

M. S. Shivananda

Vs

Karnataka State Road Transport Corporation and Others

H. S. Ramchandra and Others

Vs

Karnataka State Road Transport Corporation and Another

Civil Appeal No. 2411 of 1978

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

18.09.1979

JUDGMENT

SEN, J. –

1. This appeal, by special leave, directed against a judgment of the Karnataka High Court dated July 26, 1978 and the connected petitions under Article 32 of the Constitution, raise a common question. It would, therefore, be convenient to dispose them of by this common judgment.
2. The short question involved in these cases is, whether the employees of the erstwhile contract carriage operators in the State of Karnataka acquired a vested right of absorption in service with the Karnataka State Road Transport Corporation under sub-clause (3) to clause 20 of the Karnataka Contract Carriages (Acquisition) Ordinance, 1976.
3. It will be convenient to refer in the first place to the legislative changes. On January 30, 1976 the Karnataka Contract Carriages (Acquisition) Ordinance, 1976 was promulgated by the Government of Karnataka under clause (1) of Article 213 of the Constitution. The said Ordinance was promulgated with the object of acquiring contract carriages operating in the State and for certain matters connected therewith. On the same day i.e., on January 30, 1976 the State Government issued a notification under Clause 4(1) of the Ordinance vesting every contract carriage owned or operated by such contract carriage operator along with permit, in the State Government absolutely free from all encumbrances. On the same day, the State Government made an order under sub-clause (1) to clause 20 of the Ordinance transferring all the contract carriages that vested in the State Government under the notification issued under sub-clause (1) to clause 4 of the Ordinance to the Karnataka State Road Transport or Corporation (hereinafter referred to as 'the Corporation') Sub-clause (3) to clause 20 of the Ordinance provided for absorption of certain categories of employees of contract carriage operators in the service of the Corporation. It also provided the ratio for absorption for different categories of employees that were entitled to be absorbed in the service of the Corporation.
4. The Ordinance was subsequently replaced by the Karnataka Contract Carriages (Acquisition) Act, which was published in the gazette on March 12, 1976. The Ordinance was repealed by the Act, and

it re-enacted the provisions of the repealed Ordinance, with a saving clause in sub-section (2) of Section 31, for preservation of anything done or action taken. The Act was substantially in similar terms except for the difference that the ratio prescribed by proviso to sub-clause (3) to clause 20 of the Ordinance, which laid down the categories of persons who could be absorbed in the service of the Corporation, was substantially altered and a new ratio was inserted in the proviso to sub-section (3) of Section 19 of the Act. Otherwise, sub-section (3) of Section 19 of the Act and sub-clause (3) to clause 20, of the Ordinance were identical in every respect. Under provision to sub-clause (3) to Clause 20, the total strength of the employees of the erstwhile contract carriage operators allowable for absorption was 7.9 per vehicle, while under proviso to sub-section (3) of Section 19 of the Act the same works out to 4.45 per vehicle. Further, while under the Ordinance conductors were entitled to be absorbed, the ratio provided under the Act shows that conductors are not included in the categories of persons who can be absorbed in the service of the Corporation.

5. It appears that although as many as 785 contract carriages were notified for acquisition, only 601 vehicles were actually acquired. The change in the ratio of absorption from 7.9 per vehicle under sub-clause (3) to Clause 20 of the Ordinance to 4.45 per vehicle under sub-section (3) of Section 19 of the Act adversely affected a large number of employees of the erstwhile contract carriage operators. A large number of writ petitions were, therefore, filed in the High Court challenging the validity of the proviso to sub-section (3) of Section 19 of the Act on various grounds, but by the judgment under appeal the High Court has repelled all the contentions. Thereafter, the remaining writ petitions were all withdrawn.

6. The appeal is against the judgment of the High Court and the employees have also directly approached the Court under Article 32.

