B. H. Aswathanarayan Singh and Others

Vs

State of Mysore and Others

Civil Appeals Nos. 250 and 286 of 1965

(CJI P. B. Gajendragadkar, K. N. Wanchoo, J. R. Mudholkar, J. C. Shah, S. M. Sikri JJ)

23.04.1965

JUDGMENT

WANCHOO, J. –

These 37 appeals on certificates from the judgment of the Mysore High Court raise common questions and will be dealt with together. The appellants are motor bus operators in the district of Bellary in the State of Mysore. It appears that two draft schemes for taking over passenger bus routes were published by the State Transport Undertaking (hereinafter referred to as the Undertaking) in May 1962. Objections to those schemes were heard by the State Government and the schemes were approved after some modifications and published in the Mysore gazette in August 1962. The approved schemes were however challenged by the motor bus operators who were operating in the district before the High Court by writ petitions and the two schemes were quashed by the High Court on September 24, 1962, for reasons into which it is unnecessary to go.

Then the Undertaking published another scheme on November 1, 1962 in the Mysore gazette for taking over the routes mentioned therein to the entire exclusion of the existing motor bus operators. This scheme was published under the State Transport Undertakings (Mysore) Rules 1960. Objections to the scheme were heard by the State Government on various dates in April and May 1963. In the meantime, the State Transport Undertakings Rules were under modification and the revised rules were published on April 25, 1963. The last date for hearing of objections by the State Government was May 23, 1963. On July 25, 1963, the Rules of 1963 came into force. The order of the State Government approving the scheme was made on April 18, 1964 and thereafter the approved scheme with such modifications as the State Government had made was published in the gazette on May 7, 1964. Then followed applications by the Undertaking to the Regional Transport Authority for issue of permits in accordance with the scheme. Soon thereafter wri

A large number of contentions have been urged on behalf of the appellants to which we shall refer in due course. But the two main contentions that have been urged are : (i) it was not open, under the Motor Vehicles Act, No. 4 of 1939, (hereinafter referred to as the Act) and the Rule; thereunder, to the State Government when approving the scheme to specify minimum and maximum number of motor vehicles to be put on each route and minimum and maximum number of trips to be made on each route and insofar as the approved scheme makes such a provision it is ultra vires, and (ii) when the draft scheme was published in the Rules of 1960 were in force and the draft scheme only specified the maximum number of vehicle and trips on each route, but by the time the State Government disposed of the objections, Rules of 1963 had come into force and the approved scheme provided both for minimum and maximum number of vehicles and trips on each route. As, however, the minimum number was not specified in the draft scheme, there

We shall deal with these two main objections first and then consider other points raised on behalf of the appellants. It is not in dispute that one fixed number of vehicles as well as of trips can be provided in the scheme. The question that arises is whether the fixing of a minimum and maximum number of vehicles and trips, as has been done in the approved scheme, is also permissible under the Act. This takes us to s. 68-C of the Act which may be reproduced here :

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

It will be seen that if the Undertaking is of opinion, for reasons indicated in the section, to take over road transport services to the exclusion, complete or partial, of other persons, it has to frame a scheme, which has to be published in the official gazette and in such other manner as the State Government may direct."Road transport service" means a service of motor vehicles carrying passengers or goods or both by road for hire or reward. Under the section the Undertaking may take over road transport services in general or any particular class of such service in relation to any area or route or portion thereof. In the present case the Undertaking decided to take over passenger services over various routes in the district of Bellary to the exclusion of all other persons. There is no dispute that the Undertaking in publishing the scheme acted in the manner required by s. 68-C. The dispute arises as to the contents of the scheme published by the Undertaking and the contention on behalf of the appellants is

> "........... 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 as may be prescribed........."

It will be seen that this provision is in two parts. By the first part the section itself provides what should be there in the scheme, namely - (i) particulars of the nature of the services to be rendered, and (ii) the area or route proposed to be covered. The second part provides for such other particulars respecting thereto as may be prescribed by the rules. We have already indicated that rules have been framed for this purpose and it is not in dispute that the Rules of 1960 which were in force at the relevant time were complied with. In those Rules only the maximum number of vehicles and trips was required to be mentioned and that was done in the draft scheme, which was published. But the contention on behalf of the appellants is that the first part of the section to which we have referred requires two things, namely - (i) particulars of the nature of the services proposed to be rendered, and (ii) the area or route proposed to be covered. These is no difficulty as to the meaning of the words "area or rout

Besides indicating the class of services to be taken over, the section requires that the particulars with reference to the class of service to be taken over should also be indicated in the scheme. It is contended on behalf of the appellants that where, (for example) stage carriage services are being

taken over, particulars must indicate the exact number of motor vehicles that will be used on a particular route and the exact number of trips that they will perform in the course of a day and that this is essential to be given in the scheme to enable objectors to object to it particularly with respect to the adequacy of services to be rendered which is one of the conditions precedent for taking over the services under that section. We are of opinion that the word "particulars" in the section has been used in its ordinary meaning. In its ordinary meaning, the word "particulars" means details or items : (see the Concise Oxford Dictionary). In the Dictionary of English Law by Jowitt, "particulars" with reference to

