

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 1257 of 2015

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Satyendra Kumar Son of Late Deo Nandan Singh, Resident of Station- Jail Road Chowk, Barh, P.O./P.S. Barh, District Patna, At present residing at Krishna Bhawan, Opposite Ram Chandrapur Bus Stand, Biharsharif, P.S. Laheri, District Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar, through the State Transport Commissioner-cum-Secretary, Bihar, Patna.
2. The State Transport Commissioner-cum-Secretary, Bihar, Patna.
3. The Regional Transport Authority, Patna Division, Patna through its Secretary.
4. Sunil Kumar, Son of Late Kedarnath Singh Resident of Village Shankardih, P.S./P.O. Parwalpur, District Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 21-01-2016

Heard learned counsel for the parties.

The writ application has been filed seeking quashing of the order/decision dated 19.10.2013 by the Regional Transport Authority, Patna Division, Patna (hereinafter referred to as the 'RTA') under Agenda No. 13 at Serial No. 1 allowing replacement in Permit No. 68/2003 of the original bus bearing Registration No. BR-21A-3411 by a different bus bearing Registration No. BR-21C-7411. The additional prayer is for setting aside the order/decision dated 30.11.2013 of the RTA under Agenda No. 8 at Serial No. 3 allowing the renewal of the said Permit No. 68 of 2003. The petitioner having moved the State Transport Appellate Tribunal, Patna for the said relief and the Revision Application having been dismissed by order dated 10.06.2014, the same is also impugned herein.



The necessary facts of the case are that the respondent no. 4 had got a permit for plying his bus bearing Registration No. BR-21A-3411 on Biharsharif - Patna route under Permit No. 68 of 2003 and upon subsequent renewal, the same was valid till 23.11.2013. During the validity of the said permit, he applied before the RTA for replacement of his vehicle by another vehicle bearing Registration No. BR-21C-7411, which was allowed by order dated 19.10.2013. The respondent no. 4 then got renewal of the Permit No. 68 of 2003 by order dated 30.11.2013.

Learned counsel for the petitioner has assailed the initial order granting replacement primarily on the ground that the vehicle which has been allowed to be replaced in the original permit was not of the '*same nature*'. As per Section 83 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') read with Rule 83(2)(ii) of the Bihar Motor Vehicles Rules, 1992 (hereinafter referred to as the 'Rules'), it is submitted that the same stipulate that the replacement of vehicle should be of the '*same nature*'. In the present case, he submits, that the old vehicle had a seating capacity of 53 whereas the replacement vehicle has seating capacity of only 40/41 which, according to him, changes the nature of the vehicle making the replacement impermissible. It is his contention that besides there being reduction in the capacity of passengers who can be accommodated, the same would also lead to loss of Government revenue which is based on the seating capacity of the vehicle for which the permit is granted. Learned counsel submits



that though in the Rules, '*same nature*' has not been defined, but drawing analogy with a similar provision of the Motor Vehicles (All India Permit for Tourist Transport Operators) Rules, 1993 (hereinafter referred to as the '1993 Rules'), Rule-7 relating to replacement of vehicle clearly stipulates that a vehicle of '*same nature*' would mean having the '*same seating capacity*' for which permit has been granted. Learned counsel submits that the fact that the original vehicle has been allowed to be replaced by the subsequent vehicle not having the same seating capacity, would clearly vitiate the decision by which such replacement was allowed. It is further submitted that the vehicle by which the original vehicle has been replaced already had a valid permit being Permit No. 89 of 2009 for the same route which was in operation and thus, without having surrendered and cancelled the same, the replacement could not have been granted as it would amount to the vehicle having two permits for the same route at the same time. It is further contended that the old vehicle in favour of which the original Permit No. 68 of 2002 had been granted was already sold to a third person on 11.05.2011 i.e., much prior to the application and order for replacement. It is thus submitted that once the vehicle was sold in the year 2011 itself, automatically the validity of Permit No. 68 of 2003 also expired and thus there could not have been any question of any replacement of the vehicle as far as the said permit is concerned.

Learned counsel further submits that the



replacement vehicle of the respondent no. 4 bearing Registration No. BR-21C-7411 upon application for renewal of its Permit No. 68 of 2003, the RTA had already taken a decision in his presence allowing such renewal by order dated 30.11.2013 and thus his application on 09.12.2013 seeking a fresh Permit for the same vehicle where he had stated that the vehicle was idle was false since the renewal of Permit No. 68 of 2003 had already been permitted earlier on 30.11.2013 itself and subsequently the grant of fresh Permit was also allowed by decision taken on 09.01.2014.