7. Before dealing with the contention advanced in the appeal, it is necessary to set out the relevant provisions. Sub-clause (3) to Clause 20 of the Ordinance read as follows :

20(3). Every person who is a workman within the meaning of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) and has been immediately before the commencement of this Ordinance exclusively employed in connection with the acquired property, shall, on and from the notified date, become an employee of the Corporation on the same terms and conditions applicable to the employees holding corresponding posts in the Corporation. Any person not willing to become such an employee of the Corporation shall be entitled to retrenchment compensation as provided in the Industrial Disputes Act :

Provided that the number of workmen that shall become employees of the Corporation under this sub-section shall not exceed the following scale, the juniormost being excluded :

Scale per vehicle(1) Drivers .. 1.5(2) Conductors .. 2.65(3) Supervision .. 0.125
(4) Higher Supervision staff and Managers .. 0.075(5) Ministerial and Secretariat staff .. 0.8(6) Technical staff including Foreman .. 2.75 Line staff and checking Inspectors##

8. Sub-section (3) of Section 19 of the Act, which replaced sub-clause (3) to Clause 20 of the Ordinance, provides :

19(3). Every person who is a workman within the meaning of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) and has been immediately before the commencement of this Act exclusively employed in connection with the acquired property, shall, on and from the notified date become an employee of the Corporation on the same terms and conditions applicable to the employees holding corresponding posts in the Corporation. An person not willing to become such an employee of the Corporation shall be entitled to retrenchment compensation as provided in the Industrial Disputes Act :

Provided that the number of workmen that shall become employees of the Corporation under this sub-section shall not exceed the following scale, the junior most being excluded :

Scale per vehicle(1) Drivers .. 1.5(2) Supervision Staff and Managers .. 0.1(3) Ministerial and Secretariat staff .. 0.1(4) Technical staff including Foreman .. 2.75 ---
----- 4.45 -----##

9. The saving clause to be found in sub-section (2) of Section 31 of the Act, so far as material, runs thus :

31(2). Notwithstanding such repeal :

(i) anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.

10. It is strenuously argued that it is clear from the language of sub-clause (3) to Clause 20 of the Ordinance that there was, by operation of law, automatic absorption of the employees of the erstwhile contract carriage operators to the extent provide therein with effect from January 30, 1976, the date on which the notification was issued under sub-clause (1) clause 4 and the date on which the Government made an order under sub-clause (1) to clause 20. It is submitted that the words "shall become an employee of the Corporation", in sub-clause (3) to Clause 20 are clear and unambiguous and they must result in the consequence that all persons employed in connection with the acquired contract carriages, became employees of the Corporation. It is said that, though the process of absorption may take time, as and when the necessary steps were taken to fit in such employees falling within the categories mentioned in the proviso to sub-clause (3) to Clause 20, their absorption relates back to the notified date, i.e. January 30, 1976. In other words, the submission was that the legal effect of absorption of such employees under sub-clause (3) of Clause 20 of the Ordinance is automatic. That being so, their right of absorption could not be whittled down by the subsequent enactment of the new proviso to sub-section (3) of Section 19 of the act, inasmuch as they had acquired a vested right to absorption in the ratio mentioned in sub-clause (3) to clause 20 of the Ordinance.

11. The Ordinance promulgated by the Governor in the instant case was a 'legislative act' of the Governor under Article 213(1) and, therefore, undoubtedly a temporary statute, and while it was still in force the Repealing Act was passed containing the saving clause in Section 31(2)(i) providing that, notwithstanding such repeal, 'anything done' or any 'action taken' under the repealed Ordinance shall be deemed to have been done or taken under the corresponding provisions of the Act. The enquiry is, therefore, limited to the question whether anything was done or action taken under the repealed Ordinance. If that be so, a further question arises on the submission whether the

words 'things done' in Section 31(2)(i) reasonably interpreted can mean not only things done but also the legal consequences flowing therefrom.

12. In considering the effect of an expiration of a temporary Act, it would be unsafe to lay down any inflexible rules. It certainly requires very clear and unmistakable language in a subsequent Act of the legislature to revive or re-create an expired right. If, however, the right created by the statute is of an enduring character and has vested in the person, that right cannot be taken away because the statute by which it was created has expired. In order to see whether the rights and liabilities under the repealed Ordinance have been put an end to by the Act, 'the line of enquiry would be not whether', in the words of Mukherjea, J. in *State of Punjab v. Mohar Singh* ((1955) 1 SCR 893 : AIR 1955 SC 84 : 1955 Cri LJ 254), 'the new Act expressly keeps alive old rights and liabilities under the repealed Ordinance but whether it manifests and intention to destroy them'. Another line of approach may be to see as to how far the new Act is retrospective in operation.

