

(1979) 09 RAJ CK 0024
In the Rajasthan High Court
Case No : Civil Spl. Appeal No. 124 of 1979

Chota Lal Mehta	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 29-09-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 68D, 68I
Rajasthan State Road Transport Services (Development) Rules, 1965 — Rule 6(2)

Citation : AIR 1980 Raj 123

Hon'ble Judges : C.M. Lodha, C.J.; Kanta Bhatnagar, J

Bench : Division Bench

Advocate : R.R. Vyas, for the Appellant; D.S. Shishodia, Government Advocate
R.N. Munshi, for the Respondent

Final Decision : Dismissed

Judgement

Lodha, C. J.

1. This is a special appeal u/s 18 of the Rajasthan High Court Ordinance from the order dated July 13, 1979, passed in S. B. Civil Writ Petition No. 699 of 1979, whereby the learned single Judge dismissed the writ petition filed by the appellant.

2. The appellant is an existing operator on Doongarpur-Sabla route via Kheda Punali, Vankoda, Baroda, Bodigama, Pindawa) route extending up to Vijawamata via Lodwal. A draft scheme u/s 68-C of the Motor Vehicles Act No. 4 of 1938 (hereinafter to be referred to as the Act), was published in the Rajasthan Raj Patra dated July 26, 1976, with regard to the following four routes:--(i) Doongarpur-Aspur via Ganeshpur, (ii) Doongarpur-Aspur via Bankoda, (iii) Aspur-Sagwada via Punjpur, and (iv) Doongarpur-Nithawa via Bankoda Punjpur, Aspur, Sabla. As the petitioner-appellant's route was affected by the proposed scheme, he preferred objections before the Home Commissioner, Government of Rajasthan, Transport Department, Jaipur, on August 24, 1976, who forwarded

the same to the Joint Legal Remembrancer No. 2, Government of Rajasthan, for consideration. The Joint Legal Remembrancer No. 2, Government of Rajasthan, Secretariat, Jaipur (hereinafter to be referred to as respondent No. 2) issued a notice dated November 25, 1976, published in the Rajasthan Raj Patra dated December 2, 1976, fixing January 10, 1977, as the date for hearing the objections filed by the petitioner as well as by other objectors. But the appellant did not present himself before the respondent No. 2. The petitioner's case is that it was only on March 10, 1979, that his Manager came to know from one Shri Uda Ram, Advocate, that the objections were being heard by the Joint Legal Remembrancer No. 2 and thereupon he made an application (copy marked Annexure 4) on March 16, 1979, before the respondent No. 2 for granting him time to produce evidence. This application was rejected by respondent No. 2 by an order dated March 19, 1979 (Annexure 5).

3. Aggrieved by the order of respondent No. 2, rejecting the appellant's application, the appellant filed the writ petition on two grounds, namely, (i) that Rule 6 (2) of the Rajasthan Road Transport Service (Development) Rules, 1965, (hereinafter called the Rules), which provides for publication of notice in Official Gazette is ultra vires the provisions of Section 68-D of the Motor Vehicles Act, 1938, and (ii) that the impugned order by respondent No. 2 rejecting the appellant's prayer for grant of opportunity to adduce evidence in support of his objections is illegal and void. The learned single Judge rejected both these contentions and dismissed the writ petition.

4. Shri R.R. Vyas, learned counsel for the appellant has reiterated the same contentions before us. He has urged that it was obligatory for respondent No. 2 to give individual notice to the appellant of the date fixed for consideration of his objections and that having not been done, the provisions of Section 68-D (2) cannot be said to have been complied with.