Learned counsel appearing for the respondent no. 4 submits that the action of the RTA cannot be said to be arbitrary or illegal as it is within the power of the RTA both to allow replacement and also renew the permit. Learned counsel submits that as far as the '*nature*' of the vehicle replacing the original vehicle in Permit No. 68 of 2003 is concerned, the mere fact that a 53 seater bus has been replaced by a 40/41 seater bus cannot vitiate the order allowing replacement. It is submitted that in the Motor Vehicles Act, 1939 (hereinafter referred to as the 'Act of 1939'), Section 59(2) originally provided that the holder of a permit may, with the permission of the authority by which the permit was granted, replace by another vehicle of the same nature and '*capacity*' any vehicle covered by the permit. It is submitted that later on the legislature brought about an amendment in the Act of 1939 with effect from 02.03.1970 and the said Section 59(2) was modified to read that the holder of a permit may, with the permission of the



authority by which the permit was granted, replace any vehicle covered by the permit by any other vehicle of the same nature. It is thus submitted that the word '*and capacity*' were removed by the amendment which clearly indicates the intent of the legislature that the replaced vehicle need not be of the '*same capacity*'. It is submitted that the Act and specifically Section 83 of the same also stipulates that the holder of the permit may with the permission of the authority by which the permit was granted replace any vehicle covered by the permit by any other vehicle of the same nature. Learned counsel submits that even the Rules do not specify that the replacement of vehicle should be of the '*same capacity*'. He submits that drawing analogy to Rule 7 of the 1993 Rules stipulating that the replacement of vehicle should have the same seating capacity cannot be read into either in the Act or the Rules and in the background of the legislature itself removing the provision of '*same capacity*', the objection to such replacement is not valid. It is further submitted that in the State of Bihar it is a normal practice to allow replacement of vehicles without insisting for the replacement vehicle to be of the '*same seating capacity*'. Thus, it is submitted that the nature of the vehicle can only be taken to connote the same type of vehicle and in the present case the permit was issued basically for a '*bus*' and the original vehicle has also been replaced by a '*bus*'. It is submitted that even looking at it from the point of view of legality and public interest, a bus with a smaller capacity necessarily indicates a smaller size and the



seating capacity being less is also for the benefit of the consumers as lesser number of persons are plying in the vehicle leading to greater passenger comfort. He further submits that the issue of the respondent no. 4 not correctly stating before the Authority at the time of renewal that his vehicle was lying idle is also erroneous for the reason that though a decision may have been taken by the RTA for grant of a fresh permit on 09.01.2014 but on the date of application for renewal of permit No. 68 of 2003, no renewed permit was in existence and thus in the eyes of law, the vehicle was lying idle since without formal issuance of the renewed permit, the vehicle could not have been used for plying passenger. Learned counsel thus submits that the authority considering all those facts and also taking into account that no valid permit existed on the day the petitioner had applied and even on the day of taking a decision for renewal, had rightly allowed such renewal. It is submitted that the order for renewal for Permit No. 68 of 2008 was passed on 30.11.2013 and the minutes signed on 13.12.2013. It is submitted that the renewed permit was finally issued on 18.02.2014 and thus in the application before the State Transport Authority dated 09.12.2013 for grant of fresh Permit, the respondent no. 4 had not committed any fraud or misrepresentation since without the renewed permit having been issued, there is no permit in the eyes of law and thus on 09.12.2013, when the petitioner had made an application for issuance of a fresh permit and later also on 09.01.2014 when decision to issue such fresh permit was taken,



