

Krishan Kumar

Vs

State of Rajasthan and Others

Civil Appeal No. 3165 of 1991

(K. N. Singh, P.B. Sawant JJ)

09.08.1991

JUDGMENT

K. N. SINGH, J. –

1. Special leave granted.

2. This appeal is directed against the judgment and order of the High Court of Rajasthan dated August 9, 1990 dismissing the appellant's writ petition made under Article 226 of the Constitution challenging the scheme for nationalisation of the route in dispute.

3. The appellant holds a Stage Carriage Permit for plying his vehicle on the Kota-Khanpur route, which overlaps a portion of the Kota-Sangod route. The Rajasthan State Road Transport Corporation, Jaipur issued a Notification on October 11, 1979 proposing a scheme under Section 68-C of the Motor Vehicles Act, 1939 (hereinafter referred to as the 'old Act') for the exclusive operation of the vehicles of the State Road Transport Corporation on the Kota-Sangod route. The existing operators as well as the affected operators of the route filed their objections before the hearing authority appointed by the State government of Rajasthan. The hearing authority after considering those objections approved the scheme under Section 68-D(2) of the old Act by its order dated November 30, 1984 and submitted the papers to the State Government for the issue of Notification under Section 68-D(3). Before the State Government could issue notification under Section 68-D(3) of the old Act, the appellant and other affected operators made representation to the Minister for Transport for affording them a fresh opportunity of hearing, as result of which no final Notification under Section 68-D(3) could be issued. Meanwhile, the Motor Vehicles Act, 1988 (hereinafter referred to as the 'new Act') was enforced with effect from July 1, 1989 and the old Act was repealed. The appellant thereupon filed a writ petition before the High Court under Article 226 of the Constitution for the issue of mandamus restraining the State Government from issuing the final notification, mainly on the ground that on the enforcement of the new Act, the Notification dated October 11, 1979 issued under Section 68-C of the old Act had lapsed on account of delay in finalisation of the same. A similar writ petition had been filed earlier in respect of Kishangarh-Sarwad route by one Sardar Mohd. on similar grounds. A learned Single Judge of the High Court dismissed that writ petition holding that the draft scheme under the old Act was saved by the new Act and the same could legally be finalised under the provisions of the new Act. Sardar Mohd. filed a Letters Patent Appeal against the judgment of the learned Single Judge. A Division Bench of the High Court disposed of the Letters Patent Appeal of Sardar Mohd. as well as the various writ petitions including that of appellant by a common order dated August 9, 1990 impugned in the present appeal.

4. After the impugned judgment of the High Court, the State Government approved the scheme as proposed under Section 68-C of the old Act. Final notification approving this scheme was published in the official gazette on August 29, 1990 under Section 100(3) of the new Act, as a result of which the Kota-Sangod route has become a notified route, consequently the appellant has no right to ply his vehicle on the overlapping portion of that route.

5. Learned counsel for the appellant urged that since there was undue delay of 11 years in issuing the final notification, the scheme as proposed under Section 68-C of the old Act should be deemed to have lapsed and the State Government had no authority or jurisdiction to finalise the same or to issue Notification under Section 100(3) of the new Act. He placed reliance on a number of decisions of this Court in support of his contention that unreasonable delay in finalising a scheme proposed under Section 68-C of the old Act rendered the same illegal. He referred to the decisions of this Court in *Yogeshwar Jaiswal v. State Transport Appellate Tribunal* ((1985) 1 SCC 725 : AIR 1985 SC 516), *Onkar Singh v. Regional Transport Authority, Agra* ((1986) 3 SCC 259), *Devki Nandan v. State of Rajasthan* (1987 Supp SCC 438), *Shri Chand v. Government of U.P.* ((1985) 4 SCC 169). No doubt in these decisions the Court quashed the schemes proposed under Section 68-C of the old Act on the ground of inordinate delay for which there was no valid explanation. In the instant case, the proposed scheme had been approved by the hearing authority under Section 68-D(2) of the old Act in 1984 within five years of the proposal of the scheme but when the matter was placed before the State Government for issue of final notification under Section 68-D(3) of the old Act, the appellant and other affected operators approached the Minister for Transport and stalled the issue of final notification as a result of which delay was caused. The appellant was himself responsible for the delay therefore he is not entitled to complain of the delay. Moreover this Court has not ruled in the aforesaid decisions, or in any other decision that delay would automatically render the scheme illegal. Since under the old Act no time frame was prescribed for finalising a scheme penal consequences could not ensue. Under the old Act a scheme proposed under Section 68 could continue to remain in force till it was quashed. Since the scheme proposed on October 11, 1979 had not been quashed by any court, the same continued to be in force on the date of commencement of the new Act. In the absence of any provision in the old Act rendering the scheme ineffective on the ground of delay, the scheme proposed under Section 68-C of the old Act could not lapse ipso facto. Moreover, now the State Government has already issued final notification under Section 100(3) of the new Act on August 29, 1990, as a result of which the route has been notified. In this view ratio of the aforesaid decisions of the Court are not applicable to the instant case at this stage.

