Shrinivasa Reddy and Others

Vs

The State of Mysore and Others

Petition No. 95 to 1959

(CJI B. P Sinha, Syed Jafar Imam, K. N. Wanchoo, K. C. Das Gupta, J. L. Kapur JJ)

06.11.959

JUDGEMENT

WANCHOO J. –

This petition under Art. 32 of the Constitution is a sequel to Writ Petition No. 75 of 1959, which is also being disposed of today. It is not necessary therefore to set out the early history leading to this petition as that has already been given in the judgment in Petition No. 75. Suffice it to say that the petitioners who are the same as the petitioners in Petition No. 75 were transport operators in the Anekal pocket in the State of Mysore. They held stage carriage permits for various routes which were expiring on March 31, 1958. They were granted renewal of these permits up to March 31, 1959. In the meantime, steps were taken to formulate an approved scheme under Chapter IV-A of the Motor Vehicles Act, No. IV of 1939, (hereinafter called the Act). The scheme was finally approved and published on April 23, 1959. In order, however, to avoid inconvenience to the public temporary permits were granted to the petitioners after March 31, 1959, for a period of four months or up to the time the Mysore Government Road Transport Department (hereinafter called the Department) was granted permits under s. 68F, whichever was earlier. Sometime before June 23, 1959, the Department applied for permits in accordance with the scheme while the petitioners had applied for renewal of their permits. The Regional Transport Authority, Bangalore (hereinafter called the Authority) issued permits to the Department and rejected the renewal applications of the petitioners on June 23, 1959. The petitioners then applied to the High Court of Mysore by a writ petition challenging the issue of permits to the Department and the refusal of renewal to them. This petition was disposed of by the High Court on July 14, 1959, and it was held that the grant of permits to the department was invalid and the rejection of the renewal applications of the petitioners was incorrect; but the High Court dismissed this petition on the ground that the relief to which the petitioners were entitled, in view of these findings, would be short-lived. The petitioners then applied for a certificate to enable them to appeal to this Court and that application is still pending. The present petition was filed on August 3, 1959.

The first contention of the petitioners in this petition is that after the scheme had been approved and published under Chapter IV-A of the Act, it was the duty of the Department to apply under s. 68F for all the routes covered by the scheme and it was only, when the Department applied for all the routes, that it would be open to the Authority to reject the applications for renewal made by the petitioners. The Department in this case applied only for some of the routes and in particular it was pointed out that there was no application at any rate for one out of the fourteen routes included in the scheme. Therefore, it is submitted that the Department by picking and choosing which route to apply for and which to leave out was discriminating against those operators for whose routes it applied for permits and in favour of those operators for whose routes it did not apply for permits.

Further, the Authority by granting permits to the Department in such circumstances was denying equality before the law to the petitioners. This was an infringement of Art. 14 of the Constitution and also contravened the petitioner's right to carry on business guaranteed under Art. 19(1)(g). Secondly, the petitioners contended that the Authority could not issue permits in this case as s. 57(2) and (3) was not complied with. The petitioners therefore prayed for a direction quashing the order of the Authority issuing permits to the Department under s. 68F and refusing their renewal applications.

The petition has been opposed by the Department and its contention is that even though an approved scheme might cover a number of routes, it was open to the Department to implement it in stages and that it was the best judge as to which route should be taken over first and there could be no discrimination so long as the holders of the stage carriage permits operating on a particular route were treated equally inter se in pursuance of the approved scheme. It is also urged that sub-sections (2) and (3) of s. 57 do not apply to applications for issue of permits made under s. 68F(1).

