

RAM AUTAR LAL JAIN

v.

MINISTER OF TRANSPORT &amp; ORS.

November 28, 1973

[K. K. MATHEW AND M. H. BEG, JJ.]

*Motor Vehicles Act (4 of 1939).—Application for permit—Death of applicant—If legal representative can prosecute application.*

Upon the death of an applicant for a stage carriage permit under Chap. IV of the Motor Vehicles Act, 1939, before his application had been considered by Regional Transport Authority, the heirs or legal representatives of the applicant do not have the right to step into the shoes of the deceased applicant and prosecute the application filed by him.

Section 61 of the Act, deals with cases in which a transfer of the permit held can be applied for. If it was the intention of the legislature to provide for succession to whatever claims an applicant for a permit has even before a permit is granted to him, it would have similarly provided for such a situation. But neither the Motor Vehicles Act nor the Rules made thereunder provide for the substitution of heirs to prosecute the application of a deceased applicant for a permit. An application for a permit, gives only the right that the merits of the applicant should be considered *vis-a-vis* other applicants. These merits depend on the peculiar position, capabilities and qualifications of the applicant, which may be either personal or peculiarly or particularly those of a concern or organisation. It is not necessary that an heir or successor of an applicant will also have the applicant's qualifications or capabilities with regard to a transport service for the benefit of the public. [515H-516C; 517B-C];

*Dhani Devi v. Sant Bihari & Ors.*, [1969] 2 S.C.R. 507, explained.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2606 of 1969.

From the Judgment and Order dated the 1st July, 1968 of the Patna High Court in C. W. J. C. No. 363 of 1968.

*M. C. Chagla*, *K. K. Sinha*, *S. K. Sinha* and *B. B. Sinha*, for the appellant.

*R. C. Prasad*, for respondent Nos. 1 to 3.

*S. V. Gupta*, *U. P. Singh* and *K. N. Seshav*, for respondent No. 4.

The Judgment of the Court was delivered by

BEG, J. —This appeal by certificate from a judgment of the High Court at Patna comes before us in the following circumstances : An application made by one Ram Autar Lal Jain before the Chhotanagpur Regional Transport Authority (hereinafter referred to as the "RTA") for grant of a stage carriage permit on a particular route. The application was made within the time fixed. But, before the application could be considered Ram Autar Lal Jain died leaving one widow and two sons as his survivors, heirs and legal representatives. Ram Autar Lal Jain's heirs formed a partnership firm called M/s. Ram Autar Lal Jain and an application was made before the RTA for substitution of the firm in place of Ram Autar Lal Jain deceased, the original applicant, so that the firm could prosecute the application before the RTA. The RTA allowed the substitution but split up the route into two parts and granted one part to the appellant and the other part to the Respondent No. 4. The matter did not, however, rest with the

A decision of the RTA but was taken up in appeal before the State Transport Authority by as many as four different parties. The State Transport Authority set aside the order of the RTA on various grounds, such as : (i) that, the route could not be split up; and (ii) that, the parties in whose favour the permit had been given had failed to produce the vehicle within the time allowed by the RTA. The State Transport Authority granted the permit to one Mangtural Tulshiyan. It did not go into the question of legality of substitution of the appellant firm in place of Ram Autar Lal Jain. Four revision petitions having been filed against this order, the Minister concerned remanded the case to the RTA for a reconsideration after hearing all the parties which had appeared before the RTA on April 23, 1965. Mangtural Tulshiyan challenged this order of the Minister before the High Court of Patna which set it aside and directed the Minister to re-hear only the petitioners who had filed revision petitions and not those who had not complained against the previous order before the Minister. The Minister, on this occasion, granted the permit in favour of Bijoy Bahadur Singh (who is respondent No. 4 in this appeal) on the ground that he was competent and qualified and satisfied the requirement which the RTA had laid down, that is to say, that a new-comer and a small operator should be introduced on the relevant route and also on the ground that Government should try to break monopolies. In the course of his order, the Minister rejected the appellant's application for permit on two grounds : firstly, the appellant not being an heir to Ram Autar Lal Jain, should not have been allowed to prosecute the application before the RTA; and, secondly, that the appellant did not satisfy the criterion set up by the RTA in so far as the appellant was neither a new-comer nor a small operator. The appellant took the matter to the Patna High Court by means of a writ petition. The writ petition was summarily dismissed by the High Court.

