Equivalent Citation: 1985PLJR856

IN THE HIGH COURT OF PATNA

Civil Writ Jurisdiction Case No. 1898 of 1975

Decided On: 16.05.1984

Appellants:**The Bihar State Road Transport Corporation**

Vs.

Respondent:**The State Transport Appellate Tribunal and Ors.**

Road Transport Corporation Act, 1950-Section 20 and Section 47

The issue is as to between Petitioner and Respondent no.-4, whom permit be granted to ply in respect of the route Hazaribagh to Jamshedpur via Ramgarh, Chas, Purulia and Adardih

Petitioner applied for permit-Permit was granted for five (5) years – Petitioner made application for renewal – Application for renewal granted - Thereafter

Respondent no. 4 filed an application for grant of permit- Rejected – Respondent no. 4 appealed against the rejection- Appeal was allowed by issuing permit to Respondent no. 4 and quashing the permit of Petitioner. Being aggrieved, the Petitioner filed this Writ Petition.

Held that permit in favour of R-4 is as per clause 2 of the notification dated 31-03-1971.

Held further that there is no merit in this writ application and it must be dismissed.

(Para-10)

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Appellants:**The Bihar State Road Transport Corporation**
Vs.
Respondent:**The State Transport Appellate Tribunal and Ors.**

Hon'ble Judges/Coram:
Brishketu Sharan Sinha, N.P. Singh and S. Narain, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Mr. Jagat Nandan Prasad Sinha

For Respondents/Defendant: Shreenath Singh and Bibhuti Prasad Pandey

JUDGMENT

Brishketu Sharan Sinha, J.

1. The prayer, in this application under Articles 226 and 227 of the Constitution, by the petitioner, the Bihar State Road Transport Corporation, is to issue a writ or order quashing the order dated 19th May, 1975, passed in T.A. No. 53 of 1971 by respondent No. 1, the State Transport Appellate Tribunal; a copy of the order is Annexure '5'. By the aforesaid order the-State Transport Appellate Tribunal has directed that permit be granted to respondent No. 4 in respect of the route Hazaribagh to Jamshedpur via Ramgarh, Chas, Purulia and Adardih. The relevant facts are in a brief compass. On 10th September, 1961, the petitioner made an application for the grant of a permit in respect of the aforesaid route. No objection having been filed, the permit was granted to the petitioner Corporation on 27th January, 1965 for five years. On 20th November, 1969, before the lapse of five years, the Corporation made another application for renewal of the permit. On 19th May, 1970, respondent No. 4 made an application for grant of permit in respect of this very route. The Chotanagpur Regional Transport Authority, by order dated 5th May, 1971 allowed the application for renewal of the permit by the petitioner Corporation and rejected the claim of respondent 4. Aggrieved by this order, respondent No. 4 filed an appeal before respondent No. 1, the State Transport Appellate Tribunal (hereinafter referred to as 'the Tribunal' which, by its order dated 21st November, 1972, allowed the appeal of respondent No. 4 and directed that the permit for the said route be issued to respondent No. 4. In coming to the aforesaid conclusion the Tribunal held that the renewal of the permit in favour of the Corporation was illegal due to non-compliance of the provisions of section 20 of the Road Transport Corporation Act, 1950 (hereinafter referred to as 'the Corporation Act') inasmuch as the route in question was an inter-State route. It was further held that respondent No. 4 was entitled to get the permit for the said route. Aggrieved by that decision, the Corporation filed in this Court C.W.J.C. No. 147 of 1973 challenging the findings of the Corporation. That writ application was disposed of by a Bench of this Court on 26th July, 1974, in which it was held that the route was not inter-State route but an intra-State route and hence

there was no question of applicability of section 20 of the Corporation Act. It was, therefore, held that the Appellate Tribunal took an erroneous view regarding the applicability of the provisions of section 20 of the Corporation Act. It further directed that if the Appellate Tribunal wanted to reject the claim of the Corporation for the renewal of the permit, then it should have examined the case in detail keeping in view the considerations enjoined by section 47 of the Act and it could have rejected the application of the Corporation after recording a categorical finding that the renewal of the permit in favour of the Corporation was not in the interest of the general public. Accordingly, the matter was referred to the Appellate Tribunal for reconsideration and proper decision in the light of the observations made above. This decision of a Bench of this Court is reported in MANU/BH/0043/1975 : A.I.R. 1975 Pat 179.

