

(1973) 05 GAU CK 0004

Gauhati High Court

Case No: Civil Rule No. 540 of 1971

Dayakrishna Verma

APPELLANT

Vs

The Regional Transport
Authority Shillong and another

RESPONDENT

Date of Decision: May 10, 1973

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: AIR 1974 Guw 52

Hon'ble Judges: P.K. Goswami, C.J; B.N. Sharma, J

Bench: Division Bench

Advocate: S.N. Bhuyan and D.P. Chaliha, for the Appellant; M.A. Laskar, for the Respondent

Final Decision: Allowed

Judgement

P.K. Goswami, C.J.

This application under Article 226 of the Constitution of India is directed against an order passed by the State Transport Authority upholding the order of the Secretary and the Chairman of the Regional Transport Authority, Shillong.

2. The petitioner had a contract carriage permit to run a taxi cab at Shillong. The Regional Transport Authority duly granted him a permanent contract carriage permit some time in July 1966. The permit was renewed from time to time. It appears that as per conditions of the permit a meter is to be fitted in the vehicle. It is admitted that from 1-5-70 the meter went out of order and was sent for repair. His vehicle No. ASA 7383 was thus found plying without meter on 1-5-1970. For this breach of the condition he was asked to show cause against suspension of his permit. The petitioner submitted his explanation and he was served with an order dated 29-8-1970 passed by the Secretary, Regional Transport Authority, directing him to pay a composition fee of Rupees 300/- on pain of suspension of his permit for

two months. The petitioner did not agree to pay the composition fee and preferred an appeal to the State Transport Authority and the same was dismissed. A ground was taken amongst others before the State Transport Authority that the Secretary, Regional Transport Authority, had no jurisdiction to suspend the permit in the way done. It is now admitted by Mr. Laskar on behalf of the Respondents that there are no rules by which the Regional Transport Authority authorised the Secretary or even the Chairman to pass appropriate orders u/s 60(1) of the Motor Vehicles Act, briefly the Act. u/s 60(2-A), introduced by the Amendment Act 56 of 1969 "the powers exercisable under sub-section (1) or sub-section (1-A) (other than the power to cancel permit) by the transport authority which granted the permit may be exercised by any authority or person to whom such powers have been delegated under sub-s. (5) of Section 44; provided that (i) no such authority or person shall pass an order suspending the permit for a period exceeding one month or reducing the period thereof by more than one month; and (ii)....." u/s 44(5) of the Act the State Transport Authority and any Regional Transport Authority, if authorised in this behalf by rules made u/s 68 may delegate such of its powers and functions to such authority or person and subject to such restrictions, limitations and conditions as may be prescribed by the said rules. It is, therefore, clear that certain powers and functions of the Regional Transport Authority may be delegated to another authority or person provided there are rules made u/s 68 authorising the delegation. As stated earlier, Mr. Laskar very fairly concedes that no rules have been made u/s 68 in that behalf. Mr. Laskar also tried to persuade us to dismiss this application by pointing out that the action of the Secretary has been approved by the Chairman, Regional Transport Authority, who in this case is the Deputy Commissioner. If the action of the Secretary is invalid because of non-existence of rules, the same infirmity will be attached to the order of approval made by the Chairman even assuming that the order of approval may be considered as tantamount to action by the Chairman. We are, therefore, not impressed by this submission made by Mr. Laskar. There is another infirmity in the order of the Secretary. He has suspended the permit for two months which is in direct violation of proviso (i) to Section 60(2-A). We are rather surprised that the appellate authority did not take these things into consideration even though it is admitted by Mr. Laskar that the points were specifically taken in the appeal before it. The order of suspension in this case passed by the Secretary is, therefore, without jurisdiction, and the same is hereby quashed. Necessarily the appellate order also falls.

3. The application is accordingly allowed, and the Rule is made absolute. The petitioner is entitled to costs which we assess at Rs. 150/-.

B.N. Sarma, J.

4. I agree.