

Yogeshwar Jaiswal

Vs

State Transport Appellate Tribunal and Others

Smt. Krishna and Others

Vs

State Transport Appellate Tribunal and Others

Civil Appeals Nos. 53, 54-57 and 202-04 and 255 of 1982

(E. S. Venkataramiah, Sabyasachi Mukhara JJ)

31.01.1985

JUDGMENT

VENKATARAMIAH, J. -

1. The lamentable delay of nearly fourteen years involved in the State Government of Uttar Pradesh passing its order under Section 68-D of then Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act') on a scheme published under Section 68-C thereof has been the main cause of these appeals by special leave filed against the judgment of the High Court of Allahabad dated November 27, 1981.

2. A notification dated November 17, 1971 was published under Section 68-C of the Act by the State transport undertaking of the State of Uttar Pradesh in U.P. Gazette dated November 27, 1971 inviting objections to a draft scheme providing for the exclusive operation of its own stage carriages over thirteen routes within the jurisdiction of the Regional Transport Authority of Meerut. It is unfortunate that no decision has yet been taken by the State Government under Section 68-D of the Act for one reason or the other. In the mean while the members of the public as well as the motor operators have become subject to several constraints arising from the publication of such a scheme.

3. Chapter IV-A of the Act was introduced by Act 100 of 1956 in to the Act with the object of making provision for operation of motor vehicles to the exclusion, complete or partial, of other persons for the purpose of providing an efficient, adequate, economical and properly co-ordinated transport service to the community. The provisions contained in Chapter IV-A of the Act and the Rules made thereunder are declared as having overriding effect on the provisions in Chapter IV of the Act which contains provision relating to control of transport vehicles and all other laws. Section 68-C of the Act provides that where any State transport undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service, it is necessary in the public interest that road transport services in general or in any particular class of such service in relation to any area or result 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. On the publication of the scheme, an person already providing transport facilities by any means along or near the area or route proposed to be covered by the scheme, any association representing persons interested in the provision of road transport facilities recognised in this behalf by the State Government and any local authority or police authority within whose jurisdiction any part of the area or route proposed to be covered by the scheme lies may, within thirty days from the date of the publication of the scheme in the Official Gazette, file objections to it before the State Government. The State Government may after considering the objection and after giving an opportunity to the objector or his representatives and the representatives of the State transport undertaking to be heard in the matter if they so desire, approve or modify the scheme. This is the substance of sub-sections (1) and (2) of Section 68-D of the Act. Under sub-section (3) thereof the scheme approved or modified has to be published in the Official Gazette and such scheme is called the approved scheme and the area or route to which it relates is called the notified area or notified route. The provisions of Section 68-C and Section 68-D of the Act clearly indicate that any scheme which is intended for providing efficient, adequate, economical or properly co-ordinated transport service should be approved either as it is or in a modified form or rejected, as the case may be, within a reasonably short time as any extraordinary delay is bound to upset all or any of the factors, namely, efficiency, adequacy, economy or co-ordination which ought to govern an approved scheme under Chapter IV-A of the Act. On account of various reasons such as the growth of population and the development of the geographical area adjacent to the area or route in question, any unreasonable delay may render the very proposed contained in the scheme antiquated, outmoded and purposeless. Hence there is need for speedy disposal of the case under Section 68-D of the Act.

4. The other legal constraints flowing from the publication of the scheme under Section 68-C of the Act also leads us to the same conclusion. Section 68-F(1-D) of the Act provides that save as otherwise provided in sub-section (1-A), or sub-section (1-C) thereof, no permit shall be granted or renewed during the period intervening between the date of publication under Section 69-C of any scheme and the date of publication of the approved or modified scheme, in favour of any person for any class of road transport service in relation to an area or route or portion thereof covered by such scheme. The proviso to sub-section (1-D) of Section 68-F of the Act, however, states that where the period of operation of a permit in relation to any area, route or portion thereof specified in a scheme published under Section 68-C expire after such publication, such permit shall be renewed for a limited period, but the permit so renewed shall cease to be effective on the publication of the scheme under sub-section (3) of Section 68-D of the Act. This provision overrides the provisions in Section 58 of the Act which provides for the renewal of motor vehicle permits issued under Chapter IV of the Act. As regards the issue of fresh permits for operating motor vehicles of the class referred to in the scheme to the area or on the route in question between the date of publication of the scheme under Section 68-C of the Act and the date of publication of the approved or modified scheme under Section 68-D of the Act, sub-sections (1-A) and (1-C) of Section 68-F of the Act alone have to be resorted to. Sub-section (1-A) of Section 68-F gives preference to the State transport undertaking regarding the issue of such permits. It provides that where any scheme has been published by a State transport undertaking under Section 68-C, that undertaking, may apply for a temporary permit, in respect of any area or route or portion thereof specified in the said scheme, for the period intervening between the date of publication of the scheme and the date of publication of the approved or modified scheme, and where such application is made, the State Transport Authority or the Regional Transport Authority, as the case may be, shall, if it is satisfied that it is necessary to increase, in the public interest the number of vehicles operating to such area or route or portion