2. The matter thereafter again went to the Appellate Tribunal and the Appellate Tribunal, on reconsideration of the matter arrived at the following conclusion:--

> (i) The failure to make an application for the renewal of permit obviously showed. that Corporation had very little interest left in the route beyond the sphere of litigation.
>
> (ii) From the reports it appeared that the Corporation was highly irregular in rendering service on this route and was not plying vehicles in the manner it ought to have done.
>
> (iii) Respondent No. 4 was plying vehicles on this route regularly from 21st November, 1972, to 26th July, 1974, and there was no complaint of any kind of default by respondent No. 4 during the period that he was plying the vehicles on this route.
>
> (iv) On the point of experience the case of both parties appeared hardly to be such as to come to any definite finding in favour of either, but respondent No. 4 gained experience by consistent and regular service whereas the Corporation rendered service on this route whenever it liked and kept away the vehicles from this route whenever it so chose.

The Appellate Tribunal, therefore, concluded that trusting a permit for this route to an operator who cannot be of constant service to the people will hardly be of any benefit to the travelling public and thus the very spirit of the provisions of section 47(1) of the Motor Vehicles Act will be defeated if the permit is granted to the Corporation.

3. With regard to a route where part of it was outside the State of Bihar, it was doubtful that if a good part of the route is nationalised, it would be a point in favour of the Corporation. On these findings the Appellate Tribunal again directed that the order of the Regional Transport Authority be set aside and permit be granted to respondent No. 4. Again, aggrieved by this order, the Corporation has filed this present writ application which came up for final hearing before a Bench of this Court consisting of N.P. Singh and Shivanugrah Narain, JJ. Before them, fox the first time, a new stand was taken by the Corporation. It was submitted that out of the 152 miles of this route, 106 miles has been notified before 1970 in accordance with the provisions of the Motor Vehicles Act (hereinafter referred to as 'the Vehicles Act') and as such, according to the Corporation, the Tribunal could not have granted permit to respondent No. 4. It may be noted that out of this route Adradih to Sardih Border, a distance of about 36 miles, falls in West Bengal and 8 miles of the route from Sardih to Chas is unnotified for nationalisation. The rest of the route i.e. Jamshedpur to

Adradih which is 25 miles and chas to Ramgarh which is 50 miles and Ramgarh to Hazaribagh which is 35 miles are notified routes under sec. 68.

4. Mr. Justice N.P. Singh held that although for the purposes of this case the route must be held to be inter-State route, on the principles of res Judicata, still no writ could be issued in favour of the petitioner. In coming to that conclusion N.P. Singh, J. held that in the present case the Court would be reluctant to permit the Corporation to raise the plea that major portion of the route being nationalised, the Tribunal could not have granted permit to respondent No. 4. Mr. Justice Shivanugrah Narain, on the other hand, held that the fact that it was an inter-State route must be held to be res judicata in this case but the petitioner was entitled to raise the question that a major portion of the route-being nationalised no permit could be issued in favour of respondent No. 4. They also differed on certain other points and ultimately while Mr. Justice Singh rejected the writ application, Mr. Justice Narain allowed the application and set aside the order of the Tribunal. Because of the difference of opinion between the two learned Judges, they directed the records to be placed before the Hon'ble the Chief Justice for being referred to another Judge of this Court. Accordingly, this case has been placed before me for decision under clause 28 of the Letters Patent. The learned Judges did not formulate the question of law on which, they have differed but, in the instant case, it can be simply formulated as follows:--

Whether in the circumstances of this case, a writ should be issued or not?

5. in support of this application Mr. Jagat Nandan Prasad Sinha has submitted that the earlier decision of this Court in this case which, for the sake of convenience, I shall refer as the case reported in MANU/BH/0043/1975 : A.I.R. 1975 Pat 179, was that the route in question is an intra-State route and not an inter-State route and; therefore, there was no question of the application of section 20 of the Road Corporation Act and that respondent No. 4 could not have been granted permit for 108 miles of the route as it was forbidden, being a route notified under section 68-D of the Motor Vehicles Act. He, therefore, submitted that the fresh decision of the Tribunal could only be on other matters and hot with regard to the aforesaid two findings. If the learned counsel is right in submitting that in the earlier decision it was held that respondent No. 4 could not have been granted permit for 108 miles of the route being notified, then I suppose, there can be no difficulty in holding that the order of the Appellate Tribunal is not in accordance-with law and has to be set aside. It is well settled that when a scheme is notified under section 68-D of the Motor Vehicles Act, there is no option for the Transport Authority but to refuse any application for grant of permit by private operators on such route or part thereof. Permits for such routes can only be granted to the Corporation. Reference may be made in this connection to the decisions in Abdul Gafoor v. State of Mysore (MANU/SC/0255/1961 : A.I.R. 1961 SC 1556), Nilkanth Prasad v. State of Bihar (MANU/SC/0259/1961 : A.I.R. 1962 SC 1135); Sobhraj Odharmal v. State of Rajasthan (MANU/SC/0305/1962 : A.I.R. 1963 SC 640) and Gauri Shankar Sharma awl another v. State of Bihar and others (MANU/BH/0051/1969 : A.I.R. 1969 Pat 192). These decisions have been taken notice of in the judgment of N.P. Singh, J. The question, however, is whether it is open to the petitioner to urge this point in the pre-sent writ application as it was not urged at the time of the hearing of the earlier case in MANU/BH/0043/1975 : A.I.R. 1975 Pat 179.

