Kumaon Motor Owners' Union Ltd. and Another

Vs

The State of Uttar Pradesh

Civil Appeal Nos. 486 and 487 of 1965

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

08.10.1965

JUDGMENT

WANCHOO J. –

These two appeals on certificates granted by the Allahabad High Court raise common questions and will be dealt with together. The appellant, Kumaon Motorowners' Union Limited (hereinafter referred to as the union) was established in 1939 and had at the date of the writ petitions. 330 members all of whom owned transport vehicles. These members have public carrier permits as well as stage carriage permits, which are in force in the Kumaon region except on certain notified routes. The permits of the various members of the union are valid upto various dates falling in the years 1966 and 1967.

On August 17, 1964, the State Government purporting to exercise powers under cls. (gg) and (i) of sub-rule (2) of r. 131 of the Defence of India Rules, 1962 (hereinafter referred to as the Rules) issued a notification by which it was directed that with effect from October 1, 1964, "no private operators shall ply any vehicle or class of vehicles for the carriage of persons or goods on, and no vehicle or class of vehicles operated by the private operators shall pass through, Tanakpur-Dharchula route of Kumaon region". It was further directed in the notification that on this route, the U.P. Government Roadways vehicles alone shall ply for the carriage of persons and goods. The result of this notification was to stop plying of all vehicles belonging to the members of the union on the route in question and this led to the filing of the two petitions in the High Court. The union was party to both the petitions, which were in the same terms.

In the petitions the appellants challenged the notification of August 17, 1964, and this challenge was based on four grounds. In the first place, it was contended that no order of the kind passed on August 17, 1964 could be passed under r. 131(2)(gg) and (i). In the second place, it was contended that the U.P. Government was contemplating nationalisation of this route in the Kumaon region for a long time prior to August 1964. Eventually, however, instead of proceeding with the scheme of nationalisation which would have necessitated payment of compensation to operators plying in the region, the Government decided to circumvent the provisions of Ch. IV-A of the Motor Vehicles Act, (No. 4 of 1939) and introduced nationalisation through the device of an order under cls. (gg) and (i) of r. 131 (2) of the Rules. So it was contended that the action of the State Government in passing the challenged order was mala fide. Thirdly, it was contended that s. 44 of the Defence of India Act, No. 51 of 1962, (hereinafter referred to as the Act) had been contravened by the order. Lastly, the contention was that the satisfaction necessary for passing the order under the Act and the Rules had not been shown by the affidavits filed on behalf of the State Government and therefore the condition precedent to the passing of such an order was absent.

The petitions were opposed on behalf of the State Government. It was not disputed that at one time prior to August 1964 the State Government has thought of nationalising this route and this matter was under consideration for sometime since 1962. But the State Government justified the passing of the impugned order on the ground that since 1960 reports had started coming in from the State Intelligence Department that certain anti-national and subversive elements were infiltrating the transport organisation and were exercising influence over the drivers, employees and other private operators of the union. As far back as October 1960, the Deputy Commissioner, Almora had sent a report to Government that it was necessary in the interest of national security that no new routes in Pithoragarh should be given for operation to the union and that their operation should be limited to Almora proper. Thereupon in a meeting of high officials on November 14, 1960, it was decided that the Deputy Inspector General Intelligence should supply the Transport Commissioner with a list of the ring leaders of such anti-national elements, and the Transport Commissioner should make efforts for the elimination of such elements from the transport organisation. It was also decided that the management of the union should be asked to screen their employees before they were employed and the police would be ready to render assistance in the matter of verification of antecedents of persons to be employed by the union. Finally, it was also decided that the Transport Commissioner should consider the question of running buses exclusively owned by Government on the border routes.

Further meetings were held in January and August 1961 in which it was pointed out that it was difficult to eliminate undesirable elements from transport organisations on account of existing labour laws. In the meantime, more reports had come in of undesirable activities by workers of transport organisations in the border region. Therefore, in May 1962, it was tentatively decided by the State Government that the real solution to the problem lay in the operation of transport in the border areas by Government alone. In the meantime the Transport Commissioner informed the Government that as the union was a private concern, the transport department could do nothing itself to eliminate these antinational elements from the union and that the management of the union also appeared to be powerless in the matter. Consequently in October 1962, the transport department was asked to consider the question of nationalisation of some of the border routes from the point of view of security.

