

Rajeshwari Devi and ors. Vs. the State of Bihar and ors.

Rajeshwari Devi and ors. Vs. the State of Bihar and ors.

SooperKanoon Citation : sooperkanoon.com/128217

Court : Patna

Decided On : Jul-21-1994

Judge : N. Pandey and S.K. Singh, JJ.

Acts : [Motor Vehicles Act, 1988](#) - Sections 80 and 88; [Constitution of India](#) - Articles 19, 19(1) and 226

Appeal No. : C.W.J.C. Nos. 9333 of 1989 and 95, 2062, 5041 and 5506 of 1990

Appellant : Rajeshwari Devi and ors.

Respondent : The State of Bihar and ors.

Advocate for Def. : Shyam Nr. Sinha, Veena Rani Jaiswal, Chandra Shekhar and Sudhir Sahay, Advs., Randhir Kr. Singh and Amla Kant Chaudhry for B.S.R.T.C. and Ashok Kr. Jha and Dhirendra Nath Jha

Advocate for Pet/Ap. : K.N. Keshava and Mukul Sinha, Advs. Sunil Kumar and Priya Ranjana, Advs.

Disposition : Petition dismissed

Judgement :

1. In these writ applications the petitioners have prayed for quashing different resolutions of Darbhanga Regional Transport Authority, whereby and whereunder, numbers of permanent and temporary stage carriage permits were granted to the

private respondents on their suo motu applications. Although these writ applications are on behalf of different petitioners, but points involved, are common, therefore, for sake of convenience, they are being disposed of by this common judgment.

2. The petitioners are the existing stage carriage operators on different routes. They held permits, granted by the Regional Transport Authorities of the concerned area. They were plying their vehicles on the routes, assigned to them under such permits. Their grievance is that the decisions of the Regional Transport Authority (hereinafter to be referred as 'the authority') to grant stage carriage permits on suo motu applications, is in clear violation of the constitutional provisions, contained in Articles 14 and 19(1)(g) of the Constitution and even against the provisions of Motor Vehicle Rules, as amended after enforcement of the [Motor Vehicles Act, 1988](#) (hereinafter to be referred as 'the Act').

3. Their further grievance is that the applications of the private respondents for grant of stage carriage permits were filed without indicating any time schedule. The existing operators were not given an opportunity to file objections in order to protect their right of business and timings, fixed by the authorities for movement of vehicles. The concerned authority was not entitled to grant permits for

the routes without verifying the road conditions and the portion of the nationalised routes.

4. It further stated that the concerned authority had no jurisdiction to grant inter regional permits in violation of Section 69 of the [Motor Vehicles Act, 1988](#). According to them, more than 50 per cent of the area over which the permits were granted, are in the jurisdiction of other Regional Transport Authority. Therefore, as per the provisions of Section 69 of the Act, the other Regional Transport Authority was only competent to grant such permits. Besides the aforesaid, no approval or concurrence of the Regional Transport Authorities, within whose jurisdiction such area lies, was obtained.

5. Their further case is that all such permits were granted at the instance of the Secretary of the authority. Therefore, the competent authority had failed to apply

its judicial mind. Most of the permits were granted even without including those matters in agenda of the meeting of the authority. It is also urged that even the quorum of the meeting of the authority was incomplete when impugned resolutions were adopted.

6. In the background of the facts stated above, the petitioners prayed that the provisions of Section 80 of the Act, denying opportunity to the existing operators to protect their interest, is unreasonable and violative of the provisions of Article 19(1)(g) of the Constitution. The further question is whether powers conferred upon the authorities under Section 88 of the Act, which begins with the expression 'except as may be prescribed' is controlled by Rule 22 of the Bihar Motor Vehicle Rules, 1940. If it is so controlled, the grant of inter regional permits, covering an area of North Bihar Regional Transport Authority, Muzaffarpur, by Dharbhanga Regional Transport Authority, Darbhanga, without complying the provisions of Rule 52 is illegal and without jurisdiction.

7. Various other matters concerning allegation of mala fide that different procedures while granting suo motu permits, were not followed, have been raised. Copies of agenda

and different resolutions have been brought on the record to show that without including such matters in the agenda resolutions were passed. On the other hand, different counter and supplementary counter-affidavits have been filed by the respondents, taking a stand that all prescribed procedures were followed. Before grant of such permits, the approval and agreement of Muzaffarpur Transport Authorities were also obtained. Therefore, it cannot be said that there was any violation of provisions of Section 69 or 88 of the Act.

8. In view of the facts stated above, the grievance of the petitioners with respect to grant of suo motu permits in favour of different respondents is based upon disputed facts. Besides the aforesaid, the permits in question were granted as back as in the year, 1989 and 1990, therefore, after a lapse of about four years, it would not be in the interest of general public to quash the impugned resolutions at this stage.

