
(1989) 09 RAJ CK 0018

In the Rajasthan High Court

Case No : Civil Special Appeal No's. 350 of 1985, 101 of 1986 and 95, 249, 250 and 251 of 1987

Dal Chand

APPELLANT

Vs

R.T.A. and Others

RESPONDENT

Date of Decision : 27-09-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 68C

Citation : AIR 1990 Raj 157 : (1989) 2 RLW 340 : (1989) 2 WLN 465

Hon'ble Judges : R.S. Sharma, J;K.S. Lodha, J

Bench : Division Bench

Advocate : R.R. Vyas, for the Appellant; N.D. Khan, Additional Government Advocate and R.N. Munshi, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Lodha, J.—These six special appeals involve a common question, although they are based on some different facts, and therefore, they are being disposed of by a single judgment.

2. It may at once be stated that the main contention of the learned counsel for the appellants is that in these cases, the schemes, which had been published u/s 68-C of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act") had not been approved for a considerable long time, more than seven years in each case, and therefore, these schemes had become outdated and are liable to be quashed. In order to appreciate the contention, the dates on which the various schemes were published as draft schemes, the dates on which schemes were approved; the dates on which they were notified and implemented are given in a tabular form below along with the names of the parties and the routes concerned:

Mi	Name of the Parties	Name of the route	Date of publication of draft scheme	Date of approval of the scheme	Date of Notifica-cation of the approved scheme
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1.	Dalchand Doongarpur to Modasa via Mewaran	inter-state route lying in State of			
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Gujarat 13-4-79 29-3-85 13-6-85

2.Tarachand Nathdwara to Chhotisadri via Thamla, Talana Mavli, Vallabhnagar, Amarpura, Bhiner etc. 3-4-76 29-5-80 13-6-85

3.Ramratan Chodhary Chittorgarh to Chhotisadri and Chittorgarh to Badisadri 3-4-76 29-5-80 13-6-85

4.M/s. Arg Transport Chittorgarh to Banswara 3-4-76 29-5-80 13-6-85

5.M/s. Nandlal Tarachand Chittorgarh, Banswara via Chhotsadri 13-6-85 29-5-80

6.Pherulal Choudhary Nathdwara Chhotisadri via Thamla Vallabhnagar etc. 3-4-76 29-5-80 13-6-85

In support of the contention of the learned counsel that these schemes having become outdated and inappropriate, they are liable to be quashed, Reliance was placed upon Yogeshwar Jaiswal Vs. State Transport Appellate Tribunal and Others, ; Phool Chand Gupta Vs. Regional Transport Authority, Ujjain and Others, ; Srichand v. Govt. of U.P., AIR.1986 SC 242 and Onkar Singh and Others Vs. Regional Transport Authority, Agra and Others, On the other hand, learned counsel for the respondent-- R.S.R.T.C. urged that although there had been some delay in the approval and notification of the draft schemes, but now all these schemes have already been approved and notified and implemented and therefore, the mere fact that the draft schemes were approved after considerable delay, should not be a ground for striking them down.

3. We have given our careful consideration to the rival contentions and are clearly of the opinion that the appellants' contention cannot be accepted in the circumstances of the cases and the authorities relied upon by the learned counsel for the appellants are clearly distinguishable.

4. In Yogeshwar Jaiswal Vs. State Transport Appellate Tribunal and Others, the delay between the publication of the draft scheme and its approval was about 14 years, yet the scheme was not struck down and direction was given that the matter will be considered by the authority concerned within the time specified by the court.

5. In Phool Chand Gupta Vs. Regional Transport Authority, Ujjain and Others, the draft scheme had been published about 20 years back and by the time the matter came up for consideration it had not been approved, and, therefore, the draft was cancelled since it was found that the proposed draft scheme would not satisfy the requirements of Section 68-C of the Act, which provides that the transport service which is proposed to be introduced in respect of any route or area to the exclusion, complete or partial, of all other operators should be efficient, adequate, economical and properly co-ordinated service. Reliance was placed on Yogeshwar Jaiswal Vs. State Transport Appellate Tribunal and Others, where in it was observed.--

"On account of various reasons such as the growth of population and the

development of the geographical area adjacent to the area or route in question, any unreasonable delay may render the very proposal contained in the scheme antiquated, outmoded and purposeless. Hence there is need for speedy disposal of the case u/s 68D of the Act."

In *Shri Chand Vs. Government of U.P., Lucknow and Others*, , the draft scheme was not approved for about 26 years and on account of certain stay orders granted in favour of 32 operators, the approved scheme Became final against other operators, but was not operative against those persons who had obtained the stay orders and in that view of the matter, the scheme was struck down. It was observed :--

"The result was that while the petitioners who had filed the writ petitions were able to operate their stage carriages on the route those who had not filed the writ petitions could not operate..... It has, thus, resulted in discrimination."

Therefore, this case also is distinguishable.

