SUPREME COURT OF INDIA

Nilkanth Prasad

Vs.

State of Bihar

C.A.Nos.534 to 539 of 1961

(P. B. Gajendragadkar and M. Hidayatullah, JJ.)

01.12.1961

JUDGEMENT

HIDAYATULLAH, J.:

1. The judgment in Civil Appeal No. 534 of 1961 will dispose of Civil Appeals Nos. 535 to 539 of 1961. In these appeals, private operators of omnibuses challenge the orders of the Appeal Board of the State Transport Authority, by which it set aside the renewal of the permits on certain routes granted by the South Bihar Regional Transport Authority, Patna. The appellants held previously stage carriage permits over certain routes, which were due to expire in December, 1958 or in January, 1959. They had applied for renewal of their permits under S. 58 (2) of the Motor Vehicles Act. Under a scheme framed and notified on July 8, 1957, vide Notification No. P-2-203/57T/4794, the route, Gaya to Khijirsarai, was notified under S. 68D of the Motor Vehicles Act. The Rajya Transport, Bihar, was exclusively allowed to operate on that route. In Civil Appeals Nos. 535 to 538 of 1961, the Rajya Transport, Bihar, filed objections against the renewal of the permits. In Civil Appeals Nos. 534 and 539 of 1961, no objections were filed. The route, Gaya to Khijirsarai, which may be called conveniently route 'AB' formed part of routes, on which the appellants were operating, and in respect of which they had asked for renewal of their permits. The South Bihar Regional Transport Authority, however, renewed the permits of the appellants, holding that route 'AB' was different from the routes, for which renewal was demanded.

2. Against the orders of the Regional Transport Authority, appeals were filed by the Rajya Transport, Bihar in all the cases, that is to say, in those cases in which the Rajya Transport, Bihar, had objected, and those in which it had not objected. While these appeals were pending, the State of Bihar, acting under S. 3 of the Road Transport Corporations Act, 1950 (64 of 1950) notified on April 20, 1959 as follows :

"No. R. T. Cor. 1/59-3090 - In exercise of the powers conferred by section 3 of the Road Transport Corporation Act, 1950 (LXIV of 1950), the Governor of Bihar is pleased to establish with effect from the 1st May, 1959 a Road Transport Corporation, for the State of Bihar, to be called the Bihar State Road Transport Corporation.

2. The said Corporation shall with effect from the said date, exercise all the powers and perform all the functions which are at present being exercised and performed by the Rajya Transport, Bihar.

By order of the Governor of Bihar.

K. B. Sharma, Dy. Secy."

3. At the hearing of the appeals, the Government Advocate, Mr. Lal Narain Sinha, appeared for the Road Transport Corporation. Objection was taken to the competency of the appeals on two grounds. In those cases in which the Rajya Transport, Bihar, had not objected to the renewal of the permits before the Regional Transport Authority, it was contended that it had no locus standi to file appeals. In those cases in which it had so objected, the ground was that the Road Transport Corporation could not, in law, represent ,the Rajya Transport, Bihar, in the appeals filed by the latter. On merits, it was contended that the order of the Regional Transport Authority that route 'AB', though part of the routes for which renewal was asked, was a different route, and the State corporation had an exclusive right to ply omnibuses on route 'AB', did not affect the rights of the appellants to ply their omnibuses on routes, which were entirely different.

4. The Government Advocate contended that, on the analogy of the principle underlying O. 22, R. 10 of the Civil Procedure Code, the Road Transport Corporation on which devolved the powers and functions of the Rajya Transport, Bihar, could prosecute the appeals. He also contended, in the alternative, that he was representing also the Rajya Transport, Bihar, and that the appeals were not defective. The Board accepted the argument of the Government Advocate, and set aside the orders of renewal passed by the Regional Transport Authority. The appellants then filed petitions under Arts. 226 and 227 of the Constitution challenging the order of the Board on many grounds. The High Court, by its judgment dated July 5, 1961, dismissed all the petitions. In the order under appeal, the High Court considered the competency of the appeals, and held that the Rajya Transport, Bihar, was competent to prosecute the appeals before the Appeal Board. In dealing with the question whether the Appeal Board was entitled to interfere with the order of the Regional Transport Authority at the instance of the Rajya Transport in those cases, where the Rajya Transport had not filed objections under the Motor Vehicles Act, the High Court held that it was not necessary to express an opinion on the correctness of the argument, because the Regional Transport Authority was not competent to grant a renewal, inasmuch as such a grant was a direct violation of the scheme approved by the State Government and published in the Official Gazette. On the merits, the High Court was of opinion that under S. 68F (2) (c) (iii), the Regional Transport Authority could curtail the length of the route covered by the permit, and exclude the portion, which overlapped a notified route. The present appeals have been filed against the order of the High Court, with the special leave of this Court.