This was the situation when the Chinese attacked in October 1962. In November 1962, an employee of the union had to be detained under r. 30(1)(b) of the Rules as his activities were considered prejudicial to the defence of India and public safety. The matter remained under consideration for another year and in October 1963 it was again impressed on the Transport Commissioner to eliminate anti-national elements from the transport organisations including the union serving in the border areas. The Transport Commissioner however expressed his inability to do so and was then asked to examine the implication of nationalisation of border routes on the ground of security. In January 1964 it appears that the transport department reported that nationalisation would not be economical and that the Government would stand to lose if it eliminated all private operators from this route and substituted government owned vehicles in their place. Even so, it was finally decided in August 1964 after the matter was put up before the Chief Minister who dealt with matters arising out of the Act and the Rules that in the interest of security, this route should be taken away from private operators like the union and that the transport department should run its own vehicles on it. It was in consequence of this decision of the Chief Minister finally made in July 1964 that the impugned notification was issued on August 17, 1964.

On these averments, it was contended on behalf of the State Government in the High Court that there was no mala fides in eliminating operators from this route and entrusting it to the transport department. It was further contended that there was no contravention of s. 44 of the Act. Further it

was urged that the order in question was justified within the terms of r. 131(2)(gg) and (i) of the Rules. Lastly it was contended that the order had been passed after the necessary satisfaction of the Chief Minister.

The High Court negatived all the contentions raised on behalf of the appellants. As to the satisfaction of the Chief Minister before the issue of the impugned order, the High Court was of the view that the affidavit filed on behalf of the State Government was not very satisfactory; but on the whole it came to the conclusion that the order had been issued after the necessary satisfaction and consequently the petitions were dismissed. The appellants then obtained certificates from the High Court; and that is how the matter has come up before us.

The same four points which were raised before the High Court have been raised before us on behalf of the appellants. We shall first consider the contention that the impugned order is beyond the power of the State Government under r. 131(2)(gg) and (i). Rule 131 provides for control of road and water transport. Sub-rule (2) thereof with which we are particularly concerned reads thus :

> "(2) Without prejudice to any other provision of these Rules, the Central Government or the State Government may by general or special order -
>
> (a) to (g) . . . .
>
> "(gg) provide for prohibiting or restricting the carriage of persons or goods by any vehicle or class of vehicles, either generally or between any particular places or on any particular route;
>
> (h) . . . .
>
> (i) make such other provisions in relation to road transport as appear to that Government to be necessary or expedient for securing the defence of India and civil defence, the public safety, the maintenance of public order or the efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community."

The order of August 17, 1964 says that "in the opinion of the State Government it is necessary and expedient so to do for securing the defence of India and civil defence, the public safety, the maintenance of public order and the efficient conduct of military operations and for maintaining supplies and services essential to the life of the community" and then follow the two directions which we have set out above.

The first contention on behalf of the appellants is that r. 131(2)(gg) must be read in the context of control of road transport and so read it only gives power to the State Government to control the use of vehicles and does not empower it to prohibit private operators from plying vehicles on any particular route with respect to which the order may be made. It is true that r. 131 deals inter alia with control of road transport and cl. (gg) of r. 131(2) provides for prohibiting or restricting the carriage of persons or goods by any vehicle or class of vehicles, either generally or between any particular places or on any particular route. But we are of opinion that the vehicles, the control of which is envisaged in cl. (gg), cannot be divorced from the persons who are plying the vehicles. No order can be issued to vehicles which are inanimate objects and an order under cl. (gg) will have to be issued to the persons plying the vehicles and the prohibition or restriction envisaged by cl. (gg) must be addressed to persons plying the vehicles mentioned therein. Therefore when cl. (gg)

envisages prohibition or restriction of carriage of persons or goods by any vehicle or class of vehicles, it obviously means that the order will apply to persons plying such vehicles. The argument based on divorcing vehicles from persons plying the vehicles is in our opinion completely fallacious and consequently when cl. (gg) provides for prohibition or restriction with respect to vehicles, it obviously refers to regulation of the conduct of persons plying the vehicles or prohibiting them completely from plying vehicles. We think that is the only way to carry out the purposes of this clause.

