

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17833 of 2018

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M/s Murari Auto a proprietorship firm through its proprietor namely Shailendra Kumar, Son of Sri Krishna Murari Singh, at M/s Murari Auto, N.H.- 98, Main Road, Naubatpur, Selhouri, Post Office and Police Station- Naubatpur, District- Patna, Pin- 801109.

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Transport Department, Government of Bihar
2. The Principal Secretary, Transport Department, Government of Bihar, Patna.
3. The State Transport Commissioner, Transport Department, Government of Bihar, Patna.
4. The Additional Secretary, Transport Department, Government of Bihar, Patna.
5. The Joint Commissioner cum Regional Transport Authority, Government of Bihar, Patna.
6. The District Transport Officer, Patna.
7. The Motor Vehicle Inspector, Transport Department, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sandip Kumar, Advocate Mr. Rajeev Shekhar, Advocate
For the Respondent/s	:	Mr.Smt.Anuradha Singh -Sc21
For Intervenor	:	Mr. Bindyachal Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 17-07-2019

I.A. No. 2 of 2019

In view of what transpired with regard to the desirability to file an Interlocutory Application seeking intervention by the Motor Vehicles Inspectors Association in a lis where the State is already a party and is contesting with the petitioner, learned counsel for the proposed intervenor submits that he may be permitted to withdraw the interlocutory application.



Permission is granted.

I.A. No. 2 of 2019 is dismissed as withdrawn.

This writ application has been heard on merit.

The petitioner in the present is seeking following reliefs:

“(i) To issue a writ in the nature of Certiorari for quashing office order as contained in memo number 4921 dated 14.07.2018 issued by District Transport Officer, Patna by which works have been allotted to different Motor Vehicle Inspector to the extent as indicated in column no. 6 by which the work of counter signature of fitness certificate issued by private fitness centers, assigned to Sri Mirtunjay Kumar Singh, Motor Vehicle Inspector, Patna and consequent upon quashing of the same, issuance of writ in the nature of Certiorari for quashing the letter bearing number 267 dated 04.08.2018 issued by Motor Vehicle Inspector, Patna whereby the petitioner firm has been asked to have counter signature in the fitness certificate of the vehicles.

(ii) To issue a writ in the nature of Certiorari for quashing the notification no. 1959 dated 24.04.2015 to the extent clause-gha of earlier notification no. 730 dated 06.02.2015 has been amended as same is wholly without jurisdiction per se illegal and arbitrary.

(iii) To any other relief or reliefs to which the petitioner is entitled in the facts and circumstances of the case.”



It is the case of the petitioner that in terms of the notification as contained in Paripatra No. 730 dated 06.02.2015 (Clause- Gha) fitness certificate issued by the Authorized Testing Station will be legally valid. It is submitted that in another notification as contained in Paripatra No. 1959 dated 24.04.2015 issued by the Transport Department, Government of Bihar it has been decided that fitness certificate issued by Private Testing Station shall have counter signature of Motor Vehicle Inspector, Patna and then only same will be a valid certificate of fitness.

It is the submission of learned counsel for the petitioner that a fitness certificate is issued under Section 56 (1) in Form -38 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act of 1988'). The certificate of fitness for vehicles can be issued by either of the two authorities i.e. the Motor Vehicle Inspectors as well as the Authorized Testing Stations. In terms of Rules 62, 63 and 65 of the Central Motor Vehicles Rule, 1989 (hereinafter referred to as the 'Rule of 1989'), the Authorized Testing Stations are required to follow the conditions, procedure and regulations which are formulated by the Central Government to control the Authorized Testing Stations. It is submitted that in Form No. 38 under Rule 62(1),



the certificate of fitness does not have any scope of a counter signature of the Motor Vehicle Inspector and therefore, the authorities of the Transport Department has wrongly brought a provision through different letters and notifications whereunder the Motor Vehicle Inspectors have been empowered to counter sign the certificate of fitness issued by the Authorized Testing Stations. According to the petitioner, Rule 67 of the Rule of 1989 provides only for inspection of the vehicles by the Motor Vehicle Inspectors at the premises of the Testing Stations.