thereof, issue the temporary permit prayed for by the State transport undertaking. Such temporary permit shall be effective if the scheme is published under sub-section (3) of Section 68-D of the Act until the grant of the permit to the State transport undertaking under sub-section (1) of Section 68-F of the Act or if the scheme is not published accordingly, until the expiration of one week from the date on which the order under sub-section (2) of Section 68-D of the Act is made. If no application for the temporary permit is made under sub-section (1-A) of Section 68-F of the Act by the State transport undertaking, the State Transport Authority or the Regional Transport Authority, as the case may be, may under sub-section (1-C) of Section 68-F of the Act grant, subject to such conditions as it may think fit, temporary permit to any person in respect of the area or route or portion thereof specified in the scheme and the permit so granted shall cease to be effective on the issue of a permit to the State transport undertaking in respect of that area or route or portion thereof. Sub-section (1-A) and (1-C) of Section 68-F of the Act read together indicate that what can be granted under either of the said sub-section is only a temporary permit which can last during the period between the date of publication of the scheme under Section 68-C of the Act and the date on which the order under Section 68-D of the Act is made subject to the provisions contained in sub-section (1-B) of Section 68-F of the Act. The life of such temporary permit cannot extend to an unreasonably long period, as even a renewable permit issued under Chapter IV of the Act is subject to the restrictions contained in Section 58 of the Act as regard its duration and renewal and that a temporary permit issued under Section 62 of the Act cannot be in force in any case for more than four months. Necessarily, therefore, the State Government is required by law to pass its orders under Section 68-D of the Act as early as possible. Delay in performance of statutory duties amounts to an abuse of process of law and has to be remedied by the court particularly when the public interest suffers thereby. Hence if there is an unreasonably long and unexplained delay in the State Government passing orders under Section 68-D of the Act, the Court may issue a mandamus to the State Government to dispose of the case under Section 68-D of the Act within a specified time or may in an appropriate case even issue a writ in the nature of certiorari quashing the scheme and a writ in the nature of prohibition directing the State Government not to proceed with the consideration of the scheme published under Section 68-C of the Act because Section 68-D does not confer an unfettered discretion on the State Government to deal with the case as it likes. The power under Section 68-D has to be exercised having due regard to the public interest.

5. In the case before us the appellants are aggrieved to the quashing of the temporary permit which had been issued on January 10, 1980 under Section 68-F(1-C) of the Act by the Regional Transport Authority, Meerut in their favour to operate stage carriages on some of the routes covered by the scheme nearly nine years after its publication. It appears that the Regional Transport Authority felt that it was necessary to increase the strength of the stage carriage service on nine routes out of the thirteen routes covered by the scheme and accordingly it decided by its order dated December 17, 1979 to invite applications for temporary carriage permits. This decision was taken by the Regional Transport Authority after it had allowed the amalgamation and extension of certain existing permits held by 102 operators. Pursuant to the invitation by the Regional Transport Authority, a large number of persons including the appellants applied for the temporary permits before the last date specified for making such application i.e. December 31, 1979. On January 10, 1980, the U.P. State Transport Undertaking having not made any application under Section 68-F(1-A) of the Act, the application of the appellants and a large number of other persons who were about 800 in number were considered by the Regional Transport Authority and the appellants were granted in all nineteen temporary permits. Some persons who felt aggrieved by the resolutions of the Regional Transport Authority passed on December 17, 1979 and January 10, 1980 filed revision petitions before the State Transport Appellate Tribunal, Lucknow. The Tribunal by its order dated June 3, 1981 set aside

