

Smt. Sheela Wanti and Others

Vs

State Transport Authority, U. P., Lucknow and Others

Civil Appeal No. 640 of 1980

(V. R. Krishna Iyer, A. D. Koshal JJ)

11.03.1980

JUDGMENT

KRISHNA IYER, J. –

1. The short point which did not appeal to the High Court but does seem to have force in our view, is as to whether the upgrading of the status of the routes concerned in this appeal, is in accordance with the statutory requirements of Rule 6 of the U.P. Motor Vehicles Taxation Rules, 1935.

2. Two points were urged by Mr. Jain to invalidate the 'A' status assigned to the route Saharanpur-Chilkana. He firstly argued that as a bus operator on the route he should have been heard by the Regional Transport Authority (hereinafter to be referred as R.T.A.), before it changed the classification of the route from 'B' to 'A'. We agree with the High Court that there is no such obligation cast on the R.T.A. Indeed, the exercise of this power does not call for hearing of any particular party even though the consequences of re-classification may be that a higher levy from bus operators will be made. We, therefore, make it perfectly plain that on this question as to whether bus operators or others should be heard as a matter of right there is no such obligation and the order of re-classification cannot fail on that score. Of course, a public authority operating for public benefit will certainly take into consideration the views of members of public affected since that is part of the democratic process in administration. However, we are concerned with legal infirmities and we see none in the R.T.A. in not hearing the respondent or other bus operators or members of the public.

3. The second contention raised by Shri Jain appears to us to have considerable force. Rule 6 runs thus :

When so classifying routes, every controlling authority shall be guided by the following considerations in the order in which they appear in this rule, that is to say :

- (a) The potential income which, in regard to all the circumstances of the route, it may be expected, will accrue from the employment of a public service vehicle on that route;
- (b) The cost of maintenance of the road or roads or the portion or portions of any road or roads comprised within the said route;
- (c) The necessity for the development of the proposed route in the public interest.

4. It is plain that before re-classification the statutory body must take into consideration three basic factors namely : (a) potential income which may be expected from that route by an operator; (b) the cost of maintenance of the roads and (c) the needs of development of the proposed route to serve the public better. The proceedings of the R.T.A. do not indicate specific advertance to these three points statutorily mandated except ground (b). A report from the Executive Engineer had been called for and perhaps from the District Magistrate too. What is important is not calling for reports but actually adverting to the three factors referred to in Rule 6. Once the statutory body has considered those three aspects the re-classification is invulnerable. Regrettably, in the present case considerations (a) and (c) do not appear to have gone into the mind of R.T.A. judging by the materials placed before us.

5. Shri Rana appearing for the State contends that in the counter-affidavit of the State it has been made clear that all the three factors covered by Rule 6 justify the re-classification done by the R.T.A. Maybe, there is truth in the facts stated in the counter-affidavit but what is important is as to whether the statutory body when it actually re-classified the rate had given thought to the three criteria mentioned in the rule. Subsequent affidavits incorporating materials in compliance with the statute cannot make up for the fatal omission at the inception when the classification was made. Therefore, we are constrained to strike down the classification order as bad in law.

6. It is true that the appellant has come to this Court because a higher levy may be made from him. But the purpose of Rule 6 in authorising re-classification has to serve the public interest, especially of the travelling public. It is important that road communications are kept in good repair and if for that purpose re-classification has to be made it cannot be helped. Therefore, we wish to make it clear that the R.T.A. is free to reconsider the matter and if after considering the three factors referred to in Rule 6 it feels there is justification for upgrading the classification of the route it may do so. Indeed, since public interest is involved, we feel that the statutory body (R.T.A.) will take an early opportunity to consider whether the re-classification is necessary or not. With these observations and directions we allow the appeal and leave the parties to bear their own costs.

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