6. It is settled law now that The principles of res Judicata, as embodied in section 11 of the Code of Civil Procedure apply to writ, applications under Article 226 of the Constitution as well on the principle that it is in the interest of the public at large that

a finality should attach to the binding decisions pronounced by courts of competent jurisdiction, in the case of Amalgamated Coalfields Limited and another v. Janapada Sabha Chhindwara and others (MANU/SC/0311/1962 : A.I.R. 1964 SC 1013) it was observed that constructive res judicata being a' special and artificial form of res judicata enacted by section 11 of the Code of Civil Procedure, should not generally be applied to writ petitions filed under Article 32 or Article 226 of the Constitution. This case, however, was distinguished in the case of Devilal Modi v. Sales Tax Officer, Ratlam and others (MANU/SC/0266/1964 : A.I.R. 1965 SC 1150) where it was pointed out that the observations made in the case of Amalgamated Coalfields Limited with regard to the principles of res judicata had to be read in the light of the important fact that the order Which was challenged in the second writ petition was in relation to a different period and not for the same period as covered by the earlier petition and it was also pointed out that where Courts dealt with the question of the infringement of fundamental rights, they must consistently endeavour to sustain the said rights and should strike down unconstitutional invasions, but in doing so, should not ignore the principles of res judicata, as considerations of public policy cannot be ignored in such case's and one of the basic principles was that the judgments pronounced by the competent courts are binding and must be regarded as final between the parties in respect of matters covered by them. Thereafter, in the case of Mysore State Road Transport Corporation v. Babajan Conductor and another (MANU/SC/0323/1977 : A.I.R. 1977 SC 1112) which also related to road transport, it was held that the respondent in that case could not claim a relief which he had claimed in the earlier petition. It was noticed that although the relief prayed for in the earlier petition was not specifically rejected but it will be deemed to have been rejected. Therefore, this decision lays down that the principles of constructive res judicata apply to writ proceedings. It is also well settled that the doctrine of res judicata applies between two stages of the same proceeding (See MANU/SC/0295/1960 : A.I.R. 1960 SC 941). It has, therefore, to be seen whether the submission that in the earlier decision in MANU/BH/0043/1975 : A.I.R. 1975 Pat 179 it was held that the 108 miles of the route being notified, was a bar to the respondent No. 4 from being granted a permit for that route-It has also to be seen whether the principles of constructive res judicata apply in the present case.

7. The fact that 108 miles of the route is notified is not under challenge and hence respondent No. 4 ordinarily could not be granted a permit for that route. This was a point in favour of the Corporation. It is true that in the earlier writ application the order of the Tribunal had been set aside and the case was remanded for a fresh consideration on the materials on record and for recording a fresh decision in accordance with law. However, it has to be remembered in this context that if the plea of section 68D of the Motor Vehicles Act had been raised and decided in the earlier writ application in-favour of the Corporation then the consequence would have been that respondent No. 4 would have been debarred from being considered for the issuance of a permit for the route-in his favour. This aspect was not urged in the earlier writ application nor was it raised when the matter had gone before the Tribunal for the first time. It cannot be said that as the decision in MANU/BH/0043/1975 : A.I.R. 1975 Pat 179 was in favour of the Corporation, the Corporation was not bound to have raised this point because when the earlier writ application was being argued before a Bench of this Court it was not known what the decision of the Court would be. Therefore, I am inclined to the view that as the aforesaid point was not raised in the earlier writ application, the Corporation can, on the principles of constructive res judicata be debarred from raising this point again. I am also inclined in agreement with N.P. Singh, J. that a writ under Article 226 of the Constitution is discretionary and in granting, such relief the conduct of the petitioner

and the manner, in which he has pursued his remedy had to be taken into consideration. I have already pointed out earlier that the Tribunal, after the remand, has held that the Corporation had very little interest left in the route beyond the sphere of litigation. In MANU/BH/0043/1975 : A.I.R. 1975 Pat 179 it was also observed that "if the Tribunal wanted to reject the claim of the Corporation for renewal then it should nave examined the casein detail keeping in view the considerations enjoined by section 47 " and its application could be rejected after recording a categorical finding that the renewal of the permit in favour of the Corporation was not in the interest of general public; The Tribunal, after considering the facts of the case in detail, came to the conclusion that it was highly irregular in rendering service on this route and was not plying vehicles in the manner it ought to have, done and rendered service on this route whenever it liked and kept away the vehicles from this route whenever it so chose and, therefore, entrusting this route to the Corporation cannot be of constant service to the travelling public and the spirit of section 47(1) of the. Motor Vehicles Act will be defeated if permit is granted to it.