We shall begin by examining the second contention. Section 68F lays down that where in pursuance of an approved scheme any State Transport Undertaking applies in the manner specified in Chapter IV for a stage carriage permit, etc., in respect of a notified area or a notified route, the Regional Transport Authority shall issue such permit to the Undertaking notwithstanding anything to the contrary contained in Chapter IV. Clearly therefore the Undertaking has to apply for permits in the manner provided in Chapter IV, even though the Regional Transport Authority may be bound on such application to issue the permits. This takes us to s. 45, which lays down to which authority the application shall be made and then to s. 46 which lays down the particulars which the application must contain. Thus the Undertaking must comply with the terms of ss. 45 and 46 when it applies for permits. Then comes s. 57(2) which lays down that an application for a stage carriage permit (with which we are concerned in this case) shall be made not less than six weeks before the date on which it is desired that the permit shall take effect or if the Regional Transport Authority appoints dates for the receipt of such applications, on such dates. In this case the Regional Transport Authority had appointed no date and clearly therefore the Undertaking should have applied not less than six weeks before the date on which it desired to start the service. This is necessary to give time to the Regional Transport Authority to deal with the matter and if necessary to inform those who might be affected under s. 68F(2) to be prepared for the change. That is why s. 68F(1) provided that the applications shall be made in the manner provided in Chapter IV. This provision has nothing to do with the publication required under s. 57(3) which is meant for a different purpose. It was urged by the learned Solicitor General that the procedure provided in s. 57(3) also applies as it is not inconsistent with the provisions of Chapter IV A (see s. 68B). We consider it unnecessary to go into this matter for it is not disputed that the applications for permits in this case were not made at least six weeks before the date from which the permits were to take effect. In the circumstances the applications being not in the manner provided in chapter IV and being actually in breach of s. 57(2), no permits could be issued on such applications. Therefore, the orders in favour of the Department issuing permits to it are liable to be quashed on this ground alone.

In view of the above decision, it is really not necessary for us to decide the first contention. We would, however, like to point out the dangers inherent in the claim put forward by the Department. A scheme is prepared under s. 68C. It is initiated by the Undertaking when it is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport services, it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the Undertaking, whether to the exclusion, complete or partial, of other persons or otherwise. This

section thus gives power to the Undertaking to prepare a scheme in relation to an area or route or portion thereof. The Undertaking is thus not bound to prepare a scheme for the whole State at one time; it has been given the power to choose particular types of services or a particular area or particular routes or even portions thereof, for the reason that it may not be possible for the Undertaking to run services all over the State at the same time. Thus when the Undertaking decides to frame a scheme, it must take into account its resources in men, material and money and frame a scheme only to the extent to which it can carry it out in full. For example if it can carry out the scheme for the whole State at once it may frame a scheme for the whole State. But if it cannot do so, it can frame a scheme for one district. Even if that is not within its resources it can frame a scheme for a part of a district. Even in a part of district its scheme may deal with certain routes and not all. So long as it can show that the scheme is an efficient, adequate, economical and properly co-ordinated scheme for road transport service, it will have a right to frame a scheme for only a part of the transport services running in a State. Therefore, the scheme to be framed must be such as is capable of being carried out all at once and that is why the Undertaking has been given the power to frame a scheme for an area or route or even a portion thereof. Further after the scheme is framed it is approved and published by the State Government. Thereafter it is the duty of the Undertaking to carry out the scheme in pursuance of that it applies for permits under 68F(1). If the Undertaking at that stage has the power to carry it out piecemeal, it would be possible for it to abuse the power of implementation and to discriminate against some operators and in favour of others included in the scheme and also to break up the integrity of the scheme and in a sense modify it against the terms of s. 68E. There is no difficulty for the Undertaking to apply for permits relating to the entire scheme at the same time, for the manner in which the scheme is prepared under s. 68C takes into account all the difficulties which might arise in the implementation of the scheme and with that very object provides for taking over particular types of transport services in relation to areas or routes or even portions thereof. We need not however pursue the matter further on this occasion.

Before we go to the other point raised in this petition, we should like briefly to refer to a feature of the scheme, which has been brought to our notice. This feature is that though the scheme mentions fourteen routes with their terminate land intermediate points and the length of the routes, there is a parrot-like repetition of the words "or any portion thereof" in all the fourteen routes. We should like to point out that it is the duty of the Undertaking when it prepares a scheme under s. 68C to decide whether it will take up a whole route or a portion thereof. If it decides to take a portion of the route (provided, however, conditions of efficiency, adequacy, economy and proper co-ordination are fulfilled), it should specify that portion only in the scheme. S. 68C does not contemplate that the routes should be specified in the manner in which they have been specified in this case, as, for example, "Bangalore to Anekal or any portion thereof." If the intention was not to operate on the whole Bangalore-Anekal route, but only a portion of it, that portion should have been specified as the route. However, in this particular case, we are of opinion that the intention clearly was to take over the whole route in the case of all the fourteen routes, which will be clear from the length of the route to be taken over mentioned in the schedule to the scheme. Therefore, the words "or any portion thereof" which have been repeated, as if they were some kind of charm, throughout the schedule are nsurplusage in view of the length specified and may be ignored and the scheme taken to apply to the entire length of the fourteen routes.