13. It is settled both on principle and authority, that the mere right existing under the repealed Ordinance, to take advantages of the provisions of the repealed Ordinance, is not a right accrued. Sub-section (2) of Section 31 of the Act was not intended to preserve a abstract right conferred by the repealed Ordinance. The Legislature had the competence to so restructure the Ordinance as to meet the exigencies of the situation obtaining after the taking over of the contract carriage services. It could re-enact the Ordinance according to original terms, or amend or after its provisions.

14. What were the 'things done' or 'action taken' under the replaced Ordinance ? The High court rightly observes that there was neither anything done nor action taken and, therefore, the petitioners did not acquire any right to absorption under sub-clause (3) to clause 20. The employees of the former contract carriage operators in normal course filed in the proforma giving their service particulars and reported to duty. This was in the mere 'hope or expectation' of acquiring a right. The submission of these 'call reports' by the employees did not subject the Corporation to a corresponding statutory obligations to absorb them in service. As a matter of fact, nothing was done while the Ordinance was in force. The Act was published on March 12, 1976. On May 29, 1976, the Corporation set up proposals for equation of posts to be filled in by the employees of the former contract carriage operators. The meeting of the Committee set up by the Government for laying down the principles for equation of posts and for determination of inter se seniority, met on June 2, 1976. The Committee decided that even in the case of helpers-cleaners, there should be a 'trade test' and the staff cleared by the Committee for the posts of helper 'B' helper 'A' and assistant artisans should be on the basis of their technical competence, experience, ability, etc. The Committee also decided that all other employees of contract carriage operators, who were eligible for absorption, should be interviewed by that Committee for the purpose of absorption on the basis of experience, ability, duties and responsibilities. etc. These norms were laid down June 2, 1976. Till their actual absorption, the employees of the erstwhile contract carriage operators had only an inchoate right.

15. The distinction between what is, and what is not a right preserved by the provisions of Section 6 of the General Clauses Act is often one of great finesses. What is unaffected by the repeal of a statute is a right acquired or accrued under it and not a mere 'hope or expectation of', or liberty to apply for, acquiring a right. In *Director of Public Works v. Ho Po Song* ((1961) 2 All ER 721, 731 (PC)) Lord Morris speaking for the Privy Council, observed :

It may be, therefore, that under some repealed enactment, a right has been given, but that, in respect of it, some investigation or legal proceeding is necessary. The right is then unaffected and preserved. It will be preserved even if a process of quantification

is necessary. But there is a manifest distinction between an investigation in respect of a right and an investigation which is to decide whether some right should be or should not be given. On a repeal the former is preserved by the Interpretation Act. The latter is not.

It must be mentioned that the object of Section 31(2)(i) is to preserve only the things done and action taken under the repealed Ordinance, and not the rights and privileges acquired and accrued on the one side, and the corresponding obligation or liability incurred on the other side, so that if no rights acquired under the repealed ordinance was preserved, there is no question of any liability being enforced.

16. Further, it is significant to notice that the saving clause that we are considering in Section 31(2)(i) of the Act, saved things done while the Ordinance was in force; it does not purport to preserve a right acquired under the repealed Ordinance. It is unlike the usual saving clauses which preserve unaffected by the repeal, not only things done under the repealed enactment but also the rights acquired thereunder. It is also clear that even Section 6 the General Clauses Act, the applicability of which is excluded, is not intended to preserve the abstract rights conferred by the repealed Ordinance. It only applies to specific rights given to an individual upon the happening of one or other of the events specified in the statute.