6. Learned counsel for the appellant urged that under Section 100(4) of the new Act, if a draft scheme is not finalised and the final notification is not issued within in year from the date of the publication of the proposed scheme, the same would lapse. Since in the instant case the draft scheme dated October 11, 1979 was not finalised under Section 100(3) of the new Act the same had lapsed after one year from the date of the notification issued under Section 68-C of the old Act. In order to appreciate this contention it is necessary to consider the relevant provisions of the new Act. Chapter VI of the new Act contains special provisions relating to State Transport Undertakings. Section 99 confers power on the State Government to propose a scheme for operating the vehicles of State Transport Undertakings to the exclusion of other persons. The proposed scheme is published in the gazette. Section 100 which provides for filing of the objections before the State Government and the issue of final notification, is as under :

"100. Objection to the proposal - (1) On the publication of any proposal regarding a scheme in the Official Gazette and in not less than one newspaper in the regional language circulating in the area or route which is to be covered by such proposal any

person may, within thirty days from the date of its publication in the Official Gazette, file objections to it before the State Government.

(2) 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 such proposal.

(3) The scheme relating to the proposal as approved or modified under sub-section (2) shall then be published in the Official Gazette by the State Government making such scheme and in not less than one newspaper in the regional language circulating in the area or route covered by such scheme and the same shall thereupon become final on the date of its publication in the Official Gazette 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 :

Provided that no such scheme which relates to any inter-State route shall be deemed to be an approved scheme unless it has the previous approval of the Central Government.

(4) Notwithstanding anything contained in this section, where a scheme is not published as an approved scheme under sub-section (3) in the Official Gazette within a period of one year from the date of publication of the proposal regarding the scheme in the Official Gazette under sub-section (1), the proposal shall be deemed to have lapsed."

Section 100 provides for filing of objections before the State Government within 30 days from the date of the publication of the proposed scheme in the Official Gazette. Under sub-section (2) the State Government may approve or modify the proposed scheme after considering the objections and hearing the objectors. Under sub-section (3) the State Government is required to publish the approved scheme in the official gazette and also in one newspaper. On the publication of the approved scheme in the official gazette, the area or route to which it relates shall be called the notified area or notified route. Sub-section (4) lays down that if a scheme is not published as an approved scheme in the gazette within one year from the date of publication of the proposed scheme in the official gazette, the proposed scheme shall be deemed to have lapsed. Sub-section (4) in our opinion prescribes a period of limitation during which the State Government should hear and consider the objections of the objectors and finalise the scheme and publish the same in the official gazette and on its failure to do so within that period, penal consequences would ensue as a result of which the scheme itself shall stand lapsed. The object and purpose of Section 100(4) is to avoid delay in finalising a scheme. The Parliament was aware that under the old Act schemes were not finalised for long years as a result of which public interest suffered, therefore, it prescribed a time frame for the approval and publication of schemes.

