

Anwar

Vs

First Additional District Judge, Bulandshahr and Others

Special Leave Petition (Civil) No. 8001 of 1986

(E. S. Venkataramiah, Ranganath Misra JJ)

11.08.1986

ORDER

1. The short question which arises for consideration in this case is whether a suit is maintainable in a civil court for an injunction restraining the Hearing Authority appointed under Section 68-D of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act') from proceeding with the hearing of matters under that provision and from approving a scheme published under Section 68-C of the Act either with or without any modification.

2. The petitioner is the holder of a permit issued under Chapter IV of the Act to ply a stage carriage on Bulandshahr-Siana-Garh-Bugrasi-Brijghat-Bhasians-Shambhaoli -Babugarh-Jadol-Jahangirabad route in the State of Uttar Pradesh. The State Transport Undertaking of the State of Uttar Pradesh published a scheme dated March 7, 1975 in the U.P. Gazette dated April 5, 1975 under Section 68-C of the Act proposing to operate its stage carriages to the exclusion of all private operators on the route referred to above. The petitioner filed his objections to the said scheme along with several others. After a number of adjournments the Hearing Authority empowered under Section 68-D of the Act was able to conclude the proceedings by April 26, 1979 and it is alleged that the Authority in the course of the hearing observed that it would finalise and approve the scheme by May 21, 1979. Before the Hearing Authority could give its approval to the scheme under Section 68-D of the Act, the petitioner filed Original Suit No. 145 of 1979 on the file of the Civil Judge, Bulandshahr for a declaration that the above scheme published under Section 68-C of the Act was illegal, void and ultra vires and for an injunction restraining the defendants in the suit from finalising and approving the scheme and acting upon it after it was published. The State Transport Undertaking, i.e., the Uttar Pradesh State Road Transport Corporation, the State of Uttar Pradesh and the Regional Transport Authority, Meerut were impleaded as the defendants in the suit. The defendants contested the suit. One of the pleas raised in their written statement was that the suit was not maintainable in a civil court for the reliefs prayed for by the petitioner. During the pendency of the suit the petitioner filed an application before the civil court for staying the hearing of the suit till the disposal of a special leave petition before this Court since the question relating to the maintainability of suits of similar nature was involved in the said special leave petition. The learned Civil Judge declined to grant the request of the petitioner and fixed the suit for arguments on November 8, 1985. Aggrieved by the order of the Civil Judge, the petitioner filed a revision petition before the Additional District Judge, Bulandshahr. That revision petition was dismissed. Against the order of the Additional District Judge, the petitioner filed a writ petition on the file of the High Court of Allahabad. That petition was also dismissed. This special leave petition is filed against the order of the High Court of Allahabad.

3. We have heard the learned counsel for the petitioner in this case on the question of

maintainability of the suit out of which this petition arises.

4. The question for consideration in this case is, as mentioned above, whether a suit is maintainable in a civil court for an injunction restraining the Hearing Authority under Section 68-D of the Act from proceeding with the hearing and approving the scheme either with or without modification. The contention of the respondents before the trial court was that the suit was not maintainable for the reliefs prayed for by the petitioner since the jurisdiction of the civil courts in such matters was impliedly barred.

5. Chapter IV-A of the Act was introduced into the Act by Act 100 of 1956. Section 68-B of the Act provides that the provisions of the Chapter IV-A and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter IV of the Act or any other law for the time being in force or in any instrument having effect by virtue of any such law. Chapter IV-A contains certain special provisions relating to the State Transport Undertakings. A 'State Transport Undertaking' is defined by Section 68-A(b) of the Act as 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 Corporations Act, 1950; and (iii) any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments. Chapter IV-A of the Act provides for the preparation and approval of a scheme enabling the State Transport Undertaking to operate road transport services to the exclusion complete or partial of other persons. The procedure laid down for the preparation of the scheme is contained in Sections 68-C and 68-D of the Act. 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 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 manner as the State Government may direct. Section 68-D of the Act provides that on the publication of any scheme in the official Gazette any 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 its publication in the official Gazette file objections to it before the State Government. The State Government may, after considering the objections 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. The scheme as approved or modified as stated above shall then be published in the official Gazette by the State Government and the same shall thereupon become final and shall be called the approved scheme and the area or route to which it relates shall be called the notified area or notified route. Under Section 68-I of the Act the State Government is authorised to make rules for the purpose of carrying into effect the provisions of this chapter. The rules which are promulgated provide for the details relating to the manner in which objections or representations can be filed under Section 68-D(i) and the procedure to be followed at the hearing of persons who have filed such objections and/or representations and the representatives of the State Transport