5. We may, at this stage, read the provisions of Section 68-D (2) of the Act,--

"(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." A bare reading of the aforesaid sub-section makes it clear that it is incumbent upon the State Government to consider the objections after giving an opportunity to the objector to be heard in the matter. Thus, an opportunity of being heard must be given to the objector. That the opportunity of being heard includes the opportunity to adduce evidence also cannot be denied and if an authority is needed on the point, reference may be made to *Malik Ram Vs. State of Rajasthan*, wherein the Supreme Court observed as follows:--

"A hearing before a quasi-judicial authority does not merely mean an argument; it may in proper cases include the taking of evidence, both oral and documentary. It seems to us that in the circumstances of the provision contained

in Section 68-D (2) and the purpose of the hearing thereunder, taking of evidence, whether oral or documentary, that may be desired to be produced by either party, may be necessary before the State Government can arrive at a just conclusion with respect to the objections to the draft scheme."

We are also of opinion that opportunity of being heard necessarily implies that a date should be fixed for giving such an opportunity and the same should be notified to the parties concerned. So far there is no difficulty. The question is whether giving of an opportunity to be heard necessarily implies that individual notices should be given to the parties concerned of the date fixed for consideration of the objections. On this point, Section 68-D is silent, but provision in this respect has been made in the Rules made by the State Government in exercise of powers conferred upon it by Section 68-I of the Act. Section 68-I (1) provides that the State Government may make rules for the purpose of carrying into effect the provisions of this Chapter and in particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely,--

(a) the form in which any scheme or approved scheme may be published u/s 68-C or Sub-section (3) of Section 68-D;

(b) the manner in which objections may be filed under Sub-section (1) of Section 68-D;

(c) the manner in which objections may be considered and disposed of under Sub-section (2) of Section 68-D; The State Government, in exercise of its powers u/s 68-I made the Rajasthan Road Transport Service (Development) Rules, 1965. Rule 6 of the said Rules provides for consideration and disposal of objections and Sub-rule (2) of Rule 6 further provides that the Officer authorised to consider the objections shall fix the date, time and place of hearing of objections and issue a general notice in the Official Gazette asking the objectors and the General Manager to appear before him in person or through a duly authorised agent and the publication of the notice, in the Official Gazette shall be deemed to be the personal service on the parties.

6. Thus, the mode of giving notice prescribed by Sub-rule (2) of Rule 6 is by publication in the Official Gazette and such publication shall be deemed to be the personal service on the parties. In absence of there being any provision in the Act regarding the mode of giving notice, we are unable to accept the contention raised by Shri Vyas that the provision for publication of the notice in the Official Gazette contained in the Rules is ultra vires Section 68-B of the Act. However, Shri Vyas has placed strong reliance on *Samarth Transport Co. Private Ltd. Vs. Y.B. Chavan and Others*, In that case, Rule 142 of the Rules made u/s 68-I of the Act provided that the State Government may consider the proposed scheme and the objection at the hearing, of which at least 7 days' notice shall be given to every objector and by an amendment made in the Rule, it was provided that notice shall ordinarily be sent at the address of the objector by ordinary post

under certificate of posting provided that where the number of objectors is considerable or addresses of the objectors are illegible, the State Government may, instead of giving individual notice to every objector, give notice by publication in a local newspaper having wide circulation in the area in which the objectors reside. It was argued on behalf of the objector that it is implicit in the provisions of Section 68-D (2) of the Act and also imperative on the principles of natural justice that an individual notice must be given to every objector and Rule 142, which enables the Government to dispense with the individual notice, is ultra vires the Act and is also invalid as being opposed to the principles of natural justice. The Court observed as follows:--

"It does seem to us that Sub-rule (2), which has been added by amendment of October 28, 1959, is so worded as to permit an objection being raised against it that it is not in conformity with the provisions of Section 68-D (2)."

