
(1996) 04 PAT CK 0029
In the Patna High Court
Case No : C.W.J.C. No. 7156 of 1989

Hira Prasad Singh and Birendra Kumar Jha	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 02-04-1996

Acts Referred:

Citation : (1996) 04 PAT CK 0029

Judgement

Ram Nandan Prasad, J.—The Division Bench, while admitting C.W.J.C. No. 3248 of 1988, doubted the decision in the case, Baldeo Choudhary Vs. State of Bihar and Another, , wherein it was held that the exemption of 40 kilometers allowed on the nationalized routes by virtue of Notification No. S.O. 825 dated 10.6.1981 would not apply in the cases of grant of fresh permits; and referred it for fresh consideration by a larger Bench. C.W.J.C No. 7156 of 1989 was admitted and the same was also ordered to be heard along with above mentioned writ application. Accordingly both the writ applications have been placed for hearing before this Bench.

2. The petitioners were granted permits to ply their buses by the competent authority, taking into account the above mentioned notification dated 10.6.1981. The Bihar State Road Transport Corporation, the respondent, filed appeals; against the said order before the State Transport Appellate Tribunal which were allowed. The petitioners have preferred there writ applications against the order of the State Transport Appellate Tribunal and challenged the order on various grounds, including the ground that the findings of the Appellate Tribunal that the relaxation of 40 kms. vide the notification dated 10.6.1981, would not be applicable in the cases of grant of fresh permits, is illegal. However, these writ applications have been referred for hearing by a Full Bench for a decision on the limited point as to whether the decision in Baldeo Chaudhary's case (supra) has correctly laid down the law, that the relaxation of 40 kms. on nationalized routes would not be applicable to the cases of grant of fresh permits. Thus, the question that falls for our determination is confined to this much that whether the relaxation of 40 kms. allowed by Notification No. S.O. 825 dated 10.6.1981

would apply only to the existing private operators or to the cases of grant of fresh permits also.

3. For answering the question involved in the cases, it is necessary to look into the relevant provisions of the Motor Vehicles Act, 1939 (hereinafter referred to as the act of 1939). Chapter IVA of the Act, 1939 deals with the special provisions relating to State Transport Undertakings. Section 68A contains definition and it says that "State Transport Undertakings" means any undertaking providing road transport service, where such undertaking is carried on by...any Road Transport Corporation established u/s 3 of the Road Transport Corporation Act, 1950". The Bihar State Road Transport Corporation, the respondent, is a body established under the said enactment. Section 68B says that Chapter IVA will override Chapter IV and other laws. Sections 68C thereof is very much relevant in this case which provides preparation and publication of "Scheme" of road transport service of a State transport undertaking, and reads thus:

Where any State transport undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service, it is necessary in the public interest that road transport service 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.

The first two clauses of Sub-section (1) of Section 68D provide filing of objections by persons affected by the scheme u/s 68C before the State Government after publication of the scheme. It further provides that the State Government before approving or modifying the scheme, shall provide an opportunity to the objectors and the undertakings to be heard in the matter and the scheme so approved or modified has to be published in the official Gazette and on such publication the same shall become final and shall be called "the approved scheme". Any scheme published under Sub-section (3) of Section 68D may at any time be cancelled or modified by the State Transport Undertaking in accordance with the procedure laid down u/s 68C and Section 68D of the Act, 1939. The Scheme proposed to be cancelled or modified shall be treated to be a separate scheme u/s 68E which runs as follows:

Any scheme published under Sub-section (3) of Section 68D may at any time be cancelled or modified by the transport undertaking and the procedure laid down in Section 68C and Section 68D shall, so far as it can be made applicable, be followed in every case where the scheme is proposed to be cancelled or modified as if the proposal were a separate scheme.

4. Substantially a similar provision is also contained in Chapter VI of the Motor Vehicle Act, 1988. It is, thus, manifest from the legislation, as discussed above, that the primal object of framing the scheme is "public interest", to provide economical and better service of travelling. The scheme once framed can also be cancelled or modified to achieve the object of the legislation in the public interest. In view of the aforesaid object, the scheme, vide Notification No. 4794 dated 3.7.1957, was framed, and published under Sub-section (3) of Section 68D which runs as follows:

Whereas the Rajya Transport, Bihar, which is a State Transport undertaking, is of opinion that for the purpose of providing an efficient adequate, economical and properly co-ordinate road transport services it is necessary in the public interest that the Stage carriage services relating to certain routes or portion thereof should be run and operated by the Rajya Transport with effect from the date specified in the scheme below to the complete exclusion of other persons except those who, on such dates may be holding permanent permits to run stage carriage on those routes and are allowed, at the discretion of the State Government to operate them until the date of expiration of the existing permits.

