

Ch. Khazan Singh and Others

Vs

State of U. P. and Others

Amar Transport Roadways and Shri Duluh Singh

Vs

State of U. P. and Others

Civil Appeals Nos. 1737-1745

(CJI A. N. Ray, K. K. Mathew, P. N. Bhagwati, H. R. Khanna, A. Alagiriswami JJ)

03.12.1973

JUDGMENT

KHANNA, J. –

1. The validity of schemes approved by Uttar Pradesh Government under Section 68-D of the Motor Vehicles Act, 1939 (Act 4 of 1939) (hereinafter referred to as the Act) for inter-State routes as a result of which private operators including those who had been granted permits by Regional Transport Authorities of Rajasthan were excluded from those routes has been called in question in Civil Appeals Nos. 1737-1745 of 1972 and Civil Appeals Nos. 1870 and 1871 of 1972 which have been filed on certificate against judgment of the Allahabad High Court. This judgment would dispose of all the appeals. It would be necessary to reproduce only the facts of the case giving rise to Civil appeal No. 1738, for the Counsel for the parties are agreed that the decision in that appeal would also govern the other appeals as the question of law involved in all these appeals is identical.

2. On June 14, 1960 a letter was sent by the Deputy Secretary to the Government of Rajasthan to the Secretary to the government of Uttar Pradesh in reply to an earlier letter received from the Transport Commission Uttar Pradesh conveying approval of the Rajasthan Government for the nationalisation of the undermentioned routes for the operation of services by the State transport undertakings of both States in accordance with the reciprocal arrangement arrived at between the two States :

1. Bharatpur-Agra
2. Bharatpur-Mathura
3. Alwar Mathura
4. Mathura-Kama Kosi via Goverdhan
5. Agra-Dholpur

We are in the present appeals concerned with four of the routes, i. e. the routes mentioned above other than Bharatpur-Mathura. Appeal No. 1738 of 1972 relates to Dholpur-Agra route. It may be

mentioned that Dholpur, Bharatpur, Alwar and Kama Kosi are situated in Rajasthan while Agra and Mathura are situated in Uttar Pradesh. Notification dated December 9, 1961 by the Uttar Pradesh government under Section 68-C of the Act in respect of a proposed scheme for providing State road transport passenger services on Inter-State Agra-Dholpur route. According to the proposed scheme, no persons other than the State Transport undertaking would be permitted to provide any road transport services on the route or portions thereof. The scheme also visualised the cancellation of the permits which had been granted to the private operators, including the appellants. Objections were invited with regard to the proposed scheme from persons affected by the scheme and the same was approved under Section 68-D (2) of the Act by the Joint Judicial Secretary to the government of Uttar Pradesh who was the hearing authority, as per order dated July 30, 1962. The Central government conveyed its approval to the scheme under the proviso to sub-section (3) of Section 68-D of the Act as per letter dated February 6, 1963. Notification dated February 20, 1963 was published by the Uttar Pradesh government in the Official Gazette dated March 16, 1963 for the publication of the approved scheme under sub-section (3) of Section 68-D of the Act. Clauses 1, 2, 4 and 8 of the scheme as under :

- "1. The State Road Transport passenger services shall commence to operate from April 1, 1963 or thereafter.
2. State Road Transport passenger services shall be provided on the Inter-State route Agra Dholpur of Agra Region.
3. No persons other than the State Transport Undertakings will be permitted or provide any Road Transport Services on this route or portions thereof specified in clause (2) above.
4. The number of private Transport Vehicles on the route or portion thereof specified in clause (2) above shall be reduced to nil."

It was also provided in the scheme that the permits of the private operators would be stand cancelled. Provision was made for compensation for the premature cancellation of the permits of the private operators. No compensation was, however, to be paid when a permit for an alternative route or area in lieu thereof was offered by the Regional Transport Authority and accepted by the holder of the permit. By notification dated April 9, 1963 the permits in favour of the private operators, including the appellants, issued by the Regional Transport Authority Jaipur and countersigned by the Regional Transport Authority Agra were cancelled under sub-section (2) of Section 68-F of the Act.

3. The appellants, who are bus operators of Rajasthan, and some other thereupon filed petitions under Articles 226 and 227 of the constitution to challenge the validity of the above notifications. The learned Single Judge who heard the writ petitions came to the conclusion that a State could not by taking unilateral action territory. The learned Judge was of the view that in framing the scheme the State transport undertaking performed executive function of the State. View was expressed that one State could not cancel permits held by the bus operators of another State. Finding was also given that effective notice had not been given to the bus operators of Rajasthan as the notification were published in the Gazette of Uttar Pradesh only. The Writ petition were accordingly allowed and the impugned notifications were quashed by the learned Single Judge.

