

ALLAHABAD HIGH COURT

Shashi Kant Rai

Vs.

R.T.A., Varanasi

Writ No. 788 of 1977

(C.S.P. Singh and B.N. Saprú, JJ.)

30.11.1977

JUDGMENT

B.N. Saprú, J

1. The petitioners were operators of stage carriages on (i) Jaunpur-Minhajpur, (ii) Jaunpur-Saidpur via Kirakat, (iii) Jaunpur-Kirakat, (iv) Jaunpur-Ghazipur via Kirakat, Aurihar and Sadipur and (v) Jaunpur-Dhobi via Kirakat routes. They held valid permits to operate their stage carriages over these routes.

2. A draft scheme under Section 68-C of the Motor Vehicles Act was published in the U. P. Gazette dated 26th August, 1961. Certain objections challenging the scheme under Section 68-C of the Act were filed. The scheme was however, approved and was published in the U. P. Gazette dated 2-6-1973. Consequential orders under Section 68-F (2) (b) cancelling the petitioners' permits were made.

3. The approved scheme prepared under Section 68-D was challenged in writ no. 6734 of 1973. The aforesaid writ petition was allowed by this Court by its judgment D/- 21-12-1973. The Court quashed the notification dated 18th August, 1961 and the order of respondent no. 2 viz., the Joint Legal Remembrancer, Government of Uttar Pradesh, Lucknow, dated 22-4-1971.

4. An appeal was preferred against the said judgment being special appeal no. 82 of 1974, *State of U. P. v. Shashi Kant Rai* and others. Special appeal was dismissed. The Division Bench which decided the special appeal held that the scheme prepared by the State Government under Section 68-C must give (1) particulars of the nature of the service proposed to be rendered, (2) particulars of the route proposed to be covered and (3) such other particulars respecting

thereof as may be prescribed. It was observed that the requirement of giving particulars is two-fold, viz : (1) to enable the persons under sub section (1) of Section 68-D to file objections to the approved scheme by showing that the purposes set out in Section 68-C, will not be fulfilled by it; and (2) to enable the Hearing Authority to decide whether the purposes, for which the scheme has been prepared, will be fulfilled by it or not. It was further held that if the particulars regarding the adequacy etc. of the proposed transport services are not given in the draft scheme, then it will not be possible for the objectors to file any effective objections to the draft scheme in this regard and it would be difficult for the Hearing Authority to give its decision whether the draft scheme will be able to provide road transport services which would fulfill the four purposes mentioned in Section 68-C. It was then held that the draft scheme must give particulars indicating how the proposed transport services would be efficient, adequate, economical and properly co-ordinate.

5. The scheme prepared under Section 68-C which was impugned merely stated in paragraph 3 : " Adequate number of State Road Transport Services, according to traffic requirement are to be provided on the route or the portion thereof mentioned in clause (2) above. The provision of transport services otherwise than under the scheme is prohibited."

6. The learned single Judge who decided the writ petition and the Division Bench which decided the special appeal were both of the view that the draft scheme prepared under Section 68-C was defective as the minimum number of services and the vehicles which were proposed to be introduced on the route, had not been mentioned. The learned Single Judge who decided the writ petition held that the defect in the scheme prepared under Section 68-C was such as to render it invalid as the foundation for preparing the scheme under section 68-C was absent. It was further held by the learned single judge that the entire subsequent proceedings for finalization of the scheme became void in view of the defect in the draft scheme prepared under section 68-C. The view of the learned single judge was affirmed in the special appeal. The judgment in Special Appeal No. 82 of 1974. *State of U. P. v. Shashi Kant Rai* is reported in ¹

7. The aforesaid judgment in the special appeal became final. After the decision in the special appeal the Uttar Pradesh Motor Vehicles (Special Provisions) Act,

1976 (U.P. Act (XXVII) of 1976) was published in the U.P. Gazette dated 5-7-1976 (hereinafter referred to as the U.P. Act.). It had received the assent of the President on July 1, 1976. This Act also dealt with the situation created as a result of the judgment of the High Court in the aforementioned writ petition and the special appeal. There were two sections in the Act which are relevant for purposes of the present writ petition. Section 7 of the Act provides as follows :

"Specification of number of services not essential requirement of Section 68-C or Section 68-D. Nothing contained in Section 68-C or Section 68-D of the Principal Act shall be deemed to require or ever to have required a specification being made in an approved scheme of the number of services to be provided."

Section 16 provided as follows :

" Validation-Notwithstanding any judgment, decree or order of any court, any scheme prepared or published under Section 68-C, or approved or modified under Section 68-D of the Principal Act or purporting to have been prepared, published, approved or modified shall not be deemed to be or have been invalid on the ground of the number of the services to be provided being not specified therein.

