
(1972) 02 AHC CK 0029

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6057 of 1971

Hari Ram Sharma and Another

APPELLANT

Vs

Government of U.P. and Others

RESPONDENT

Date of Decision : 16-02-1972

Acts Referred:

Constitution of India, 1950 — Article 226

Motor Vehicles Act, 1939 — Section 68C, 68D(2), 68E

Citation : AIR 1973 All 214

Hon'ble Judges : C.S.P. Singh, J

Bench : Single Bench

Advocate : R.S. Sharma and S.C. Khare, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

C.S.P. Singh, J.—The State Transport Undertaking in exercise of powers u/s 68-C of the Motor Vehicles Act (hereinafter referred to as the Act) published a scheme in the U. P. Gazette dated June 25, 1960, in respect of the Aligarh-Tappal route. Objections were filed against the proposal. These objections remained pending and subsequently a representation was submitted to the Minister of Transport, U. P. on 29-1-1971. It is said that a delegation of operators of the route contacted the Minister concerned personally in respect of this representation and subsequent thereto, reminders were also sent. The Minister concerned, seems to have passed an order on the 24th March, 1971 for denotification of the route. The Minister of Transport also sent a letter on the 25th March, 1971 to one Chandra Pal Singh who is Vice-President of the Union of Operators, intimating to him that he had decided that the route should be denotified and that he would be informed in due course about this decision, by the Transport Department. The State Government had appointed the Legal Remembrancer. Shri B. C. Saxena, Joint Legal Remembrancer has the authority to decide objections in respect of this route. The matter was taken up by him, and the operators raised the objections that inasmuch as the scheme had been directed to be denotified the

proceedings should be dropped. The Officer, however, did not accept this contention. He came to the conclusion that the decision taken by the then Transport Minister was only a tentative one, and, further that inasmuch as the order was not expressed in the name of the Governor, it did not have binding force. Taking the order as only advisory in nature, he rejected the objections of the petitioners, and fixed a date for disposal of the objections. The petitioners challenge this order as also pray for an order restraining the officer concerned from proceeding further in the matter.

2. Counsel for the petitioners has urged that the State Transport Undertaking is a Department of the Government, and the Transport Minister being the head of that Department was fully competent to pass an order for denotifying the route, and it was not necessary that the order should be expressed in the name of the Governor for it to become effective. It is also urged that the order of the Minister concerned was an order u/s 68-D (2), and being an order quasi-judicial in nature, the same could not be rescinded by any subsequent decision of the State Govt., for there was no power of review. Counsel for the State has urged that in reply the scheme is notified in the Official Gazette as required by Section 68-C, and assuming that the State Transport Undertaking could withdraw the scheme, it could be done only in a like manner i.e., by another notification, and a mere order of the Transport Minister was not sufficient to effect a denotification of the route. It is also urged that the Transport Minister could not pass the impugned order on behalf of the State Transport Undertaking, inasmuch as under the statute he was not the head of that Undertaking. It is also urged that the order in question was not passed by the State Government u/s 68-D (2) inasmuch as the Transport Minister was not a person authorised to dispose of the objections, and that being so the question of reviewing the order does not arise.

3. The scheme is prepared by the State Transport Undertaking u/s 68-C of the Act. After the scheme is prepared, the scheme along with the necessary particulars is published in the official gazette. Section 68-D provides for objections being filed by persons affected by the scheme, and empowers the State Government, after giving an opportunity to the objectors, to approve or modify it. The scheme as approved or modified is then published in the official gazette and the same on its publication becomes final. The State Transport Undertaking, thereafter still has the power to cancel or modify the scheme as approved by the State Government. But, so far as the modification of the scheme is concerned, steps required under Sections 68-C and 68-D have to be gone through. These provisions are suggestive of the result that the Act maintains a distinction between the State Transport Undertaking, which is statutory entity, and the State Government. Can it be said, in these circumstances, that the order passed by the Transport Minister can in law be one passed by the State Transport Undertaking? In the case of H.C. Narayanappa and Others Vs. The State of Mysore and Others, their Lordships of the Supreme Court observed:

"By Chapter IV-A, the State Transport Undertaking which is either a department

of the State or a corporation owned or controlled by the State on the approval of a scheme is entitled, consistently with the scheme, to exclusive right to carry on motor transport business."

The question as to whether the State Transport Undertaking was a statutory entity OB could be equated with the State Government, came up specially for consideration before their Lordships of the Supreme Court in the case of Kalyan Singh v. State of Uttar Pradesh AIR 1962 SC 1183 wherein their Lordships referring to this aspect observed on page 1186:

"The effect of the said provisions, in to far as they are relevant to the present inquiry, may be stated thus: The State Transport Undertaking is an undertaking providing road transport service which is, carried on by the State or any other corporation of authority mentioned in Section 68-A. The definition creates a statutory authority distinct from authorities which run it. This is made clear by Section 68-C whereunder it is the State Transport Undertaking that will have to form the requisite opinion. This is further elucidated by the fact that u/s 68-C of the Act the State Transport Undertaking is required to publish the proposed scheme in the Official Gazette and in such other manner as the State Government may direct. This distinction between the two is further made clear by Section 68-D (2) whereunder the State Government has to hear the representatives of the State Transport Undertaking. Briefly stated, under the said provisions, a statutory authority called the State Transport Undertaking is created, it is authorised to initiate a scheme of nationalisation of road transport, the aggrieved parties are given opportunity to file objections thereto, and the State Government is empowered to hear both the parties and approve or modify the scheme, as the case may be."

