Ramnath Verma

Vs

State of Rajasthan

Civil Appeal Nos. 142 - 146 of 1962

(CJI B. P. Sinha, T. L. Venkatarama Ayyar, P. B. Gajendragadkar, K. N. Wanchoo, N. Rajagopala Ayyangar JJ)

17.04.1962

JUDGMENT

WANCHOO, J. -

These five appeals on certificates granted by the Rajasthan High Court raise common questions and will be dealt with together. Appeals Nos. 142, 144 and 145 are with respect to Jaipur-Bharatpur route appeal No. 143 with respect to Jaipur-Shahpur-Alwar-Himkathana route, and appeal No. 146 with respect to Ajmer-Kotah route. It appears that the Rajasthan State Roadways, which is a State Transport Undertaking, published five schemes in pursuance of s. 68C of the Motor Vehicles Act, No. 4 of 1939 (hereinafter called the Act). Later, the Government of Rajasthan appointed the Legal Remembrancer to consider objections to these five draft schemes. Objections were filed by the Stage carriage permit-holders who were plying on these five routes. The objections with reference to the three routes with which these appeals are concerned were heard on December 7 and 14, 1960 and the draft schemes were approved by the Legal Remembrancer on December 14 and 15, 1960, with slight modifications.

It appears further that the objectors relating to Jaipur-Ajmer and Jaipur-Kotah routes, which were among the five schemes, published as above, objected to these two schemes on various grounds and prayed that they should be given an opportunity to show that the two draft-schemes did not provide an efficient, adequate, economical and properly co-ordinated road transport service and should therefore be not approved and also prayed that evidence might be taken in support of their contentions. One of the permit holders on the Jaipur-Ajmer route was Malik Ram who had contended that the draft-scheme should be rejected in its entirety and had desired to lead evidence for that purpose. The Legal Remembrancer, however, held on the basis of an earlier decision of the Rajasthan High Court in Chandar Bhan v. The State of Rajasthan [(1961) Raj. Law Weekle 47] that it was not open to him to reject the scheme in its entirety and he could only either approve of it or modify it. He further held that he could take no evidence while considering objections to the scheme and all that he had to do was to hear arguments on either side. Malik Ram then moved the Rajasthan High Court by a writ petition which was dismissed. He then came to this Court by special leave challenging the view taken by the Legal Remembrancer on the two points above. This Court allowed Malik Ram's appeal and held that it was open to the Legal Remembrancer to reject the draft scheme or to take evidence, if necessary, though it was pointed out that it would be within the discretion of the States Government or the officer appointed by it to hear objections to decide whether the evidence intended to be produced was necessary and relevant to the inquiry, and if so to give a reasonable opportunity to the party desiring to lead evidence to do so within reason, and that the State Government or the officer concerned would have all the powers of controlling the giving

and recording of evidence that any court has. This decision was given on April 14, 1961 (see Malik Ram v. State of Rajasthan [(1962) 1 S.C.R. 978].

In the meantime a large number of writ petitions were filed in the Rajasthan High Court challenging the approved schemes with respect to the three routes with which we are concerned in the present appeals and also with respect to the three routes with which we are concerned in the present appeals and also with respect to the other two routes. These petitions came to be heard after the decision of this Court in Malik Ram's case [(1962) 1 S.C.R. 978]. So far as the petitions relating to Jaipur Ajmer route were concerned, they were not pressed in view of the decision of this Court quashing the scheme with respect to that route and directing the Legal Remembrancer to hear the objections over again. With respect to Ajmer-Kotah route, the High Court allowed the objections on the basis of the decision of this Court in Malik Ram's case [(1962) 1 S.C.R. 978] as the objector in those cases had wanted to lead evidence on the question of rejection of the draft scheme in its entirety, and they had not been given an opportunity to do so. But with respect to the three routes with which the present appeals are concerned, the High Court dismissed the writ petitions on the ground that there was nothing to indicate that the appellants desired to lead evidence in support of their case that the draft-schemes should be totally rejected. It was contended before the High Court that it was unless for the appellants to make any application for the taking of evidence because it would in any case have been rejected as the Legal Remembrancer had already taken the view that he could not reject the scheme as a whole. The High Court was however not impressed with this argument and held that the order of the Legal Remembrancer did not show that he thought that the draft scheme should be totally rejected but felt unable to do so because of the decision of the High Court in Chander Bhan's case [(1961) Raj Law Weekly 47]. On the other hand, the High Court was of the view that the Legal Remembrancer considered the objections raised before him in detail and his order showed that he only thought that the schemes should be modified in part and were otherwise fit for approval. The appellants then applied to the High Court for certificates which were granted; and that is how the matter has come up before us.