8. After the passing of this Act the Regional Transport Authority, Varanasi published a notification in the official Gazette dated 31st January, 1977 stating that since the scheme stood revived as a result of the passing of the aforesaid Act, the stage carriage permits of all the operators on the routes in question stood cancelled on the expiry of 15 days commencing from the date of the publication of the gazette notification. The petitioners preferred revisions before the State Transport Appellate Tribunal, U.P., Lucknow, against the order of the Regional Transport Authority, which were dismissed by the Presiding Judge by his judgment dated 31st March, 1977. Being aggrieved, the petitioners have preferred the present writ petition.

9. It is submitted on behalf of the petitioners that the draft scheme prepared under Section 68-C of the U. P. Motor Vehicles Act still retains the vice of non-specification of particulars as to the number of services that were to be provided

by the U. P. State Road Transport Corporation on the routes in question.

10. The U. P. Motor Vehicles (Special Provisions) Act, 1976 (U. P. Act No. 27 of 1976) has definition clause viz., Section 2. Section 2 defines the expression " approved scheme" . It runs as follows :

" (a) the expressions " approved scheme", " notified area" and " notified route" shall have the same meanings as in 3. 68-D of the principal Act."

The principal Act is the Motor Vehicles Act. Sections 68-C and 68-D of the Motor Vehicles Act are to be found in Chapter IV of the Act which contains special provisions relating to State Transport Undertakings. Sections 68-C and 68-D are reproduced below :

" 68-C. Preparation and publication of scheme of road transport service of a State Transport undertaking. Where any State Transport undertaking is of opinion that for the purpose of providing an efficient, adequate economical and properly co-ordinated 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 other manner as the State Government may direct.

68-D. Objection to the scheme, (1) On the publication of any scheme in the Official Gazette and in not less than one newspaper in the regional language circulating in the area or route which is proposed to be covered by such scheme,-

- (i) any person already providing transport facilities by any means along or near the area or route proposed to be covered by the scheme.
- (ii) any association representing person interested in the provision of road transport facilities recognized in this behalf by the State Government; and
- (iii) 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 objection to it before the State Govt.

(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 the scheme.

(3) The scheme as approved or modified under sub-section (2) 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 :

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

It will have been noticed that under the U. P. Act the expression " approved scheme" has been defined in Section 2 (s) which has been reproduced earlier. A " draft scheme" is prepared under Section 68-C and thereafter published in the official Gazette. Thereafter under Section 68-D (1) it is provided that within a period of thirty days from the publication of the Official Gazette objections may be filed before the State Government. Thereafter Section 68-D (2) provides that the State Government may, after considering the objections and after giving an opportunity to the objector or his representatives and the representative of the State Transport Undertaking to be heard in the matter, may either approve or modify the Scheme. The scheme as approved or modified under sub-section (2) is then to be published in the official Gazette of the State Government and becomes final and that scheme is called the approved scheme. In other words, it is the scheme prepared under Section 68-D (3) which is the approved scheme. The draft scheme prepared under Section 68-C is not an approved scheme. The Uttar Pradesh Act in Section 7 has provided that nothing contained in Section 68-C or Section 68-D of the Principal Act shall be deemed ever to have required a specification made in the " approved scheme of the number of services to be provided" . An approved scheme is not prepared under Section 68-C of the Motor Vehicles Act and, as such, the reference to Section 68-C in Section 7 of the U. P. Act is meaningless and of no legal effect.

11. This Court has held that the scheme prepared under Section 68-D was defective as the foundation for preparing the scheme was missing because the number of services to be provided by the State Road Transport Undertaking had not been specified in the draft scheme prepared under Section 68-C. The defect has not been removed by Section 7 of the U. P. Act of 1976.

12. Now we have to consider whether Section 16 of the U. P. Act saves the schemes prepared u/Sections 68-C and 68-D of the Motor Vehicles Act.

13. In the case of *I.N. Saksena v. State of M.P.*,² the Supreme Court has observed as follows;-

" The distinction between a " legislative" act and a " judicial" act is well known, though in some specific instance the line which separates one category from the other may not be easily discernible. Adjudication of the rights of the parties according to law enacted by the legislature is a judicial function. In the performance of this function, the court interprets and gives effect to the intent and mandate of the legislature as embodied in the statute. On the other hand, it is for the legislature to lay down the law, prescribing norms of conduct which will govern parties and transactions and to require the court to give effect to that law.

While, in view of this distinction between legislature and judicial functions, the legislature cannot by a bare declaration, without more, directly overrule, reverse or override a judicial decision, it may, at any time in exercise of the plenary powers conferred on it by Articles 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law on a topic within its legislative field fundamentally altering or changing with retrospective, curative or neutralizing effect the conditions on which such decision is based. As pointed out by Ray C. J. in *Indira Nehru Gandhi v. Raj Narain*,³ the rendering ineffective of judgments or orders of competent courts and tribunals by changing their basis by legislative enactment is a well known pattern of all validating Acts. Such validating legislation which removes the causes for ineffectiveness or invalidity of actions or proceedings is not an encroachment on judicial power. In *Hari Singh v. Military Estate Officer*,⁴ a Bench of seven

learned Judges of that Court laid down that the validity of a validating law is to be judged by two tests. Firstly, whether the legislature possesses competence over the subject matter, and, secondly, whether by validation the legislature has removed the defect which the courts had found in the previous law. To these we may add a third : Whether it is consistent with the provisions of Part III of the Constitution."