4. On appeal the Division bench of the High court held that when an undertaking proposes a scheme

and the same is approved by the State government, the undertaking and the State Government really perform the functions of the Central Government under clause (2) of Article 258 of the Constitution. Regarding the cancellation of the permits, the Division Bench observed :

"The Bus Operators of Uttar Pradesh held permits granted by the Transport authorities of Uttar Pradesh. They could, however, not legally ply their vehicles on hire in Rajasthan beyond the limits of Uttar Pradesh without first having their permits countersigned by the Transport authorities of Rajasthan. What really happened was that when the Scheme was finalised, the permits of the operators of Uttar Pradesh were cancelled by the transport authorities of Uttar Pradesh and the counter-signatures made by the Transport authorities of Rajasthan were cancelled by those transport authorities. Similarly, the permits held by those operators of Rajasthan were cancelled by the Transport authorities of Rajasthan and the counter-signatures on those permits made by the transport authorities of Uttar Pradesh were cancelled by these transport authorities. We therefore find no substance in this argument advanced on behalf of the respondents."

The High Court repelled the contention advanced on behalf of the appellants that they had no knowledge of the proposed schemes. It was observed that the relevant provisions for publication of the schemes were complied with and that notices were put up on the notice boards of the State transport authorities of Uttar Pradesh as well as of Rajasthan. The Division Bench accordingly allowed the appeals filed by the State and held that the impugned schemes and notifications were valid in law. The division Bench while allowing the appeals observed :

"In consequence, we allow these appeals set aside the order of the learned single Judge and hold that the impugned Schemes and notifications are valid in law. The learned Single Judge has said in his judgment that individual petitions had raised some additional and separate grounds for questioning their exclusion from certain routes. He, however, felt that it was not necessary to consider individual cases of petitioners as all the writ petitions could be decided on general grounds common to all the petitions emerging from admitted facts. The individual grounds must now be considered by the learned Single Judge. He, however, is no longer available the Chief Justice for nominating a Bench."

5. The correctness of the view taken by the Division Bench has been assailed in these appeals. Before dealing with the contentions advanced, we may refer to the relevant provisions of the Act as they existed at the relevant time. Chapter IV-A was inserted in the Act by the Motor Vehicles (Amendment) Act, 1956 (Act 100 of 1956). The said chapter came into force with effect from February 16, 1957 and consisted at the relevant time of Sections 68-A to 68-I. Section 68-A contains definitions. According to clause (b) of that Section, "State transport undertaking" means any undertaking is carried on by, - (i) the Central Government or a State Government; (ii) any Road Transport Corporation established under Section 3 of the Road Transport Corporation Act, 1950; (iii) the Delhi Road Transport Authority established under Section 3 of the Delhi Road Transport Authority Act, 1950; (iv) any municipality or any corporation or company owned or controlled by the State Government. Section 68-B provides that the provisions of Chapter IV-A 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. Sections 68-C and 68-D at the relevant time read as under :

"68-C. where any State transport undertaking is of opinion that for the purpose of providing an efficient, adequate economical properly co-ordinated road transport service, it is necessary in the public interest that road transport services in general or nay 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 of route proposed to be covered and such other particulars respecting thereto as may be prescribed and shall cause every scheme to be published in the Official Gazette and also in such other manner as the State Government may direct.

68-D. (1) any person affected by the Scheme published under Section 68-C, within thirty days from the date of the publication of the scheme in the Official Gazette, file objection 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 under taking to be heard in the matter, if they so desire, approve or modify the scheme.

(3) The Scheme as approved or modified under sub-section (2) shall then be published in the Official Gazette by the State government and the same shall thereupon become final and shall be called the approved scheme and the area or route in which it relates shall be called the notified area or notified route :

Provided that no such scheme which relates to any Inter-State route shall be deemed to be an approved scheme unless it has been published in the Official Gazette with the previous approval of the Central Government."

