

Tarun Kumar Samanta Vs. Transport

Tarun Kumar Samanta Vs. Transport

SooperKanoon Citation : sooperkanoon.com/51917

Court : Jharkhand

Decided On : May-19-2015

Appellant : Tarun Kumar Samanta

Respondent : Transport

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(C) No. 6350 of 2014
Tarun Kumar Samanta, son of Late S.K. Samanta, resident of Baxidih Road,
G.P.O. & P.S. Giridih Town, District Giridih ... Petitioner Versus

1. The State of Jharkhand through its Secretary, Department of Transport, Govt. of
Jharkhand, Ranchi

2. The Chairman, State Transport Authority, Jharkhand, Ranchi

3. Joint Transport Commissioner, State Transport Authority, Jharkhand, Ranchi ...
Respondents CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR
For the Petitioner : Mr. Sudhir Sahay, Advocate For the State : Mr. L.C.N.
Shahdeo, G.P. IV Mr. Suraj Singh, J.C. to G.P. IV Order No. 08 Dated: 19.05.2015
Aggrieved by letter dated 24.11.2014 whereby, respondent Joint Transport
Commissioner, Jharkhand has declined renewal of permit No. P.St.P.11/1990, the
petitioner has sought a direction commanding upon the respondent authority to
renew the said permit.

2. The brief facts of the case are that, the petitioner was granted permit No. P.St.P.11/1990, initially valid up to 11.02.1995 for the route Madhupur to Raniganj. The said permit has been renewed from time to time and lastly, it was renewed vide order dated 21.10.2010 for period up to 11.02.2015. The petitioner submitted an application on 04.09.2014 for renewal of the said permit however, vide letter dated 24.11.2014 the renewal of the said permit has been declined and the petitioner has been directed to substitute vehicle No. JH01AE 1005 by another vehicle.

3. The learned counsel for the petitioner submits that an application for renewal can be declined only in terms of Section 2 81(4) of the Motor Vehicles Act, 1988. In the present case, the conditions enumerated under subsection

(4) of Section 81 is not satisfied and therefore, the impugned order dated 24.11.2014 declining renewal of licence is illegal. It is further submitted that in view of Section 72(2)(x), a further condition must be published in the official Gazette and a period of 2 years has to be provided for complying with such condition. In the present case, no condition as to the age of a vehicle has been notified and therefore, the Joint Transport Commissioner, Jharkhand was not authorised to direct the petitioner to replace the vehicle bearing No. JH01AE 1005 by another vehicle. The learned counsel relies on decision of this Court in W.P.(C) No. 3862 of 2005 [Giribala Jha Vs. The State of Jharkhand & Ors.].

4. As against the above, Mr. L.C.N. Shahdeo, the learned G.P.IV appearing for the respondent State of Jharkhand submits that the Regional Transport Authority has power to fix the age even if no rule has been framed in this respect. Relying on the decision in Subhash Chandra & Ors. Vs. State of U.P. & Ors., (1980) 2 SCC 324, the learned counsel submits that the safety of the commuters has also to be considered by the Regional Transport Authority while taking a decision on the application for grant of renewal of the permit. It is further submitted that the expression description would cover the age of a vehicle and thus, the Regional Transport Authority is empowered to fix the

age of a vehicle while taking a decision for permit/renewal of a permit. The learned counsel for the respondents relied on several decisions and submits that the Regional Transport Authority is competent to prescribe conditions. 5. In reply, the learned counsel for the petitioners submit that the decisions in Subhash Chandracase and in S.K. Bhatia & Ors. Vs. State of U.P. & Ors., were delivered in the context of Section 3 51 of the Motor Vehicles Act, 1939 however, no such provision has been incorporated in the Motor Vehicles Act, 1988 and therefore, the decisions cited by the learned counsel for the respondent State of Jharkhand are not applicable in the present case.

6. A perusal of order contained in letter dated 24.11.2014 discloses that permit No. P.St.P.11/1990 was to expire within four months. It is stated that the permit was valid upto 11.02.2015 and the application was submitted by the petitioner on 04.09.2014 on which order dated 24.11.2012 has been passed. In Subhash Chandracase, the expression of description has been described by the Hon'ble Supreme Court in the following words: year of the make and the particulars of the model are part of the description.. It has been observed by the Hon'ble Supreme Court; 4.the older the model, the less the chances of latest safety measures being built into the vehicle. Every new model incorporates new devices to reduce danger and promote comfort. Every new model assures its age to be young, fresh and strong, less likely to suffer sudden failures and breakages, less susceptible to wear and tear and mental fatigue leading to unexpected collapse. When we buy a car or any other machine why do we look for the latest model? Vintage vehicles are good for centenary display of curious and cannot but be mobile menaces on our notoriously neglected highways. We have no hesitation to hold, from the point of view of the human rights of road users, that the condition regarding the model of the permitted bus is within jurisdiction, and not to prescribe such safety clauses is abdication of statutory duty.

