all passengers and goods carried by a public service motor vehicle; such tax shall be levied and paid at the rate of twelve and a half per centum of the fares and freights payable to the owner of such vehicles :
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> Provided . . . . ."

Section 6 requires the owner of the vehicle to make prescribed return to the prescribed authority within such period as may be prescribed. Section 7 prescribes the machinery for assessment of tax. Section 9(1) provides that the amount of tax or penalty if any, payable by an owner under the Act shall be paid in the manner hereinafter provided. Sub-section (2) of s. 9 provides that before any owner furnishes any return under the Act he shall in the prescribed manner pay into the Government Treasury the full amount of tax due from him under the Act according to such return and shall furnish along with the return a receipt from the treasury showing payment of the said amount. By s. 22 power is conferred upon the state Government to make rules not inconsistent with the Act for all matters expressly required or allowed by the Act to be prescribed and generally for carrying out the purposes of the Act and regulating the procedure to be followed, forms to be adopted and fees to be paid in connection with proceedings under the Act and all other matters ancillary or incidental thereto. In exercise of the power conferred by s. 22, the State of Bihar has framed the Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Rules, 1966. Rule 11 provided that every owner shall furnish to the authority prescribed in r. 16, a monthly return, in Form V within a period of fifteen days of the close of the month to which such return relates. Rule

18 provides that where any sum is payable by an owner under the Act or the rules or any amount due for which a notice is to be given under sub-section (4) of s. 9, the authority prescribed in r. 16 shall serve notice in Form XI, and shall also fix a date by which the owner shall produce a receipted challan in proof of such payment. It is clear from the scheme of the Act and the rules that by s. 3 a charge is imposed upon an owner of the vehicle to pay tax to the State Government on all passengers and goods carried by a public service motor vehicle at the rates fixed by the statute and the owner must make monthly returns within fifteen days from the expiry of the month to which the return relates.

The decision of the Madhya Pradesh High Court in Raipur Transport Co., Private Ltd., Raipur v. M.P. Singh and Ors. [A.I.R. 1968 M.P. 36.] on which reliance was placed by counsel for the appellant has, in our judgment, no bearing on the question which falls to be determined in this appeal. Section 10 of the Motor Vehicles (Taxation of Passengers) Act, 1959, passed by the State of Madhya Pradesh provided that in cases referred to in Ss. 7, 8 and 9, the Tax Officer shall serve on the operator a notice of demand for the sums payable to the State Government. That in the view of the High Court pre-supposes that an order of assessment has been made under the earlier provisions of the Act, and therefore an order of assessment was necessary not only for the validity of the notice of demand, but also for enabling the appellate authority to see whether the tax had been correctly assessed or not and the demand made against the operator was or was not justified. We are in the present case not concerned to determine the validity of a notice of demand. The liability to pay tax under Bihar Act 17 of 1961 clearly arises by statutory injunction and not from the order of assessment. In terms s. 3 says that there shall be levied and paid to the State Government a tax on all passengers and goods carried by a public service motor vehicle.

The appellant plied his motor buses in 1950-51 and on the plea that the tax was invalid did not pay the tax levied under Act 17 of 1950. After the reimposition of the tax by Act 17 of 1961, there survived no ground on which the liability to pay tax could be resisted. On January 15, 1965, a condition had been imposed upon the appellant that a permit would be granted to him provided he produced a clearance certificate. Liability to pay transport tax amounting to Rs. 1,675/- was outstanding against the appellant for nearly fifteen years and that liability was discharged by payment on March 5, 1965. It cannot, in the circumstances, be contended that there was no liability to pay transport tax outstanding against the appellant on the date of the order granting him the permit. Failure to produce the clearance certificate in respect of the transport tax clearly disentitled the appellant to the grant of a permit.

Counsel for the appellant, however, contended that the imposition of a condition that the appellant shall produce a clearance certificate in respect of the transport tax was invalid and the condition was liable to be ignored by the appellant. Section 47(1) of the Motor Vehicles Act, 1939, insofar as it is material provides :

> "A Regional Transport Authority shall, in considering an application for a stage carriage permit, have regard to the following matters, namely :-
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> (a) the interests of the public generally;
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> (b) the advantages to the public of the service to be provided, including the saving of time likely to be effected thereby and any convenience arising from journeys not being broken;

(c) the adequacy of other passenger transport services operating or likely to operate in the near future, whether by road or other means, between the places to be served;

(d) the benefit to any particular locality or localities likely to be afforded by the service;

(e) the operating by the applicant of other transport services, including those in respect of which applications from him for permits are pending;

(f) the condition of the roads included in the proposed route or area;

and shall also take into consideration any representation made by persons already providing passenger transport facilities by any means along or near the proposed route or area, or by any association representing persons interested in the provision of road transport facilities recognised in this behalf by the State Government, or by any local authority or police authority within whose jurisdiction any part of the proposed route or area lies :

Provided . . . . ."