The next question is about the order to be passed in this case. The contention on behalf of the Department is that as the petitioners had applied to the High Court and their petition was dismissed and the application for a certificate to appeal to this Court is pending before the High Court, this Court should dismiss the present petition and direct the petitioners to come either on a certificate granted by the High Court or by a special leave application in case the High Court refuses the

certificate. We do not think it necessary in this case to decide this general question in view of certain special features of the present case. It is true that the writ petition by the petitioners was dismissed by the High Court; but the judgment of the High Court shows that it was of opinion that the applications under s. 68F should have complied with s. 57(2) of the Act and should thus have been made at least six weeks before the date from which the scheme was to be implemented. On that view the High Court held that the issue of permits to the Department was not according to law. It also held in consequences that refusal of the renewal to the petitioners was illegal; but it refused to pass an order in favour of the petitioners on the ground that the relief granted to them would be short-lived. In effect, therefore, the judgment of the High Court was in favour of the petitioners and not against them, though in form the writ petition was dismissed. In these circumstances we are of opinion that as the petitioners' fundamental right to carry on business is certainly involved in this case we should not refuse relief to the petitioners on the ground that their writ petition was dismissed by the High Court and they have not yet been able to obtain a certificate permitting them to appeal to this Court.

There are two prayers in the present petition : (1) that the proceedings of the Authority issuing permits to the Department be quashed, and (2) that the proceedings rejecting the renewal applications of the petitioners be also quashed. We see no reason why we should not grant the first prayer and quash the issue of permits to the Department by the Authority on June 23, 1959. Our attention in this connection was drawn to K. N. Guruswamy v. The State of Mysore and Others ([1955] 1 S.C.R. 305). In that case this Court after declaring the law in favour to the petitioner did not issue a writ as there was hardly a fortnight left for the excise contract which was involved in that case to expire and the issue of a writ would have been meaningless and ineffective. That case however is distinguishable because the contract there would have come to an end within a few days. In the present case there is no reason to assume that the six weeks period which is the minimum period prescribed under s. 57(2) is the only period that will be required for implementation of the scheme under s. 68F(1). In these circumstances we are of opinion that the prayer for quashing the permits granted to the Department on June 23, 1959, should be allowed. As for the other prayer for quashing the order rejecting the renewal applications of the petitioners, it is now unnecessary in view of our decision in Petitions Nos. 54 and 75 of 1959. We, therefore, allow the petition and quash the order issuing permits to the Department. We order parties to bear their own costs of this petition taking into account that Petition No. 117 of 1959 filled by the petitioners with respect to the validity of the scheme has been withdrawn by them at a late stage and we have directed parties to bear their own costs of that petition also.

KAPUR J. –

I have read the judgment prepared by my learned brother Wanchoo, J., but I respectfully dissent from the opinion therein given. I shall proceed to give my reasons for the dissent.

It is not necessary to restate the facts which are set out in detail in the proposed judgment but reference may be made to certain dates. On August 28, 1958, the proposed scheme under Chapter IV-A of the Motor Vehicles Act, 1939, as amended by Act 100 of 1956 (which for the sake of convenience will hereinafter be termed the Act) was published as a draft scheme. It was approved on October 24, 1958, but on its being challenged in the High Court of Mysore, it was quashed on December 3, 1958. A fresh draft scheme was published on January 22, 1959, and after the Chief Minister had heard objections against it, it was approved on April 15, 1959, and was published on April 23, 1959. The fresh scheme was also challenged in the High Court of Mysore in Civil Writ Petition No. 315 of 1959 but this petition was dismissed on June 1, 1959. The Regional Transport

