

PATNA HIGH COURT

Mahabir Motor Co

Vs

State of Bihar

Misc. Judicial Case No. 454 of 1954

(Das, C.J. and Imam, J.)

19.04.1955

JUDGMENT

Das, C.J.

1. This is an application for the issue of a writ in respect of an order passed by the State Transport Authority in the exercise of its appellate jurisdiction, on 12-12-1953 by which the State Transport Authority allowed an appeal against an order of the East Bihar Regional Transport Authority, dated 23-4-1952, by which the said Regional Transport Authority renewed the permit of the present petitioner in respect of a stage carriage permit for the Bhagalpur Deogher route via Jaipur and Jamadha. The petitioner also filed an application to the State Government under Section 64A of the Motor Vehicles Act, 1939, which application of the petitioner was rejected by the State Government. It is in respect of these two orders that the present application for the issue of a writ has been made, on the ground that the order of the State Transport Authority is without jurisdiction and the order of the State Government violates the principles of natural justice.

2. The facts relevant for the purpose of the present application are these. The petitioner, M/S. Mahabir Motor Company, Bhagalpur originally had a permit for one bus, namely, B.R.J. 528 for the aforesaid Bhagalpur Deoghar route. Subsequently, they had a permit for another bus, B.R.J. 86. On account of the short supply of petrol, only one bus actually was run by the petitioner. On 15-10-1951 the Regional Transport Authority, within whose jurisdiction the route lay, decided to advertise the renewal in respect of only one service for the route in question and to get Government Sanction for the additional service. The result was that from 15-10-1951, the petitioner had only one service on the said route. When the renewal application was advertised, one Rameshwar Prasad filed an objection to the renewal of the permit of the petitioner. On 23-4-1952, the renewal question as also the objection of Rameshwar Prasad were considered by the Regional Transport Authority, and that authority by its order dated 23-4-1952, renewed the permit of the petitioner for three years in respect of bus no. B.R.J. 528. Rameshwar Prasad then

filed an appeal to the State Transport Authority under Section 64 of the Motor Vehicles Act, 1939. This appeal was heard on 4-6-1953, by the State Transport Authority. The State Transport Authority referred to certain allegations made against the petitioner and called for a further report from the Regional Transport Authority. After a report had been received, the State Transport Authority finally heard the appeal on 12-12-1953, and by their order of that date, the State Transport Authority allowed the appeal and rescinded the order of the Regional Transport Authority renewing the permit of the present petitioner. The present petitioner then filed an application under Section 64A to the State Government, which application, I have already stated, was dismissed on 1-5-1954. Thereafter the petitioner has preferred the present application for the issue of a writ of certiorari, or any other appropriate writ, for the purpose of quashing the aforesaid two orders.

3. In support of the petition two points have been urged before us by Mr. Bhabananda Mukherji, who appealed for the petitioner. The first point is that the order of the State Transport Authority in the exercise of its appellate jurisdiction was itself void and without jurisdiction, because no appeal lay to the State Transport Authority. Our attention has been drawn to Section 47 of the Motor Vehicles Act, which states, inter alia that in Deciding whether to grant or refuse a stage carriage permit, the Regional Transport Authority shall have regard to certain matters mentioned in clauses (a) to (f) of Sub-Section (1) of the Section; Sub-Section (1) further states that the Regional Transport Authority shall also take into consideration any representations made by person already providing road transport facilities along or near the proposed route or routes or by any local authority or police authority within whose jurisdiction any part of the proposed route or routes lie or by any association interested in the provision of road transport facilities. Section 57 of the Motor Vehicles Act lays down the procedure in applying for and granting permits. Sub-Section (3) of Section 57 says, inter alia, that the application shall be notified and a date will be fixed for the hearing of representation in connection with the application. Sub-Section (5) of Section 57 lays down that the Regional Transport Authority shall dispose of the application at a public hearing at which the applicant and the person making the representation shall have an opportunity of being heard either in person or by a duly authorised representative. Our attention has also been drawn to Section 58(2) of the Motor Vehicles Act which states that a permit may be renewed on an application made and disposed of as if it were an application for a permit; therefore, the procedure for renewing a permit is the same as for granting a permit, though under the proviso to Sub-Section (2) of Section 58 an application for renewal is to be given preference over new applications for permits. Mr. Bhabananda Mukherji has contended before us that Rameshwar Prasad, who objected to the renewal of the permit of the petitioner, had no locus standi and was not entitled to make any representation or objection under Section 47 of the Motor Vehicles Act, because he was not a person already providing road transport facilities along or near the proposed route or routes. This really is a question of fact. A counter-affidavit has been filed on behalf of Rameshwar Prasad in which Rameshwar Prasad has stated that he was providing road transport facilities along or near the route in question by means of a permit, namely, Public carrier permit No. B.R.J. 218. In view of this counter-affidavit it cannot be said

