(1978) 02 PAT CK 0002

Patna High Court

Case No: C.W.J.C. No. 1298 of 1975

Smt. Premlata Devi		APPELLANT
	Vs	
Smt. Nirmala Devi and Others		RESPONDENT

Date of Decision: Feb. 15, 1978

Acts Referred:

- Motor Vehicles Act, 1939 - Section 48(3)(i), 48(3)(xxi)

Citation: (1978) 26 BLJR 256

Hon'ble Judges: Sarwar Ali, J; S.K. Choudhary, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

S.K. Choudhary, J.
In this writ application, the petitioner challenges the order contained in Annexure 3 dated 10-12-1974 passed by the Chairman, State Transport Appellate Tribunal, Bihar, Patna (Respondent No. 2) allowing the revision application and thereby extending the route under permit of Respondent No. 1 upto Shaharghat.

2. In order to appreciate the points raised in support of this application, the salient facts are these ; Respondent No. 1 was granted a stage carriage permit for the route Sitamarhi-Sheohar-Belwaghat, a distance of 24 miles, sometimes in the year 1969. The said permit was valid for three years. It appears that within the said period, Respondent No. 1 on an application made by her, got an extension of her permit from Sitamarhi to Harhi Bazar, a distance of about 15 miles equivalent to 24 kilometers. The said order of extension is contained in Annexure 1 to the writ application dated 13-6-1972. However, it appears from Annexure ''1'' that a claim for extension of the route for more than 15 miles was made which was not allowed. It is not disputed that sometime after the aforesaid order, the original permit was to expire when an application for renewal of the said permit was made which was duly notified and thereafter it was renewed for another term. After the aforesaid

renewal, an application was made sometime in the year 1973 (wrongly stated to paragraph 3 of the writ application as 1972) for a further extension of the route upto Shaharghat. This application, it is said, was again duly notified is the Gazette so that if any person had any objection to the said extension, he could have objected to the same. It appears that no objection was filed by any body. The prayer for extension was, however, rejected by the Chairman, North Bihar Regional Transport Authority, Muzaffarpur (Respondent No. 3). The said order is contained in Annexure 2 dated 4, 15 and 16 March 1975. It appears from the said order that the extension claimed for was rejected on the ground that it was a claim for second extension. Being aggrieved by the said order, respondent No. 1 preferred a revision application before Respondent No. 2 which has been allowed by order dated 10-12-1974, which is the impugned order in the present case.

3. As the aforesaid statements of facts are not disputed, it is not necessary to state the contents of the counter affidavit and the rejoinder filed thereto. Mr. Rajeshwar Prasad Srivastava learned Counsel appearing in support of this application, in the first instance, contended that the order contained in Annexure 3 is without jurisdiction as it has been passed by Respondent No. 2 against the express provision of Law, namely, the proviso to Clause (xxi) of Section 48(3) of the Motor Vehicles Act, 1939 (hereinafter referred to as ''the Act''). Mr. Septami Jha learned Counsel appearing for Respondent No. 1 on the other hand, contended that the said provision has no application to the present case as there was no condition attached to the permit similar to what has been laid down in the aforesaid Clause (xxi). In order to appreciate the argument, it will be necessary here to quote Section 48(3) of the Act along with Clauses (i), (xxi) and the proviso which reads thus:

48 (3) The Regional Transport Authority, if it decides to grant a stage carriage permit, may grant the permit for a service of stage carriages of a specified description or for one or more particular stage carriages, and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely -

(i) that the vehicle or vehicles shall be used only in a specified area, or on a specified route or routes.

x x x x x

(xxi) that the Regional Transport Authority may, after giving notice of not less than one month-

(a) vary the conditions of the permit ;

(b) attach to the permit further conditions:

Provided that the conditions specified in pursuance of Clause (0 shall not be varied so as to alter the distance covered by the original route by more than 24 kilometers,

and any variation within such limits shall be made only after the Regional Transport Authority is satisfied that such variation will serve the public convenience and that it is not expedient to grant a separate permit in respect of the original route as so varied or any part thereof.

4. Reading the aforesaid provision, it is manifest that Sub-section (3) of Section 48 of the Act enumerates the conditions and any one or more of the conditions may be attached to the permit granted by the Regional Transport Authority and it cannot, therefore be contended that Clause (xxi) with the proviso is a condition, of the permit without the same being mentioned in the permit. If the authority requires, it can attach this condition while granting the permit. It will be necessary here to state that this proviso to Clause (xxi) has been added by the amendment in the Motor Vehicles Act, 1939 by Central Act 56 of 1969 and brought into force on the 2nd March, 1970. I have already stated above that in the present case the original permit was granted to Respondent No. 1 in 1969, that is, much before the aforesaid amendment had come into force and, therefore, the restriction of extension of the route granted by the original permit by not more than 24 kilometers, as provided under the proviso to Clause (xxi) could not have been imposed as a condition of the permit granted before the amended provision came into force. It is true that the application was made for renewal of the original permit after coming into force of the aforesaid proviso to Clause (xxi) and if the authorities so liked, at the time of renewal of the said permit, they could have put in a condition as laid down in the aforesaid proviso to Clause (xxi). The original licence was produced before us and we have examined the same and the conditions which have been laid down in the said permit. We have also seen the endorsement of extension made in the said permit. The said original licence was also examined by the learned Counsel appearing for the petitioner. It is not disputed that in the condition laid down in that licence, a condition similar to what has been laid down in the proviso to Clause (xxi) was not there. Therefore, in my opinion, there being no such condition restricting the extension of the route granted by the permit to a- certain limit, it cannot be said that the Chairman had no authority to pass the impugned order. In my opinion, therefore, the said order of the Chairman (Respondent No. 2) cannot be challenged under the proviso to Clause (xxi) of Section 48(3) of the Act.

