

Sita Ram Sharma and Others

Vs

State of Rajasthan and Others

Civil Appeals Nos. 1850, 1851-1855, 1974, 1875, 2041-2046, 2057 and 2065-2068 of 1973 and 60-63, 280-281, 53-59 and 244 of 1974

(S. N. Dwivedi, P. Jagmohan Reddy JJ)

03.05.1974

JUDGMENT

DWIVEDI, J.

1. All these appeals now raise a common question of law and are being decided by a common judgment.
2. All the appellants were operators of State carriages in the State of Rajasthan. They held regular permits for various routes in the State.
3. The State has a Road Transport Corporation. It is called the Rajasthan State Road Transport Corporation. It was constituted on October 1, 1964 under the Road Transport Corporation Act, 1950. It has a General manager.
4. Section 19(2)(c) of the aforesaid Act empowers the Corporation to acquire routes for plying buses and to exclude private operators therefrom. In 1956 Parliament inserted Chapter IV-A in the Motor Vehicles Act for acquiring routes. Section 68C is to be found in that Chapter. It enables the State Government to make rules to carry into effect the provisions of the Chapter. The State of Rajasthan has made certain Rules under this section. Rules 3 and 4 are material for our purpose. Rule 3 provides that a scheme under Section 68C of the Motor Vehicles Act will be prepared by the General Manager of the State Transport Undertaking. Rule 4 provides that the scheme shall be published in the Gazette with certain particulars specified therein.
5. Acting under Rules 3 and 4, the General Manager of Corporation published schemes in the Gazette for nationalization of the appellants routes on September 22, 1969. Thereafter the procedure provided for in the provisions in Chapter IV-A was gone into; and the schemes then became final. Then the appellants filed writ petitions in the High Court of Rajasthan challenging the schemes. The schemes were challenged on various grounds. But the main ground of attack was that the Rajasthan State Road Transport Corporation and not its General manager, could prepare and publish a scheme. The validity of Rules 3 and 4 was also questioned.
6. The Rajasthan high Court rejected all the grounds of attack and dismissed the writ petitions. So these appeals.
7. During pendency of the appeals the Governor of Rajasthan has enacted an ordinance. The Ordinance is called the Motor Vehicles (Rajasthan Amendment) Ordinance, 1974 (Ordinance No. 3

of 1974). It was published in the State Gazette, dated January 23, 1974. Section 4 of the ordinance is relevant for our purpose. After Section 68C in Chapter IV-A, Section 4 adds a new Section 68CC. The new section read :

For the removed of doubts, it is hereby declared that where in exercise of the powers conferred by rules made under this Chapter, any scheme has been prepared or published under Section 68-C, by the General Manager of a State Transport Undertaking or by any other officer authorised in this behalf, the scheme shall be deemed to have been prepared or published by the State Transport Undertaking and the scheme shall not be questioned in any Court or before any other authority merely on the ground that the same has been prepared or published by the General manager or the other officer.

8. All counsels for the appellants have made the concession that if Section 4 of the Ordinance is constitutions, other points could not survive and the appeals could fail. Accordingly we have heard counsel for the parties first on the constitutionality of Section 4. After hearing all of them we are of opinion that Section 4 is validly made by the Governor.

9. The main argument is that the subject matter of Section 4 falls within Item 43 of List I of the Seventh Schedule to the Constitution. So the State Legislature could not enact Section 4. The rival contention of Dr. L. M. Singhvi, Advocate-General of Rajasthan, is that the subject matter of Section 4 in its true nature and character falls within Items 35 and 42 of List III of the Seventh Schedule to the Constitution.

10. Item 43 of List 1 read : "Incorporation, regulation and winding up of trading corporation, including banking, insurance and financial corporation but not including co-operative societies." Item 35 of List III read : "Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied." Item 42 of List III read : "Acquisition and requisitioning of property."

11. The Road Transport Corporation Act, 1950, is made by Parliament under Item 43 of List I. Section 19(2)(c) enables the Road Transport Corporation :

. . . to prepare schemes for the acquisition of and to acquire, either by agreement or compulsorily in accordance with the law of acquisition for the time being in force in the State concerned and with such procedure as may be prescribed, whether absolutely or for any period, the whole or any part of any undertaking of any other person to the extent to which the activities thereof consist of the operation of road transport services in that State or in any extended area.

12. We now pass on to Chapter IV-A of the Motor Vehicles Act. Section 68A is the definition provision. Clause (b) thereof defines the "State transport undertaking". It means any undertaking providing Road transport service, where such 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, and (iii) any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments.

13. Section 68B 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. Section 68C provides that

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

14. Acting under this provision read with Rules 3 and 4, the General Manager of the Rajasthan State Road Transport Corporation has prepared and published the impugned scheme of nationalization of routes.

15. It is not disputed by the appellant that the subject-matter of Chapter IV-A falls within Items 35 and 42 of List III. It would accordingly follow that Section 68A the definition clause, also is a law with respect to those very items. Section 4 of the Ordinance declares that any scheme prepared and published under Section 68C by the General Manager of State Transport Undertaking shall be deemed to have been prepared or published by the State Transport Undertaking. It also provides that the scheme shall not be questioned in any court or before any authority merely on the ground that the same has been prepared or published by the General manager. It may be observed that Section 4 makes no amendment in the Road Transport Corporation Act. It does not directly affect the power of the Road Transport Corporation under Section 19(2)(c) of the said Act. It has attempted to insert a new Section 68CC in Chapter IV-A of the Motor Vehicles Act. By this new section it has validated the scheme prepared and published by the General manager of a State Transport Undertaking as defined in Section 68C.

16. We have little doubt in our mind that the subject matter of Section 4 clearly falls within Items 35 and 42 of List III and not within Item 43 of List I. The subject-matter is the conferment of power of acquisition of a road transport undertaking by the General Manager the State Transport Undertaking. It has direct concern with acquisition. It has no concern with incorporation, regulation and winding up of trading corporations. The constitutionality of the law is to be determined by its read subject-matter and not by the incidental effect which it may have on any topic of legislation in List I. (See *Prafulla Kumar Mukherjee v. Bank of Commerce Ltd.* ((1947) FCR 28 : AIR 1947 PC 60 : 74 IA 23) and *Kannan Devan Hills Produce Company Ltd. v. The State of Kerala* ((1973) 1 SCR 356, 369, 370 : (1972) 2 SCC 218, 229)).

17. It is important to observe that Section 19(2)(c) of the Road Transport Corporation Act itself gives power to the Road Transport Corporation to prepare a scheme for the acquisition of road transport undertaking "in accordance with the law for the time being in force in the State concerned". This shows that the power under Section 19(2)(c) is subject to any State law. Section 4 of the impugned ordinance is a State law. In this view of the matter we are not concerned in this case with question that as Section 19(1)(c) has occupied the field, the State Legislature could not enact Section 4. It has kept the field open for the State law.

18. It is true that Section 4 of the Ordinance does not amend the definition provision Section 68C for all future times. That is so, because the object of Section 4 is to validate the scheme already prepared and published by the General manager of a State Transport Undertaking. It does not, however, affect the substance of the matter. The subject-matter of Section 4 relates to Items 35 and 42 of List III and not Item 43 of List I.

19. Counsel for the appellant have cited a number of cases in support of their argument. It is not necessary to cite them, for we do not think that they throw any useful light on the issue before us.

20. In the result, we find no force in these appeals and they are dismissed. In the circumstances of this case, there shall be no order as to costs.

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