In this connection our attention is drawn to s. 6(4) of the Act, which lays down that during the continuance in force of the Act, the Motor Vehicles Act, 1939, shall have effect subject to certain provisions specified in cls. (a) to (f). The provisions in cls. (a) to (f) make certain in the provisions of the Motor Vehicles Act with which we are not concerned in the present appeals. The argument however is that this provision shows that the Motor Vehicles Act will have full force and effect subject to the amendments mentioned in cls. (a) to (f) and therefore it was not open to the State Government to take over the route in question and exclude private operators altogether without paying compensation as provided in chapter IV-A of the Motor Vehicles Act. Attention has also been invited to s. 68-B of the Motor Vehicles Act, which appears in Ch. IV-A and provides that "the provisions of this Chapter and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter IV of this Act or in any other law for the time being in force or in any instrument having effect by virtue of any such law". It is urged on a combined reading of s. 6(4) of the Act and s. 68-B of the Motor Vehicles Act that the provisions of Ch. IV-A with regard to the framing of scheme and payment of compensation must be complied with even where action is taken under r. 131(2)(gg) of the Rules.

This argument is met on behalf of the State by reference to s. 43 of the Act which lays down that "the provisions of this Act or any rule made thereunder or any order made under any such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act." It does appear that there is some apparent conflict between s. 43 on the one hand and s. 68-B of the Motor Vehicles Act read with s. 6(4) of the Act on the other, and that conflict has to be resolved. The only way to do it is to decide whether in such a situation, s. 43 of the Act will prevail or s. 68-B of the Motor Vehicles Act will prevail. We are of opinion that s. 43 of the Act must prevail. In the first place, s. 43 appears in an Act which is later than the Motor Vehicles Act and therefore in such a situation unless there is anything repugnant, the provisions in the later Act must prevail. Secondly, if we look at the object behind the two statutes, namely, the Act and the Motor Vehicles Act, there can be no doubt that the Act, which was passed to meet an emergency arising out of the Chinese invasion of India in 1962, must prevail over the provisions contained in Ch. IV-A of the Motor Vehicles Act which were meant to meet a situation arising out of the taking over of motor transport by the State. Thirdly, if we compare the language of s. 43 of the Act with s. 68-B of the Motor Vehicles Act we find that the language of s.43 is more emphatic than the language of s. 68-B. Section 43 provides that the provisions of the Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Act. This would show that the intention of the legislature was that the Act shall prevail over other statutes. But we do not find the same emphatic language in s. 68-B which lays down that the provisions of Ch. IV-A would prevail notwithstanding anything inconsistent therewith contained in Ch. IV of the Motor Vehicles Act or in any other law for the time being in force. The intention seems to be clear in view of the collocation of the words "in Chapter IV of this Act" with the words "in any other law for the time being in force" that Ch. IV-A was to prevail over Ch. IV of the Motor Vehicles Act or over any other law of the same kind dealing with motor vehicles or for compensation. On the other

hand s. 43 of the Act emphatically says that the Act will prevail over any enactment other than the Act, and this suggests that the legislature intended that the emergency legislation in the Act will be paramount if there is any inconsistency between it and any other provision of any other law whatsoever. Such a provision is understandable in view of the emergency which led to the passing of the Act.

Another argument under s. 6(4) of the Act is that by that provision the Motor Vehicles Act must be held to derive its authority from the Act and thus be treated as if it was part of the Act. Emphasis is laid on the words "shall have effect" in this connection and it is urged that by virtue of these words, the Motor Vehicles Act must be deemed to derive its authority from the Act and therefore must be treated as part thereof. In consequence, it is said that s. 43 which lays down that the Act and the Rules thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Act will not apply because the Motor Vehicles Act is a part of the Act. We are of opinion that there is no force in this argument. The words "shall have effect" appearing in s. 6(4) of the Act have to be read in the context of that sub-section. In that context they only mean that the Motor Vehicles Act will continue as before subject to the amendments made by s. 6(4). These words in the context of s. 6(4) do not mean that the entire Motor Vehicles Act is being made a part of the Act; and it is only the six clauses making changes in the Motor Vehicles Act which can at the best be treated as part of the Act. The over-riding effect given to orders passed under the Act and the Rules by s. 43 of the Act cannot therefore be taken away with respect to the provisions of the Motor Vehicles Act other than clauses (a) to (f) of s. 6(4). It is not in dispute that we are not concerned in the present case with cls. (a) to (f) and as a matter of fact if we look at these clauses they are concerned with making provisions which over-ride certain provisions of the Motor Vehicles Act. The argument that the entire Motor Vehicles Act must be read as a part of the Act must therefore be rejected and in consequence s. 43 of the Act will have over-riding effect in accordance with its tenor.

