Kalyan Singh

Vs

State of U.P.

Civil Appeal No. 325/61

(CJI B. P. Sinha, J. C. Shah, K. Subha Rao, Raghubar Dayal, J. R. Mudholkar JJ)

11.12.1961

JUDGMENT

SHAH, J. –

The appeal and the writ petitions practically raise the same points and may be disposed of together. At the outset we shall briefly state the facts relevant to each of the said proceedings.

The appellant in Civil Appeal No. 325 of 1961 held a permit for plying stage carriage on the Kanpur-Bela-Bidhuna route via Chaubepur, in the State of Uttar Pradesh. The entire route is 68 miles long, and a part of the route 16 miles in length i.e., Kanpur to Chaubepur, is a notified route. This part was common between the said route and the Kanpur-Chaubepur-Sarai Miran route, which was a nationalised route. A condition was, therefore, attached to the appellant's permit that he would not be entitled to pick up passengers or drop them between Kanpur and Chaubepur. His permit was to expire on June 10, 1960. Before the said date, he applied for renewal of his permit, and on May 20, 1960 it was published in the U.P. Govt. Gazette calling for objections. On the same day, the State Government published a notification in the Gazette proposing to nationalise the said route. As the application for renewal could not be disposed of before the expiry of the period fixed in the permit a temporary permit for the route was granted to the appellant. On July 19, 1960 the application for renewal of the appellant's permit was considered by the Regional Transport Authority, Kanpur, and his permit was renewed for three years with effect from July 23, 1960, only in respect of a part of the old route, namely, Chaubepur-Bela-Bidhuna; but under the directions of the Transport Commissioner, the Regional Transport Authority made an endorsement on the renewed permit authorizing the appellant to ply his vehicle between Kanpur and Chaubepur for a period of four months commencing from July 23, 1960. As regards the proposed scheme of nationalization, on June 22, 1960 the appellant filed his objections thereto. The said objections were heard by the Joint Secretary, Judicial Department, who approved the scheme with some modifications. The approved scheme was published in the Gazette on October 8, 1960. Under the notification the scheme was to be put into operation from October 15, 1960 or thereafter. On November 12, 1960, a notification dated November 4, 1960 was published in the Gazette under s. 68F of the Motor Vehicles Act cancelling the appellant's renewed permit with effect from November 27, 1960. Under the nationalization scheme the stage carriages belonging to the State Transport Undertaking could ply on the said route without obtaining permits. The appellant filed a petition under Art. 226 of the Constitution in the High Court of Judicature at Allahabad praying for the following reliefs :-

> (a) That a writ in the nature of mandamus may issue to command the respondents not to interfere with the Petitioner's right to ply on Kanpur-Bela-Bidhuna Via Chaubepur

route under the permit duly renewed in his favour till the entire duration of the permit viz., till July 22, 1963.

(b) That a Writ in the nature of certiorari may issue to quash so much of the Resolution dated July 19, 1960 passed by the Regional Transport Authority, Kanpur, as directs imposition of illegal conditions to the renewed permit of the petitioner.

(c) That a Writ in the nature of mandamus may issue to command respondents No. 2 and 3 not to give effect to the illegal endorsements made on the petitioner's permit on July 23, 1960 and to treat the petitioner's permit as having been renewed without the illegal conditions attached thereto by the two endorsements dated July 23, 1960, reproduced in paragraph 15 of the affidavit.

(d) That a Writ in the nature of certiorari may issue to quash the notifications dated May 18, 1960 under section 68C of the Act, so also the subsequent notifications under section 68D(2) of the Act dated September 26, 1960 and the notification dated November 4, 1960 under section 68F(2) of the Act in regard to Kanpur-Bela-Bidhuna route.

(e) That a Writ in the nature of mandamus may issue directing the respondents Nos. 1 to 3 not to give effect to the notifications dated May 18, 1960, September 26, 1960 and November 4, 1960 in regard to Kanpur-Bela-Bidhuna route.