5. A bench decision was cited at the bar in Basudeo Tiwary Vs. Shree Bagun Sumbrui and Others, . In that case, it has been pointed out that Rule 68 of the Bihar Motor Vehicles Rules gives power to the authority concerned in its discretion to vary the permit or any of the conditions thereof subject to the provisions of the sub-rules of that rule. It has been held in that case that under that rule, the Regional Transport Authority had power to vary the particulars of the licence and accordingly the order passed in that case by the Minister of Transport by extending the route under the permit beyond 24 Kilometers was upheld. This bench decision has relied upon the decision in Sri Ram Vilas Service Ltd., Kumbakonam Vs. Raman and Raman Private Ltd. and Another, . In that case, their Lordships were dealing with the true

constructions of some of the sections of the Motor Vehicles Act, 1939, as amended by Madras Act 3 of 1964, The relevant portion of the said Judgment may be quoted here:

(8). It seems to us that the High Court erred in holding that Section 48(3)(xxi) of the Act as amended, by itself gave power to the Regional Transport Authority to vary the route within certain limits. This power, in our view, would be exercisable only if a condition to that effect is put in the permit. In the case of the appellant we saw the permit and what it contained was a condition similar to the condition mentioned in Section 48(3)(xxi) before its amendment by Act III of 1964. Therefore, for the purpose of this appeal, we must treat Section 48(3)(xxi) as amended, as non-existent. If Section 48(3)(xxi) as amended, is treated as non-existent, then there can be no difficulty in coming to the conclusion that no limitation had been placed on the powers of the Regional Transport Authority in respect of the grant of applications for variation of the route. The order of the Regional Transport Authority cannot, therefore, be challenged as being beyond its jurisdiction.

Thus considering all the aspects, I am of the opinion that for the reasons stated above the contention of learned Counsel for the petitioner has no substance and is rejected.

6. It was next contended that under Annexure ''1'', the prayer for extension of the route beyond 24 kilometers was refused and Respondent No. 1 never chose to challenge that order by approaching either the appellate authority or the revisional authority. It has been pointed out, and in my Opinion rightly by Mr. Septami Jha that the application for extension of the route under the permit of Respondent No. 1 was allowed in part and as the permit was to expire shortly for which a renewal application was required to be filed therefore, Respondent No. 1 did not think it proper to challenge the said order and was contended with the order of extension of the route granted in part under that annexure. I have already pointed out above that shortly after the passing of the order as contained in Annexure 1, the permit, which was valid for three years, was to expire and accordingly a renewal application was filed within time and in accordance with law and the said permit was renewed for another term. Mr. Jha rightly contended that after extension was granted to Respondent No. 1 sometime in 1973 it was thought proper, considering the prevailing circumstances, to apply for a further extension. Accordingly, an application was made for further extension of the permit. In my opinion, therefore, in the circumstances stated above, it cannot be contended that the refusal of extension of the route beyond 24 kilometers under Annexure 1 was a bar for application for the second extension. I therefore, reject this contention also.

7. It was finally urged by Mr. Shrivastava that as in the permit the route itself has been mentioned, which was required to be mentioned under Clause (i) of Section 48(3) of the Act, the proviso to Clause (xxi) is attracted, as the proviso refers to Clause (i) aforesaid. In my opinion, this contention also has no substance. I have

already held above that it was necessary for the authorities to mention in the permit any one or more of the conditions laid down in several clauses of Section 48(3) of the Act, and under Clause (i) it was required to specify the area/route in the permit. It is this route which the proviso has put restriction in the power of the authority to vary or alter to the Maximum of 24 kilometers. It, therefore, became necessary to refer in the proviso the aforesaid Clause (i) because the variation is to be made in the said route mentioned in the permit. Further, the condition laid down in the proviso, even after renewal, was not mentioned in the permit and, accordingly, mere mention of the route in the permit could not necessarily attract the proviso to Clause (xxi).

8. In the result, there is no merit in this application and it is accordingly dismissed. But in the circumstances of the case, I would make no order as to costs.

Sarwar Ali, J.

9. I agree.