

Ramesh Chand and Others

Vs

State of U. P. and Others

Dwarika Prasad and Others

Vs

State of Uttar Pradesh and Others

And

Smt. Roopwati (dead) by Lrs and Others

Vs

State of Uttar Pradesh and Others

Civil Appeals Nos. 804-810 of 1977, Writ Petitions Nos. 650-651, 652-653, 48, 394, 395, 691, 670, 680, 681, 687-688, 412-415, 416-418 of 1979 and Special Leave Petitions (Civil) Nos. 5193-5196 and 5517 of 1979

(Syed M. Fazal Ali, P. S. Kailasam, A. P. Sen JJ)

04.09.1979

JUDGMENT

KAILASAM, J. –

1. In all these appeals, writ petitions and special leave petitions the challenge is against the validity of the scheme framed by the State Transport Undertaking of U.P.
2. In giving special leave in Civil Appeals Nos. 804 to 810 of 1977 this Court restricted the special leave by stating : "Special leave granted confined to the alleged conflict between Section 68-C of the Motor Vehicles Act and Section 7 and Section 16 of the U.P. Amendment Act of 1976, (27 of 1976)". When the hearing in these matters started Mr. Garg, learned Counsel for the appellants, submitted that there is no conflict between Section 68-C of the Motor Vehicles Act, 1939 and Sections 7 and 16 of the U.P. Amendment Act. But his plea is that the amendment has not in any way affected or cured the defect in Section 68-C and therefore the defect in the scheme continues to render it invalid.
3. In terms of the restricted leave granted, we do not think it is strictly open to the learned Counsel to raise the plea which he has taken before us. But as several matters are involved and there is a conflict between two judgments of the Allahabad High Court we gave permission to the learned Counsel to raise this question.
4. The point that is raised by Mr. Garg is that the introduction of Sections 7 and 16 by the

Amending Act 27 of 1976, the Uttar Pradesh Motor Vehicles (Special Provisions) Act, 1976 does not dispense with the requirements specified in Section 68-C as the two sections relate only to an approved scheme.

5. In order to appreciate learned Counsel's contention it is necessary to set out Section 68-C of the Motor Vehicles Act, 1976. Section 68-C reads as follows :

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.

Section 68-C requires the State Transport Undertaking to 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 is thus necessary that the scheme should give (1) particulars of the services proposed to be rendered; (2) the area or route proposed to be covered; (3) such other particulars thereto as may be prescribed. The scheme prepared under Section 68-C did not specify the number of services to be provided. The Allahabad High Court in *Shashi Kant Rai v. Regional Transport Authority* (AIR 1978 All 68), held that if the particulars regarding the adequacy, etc. of the proposed transport services are not given in the draft scheme then it will not be possible for the objectors to file any effective objection to the draft scheme in this regard and it would be difficult for the Hearing Authority to give its decision whether the draft scheme will be able to provide road transport services which would fulfill the four purposes mentioned in Section 68-C. The Court held that the draft scheme must give particulars indicating how the proposed transport services would be efficient, adequate, economical and properly co-ordinated. The scheme mentioned "adequate number of State Transport Services, according to traffic requirements are to be provided on the route or the portion thereof mentioned in clause (2) above. The learned single Judge and the division bench of the Allahabad High Court were of the view that the draft scheme prepared under Section 68-C was defective as the minimum number of services and the vehicles which were proposed to be introduced on the road had not been mentioned. In order to get over the effects of the decision the U.P. legislature introduced the Uttar Pradesh Motor Vehicles (Special Provisions) Act, 1976 (U.P. Act No. 27 of 1976). Section 7 of the Act reads as follows :

Nothing contained in Section 68-C or Section 68-D the Principal Act shall be deemed to require or ever to have required a specification being made in an approved scheme of the number of services to be provided.

Section 16 of the Act is the validating section and runs as follows :

Notwithstanding any judgment, decree or order of any Court, any scheme prepared or published under Section 68-C, or approved or modified under Section 68-D of the Principal Act or purporting to have been prepared, published, approved or modified

shall not be deemed to be or have been invalid on the ground of the number of the services to be provided being not specified therein.

6. Mr. R. K. Garg, the learned counsel for the appellants, submitted that Section 7 is applicable only to approved schemes, i.e. for a scheme which had been approved under Section 68-D(3) and that its object is to cure the defect in approved scheme under Section 68-D where the number of services provided is not mentioned. The learned counsel would read the section that nothing contained in the Principal Act shall be deemed to require or ever to have required a specification of the number of services to be provided in an approved scheme. He would emphasize the words "approved schemes" and submit that the change if any is as regards the particulars required under an approved scheme under Section 68-D and that this section would not relate to the scheme under Section 68-C.

7. The marginal note to Section 7 states : "Specification of number of services not an essential requirement of Section 68-C or Section 68-D". The intention therefore is to make specification of number of services not an essential requirement under Sections 68-C and 68-D. The section therefore is intended to cover Section 68-C also. It is seen the intention is carried out by the section providing that : "Nothing contained in Section 68-C or Section 68-D of the Principal Act shall be deemed to require . . .". The operation of the section is thus intended to apply both to Sections 68-C and 68-D. The result would be that if one of the requirements of Section 68-C is that it should specify the number of services to be provided it shall be deemed that requirement was never there. The reference to the approved scheme is because Section 68-C and Section 68-D form part of the same procedure of publication of a scheme and approval of the scheme.

