

## Dhani Devi vs Sant Bihari & Ors on 18 October, 1968

**Equivalent citations: 1970 AIR 759, 1969 SCR (2) 514, AIR 1970 SUPREME COURT 759, 1970 ALL. L. J. 579, 1970 2 SCJ 157, 1969 2 SCR 507, 1970 BLJR 498**

**Author: R.S. Bachawat**

**Bench: R.S. Bachawat, S.M. Sikri**

PETITIONER:

DHANI DEVI

Vs.

RESPONDENT:

SANT BIHARI & ORS.

DATE OF JUDGMENT:

18/10/1968

BENCH:

BACHAWAT, R.S.

BENCH:

BACHAWAT, R.S.

SIKRI, S.M.

CITATION:

1970 AIR 759

1969 SCR (2) 514

CITATOR INFO :

RF 1971 SC1804 (23)

D 1972 SC1324 (15)

E&D 1974 SC 326 (4,5)

R 1974 SC1274 (6,9,10)

ACT:

Motor Vehicles Act 4 of 1939, ss. 45 and 57--Application for permit--Applicant dying--possession of vehicle passing to widow of applicant-Regional Transport Authority whether has power to allow widow to prosecute application.

HEADNOTE:

The appellant's husband was one of the applicants for a permanent stage carriage permit on a route under the jurisdiction of the North Bihar Regional Transport Authority. On her husband's death during the pendency of the aforesaid application, the appellant came into

possession of all his transport vehicles. The Regional Transport Authority allowed the appellant to prosecute the application and directed the grant of the permit to her. The appeal filed by the unsuccessful applicants against this order was allowed by the State Transport Authority but the Transport Minister, in revision under s. 64A of the Motor Vehicles Act 1939, decided in favour of the appellant. Against the orders of the Transport Minister writ-petitions were filed in the High Court and were allowed. The appellant came to this Court. The question for consideration was whether on the death of an applicant for a stage carriage permit in respect of his transport vehicles the Regional Authority has power to allow the person succeeding to the possession of the vehicles, to prosecute the application filled by the deceased applicant.

HELD: The High Court was in error in setting aside the order of the Transport Minister.,

A person in possession of a transport vehicle is not entitled to a permit as a matter of right. His only right is to make an application under s. 45 of the Motor Vehicles Act and to a consideration of the application under the provisions of the Act. If he dies after obtaining the permit, the Regional Transport Authority has power under s. 61(2) to transfer the permit to the person succeeding to the possession of the vehicles covered by the permit. In the case of death of the applicant before the final disposal of his application for the grant of a permit in respect of his vehicles the Regional Transport Authority has power to substitute the person succeeding to the possession of the of the deceased applicant. As the relief sought for in the application is dependent upon and related to the possession of the vehicles, the application is capable of being revived at the instance of the person succeeding to the possession of the vehicles.

[509 G-510 C]

Verappa Pillai.v. Raman. & Raman Ltd., [1952] S.C.R. 583, 591, 595. referred to.

Under s. 57 an application for a stage carriage permit or a public carrier permit must be made within the appointed time and published in the prescribed manner. The representations relating thereto must also be made at the appointed time. In the event of the death of the applicant after the expiry of the time appointed for making the application, the person succeeding to the possession of the vehicles cannot, having regard to the lapse of time, make another application in his own right.

508

The successor cannot obtain the permit unless he is allowed to prosecute the application filed by his predecessor and there is no reason why he cannot be permitted to do so.