(f) That an interim direction may issue to the respondents Nos. 2 and 3 not to interfere with the Petitioner's right to ply on the entire Kanpur-Bela-Bidhuna route under the renewed permit irrespective of the illegal conditions attached thereto or of the illegal scheme for the nationalization of the said route.

(g) That costs of this petition may be awarded to the Petitioner as against the opposite parties.

On December 2, 1960 the High Court made an interim order directing the State of Uttar Pradesh not to interfere with the petitioner operating his vehicle on Kanpur-Bela-Bidhuna route in accordance with the terms of his permit. To that writ petition, the State of Uttar Pradesh, the Regional Transport Authority, and the Secretary to Regional Transport Authority, were made respondents. The respondents opposed the petition. On March 6, 1961 a Division Bench of the High Court, accepting the contentions raised by the respondents, dismissed the petition. Hence the appeal.

Writ Petition No. 205 of 1961 is filed in this Court by another operator under Art. 32 of the Constitution. He was plying his stage carriage on the Jaunpur-Shahganj route in Uttar Pradesh under Permit No. 430, which was valid up March 15, 1962. The State Government published in the Gazette dated July 23, 1960 a notification dated July 15, 1960 under s. 68C of the Act proposing to nationalize the said route along with another route. The petitioner and others filed objections against the scheme within the time prescribed. The objections were heard by the Joint Secretary, Judicial Department, who approved the scheme. The approved scheme was published in the U.P. Official Gazette dated February 25, 1961. Thereafter, the Secretary to the Regional Transport Authority, Allahabad, issued a notification dated July 29, 1961 wherein it was stated that the permits of the operators on the said routes including that of the petitioner would stand cancelled and that the notification would come into force upon the expiry of 15 days from the date of publication of the

said notification. The petitioner has filed the present writ petition asking for the following reliefs :-

> (a) A writ in the nature of certiorari quashing the notifications (Annexures A, B and C to this writ petition).
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> (b) A writ in the nature of mandamus directing the respondents not to give effect to the notifications.
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> (c) A writ in the nature of mandamus commanding the respondents not to interfere with the rights of the petitioner to ply his stage carriage on the aforesaid route (Jaunpur Shahganj route), due to the aforesaid scheme.
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> (d) Award the costs of this petition to the petitioner.

Writ Petitions Nos. 180 and 181 of 1961 relate to the route Robertasgunj-Dudhi-Mamhani. The State Government issued a notification dated July 13, 1960, proposing to nationalize the said route and published the same in the Gazette on July 23, 1960. The petitioners filed objections against the scheme and the said objections were heard by the Joint Secretary, Judicial Department, and the scheme was finally approved by him. The approved scheme was notified in the Gazette on May 20, 1961. Under the said notification, the State Transport Undertaking would commence to operate its stage carriage service on the said route from July 15, 1961 or thereabout. Aggrieved by the said scheme, the petitioners filed the said petition for writs in this Court for reliefs similar to those in the other petition.

Mr. Kacker, learned counsel for the petitioner in Writ Petition No. 205 of 1961, raised the following points : (1) Under s. 68C of the Motor Vehicles Act, the State Transport Undertaking has to form its opinion and prepare a scheme for nationalisation and publish it in the manner prescribed thereunder, but in the present cases the State Government initiated the schemes and, therefore, the schemes were not validly made; (2) As neither the objections to the proposed scheme were heard nor were they approved by the State Government, as they should be under s. 68D of the Motor Vehicles Act, the schemes were invalid; (3) The Regional Transport Authority acted illegally in curtailing the period of renewal - this question arises only in the appeal; (4) The Regional Transport Authority had not applied its mind in dealing with the renewal application but mechanically followed the provisions in the proposed schemes and, therefore, its order was bad; (5) Even after the approval of the nationalisation schemes, the State owned buses were required to apply for and get permits under the Act and plying of buses by the State without permits was illegal; and (6) The Secretary to the Regional Transport Authority had no jurisdiction to issue an order under s. 68F(2) of the Motor Vehicles Act, since under the said section only the Regional Transport Authority had the powers to do so - this question arises only in Writ Petition No. 205 of 1961.