8. That this is the object is put beyond all doubt by introduction of the validating section, Section 16, which provides that in any scheme prepared or published under Section 68-C or approved or modified under Section 68-D of the Principal Act shall not be deemed to be invalid on the ground of number of services to be provided being not specified therein. We are satisfied that Sections 7 and 16 of the Act have validly provided that the specification of the number of services is not and shall be deemed to have never been an essential requirement in scheme prepared and published under Section 68-C or approved or modified and published under Section 68-D. The plea of the learned counsel therefore fails. In this view we hold that decision in *Shashi Kant Rai v. Regional Transport Authority* (AIR 1978 All 68) is erroneously decided.

9. When the arguments of Mr. Garg on this point and the reply thereto were heard, Mr. Shanti Bhushan, the learned counsel for one of the appellants, submitted that he may be permitted to raise the question of validity of Section 68-C. He submitted that if the amended (sic amending) Sections 7 and 16 of the U.P. Act have the effect of modifying Section 68-C and Section 68-C itself would not be valid. According to the learned counsel the requirement of Section 68-C is that before a scheme is prepared and published the State Transport Undertaking must be 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 sector that the road transport services should be run and operated by the State Transport Undertaking. In order to satisfy the requirements the learned counsel submitted that the scheme should give (1) particulars of the nature of the services proposed to be rendered, (2) area or route proposed to be covered and such other particulars respecting thereto as may be prescribed. The first two requirements with which we are concerned are under Section 68-C. Relying on a decision of this Court in *B. H. Aswathanarayan Singh v. State of Mysore* ((1966) 1 SCR 87 : AIR 1965 SC 1848 : (1965) 2 SCJ 824), the learned counsel submitted that if the requirement to specification of the number of services to be provided in the draft scheme is dispensed with, the particulars of the nature of services proposed to be rendered as required in

Section 68-C would be lacking. The learned counsel referred to page 93 of the case ((1966) 1 SCR 87 : AIR 1965 SC 1848 : (1965) 2 SCJ 824) wherein the Court observed that

When Section 68-C provides for giving particulars of the nature of the services proposed to be rendered, the intention is that such details should be given as are necessary to enable the objectors to make their objections. We do not think that these details would necessarily consist of the precise number of vehicles and trips to be used on each route. We see no difficulty in holding that the details of the nature of services proposed to be rendered may not only be in the form of a precise number of vehicles and trips but also in the form of a minimum and maximum number of vehicles and trips on each route.

Strong reliance is placed on the requirement that the details of the nature of services should not only be in the form of precise number of vehicles and trips but also in the form of minimum and maximum number of vehicles and trips on each route. But this statement is explained in the next two sentences where the court stated :

Furnishing of maximum and minimum number of vehicles and trips for each route would also in our opinion satisfy the requirement that particulars should be furnished of the services proposed to be rendered. Further the indication of minimum and maximum number of vehicles and trips for each route would give the necessary information to enable the objectors to oppose the scheme even with reference to the adequacy of the services proposed to be rendered. We do not think that the appellants are right in submitting that when the word "particulars" is used in that part of the section, it can only be satisfied if the exact number of vehicles and trips for each route is specified and that there is no other way of satisfying the requirement implicit in the use of the word "particulars".

It is thus clear that the exact number of vehicles and trips for each route need not be given and all that Section 7 of the amended Act provides is that the draft scheme as well as the approved scheme need not specify the number of services. The decision relied on by the learned counsel makes it clear that the number of vehicles and trips for each route need not be specified. We are therefore unable to accept the contention that the failure to specify the number of services would invalidate the draft scheme or the approved scheme.

10. The learned counsel Mr. Shanti Bhushan submitted that in any event as the maximum or minimum number of buses, vehicles and trips have not been mentioned, the scheme should be held up inoperative. This contention again is not factually sustainable as the impugned scheme under Section 68-C which was notified in the U.P. Gazette on December 4, 1961 gave the required particulars. Clause 3 of the scheme stated "adequate number of State Road Transport passenger services according to traffic requirements are to be provided on the route mentioned in clause (2) above. The provision of transport service otherwise than under the scheme is prohibited". Clause 2 provided that State Road Transport Passenger services shall be provided on the inter-State route Agra-Dholpur of Agra Region. Clause 6 provided that the transport vehicles which may be used on the route indicated in clause (2) above, shall be of country type and their carrying capacity shall be 30 to 45 seats. Clause 7 mentions the permits which have been cancelled. A reading of the scheme would indicate that transport vehicles and services will be provided on the routes taken over by country type vehicles with 30 to 45 seats capacity. There is no material to show that any of the operators or others entitled to object to the scheme raised this objection before the scheme was

approved in the year 1963. When specifically asked whether such an objection was taken to the draft scheme, the learned counsel for the appellants were unable to say that the objection was taken. We feel it is futile for them to raise the plea after a lapse of about 15 years. There is no substance in any of the contentions raised. One cannot but express amazement at the tenacity of the operators in stalling the scheme for nationalisation of public transport.

11. The appeals are dismissed with costs one set.

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