Their Lordships further observed on page 1187:

"A State Transport Undertaking means, inter alia an undertaking run by a State. The statutory authority created is an undertaking run by a State. The State can only run an undertaking through its officers; it may entrust the conduct of the transport service to a particular officer or to a department of the State; in either event, it is the State Government that runs the undertaking. The statutory authority namely, the State Transport Undertaking, has to form an opinion within the meaning of Section 68-C of the Act, and the opinion must necessarily be that of the State Government which runs it. If the State Government running an undertaking forms an opinion, it can legitimately be said that the statutory authority i.e., the State Transport Undertaking, has formed the opinion."

In view of this decision of their Lordships of the Supreme Court, it has to be held that the State Transport Undertaking is a statutory authority and for the purpose of the Act exercises powers separately from the State Government. The officers of the State Government may act on its behalf in case they are duly authorised. Although it has been seriously disputed as to whether the Transport Minister was the head of the Transport Undertaking, we may assume, for the purpose of this

case, that this is so. The question still remains as to whether the order passed by him would be effective unless it is notified. The power to frame a scheme carries with it impliedly the power to rescind the scheme. This would follow from Section 21 of the General Clauses Act. The contention made on behalf of the State, that the State Transport Undertaking does not have the power to withdraw the scheme once it is published u/s 68-C, inasmuch as the power of cancellation or modification has to be found only in Section 68-E of the Act, which can be exercised only after the objections of the State Government have been decided, does not appear to be correct. Section 68-E comes into play only when the scheme has been published u/s 68-D (3) and not earlier. The fact that the statute does not confer any express power on the State Transport Undertaking to withdraw the scheme earlier than when it is published u/s 68 (3) is not suggestive of the result that the powers which the State Transport Undertaking has in view of the provisions of Section 21 of the General Clauses Act, do not exist. If the State Transport Undertaking has power to override the decision of the State Government by cancelling or modifying the scheme, even though the matter has become final u/s 68-D (3), it would be illogical to deny that power to the Undertaking before the objections have been disposed of u/s 68-E. But before such a power can be exercised, the requirements of Section 21 of the General Clauses Act, that it should be in a "like manner", have to be fulfilled. The proposal for the scheme has to be published in the Gazette and the rescission of that proposal has to be made in a like manner i.e., by way of a notification. This has, admittedly, not been done and, as such, it cannot be said that the order of the Transport Minister had the effect of cancelling the scheme.

4. Counsel for the petitioners had, however, drawn my attention to a decision of this Court in the case of *Mowasi Vs. State of Uttar Pradesh and Others*, and had contended that once the Minister concerned had taken the decision to withdraw the notification, the same could not be departed from subsequently, and further that it was not necessary that the decision of the Minister concerned should be notified. It is now necessary to consider this decision. This case was one under the Land Acquisition Act. A preliminary notification had been issued under the Act. Objections were invited u/s 5-A of the Act. After the objections had been filed, the State Government considered the matter and after perusing all the relevant documents and the report of the Land Acquisition Officer allowed the objections and decided not to acquire the plots. A G. O. was also issued by the State Government. Subsequently, the Land Acquisition Officer ordered the proceedings for acquisition to be dropped. Later, however, another G. O. was issued cancelling the earlier one and, thereafter, the Land Acquisition Officer, acting on the basis of the subsequent order, re-started the proceedings. The Bench took the view that inasmuch as the decision u/s 5-A was, made by the statute to be final, that decision could not be altered and no notification u/s 6 could be made, for that would rescind the decision u/s 5-A which the Act made final. This decision is based upon the language employed in Section 5-A of the Land Acquisition Act and cannot assist the petitioners so far as the present case

is concerned, and no general propositions, as the petitioners' counsel seeks to deduce from this case, emerged from this decision. The other contention raised on behalf of the petitioners is also without substance. No factual foundation at all has been made in the petition for this argument, and neither has a ground appropriate to this contention been taken. Before recourse to Section 68-D Sub-clause (2) can be taken, it has to be seen as to whether the Minister for Transport was authorised to consider and decide the objections. Section 68-D Sub-clause (2) contemplates a decision of the objections by the State Government, and State Government cannot be equated with the Minister for Transport. It is nowhere stated in the petition that at the time the Transport Minister passed the order in favour of the petitioners, no officer had been designated to decide the objections by the State Government. In these circumstances, the possibility that the power may have, at the relevant point of time been delegated to some officer cannot be ruled out. Be that as it may, before the order of the Transport Minister could be taken to be that of the State Government, the petitioners had to show conclusively that the Transport Minister was authorised to decide the objections by the State Government. These considerations apart, in case the petitioners are permitted to take this ground, which involves a mixed question of fact and law, the respondents will be prejudiced, inasmuch as the facts necessary for such attack not having been taken in the petition and no such ground having been raised, the respondents had no opportunity of meeting such a contention. A fair reading of the petition further discloses that even the petitioners did not take the order of the Transport Minister to be one u/s 68-D (2), and the present argument seems to be afterthought. All the contentions raised on behalf of the petitioners therefore, fail.

5. The writ petition is accordingly dismissed with costs.