

Mitrynjay Kumar Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Jun-24-2002

Judge : R.S. Garg, J.

Appeal No. : C.W.J.C. No. 995 of 2002

Appellant : Mitrynjay Kumar

Respondent : The State of Bihar and ors.

Disposition : Petition Allowed

Judgement :

R.S. Garg, J.

1. The petitioner is the resident of Fatehpur filed this writ petition challenging the correctness, validity and propriety of Annexure 1, a short term notice so issued by District Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Gaya. According to the petitioner in Annexure 1 Zila Parishad wanted to settle Fatehpur Bus Stand for 2001-2002 but before settlement they did not obtain any permission or sanction/direction from concerned Regional Transport Authority in accordance with Rule 191 of Motor Vehicle Rules. The petitioner also says that the action of the authority is illegal and cannot be allowed to stand. The State Government in its counter has come out with a separate case that Regional Transport Authority has not passed any order under Rule 191. The respondent-

Zila Parishad in their counter-affidavit submitted that the petitioner has no locus. The petitioner in fact, has personal grievance against Zila Parishad relating to some other contract matter and as the Zila Parishad is the owner of the property the right vests in the Zila Parishad. The Zila Parishad is entitled to station a particular place as Bus Stand.

2. Referring to Sub-rule (1) of Rule 191 it is contended that the District Magistrate or Regional Transport Authority or the State Government can direct the owner (Zila Parishad) to provide certain facilities and amenities but beyond that R.T.A. or the State has no authority. It is also contended that the period for which tender/auction notice was issued has since come to an end and for the said period bus stand could not be auctioned, the petition has become infructuous and must be dismissed accordingly.

3. Earned Counsel for the petitioner submitted that the petition is not with mala fide intention. The petitioner has raised legal issue and Zila Parishad in absence of the order of Regional Transport Authority concerned, cannot settle the bus stand nor can settle the right in favour of any body. He further submitted that the petition would not become infructuous because the respondent-authority, after dismissal of the petition as infructuous, may again issue another notice and invite tender for the same.

4. Learned Counsel for the State, however, submitted that the Government's stand is clear and positive and according to them no order has been passed by the concerned Regional Transport Authority.

5. Rule 191 relates to parking places and halting stations. Sub-rule (1) of Rule 191. clearly provides that in consultation with local authorities having jurisdiction in the area concerned or the authority/officer, who is competent to give consent may by notification in the official Gazette or by the erection of traffic signs which are permitted for the purpose, in consultation with the local authorities having jurisdiction in the area concerned District Magistrate by notification in the official Gazette or by the erection of traffic signs for the purpose under Sub-section (1) of Section 116, or both, in respect of picking up or setting down of Passengers or both, by public serving vehicle or by any specified class of public service vehicle:

(i) conditionally or unconditionally prohibit the use of any specified place or of any place of a specified class, or

(ii) require that within the limits of any municipal corporation, municipality, notified area or cantonment, or within such other limits as specified in the notification, certain, specified stands or halting places only shall be used.

6. From perusal of Clauses (2) of Rule 191 it would be clear that a particular place is to be specified as a halting place or bus stand. In the present matter, undisputedly, before issuance of Annexure 1 no order in favour of Zila Parishad was passed by the concerned Regional Transport Authority. The submission of earned Counsel for the respondent-Zila Parishad, that they being the owner and as they were using the place for long many years as bus stand they are entitled to auction their right, cannot be accepted. The law requires the Regional Transport Authority to declare a particular place or specify a place as halting station or bus stand. Unless such order is passed by Regional Transport Authority even then within the township or within the jurisdiction of local authority cannot be used as a halting station/bus stand. If the argument raised by earned Counsel for Zila Parishad is accepted then any local authority may declare any place as a bus stand in its wisdom then it may lead to a chaotic condition and may lead to law and order so also the traffic problem. When an order is to be passed by the competent authority then it has to be passed by that authority only and none else. The property may vest in the Zila Parishad but the right to declare the user their property as a bus stand would not vest in the Zila Parishad. The power to declare a bus stand does not vest in Zila Parishad. The law clearly says that such power vests in the Regional Transport Authority. The Regional Transport Authority can exercise its power in consultation with the local authority.

7. If the local authority requires a particular place to be declared as bus stand/halting station then it has to make such application to Regional Transport Authority.

8. The Regional Transport Authority shall discuss the subject with the said local authority and State authority and in consultation with the local authority and after taking into consideration the pros and cons of the proposal would pass an order in

accordance with law.

9. Rule 191 of Bihar Motor Vehicles Rules, 1992 is not an empty formality. It has force of law. When an order has to be passed by the Regional Transport Authority then it has to be passed by the said authority alone and Zila Parishad cannot assume any jurisdiction.

10. At this stage I would discuss the question of the petition being infructuous. True it is that the petition has come to an end but the fact still remains that respondent-Zila Parishad is not submitting before this Court that it would not auction the bus stand. The case of Zila Parishad, in fact, is that after the petition is dismissed as infructuous they may take step for re-auction of the right to collect the fee for particular area as bus stand. The stand of Zila Parishad cannot be said to be valid one. They are required to inform this Court that they would not oppose but would observe true spirit of law. In view of the stand of the Zila Parishad an order on the merits of the matter has to be passed.

11. Learned Counsel for the petitioner has placed reliance upon a single Judge's judgment of this Court in the matter *Dinesh Kumar Yadav v. State of Bihar* 1999 (3) PLJR 130. In paras 14 to 17 the learned Single Judge has observed that parking/bus stop in a city/town is undisputedly different from a bus stand. The learned Judge observed that the District Magistrate cannot designate a bus stand and prescribe fees for its use. It was also observed that Rule 191 empowers the traffic authority to designate a bus stand and to prescribe fees etc. Being in respectful agreement in the above judgment I hold that Zila Parishad has no authority or jurisdiction to designate a particular place as bus stand. If they cannot designate a particular place as bus stand they certainly cannot auction the right in favour of a third party for collection of fees etc. It is made clear respondent-Zila Parishad would have no authority to auction the bus stand unless a particular place is earmarked or is so designated by Regional Transport Authority as halting station/bus stand.

12. I have no hesitation in saying that Annexure 1 though has lost its efficacy, is contrary to law and without any authority.

13. Learned Counsel for Zila Parishad at this stage submitted that Zila Parishad has also made an application to the Regional Transport Authority but till date no order has been passed by the concerned Regional Transport Authority on the said application. If that is so let a copy of this order be filed by Zila Parishad before the concerned Regional Transport Authority who shall within six weeks from the date of receipt of the same shall pass necessary orders on the application filed by respondent-Zila Parishad in accordance with law after observing legal and statutory requirement.

14. The petition is allowed and it is held that unless in consultation with the local authority, the Regional Transport Authority issues order or notification, the Zila Parishad would have no jurisdiction to fix the fees/auction a particular place as halting station or Bus stand. No costs.

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