Samrathmal Keshrimal Agarwal Bus Operator

Vs

Regional Transport Authority, Indore and Another

Civil Appeal No. 378 of 1970

(J. M. Shelat, I. D. Dua JJ)

05.05.1971

JUDGMENT

SHELAT, J. -

1. The appellant carries on the business of plying stage carriages for transporting passengers. In 1962 he was granted at stage carriage permit by the Transport authorities under the Motor Vehicles Act, IV of 1939 (hereinafter referred to as the Act) bearing No. 203/62 for the route between Ratlam and Kukshi via Dhar. The permit was renewed on December 14, 1965 with effect from August 14, 1965 for period of 3 years i.e., upto August 15, 1968.

2. Under Section 68C of the Act, the respondent-corporation published a scheme bearing No. 37 in the Madhya Pradesh Government Gazette, dated March 12, 1965 which included amongst other routes Indore-Dhar and Bagh-Kukshi routes. In that scheme, the appellant's said permit was shown as one of the permits which would have to be cancelled. On being objected to by a number of operators that scheme was rejected by an order dated January 20, 1967 passed of the Government under Section 68D(2) of the Act.

3. The respondent-corporation had also prepared and published another scheme in the Government Gazette of February 12, 1965, called scheme 36. The scheme contained 37 routes, 4, 5, 6, 18, 19 and 20 of which were as follows :

4. Indore-Ratlam via Kasur 5. Indore-Ratlam 6. Indore-Khachrod via Badnawar 18. Ratlam-Digthan via Nagdo, Dhar 19. Ratlam-Dhar via Bakhatgarh, and 20. Ratlam-Dhar.

Clause (2) of the scheme set out all the aforesaid 37 routes over which the Corporation proposed to provide State Road Transport Services. Clause (4) provided that no person that other than the Corporation would be permitted to operate transport services on the routes or portions thereof specified in clause (2) except only those covered by an agreement between the M.P. State Government and the Rajasthan Government. Clause (5) of the scheme provided that transport services would, subject to the provisions made in subsequent clauses (which provisions for the purposes of this appeal are not relevant, and therefore need not be set out here), be provided by the corporation "exclusively on Indore-Ratlam, Neemuch, Ratlam-Dhar and Ratlam-Mhow roads covering portions of the routes specified in clause (2) above and in conjunction with others on Ratlam-Sallana, Pipliya-Rampura ..." and other routes specified therein. Clause 7 (a) set out as many as 43 permits already granted to private operators which would have to be cancelled. The appellant's permit for Ratlam-Dhar-Kukshi route, however was not included amongst the said 43 permits. That clause, however, provided :

Similar or any other permits, if any, granted on any route covering Indore-Ratlam-Neemuch, Ratlam-Mhow and Ratlam-Dhar portions shall also deemed to have been cancelled.

Clause 7(c) set out six permits which covered portions of Indore-Ratlam-Neemuch, Ratlam-Mhow and Ratlam-Dhar roads which would be made ineffective, i.e., persons operating under those permits would not be allowed to pick up passengers from any station to any station lying on the above roads and vice versa. Here too the appellant's said permit was not mentioned. But as in the case of Clause 7(a), there was a residuary statement below the list of the said six permits to the effect that "similar or any other permits" granted on any route covering portion or portions of the Indore-Ratlam-Neemuch, Ratlam-Mhow and Ratlam-Dhar routes would be deemed to have been made ineffective.