In view therefore of the provisions contained in s. 43 of the Act which as we have said already was passed to meet a grave national emergency, the argument that the provisions contained in Ch. IV-A for framing a scheme and paying compensation must still be complied with where action is taken under r. 131(2)(gg) of the Act must be rejected.

Then it is urged that by passing the impugned order, the commercial undertaking of the union is destroyed, and that this could not be the intention behind cl. (gg) of r. 131(2) of the Rules. We are of opinion that in this case there is no destruction of the commercial undertaking of the union, for the simple reason that it is not disputed that this is not the only route on which the union is plying its vehicles and the impugned order does not touch the other routes on which the appellants may be plying their vehicles. Further there is nothing in the order which destroys the commercial undertaking even otherwise, for it has neither taken over any of the assets of the commercial undertaking nor has it in any way interfered with the working of the commercial undertaking; all that the order provides is that the union shall not ply its vehicles on a particular route. This in our opinion does not amount to destroying the commercial undertaking which is left untouched by the order. All that may be said to have resulted from the order is that the profit making capacity of the commercial undertaking might have been reduced to a certain extent. That however does not in our opinion mean that the commercial undertaking has been destroyed. We may add that even if the profit making capacity of the commercial undertaking was lost due to one line of business being stopped that would not amount to destruction of the commercial undertaking, which could take up other business. So long as the order under cl. (gg) of r. 131(2) comes within the terms of that clause, it will be good even though it may diminish the profit making capacity of a commercial undertaking

or even reduce it to nothing in a particular line of business. We are therefore of opinion that the impugned order is in accordance with the terms of cl. (gg), sub-r. (2) of r. 131 and cannot be said to go beyond the powers conferred on the State Government by that clause.

Lastly it is urged that in any case the second part of the order which directs that the Roadways Vehicles will only ply for carriage of persons and goods on the route in question cannot fall under cl. (i) of r. 131(2). We have already set out cl. (i). That clause in a sense is complementary to the provisions of other clauses of r. 131(2). Where the State Government decides to issue a prohibition under cl. (gg), it must naturally provide for alternative methods for the carriage of persons or goods on the prohibited route and cl. (i) clearly makes provision for this. It gives powers to the State Government to make such other provisions in relation to road transport as appear to it to be necessary or expedient for securing the defence of India, etc. Obviously when the State Government, as in this case, prohibited the union from plying its vehicles on this particular route, a vacuum was created in the matter of carriage of persons and goods. That vacuum had to be filled in the interest of securing the defence of India, civil defence etc. To fill that vacuum the State Government directed that U.P. Government Roadways vehicles shall ply for the same purpose on this route. Clearly the vacuum was filled by the Roadways, because that organisation was readily available to Government to fill it. Otherwise we have no doubt that the Government could have made some other arrangement to fill the vacuum. Therefore, whether the vacuum was filled by ordering the Roadways to ply their vehicles on the route in question or by making any other arrangement, that would clearly be within the power of the State Government under cl. (i) of r. 131(2). We are therefore of opinion that the order passed by the State Government on August 17, 1964 was within its powers under r. 131(2)(gg) and (i) of the Rules.