9. The petitioners were plying their vehicles on the routes, assigned to them. They are in full enjoyment of their fundamental rights, guaranteed under Article 19(1)(g) of the [Constitution of India](#). There is no threat of any kind, whatsoever, to their legitimate right to operate vehicles on the basis of permits, granted to them. In that view of the matter, if the private operators are allowed to ply their vehicles for the remaining period, the petitioners are not affected in any manner.

10. Now I shall examine the main grievances of the petitioners that the provisions of Section 80 of the Act, denying opportunity to the existing operators to protect their interest, is unreasonable and violative of the provisions of Articles 14 and 19(1)(g) of the [Constitution of India](#). It is urged that the right of existing operators to file objections with regard to grant of permits, is protected under the provisions of Article 19(1)(g) of the Constitution. Since such provision was available to the existing operators under the old Act, the restriction imposed under the new Act by the Parliament is unreasonable and arbitrary.

11. It is urged that Article 19(1)(g) of the

Constitution confers a fundamental right upon the citizens to practice any profession or to carry on occupation, trade or business. The Court must consider the validity of the law imposing prohibition on such right. If such prohibition or restriction is unreasonable and opposed to the public policy, the same must be held ultra vires to Article 19(1)(g) of the Constitution. In support of the aforesaid contention reliance was placed to the case of *Municipal Corporation of the City of Ahmedabad v. Jan Mohammed Usmanbhai*, AIR 1986 SC 1205. The relevant findings in this regard from the aforesaid report is reproduced hereunder:

'The Court must in considering the validity of the impugned law imposing prohibition on the carrying on of a business or a profession attempt an evaluation of its direct and immediate impact upon the fundamental rights of the citizens affected thereby and the larger public interest sought to be ensured in the light of the object sought to be achieved, the necessity to restrict the citizens freedom, the inherent pernicious nature of the act prohibited or its capacity or tendency to be harmful to the general public, the possibility of achieving object by imposing a less drastic restraint, and in the absence of exceptional situations such as the

prevalence of a state of emergency, -national or local, or the necessity to maintain necessary supplies or the necessity to stop activities inherently dangerous, the existence of a machinery to satisfy the administrative authority that a case for imposing restriction is made out or a less drastic restriction may ensure the object intended to be achieved.'

12. It was contended that action of the State cannot be arbitrary and unreasonable, so as to affect the constitutional rights, guaranteed to the citizens. The Government cannot act as private individual. The action must be fair and equal for all. In support of such contention, he has placed reliance over a decision of the Supreme Court in the case of *Ramana Dayaram Shelly v. The International Airport Authority of India*, AIR 1979 SC 1628.

13. A question, thus, emerges whether the impugned amendment of the Act, taking

away the right of existing operators to file objections, is unreasonable and against the public policy.

14. It would be relevant to notice that during pendency of these writ applications, identical question arose for consideration before the Supreme Court in the case of *Mithiiesh Garg etc. etc. v. Union of India*, AIR 1992 SC 443. In that case Supreme Court was dealing with a batch of writ petitions, where the question of jurisdiction of R.T.A., Merath fell for consideration. There Mithiiesh Garg and other writ petitioners were the existing operators. They objected to the grant of new permits on the ground that their fundamental right under Articles 14 and 19(1)(g) had been adversely affected by the grant of a new permit. The Supreme Court after examining the differences in the provisions of Sections 47 and 57 of the Old Act and Sections 71, 72 and 80 of the New Act, made it clear that the procedure for grant of permits under New Act has been liberalised to such an extent that an intended operator can get permit irrespective of the members of operators already in the field.

15. No doubt under Sections 47(1) read with 57 of the Old Act, an application for grant of permit was to be published and kept for inspection in the office of R.T.A.,

so that the existing operators could file representations/objections against such applications. Examining the aforesaid aspect, the Supreme Court in the Mithiresh Garg's case, AIR 1992 SC 443 (supra) held that if the Parliament in its wisdom has completely deleted such provision, it cannot be said that it was unreasonable. It would be appropriate to notice the observation of the Supreme Court in this regard hereunder:--

'The Parliament in its wisdom has completely effaced the above features. The scheme envisaged under Sections 47 and 57 of the Old Act has been completely done away with by the Act. The right of existing-operators to file objections and the provision to impose limit on the number of permits have been taken away. There is no similar provision to that of Section 47 and Section 57 under the Act. The statement of Objects and Reasons of the Act

shows that the purpose of bringing in the Act was to liberalise the grant of permits. Section 71(1) of the Act provides that while considering an application for a stage carriage permit the Regional Transport Authority shall have regard to the objects of the Act. Section 80(2), which is the harbinger of Liberalisation, provides that a Regional Transport Authority shall not ordinarily refuse to grant an application for permit of any kind made at any time under the Act. There is no provision under the Act like that of Section 47(3) of the Old Act and as such no limit for the grant of permits can be fixed under the Act. There is, however, a provision under Section 71(3)(a) of the Act under which a limit can be fixed for the grant of permits in respect of the routes which are within a town having population of more than five lakhs.'