In the counter affidavit filed on behalf of respondents no. 2 to 7 a stand has been taken that pursuant to the provision under Section 56 of the Act of 1988 and the Rules 63 of the Rule of 1989, provisions have been made which prescribes registration of motor vehicles under Section 39 of the Act of 1988 which can be done only after a fitness certificate is issued by the prescribed authority or by an Authorized Testing Station and in order to facilitate testing facilities, the Testing Stations were set up for testing of the vehicles and issuance of fitness certificate.

Earlier in the case of **Joint Transport Commissioner, Jharkhand Versus M/s Nag's Auto Testing Station & Anr.** when a notification dated 10.09.2003 and order dated



24.04.2004 providing for counter-signature by the Motor Vehicle Inspectors on the certificate of fitness issued by the Authorized Testing Stations went to the Hon'ble Supreme Court in Civil Appeal No. 1851 of 2009 and 1852 of 2009, the Hon'ble Supreme Court held that the State Government has power to issue such a direction under Section 65 read with Section 123 of the Act and held the provision as a salutary measure in order to keep a check on the Authorized Testing Stations so that they may not, for extraneous purposes grant certificates of fitness.

It is further submitted that the Government of Bihar in exercise of its power under Section 213 of the Act of 1988 vide notification as contained Memo No. 1159 dated 24.04.2015 empowered the Motor Vehicle Inspectors of the Transport Department to be competent for purpose of making counter signature on the certificates issued by the Private Testing Stations authorized under Section 67 of the Rule of 1989. Further a modification has been made in Clause 'Gha' of earlier Department's notification No. 730 dated 06.02.2015 to the extent that only those fitness certificates issued by the Authorized Private Testing Stations shall be valid which are duly counter signed by the Motor Vehicle Inspector. It has been



made effective with effect from the date of issuance of notification no. 730 dated 06.02.2015. A copy of the notification has been placed on record as Annexure 'C' to the counter affidavit.

It is submitted that the Government of India has vide Gazette Notification Dated 28.11.2016 inserted Form 38A for issuance of fitness certificate whereunder now an Inspecting Officer or Authorized Testing Station in State /Union Territory within the State / Union Territory where the vehicle is registered and the Inspecting Officer who conducted the test shall on the same day or on the following working day, upload his inspection report in Form 38A on the Government Portal and also send the inspection report signed with his seal to the registering authority by speed post.

It is, thus, submitted that the writ application is wholly misconceived and is liable to be dismissed in view of the decision of the Hon'ble Apex Court and the subsequent developments.

Having heard learned counsel for the parties and on perusal of the records, this Court finds that earlier in the case of **M/s Nag's Auto Testing Station** (supra) the Hon'ble Supreme Court has held as under:-

“This Appeal has been filed against the impugned



judgment of the High Court of Jharkhand dated 20.07.2007 passed in Writ Petition (C) No. 2617 of 2004.

The facts have been given in the impugned judgment and hence we are not repeating the same here, except wherever necessary.

Respondent no. 1 herein earlier filed a writ petition being Writ Petition No. 4092 of 2000 before the High Court which had been dismissed on 11.01.2000, and that judgment became final. In our opinion, the subsequent writ petition being Writ Petition No. 2617 of 2004 filed in the High Court by respondent No. 1 herein, out of which the present Appeal arises, was not maintainable as it was barred by the principle of res judicata or at least by the principle of constructive res judicata. Surprisingly, the High Court had entertained the second writ petition out of which the present Appeal arises and had allowed the said writ petition.

Apart from the bar of res judicata, we are also of the opinion that on merits too the High Court was not justified in quashing the notification dated 10.09.2003 and order dated 24.04.2004 providing for counter-signature by the Motor Vehicle Inspectors of the certificates of fitness issued by the authorised testing stations. In our opinion, the State Government has power to issue such a direction under Section 65 of the Motor Vehicles Act, 1988 (For short 'the Act') read with Section 213 of the Act. In fact, this provision is a salutary measure in order to keep a check on the authorised testing stations so that they may not, for extraneous purposes, grant certificates of fitness even in those cases where the vehicles are not fit to ply. If the authorised testing stations go unchecked, then ultimately it would not



only endanger safety of passengers but also the public at large may suffer, e.g., by accident.

For the reasons stated above, we set aside the impugned judgment of the High Court and dismiss Writ Petition No. 2617 of 2004.

The Appeal is allowed accordingly. No costs.”

In the aforesaid view of the matter, this writ application is not fit to proceed and the prayer made therein are hereby refused.

This writ application is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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