We may in this connection refer to s. 46(C) and s. 48(3) (ii) which also indicate that it is permissible to have minimum and maximum number of daily services in case of stage carriages in particular. Section 46 provides for application for stage carriage permits of two kinds - (i) in respect of a service of stage carriages, and (ii) in respect of a particular motor vehicle used as a stage carriage. Where a service of stage carriages has to be provided, cl. (c) of s. 46 provides for indicating the minimum and maximum number of daily services proposed to be provided in relation to each route or area and the time-table of the normal services. Section 48 which provides for grant of stage carriage permits by the Regional Transport Authority also provides in sub-s. (3) in the case of a service of stage carriages for attaching to the permit any condition relating to the minimum and maximum daily services to be maintained in relation to any route generally or on specified days and occasions. Number of vehicles would

Besides we are of opinion that a provision for a minimum and maximum number of vehicles and trips would subserve the purpose of Chap. IV-A inasmuch it will provide for a certain amount of flexibility in the service to be rendered, for it cannot be disputed that transport needs may vary from season to season. This flexibility provided by specifying the minimum and maximum would obviate the necessity of taking action under s. 68-E of the Act every time the Undertaking decided to make a minor change in the number of trips with the necessary change in the number of vehicles employed. We cannot accept the argument that provision of a minimum and maximum number in the scheme would be hit by s. 68-E of the Act which provides for cancellation or modification of an approved scheme, for s. 68-E comes into play after the scheme has been approved under s. 68-D. Nor can the provision of vehicles and trips be said to be a device to get round s. 68- E, which deals with a situation after the scheme has been approved. But wh or even such an approved scheme may require radical alteration after some years when transport needs may have radically changed and in such cases action under s. 68-E would be necessary. But this provision of flexibility providing minimum and maximum number in a scheme cannot per se be said to be an attempt to get round s. 68-E.

In this connection our attention is drawn to a decision of this Court in Dosa Satyanarayanamurty v. Andhra Pradesh State Road Transport Corporation (1) [1961] 1 S. C. R. 642. In that case r. 5 of the Andhra Pradesh Motor Vehicles Rules was struck down on the ground that it violated s. 68-E. In that case the scheme provided for an exact number of trips and an exact number of vehicles. Rule 5 however permitted frequency of services to be varied. It was in these circumstances that the rule was held to be ultra vires s. 68-E. But where the scheme itself provides for a minimum and maximum number of vehicles and trips there is no question of its being violative of s. 68-E. We are therefore of opinion that the provision of minimum and maximum number of vehicles and trips in the scheme is approved is not against the provision of s. 68-C as the section does not require that only an exact number of vehicles and trips for each route must be notified in the scheme.

Our attention is also drawn to C. P. C. Motor Service v. The State of Mysore (1) [1962] Supp. 1 S. C. R. 717. In that case at p. 727, following observations occur :

> "The earlier Rules required a statement as to the minimum and maximum number of vehicles to be put on a route, as also the minimum and maximum trips. It was however held by this Court that a departure from the minimum number would mean the alteration of the scheme, necessitating the observance of all the formalities for framing a scheme."

The observations are pressed into service to show that a minimum and maximum number cannot be prescribed in a scheme prepared under s. 68- C. It is true that there is an observation in that case that it had been held by this Court that a departure from the minimum number would mean an alteration of the scheme, necessitating the observance of all the formalities for framing a scheme. But learned counsel was unable to point out any case of this Court where it was held that a departure from the minimum in the case of a scheme which mentions both the minimum and maximum would require action under s. 68-E. The only case to which our attention was invited in this connection is that of Dosa Satyanarayanamurty (2) [1961] 1 S. C. R. 642; but in that case it was held that a departure from an exact number would require action under s. 68-E. However, that was not a case where the scheme itself fixed minimum and maximum. The scheme in that case fixed an exact number and it was held that a departure from such a number woul

Lastly our attention is drawn to a judgment of this Court in C. S. Rowjee v. The State of Andhra Pradesh (3) 1964 6 S. C. R. 330. In that case the question of indicating minimum and maximum in the scheme had come up for consideration. But the scheme in that case was quashed on the ground of bias and this Court had therefore no occasion to consider the question whether the indication of minimum and maximum in the scheme would make it ultra vires s. 68-C. Even so some observations were made in that connection at the end of the judgment. But the learned Judges made it clear that they had not thought it necessary to decide the larger question viz., whether the mere prescription of the maxima and minima constituted a violation of s. 68-E, as to require the scheme to be struck down. Therefore the observations in that case with respect to the fixing of minima and maxima must be treated as obiter. Further in that case it was argued on behalf of the State that indication of minima and maxima by itself would not be ba