The said scheme was modified from time to time in the public interest, to provide better service of travelling. In the year 1981 the earlier scheme was modified and published u/s 68E of the Act, 1939 vide S.O. 825 dated 10.6.1981, which reads as follows:

(2) The Transport Authority may permit private buses to pass through or traverse stretches of notified routes meant for exclusive plying of State Transport Undertaking to the maximum extent of 40 (forty) kilometers with a view to connect the services with their natural terminal in the Public interest provided that either the starting or terminating point falls on the unmodified route. The buses of the private operators may also pick up or drop the passengers on the notified portions of the route but only for journey originating from or terminating at places which do not lie on the route notified for exclusive operation of the State Transport Undertaking.

2. The above amendment shall come into effect from the date of publication of this notification in the Bihar Gazette and all previous notifications issued in this behalf shall be treated to have been modified and cancelled accordingly.

5. The above mentioned scheme in the notification dated 10.6.1981 admittedly holds the filed and is operative even today in grant of permits upto 40 kms. on nationalized routes. The scheme, of 1957 completely excluded the other persons, except those who on such dated may be holding permanent permits to run stage carriages on those routes and are followed at the discretion of the State Government to operate them until the date of expiration of the existing permits, but the said exclusion was completely modified subsequently and by the scheme of 1981 the private bus operators were permitted to pass through the notified routes to the maximum extent of 40 kms. with a view to connect the services

with their natural termini in the public interest, provided that either the starting or terminating point falls on the unnotified routes.

6. The question for determination is, whether the scheme of 1981 is applicable only to the existing private operators or to the cases of grant of fresh permits.

It is well established that interpretation is made to achieve the object of the legislation and not to frustrate the object of the legislation. It has already been stated that the object of framing the scheme is "public interest" to provide better service of travelling. The scheme of 1981 does not whisper any classification between the existing private operators and the private operators to whom permits are to be granted. The existing private operators and the private operators to whom permits is to be granted fall within the same category and any classification is the same category would be discriminatory, unreasonable and uncalled for, specially in absence of any indication in the scheme to that effect, and would be violative of Article 14 of the Constitution.

7. In case of *Vishundas Hundumal and Others Vs. State of Madhya Pradesh and Others*, , out of one class of operators, some were allowed to operate their bus and some were not allowed to operate their buses on the nationalized routes, the apex court held that the action is discriminatory and is violative of the provisions of Article 14 of the Constitution. The action tells upon the fundamental right of the citizens and equal protection as enshrined in Article 14 of the Constitution. In the instant case, in my view, allowing to ply their buses only to the private existing operators and not to allow the same benefit to the cases of grant of fresh permits to the private operators would be discriminatory and unreasonable classification amongst the same class of operators and would be violative of Article 14 of the Constitution.

8. Learned Counsel for the Bihar State Road Transport Corporation contended that in the scheme vide notification dated 8.7.1957 the relaxation was made only to the existing private operators on the date of the notification and hence the scheme in the notification dated 10.6.1981 should be interpreted as a relaxation to the existing private operators. The submission appears to be misconceived, as the said scheme of 1957 was modified several times and ultimately the modified scheme was published on 10.6.1981. Thus, the restrictions put in the scheme of 1957 cannot be held to be operative in view of the 1981 scheme. The scheme of 1957 in the circumstances must be held to be modified and not operative and the same cannot be taken into consideration for interpreting the scheme of 1981 by any stretch of imagination.

9. Accordingly, the reference is answered in this way that the scheme vide notification dated 10.6.1981 applies in the cases of grant of fresh permits also and the decision in *Baldeo Chaudhary* (supra) cannot be held to have correctly laid down the law. Let the writ petitions be placed before an appropriate Bench in the light of the answer to the reference made.

B.L. Yadav, J.

I agree.

Naresh Kumar Sinha, J.

I agree.