Chapter IV-A incorporates special provisions relating to State transport undertakings. The provision of this chapter and the rules and orders made thereunder have in view of Section 68-B an overriding effect and would prevail even though they are inconsistent with anything contained in chapter IV of the Act or any other law for the time being in force or any instrument having effect by virtue of any law. Section 68-C enables a State Transport undertaking as, defined in Section 68-A of the Act, to prepare a scheme for nationalisation of transport service, with the particulars mentioned in the Section, in case that State transport undertaking is of the 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 service in general or in any particular case of such service should be run and operated by the State transport undertaking to the exclusion, complete or partial, of other persons or otherwise. It is also provided that such a scheme shall be published in the Official Gazette and also in such other manner as may be directed by the State Government. Section 68-D enables the persons affected by the Scheme to file objections within thirty days from the date of publication of the proposed scheme in the Official Gazette before the State Government. The State Government has thereafter to consider the objections after giving an opportunity to the objector of his representatives and the representatives of the State transport undertaking to be heard in the matter. Power is given to the State Government to either approve the scheme or modify the same. the scheme as approved or modified is then published in the Official Gazette by the State

Government and thereupon the scheme becomes final. The approved scheme then operates for the area or the route to an Inter-State route, the same shall not be deemed to be an approved scheme unless it has been published in the Official Gazette with the previous approval of the Central Government.

6. It has been argued on behalf of the appellant that a State Government cannot approve a scheme for Inter-State route under Section 68-D of the Act as the powers of the State Government can operate within its own territory and cannot operate in an area beyond the territorial limits of the State. This contention, in our opinion, cannot be accepted as it runs counter to the plain language of the proviso to sub-section (3) of Section 68-D of the Act. According to the proviso, no scheme which relates to an Inter-State route shall be deemed to be an approved scheme unless it has been published in the Official Gazette with the previous approval of the Central Government. The proviso manifestly contemplates that the State Government can in accordance with the procedure laid down in Chapter IV-A of the Act approve a scheme relating to an Inter-State route and publish the same. The only limitation on the power of the State government in this respect is that it should before publishing the scheme obtain the prior approval of the Central Government. Such previous approval of the Central government was admittedly obtained in respect of the Inter-State route with which we are concerned as per letter dated February 19, 1963. An Inter-State route is one of which one of the termini falls in one State and the other in another State. Agra-Dholpur route is admittedly an Inter-State route as the termini of the route are situated in two different States. In the face of the proviso to sub-section (3) of Section 68-D of the Act, we find it difficult to accede to the submission that the Uttar Pradesh Government was not competent to approve and publish the impugned scheme relating to Agra-Dholpur route.

7. There is no force in the contention advanced on behalf of the appellant that approval of the State Government for a scheme relating to an Inter-State route can only be in respect of that portion of the route which is within its own territory and not in respect of the entire Inter-State route. If the approval of the State Government was to be accorded in respect of that portion of Inter-State route which was within its own territory, there would have been no necessity to obtain the prior approval of the Central Government. A State Government is competent to approve a scheme for nationalisation of transport service on a route within its own territory if it complies with the other necessary to obtain the prior approval of the Central government. A State government is competent to approve a scheme for nationalisation of transport service on a route within its own territory if it complies with the other necessary formalities prescribed by law. There is in such an event no necessity to obtain any approval of the Central Government. The necessity of obtaining prior approval of the Central government arises because the scheme envisages nationalisation of transport service not only for that part of the Inter-State route which is within the territorial limits of the State Government approving the scheme but also for the remaining part of the route which is outside the said territorial limits. Inter-State route would normally cover the entire route and not merely the portion of the route which is within the territorial limits of the State government which accords approval.

8. It has then been argued by the learned Counsel for the appellant that when a State Government approves a scheme, it makes law and as a State Government cannot make law for areas outside its territorial limits, the scheme approved by the State government in respect of an Inter-State route is unconstitutional. This argument in our opinion, is fallacious and untenable. A scheme approved by a State Government is undoubtedly law as defined in clause (3) of Article 13 of the Constitution, according to which unless the context otherwise requires, "law" any Ordinance, order, Bye-law, rule, regulation notification, custom having in the territory of India the force of law. The above of "law"

is for the purpose of Article 13 in the context of fundamental rights contained in Part III of the constitution. The State government in approving a scheme does not legislate in the sense, the Legislature of a State makes law under Article 245 of the Constitution for the whole or any part of the State. The limitation in the power of a State Legislature to make laws for the whole or any part of the State and not for areas outside the territorial limits of the State cannot be invoked for the purpose of placing a restriction on the power conferred upon the State government by Parliamentary legislation to approve a scheme relating to an Inter-State route.