It will be seen that there has been no effective legislative amendment of the U. P. Act of 1976 in Section 68-C of the Motor Vehicles Act. That Act continues in the form it was when it was interpreted by this Court in the writ petition and the special appeal referred to earlier. Therefore, the decision of this Court in those cases governs the matter. The draft scheme prepared under Section 68-C continues to remain ineffective, as the number of services to be provided by the State Transport Corporation has not been specified in the scheme.

14-15. The provisions of Section 16 of the U.P. Act of 1976 will not save the scheme prepared under Section 68-C of the Motor Vehicles Act as the legislature has not cured the defect which led the High Court to hold that the scheme was invalid. In the judgment of the Supreme Court quoted earlier it has been pointed out that the Legislature cannot by a bare declaration, without more, directly overrule, reverse or override a judicial decision. It has, however, also been laid down that the Legislature can bring (render?) the judicial decision ineffective by enacting a valid law on the topic within its legislative field fundamentally altering or changing with retrospective, curative or neutralizing effect the conditions on which such decision is based.,

16. Thus, as the U.P. Act has not effectively amended the provisions of Section 68-C in regard to the preparation of a draft scheme and as to the requirement of the specification of the number of services to be rendered by the State Road Transport Corporation, Section 16 of the U.P. Act of 1976 will not save the scheme prepared under Section 68-C of the Motor Vehicles Act. The view that this Court is taking in this decision is re-inforced by a decision of the Supreme Court in the case of *State of Tamil Nadu v. M. Rayappa Gounder*,⁵ In that case the Madras High Court has held that under the Madras Entertainment Tax Act, 1939 there was no power in the Assessing Authority to reassess the receipts that had escaped assessment. Thereafter the State Legislature enacted the Madras Entertainment Tax (Amendment) Act (20 of 1966). Section 7 of that Act

contained a provision relating to validation of assessment for collection of certain tax. That section reads :

" Notwithstanding anything contained in this Act or in the principal Act or in any judgment, decree or order of any Court no assessment or reassessment or collection of any tax due on any payment for admission to any entertainment or any cinematograph exhibition which has escaped assessment to tax, or which has been assessed at a rate lower than the rate at which it is assessable, under Section 4 or 4-A of the Principal Act, made at any time after the date of the commencement of the principal Act and before the date of the publication of this Act in the Fort St. George Gazette shall be deemed to be invalid or ever to have been invalid on the ground only that such assessment or re-assessment or collection was not in accordance with law and such tax assessed or reassessed or collected or purporting to have been assessed or reassessed or collected, shall, for all purposes, be deemed to be and to have been always validly assessed or reassessed or collected; and accordingly-

(a) all acts, proceedings or things done or taken by the State Government or by any officer of the State Government or by any other authority in connection with the assessment or reassessment or collection of such tax, shall, for all purposes be deemed to be and to have always been done or taken in accordance with law :

(b) no suit or other proceeding shall be maintained or continued in any court against the State Government or any person or authority whatsoever for the refund of any tax so paid ; and

(c) no court shall enforce any decree or order directing the refund of any tax so paid" .

Thereafter the question arose as to the validity of the reassessment. These reassessments were challenged before the Madras High Court which quashed the reassessment on the ground that the power to reassess under Section 7-B introduced by the Act is incomplete and was not exercisable in the absence of prescription as to the limitation contemplated. The matter went up in appeal to the Supreme Court. It held that Section 7 could not declare any decision of a court of law to be void or of no effect. The position, therefore, is that notwithstanding the provisions of Section 16 of the U.P. Act 1976, the defect

which was originally found in the draft scheme prepared under Section 68-C continues and, as such, no valid scheme could be prepared under Section 68-D(3) of the Motor Vehicles Act.

17. An approved scheme can only be prepared under Section 68-D(3) of the Motor Vehicles Act after the provisions of Sections 68-C and 68-D(1) and (2) have been complied with. These provisions not having been complied with the approved scheme prepared under Section 68-D(3) is unenforceable.

18. It is necessary to add that the petitioners had permits on the routes in question which were cancelled. The petitioners have challenged the orders of cancellation as well as the orders of the State Transport Appellate Tribunal dismissing their revisions. During the pendency of the writ petition the permits of some of the petitioners would have expired by efflux of time even if they have not been cancelled, while the permits of some of the other petitioners would have survived.

19. In view of our conclusions stated above, the petition succeeds and is allowed. The impugned order cancelling the permits of the petitioners is quashed. As respects the petitioners whose applications for the renewal of permits are pending, the Regional Transport Authority should dispose of those applications in accordance with law and on the basis that there is no valid approved scheme for the routes in question. The petitioners are entitled to their costs.

Petition allowed.

Cases Referred.

1. AIR 1976 All 315
2. AIR 1976 SC 2250
3. (1975) (Supp) SCC 1
4. AIR 1972 SC 2205
5. AIR 1971 SC 231