his vehicle was lying idle as there was no valid permit on the said dates. It is submitted that at no point of time, the respondent no. 4 had more than one valid permit in operation with regard to Vehicle No. BR-21C-7411. Learned counsel submits that as far as the question of having sold the vehicle is concerned, the same was neither handed over to the buyer nor the ownership transferred, which was communicated to the Authority concerned and the fact was also mentioned that the purchaser had failed to pay the remaining Rs. 1,00,000/- of the sale amount due to which request was made not to transfer the vehicle in the name of the purchaser. Learned counsel submits that no evidence has been brought either before the Tribunal or before this Court to indicate that the vehicle was actually transferred in the name of any purchaser and furthermore the original Registration Certificate is still in the name and possession of the respondent no. 4, including the tax token. Learned counsel further submits that as far as validity of Permit No. 89 of 2009 is concerned, it was surrendered before the authority concerned on 13.10.2011 itself with a request for its cancellation and as per Rule 86(1) of the Rules, the holder of a permit may at any time surrender the permit to the original Transport Authority and the authority shall forth with cancel any permit so surrendered. It is thus submitted that once the formality on the part of the petitioner with regard to surrendering the permit was complete, the formal cancellation order which was to be passed by the respondent authorities not having been done, liability cannot



be fastened on the petitioner as on 13.10.2011, after having surrendered the permit, the authorities had to forthwith cancel the same and the presumption in law can be drawn that such permit stood cancelled upon such surrender by the respondent no. 4 of the permit in his favour as the formal issuance of a cancellation certification is merely a ministerial act. Learned counsel has also referred to and relied upon decisions of Division Benches of this Court in **C.W.J.C. No. 5037 of 1991 (Binod Chandra Ray vs. Chairman, Darbhanga Regional Transport Authority and others)** and **C.W.J.C. No. 1839 of 1990 (Sri Narayan Sharma vs. The State of Bihar and Others)** dated 14.09.1991 and 13.08.1991 respectively in which it has been held that a private operator has no legal right to file representation or a right for being heard in the matter of grant of permit on the same route to another applicant. For the said proposition he has also relied upon a Full Bench decision of the Andhra Pradesh High Court in the case of **Secretary R.T.A., Guntur v. E. Rama Rao** reported in **A.I.R. 1991 A.P. 11** and also of the Hon'ble Supreme Court in the case of **Mithilesh Garg v. Union of India** reported in **A.I.R. 1992 SC 443**, where liberalized policy with regard to grant of permit to private operators has been upheld and the Court has approved doing away of grant of permit to specified number of operators and inviting objections against the award from existing operators.

Learned counsel for the State submits that the Appellate Authority has considered the matter in detail and has



arrived at a finding that the action of the RTA in granting permit for replacement as well as renewal thereafter is in accordance with law. As far as the petitioner having filed a representation before the South Bihar Transport Authority, Patna on 15.01.2014, copy of which has been made Annexure-7 of the writ application, it is submitted that the question relating to petitioner not having submitted the cancelled Permit No. 89 of 2009 prior to renewal of his Permit No. 68 of 2003, it was due to human error by a person in the department for which action has been taken against him but respondent no. 4 cannot be held responsible as there was no fault or laches on his part.

After having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is of the considered opinion that though there may have been slight departure from the strict requirement of the Act and the Rules but the same cannot be attributed to the respondent no. 4 and visit him with the extreme consequences of the permission for replacement and subsequent renewal of his permit being set aside. Even with regard to the question of his replacement being permissible only for the vehicle of the '*same nature*', the Court is unable to agree with the contentions of learned counsel for the petitioner that the '*nature*' would indicate '*seating capacity*' also. In the present case, a bus having a seating capacity of 53 being replaced by a bus having seating capacity of 40/41 cannot be said to be of a different '*nature*' and on this ground the Court does not



feel that it would warrant setting aside the order of replacement. Incidentally, during the course of argument, learned counsel for the State had produced certain documents before the Court to indicate that even earlier a replacement order in favour of the petitioner with regard to his another vehicle had been allowed by which the original vehicle of the Permit No. 294 of 2011 which was for a seating capacity of 32 has been replaced by a vehicle of seating capacity of 41. Thus, the petitioner having availed of a benefit of replacement in his own case with regard to another vehicle possessed by him cannot plead before a Court of law that the same benefit may not be given to another party. The Court is also in agreement with the submissions of learned counsel for the respondent no. 4 that at no point of time he had more than one valid permit for the vehicle in question. Moreover, the petitioner also possessing a permit for a bus on the same route cannot contend that any prejudice has been caused to him and the decisions relied upon by learned counsel for the respondent no. 4 on this point also support his case. The renewal of the Permit equally cannot be held to be illegal.

For the reasons aforesaid, the Court does not find any merit in the writ application and the same stands dismissed.

(Ahsanuddin Amanullah, J.)

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