4. In pursuance of the power contained in Section 68D(2), the Special Secretary (Home) to the State Government passed an Order, dated January 2, 1967, granting the Government's approval to scheme 36 with certain modifications. Para 9 of the Order stated that nine operators had not been mentioned in the scheme although their permits were affected. In other words, notices as regard the scheme had not been served upon them so as to enable them to raise their objections to it, if any. They were, therefore, served during the pendency of the approval proceedings before him. The permits of two them, however, had expired. With regard to the remaining seven operators, whose routes under the permits granted to them partially overlapped over the routes proposed to be exclusively taken over by the Corporation, the Secretary felt that in view of the decision of the Madhya Pradesh High Court in Misc. Petition 107 of 1966, dated September 15, 1966 they could not be impleaded by any subsequent notices, that therefore, their permits could not be disturbed and they would have to be allowed to operate over the portions of the said routes in respect of which they had the permits, although those portions were part of the routes declared exclusive for the respondent-corporation. This view meant that the residuary statements in Clauses 7(a) and (c) of the scheme by which it was stated that permits not expressly set out in those sub-clauses would also be deemed to be cancelled or made ineffective, was not of any efficacy and that if such permits were intended to be affected their holders had to be given notices. The order then proceeded to state that the private operators affected by the scheme fell into two categories, (1) those whose routes partially overlapped the exclusive routes in the sense that at least one terminus of their routes partially overlapped the exclusive routes in the sense that at least one terminus of their routes lay outside the exclusive routes, and (2) those whose routes lay wholly within the exclusive routes; in other words, both the termini of their routes fell within the routes marked exclusive for the corporation. According to the Secretary, these two categories of permit-holders constituted distinction in mind, the only course open to the corporation was to drop from the scheme all those operators who were similarly situated vis-a-vis the exclusive routes, as the said seven omitted operators. In other words, according to him, the discriminatory element of the scheme could be removed by limiting it to such operators whose routes lay wholly within the routes proposed to be taken over exclusively by the corporation. The order suggested that if the corporation wanted to include the permit-holders who fell within the first category, it would put up another scheme which would include them. No such scheme was, however, made or published.

5. It may be mentioned here that para 11 of the Order set out permits which would have to be dropped from the scheme in pursuance of what was stated in para 10. The appellant's said permit 203/62 was, however, not one of those so set out although it was subsisting at the date when the date when the said Order was made.

6. As aforesaid, the permit held by the appellant as renewed in 1965 was effective up to August 15,

1968. The appellant, therefore, applied for renewal of that permit in respect of entire route, namely Ratlam-Dhar-Kukshi. By his order dated January 7, 1969, the Regional Transport Authority granted him a renewal for part of the route only, namely, between Dhar and Kukshi, thus dropping that portion of the route which lay between Ratlam and Dhar, a distance of about 60 miles from the total mileage of 128 miles. The reason given for the reduction was as follow :

The portion of the route from Ratlam to Ratlam to Dhar is included in scheme 36, and hence no renewal can be granted for this portion from Ratlam to Dhar in view of Hon'ble High Court decision passed in Misc. Petition 337 of 1968 dated December 20, 1968.

That decision was that a scheme under Chapter IV-A of the Act had the force of law, that since such a scheme is finally made by an order of approval by the State Government, it is also an order within the meaning of Section 68B and has effect, notwithstanding anything inconsistent therewith contained in Chapter IV, that under Section 68F, the Regional Transport Authority is bound to give effect to such a scheme and for that purpose may refuse an application for renewal of any permit, cancel any existing permit or modify such existing permit. The High Court had also held that the Regional Transport Authority had no jurisdiction whatsoever to grant a permit with authority to ply stage carriage on the road part of which is a route of complete exclusion under a scheme. (See M.P.S.R.T. Corporation v. R. T. A., Rewa (AIR 1969 MP 183)).

7. The appellant thereupon filed a writ petition in the High Court of Madhya Pradesh for a mandamus directing the R.T.A. to grant a renewal in respect of the entire route between Ratlam and Kukshi. By its order impugned in this appeal the High Court interpreted clause (5) of the scheme and held that its first part contradicted its second part inasmuch as though the first part provided complete exclusion for Ratlam-Dhar route together with two other routes, the second part provided that the routes named therein namely, Indore-Khachrod via Badnawar, Jaora-Mandsaur-Rampura, Dhar-Badnawar-Ujjain and Jaora-Neemuch routes should be operated "in conjunction" with others. The view of the High Court was that the routes, Indore-Khachrod via Badnawar and Dhar-Badnawar-Ujjain includes the sector Badnawar to Dhar and under the second part of clause (5) that sector was to be operated in conjunction with private operators holding permits for that sector. The High Court held that in view of the aforesaid contradiction it could not be held that the sector between Badnawar-Dhar was exclusively earmarked for the corporation and in that view directed the R.T.A. to grant a renewal to the appellant so as to include that part of the route which lay between Badnawar and Dhar. The High Court, however, did not agree with the appellant that the route between Ratlam and Badnawar should also be included in the renewal as that part of the route, according to the High Court, was made exclusive for the corporation.