8. Before proceeding further it may be noticed that although on the basis of earlier decision in MANU/BH/0043/1975 : A.I.R. 1975 Pat 179 it was held that the route, in question is an intra-State route and not an inter-State route, but subsequently, the Supreme Court, in K. Venkamma v. the Government of Andhra Pradesh and others (MANU/SC/0243/1977 : A.I.R. 1977 SC 1170) has held that where a route traverses more than one State, if is an inter-State route. Therefore, it was argued that according to the latest decision the present route would be an inter-State route. However, as in MANU/BH/0043/1975 : A.I.R. 1975 Pat 179 it was held that the route is an intra-State route, in the present writ application one cannot proceed on the assumption that the route is an inter-State route.

9. The next important question that falls for consideration in the present application is whether the respondent No. 4 could be granted a permit for the route in question. As both the learned Judges have considered it proper to examine this question on the assumption that it is open to the Corporation to urge this point, it is only right that I should also consider it. The period of five years for which permit was granted and which has been the subject matter of challenge in this writ application expired on 15th June, 1980. Subsequently, a fresh permit has been issued to respondent No. 4 for another period of five, years with effect from 15th June, 1980 and in such a situation the writ application is not infructuous and a prayer for amendment of the writ application was made by the Corporation which was allot-wed granting permission to the Corporation to challenge the order of renewal, 11. It is not disputed that a part of the route falls in the State of West-Bengal and a notification half been issued by the State Government under sub-section (2) of section 68C of the Motor Vehicles Act which was published in the gazette on 31st March 1971; Its copy is annexed as Annexure 'C' and hence it was open to the Tribunal to grant permit to the respondent. The relevant portion of the notification is as follows:-

> Scheme approved under section 68D (3) of the Motor Vehicles Act as referred to in the schedule, giving elusive right of operation to the State Transport Undertaking shall not affect the inter-State bus services in operation in terms of the reciprocal transport agreements, entered into with other States or those to be operated in accordance with similar agreement hereafter entered into with other States with the approval of the State Govt.:
>
> Provided that extension of existing private services operating on interstate routes shall not be allowed to any destination out-side the State except With

the prior approval of the State Govt.

The validity of this notification has not been challenged. There is dispute about its applicability. It has been submitted that as in MANU/BH/0043/1975 : 1975 Pat 179 the route has been held to be an intra-State route this provision has no applicability which only applies to an inter-state route. On a reading of this provision it is obvious that the Word route is not used in it at all. The first condition for this provision coming into play is that it should be an inter-State Bus service. An inter-State Bus service, to my mind, cannot be read as an inter-State Bus route. It was pointed out by Krishna Iyer, J. in K. Venkamma's case that road cannot be confused with route. Similarly, I am of the view that an inter-State Bus service cannot be confused with an inter-State route. So even if one has to proceed in this case on the assumption that the route is an intra-State route, it cannot be said that in such a situation, the aforesaid notification has no applicability and the respondent No. 4 is debarred from getting a permit for this service. When the aforesaid notification was issued the Corporation was operating the route in question in terms of a reciprocal agreement. However, it has not been asserted that after the grant of the permit in the year 1972 to the respondent No. 4, the respondent No. 4 is operating the said route without any reciprocal transport agreement. One cannot assume that there is no such reciprocal transport agreement. It was for the Corporation which has raised this plea to show that there was no such reciprocal transport agreement. That has not been done and in view of the fact that the respondent No. 4 has specifically pleaded that the permit has been granted to him under clause (2) of the aforesaid notification which was legal and valid, in the absence of pleading of facts, it cannot be held that it was in violation of that notification. This point cannot be adjudicated upon in absence of better pleadings on behalf of the Corporation and, therefore, I am constrained to hold that there is nothing to indicate that the permit in favour of respondent No. 4 is not in terms of clause (2) of the aforesaid notification. Even when it made an application for amending the pleadings, the facts relating to the non-applicability of clause (2) of the aforesaid notification have not been specifically pleaded, particularly so when it was not raised before the Tribunal.

11. For the reasons expressed I hold that there is no merit in this writ application and it must be dismissed. I would accordingly, answer the question, agreeing in substance with the conclusions reached by N.P. Singh, J., in the negative. I regret that I have reached a conclusion different from' that of S. Narain, J. The result, therefore, is that this writ application fails and is dismissed but, in the circumstances of the case, there will be no order as to costs.