both the resolutions dated December 17, 1979 and January 10, 1980 passed by the Regional Transport Authority. The main ground for setting aside the resolution dated December 17, 1979 was that the amalgamation and extension of permits granted in favour of the existing operators after the publication of the scheme under Section 68-C of the Act was contrary to the provisions of Chapter IV-A of the Act. The Tribunal, however did not hold that there was no necessity for increasing the number of stage carriage services on the routes in question and for issuing temporary permits under Section 68-F of the Act. Thereafter the appellants filed writ petitions before the High Court under Article 226 of the Constitution questioning the correctness of the order setting aside the temporary permits granted in their favour on January 10, 1980. The existing operators who had been granted amalgamation and extension of their permits by the Regional Transport Authority on December 17, 1979, however, did not challenge the order of the Tribunal even though the orders passed in their favour were also set aside. The High Court dismissed the writ petitions filed by the appellants holding that since the grant of temporary permits in favour of the appellants was dependent upon the order dated December 17, 1979 to which the appellants were not parties, the temporary permits granted in their favour on January 10, 1980 were also liable to be set aside. These appeals by special leave are filed against the judgment of the High Court in the above writ petitions.

6. On the facts and in the circumstances of these appeals, we are constrained to observe that both the Tribunal and the High Court overlooked the relevant issues affecting the public interest which should always be the guiding principle in deciding cases relating to the grant of motor vehicles permit under the Act. The Tribunal and the High Court have both failed to notice that the scheme had been published in the year 1971 and the order issuing temporary permits had been passed nearly nine years after its publication, after the Regional Transport Authority was satisfied that there was necessity for granting them. The Tribunal and the High Court did not to elicit information about the reasons for the inordinate delay in the State Government passing its order under Section 68-D of the Act and failed to consider the adverse effect on the travelling public. The Tribunal and the High Court took a highly technical view in disposing of the matter. We are of the view that it is needless of this stage to go into the grounds in detail on which the Tribunal and the High Court found that the orders of the Regional Transport Authority were untenable since nearly fourteen years have elapsed from the date of publication of the scheme. The High Court appears to have given more attention to the validity of the grant of extensions to the existing operators on December 17, 1979 which was not at all in issue before it than to the correctness of the order of the Tribunal in setting aside the temporary permits granted to the appellants on January 10, 1980 which had been challenged by the appellants in the writ petitions. Admittedly the region in which the routes in respect of which the scheme is published are lying is a thickly populated part of the State of Uttar Pradesh. There has been a lot of development in the region in recent years on the agricultural front as well as the commercial front. The Regional Transport Authority had found that there was need for issuing the said temporary permit for some of the routes in question after it had granted extensions to the permits held by 102 existing operators. On the cancellation of the said extensions, the need for providing additional travelling facilities became further intensified and therefore there was certainly no case for setting aside the temporary permits granted in favour of the appellants. The cancellation of the temporary permits issued in favour of the appellants has resulted in grave public prejudice. We are also of the opinion that the extraordinary delay in the disposal of the proceedings before the State Government under Section 68-D of the Act has brought about a situation which should be terminated quickly in the interests of the general public.

7. We, therefore, consider that in the interests of justice it is appropriate to bring an end to the proceedings under Section 68-D of the Act expeditiously. We would have perhaps considered the question of quashing the scheme itself at this stage but since no such contention is urged before us,

we feel that it is sufficient to issue a direction to the State Government to pass orders under Section 68-D(2) of the Act approving the scheme with or without any modification or rejecting it or to pass any other order thereon which it may pass under that provision on or before July 31, 1985. We issue a direction accordingly. If the State Government approves the scheme with or without any modification, such approved scheme shall be published under Section 68-D(3) of the Act on or before August 31, 1985. If the State Government fails to dispose of the matter accordingly within the time specified above, the scheme published under Section 68-C of the Act shall stand quashed with effect from August 31, 1985. The order of the Tribunal and the order of the High Court to the extent they cancel the temporary permits issued in favour of the appellants are set aside. The appellants are permitted to operate their services under the temporary permits issued to them under Section 68-F(1-C) of the Act on January 10, 1980 and the operation of the said temporary permits shall come to an end in accordance with law.

8. The appeals are accordingly disposed of. There shall be no order as to costs.

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