5. These appeals thus fall into two groups. In one group are Civil Appeals Nos. 534 and 539 of 1961 and in the other are Civil Appeals Nos. 535 to 538 of 1961. In the former, the grant of renewal of the permits has been made without any objection, and in the latter, in spite of the objections filed by the Rajya Transport. The competency of the appeals before the Appeal Board is involved in both the groups, though on different grounds. The answer to the different objections is, however, the same.

6. In Abdul Gafoor v. State of Mysore, AIR 1961 S C 1556, the effect of notifying a scheme was considered by this Court, and it was there stated that when a scheme has been notified under Chap. IVA of the Motor Vehicles Act, and an application is made for the grant of a permit on a route notified under the scheme by a private operator, the Regional Transport Authority has no option but to refuse the permit to the private operator, if the State Transport Undertaking has either applied for a permit or has already been granted one. In all the present cases, The State Transport Undertaking had already been granted a permit over route 'AB,' and if the private operators, that is to say, the appellants, were not entitled, in law, to the renewal of their permits for routes which embraced also route 'AB,' then the Regional transport Authority could not but refuse to renew the permits. It was

observed in Abdul Gafoor's case, AIR 1961 SC 1556 that the duty of the Regional Transport Authority was merely mechanical; and that it was required to take note of routes which had been notified and to adapt its orders so as to be in conformity with the notified scheme. In view of the fact, therefore, that the scheme had been notified and route 'AB' had already been granted to the Rajya Transport and/or the State Transport Undertaking, the Regional Transport Authority was incompetent to renew a permit over a route embracing route 'AB.' The Regional Transport Authority not having done its duty under the law, the Appeal Board was entitled, when the record was before it, to revise the order of the Regional Transport Authority, even if the appeal was incompetent, in view of the vast powers of revision wider S. 64A. That section, omitting the provisos, reads:

"The State Transport Authority may, either on its own motion or on an application made to it, call for the record of any case in which an order has been made, by a Regional Transport Authority and in which no appeal lies, and if it appears to the State Transport Authority that the order made by the Regional Transport Authority is improper or illegal, the State Transport Authority may pass such order in relation to the case as it deems fit."

The High Court came to the conclusion that it should not interfere, in its discretionary powers under Arts 226 and 227, with the order of the Appeal Board, because even if the appeal for some reason was incompetent the Appeal Board had the record before it, and gave effect to the correct legal position arising from a notified scheme. The same view was expressed also in Samarth Transport Co. v. Regional Transport Authority, Nagpur, AIR 1961. S C 93 at p. 97. In our opinion, we should not interfere on this ground either. In this connection the difference between the two sets of cases arising from the fact whether the Rajya Transport, Bihar, had objected or not, completely disappears.

7. We are now concerned with the merits of the contention that where the scheme notifies, as a route, a part of a larger route operated by a private operator, the two routes must be regard as different, and the private operator cannot be prevented from running his omnibuses on that portion of his route which is a different route, although notified. Reliance is placed upon a decision of the Privy Council in Kelani Valley Motor Transit Co., Ltd. v. Colombo Ratnapura Omnibus Co., Ltd,1946 AC 338 : (AIR1916 P C 137). There, the Privy Council was concerned with two Ordinances promulgated in Ceylon intituled the Motor Car Ordinance (N0. 45 of 1938) and the Omnibus Service Licensing Ordinance (No. 47 of 1942). By the first schedule, para.1 of the latter Ordinance, it was provided that if applications were made by two or more persons for road service licences in respect of the same route, preference should be given to (a) an application from a company or partnership comprising the holders of all the licences for the time being in force under the Motor Car Ordinance No. 45 of 1938 authorising the use of omnibuses on such route, and (b) an application from a company or partnership comprising the holders of the majority of the licences referred to in (a) above. Section 7, sub.s 1 provides :

"The issue of road service licences under this Ordinance shall be so regulated by the Commissioner as to secure that different persons are not authorised to provide regular omnibus services on the same section of any highway : Provided, however, that the Commissioner may, where he considers it necessary to do so having regard to the needs and convenience of the public, issue licences to two or more persons authorising the provision of regular omnibus services involving the use of the same section of a highway, if, but only if - (a) that section of the highway is common to the respective routes to be used for the purposes of the services to be provided under each of the licences, but does not constitute the whole or the major part of any such route."

