

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.199 of 2016

Trilok Singh, son of Shyam Sunder Singh, resident of Village- Ursa, P.O. + P.S. Hausa, District- Nawada.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Magadh Division –cum- Chairman, Magadh Regional Transport Authority, Gaya.
2. The Secretary, Magadh Regional Transport Authority, Commissioner Compound, Gaya.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Randhir Kumar Singh
Mr. Sanjay Kumar Pandey

For the Respondent/s : Mr. Mithilesh Kr. Upadhyay, AC to GP-10

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 17-05-2016

Heard Mr. Randhir Kumar Singh, learned counsel appearing for the petitioner and Mr. Mithilesh Kumar Upadhyay, learned Assisting Counsel to Government Pleader No.10 for the State.

The petitioner prays for issuance of a writ in the nature of certiorari for quashing the order dated 10.10.2014 present at Annexure-8, passed by the Magadh Regional Transport Authority, Gaya (hereinafter referred to as ‘the Authority’) whereby ‘the Authority’ has refused to renew the permanent Inter Regional Stage Carriage permit of the petitioner bearing Permit No.134 of 2005 for the route Nawada to Rajgir, *inter alia*, on grounds that the petitioner has replaced his 22 seater vehicle by a 33 seater vehicle

and which action is hit by the provisions of section 83 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') and the 'Rules' framed thereunder.

The case in hand is a pathetic reflection of the working of the Transport Department and is also a reflection as to how the litigations are generated even when there is no dispute, the law is well settled and the statutory provisions are self eloquent.

The facts of the case briefly stated is that the petitioner was granted stage carriage permit by the Magadh Regional Transport Authority bearing Permit No.134 of 2005 which was valid from 8.9.2005 to 7.9.2010 and was in respect of 22 seater vehicle. A copy of such permit is placed at Annexure-1. On nearing the expiry of the validity period of permit that the petitioner filed his application for renewal vide Annexure-2 and was granted temporary permit for four months vide Annexure-3 which lapsed by passage of time rendering the petitioner without a permit. The petitioner took shelter before this Court in CWJC No.6000 of 2011 and which was disposed of vide order dated 20.5.2011 present at Annexure-5 requiring the authorities of the Transport Department to consider the grievance of the petitioner and dispose of the same within two months from the date of



receipt/production of a copy of the said order. The matter was again considered by the Magadh Regional Transport Authority, Gaya consisting of the Joint Commissioner –cum- Secretary, Magadh Regional Transport Authority, the District Magistrate, Gaya, the Deputy Inspector General of Police, Magadh Range and the Commissioner –cum- Chairman, Magadh Division, Gaya. The prayer of the petitioner for renewal of permit was again rejected and this time the ground was that his 21 seater vehicle was below 32 seater capacity. The order is present at Annexure-6.

Since the ground assigned by ‘the Authority’ for rejecting the renewal of permit, is foreign to the provision of ‘the Act’ and the ‘Rules’ framed thereunder that the petitioner again came before this Court in CWJC No.21323 of 2012. Before this Court a stand was taken by the respondents through their counsel that should the petitioner replace his vehicle with a higher seat capacity vehicle then his application of renewal would be considered. The writ petition was accordingly disposed of vide order present at Annexure-7.

Although lawfully there was no requirement for the petitioner to replace his vehicle by a higher seating capacity vehicle for obtaining renewal of his permit but the petitioner taking



no confrontation with the department, replaced his old vehicle with a 33 seater capacity vehicle and again filed his renewal application. This time the Magadh Regional Transport Authority, Gaya vide order placed at Annexure-8 has rejected his prayer on grounds that since the original permit was for a 22 seater vehicle and the petitioner has replaced his vehicle by a 33 seater vehicle without permission of the authorities of the Transport department hence the prayer for renewal cannot be accepted.

Mr. Randhir Kumar Singh, learned counsel appearing for the petitioner while referring to the statutory provisions underlying section 81(4) of 'the Act' has submitted that the grounds for refusal of renewal stands enumerated therein and a replacement of vehicle is no such ground. He further submits that the arbitrariness in the action of the respondents can be well ascertained from the fact that whereas before this Court a stand was taken by them requiring the petitioner to replace his vehicle with a higher seating capacity vehicle but once the petitioner has complied with the desire of the Authority although it was not required, now they proceeded to reject the renewal prayer by taking refuge under section 83 of 'the Act'. Learned counsel has relied upon the decision of this Court reported in **2009 (3) PLJR**



720 (Lallan Singh vs. The State of Bihar) as well as a judgment rendered in a case arising from CWJC No.1257 of 2015 (**Satyendra Kumar vs. The State of Bihar**) to submit that while a refusal of renewal of permit has to be in tune with the conditions provided under section 81(4) of 'the Act, a replacement of vehicle by higher capacity vehicle so long its nature does not change cannot be a basis for refusal by taking recourse to section 83 of 'the Act'.

Although learned counsel for the State has endeavoured hard to defend the action of the State culminating in the order impugned but the attempt is defenseless for the order is plainly arbitrary and de hors the statutory provisions as well as the judicial pronouncements on the issue. In fact the respondents having forced the petitioner to invest in a higher sitting capacity vehicle in the previous round of litigation arising from CWJC No.21323 of 2012, they could under no circumstances reject the renewal application on this very ground. The petitioner has been a victim of harassment at the hands of the Regional Transport Authority for reasons entirely attributable to the wisdom of 'the Authority' in being ignorant of the statutory stipulations as well as the judicial pronouncement on the issue referred to above. The



impugned order has been passed by taking refuge under section 83 of 'the Act' which merely provides that the holder of a permit may with the permission of the authority replace any vehicle by any other vehicle of same nature.

The nature of the vehicle is not in debate rather the debate is on sitting capacity and the statutory provisions underlying section 83 of 'the Act' makes no distinction on amongst the vehicles of similar nature on the basis of sitting capacity. In other words, so long the nature of the vehicle remains the same be it a bus or a truck or any other commercial vehicle, its renewal cannot be refused on the basis of enhancement/reduction in sitting capacity. Even otherwise it is only within the parameter of section 81(4) of 'the Act' that a refusal of a permit can be issued and a replacement of vehicle is not one of such ground.

The third most important aspect of the matter which almost persuades this Court to impose heavy cost on the respondents is the stand taken by them before this Court in requiring the petitioner to invest in a higher sitting capacity vehicle and I would do no better than to reproduce the relevant paragraph of the order present at Annexure-7:

“Learned counsel for the respondents submits that if the petitioner replaces the vehicle with a higher seat capacity vehicle, his application for

renewal can be considered by the authorities afresh.”

Now even if in this third round litigation the respondents are trying to hide behind section 83 to submit that a replacement without permission is not acceptable, such objection, in view of their stand before this Court as referred to above can only invite a heavy cost.

Records confirm that neither on the statutory provisions nor on propriety is the wisdom of ‘the Authority’ sustainable and accordingly the order impugned dated 10.10.2014 present at Annexure-8 passed by the Magadh Regional Transport Authority, Gaya is set aside. The Magadh Regional Transport Authority, Gaya is directed to forthwith grant renewal of permit to the petitioner

The writ petition is allowed.

(Jyoti Saran, J)

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CAV DATE	
Uploading Date	24-05-2016
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