To appreciate the first argument it is necessary to notice briefly the relevant provisions of Ch. IVA of the Motor Vehicles Act, 1939 (IV of 1939) - hereinafter called the Act. Section 68A(b) defines "State transport undertaking" to mean "any undertaking providing road transport service, where such undertaking is carried on by (i) the Central Government or a State Government..... ". Section 68C reads :

> "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 and such other particulars respecting thereto may be prescribed and shall cause every such scheme to be published in the Official Gazette and also in such other manner as the State Government may direct".

Section 68D reads :-

"(1) Any person affected by the scheme published under section 68C may, within thirty days from the date of the publication of the scheme in the Official Gazette, file objections thereto before the State Government.

(2) The State Government may, after considering the objections and after giving an opportunity to the objector or his representatives and the representatives of the State Transport undertaking to be heard in the matter, if they so desire, approved or modify the scheme."

Section 68E provides for the cancellation or modification of the scheme by the State transport undertaking; and in that event the same procedure prescribed for framing a scheme is to be followed.

The effect of the said provisions, in so far as they are relevant to the present inquiry, may be state thus : The State transport undertaking is an undertaking providing road transport service which is carried on by the State or any other corporation or authority mentioned in s. 68A. The definition creates a statutory authority distinct from authorities which run it. This is made clear by s. 68C whereunder it is the State transport undertaking that will have to form the requisite opinion. This is further elucidated by the fact that under s. 68C of the Act the State transport undertaking is required to publish the proposed scheme in the Official Gazette and also in such other manner as the State Government may direct. This distinction between the two entities is further made clear by s. 68D(2) whereunder the State Government has to bear the representatives of the State Transport undertaking. Briefly stated, under the said provisions, a statutory authority called the State transport undertaking is created it is authorised to initiate a scheme of nationalisation of road transport, the aggrieved parties are given opportunity to file objections thereto, and the State Government is empowered to hear both the parties and approve or modify the scheme, as the case may be. Counsel for the appellant contends that the underlying scheme of the Act cannot be worked out unless a clear distinction is maintained between the State transport undertaking and the State Government, for, if one is equated with the other, the State Government would become a judge of its own cause, and that, therefore, it was incumbent upon the Government to form a separate and distinct authority to enable it to initiate a scheme in accordance with law.

Counsel for the State contends that a transport undertaking run by a State Government is a State transport undertaking and, therefore, the scheme initiated by the State Government which runs the State undertaking is a scheme initiated by the said undertaking.

It is true that the provisions maintain a distinction between a State transport undertaking and the State Government. It is also true that the State Government has to hear the objections of the

aggrieved parties and also the representatives of the State transport undertaking before approving or modifying the scheme, indicating thereby that the State Government has to decide the dispute that may arise between the two contestants. Though the functions of the different bodies are clearly demarcated in the case of undertaking run by corporations, there is overlapping in the case of an undertaking run by a State Government. This may lead to anomalous position, but in practice it can be avoided, if the State Government creates a department to be in charge of the undertaking and hears the objections and approves or modifies the scheme in a manner without violating the principles of natural justice.

A State transport undertaking means, inter alia, an undertaking run by a State. The statutory authority created is an undertaking run by a State. The State can only run an undertaking through its officers; it may entrust the conduct of the transport service to a particular officer or to a department of the State; in either event, it is the State Government that runs the undertaking. The statutory authority, namely, the State transport undertaking, has to form an opinion within the meaning of s. 68C of the Act, and the opinion must necessarily be that of the State Government which runs it. If the State Government running an undertaking forms an opinion, it can legitimately be said that the statutory authority i.e., the State transport undertaking, has formed the opinion.

In Gullapalli Nageswara Rao v. Andhra Pradesh State Road Transport Corporation [[1959] Supp. 1 S.C.R. 319, 335] before the State of Andhra was formed in November, 1956, the Motor Vehicles (Hyderabad Amendment) Act, 1956 was in force in Telengana area. Under the said Act the State transport undertaking was defined to mean the road transport department of the State providing road service. After the Andhra Pradesh State was formed, that department initiated the scheme and this Court held that the said department clearly fell within the definition of state transport undertaking. This Court observed in that case :

> "The State Government maintained the department for providing road transport service and therefore the department clearly falls within the definition of State Transport Undertaking."