F The principal question that has arisen for determination in this appeal is whether, upon the death of an applicant for a stage carriage permit before his application has been considered by the Regional Transport Authority, the heirs or legal representatives of the applicant have the right to step into the shoes of the deceased applicant and prosecute the application filed by him before the Regional Transport Authority. The problem arises because there is no provision in the Motor Vehicles Act, 1939, which provides for succession to an applicant's right to prosecute his application for a stage carriage permit before the Transport Authorities.

G It is clear that, although, no person is entitled to a permit as a matter of right, the Motor Vehicles Act has conferred upon a person the right to make an application under Chapter IV of the Motor Vehicles Act for any of the four types of permits dealt with in that chapter. A person has also the right to have his application considered by the appropriate authority in accordance with the provisions of the Act so long as he makes an application within the prescribed time and in the prescribed form. If such an application is made the transport authority cannot legally ignore that application and consider other applications only. The authority could reject the

application on merits. Thus, an application made for a permit under Chapter IV of the Motor Vehicles Act gives only the right that the merits of the applicant will be considered *vis-a-vis* other applicants. These merits depend generally upon the peculiar position, capabilities, and qualifications of an applicant which may be either personal or peculiarly or particularly those of a concern or organisation. It is not necessary that an heir or successor of an applicant will also have the applicant's qualifications or capabilities with regard to a transport service for the benefit of the public. Probably it was for this reason that neither the Motor Vehicles Act nor the rules made thereunder provide for the substitution of heirs to prosecute the application of a deceased claimant for a permit.

In *Dhani Devi v. Sant Bihari & Ors.*<sup>(1)</sup> this Court had to answer the question as to 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. This Court on that occasion noted that neither Order XXII of the Code of Civil Procedure nor Section 306 of the Indian Succession Act, 1925, have any application in such a case and also that there is no express provision in the Motor Vehicles Act or the rules framed under the Act to deal with this situation. This Court, however, held that if a person in possession of transport vehicles "dies after obtaining the permit, the Regional Transport Authority has power under Section 61(2) to transfer the permit to the person succeeding to the possession of the vehicles covered by the permit". In the course of the judgment in that case this Court observed there:

"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."

The observations set out above, relied upon by the appellant, do not cover a case where the deceased applicant is not in possession of any motor vehicles. The ratio of *Dhani Devi's* case (supra) was simply this : since the right to and possession of the vehicles goes from a deceased holder of a permit or an applicant for its "transfer" to his heirs, the right to continue an application must also necessarily go to them. It does not decide what will happen if there is no motor vehicle to which a deceased applicant's heirs or legal representatives can succeed. Moreover, *Dhani Devi's* case (supra) was one which was specifically covered by Section 61 of the Motor Vehicles' Act where the permit actually granted and held for a period specified seems

(1) [1969] (2) S.C.R. 507.

- A** to be treated as an adjunct of the possession of the vehicle. It becomes a kind of property right attached to the business of running a vehicle which is actually serving the public on the road. In such case the right does not remain a mere personal right to apply but is of a transferable character. Therefore, Section 61 of the Act deals with cases in which a "transfer" of the permit held can be applied for. If it was the intention of the legislature to provide for succession to whatever claims an applicant for a permit has even before a permit is granted to him, it would have similarly provided for the situation in the case before us. As there is no such provision, we cannot legislate and import one into the Act. Indeed, as already pointed out, it is difficult to conceive of succession to claims for the recognition of which personal or other particular qualifications play so large a part.
- B**

- C** It was also contended that Messrs. Ram Autar Lal Jain is, in the eye of law, a new entity separate from both Ram Autar Lal Jain, the deceased applicant, as well as his heirs and legal representatives, and that it could not be the successor or legal representative of the deceased in whom any right to continue any proceeding could vest by succession. As this appeal fails on other grounds discussed above, it is not necessary to decide this question.

Consequently, we dismiss this appeal with costs.

V. P. S.

*Appeal dismissed.*