7. The provisions of Section 100 are applicable to the schemes proposed under the new Act. The question is whether it would apply to a scheme proposed under Section 68-C of the old Act. The legislature was conscious that a number of schemes proposed under the old Act were pending approval on the date of the commencement of the Act, it therefore made a provision for saving those schemes by enacting Section 217 of the Act, which is as under :

"217. Repeal and savings - (1) The Motor Vehicles Act, 1939 (4 of 1939) and any law corresponding to that Act in force in any State immediately before the commencement of this Act in that State (hereinafter in this section referred to as the repealed enactments) are hereby repealed.

(2) Notwithstanding the repeal by sub-section (1) of the repealed enactments, -

(a) any notification, rule, regulation, order or notice issued, or any appointment or declaration made, or exemption granted, or any confiscation made, or any penalty or fine imposed, any forfeiture, cancellation or any other thing done, or any other action taken under the repealed enactments, and in force immediately before such commencement shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been issued, made, granted, done or taken under the corresponding provision of this Act;

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(e) any scheme made under Section 68-C of the Motor Vehicles Act, 1939 (4 of 1939) or under the corresponding law, if any, in force in any State and pending immediately before the commencement of this Act shall be disposed of in accordance with the provisions of Section 100 of this Act;

(f) the permits issued under sub-section (1-A) of Section 68-F of the Motor Vehicles Act, 1939 (4 of 1939), or under the corresponding provisions, if any, in force in any State immediately before the commencement of this Act shall continue to remain in force until the approved scheme under Chapter VI of this Act is published...."

Under sub-section (1) the old Act has been repealed but under sub-section (2) in spite of repeal the Parliament has made provisions for saving the schemes proposed under Section 68-C of the old Act. Clause (e) of Section 217(2) of the new Act provides that notwithstanding the repeal of the old Act a scheme proposed under Section 68-C of the old Act, if pending immediately before the commencement of the Act shall be finalised in accordance with the provisions of Section 100 of the new Act. The legislative intent is clear that the schemes proposed under Section 68-C of the old Act pending on the date of the commencement of the new Act should not lapse instead these schemes should be finalised in accordance with the provisions of Section 100 of the new Act. The pending schemes were therefore saved and the same were to be finalised within one year as contemplated by Section 100(4) of the new Act. Section 100(4) lays down that if the proposed scheme is not finalised within one year from the date of its publication in the official gazette, it shall be deemed to have lapsed but that applies to a scheme proposed under the new Act and not to a scheme proposed under Section 68-C the old Act. If the period of one year from the date of the publication of the proposed scheme is applied to the pending schemes under Section 68-C of the old Act, the purpose and object of saving the old schemes under clause (e) of Section 217(2) of the new Act would be frustrated.

8. Learned counsel for the appellant urged that since Section 217(2)(e) provides for the finalisation of a pending scheme published under the old Act in accordance with the provisions of Section 100 of the new Act, the period of limitation of one year prescribed under sub-section (4) of that section would apply. He further urged that since period of one year had already expired from the date of the publication of the scheme under Section 68-C of old Act, the scheme automatically lapsed and the same could not be finally published under Section 100 of the Act.

9. If the appellant's contention is accepted the schemes published under Section 68-C of the old Act would lapse after the expiry of the period of one year from the date of the publication of the scheme in the official gazette in accordance with the provisions of the old Act. On the other hand we find that Section 217(2)(e) permits finalisation of a scheme published under Section 68-C of the old Act if same was pending on the date of the commencement of the new Act. The old Act did not provide any period of limitation consequently a number of schemes published under Section 68-C of the old Act were pending on the date of commencement of the new Act although a period of one year had already expired. If the Parliament intended to apply the limitation of period of one year to the pending schemes published under Section 68-C of the old Act, new the Act have made provisions to that effect. On the contrary Section 217(2)(e) has been enacted to save the schemes published under Section 68-C of the old Act which were pending on the date of the commencement of the Act a further direction that the same shall be finalised in accordance with Section 100 of the Act. Sub-section (4) of Section 100 provides that where a scheme is not published as approved under sub-section (3) within period of one year from the date of publication of the proposal in the official gazette under sub-section (1), the proposal shall be deemed to have lapsed. A scheme published under Section 68-C of the old Act pending on the date of commencement of the Act could not be a scheme proposed under sub-section (1) of Section 100, therefore, the rigour of period of one year as applicable to a scheme proposed under sub-section (1) of Section 100 could not apply to a scheme under Section 68-C pending on the date of commencement of the Act. It was not meant that a scheme under Section 68-C of the old Act pending on the date of commencement of the new Act may be approved or finalised with (sic at) leisure without any time limit.

