

A. P. State Road Transport Corporation

Vs

P. V. Ramamohan Chowdhary and others

Civil Appeal No. 3362 of 1979

(N. M. Kasliwal, K. Ramaswamy JJ)

18.02.1992

JUDGEMENT

K.RAMASWAMY, J.:-

1. This appeal by special leave arises against the judgment of the Division Bench of the Andhra Pradesh High Court dated October 3, 1977 in Writ Petn. No. 3343/ 75. The Govt. in exercise of power under S. 68-D in Chapter IVA of the Motor Vehicles Act, 1939 approved a draft scheme framed under S. 68-C through G.O.M.S. No. 753, Home (Transport) Dept. dated June, 1975, published in the gazette on June 4, 1975, relating to the route Anantapur to Dharmavaram via Mamillapalli. The scheme No. 82 of 1974 was questioned in Writ Petition No. 3827/75 and the same was upheld by a single Judge on September 30, 1975 and on appeal in Writ Appeal No. 80 of 1975 dated November 14, 1975, the Division Bench upheld the same. While approving the scheme the routes, namely, (1) Kodikonda to Anantapur via Dharmavaram, (2) Bukkapatnam to Anantapur via Dharmavaram, (3) Interstate route Virechal to Dharmavaram via Anantapur, (4) Anantapur to Puttaparti via Dharmavaram to the extent indicated in the note thereunder were exempted from the scheme. Thereby the partial exemption of these routes from the approved scheme stood upheld. Thereafter the two respondents filed the writ petition challenging the self same scheme contending that the non exemption of the routes i.e. Kalyandrug to Pernapalli via Dharmavaram and Anantapur to Perur via Dharmavaram offend Art. 14 of the Constitution. The High Court upheld the contention and held that their exclusion is discriminatory. Accordingly the High Court directed that the case "worth consideration in the case of exempted routes". The Govt. was directed to consider their case and to pass appropriate orders to accord exemption from the scheme. Questioning the correctness of the judgment, this appeal has been filed.

2. Under S. 68-C, where the State Transport Undertaking is of the 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 the road "transport services" in general or any particular route 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 service 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. The draft scheme accordingly was prepared on the above routes and was published. Objections had been filed. In exercise of the power under sub-sec. (2) of S. 68D the State Govt. after considering the objections and giving opportunity to the objectors and the representatives and also of the State Transport Undertaking approved the scheme and excluded the aforesaid four routes. As stated

earlier, the scheme was upheld by the High Court and became final. The question emerges whether the non-exclusion of two transport operators, the respondents herein offends Art. 14.

3. The contention of Sri Narsamhulu, the learned Counsel for the operators, is that the State Govt. having exempted four routes from the scheme, the respondents too are entitled to parity of treatment and the denial offends their right to equality guaranteed under Art. 14 of the Constitution. We find difficult to give our acceptance to this contention. It is true, as disclosed in the counter affidavit filed by the State Govt. in the writ petition, before the High Court that inadequate transport facilities prevailing on those four routes and density of the population that need transport service by the private operators induced the Govt. to give exemption and that the respondents also may be situated in the similar circumstances. But by the very language of S. 68-C whose constitutional validity can no longer be questioned, and was not in fact questioned, gives power to the S.T.U. to exclude the private operators completely or partially from an area or route or part thereof in the draft scheme and given exclusive power to offer transport service in that area or route or part thereof. On approval the scheme has the effect of excluding the private operators from the field. The statute itself gives power to the State to exercise discretion for formulating a scheme for an area or route or part thereof and necessarily has the effect of excluding the existing or potential private operators from the field to render transport service in that partially prohibited area etc. while retaining similar private operators in other area, route or part thereof. The exclusion completely or partially is allowable under the statute itself and is writ large. The discretion need not, necessarily be discriminatory. Sec. 68-C, left the choice to the S.T.U. and so discrimination in that sense is discernible from S. 68 C which. itself authorises the S.T.U., based on factual matrix, eliminate in its choice of a partial exclusion of private operators in an area or route or part thereof. Opportunity has been given to an affected party to file his or their objections and of a right of hearing before the State Govt. approved of the draft scheme and publication thereof in the gazette. The exercise of discretion by the S.T. U. in its selective application of partial prohibition is controlled and regulated by the statute in Ss. 68D and 68E of the Act. In *Ram Nath Verma v. State of Rajasthan*, (1963) 2 SCR 152 at 160: (AIR 1967 SC 603 at p. 607), one of the contentions raised was that out of five routes which were partially overlapping, three routes have been taken over. Permits of the existing objectors has been cancelled with respect to the overlapping part of the routes while in other two routes, the objectors were allowed to ply even on the overlapping part but they had been forbidden to pick up passengers on the overlapping part for a destination within the overlapping part. This latter method was adopted to make the permits ineffective for the overlapping part. The contention of the aggrieved persons was that they were discriminated. This Court held thus:

"We are of the opinion that there is no force in it. Under S. 68C, it is open to frame a scheme in which there is a partial exclusion of private operators. Making the permits ineffective for the overlapping part only amounts to partial exclusion of the private operators from that route. In the circumstances an order making the permit ineffective for the overlapping part would be justified under S. 68C." Giving primacy to the contention of violation of Art. 14 would be fraught with insidious effects of upsetting the very scheme itself, since any one of the existing or potential operators would always contend that he too is similarly situated with that of the exempted operators of other area, route or part thereof and unequal treatment has been meted out in the grant of permit to offer transport service offending his right under Art. 14. It is true that sub-section (2) of S. 68-E, as stated by Shri Narsamhulu, that despite the approval of the scheme under sub-section (2) of S 68-D, the State Govt. may, at any time, if it considers necessary in the public interest so to do, modify any scheme published under sub-s. (3) of S. 68-D of the Act after following the procedure

prescribed there in. The exercise of that power would be de hors the approval granted under sub-section (2) of S. 68-D of the Act and published under subsection (3) of S. 68-D. The conditions precedent therein are the Govt. must objectively come to a finding that there exists necessity in public interest and that the approved schemes needs modification and that the Govt. considers that such necessity to be imperative to modify the scheme. The Govt. thereafter should follow the procedure prescribed under sub-sec. (2) of S. 68-E as if it is a new scheme and pass appropriate orders in that regard. That too it would be only either on the initiative of the S.T. U. or on an application or representations by the general public of the necessity, in public interest, to modify the scheme approved under sub-section (2) of S. 68-D of the Act. It is not at the behest of the erstwhile holders of the permit, who have been completely or partially frozen to obtain permit afresh or intending fresh applications in this behalf. It is now settled law that even on a partial overlapping approved scheme private operators have been totally prohibited to have corridor shelters and could no longer enter into the frozen area, route or part thereof and obtain permit to render transport service to the travelling public. When that be so, the partial exclusion does not offend Art. 14 of the Constitution. In fact the respondents did not question the validity of the scheme. Thus considered the approach and the reasoning of the High Court are clearly illegal. Accordingly the appeal is allowed and the judgment of the High Court is set aside. The writ petition stands dismissed. Rule nisi discharged. But in the circumstances the parties are left to bear their own costs. Appeal allowed.

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