17. Employees in excess of the scale prescribed for the categories specified under proviso to sub-section (3) of Section 19 of the Act are clearly not entitled for absorption. Though sub-clause (3) to Clause 20 of the Ordinance provided for absorption of certain classes of employees in a particular ratio with effect from January 30, 1976, it does not follow that there was an automatic absorption as from that date. Every such person eligible for absorption had to fulfill three conditions, viz., (1) he had to be a workman within the meaning of the Industrial Disputes Act, 1947, (2) he should have been immediately before the commencement of the Ordinance, exclusively employed in connection with the acquired property and (3) he had to come within the ratio provided in the proviso to sub-clause (3) to Clause 20. The whole object of inserting sub-clause (3) to Clause 20 of the Ordinance was to obviate the unemployment of persons suitable for employment. For this purpose, the Corporation had necessarily to screen the applicants.

18. It is necessary to mention that Clause 5 of the Ordinance, which corresponds to Section 5 of the Act, provided that every contract carriage operator shall within 15 days from the notified date or within such further time as the State Government may allow, furnish to the State Government or any officer authorised by it in this behalf, complete particulars among others of persons who were in their employment immediately before the notified date. It was only after such information was received that steps had to be taken for the purpose of ascertaining as to who were entitled to be absorbed in the service of the Corporation in accordance with sub-clause (3) to Clause 20 of the Ordinance. The authorities after collecting the necessary information had to determine not only the corresponding posts to which the erstwhile employees of the contract carriage operators could be absorbed in the service of the Corporation but also their relative seniority for the purpose of excluding the employees who were in excess of the scale for the purpose of absorption.

19. As sub-clause (3) to Clause 20 itself provides that a person who is not willing to become an employee of the Corporation is entitled to retrenchment compensation as provided for in the Industrial Disputes Act, the authorities were also required to ascertain as to whether the employee, who was entitled to be absorbed in service, was willing to become an employee of the Corporation or not. It was only if the employee was willing to be absorbed in the service of the Corporation that

the Corporation could absorb him in service, provided the other conditions specified in sub-clause (3) to Clause 20 were satisfied. Thus it is clear that several steps had to be taken by the authorities before identifying and determining the persons who could be absorbed in the service of the Corporation, in accordance with sub-clause (3) to Clause 20 of the Ordinance.

20. The very fact that all these various steps were necessary to be taken, which necessarily takes time, shows that automatic absorption of the employees of the erstwhile contract carriage operators was not legally permissible. When the Ordinance came to be replaced by the Act, the Corporation felt that the number of employees of the erstwhile contract carriage operators was too large for its requirements. The legislature, therefore, stepped in and reduced the scale of absorption in the proviso to sub-section (3) of Section 19 from 7.9 per vehicle to 4.45 per vehicle.

21. This is, in our judgment, sufficient for the determination of the appeal. But, as we have formed a clear opinion on the other aspect. We do not hesitate to express that opinion. That contention is of this nature. It is pointed out that the employees of the erstwhile contract carriage operators acquired vested right to absorption in the service of the Corporation by virtue of sub-clause (3) to Clause 20 of the repealed Ordinance with effect from January 30, 1976, which cannot be taken away by the proviso to sub-section (3) of Section 19. Even if, contrary to the decision reached by us, it were possible to hold that they had some kind of such right, that right is expressly taken away by the legislature. The connection does not take note of the fact that by sub-section (1) of Section 1 the Act was brought into force with effect from January 30, 1976, i.e., the date on which the Ordinance was promulgated. The Act substitutes a 'new' proviso in sub-section (3) of Section 19 in place of the old proviso to sub-clause (3) to Clause 20 of the Ordinance, altering the whole basis of absorption. The new proviso is given a retrospective effect, and it now holds the field from the notified date, i.e., January 30, 1976. The proviso in sub-clause (3) to Clause 20 laying down a particular ratio of absorption, is pro tanto avoided by an express enactment of a 'new' proviso to sub-section (3) of Section 19 which is entirely inconsistent with it. When an Ordinance is replaced by an Act which is made retrospective in operation, anything done or any action taken under the Ordinance stand wholly effected.

22. In the result, the appeal as well as the writ petitions must fail and are dismissed. There shall be no order as to costs.

</html