7. Section 68(3) empowers the State Transport Authority and the Regional Transport Authority to carry and regulate the activities and policies of Regional Transport Authorities, if any, of the State. Section 70 provides that the application for grant of permit in respect of the stage carriage may contain the description as to type of the vehicle. Section 71 further provides that the Regional Transport Authority while considering the application shall have regard to the objects of the Act. Section 72(2) of the Motor Vehicles Act, 1988 uses the expression stage carriage of a specified description. It has been held that the expression a specified description would cover age of vehicle also. In *Rajasthan SRTC Vs. Santosh*, (2013) 7 SCC 94, the Hon'ble Supreme Court has taken note of the object behind repealing the 1939 Act. In paragraph no. 21, it has been noticed that Section 59 of the Act empowers the State to fix the age limit of the vehicles.

8. In *K.M. Ismeth Ummer & Anr. Vs. Regional Transport Authority & Anr.*, (2011) 15 SCC 288, while interpreting Section 72(2) of the Motor Vehicles Act, 1988, the Hon'ble Supreme Court has held that the Regional Transport Authority can fix the age of the vehicle. The expression specified description comprehends fixing of age of vehicles. In *Giribala Jha* case, the aforesaid judgment of the Hon'ble Supreme Court could not have been noticed. Moreover, in the said case renewal was granted subject to the condition that the petitioner was required to replace the existing model by a higher model.

9. In *Vijay Goyal v. State of Uttarakhand* reported in AIR 2010 UTTARAKHAND 12, the order of Regional Transport Authority that the Stage Carriage Permit under the Motor Vehicles Act can be granted to only those applicants who have a new vehicle, was under challenge. The Hon'ble High Court of Uttarakhand has observed as under: 4. ...Moreover, under Section 72(2)(xiv) of the Act, the RTA can prescribe any other condition as such if the RTA has come to the conclusion keeping in mind that the State of 5 Uttarakhand is largely a hill State and the permit shall only be granted to the new vehicle this Court finds no anomaly in the same as the order is within the jurisdiction of the RTA. It cannot be held that the order is bad or without jurisdiction. The RTA has also to

consider the safety of the vehicle as well as the safety of the passengers and if a condition has been prescribed in the permit, which cater to this aspect, such an order is perfectly justified.

10. In *Maharj Uddin & Ors. v. State of U.P. & Ors.* reported in AIR 2011 ALLAHABAD 151, High Court of Allahabad has held that the STA is fully justified to put model condition regarding age of vehicles (including three wheeler). In paragraphs 13 & 14 the Court has observed as under:

13. Under section 68(3) of the Act, 1988, the STA subject to the directions issued by the State Government under Section 67 shall exercise and discharge throughout the State the functions and powers as enumerated in subsection (3). One of the functions provided in subsection (3) is to coordinate and regulate the activities and policies of the R.T.A.

14. The question as to whether model condition for grant of permit can be laid down by the STA came up for consideration before the Division Bench of this Court in 1995 AWC 890, *Smt. Munni Devi v. Regional Transport Authority, Meerut & Ors.* In the aforesaid case, the R.T.A., Meerut while granting permit has put a condition that not more than 10 years old vehicles be provided. The said condition was challenged by means of writ petition by stage carriage permit holders. It was held by the Division Bench that the STA can issue direction regarding fixation of age of vehicles. Even grant of permit by the R.T.A. of the vehicle owners having 10 years old vehicles was upheld.....

11. In the present case, as noticed above, the application for grant of renewal has been declined vide order dated 24.11.2012. The submission of the learned counsel for the petitioner referring to Section 72(2)(x) would not cover the age of the vehicle. Accordingly, the submission that a notice of two year's time should have been given to the petitioner before imposing a condition for replacing the existing vehicle is not attracted in the present case. Fixing the age of a vehicle, by no stretch of imagination, would fall within the expression, a vehicle of a specified type

fitted with body conforming to approved specifications. 12.
Considering the above facts, I find no merit in the writ
petition and accordingly, it is dismissed. (Shree Chandrashekhar, J.) Manish/A.F.R.

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