The main contentions of the appellants before us are the same which they raised before the High Court. They urge that they did not get a proper hearing before the Legal Remembrancer because of his view that it was not open to him to reject the schemes in their entirety and that they were not given an opportunity to lead evidence to convince the Legal Remembrancer that the schemes should be rejected in their entirety. It is not in dispute that the appellants never applied before the Legal Remembrancer that they wanted to lead evidence on any point in support of their objections. Only in one writ petition (see. C.A. 144 of 1962) it was averred that the Legal Remembrancer did not allow the appellants to lead evidence but that in our opinion is not correct, because the Legal Remembrancer has filed an affidavit to the effect that no such oral request was made to him by the objections on the three routes with which these appeals are concerned. The High Court therefore was right in saying that it could not be said in these cases that the Legal Remembrancer had shut out evidence relating to the inquiry before him which the objectors desired to produce. But it is urged on behalf of the appellants that as the Legal Remembrancer had already taken one view in the case of Jaipur-Ajmer route it was useless for them to make an application to him for leading evidence for that would have inevitably been rejected in view of the earlier judgment of the Rajasthan High Court referred to above. Even though, this may be so, it is remarkable that did not that prevent the objectors on the Jaipur-Ajmer and Jaipur-Kotah routes from making applications to the Legal Remembrancer that the draft-schemes should be totally rejected and they should be given an opportunity to lead evidence to show this. We fail to see why the appellants could not have been taken the same course if they really desired to lead any evidence in order to make out their case for total rejection of the schemes with which they were concerned. I seems to us clear therefore that at

the stage when objections were being heard by the Legal Remembrancer there was no desire on the part of the appellants to lead any evidence in support of their objections. Nor does it appear that when the writ petitions were filed in the High Court the appellants claimed that they had desired to lead evidence and had been shut out by the Legal Remembrancer. It was only after the decision in Malik Ram's case [(1962) 1 S.C.R. 978] that applications were filed taking advantage of that decision and pointing out that the wrong approach of the Legal Remembrancer in holding that it was not open to him to reject the draft-scheme in its entirety had resulted in the appellant's not getting an effective hearing. But it does not seem to have been suggested even at that (except in one case) that the appellants had desired to lead evidence before the Legal Remembrancer and he had shut them out. Nor was it shown at that stage what evidence the appellants could produce in support of their objections if an opportunity had been given to them. Lastly even this Court the appellants have not indicated what evidence they could produce in support of the objections raised by them. It seems to us therefore that the appellants never really desired to produce evidence in order to establish that the schemes as a whole should be rejected and that they put forward the contention that they would have produced evidence if given an opportunity to do so, merely taking advantage of the decision of this Court in Malik Ram's case [(1962) 1 S.C.R. 978]. Further it seems to us on looking at one of the objections filed before the Legal Remembrancer in C.A. 142 of 1962 as a sample that there was nothing in the objections which really required the giving of evidence and which would show that there could be any desire on the part of the objectors to lead evidence. The objections were of a general nature and all that was desired was that "the State Government must weigh the objections of the undersigned with reference to the actual conditions obtaining on the said route, by such method as holding public inquiry on site, by looking into the past records of service provided by the objector, by inspecting the vehicle of the objector and by comparing the actual facilities provided by the objector." In short, a perusal of the objections shows that what was being contended before the Legal Remembrancer was not so much that the draft-schemes were not efficient, adequate, economical and properly co-ordinate but that the objectors were providing transport service which was more efficient, adequate, economical and properly co-ordinated than the service proposed to be provided in the draft-schemes. That however is hardly a reason for rejecting the draft-schemes in their entirety. Further, a perusal of the order of the Legal Remembrancer summarising the objections which are relevant under s. 68D shows that the objection were of such a nature as to require the productions of evidence in support of them for the question of fact raised there were not in dispute. Therefore, there could be an effective hearing before the Legal Remembrancer if objectors were given a chance to put forward their arguments in support of the objections even without any evidence. We are therefore of opinion that the appellants cannot in the circumstances take advantage of the decision in Malik Ram's case [[1962] 1 S.C.R. 978], and on the facts and circumstances in the present appeals there is no doubt that they had an effective hearing and the order of the Legal Remembrancer approving the schemes is not in any way vitiated by the wrong view taken by him that he had no power to reject the draft-schemes in their entirety. It seems that he considered the draft-schemes on merits as required by ss. 68C and 68D and held that it was in accordance with the requirements of s. 68C. The facts that in some cases the number of buses might have been reduced or the fares have been raised or some of the direct services had to be cut down where their routes overlapped with the routes in the three draft-schemes would not necessarily lead to the conclusion that the draft-schemes were not in conformity with the requirements of s. 68C. The contention therefore based on the judgment of this Court in Malik Ram's case [[1962] 1 S.C.R. 978] must on the facts and circumstances of these appeals be rejected.