8. Section 68C authorises a State Transport Undertaking, to prepare and publish a scheme in relation to any area, route or portion thereof, if, it is of opinion that for purposes therein set out it should run and operate its own service thereon and such a scheme can provide that the undertaking should do so to the exclusion, complete or partial, of other persons or otherwise. Under Section 68-D(1) persons and authorities mentioned therein can file objections to such a scheme within the prescribed time. Under sub-section (2), the State Government may after considering such objections approve or modify the scheme. Section 68F next provides that where, in pursuance of an approved scheme, a State Transport Undertaking applies for permit, the R.T.A. shall issue such permit to such undertaking notwithstanding anything to the contrary contained in Chapter IV. Sub-section (2) of the section provides that of the purpose of giving effect to the approved scheme in respect of a notified area or notified route, the R.T.A. may, by order, refuse to entertain any application for the grant or renewal of any other permit or reject any such application as may be pending cancel any

existing permit or modify the terms or such an existing permit. It is clear that under this sub-section the R.T.A. has been embowered to refuse to entertain an application for the grant or renewal of a permit "for the purpose of giving effect to the approved scheme in respect of a notified area or notified route"

9. The question, therefore, is whether the R.T.A. could under Section 68F(2) refuse to entertain the appellant's application for renewal on the ground that he was doing so for the purpose of giving effect to the scheme as approved by the Special Secretary who was exercising the power of the State Government in that behalf. The question, in other words, is what precisely was the scheme as approved by the Special Secretary.

10. It is well settled that once a scheme under Section 68C is prepared and published and is approved by the State Government under Section 68D(2), the R.T.A. has no discretion and is bound to grant a permit to the State Transport Undertaking in respect of the route or routes exclusively earmarked for such undertaking under the scheme. (See Abdul Gafoor v. State of Mysore ((1962) 1SCR 909 : AIR 1961 SC 1536) and Capital Multi-Purpose Co-operative Society v. State of M.P. ((1967) 3 SCR 329 : AIR 1967 SC 1815) In such a case the permits held by private operators in respect of the routes so earmarked can be lawfully cancelled. (See Sobhraj Odharmal v. State (1963 Supp 1 SCR 99 : AIR 1963 SC 640).

11. The argument was that under scheme 36 the routes set out therein including the route between Ratlam and Dhar were nationalised, and therefore, could only be operated upon by the respondent-corporation once that scheme was published and approved by the State Government. That no doubt is true, but the difficulty in present case arises by reason of the language used in clause (5) of the scheme. As aforesaid, the High Court felt that the language (5) was contradictory in that although it first said that the routes between Indore-Ratlam-Neemuch and Ratlam-Dhar would be exclusively operated by the corporation, the latter part of that clause stated that the routes, for instance, between Indore-Badnawar-Khachrod which would include the sector between Badnawar and Nagda and Dhar-Mhow which would include Dhar-Nagda would be operated in conjunction with others, i.e., private operators. It was on account of his contradiction that the High Court directed the R.T.A. that the sector between Badnawar and Dhar should be included in the in the renewal asked for by the appellant and that the application for renewal in respect of that part of the route was wrongly refused. While passing its order the High Court, however, took into consideration only clause (5) of the scheme as originally published, and did not consider the effect of the modifications made in the scheme by the Special Secretary during the approval proceedings before him. What had happened was that during the hearing of those proceedings the Secretary noticed that seven private operators, whose routes partially overlapped the routes proposed to be exclusively taken over by the corporation, had not been served with notices and that since, according to a decision for the High Court, subsequent notices to them would not avail, their permits in respect of the overlapping sectors could not be disturbed and consequently those seven operators would have to be left out of the scheme. The next difficulty, he felt, was that if those seven operators were to be left out, other operators, similarly situated and whose routes overlapped in like manner, would also have to be left out, as otherwise the scheme was liable to be attacked on the grounds of discrimination. For ascertaining who amongst the private operators should be so left out he evolved a principle. That principle was that there would be two types of operators - (1) those whose routes overlapped the routes exclusively earmarked for the corporation in the sense that at least on terminus of the routes operated by them lay outside the exclusive routes, and (2) those whose routes lay wholly within the exclusive routes, i.e., both the termini of whose routes lay wholly the exclusive routes. To avoid any attack on the scheme on the ground of discrimination, he modified the scheme by limiting it to the

