

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.812 of 2012

IN

Civil Writ Jurisdiction Case No. 14590 of 2011

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Mani Bhushan Kumar, S/O Sri Lallan Kumar Shukla, R/O Village- Jalalpur, P.S.-
Lalganj, District- Vaishali

.... Appellant/s

Versus

1. The State of Bihar through its Secretary Department of Transport, Bihar, Patna
2. The Chairman State Transport Appellate Tribunal, Bihar, Old Secretariat, Patna
3. State Transport Authority, Bihar through its Secretary Bisheshwaraiya Bhawan,
Bailey Road, Patna
4. Subhas Chandra, S/O Sri Dina Nath Jaiswal, R/O Near Bus Stand, Purnea, N.H.
31, P.S.- K. Hat, District- Purnea

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Badri Narayan Singh, Sr. Advocate
Mr. Randhir Kr. Singh, Advocate
Mr. Sanjay Kr. Pandey, Advocate

For the Respondent/s : Mr. Sunil Kr. Gupta, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 08-09-2016

Heard Sri Badri Narayan Singh and Sri Sunil

Kumar Gupta for the parties and with their consent this appeal is
being disposed of at this stage itself.

The appellant is the grand-son of one Jairam
Sukla. The dispute originally was between Jairam Sukla and the writ
petitioner Subhas Chandra. The dispute was with regard to inter-state
road permit to ply public service vehicles as between Motihari and
Silliguri. Initially the permit after long litigation was granted in the



name of Jairam Sukla. While litigations were then pending he died. Application was made by Mani Bhushan Kumar in the case pending before the appellate Tribunal in T.R. No. 17 of 2008 for being substituted, but the Tribunal by its order dated 12.04.2010 rejected the same and all the cases were allowed by the order of the Tribunal dated 28.08.2008. The permits remain thus in the name of Jairam Sukla, who had since died. Being aggrieved by this order Subhas Chandra filed the writ petition challenging the order of the Tribunal and the authorities. The writ petition was contested by the writ petitioner Subhas Chandra and Mani Bhushan Kumar, who was respondent no. 4. Before the learned Single Judge, on behalf of respondent no. 4 it was pointed out that in view of the judgment of the Supreme Court in the case of Mst. Dhani Devi Vs. Sant Bihari Sharma and others since reported in AIR 1970 Supreme Court 759, substitution could be applied for and obtained on death of the permit holder. The learned Single Judge first in paragraph 10 noted that application for substitution was made before the Tribunal itself, which the Tribunal rejected, but while concluding the judgment in paragraph 24, the learned Single Judge notes that no substitution application was made by respondent no. 4 nor permit had been granted in the name of respondent no. 4 or for that matter Jairam Sukla before he died. Accordingly, the writ petition was allowed and the permit granted or



purported to be granted in the name of Jairam Sukla was set aside. Against this, the present appeal was preferred. When the appeal was taken up by Division Bench on 08.08.2012, the Division Bench merely holding that no permit could be granted in the name of a dead person nor a permit was a property that could be transferred refused to interfere with the judgment and order of the learned Single Judge and consequently the intra-court appeal was dismissed. Thereafter the appellant filed a review application being Civil Review No. 443 of 2013 and noticing the judgment of the Apex Court in the case of Mst. Dhani Devi (supra), which had been noticed by the learned Single Judge but had not been taken note by the Division Bench, the civil review application was allowed and the judgment in this intra-court appeal earlier passed on 08.08.2012 was recalled. It is under this situation that we are hearing this intra-court appeal once again.

Sri Badri Narayan Singh in support of the appeal once again relies on the judgment of the Apex Court in the case of Mst. Dhani Devi (supra). We have heard him as well as Sri Sunil Kumar Gupta, who appears for contesting respondent no. 4, who was the writ petitioner. We are afraid learned Single Judge committed a clear error of record having noted that application for substitution had been made, which was rejected by the Tribunal. Later, in the judgment in paragraphs 23 and 24 learned Single Judge noted that there was no

application for substitution nor permits granted in the name of respondent no. 4. This was wrong, inasmuch as, application for substitution had been made and though the Tribunal refused substitution later on the transport authorities substituted the name of respondent no. 4 in place of Jairam Sukla. On this issue itself the appeal has to be allowed and the judgment and order of the learned Single Judge has to be set aside.

However, very fairly Mr. Sunil Kumar Gupta, learned counsel appearing for the writ petitioner Subhas Chandra, who is contesting respondent no. 4 states and submits that as of date Subhas Chandra does not have vehicle which can be made available for plying. He is not in a position to oppose.

Thus, considering the aforesaid, we set aside the judgment and order of the learned Single Judge dated 18.05.2012, passed in C.W.J.C. No. 14590 of 2011 and allow this appeal. We, thus, dismiss the aforesaid writ petition.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh/AFR

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