This brings us to the question of mala fides. The argument is that the order was passed under r. 131(2)(gg) in order to avoid payment of compensation by taking action under Ch. IV-A of the Motor Vehicles Act. In that connection we have already set out the affidavit filed on behalf of the State Government as to how the order came to be passed. We have no reason to think that the averments made in the affidavit with regard to subversive activities on the border of India with China are not correct. In view of the facts mentioned therein there can be no doubt that the action under r. 131(2)(gg) was taken as stated in the order for the purpose of the defence of India, civil defence, the public safety, the maintenance of public order and the efficient conduct of military operations, and for maintaining supplies and services essential to the life of the community. It is true that at one stage the State Government was thinking of nationalising this particular route and if that scheme had gone through, action would have had to be taken under Ch. IV-A of the Motor Vehicles Act. But the reports as to subversive activities which were thought to be prejudicial to the defence of India had started to come in as far back as 1960 long before the Chinese invasion of India and the matter was under consideration for almost four years before the impugned order was passed. The question became urgent after the Chinese invasion of India in October 1962. Even so, the State Government explored various means of stopping activities prejudicial to the defence of India on the border between India and China. There can be no doubt that the matter was considered from all aspects and eventually it was decided to take action under r. 131(2)(gg) of the Rules. In these circumstances it cannot possibly be said that the action was mala fide and was taken to avoid payment of compensation under Ch. IV-A. The fact that at one stage nationalisation and consequent payment of compensation under Ch. IV-A was under consideration does not mean that if eventually action was taken under r. 131(2)(gg) to stop activities prejudicial to the defence of India such action was mala fide or was merely a device to avoid payment of compensation. The long period of almost four years which was taken for coming to a decision shows the circumspection with which the State Government acted when it finally decided to pass the order under r. 131(2)(gg). We are therefore of

opinion that there is no question of the order being mala fide or having been passed as a device to avoid payment of compensation under Ch. IV-A of the Motor Vehicles Act. Some of the words used in the counter-affidavit on behalf of the State Government in reply are somewhat unfortunate and inapt, but we have to doubt that the impugned order was passed without any mala fide and was not a device merely to avoid payment of compensation.

Then we come to the argument that the action taken was more than the situation demanded and therefore under s. 44 of the Act the order was vitiated. Section 44 provides that "any authority or person acting in pursuance of this Act shall interfere with the ordinary avocation of life and the enjoyment of property as little as may be consonant with the purpose of ensuring the public safety and interest and the defence of India and civil defence". We are of opinion that if a person contends that a particular order contravenes s. 44, it is for him to show that anything less than what the order provides would have met the needs of the situation. In the present case the appellants have failed to show any such thing. Besides the affidavit filed on behalf of the State Government shows that for a long time attempts were made to see if the prejudicial activities complained of could be stopped in any other way. It was only when it was felt that there was no other way of stopping the prejudicial activities of the employees of the union that the order in question was passed. In the circumstances we are not prepared to hold that the order in question interferes with the rights of the appellants more than was necessary for the purpose to be attained.

This brings us to the last point that has been urged on behalf of the appellants, namely, that it was not proved that the State Government was satisfied that it was necessary and expedient for securing the defence of India and civil defence, the public safety, the maintenance of public order and the efficient conduct of military operations and for maintaining supplies and services essential to the life of the community that the order should be passed. It does appear that the affidavits filed in the High Court were not quite clear on this point. Therefore we gave an opportunity to the State Government to file an affidavit to show that the satisfaction of the State Government necessary before passing an order of this kind was arrived at. In consequence an affidavit was filed on behalf of the State Government on August 16, 1965 by the Deputy Secretary (Home Department) U.P. Government, Lucknow. In that affidavit it has been stated that under the rules relating to the allocation of business, matters relating to the subject matter which lad to the issue of the impugned notification have to be submitted to the Chief Minister before the issue of orders. It was further stated that after various meetings of the officials of the State, the matter was put up before the Chief Minister on December 5, 1963 or so and the Chief Minister after considering all aspects decided that it was necessary to take over the route in question. The matters were further considered by various officers and there was correspondence with the Government of India and eventually on July 30, 1964, it was finally decided by the Chief Minister to take over the route in question in the interest of security. It was thereafter that the order of August 17, 1964 was issued by the Transport department with the concurrence and approval of the Home Department. In view of this affidavit filed in this Court there can be no doubt that the necessary satisfaction of the State Government which is a condition precedent for the issue of an order under the rules was there before the impugned order was issued.

The appeals therefore fail and are hereby dismissed. In the circumstances we order the parties to bear their own costs.

Appeals dismissed.

</html