Then it is urged that whatever may be the position in a case of complete exclusion, fixing of minimum and maximum in relation to vehicles and trips could not be contemplated by s. 68-C where there is partial exclusion. Therefore if it could not be contemplated in the case of partial exclusion it could not be contemplated in the case of complete exclusion also. It may be assumed that there may be some difficulty in working out a scheme containing minimum and maximum number of vehicles and trips where exclusion is partial as compared to a case where exclusion is complete. Even so we do not think that that would change the meaning of the word "particulars" used in s. 68-C and necessarily imply that the particulars given must consist only of an exact number of vehicles and an exact number of trips. Further we are of opinion that though it may be assumed that certain difficulties may conceivably arise in carrying out a scheme which includes minimum and maximum in the case of partial exclusion the difficulties are

We are therefore of opinion that specifying of both minimum and maximum number of vehicles and trips in the scheme under challenge is also in accordance with the provisions of s. 68-C and is not hit by s. 68-E. The contention of the appellants under this head is therefore rejected.

Then we come to the second main point raised in the case. It is urged that the draft scheme was framed when rules only required maximum number to be mentioned and the draft scheme mentioned the maximum. But in the approved scheme, this was modified and both the minimum

and maximum were mentioned. So it is urged that as the minimum was not mentioned in the draft scheme which was in accordance with the Rules of 1960 as they then stood, it was not possible for the objectors to object with respect to the minimum which was introduced by the State Government by modification under s. 68-D of the Act. Therefore there was breach of principles of natural justice as the objectors had no opportunity to show that the condition precedent, namely, that the service was adequate, had been complied with. It may be accepted that there was a defect in the draft scheme inasmuch as it only indicated the maximum number of services and not the minimum. But we are here concerned with the approved scheme after it was modified by the

We shall now consider the other points raised on behalf of the appellants. It is urged that cls. (e) and (f) of r. 3 of the 1960- Rules are bad as they provide only for a maximum number of vehicles and trips. It is further urged that r. 12 of he 1960-Rules is bad inasmuch as it allows an Undertaking to vary the frequency of services operated on any of the notified routes or within the notified area without exceeding the maximum number of vehicles or services having regard to the traffic needs during any period. We are of opinion that it is unnecessary to consider the validity of these rules in view of the fact that they no longer exist. We should however guard ourselves by saying that we should not be understood as accepting the view of the High Court which has upheld the validity of these rules.

Then it is urged that cls. (e) and (f) of r. 3 of the 1963-Rules as well as r. 12 thereof are bad. Clauses (e) and (f) of r. 3 provide for the specification of maximum and minimum number of vehicles and trips in the scheme. We have already considered this question and have held that it is permissible to specify the maximum and minimum number of vehicles and trips under s. 68-C. Rules 3(e) and (f) is in accordance with what we have held above and is therefore valid. Rule 12 lays down that where the services are run and operated to the complete exclusion of other persons by the Undertaking, it may, in the interest of the public, having regard to the traffic needs during any period vary the frequency of services operated on any of the notified routes or within any notified area without exceeding the maximum number of vehicles or services as enumerated in the approved scheme. This rule is ancillary to r. 3 (e) and (f) and comes into operation only where services are run to the total exclusion of other persons. I

Then it is urged that the scheme cannot be deemed to have been approved as it relates to inter-State routes and the approval of the Central Government has not been taken as required under the proviso to s. 68-D (3). We are of opinion that there is no substance in this contention. An inter-State route is one in which one of the termini is in one State and the other in another State. In the present case both the termini are in one State. So it does not deal with inter-State routes at all. It is urged that part of the scheme covers roads which continue beyond and State and connect various points in the State of Mysore with other States. Even if that is so that does not make the scheme one connected with inter-State routes, for a road is different from a route. For example, the Grand Trunk Road runs from Calcutta to Amritsar and passes through many States. But any portion of it within a State or even within a District or a sub-division can be a route for purposes of stage carriages or goods vehicles. That would

Lastly it is urged that the Chief Minister was not competent to hear the objections under s. 68-D and that this should have been done by the Minister in-charge of transport. The authority under s. 68-D to hear objections is the State Government. As the State Government is not a living person, some living person must hear the objections. Rule 8 provides that the Chief Minister shall be the authority to hear and decide the objections. We fail to see why, if according to the appellants the Minister in-charge of transport can hear the objections, the Chief Minister cannot do so when the rule framed by

the Government under the Act nominates the Chief Minister as the authority to hear the objections on behalf of the State Government. There is no force in this objection and it is hereby rejected.

The appeals therefore fail and are hereby dismissed with costs - one set of hearing fee.

Appeal dismissed.

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