7. It should, however, be noted that the observation, extracted above, was not made after a full dress debate inasmuch as in the very next sentence, the learned Judges said that it was not necessary for them to deal with this grievance in any detail because the said grievance had become academic. However, we may observe that Rule 142 of the Rules under consideration before the Bombay High Court was differently worded. That Rule provided that notice shall be given to every objector and the amendment sought to engraft an exception to the main rule. Besides that, the observation relied upon by the learned counsel is only obiter dicta. We have already explained above that there is nothing in Section 68-D of the Act to show that the Legislature intended to provide that individual notice must be given to fulfil the requirement of providing opportunity to the objector of being heard, As to the applicability of the principles of natural justice "*audi alteram partem*", we wish to point out that this principle has been closely examined in a number of decisions by the Supreme Court and the High Courts during the recent years. In the first place, we may mention, that where the provision regarding mode of hearing is made in the statute or the Rules made under it, the principle of natural justice, cannot override the statutory provision. Besides that, we have not been shown any authority in support of the proposition that giving of individual notice is a principle of natural justice. In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, the Supreme Court observed as follows:--

"The *audi alteram partem* rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise. That is why Tucker, L. J., emphasised in *Russel v. Duke of Norfolk* (1949) All EB 109 that whatever standard of natural justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case". What opportunity may be regarded as reasonable would necessarily depend on the practical necessities of

the situation.

It may be a sophisticated full-fledged hearing or it may be a hearing which is very brief and minimal: it may be a hearing prior to the decision or it may even be post-decisional remedial hearing. The audi alteram partem rule is sufficiently flexible to permit modifications and variations to suit the exigencies of myriad kinds of situations which may arise. This circumstantial flexibility of the audi alteram partem rule was emphasised by Lord Reid in *Wiseman v. Borneman* (1971 AC 297) when he said that he would be "sorry to see this fundamental general principle degenerate into a series of hard and fast rules" and Lord Hailsham, L.C., also observed in *Pearl-Berg v. Varty* (1971) 1 WLR 728 that the Courts "have taken an increasingly sophisticated view of what is required in individual cases",

The aforesaid observations by their Lordships of the Supreme Court make it amply clear that what is required for applicability of the principles of natural justice is a reasonable opportunity of being heard, and what is reasonable, would necessarily depend on the practical necessities of the situation.

8. Now, in the present case, when a draft scheme is published and objections are invited, it may be that a large number of persons may file objections. It has been submitted on behalf of the respondents and not without force that if an individual notice to all the objectors had been made obligatory, then the objectors interested in opposing the scheme may delay and defeat the proposed scheme by evading individual service. Thus, the rule making authority, it appears, in its wisdom considered it proper that instead of making provision for individual notice, publication of notice in the Official Gazette should be considered as sufficient notice. It is also important to note that operators, by and large, do keep themselves informed of Gazette notifications pertaining to such matters, as they vitally affect their interest. In these circumstances, we are unable to hold that the provision contained in Rule 6 (2) of the Rules providing publication of notice in the Official Gazette is ultra vires Section 68-D of the Act or in any way violative of the principles of natural justice.

9. This brings us to the other contention advanced by Shri Vyas that the respondent No. 2 acted in a patently Illegal manner in not allowing the ap-pellant an opportunity to adduce evidence. It may be recalled that the date fixed for consideration of the objections was January 10, 1977. The application (Annexure 4) was filed by the appellant after more than two years, on March 16, 1979. It has been mentioned therein that after filing of the objections by the appellant, no intimation had been given by the Home Commissioner regarding hearing of the objections and that the objector had come to know only on March 10, 1979 from Shri Uda Ram, Advocate, that the objections were being considered by the respondent No. 2. It was prayed that the objector (appellant) may be granted one month's time to file a list of witnesses. It may be noticed that the recording of evidence had been over and March 16, 1979, was the date fixed for arguments. The application was thus obviously a highly belated one. It is also

significant that the appellant neither brought witnesses on that day, nor submitted a list of witnesses but wanted one month's time to furnish a list of witnesses, This only goes to show that either the appellant was not at all vigilant and serious in producing evidence or he only wanted to delay the matter by dilatory tactics. In these circumstances, respondent No. 2 cannot be said to have committed any error in exercise of his discretion in rejecting the application. Of course, it goes without saying that if the appellant can press his objections without evidence from his side, he would be at liberty to do so.

10. The net result of the foregoing discussion is that we do not find any force in this appeal and hereby dismiss it, but make no order as to costs.