
(1971) 08 PAT CK 0020

In the Patna High Court

Case No : Civil Writ Jur. Case No. 795 of 1969

Dilwara Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-08-1971

Acts Referred:

Motor Vehicles Act, 1939 — Section 68D, 68D(3)

Citation : AIR 1972 Patna 162

Hon'ble Judges : N.L. Untwalia, J; Akbar Hussain, J

Bench : Division Bench

Advocate : Saptami Jha, for the Appellant; Tarakant Jha, Standing Counsel No. 2 for the State, Lal Narayan Sinha, (Road Transport Corporation), Lakshman Saran Sinha and R.P. Srivastava for other Respondents, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioners in this writ application are owners of transport vehicles which they ply for hire or reward on routes in the State of Bihar.

They are the operators who got their permits from the East Bihar Regional Transport Authority (respondent No. 3) at Bhagalpur. On the 7th June, 1967, by resolution No. 3541, the Bihar State Road Transport Corporation, hereinafter called "the Corporation", prepared a scheme u/s 68-C of the Motor Vehicles Act, hereinafter called "the Act". The said scheme was published in the Bihar Gazette on the 26th July, 1967. Several objections were filed to that scheme by operators throughout Bihar plying their vehicles on grant of permits by the different Regional Transport Authorities. The objections were heard on the 18th of October, 1967 as also on the 24th October, 1967. According to the petitioner's case, the hearing had not concluded, and the Transport Minister, who was authorised to hear the objections on behalf of the State Government, went out of office on the 25th January, 1968. No information, according to the case of the petitioners, was given to them of any order having been passed by him. A new Ministry was formed on the 28th January, 1968, and under the orders of the new

Transport Minister fresh notices were issued to the objectors; a copy of such notice dated 4-3-1968 is Annexure 4 to the writ application. The matter was to be heard on the 30th March, 1968. This new Ministry also fell on the 28th March, 1968. A Press note was issued on that date that the date fixed for hearing the objections on the 30th March, 1968 by the Minister (Transport) against the scheme of the Corporation published in the Bihar Gazette dated the 26th July, 1967, for nationalisation of the bus routes was postponed and that the next date of hearing would be published, when fixed, in a Press note. The petitioner's case further is that without fixing the next date of hearing and without concluding the hearing which commenced on the 18th October, 1967, the scheme was published in the Extraordinary issue of the Bihar Gazette dated the 28th May, 1969. Their grievance is that the scheme so published is invalid in law as it has been published without finalising the objections raised by the petitioners.

2. The State of Bihar is respondent No. 1 in this writ application. Both the Corporation and the State have filed their counter-affidavits. Both of them deny the assertion of the petitioners that the hearing had not concluded on the 24th October, 1967. They say that the hearing had been concluded on that date and orders were reserved by the then Transport Minister. He passed the final orders on the 18th January, 1968. A copy of this order has also been annexed by the petitioners as Annexure 7 to the writ application. The State Government examined the matter after the fall of the second Ministry and came to the conclusion that the scheme had to be published as had been directed by the then Transport Minister in his order dated the 18th January, 1968. Nothing more was to be done, and, the order of the Transport Minister being of a judicial nature, it could not be reviewed by the successive Transport Minister of the second Ministry and all the notices (Annexures 4 and 5) were ultra vires and illegal. The Corporation's stand also is that the petitioners had knowledge of the order and the operators of the various regions in the State of Bihar were acting in concert. When the scheme was about to be published, the operators of the Hazaribagh district filed Title Suit No. 136 of 1968 in the court of the Subordinate Judge at Hazaribagh on the 21st November, 1968. An injunction order was obtained on that very date which was made absolute by the trial court on the 9th January, 1969; but the District Judge vacated the injunction order on the 24th May, 1969, and then only this scheme could be published on the 28th May, 1969. Thereafter, Muzaffarpur operators filed Title Suit No. 68 of 1969 in Muzaffarpur court on the 28th May, 1969 and obtained an ad interim order of injunction on the 30th May, 1969. This ad interim order of injunction was vacated on the 19th July, 1969; and, six days thereafter the Bhagalpur operators filed the present writ application which was admitted on the 28th July, 1969; but no stay was granted.

3. The first question which has been pressed by learned Counsel for the petitioner is that the hearing of the objections, which had commenced on the 18th October, 1967, had not concluded on the 24th October, 1967; and, without concluding the hearing the then Transport Minister had no jurisdiction to pass an order on the 18th January, 1968, disposing of the objections in the manner he