Section 57 does not deal with the situation arising on the death of an applicant nor has it prescribed any time for the making of an application for substitution of the

successor or for the filing of objections against the grant of the permit to him. In the absence of any statute or statutory rule the Regional Transport Authority may devise any procedure for dealing with the situation. The Regional Transport Authority has complete discretion in the matter of allowing or refusing substitution. It is not bound to embark on a prolonged investigation into disputed questions of possession. Nor is it bound to allow substitution if such order will delay the proceedings unreasonably or will otherwise be detrimental to the interests of the public generally. [510 C--511 A]

The same principle would apply to applications under ss. 57(1), 58(8) and 58, as well as to appeals under s. 64, and revisions under s. 64A. [511 B]

Ratanlal v. State Transport Authority, A.I.R. 1957 All 471, disapproved

Meenakshi v. Mysore S.T.A. Tribunal, A.I.R. 1963 Mys. 279, Hanuman Transport Co. v. Meenakshi, C.A. No. 794/63 dt. 20-12-63, Maruthavanan v. Balasubramaniam A.I.R. 1963 Mad. 292, Kuppu swami v. Ramchandran, A.I.R. 1964 Mad. 356, and Director of Public Works v. Ho Po Sang & Ors., [1961] A.C. 901, referred to.

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1264 and 1265 of 1968.

Appeals from the judgment and order, dated March 18, 1968 of the Patna High Court in Civil Writ Jurisdiction Cases Nos. 235 and 287 of 1967.

C.K. Daphtary, Attorney-General, Saptami Jha and B.P. Jha, for the appellant (in both the appeals). D. Goburdhun, for respondent No.1 (in both the appeals). B.P. Singh and R.B. Datar, for respondent No. 2 (in both the appeals).

The Judgment of the Court was delivered by Bachawat, J. Several persons including one Ram Bichar Singh filed applications for the grant of a permanent stage carriage permit for the Chapra-Masrakh-Siwan-Gopalganj route before June 15, 1963 and last date appointed for the receipt of the applications by the North Bihar Regional Transport Authority. Ram Bichar Singh died on April 12, 1965 before the final disposal of his application. His widow Dhani Devi succeeded to the possession of the transport vehicles left by him and accordingly under s. 61(2) of the Motor Vehicles Act, 1939, the Regional Transport Authority, transferred to her all the permits held by him for other routes. On May 4, 1966, the Regional Transport Authority considered all the applications, allowed Dhani Devi to prosecute the application filed by her husband and directed the grant of the permit to her. Sant Bihari Sharma, Chandra Kriti Singh and other unsuccessful applicants filed appeals against the order under 64. At the hearing of the appeals it was contended that the order was without jurisdiction as Dhani Devi had no right to prosecute the application filed by her husband. The State Transport Appellate Authority accepted the contention, set aside the order appealed from and

directed the grant of the permit to Sant Bihari Sharma and in case of his failure to comply with certain conditions gave the second preference to Chandrakriti Singh. Dhani Devi, .Chandrakriti Singh and another applicant filed revision petitions against the order under s. 64A. The Transport Minister allowed the-revision petition of Dhani Devi and restored the order of the Regional Transport Authority. He held that the order of the Regional Transport Authority was not without jurisdiction. Sant Bihari Sharma and Chandrakriti Singh filed two writ petitions in the Patna High Court challenging the said order. The High Court allowed the petitions, quashed the order for the grant of permit to Dhani Devi and remanded the matter for disposal according to law. The present appeals have been filed by Dhani Devi against the orders passed by the High Court.

The sole question in this appeal is whether on the death of an applicant for a stage carriage permit in respect of his transport vehicles the Regional Transport Authority has power to allow the person succeeding to the possession of the vehicles to prosecute the application filed by the deceased applicant. No express provision on the subject is to be found in the Motor Vehicles Act or the Rules framed thereunder. Order 22 of the Code of Civil Procedure does not apply to proceedings under the Motor Vehicles Act. Section 306 of the Indian Succession Act, 1925 has no application as no executor or administrator was appointed to the estate of the deceased Ram Bichar Singh. ' No transport vehicle can be used save in accordance with a permit issued under Chapter IV of the Motor Vehicles Act. Four types of permits may be issued under Chapter IV, viz., stage carriage permit, (ss. 46 to 48); contract carriage permit (ss. 49 to 51); private carrier's permit, (ss. 52 and

53) and public carrier's permit, (ss. 54 to 56). A person in possession of a transport vehicle is not entitled to a permit as a matter of right, see *Verappa Pillai v. Raman & Raman Ltd.* (1) His only right is to make an application for the grant of a permit under s. 45 and to a consideration of the application in accordance with the provisions of the Act. If he dies after obtaining the permit, the Regional (1) [1952] S.C.R. 583, 591,595.