Undertaking. The rules also provide for the particulars to be incorporated in the scheme published under Section 68-C of the Act. From the above provisions it is clear that on the publication of the scheme under Section 68-C of the Act any person who is aggrieved by the proposed introduction of the scheme is entitled to file his representations and objections and to appear before the Hearing Authority under Section 68-D of the Act and make his submissions in support of his objections or representations. Sub-section (ii) of Section 68-D of the Act authorises the Hearing Authority to approve the scheme either with or without modification. By necessary implication it can also reject a scheme if it feels that it is not necessary to introduce the scheme. When the scheme is approved or modified under Section 68-D of the Act, such approved or modified scheme is required to be published in the official Gazette and on such publication it becomes final. It is thus seen that Parliament has created a special machinery by the provisions contained in Chapter IV-A of the Act for bringing into force an approved or modified scheme which would have the effect of excluding completely or partially other persons from operating motor service vehicles on any route or in any area. After the scheme becomes final, as provided in sub-section (iii) of Section 68-D of the Act, the transport authorities concerned can issue permits only in accordance with the scheme and the other provisions contained in Chapter IV-A of the Act. This Court in *H.C. Narayanappa v. State of Mysore* [(1960) 3 SCR 742 : AIR 1960 SC 1073] at page 753 of the Reports has observed that the scheme approved or modified and published under Section 68-D of the Act may properly be regarded as 'law', within the meaning of Article 19(6) of the Constitution, made by the State excluding private operators from notified routes or notified areas, and immune from the attack that it infringes the fundamental right guaranteed by Article 19(1)(g) of the Constitution.

6. Section 9 of the Code of Civil Procedure, 1908 provides that the courts (subject to the provisions contained therein) have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. It is no doubt true that there is no express provision in the Act taking away the jurisdiction of the civil courts to try a suit in which the validity of the proceedings under Chapter IV-A of the Act is called in question. But we are of opinion that the jurisdiction of the civil courts is impliedly barred from entertaining suits of the present nature. The jurisdiction of the State Government (the Hearing Authority under Section 68-D of the Act) is exclusive in character and it is not open to a civil court to issue an order of injunction restraining the Hearing Authority from proceeding with the hearing of the case and exercising its statutory functions. Whenever statute uses the expression that a decision of an authority shall be final, the jurisdiction of a civil court to go into the correctness or otherwise of the decision is taken away. We have gone through the plaint presented in this case. It is not disputed that the scheme had been duly published under Section 68-C of the Act by an authority which had the power to publish it and that the authority which was hearing the case under Section 68-D of the Act had the power to do so. All the contentions urged in the plaint relate to the merits of the scheme and the desirability of bringing the scheme into force. All such objections relating to the merits of a scheme or the desirability of bringing such scheme can be raised by an aggrieved person before the Hearing Authority under Section 68-D of the Act and it is for the Hearing Authority to consider such objections and representations and to pass appropriate orders thereon. Where the statute gives finality to the orders of a special tribunal the civil courts' jurisdiction must be held to be excluded insofar as the merits of the case is concerned. If jurisdiction is so excluded, the civil courts have jurisdiction only to examine whether the provisions of the statute have not been complied with or the tribunal had or had not acted in conformity with the fundamental principles of judicial procedure. In cases of the present nature where invariably reliance is placed by the private operators on Article 19(1)(g) of the Constitution, a writ petition lies before the High Court. In such cases a suit is hardly the remedy which can be availed by them. If suits of this nature are allowed to be entertained, the very object of

the several provisions of Chapter IV-A of the Act can be frustrated by interested parties by resorting to a civil court with the sole object of delaying the implementation of a scheme. Such attempts should be curbed at the earliest opportunity. The learned Civil Judge was right in declining to stay the further proceedings in the suit. This is a suit which should have been rejected at the threshold under Order 7 Rule 11 of the Code of Civil Procedure on the ground that it did not disclose a cause of action. We, therefore, do not find any ground to interfere with the orders of the High Court, the District Judge and the Civil Judge. The Civil Judge is directed to dispose of the suit in the light of the observations made in this order. The petition fails and is dismissed.

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