that Rameshwar Prasad had no locus stand to make a representation. This point was also considered by the State Transport Authority, and the State Transport Authority took the view that under Section 57 of the Motor Vehicles Act any person had the right to file an objection to the granting of a permit. It is unnecessary to consider in this case whether that view of the State Transport Authority is right or wrong. On the affidavits filed before us it is clear that Rameshwar Prasad had the right to make an objection. If Rameshwar Prasad had the right to make an objection he had also the right to prefer an appeal against the order of the Regional Transport Authority, Section 64 of the Motor Vehicles Act provides for appeals. Section 64 is in these terms :

"64. Appeal : Any person –

(a) aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, or

(b) aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof, or

(c) aggrieved by the refusal to transfer the permit to the person succeeding on the death of the holder of a permit, or

(d) aggrieved by the refusal of the State or a Regional Transport Authority to counter sign a permit, or by any condition attached to such counter-signature, or

(e) aggrieved by the refusal of renewal of a permit, or

(f) being a local authority or police authority of an association which, or a person providing transport facilities who, having opposed the grant of a permit, is aggrieved by the grant thereof or by any condition attached thereto, or

(g) being the holder of a license, who is aggrieved by the refusal of a Regional Transport Authority to grant an authorisation to drive a public service vehicle, may, within the prescribed time and in the prescribed manner, appeal to the prescribed authority who shall give such person and the regional authority an opportunity of being heard".

Clause (f) states, inter alia, that any person providing transport facilities who, having opposed the grant of a permit, is aggrieved by the grant thereof, may prefer an appeal under Section 64. Mr. Bhabananda Mukherji has argued that clause (f) is limited only to the grant of a permit and does not, therefore, extend to the renewal of a permit. He has drawn our attention to the fact that in other clauses of Section 64 a distinction has been drawn between the grant of a permit and the renewal of a permit; for example, clause (a) relates to the grant of a permit; clause (e) relates to the refusal of renewal of a permit. Mr. Bhabananda Mukherji has therefore, argued that in view of the distinction drawn between the grant of a permit and renewal of a permit in clauses (a) and (e) of Section 64, clause (f) should be so read as to confine it to a case where a person having opposed the grant of a permit, as distinguished from renewal of a permit, is aggrieved by the grant. I am unable to accept such a narrow construction of clause (f) of Section 64. Such a narrow construction conflicts with the other provisions in the Motor Vehicles Act. I have already referred to Section 57, Section 58 which show that the procedure for the renewal of a permit is

