(1965) 03 PAT CK 0004

Patna High Court

Case No: Misc. Judl. Case No. 503 of 1964

Bikramajit Singh		APPELLANT
	Vs	
State of Bihar and Others		RESPONDENT

Date of Decision: March 30, 1965

Acts Referred:

- Motor Vehicles Act, 1939 - Section 46, 64A

Citation: AIR 1966 Patna 96

Hon'ble Judges: R.K. Choudhary, J; G.N. Prasad, J

Bench: Division Bench

Advocate: Sailesh Chandra Sinha, for the Appellant; Lal Narayan, Government Advocate and Rajeshwar Prasad Srivastava, for the Respondent

Final Decision: Dismissed

Judgement

Choudhary, J.

The petitioner has applied for a permanent stage carriage permit for the twelve-miles route Dehri-Sasaram, and he based his claim for getting the permit on the ground that he was operating a bus service since 1950, that he was a resident on the route, having his workshop and garage at Dehri, and that he was a motor mechanic. He offered the latest available model vehicle. Respondent No. 4 Messrs. Shaw Motor Company and Works were also applicants for the permit and they claimed to have the same on the ground that they were displaced operators and had 36 years'' experience and were already plying a bus in a. portion of the same route. They also offered the latest model vehicle. The applications were considered at a meeting of the South Bihar Regional Transport Authority, Patna (hereinafter to be referred to as ''the R. T. A.'' for the sake of brevity) on the 5th of January, 1963. The petitioner''s application was rejected and the permit was granted to respondent No. 4. The petitioner preferred an appeal to the Appeal Board which dismissed the appeal on the 20th of July, 1963. The petitioner, thereupon, filed a revision application u/s 64A of the Motor Vehicles (Bihar Amendment) Act (hereinafter to be

referred to as "the Act") to the Transport Minister, but that application was summarily rejected. Being thus aggrieved, the petitioner has filed this writ application.

2. The grievance of the petitioner is that the Minister did not give him a hearing before summarily rejecting his revision application. It was urged that the Minister could not reject the revision application without giving the petitioner an opportunity to be heard. On behalf of the respondent No. 4 it was submitted that the Minister, while exercising his revisional jurisdiction u/s 64A of the Act, was not bound to hear any argument on behalf of the petitioner if, on perusal of the record, he was of the opinion that, on the facts of the case, his interference was not called for. In my opinion the contention raised on behalf of respondent No. 4 is well founded and must prevail. No authority has been placed before us on behalf of the petitioner to show that the Minister was bound to give him an oral hearing when, acting under his revisional powers, he was of the opinion that the decision of the subordinate authority did not call for any interference. There is no provision for the Minister to issue a notice to the petitioner in a revision application to enable him to make an oral submission. A different consideration may arise when the Minister is going to reverse an order of the subordinate authority and thus pass an adverse order against a person in whose favour the subordinate authority had passed an order. That principle, in my opinion, will not apply where the Minister, on perusal of the record, is proceeding to reject a revision application summarily and thus affirming the order of the subordinate authority.

Mr. Sinha, who has argued the case on behalf of the petitioner, has, however, strenuously urged that at least the Minister was bound to consider his application on merits before summarily dismissing it. There is no doubt that, even in rejecting a revision application summarily, the Minister had to consider the points raised in the revision application and then to come to the conclusion whether it was a case fit for being summarily dismissed. In the writ application, nowhere it has been mentioned that the Minister did not consider the application on merits. We, therefore, wanted to have a look at the order of the Minister, and learned Government Advocate, though he was appearing for a private party, undertook to produce the same before us and has produced the entire file of the revision case for our perusal. On perusing the same I do not feel any doubt that, before the Minister passed the order summarily rejecting the application, he had before him all the material facts of the case for applying his mind to them, and it cannot be said that the order passed by him is one which has been passed without applying his mind to the facts of the case. There is no merit in the argument of the learned counsel in this regard and it has to be rejected.

3. Mr. Sinha has then contended that the order of the R. T. A. and the order of the Appeal Board are themselves bad, because certain facts which should have been considered for granting a permit to the petitioner and certain facts which should

have been considered for refusing the prayer of respondent No. 4 for the permit have not been considered. His grievance is that the orders of the R. T. A. and of the Appeal Board have not set out fully all the reasons that should have been considered in granting the permit. On perusal of the two orders, however, I do not find any substance in this argument.

4. From the order of the R. T. A., a copy of which is annexure "A" to the writ application, it appears that the claim of respondent No. 4 was found to be anterior to the other applicants on five grounds, namely, (i) that they had experience of 36 years, (ii) that they were still to be compensated, (iii) that they were running a service on the route Dumraon to Dehri and as such they would be able to manage this route efficiently, (iv) that they were ready to offer latest model vehicle and (v) that they were displaced operators. At the end of the order, however, it was mentioned that preference was to be given to a displaced operator, and Mr. Sinha, for the petitioner, seriously criticised the order based on preference to a displaced operator. He has submitted that this is no ground for giving preference to respondent No. 4 and the order of the R. T. A, is, accordingly, bad in law. I am unable to agree with this contention. The reasons for which the permit has been given to them have already been mentioned, as stated above, and, over and above the same, it has also been mentioned that preference may have to be given to a displaced operator.

5. Mr. Sinha has then contended that on two previous occasions respondent No. 4 had been fined for having acted irregularly. The second occasion on which they were fined was however subsequent to the order of the R. T. A. but during the pendency of the appeal before the Appeal Board. Before the Appeal Board, this point had been taken which it considered and, for reasons given in the order, it did not think it to be enough for rejecting the claim of respondent No. 4. It cannot be said that, if an operator has been found guilty of some irregularity once or twice, he has to be debarred for all times from getting a permit. It is for the authority concerned to look to the seriousness of the irregularity and the other convenience in granting a permit. The most important thing that appears to have weighed with the R. T. A. as well as the Appeal Board is that respondent No. 4 was already plying a bus on a portion of the route and they were therefore thought fit to manage on the same route another service efficiently. In my opinion, there is illegality in the order of the R. T. A. or the Appeal Board.

6. Mr. Sinha has also contended that the extent of experience is no ground for consideration u/s 46 of the Act for granting a permit. I, however, do not agree with that contention. In granting a permit, the interest of the general public has to be seen, and it is in the interest of the public that an experienced operator should be permitted to operate. The petitioner has the experience of only 12 years whereas respondent No. 4 has the experience of 36 years.

7. The result, therefore, is that the application fails, and is dismissed; but there will be no order as to costs.

G.N. Prasad, J.

8. I agree.