9. Contention has also been advanced by the learned counsel for the appellants that the State Government in approving a scheme exercises executive power. Such executive power, according to the contention, cannot operate in areas beyond the territorial limits of the State. In this connection, we find that the Motor Vehicles Act was enacted by the Central Legislature. Chapter IV-A of the Act containing the Section with which we are concerned was inserted in the Act by the Union Parliament. The State government in approving a scheme in respect of an inter-state route under sub-section (3) of Section 68-D of the Act exercises a statutory power which has been vested in it by a law under by the Parliament. The said law relates to the creation of a State monopoly in the matter of transport service. The executive power of the Union and each State under Article 298 of the constitution extends, inter alia, to the carrying of any trade or business. There is nothing in Article 298 to show that the trade or business carried on by a State must be restricted to the area within its territorial limits. On the contrary, the Article envisages the carrying on of the trade and business by a State without any territorial limitations. The only restriction on the executive power of the State in this respect is contained in clause (b) of the proviso to that Article. According to that clause, the executive power of the State shall, in so far as such trade or business is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament. Entry 35 in List III of Seventh Schedule to the Constitution relates to mechanically propelled vehicles including the principles on which taxes or such vehicles are to be levied. Under Entry 21 in List III of the Seventh Schedule, the Parliament can make laws for commercial and industrial monopolies. The expression "commercial and industrial monopolies", as held by this Court in the case of *H. C. Narayanappa & Ors. v. The State of Mysore & Ors.*, is wide enough to include grant or creation of commercial or industrial monopolies to the State and citizens as well as control of monopolies, dealing with the question of State as well as control of monopolies. Dealing with the question of State monopoly in the matter of transport service as envisaged by Chapter IV-A of the Act, Shah, J., speaking for the Court observed in the above mentioned case :

"The amplitude of the powers under the entry in the concurrent list expressly dealing with commercial and industrial monopolies cannot be presumed to be restricted by the generality of the expression 'trade and commerce' in the State List. If the argument of the petitioner's and the Intervener that legislation relating to monopoly in respect of trade and industry is within the exclusive competence of the State be accepted the Union Parliament cannot legislate to create monopolies in the Union Government in respect of any commercial or trading venture even though power to carry on any trade or business under a monopoly is reserved to the union by the combined operation of Art. 298 and the law which is protected from the attack that it infringes the fundamental freedom to carry on business by Art. 19 (6). We are therefore of the view that Chapter IV-A could competently be enacted by the Parliament under entry No. 21 read with Entry No. 35 of the concurrent List."

A scheme approved by the State Government under Sub-section (3) of section 68-D of the Act effectuates the object of state monopoly in the matter of transport service. Such a scheme, in our

opinion, does not entail encroachment by one State Government upon the executive sphere of another State Government. The action taken by the Uttar Pradesh Government in furtherance of the objective of a State monopoly in accordance with the statute made by Parliament cannot, in our opinion, be struck down on the ground of encroachment upon the executive power of the Rajasthan Government. In any case, there is no question of encroachment upon the executive domain of the State of Rajasthan in the present case as the whole thing is being done by the Uttar Pradesh government with the concurrence of the government of Rajasthan and the two Government are acting in concert.

10. In view of the above, it is not necessary to go into the question as to whether the validity of the action of the Uttar Pradesh Government in according approval to the scheme can be sustained under clause (2) of Article 258 of the Constitution.

11. The appellants have not challenged the constitutional validity of the proviso to sub-section (3) of Section 68-D of the Act. It has, however, been urged on their behalf that the proviso should be construed in such a manner so as not to contravene the Articles of the Constitution. In our opinion, the construction which we have placed upon the aforesaid proviso entails no contravention of the Articles of the Constitution.

12. We may now deal with some of the cases which have been cited on behalf of the appellants. The case of King Emperor v. Sibnath Banerji & Ors. related to the validity of Rule 26 of the Defence of India Rules framed under the Defence of India Act 1939. The rule was held to be valid. It was also held that it was not necessary for the Governor to be personally satisfied before an order under the above Rule committee held that it includes both a decision. Their Lordships further expressed disagreement with the view which sought a narrow reading of Section 49(2) and 124(2) of the Government of India Act, 1935. The case of In re The Delhi Laws Act; 1912 related to the delegation of legislative power and the difference between delegation of legislative power and conditional Gullapali Nageswara Rao & Ors v. Andhra Pradesh State Transport corporation & Anr. dealt with the procedure to be allowed for nationalising transport service. None of the above cited in our opinion, are of any real assistance to the appellant because the question involved in these appeals is materially different.

13. There is no force in these appeals. The same are accordingly dismissed with costs. One hearing fee.

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