the same as the procedure for the grant of a permit. If, therefore, a person has a right to oppose the renewal of a permit, it seems somewhat strange and anomalous that he shall have the right to oppose the renewal of a permit but not the right of appeal against an order adverse to him. There is further difficulty in accepting the narrow construction put on clause (f) by Mr. Bhabanand Mukherji. A local authority or police authority has also the right to make an objection to the grant of a permit; they can also make an objection to the renewal of a permit. If the narrow construction sought to be put on clause (f) by Mr. Mukherji is accepted, then the local authority or the police authority will also have no right of appeal against an adverse order made on an application for the renewal of a permit, as distinguished from an application for the grant of a permit. This will give rise to a very anomalous result; and unless the words of the clause force us to accept a narrow construction, such a construction as will result in an absurdity should not be accepted. In making a distinction between grant of a permit and the refusal of renewal of a permit in clauses (a) and (e) of Section 64, the Legislature was merely providing for all the circumstances in which an appeal may be preferred, and it may even be that the distinction was made by way of abundant caution. Both grant and renewal stand more or less on the same footing by reason of Section 47, Section 57, Section 58 of the Motor Vehicles Act; and when in clause (f) the legislature gave a right of appeal to a person providing transport facilities who, having opposed the grant of a permit, is aggrieved by the grant, the legislature must have intended that the expression "grant" in clause (f) includes also the renewal of a permit; because if a person has the right to oppose a renewal, it is anomalous to hold that he has no right of appeal against an adverse order passed in spite of his opposition. I would, therefore, hold that clause (f) of Section 64 relates not merely to the grant of a permit but also to the renewal of a permit; and a person who is aggrieved by the order of renewal has the right to prefer an appeal under Section 64 of the Act.

4. This disposes of the first objection urged on behalf of the petitioner. Mr. Mukherji wanted us to go into the facts and to hold that the petitioner had not been guilty of any fraud or irregularity in the matter of the permit which he had for the route in question. It is not open to us to go into facts. The appellate authority did go into facts and held that the petitioner had been guilty of irregularity; and as we are not sitting in appeal over the State Transport Authority it is not open to us to go into the facts.

It is enough to state that the State Transport Authority had jurisdiction to hear the appeal of Rameshwar Prasad and that they committed no error apparent on the face of the record.

5. As to the order passed by the State Government under Section 64-A of the Motor Vehicles Act, it has been held by a Bench of this Court that the power which the State Government exercises under Section 64-A is more or less in the nature of a revisional power and, therefore, of a quasi-judicial nature : see the decision in Misc. Judl Case Nos. 129 of 1954 and 4 of 1955, D/d. 18-3-1955. It is well settled that a power which is quasi-judicial in nature has to be exercised in accordance with the established principles of natural justice. Therefore, the question is if the principles of natural justice have been violated in this case. It cannot be said that the petitioner

has had no opportunity of presenting his case to the State Government. The petitioner did present his case to the State Government by means of an application and all the grounds which the petitioner has now agitated were placed before the State Government. The State Government considered those grounds and then saw no reasons to interfere. I do not think that in circumstances like those in the present case, it can be said that the principles of natural justice have been violated. In Misc. Judl Case No. 129 of 1954, (Pat) (A) to which I have already made a reference, the facts were the following. One Kedar Nath Lath, along with certain other persons filed applications for a permit. The Regional Transport Authority granted a permit to one Rajanikant Thakur. Against that order Kedar Nath Lath and another person filed an appeal. The appeal of Kedar Nath Lath was allowed and Kedar Nath Lath obtained a permit. Then Rajanikant Thakur moved the State Government under Section 64A of the Motor Vehicles Act. The State Government allowed the representation of Rajanikant Thakur and in effect cancelled the permit of Kedar Nath Lath. Therefore, that was a case in which the permit of Kedar Nath Lath was cancelled without giving any hearing whatsoever to him and without even giving him an opportunity of showing why his permit should not be cancelled. Here, however, we have an entirely different situation. Here the petitioner's permit has been cancelled by the appellate authority after hearing the petitioner; the petitioner then moved the State Government under Section 64-A and in his application the petitioner stated all his grounds. Those grounds were considered by the State Government, and the State Government saw no reasons to interfere with the order of the appellate authority. It cannot, therefore, be said that this is a case in which the principles of natural justice have been violated. The petitioner did have an opportunity of presenting his case and he did present his case by a written application. I do not think that it can be laid down as a general rule that in every case an oral hearing must be given and unless an oral hearing is given the principles of natural justice are violated. I may refer here to Section 439, Section 440 Criminal Procedure Code. Under Section 439, Criminal Procedure Code this Court has powers of revision. Under Sub-Section (2) of Section 439 no order under the Section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by a pleader in his own defence. Section 440 states that no party has any right of being heard either personally or by a pleader before any court when exercising its powers of revision, but nothing in Section 440 shall be deemed to affect Sub-Section (2) of Section 439. Therefore, the position comes to this. Except in respect of cases covered by Sub-Section (2) of Section 439, no party has a right to be heard either personally or by a pleader before any court when exercising its powers of revision. I do not think that it can be argued that Section 440, Criminal Procedure Code violates the principles of natural justice. What is required is that a party must have an opportunity of presenting his case or of showing cause against the order in respect of which he is making a grievance; it is not essential that in every case the party must be heard personally or through a pleader. Learned Counsel for the petitioner has referred to certain observations in Maxwell on the Interpretation of Statutes. The observations he has relied on are these (page 370, 10th edition) :