If a state directly runs an undertaking it can only be through a department. In law there cannot be any difference between an undertaking run by a department of a State Government and that run by the State Government. In either case the undertaking is run by the State and that undertaking is a State transport undertaking within the meaning of s. 68C of the Act.

The opinion must necessarily be formed by somebody to whom, under the rules of business, the conduct of the business is entrusted and that opinion, in law, will be the opinion of the State Government. It is stated in the counter-affidavit that all the concerned officials in the Department of Transport considered the draft scheme and the said scheme was finally approved by the Secretary of the Transport Department before the notification was issued. It is not denied that the Secretary of the said Department has power under the rules of business to act for the State Government in that behalf. We, therefore, hold that in the present case the opinion was formed by the State transport undertaking within the meaning of s. 68C of the Act, and that there was nothing illegal in the manner of initiation of the said scheme.

The second ground urged by counsel for the appellant that the scheme was invalid because the objections to the scheme were heard and the scheme was approved by the Joint Secretary, Judicial Department, who was not lawfully invested with authority in that behalf is for reasons to be presently stated not open to the appellant. By the first sub-section of s. 68D which we have already

set out persons affected by a transport scheme are entitled to file objections thereto. By sub-section (2), the State Government is authorised to approve or modify, the scheme after considering the objections, if any, and after giving an opportunity of being heard in the matter to the objector or his representatives and the representatives of the State transport undertaking. Sub-section (3) provides for the publication of the approved or modified scheme in the Official Gazette by the State Government and on such publication the scheme becomes final. It must at once be observed that neither in the petition under Art. 226 of the Constitution to the High Court, out of which Civil Appeal No. 325 of 1961 arises, nor in the Writ Petition under Art. 32 (No. 205 of 1961) presented to this Court, was the plea raised that the Joint Secretary to the Judicial Department was not authorised to hear the objection and to approve the scheme. In the petition (No. 205 of 1961) under Art. 32 of the Constitution it was averred by the petitioner in para 10 that "the petitioner filed objections under s. 68D(1) of the Act, against the scheme of the State Government, and it also heard its own representatives in opposition to the petition" and again it was averred in the same paragraph "at the time of hearing of the petitioner's objections under section 68-D, Before the State Government it was argued on behalf of the petitioner that the aforesaid scheme was bad....." In the petition under Art. 226 of the Constitution it was averred in paragraph 25 "That no State Transport Undertaking having been constituted the State Government initiated the scheme and heard its own representatives on 13.8.1960. The petitioner has bonafied belief that the Joint Secretary to the Government of Uttar Pradesh (Judicial Department) who heard the objections acted with bias against the petitioner." Even in the petition for special leave to appeal to this Court, no such objection was raised. There is also no reference to any such contention in the judgment of the High Court. The validity of the scheme on this ground is sought to be raised for the first time in this Court, and, according to the settled practice of this Court the appellant except in exceptional circumstances and there are none such in this case - is not entitled to raise this argument for the first time at the hearing in this Court. It was urged in the course of the argument that by Rule 7 of the State Land Transport Services Development Rules 1958, which at the material time read as follows :

> "(1) The objections received shall be considered by the judicial Secretary to Government of U.P. or an officer of his department, not below the rank of Joint Secretary, nominated by the former for the purpose.
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> # x x x x x x x x##
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> (5) After hearing of such parties as appear, the officer shall give a decision whether the scheme be approved or modified as he may deem proper".

no authority was lawfully conferred upon the Joint Secretary, and the proceedings of the Joint Secretary in purported exercise of powers under s. 68D(2) were without jurisdiction. But this is another facet of the same argument, and it is clear from a perusal of the petitions before the High Court and this Court and the judgment of the High Court that is was never raised.