did, and that was the reason that the successor Transport Minister had decided to proceed with the hearing and conclude it. We do not feel persuaded to accept this argument as correct. It is obviously wrong. It is difficult to accept that the previous Transport Minister would have passed the order contained in Annexure 7 without concluding the hearing. In the very first paragraph of the order, it is mentioned that the hearing commenced on the 18th October, 1967, but it was not concluded on that date, and, hence, with the consent of all the parties it was adjourned to the 24th October, 1967, and, on that date the hearing was concluded and order was reserved. The statement in paragraph 9 of the show cause petition filed by the Corporation is amply supported by the order contained in Annexure 7. The allegations of the petitioners in paragraph 12 of the petition have been controverted in that paragraph of the show cause petition. Similar is the stand taken on behalf of the State of Bihar. In our opinion, therefore, the first point fails. It has got to be held that the hearing had concluded on the 24th October, 1967, and thereupon, the previous Transport Minister had passed the final order contained in Annexure 7 on the 18th January, 1968. This is further supported by the notice dated the 4th March, 1968 (Annexure 4). This notice recites that the then Transport Minister had decided to reconsider the matter and, for that purpose, had fixed the 30th of March, 1968, as the date of hearing. The language used in Hindi is as under:

"Aapaki aapatti par punah vichar karne ke live sunwayi ki tithi 30-3-1968 ko 11 baje din me nishchit ki hai."

4. The second contention put forward on behalf of the petitioners is that the order dated the 18th January, 1968, could not become final unless it was communicated to the petitioners. In support of this contention, reliance has been placed on a decision of the Supreme Court in *Bachhittar Singh Vs. The State of Punjab*, . In my opinion, there is no substance in this argument. The order, which was held to be not effective without communication in the case before the Supreme Court, was entirely of a different kind. Under Chapter IVA of the Act wherein occur Sections 68C and 68D. after hearing the objections the State Government have to approve or modify the scheme. This must be by an order. The scheme, when it is approved, becomes final only when it is published in the official gazette. A distinction, therefore, must be maintained between the final order of the State Government under Sub-section (2) of Section 68D and the finality of the scheme under Sub-section (3). There is no law that the order approving or modifying the scheme has got to be communicated either to the objectors or to the Corporation. This is apart from the fact that the various facts mentioned in the counter-affidavit of the Corporation lend some support to the contention put forward on its behalf that the petitioners had knowledge of the order. But that apart, we do not think that the order dated the 18th January, 1968, required communication to the petitioners before it could be adopted as a final scheme on publication of the scheme in the Bihar Gazette.

5. The third contention put forward on behalf of the petitioners is that once the

successor Transport Minister had decided to rehear the matter, even assuming that it was a case of rehearing, the State Government eventually could not drop the idea of rehearing and publish the scheme on the basis of the order dated the 18th January, 1968. I have no difficulty in rejecting this argument also, as, in my opinion, it does not stand scrutiny. Wanchoo, J., as he then was, delivering the judgment on behalf of the Court in the case of Nehru Motor Transport Co-operative Society Ltd. and Others Vs. The State of Rajasthan and Others, has said at page 1100, column 1, in paragraph 6 :

"There is no doubt that a draft scheme has to be considered as a whole and all objections to it have to be decided before it can be approved by the State Government or by the officer appointed in that behalf and the Act does not envisage approving of a part of the scheme once and putting it into effect and leaving another part unap-proved and left over for enforcement later. It is also true that the Act does not provide for review of an approval once given by the Legal Remembrancer, though he may be entitled to correct any clerical mistakes or inadvertent slips that may have crept in his order. It is also true that the Legal Remembrancer when considering the objections has to exercise his own judgment subject to any directions that the High Court might give on questions of law relating to a particular draft-scheme. But we do not think that this is a case where the draft-scheme has been approved in part and another part of it has been left unapproved to be taken up later; nor is this a case where the Legal Remembrancer abdicated his own judgment or reviewed his earlier decision when he proceeded to reconsider the matter after the High Court had set aside the scheme as published u/s 68D(3) of the Act on June 16, 1962."

The said observation clearly Indicates that the nature of the order passed by the State Government, and in this case the Transport Minister on behalf of the State Government, is judicial. The objections are dealt with and thereafter the scheme prepared by the Corporation is either approved or modified. If such an order was a judicial order. then the third contention put forward on behalf of the petitioner has got to be rejected on two grounds. Firstly, the successor Transport Minister had no power to review such an order or to reconsider the objections and pass another order in respect of the scheme. Secondly, even assuming that he had such a power, a mere issuance of notices to the objectors that the matter will be reconsidered did not confer any right upon them to have the matter reconsidered or to have the matter reheard if the State Government acting through the successor Transport Minister decided to rehear the matter, they had equally a right to drop their decision of rehearing. The effect of dropping their decision to rehear the matter would be that the order of the Transport Minister passed on the 18th January, 1968 did not lose its finality even though assuming, although not admitting, that it could be reviewed by a successor Transport Minister. In either view of the matter, we fail to understand how the scheme published in the Bihar Gazette dated the 28th May, 1969, can be declared to be invalid on the ground that the petitioners did not get a chance of reconsideration and rehearing of the matter in pursuance of the notices (Annexures 4 and 5).

6. For the reasons stated above, the application fails and is dismissed with costs; hearing fee is assessed at Rs. 100/- (one hundred) only payable to respondent No. 1.