The real question in the case was whether the appellant there could take into account for the purpose of the first schedule, six omnibuses which had been licensed for the route, Panadura to Badulla via Colombo and the low level road. Panadura is 16 miles along the coast to Colombo and thence from Colombo to Ratnapura is 50 miles, and from Ratnapura to Badulla, a further 80 miles. It was clear that the route from Panadura to Badulla was not the same or substantially the same route as the route, Colombo to Ratnapura ; but it a licence for an omnibus on the route, Panadura to Badulla, was one authorising the use of the omnibus on the route, Colombo to Ratnapura, then six omnibuses plied by the appellant could be taken into account to turn the scale between the parties. Sir John Beaumont in expounding the meaning of the word "route" observed as followes:

"If 'route' has the same meaning as highway in the Ordinance this argument must prevail, since admittedly an omnibus running on the highway from Panadura to Badulla will pass over the whole of the highway between Colombo and Ratnapura, but in their Lordships' opinion it is impossible to say that 'route' and 'highway' in the two Ordinances are synonymous terms..... A 'highway' is the physical track along which an omnibus runs, whilst a 'route' appears to their Lordships to be an abstract conception of a line of travel between one terminus and another, and to be something distinct from the highway traversed."

8. This distinction between "route" and "road" is relied upon by the appellants to show that the notified route, which we have called 'AB' was a different route from the routes for which renewal of permits was demanded, even though route 'AB 'might have been a portion of the "road' traversed by the omnibuses of the appellants plying on their "routes." The distinction made by the Privy Council is right; but it was made with reference to the words used in the Ordinances there under consideration. The question is whether a similar distinction can be made in the context of the Motor Vehicles Act. Mr. Viswanatha Sastri appearing for the appellants took us through Ss. 42 to 57 of the Motor Vehicles Act and drew our attention to those in which the word "route" has been used, contra-distinguished from the word "area," and contended that everywhere the word "route" is used in the sense of a notional line between two termini running a stated course, and is used in contradistinction to what may be conveyed by the word "area". In Kondala Rao v. Andhra Pradesh State Road Transport Corporation, AIR 1961 S C 82, this Court, in dealing with the scheme of the Motor Vehicles Act, declined to make any such distinction between "route" and "area". This Court, speaking through Subba Rao J., observed at p. 93 :

"Under S. 68-C of the Act the scheme may be framed in respect of any area or a route or a portion of any area or a portion of a route. There is no inherent inconsistency between an 'area' and a 'route'. The proposed route is also an area limited to the route proposed. The scheme may as well propose to operate a transport service in respect of a new route from point A to point B and that route would certainly be an area within the meaning of S. 68C."

In any event, under S.68C it is provided that a scheme may notify a route or an area or a portion of a route or a portion of an area, and the exclusion of the private operators from the whole route or the whole area or a part of the route or a part of that area, as the case may be, may be either complete or partial, and under S. 68-F (2)(c) (iii), the Regional Transport Authority may modify the terms of any existing permit so as to

"curtail the area or route covered by the permit, in so far as such permit relates to the notified area or notified route".

This means that even in those cases where the notified route and the route applied for run over a

common sector, the curtailment by virtue of the notified scheme would be by excluding that portion of the route or, in other words, the "road" common to both. The distinction between "route" as the notional line and "road" as the physical track disappears in the working of Chap. IVA, because you cannot curtail the route without curtailing a portion of the road, and the ruling of the Court to which we have referred, would also show that even if the route was different, the area at least would be the same. The ruling of the Judicial Committee cannot be made applicable to the Motor Vehicles Act, particularly Chap. IV- A, where the intention is to exclude private operators completely from running over certain sectors or routes vested in State. Transport Undertakings. In our opinion, therefore, the appellants were rightly held to be disentitled to run over those portions of their routes which were notified as part of the scheme. Those portions cannot be said to be different routes, but must be regarded as portions of the routes of the private operators, from which the private operators stood excluded under S. 68F (2) (c) (iii) of the Act. The decision under appeal was, therefore, correct in all the circumstances of the case.

9. This leaves over for consideration Civil Appeal No. 434 of 1961. There, the question which arose was decided in the same way in which we have disposed of the other appeals on merits. Ramaswami, C. J. and Kanhaiya Singh, J. referred to an earlier decision (M. J. C. No. 354 of 1960 decided on 13th May 1960) given by the Chief Justice and Chaudhuri, J., in which they had applied the Privy Council case, and made a distinction between a route which was longer than the notified route, though running for part of the way along the notified route and the notified route. In the judgment from which Civil Appeal No. 434 of 1961 arises, the learned Chief Justice has declined to follow his earlier ruling which, he considers, was given per incuriam, because the provisions of S. 68F (2) (c) (iii) of the Motor Vehicles Act were not taken into account. After considering the matter in the light of that section, the Divisional Bench has reached the same conclusion as we have, and along almost the same line of reasoning. In view of what we have said in Civil Appeal No. 534 of 1961, Civil Appeal No. 434 of 1961 must also fail.

10. In the result, the appeals are dismissed, but in the circumstances of the case, we make no order about costs.

Appeals dismissed.