16. In the aforesaid case, the Supreme Court further held that on a comparative reading of the provisions of the Old Code as well as the new one, it is clear that the procedure for grant of permits under the New Act has been liberalised. The scheme, as it was available under Sections 47 and 57 of the Old Act, has been completely done away with by the new Act. The right of existing operators to file objections have been taken away. The statement of objects and reasons of the Act shows that the purpose was to liberalise the system in granting permits. There is no threat of any kind under the new Act to the enjoyment of the right of existing

operators under Article 19(1)(g) to carry on occupation of transport. In this regard, it would be appropriate to notice the relevant observation of the Supreme Court from the aforesaid case:

'It is thus a guaranteed right of every citizen whether rich or poor to take up and carry on, if he so wishes, the motor transport business. It is only the State which can impose reasonable restrictions within the ambit of Article 19(6) of the [Constitution of India](#). Section 47(3) and 57 of the Old Act were some of the restrictions which were imposed by the State of the enjoyment of the right under Article 19(1)(g) so far as the motor transport business was concerned. The said restrictions

have been lakenaway and the provisions of Sections 47(3) and 57 of the old Act have been repealed from the Statute Book. The Act provides liberal policy for the grant of permits to those who intend to enter the motor transport business. The provisions of the Act are in conformity with Article 19(1)(g) of the [Constitution of India](#). The petitioners are asking this Court to do what the Parliament has undone. When the State has chosen not to impose any restriction under Article 19(6) of the [Constitution of India](#) in respect of motor transport business and has left the citizens to enjoy their right under Article 19(1)(g) there can be no cause for complaint by the petitioners.'

17. In our view, after the clear pronouncement of the law in Mithilesh Garg's case AIR 1992 SC 443 (supra) by the Surpeme Court that the existing operators had no right to object to the grant of permit to another operator, it is not open to the petitioners to contend that the impugned resolutions, granting permits in favour of the private respondents, without entertaining their objections, are illegal. The provisions of New Act are in conformity with Article 19(1)(g) of the Constitution. The writ petitioners, therefore, cannot ask the Court to do what the Parliament had undone. Reference in this regard can be made to an earlier decision of the Supreme Court in the case of Hans Raj Kehar v. The State of U.P., AIR 1975 SC 389.

18. It was next contended that the Supreme Court in Mithilesh Garg's case AIR 1992 SC 443 (supra) has not considered the right of existing operators to file

objections/representations with respect to the timings of the vehicles. Therefore, the Kerala High Court in the case of *The Secretary, Changancherry Taluk Road Bus Thozhlali Co-operative Society Ltd. v. Mathew Job*, AIR 1993 Ker-191 while agreeing with the findings of *Thomas Lucka's* case in so far as it stated that existing operators could object in respect to the timings, given by the applicants in their applications.

It would be appropriate to quote the relevant findings of the aforesaid report hereunder:

'For the aforesaid reasons, we hold that

Kunhikrishnan Nair's case (1991 (2) KLT 266) to the extent it decides that existing operators have a right to object at the stage of grant of permit to another operator is not good law and must be deemed to be implicitly overruled by the Supreme Court in *Mithilesh Gar's* case. Similarly, if the decision in *Thomas Lucka v. Secretary, R.T.A.* (1992(2) KLT 229) laid down any proposition similar to the one in Kunhikrishnan Nair's case, to that extent it must also be deemed to be partly overruled. We however agree with *Thomas Lucka's* case in so far as it stated that existing operators could object in respect of the timings. We also agree with *Girija Devi v. K.T. Mathew* (1991 (1) KLT 353) to the extent, it held that existing operators have no right to object to the grant of permit to another operator.'

19. I have already noticed the contention of the learned counsel for the petitioners that even with regard to timings, allotted to new operators, the existing operators were not given an opportunity to file representation. On the other hand, the respondents denied such allegations and stated that the appropriate authorities had already taken notice to these facts. As I have already held that these grievances of the petitioners are based on disputed questions of facts, therefore, it would not be in the interest of general public to quash such permits at this stage. The Legislative policy under the Act cannot be challenged on these grounds. It is for the authorities to consider the relevant factors at an appropriate stage. The authorities are bound to keep a watch on the erroneous and illegal exercise of power in granting permits under the liberalised scheme.

20. I, therefore, see no force in the contentions, raised by the petitioners with respect to the validity of the New provisions under the Act and, as such, the writ applications are dismissed to the extent, indicated above. So far the claim of the petitioners to file representation with regard to the timings, granted to the new operators, in my view, the same has to be considered in accordance with law, whenever fresh permils are granted. But in the circumstances of the case the parties are

left to bear their own costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com