Authority on the application of the Mysore Government Road Transport Department (hereinafter termed the Department) issued in favour of the Department permits on June 23, 1959, and rejected the application of the other operators, the petitioners. This order was challenged in the High Court by Civil Writ Petition No. 463 of 1959 on June 24, 1959. On July 14, 1959, the High Court although it found in favour of the petitioners practically on all points, did not grant any relief and dismissed the petition on the ground that the effectiveness of the relief will be for a short period of six weeks at the most; but in the order it was stated that the permits granted to the Department were invalid as they had not applied for in the manner provided in s. 57 of the Act and also that the Regional Transport Authority had been careless in the exercise of its powers. Against this decision the petitioners applied to the High Court for a certificate for appeal to this Court but the matter is still pending in the High Court. In the meanwhile the petitioners filed this petition in this Court under Art. 32.

The core of the question is what is the consequence of the framing of the scheme under Chapter IV-A and how it is to be implemented. The petitioners contended that on a proper construction of ss. 68C and 68F the scheme as approved must be implemented as a whole simultaneously or not at all. The submission of the Department on the other hand is two-fold : (1) that in the very nature of things it must be left open to the Department to implement the scheme in reasonably convenient stages and (2) if the Department has applied for and obtained permits for certain routes in the scheme and has substantially implemented that scheme the implemented portion of the scheme cannot be set aside. The decision of these rival contentions would turn on the interpretation of the various sections in Chapter IV-A. This Chapter contains special provisions relating to State Transport Undertaking and was inserted in the Act by s. 62 of Act 100 of 1956. Section 68A contains definitions, 68B gives overriding effect to this Chapter qua Chapter IV. Section 68C deals with preparation and publication of the scheme of road transport services of the State Transport Undertaking. Section 68D provides for objections to be filed against a proposed scheme; 68E to the consequences of cancellation or modification of the scheme. Then comes s. 68F which provides for the issue of permits to State Transport Undertakings. Section 68G provides for the method of determining of compensation in case of State Transport taking over; 68H for payment of compensation and 68I gives power to make rules. We were informed by Mr. Sanyal that rules have been framed under this section. The relevant portion of s. 68C is as follows :-

> "Where any State transport undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State transport undertaking, whether to the exclusion, complete or partial of other persons or otherwise, the State transport undertaking may prepare a scheme giving particulars of the nature of the services proposed to be rendered the area or route proposed to be covered ....."

Section 68F(1) provides :

> "Where, in pursuance of an approved scheme any State transport undertaking applies in the manner specified in Chapter IV for a stage carriage permit or a public carrier's permit or a contract carriage in respect of a notified area or notified route, the Regional Transport Authority shall issue such permit to the State Transport undertaking, notwithstanding anything to the contrary contained in Chapter IV."

It was contended that the State Transport Undertaking (to be termed the Undertaking) can propose a scheme only when the conditions in s. 68C are fulfilled, that is, for the purpose of providing efficient, adequate, economical and properly co-ordinated road transport services. The argument is that all these conditions are a sine qua non of the scheme being proposed and if for any reason the Undertaking is unable to put the whole scheme into effect all at once then it should modify the scheme under s. 68E and implement this modified scheme. No doubt the words adequate, economical and co-ordinated are used in the section but they must be read in the context. The words of the section require that when the Undertaking is of the opinion that for the objects therein mentioned the services on any route or in any area should be operated by it, it may prepare a scheme. All that the section requires is that the Undertaking must be of that opinion when it prepares the scheme. The scheme has to contain particulars of the services proposed to be rendered, the areas or routes to be covered.

It was next submitted that the language of s. 68F further supports the contention that if the approved scheme is to be implemented it must be implemented all at once or not at all and emphasis was laid on the words "in pursuance of" and "permit in respect of a notified area or notified route". These words, in my opinion, do not necessarily lead to that conclusion. Before the scheme is proposed the undertaking is to be of a certain opinion and when it is to be in operation the Undertaking has to proceed in a manner prescribed in the section. But it cannot be said that when the scheme is implemented, the whole thing is to be done in a rigid manner. Some flexibility and practicability in effectuating the scheme must necessarily be implied because of the implications, financial and others of the scheme itself. It may happen that at the time of the implementation it is discovered that the scheme cannot be put into effect all at once, because of a natural calamity or of some unforeseen circumstance beyond the control of the State Transport Undertaking. If the contention of the petitioners is correct then it would mean that the whole scheme must be scrapped and a new scheme prepared and approved with its consequential delays. In this manner the policy of nationalisation which is the State policy in India would be indefinitely put off because in the meanwhile all kinds of interests may come into existence and circumstances may supervene which may delay, if not obstruct, the State in its policy of nationalisation.