second type of operators only and held that the first type of operators fell in the category of the aforesaid seven operators and their permits should not, therefore, be disturbed. In para II of the Order he set out the permits which would have to be dropped from the scheme, i.e., that the holder of those permits would be permitted to operate on the routes for which permits had been issued to them in conjunction with the corporation. He suggested that the corporation should put forward a fresh scheme affecting them also if it desired to operate exclusive on these sectors.

12. It is true that the permit held by the appellant was not included in the list set out in para 11 of the Order. But of January 2, 1967, when the Order was made the appellant's permit for the route between Ratlam and Kukshi was subsisting. The appellant also clearly feel within the first type or category of operators inasmuch as one terminus of his route, namely, Ratlam, fell within the route proposed to be nationalised, i.e., Ratlam-Dhar, and the other terminus, namely, Kukshi, fell outside that route. His permit, therefore, ought to have been included in the list of permits set out in para 11 of the Order which were not to be affected by the scheme as modified by him, unless and until the corporation put forward a new scheme affecting such permits also.

13. Since the High Court held that the sector between Badnawar-Dhar had to be included in the renewal ordered by the R.T.A. on the ground that clause (5) of the scheme included that sector as one to be operated in conjunction with the private operators, it ought to have included on the same reasoning the sector between Ratlam and Badnawar also. That is because, according to the modifications made by the Secretary, private operators whose routes where such that both their termini did not fall within the routes proposed to be made exclusive for the corporation were to be permitted to operate in conjunction with the corporation. There can be no manner of doubt that the appellant fell within first type or category of operators out of the two categories formulated by the Secretary and who were not to be disturbed on the principle evolved by him in his said Order. In respect of both the routes proposed to be nationalised, namely, Indore-Ratlam-Neemuch and Ratlam-Badnawar-Dhar, one of the termini, namely, Ratlam, fell within the routes proposed to be exclusive and the other, namely, Kukshi, fell outside both of them. If, therefore, clause (5) of the scheme as originally published and modifications made therein by the Secretary by para 10 of his Order were to be read together, as they must be, because the R.T.A. was bound by the scheme approved by the Government, then, in consonance with the reasoning adopted by High Court, the High Court could not have limited the scope of its order only to the sector between Badnawar and Dhar, but should have extended it over the entire route from Ratlam to Dhar and to Kukshi.

14. The being the position, the R.T.A. could not have refused to grant the renewal as applied for by the appellant and restrict the renewal to the sector between Dhar and Kukshi on the ground that under the scheme as approved by the Government the route between Ratlam to Dhar was exclusively earmarked for the corporation. On a proper construction of clause (5) of the scheme and the modifications made therein by the Secretary that was not so, and therefore, the R.T.A. was no right in turning down the appellant's renewal application for the whole of the route between Ratlam and Kukshi. Nor was the High Court right in limiting its order to the sector between Badnawar and Dhar.

15. For the reasons aforesaid we allowed the appeal and set aside the order of the High Court by which the High Court upheld the R.T.A.'s decision excluding the sector between Ratlam and Badnawar from the appellant's permit on the ground that that part of the route was exclusively earmarked for the corporation under the scheme as approved by the Secretary. The inclusion by the High Court of the sector between Badnawar and Dhar in the renewal granted by the R.T.A. stands as no appeal against the part of the order of the High Court was filed by either of the respondents and

has consequently become final and binding on them. The consequence is that the application for renewal by the appellant to the extent of the sector between Ratlam and Badnawar will have to be remitted to the R.T.A. to be disposed of by him in accordance with law and the observations made herein above. That has to be done for the reason that his exclusion of that part of the route only on the ground that it was being done by him for the purpose of implementing or in pursuance of the scheme as approved by the Secretary cannot be sustained. The R.T.A., however, is at liberty to deal with and dispose of the said application is respect of the sector Ratlam to Badnawar on other grounds available to him under any other provision of the Act or the Rules made thereunder. The respondent corporation will pay to the appellant his costs of this appeal.

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