3Sup. C1/69--16 Transport Authority has power under s. 61(2) to transfer the permit to the person succeeding to the possession of the vehicles covered by the permit. We are inclined to think that in the case of death of the applicant before the final disposal of his application for the grant of a permit in respect of his vehicles the Regional Transport Authority has power to substitute the person succeeding to the possession of the vehicles in place of the deceased applicant and to allow the successor to prosecute the application. As the relief sought for in the application is dependent upon and related to the possession of the vehicles, the application is capable of being revived at the instance of the person succeeding to the possession of the vehicles. Under s. 57 an application for a stage carriage permit or a public carrier permit must be made within the appointed time and published in the prescribed manner. The representations relating thereto must also be made before the appointed time. In the event of the death of an applicant after the expiry of the time appointed for making the applications, the person succeeding .to the possession of the vehicle cannot, having regard to the lapse of time, make another application in his own right. The successor cannot obtain the permit unless he is allowed to prosecute the application filed by his predecessor and we see no reason why he cannot be permitted to do so. Where the successor is allowed to prosecute the application, the Regional Transport Authority may have to take into consideration many matters personal to the successor, such as his experience, the facilities at his disposal for operating the

services and his adverse record, if any. The matters personal to the deceased applicant can no longer be taken into account. The rival applicants should, if necessary be given suitable opportunity to file objections against the grant of the permit to the successor. Section 57 does not deal with the situation arising on the death of an applicant nor has it prescribed any time for the making of an application for substitution of the successor or for the filing of objections against the grant of the permit to him. In the absence of any statute or statutory rule the Regional Transport Authority may devise any reasonable procedure for dealing with the situation. As stated in American Jurisprudence, 2d. vol. 2 (Administrative Law), Art. 340, p. 155: "Where the statute does not require any particular method of procedure to be followed by an administrative agency, the agency may adopt any reasonable method to carry out its functions." (see also Corpus Juris Secundum, vol. 73 (Public Administrative Bodies and Procedure, Art. 73, p. 399). The Regional Transport Authority has complete discretion in the matter of allowing or refusing substitution. It is not bound to embark upon prolonged investigation into disputed questions of succession. Nor is it bound to allow substitution if such an order will delay the proceedings unreasonably or will otherwise be detrimental to the interests of the public generally. Under s. 57(1) an application for a contract carrier's permit or a private carrier's permit may be made at any time, and therefore the Regional Transport Authority can more readily allow the successor to prosecute the application filed by his predecessor. The Regional Transport Authority may similarly deal with the situation arising on the death of an applicant for the variation of the permit under s. 57(8) or the renewal of the permit under s. 58. Likewise, in the case of the death of an applicant during the pendency of an appeal under s. 64A or a revision petition under s. 64A the appellate or the revisional authority has power if it thinks fit to substitute the successor in place of the deceased applicant in the records of the proceedings.

We may now refer to the relevant decisions on the subject under consideration. In *Ratanlal v. State Transport Authority*(1) one Munnalal died during the pendency of appeals filed by him against the orders rejecting his application for the grant of a stage carriage permit and directing the issue of the permit to another applicant. The appellate authority refused to order substitution of his son Ratanlal in his place. Ratanlal filed a writ petition challenging the order. The Allahabad High Court dismissed the petition. It held that the right to apply for the grant of a permit was not heritable or transferable and Ratanlal's heir had no right to continue the appeals. In *Meenakshi v. Mysore S.T.A. Tribunal*(2) several persons including Gopalassetty applied for the grant of a stage carriage permit. The Regional Transport Authority decided to grant the permit to another applicant. Unsuccessful applicants other than Gopalassetty filed appeals against the order. During the pendency of the appeals Gopalassetty died. The appellate tribunal allowed the appeals and remanded the matter to the Regional Transport Authority for fresh disposal. After the matter went back to the Regional Transport Authority, the widow of Gopalassetty was substituted in his place and was allowed to prosecute the application presented by him. On a consideration of all the applications the Regional Transport Authority granted the permit to the widow of Gopalassetty. The order was set aside by the appellate tribunal on the ground inter alia that the widow could not continue the application filed by Gopalassetty. On a writ petition filed by the widow, the Mysore High Court set aside the order of the appellate tribunal and restored the order of the Regional Transport Authority. It held that the application presented by Gopalassetty could be (1) A.I.R. 1957 All. 471. (2) A.I.R. 1963 Mysore, 279.