"In giving judicial powers to affect prejudicially the rights of person or property, a

statute is understood as silently implying, when it does not expressly provide, the condition or qualification that the power is to be exercised in accordance with the fundamental rules of judicial procedure, such, for instance, as that which requires that, before its exercise, the person sought to be prejudicially affected shall have an opportunity of defending himself". I do not think that the aforesaid observations advance the case of the petitioner any further. The petitioner did have an opportunity of defending himself and he did make an application stating all his grounds to the State Government; it cannot, therefore, be said that the petitioner was denied an opportunity of allowing cause or of defending himself. The other observations on which Mr. Mukherji has relied are at page 372:

"It is obvious that where an Act which creates a new jurisdiction gives any person dissatisfied with its decision an appeal to another judicial authority which is empowered to confirm or annul the decision as to it shall appear just and proper, the right of being heard in support of his appeal is impliedly given to the appellant".

Here again I do not think that the procedure with regard to revisional power must be the same as for appellate power. The right of being heard in support of an appeal may in a fit and appropriate case be held to have been impliedly given to the appellant. I doubt if the same can be said with regard to the revisional power. Learned Counsel also referred to the decision in *In re : Banwarilal Roy*¹, (B) and referred us to the observations at page 800 with regard to the nature of a quasi-judicial function. The observations are to the following effect :

"A judicial or quasi-judicial act, on the other hand, implies more than mere application of the mind or the formation of the opinion. It has reference to the mode or manner in which that opinion is formed. It implies 'a proposal and an opposition' and a decision on the issue."

It is always a matter of some nicety as to the extent to which general observations have their application to the facts of a particular case. I have no doubt in my mind that the power exercised by the State Government under Section 64A is of a quasi-judicial nature; that does not, however, mean that there must, in every case under Section 64A, be a 'proposal' and an 'opposition'. It is, I think, open to the State Government to consider the application filed, and as the Section itself says, call for the record of such proceedings, and after examining such records pass such orders as it thinks fit. It is not an arbitrary power and it does not give an unfettered discretion to the State Government. The discretion that is given has to be exercised judicially, but I do not think that it is essential in every case that the State Government must give a personal hearing or a hearing through a lawyer before disposing of the application, though it is essential that the person against whom the order is proposed to be made must have an opportunity of defending himself or of showing cause. Once that essential requirement is fulfilled, the principles of natural justice cannot be said to have been violated. Whether a personal or a further hearing should or should not be given will necessarily depend on the facts and circumstances of each case.

6. For the reasons given above, I hold that no case for the issue of a writ has been made out. I would accordingly dismiss the application with costs.

Imam, J.

7. I agree.

Application dismissed.

Cases Referred

¹43 Cal WN 766