Besides this main objection, three subsidiary points have been raised on behalf of the appellants. It appears that in some cases the objectors served routes which overlapped the three routes which have

been taken over. In these cases what has been done is that in some cases the permits of the objectors have been cancelled with respect to the overlapping part of the routes while in other cases the objectors are allowed to ply even on the overlapping part but they have been forbidden to pick up passengers on the overlapping part for destinations within the overlapping part. This latter method is called making the permits ineffective for the overlapping part. Now the grievance of those whose permits have thus been rendered ineffective for the overlapping part is two-fold. In the first place, it is said that this cannot be done and in the second place, it is said that even if this can be done, the result is that those whose permits have been made ineffective for the overlapping part will not be entitled to compensation under s. 68G read with s. 68F(2). So far as the first contention is concerned, we are of opinion that there is no force in it. Under s. 68C, if is open to frame a scheme in which there is partial exclusion of private operators. Making the permits ineffective for the overlapping part only amounts to partial exclusion of the private operators from that route. In the circumstances an order making the permit ineffective for the overlapping part would be justified under s. 68C. As to the second point, there is no doubt that where the permit is made ineffective the permit-holder not be entitled to any compensation under s. 68G. It is said that this amounts to discrimination between those whose permits have been cancelled for the overlapping part and who would get compensation and those whose permits have been made ineffective and who would therefore not get compensation. Now we should have though that the making of the permit ineffective for the overlapping part of the route and allowing the permit-holder to pick up passengers on the overlapping route for destinations beyond that portion of the route would be to the advantage of the permit-holder. In any case, if any permit-holder feels that he would rather have his permit cancelled for the overlapping route and get compensation it is for him to raise that objection before the State Government or the officer hearing objections. If he does not do so, he cannot be heard to say that there is discrimination because his permit has been rendered ineffective and he gets no compensation, for it may very well be that he is still better off than the person whose permit has been cancelled for the overlapping part of the route. In any case unless facts are brought on the record which would show that in spite of the advantage which the permit holder, whose permit has been made ineffective for the overlapping part of the route, gets by picking up passengers on the overlapping route for destinations beyond that part is not equal to the compensation which he would get in case his permit is cancelled for the overlapping part of the route, there would be no case for discrimination under Art. 14 of the Constitution. In the present appeals no such case has been made out on the facts and therefore we must reject this argument based upon discrimination.

Secondly, it is urged that in the case of some persons, the permits have neither been cancelled nor made ineffective over the overlapping route and this amounts to discrimination. The reply of the State to this contention is that it was by oversight that permits of certain permit-holders on the overlapping routes have not been cancelled or made ineffective and it is further said that the State would have corrected this oversight but for the stay order obtained from this Court. Discrimination envisaged under Art. 14 is conscious discrimination and a discrimination arising out of oversight is no discrimination at all. In the present case the discrimination has resulted because of an oversight which the State is prepared to rectify. It is not the case of the appellants that these few permit-holders are being favoured deliberately for ulterior reasons. We therefore accept the reply of the State that a few permit-holders on the overlapping route have been left out by oversight and that their permits will be dealt with in the same manner as of the appellants, as soon as the stay order passed by this Court comes to an end. There is therefore no force in this contention also and it is hereby rejected.

Lastly, it is urged that the permits on the Ajmer-Kotah route have been cancelled or rendered ineffective between Deoli and Ajmer only any therefore the permit-holders are entitled to ply

between Deoli and Kotah. It appears however that Deoli-Kotah part of the Ajmer-Kotah route is common the Jaipur-Kotah route from Deoli to Kotah and the necessary orders for exclusion of permit-holders have been passed in connection with the Jaipur-Kotah route. The scheme with respect to that route was quashed by the High Court and the matter sent back for re-hearing the objectors in accordance with the decision of this Court in Malick Ram's case [(1962) 1 S.C.R. 978]. Therefore, the question whether the permit-holders can ply on the Deoli Kotah portion of the Ajmer-Kotah route will depend on the decision of the Jaipur-Kotah scheme. If that scheme is upheld, on re-hearing, the exclusion will continue. But if that scheme is not upheld, the position may have to be reviewed in connection with this portion of the Ajmer-Kotah route. In the circumstances no relief can be granted to the appellants of the Ajmer-Kotah route at this stage.

The appeals are hereby dismissed with costs-one set of hearing costs.

Appeals dismissed.

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