prosecuted by his widow. The decision of the Mysore High Court was reversed by this Court on another point in *Hanuman Transport Ca. v. Meenakshi*(1). But this Court then declined to express any opinion on the question whether the successor can be permitted to prosecute the application filed by his predecessor. In *Maruthuvanan v. Balasubramaniam*(2) two partners of a firm filed an appeal' from an order rejecting their application for the grant of a permit. During the pendency of the appeal one of the partners died. The Madras High Court held that the appeal could be continued by the surviving partner. In *Kuppuswami v. Ramchandran*(3) one Lakshimi applied for a variation of the stage carriage permits held by her. Her application was rejected by the Regional Transport Authority. She filed a revision petition against the order under s. 64A. During the pendency of the revision petition she died. The State Transport Appellate Tribunal permitted the guardian of her minor legal representatives to continue the revision petition, set aside the order of the Regional Transport Authority and granted the variation sought for. Two of the rival operators filed writ petitions challenging the order. The Madras High Court held that the legal representative of Lakshimi could continue the revision petition. For the reasons already given, we are not inclined to agree with the Allahabad decision. In *Director of Public Works v. Ho Po Sang & Ors.*(4) the Privy Council held that the right of a crown lessee of premises in Hongkong to get petition and cross-petition for the grant of a rebuilding certificate pursuant to the proposal of the Director of Public Works to be considered by the Governor-in-Council under sec. 3B of the Landlord and Tenant Ordinance (Hong Kong), 1947 was not a right or a privilege either accrued or acquired within the meaning of sec. 10 of the Interpretation Ordinance of Hong Kong, corresponding to sec. 38 of the Interpretation Act, 1889 and that on the repeal of the Ordinance, the proceedings could not be continued and the Governor could not pass any order under s. 3B. This decision is not relevant, as we are not concerned in the present case with the effect of repeal of the Motor Vehicles Act on a pending application for the grant of a permit..

Let us now turn to the facts of the present case. The appellant's husband Ram Bichar Singh made 'an application for the grant of a stage carriage permit. Upon his death during the pendency of the application, the Regional Transport Authority allowed the appellant to prosecute the application filed by him.' She made no formal application for substitution; but no objection was raised on that ground nor was any adjournment asked (1) C.A.No. 794/63 decided on 20-12-1963.

(2) A.I.R.1963 Mad. 292.

(3) A.I.R.1964 Mad. 356.

(4) [1961] A.C. 901.

for by the rival claimants in order to enable them to file objections. Ram Bichar Singh is said to have left behind other heirs also, but no objection was taken on the ground of their nonjoinder. The Regional Transport Authority directed the grant of the permit to the appellant. On the materials on the record, the Regional Transport Authority found that the appellant was an experienced and displaced operator. That finding was not challenged in appeal. The only point taken in the appeal was that the application of Ram Bichar Singh had abated and that the Regional Transport Authority had no power to allow her to continue the application. The Appellate Authority accepted the

contention and set aside the order directing the grant of the permit to the appellant. The Transport Minister rightly set aside the order of the Appellate Authority and held that the Regional Transport Authority has power to permit her to prosecute the application filed by her deceased husband. In our opinion, the High Court was in error in setting aside the order of the Transport Minister.

In the result, the appeals are allowed, the order of the High Court is set aside and the order of the Transport Minister is restored. There will be no order as to costs.

G.C.

Appeals allowed.