10. There appears to be some apparent conflict between Section 100(4) and Section 217(2)(e) of the Act. While Section 217(2)(e) permits finalisation of a scheme in accordance with Section 100 of the new Act sub-section (4) of Section 100 lays down that a scheme if not finalised within a period of one year shall be deemed to have lapsed. If the appellant's contention is accepted then Section 217(2)(e) will become nugatory and no scheme published under Section 68-C of the old Act could be finalised under the new Act. On the other hand if the period of one year as prescribed under Section 100(4) is not computed from the date of publication of the scheme under Section 68-C of the old Act and instead the period of one year is computed from the date of commencement of the Act both the provisions could be given full effect.

11. It is settled principle of interpretation that where there appears to be inconsistency in two sections of the same Act, the principle of harmonious construction should be followed in avoiding a head on clash. It should not be lightly assumed that what the Parliament has given with one hand, it took away with the other. The provisions of one section of statute cannot be used to defeat those of another unless it is impossible to reconcile the same. In *Venkataramana Devaru v. State of Mysore* (AIR 1958 SC 255, 268 : 1958 SCR 895), this Court observed : (AIR p. 268)

"The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is what is known as the rule of harmonious construction."

The essence of harmonious construction is to give effect to both the provisions. Bearing these principles in mind it is legitimate to hold that Section 100(4) prescribed period of limitation of one year in respect of the scheme proposed under the provisions of the new Act, while in the case of a schedule under Section 68-C of the old Act, pending on the date of enforcement of the new Act, namely, July 1, 1989, the period of one year as prescribed under Section 100(4) should be computed

from the date of commencement of the new Act. This interpretation would give full effect to both the sections - Section 100(4) and Section 217(2)(e) of the new Act.

12. Learned counsel for the appellant placed reliance on a Division Bench decision of the Allahabad High Court in Santosh Kumar v. Regional Transport Authority (CMP No. 21773 of 1989, decided on 16.3.199 (All). In that case a Division Bench of Allahabad High Court held that a draft scheme under Section 68-C of the old Act published in 1986 shall be deemed to have lapsed on the date of the enforcement of the new Act in view of the absolute prohibition contained in Section 100(4) of the new Act against the continuance of any scheme after one year. We have gone through the judgment of the Division Bench carefully but in our opinion the view taken by the High Court of Allahabad is unsustainable in law. The learned Judges constituting the bench failed to notice the legislative interment under Section 217(4)(e) of the new Act which kept alive the scheme published under Section 68-C of the old Act for the purposes of being finalised under the new Act. We are therefore clearly of the opinion that the view taken by the Allahabad High Court is incorrect.

13. In the instant case, the appellant had filed writ petition in May 1990 and obtained an interim order from the High Court restraining the State Government from publishing the final notification under Section 100(3) of the new Act. The State Government published the final notification under Section 100(3) of the new Act on August 29, 1990 after the dismissal of the writ petition by the Division Bench of the High Court. The period of one year with regard to the pending scheme expired on July 1, 1990 but since the appellant had obtained stay order from the High Court, the State Government could not publish final notification. Explanation to Section 100(4) of the new Act lays down that in computing the period of one year any period during which the publication of the approved scheme under Section 100 is held up on account of any stay or order of any court, shall be excluded. On the application of the Explanation the period during which the appellant had obtained stay order against the State Government is liable to be excluded in computing the period of one year. Admittedly in the instant case stay order passed by the High Court remained in force from May to August 9, 1990. On the exclusion of that period the final notification issued by the State Government under Section 100(3) of the new Act on August 29, 1990 was well within the prescribed period.

14. In view of the above discussion, we are of the opinion that the High Court rightly dismissed the appellant's writ petition. The appeal fails and is accordingly dismissed with costs.

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