The use of the words "in pursuance of" in s. 68F only means that applications are made to give effect to the scheme or in execution of the scheme. These words import a notion of obligation and are more restrictive than the phrase "by reason of" which is permissive. Bradford Corporation v. Myers ((1916) 1 A.C. 242 at p. 247) where Lord Buckmaster in construing these words said :-

> "It is because the act is one which is either an act in the direct execution of a statute, or in the discharge of a public duty, or the exercise of a public authority."

Therefore, the mere use of the words "in pursuance of" cannot mean that the whole scheme has to be put into operation and not a portion of it.

The second argument raised in support of the contention that the scheme has to be implemented as a whole and all at once is the use of the words "applies in the manner specified in Chapter IV for a stage carriage permit ..... in respect of a notified area or notified route." Chapter IV deals with the control of transport vehicles. Section 46 deals with applications for such stage carriage permits and requires the following particulars to be set out in the applications : the route or routes or the area or areas for which the application is made, the number of vehicles proposed to operate in relation to each route or area, the minimum and maximum number of daily services proposed to be provided in relation to each route, the number of vehicles to be kept in reserve, the arrangements to be made for

housing and repair of vehicles and for the comfort and convenience of passengers and such other matters as may be prescribed. This section also applies to applications made under 68F. It means therefore that if the area is extensive or the number of routes which a State Undertaking wishes to take over is large a number of applications will have to be made if all theses particulars have to be properly given. If the contention of the petitioners is correct then all applications under s. 46 will have to be made at one and the same time and there is no reason to make allowances for mistakes or accidental omissions. If accidental omissions are to be excused there is no reason to exclude omission due to unforeseen circumstances, e.g., some vehicle being found unusable, some repair shops not being completed in time or some natural calamity making it impossible to start operations on a particular route. If the State cannot take over those routs for which applications can immediately be made then it would mean that taking over would become not only difficult but extremely expensive because, as I have said before, other interests may come in which it may not be possible for the State to take over. Therefore, if the State Undertaking intends to run a scheme within a reasonable time then there is no reason why the State should not apply for different routes within a reasonable time so long as it acts honestly, fairly and without oblique motives.

The third argument on behalf of the respondents was that if the State Undertaking has implemented the scheme in regard to certain routes and had actually started work on those routes after having obtained permits that portion of the implemented scheme should not be quashed because it would mean that the stage carriages of the State Undertaking will be taken off and somebody else will have to be given the permits at once or the people will have to go without road transport which cannot be the intention of the Act. If the policy of the State is nationalisation then such an order will not only delay but obstruct and thwart that policy. In my opinion therefore it is not the intention of the legislature in ss. 68C and 68F that the whole scheme must be put into operation all at once or not at all.

The question then arises as to what should be the order in the instant case. The High Court has indicated in its order that the applications made on behalf of the State Undertaking were not in accordance with s. 57 of the Act and the learned Additional Solicitor-General informed us that the State Undertaking had accepted that view of the law and proceeded to make application in accordance with s. 57 and other relevant provisions of Chapter IV. In that view of the matter, in my opinion, it is not necessary to pass a formal order quashing the permits granted in favour of the State Undertaking. The case is very much like K. N. Guruswamy v. The State of Mysore & Ors. ([1955] 1 S.C.R. 305).

In this view of the matter and in view of the opinion I have given in Petitions Nos. 54, 75 & 76, I am of the view that this petition should be dismissed but the parties should bear their own costs.

ORDER OF COURT

In accordance with the opinion of the majority, we allow the petition and quash the order issuing permits to the Department. We order parties to bear their own costs of this petition taking into account that Petition No. 117 of 1959 filed by the petitioners with respect to the validity of the scheme has been withdrawn by them at a late stage and we have directed parties to bear their own costs of that petition also.

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