6. In *Onkar Singh and Others Vs. Regional Transport Authority, Agra and Others*, the draft scheme remained pending for approval for about 25 years, i.e. till the decision by the Hon"ble Supreme Court in that case and, therefore, it was struck down. In that judgment of course, their Lordships of the Supreme Court have observed:--

"We find that there has been clear disobedience of the provisions of the Act. The proviso to Section 68-F(1-D) of the Act which provides that where the period of operation of a permit in relation to any area, route or portion thereof specified in a scheme published u/s 68-C of the Act expire after such publication, such permit may be renewed for a limited period but the permit so renewed for a limited period shall cease to be effective on the publication of the scheme under Sub-section (3) of Section 68-D of the Act indicates the legislative intention regarding the maximum period that may be spent on the proceedings which intervene between the date of publication of the draft scheme u/s 68-C of the Act and the publication of the approved or modified scheme u/s 68-D(3) of the Act. It suggests that it cannot be longer than three to five years which is usually the period during which a permit can be in force without renewal as provided in Section 58 of the Act. It could never have been in the contemplation of parliament that the period of approving a scheme with or without modification or for rejecting it could be twenty-five years as in this case".

From these observations, learned counsel for the appellants wants us to hold that according to the Hon"ble Supreme Court, the draft scheme which is not approved within five years, is liable to be struck down on that very ground, but we are unable to agree with the learned counsel. These observations of the Hon"ble Supreme Court are only to the effect that about 3 to 5 years should be the appropriate time within which the draft scheme should ordinarily be approved, but it does not lay down that if even a single day passes over the period of five years, the scheme would be liable to be struck down on chat very

ground. If that was so, then in Yogeshwar Jaiswal Vs. State Transport Appellate Tribunal and Others, the direction would not have been given for deciding the question of approving the draft scheme within the specified period. The observations of the Supreme Court have to be taken in the context and the background of the facts in which they have been made, as has been held by the Hon"ble Supreme Court in Greater Bombay Municipal Corporation v. Thukral Anjali AIR 1989 SC 1192. It may also be mentioned here that the fact that in the present matters, the schemes have already been approved, notified and implemented makes a lot of difference and now after the implementation of these schemes, if they are struck down at this stage, a lot of inconvenience will be caused to the travelling public as also to the R.S.R.T.C. If there is an increased public need now, the R.S.R.T.C. can always cope with it by resorting to proviso, to Section 68-E. Therefore, public interest would not suffer.

7. We are clearly of the opinion that although there had been some undue delay between the publication of the draft schemes and the notification of the approved schemes, the schemes are not liable to be struck down only on the ground of delay in approval of the schemes after the publication of the draft schemes.

8. In two of these appeals, it is also contended by the learned counsel for the appellants that the schemes only permit overlapping of 10 kms. by private operators over the nationalised route and there is no raionale for filling the limit of 10 kms. As a matter of fact, in order that no inconvenience is caused to the travelling public, overlapping should have been allowed up to the place where the other service was available without break. Therefore, on this ground also, the schemes are liable to be struck down. We do not find any substance in this contention either. When a route is nationalised, the State Transport Corporation has right to ply on it to the exclusion of any private operators. Overlapping of 10 kms. on such route by private operators of other routes is permitted only with a view to give facility to the public so that for short distance they need not have to change from a vehicle of private operator to that of State Transport Corporation during the travel. The distance of 10 kms. cannot be said to be inappropriate inasmuch as if the private operators are permitted to overlap their services over the nationalised routes for longer distance, the very purpose of nationalisation of the route would be defeated. We are supported in this view by a decision of the Supreme Court in C.K. Narayana Chary v. P. Ashanna AIR 1987 SC 317. Although in that case, the question of distance of overlapping was not specifically raised, their Lordships observed,--

"A necessary consequence of these provisions is that no private operator can operate his vehicle on any part or portion of a notified area or notified route unless authorised so to do by the terms of the scheme itself. He may not operate on any part or portion of the notified route or area on the mere ground that the permit as originally granted to him covered notified route or area. We are not impressed by the various submissions made on behalf of the appellants by their several counsel. The foremost argument was that based on great inconvenience

which may be caused to the travelling public if a passenger is not allowed to travel, say, straight from A to B on a stage carriage, to ply which on the route A to B a person X has a permit, merely because a part of the route from C to D somewhere between the points A and B is part of a notified route. The answer to the question is that this is a factor which will necessarily be taken into consideration by the State transport undertaking before publishing the scheme, u/s 68-C by the Government u/s 68-D when considering the objections to the scheme and thereafter either by the State transport undertaking or by the Government when the inconveniences experienced by the travelling public are brought to their notice. The question is one of weighing in the balance the advantage conferred on the public by the nationalisation of the route C-D against the inconveniences suffered by the public wanting to travel straight from A to B. On the other hand, it is quite well known that under the guise of the so-called corridor restrictions permits over longer routes which cover shorter notified routes or overlapping parts of notified routes are more often than not misutilised since it is next high impossible to keep a proper check at every point of the route. It is also well known that often times permits for plying state carriages from a point a short distance beyond one terminus to a point to a short distance beyond another terminus of a notified route have been applied for and granted subject to the so-called corridor restrictions" which are but mere ruses or traps to obtain permits and to frustrate the scheme. If indeed there is any need for protecting the travelling public from inconveniences as suggested by the learned counsel, we have no doubt that the state transport undertaking and the government will make a sufficient provision in the scheme itself to avoid inconvenience being caused to the travelling public."

No other point has been urged before us.

9. The special appeals, therefore, fail and are, hereby, dismissed. There will be no order as to costs.

10. Learned counsel for the appellants prays for leave to appeal to the Hon''ble Supreme Court.

11. We do not see any reason to grant such leave in the facts and circumstances of the case on which it has been decided. Leave is, therefore, refused.