There is no doubt that the scheme has been duly published under s. 68D(3) and if the objection to the invalidity of the scheme on the ground that the objections were not heard by an authority competent in that behalf cannot be permitted to be raised in this Court for the first time during the course of the arguments, the statutory consequences prescribed by s. 68F must ensue.

It is necessary to bear certain facts and considerations in mind in dealing with the remaining contentions. By the scheme (cl. 7) the permit of the appellant was cancelled. The scheme as approved was published in the U.P. Gazette on October 8, 1960, and was to come into operation on

October 15, 1960, or thereafter. A notification was published on November 4, 1960, under s. 68F(2) of the Act cancelling the appellant's permit with effect from November 27, 1960. The appellant therefore ceased to have any right to ply his vehicles on the route and he had no right to object to the vehicles of the State transport undertaking plying on that route. If the scheme was validity promulgated and became final within the meaning of s. 68D(3), it had the effect of extinguishing all rights of the appellant to ply his vehicles under his permit. After cancellation of his permit, he could not maintain a petition for writ under Art. 226 because a right to maintain such a petition postulates a subsisting personal right in the claim which the petitioner makes and in the protection or which he is personally interested. It is true that the appellant did at the date of the petition filed in the High Court hold a permit which was to enure till the 27th November, 1960. But if the permit was validly terminated from the date specified, he will not be entitled to relief even if he had on the date of the petition a subsisting right. Ground No. 2 must therefore fail.

Grounds 3 and 4 of the appellant that the Regional Transport Authority acted illegally in curtailing the period of renewal and that, in any event, it did not apply its mind in dealing with the renewal application but mechanically followed the provisions of the scheme may now be considered.

The Regional Transport Authority was by the terms of the scheme left no discretion in the matter. It was by the scheme that the right of the appellant was restricted and if the scheme became final and binding the Regional Transport Authority had no authority to permit the appellant to ply his vehicles. The order passed by the Regional Transport Authority was purely consequential on the scheme, and if the scheme is not open to challenge, orders consequential thereon will not also be open to challenge. We are supported in this view by the observation of this Court in Abdul Gafoor : Proprietor, Shaheen Motor Service v. The State of Mysore [A.I.R. (1961) S.C. 15, 56] that :

> "It appears to us that when deciding what action to take under s. 68F(1) the authority is tied down by the terms and conditions of the approved scheme and his duty is merely to do what is necessary to give effect to the provisions of the schemes. The refusal to entertain applications for renewal of permits or cancellation of permits or modification of terms of existing permits really flow from the scheme. The duty is therefore merely mechanical; and it will be incorrect to say that there is in these matters any lie between the existing operators and the State Transport Authority. There is no justification therefore for saying that when taking action under s. 68F(2) is really independent of the issue of the permits under s. 68F(1). Once the scheme has been approved, action under s. 68F(1) flows from it and at the same time action under s. 68F(2) flows from the same scheme".

We are bound by the decision.

We are not called upon to consider whether the State owned buses are being validly plied without obtaining permits under s. 68F(1) of the Act. If the right of the appellant to ply his buses is lawfully extinguished, he is not entitled to maintain an appeal challenging the right of the State Transport Undertaking to ply their buses with or without permits. Nor is any fundamental right of the appellant infringed by the State Transport Undertaking plying its buses without permits, and a petition under Art. 32 of the Constitution cannot be maintained unless a fundamental right of the applicant is infringed.

Nor is there any substance in the last contention. The orders passed under ss. 68F(2)(a) and (b) flow from the publication of the scheme duly approved and the issue of an order, which is not quasi-

judicial but administrative, by the Secretary on behalf of the Regional Transport Authority is not open to challenge. If it not the case of the Petitioner in W.P. 209/61 in which alone this contention is raised that the order unauthorised : what is contended is above this contention is raised that the order is being quasi-judicial, power to make it cannot be delegated. But for reasons already set out the order is not quasi-judicial; it is purely administrative.

In our view, therefore, the appeal and the petitions must fail, and are dismissed with costs.

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