Sub-section (2) of s. 47 sets out the conditions under which the Regional Transport Authority may refuse to grant a stage carriage permitted; and sub-s. (3) provides for the conditions in which, having regard to the matters specified in sub-s. (1), the Regional Transport Authority may limit the number of stage carriages generally or of any specified type for which stage carriage permit may be granted in the region or in any specified area or on any specified route within the region. It was urged that under s. 47 the Regional Transport Authority is bound to consider only the matters which are specified in cls. (a) to (f) of sub-s. (1) of s. 47, and if the applicant is found qualified for a permit no conditions may be imposed by the Regional Transport Authority. We need express no opinion on that argument. If the argument raised by counsel for the appellant has any substance, and if it be held that the grant of a permit is to be subject only to such of the conditions as may be prescribed under s. 48, the order made by the Regional Transport Authority must be deemed to be an order refusing the permit. The appellant could, if so advised, have challenged the validity of the imposition of the condition relating to the payment of tax, but he could not ignore the conditions subject to which the permit was granted.

Finally, it was urged that the Minister of Transport acted illegally in taking into account evidence which was not on the record of the Regional Transport Authority, and alternatively, that the Minister violated the fundamental rules of natural justice in basing his judgment upon a document received from the Deputy Commissioner of Commercial Taxes, intimating that the transport tax was due by the appellant without bringing it to the notice of the appellant and calling for an explanation. Section 64-A of the Motor Vehicles Act, 1939, as amended by Bihar Act 17 of 1950 authorises the State Government to call for, in the course of any proceedings taken under the Chapter, from any authority or officer subordinate to it, the records of such proceedings, and after examining such records pass such order as it thinks fit. The expression "pass such order as it thinks fit" is not restricted to the passing of orders which are final in character. If for the purposes of doing complete justice between the parties, the authority who hears the revision petition is satisfied that it is necessary to call for additional evidence, he may call for such evidence. There is no bar in the Act or the rules against an appellate or the revising authority taking into consideration additional evidence brought on the record, if the authority requires additional evidence to be brought on the

record or allows it to be brought on the record to do complete justice between the parties. The evidence must undoubtedly be disclosed to the parties and they must be given an opportunity to meet an inference that may arise from such additional evidence. We are unable to hold that the Minister of Transport in taking into consideration the report received from the Deputy Commissioner of Commercial Taxes, Intelligence Branch, that an amount of Rs. 1,675/- was outstanding on February 16, 1965, against the appellant in respect of the two buses plied in the year 1950-51 acted in violation of the rules of natural justice. The circumstances in which this document was brought on the file of the Minister are not clear on the record. But, as stated by the Minister, the document was disclosed to counsel for the appellant and counsel was asked to give a reply thereto. The Minister also recorded in his judgment that counsel for the appellant explained that since there was no demand for payment of the dues, it was not correct to say that the amount of Rs. 1,675/- was due against the appellant on February 16, 1965. The Minister of Transport rejected that argument. Before us it was contended that the document was never shown to the appellant's counsel and he was never asked to render his explanation in that behalf. If this were true, the appellant would, we have no doubt, have approached the Minister who was exercising quasi-judicial functions, and would have asked him to review his order. This admittedly has not been done. Again, if the grievance now raised were true, the averments in paragraph-19 of the petition before the High Court would not have taken the form which they have taken. In paragraph-19 it is stated that "the so-called report of the Deputy Commissioner, Commercial Taxes, Intelligence Branch, Patna, under Memo No. 8527 dated 24-7-1965 was never shown to the petitioner and the petitioner had no opportunity to meet the said report." Whereas the Minister of Transport had recorded that the report of the Deputy Commissioner, Commercial Taxes, was shown to counsel for the appellant and the counsel had given certain information the petition before the High Court merely stated that the appellant was not shown the report of the Deputy Commissioner.

The High Court on a consideration of the evidence has come to the conclusion that the claim made by the appellant that document was not disclosed at the hearing before the Minister of Transport, and the Minister acted upon that document without informing the appellant, cannot be accepted, and we do not see any reason to disagree with the view expressed by the High Court.

The appeal fails and is dismissed with costs.

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Appeal dismissed.

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