

(1986) 12 PAT CK 0018

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2192 of 1981

Indrath Sakchit Berojgar Motor Parivaban Sahkari Samittee
(unlimited) and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-12-1986

Acts Referred:

Motor Vehicles Act, 1988 — Section 68(c), 68(D), 68F

Citation : (1987) PLJR 218

Hon'ble Judges : M.P. Varma, J

Bench : Single Bench

Advocate : Badri Narain Singh, Mr. Sheopujan Singh and Mrs. Sujata Mukherjee,
for the Appellant; Mani Lal Yadav, for the Respondent

Final Decision : Allowed

Judgement

M.P. Varma, J.—The petitioners are holders of temporary permits for plying public buses on the Arrah-Sasaram route and have filed this writ application for quashing the order dated 25.5.81 passed by the State Transport Appellate Tribunal, Bihar, Patna by which the order granting the temporary permits to the petitioners has been declared as bad in law and has been accordingly set aside. The Bihar State Road Transport Corporation (for brevity "the Corporation") published a scheme u/s 68 (c) of the Motor Vehicle Act (to be referred to as "the Act") for nationalisation of the said route-Arrah-Sasaram portion, subject to the modification that the Corporation shall ply five direct express services, the timing of which was to be adjusted in consultation with Arrah-Sasaram Light Railway and a portion of the route between Arrah-Bikramganj was to be treated as "Free Zone" for the existing private operators plying in between Arrah-Dehri via Bikramganj and Nasriganj. It was mentioned in the said notification that in case in pursuance of the monopoly scheme of the Corporation, private operators expressed their inability to ply a curtailed services, the Corporation shall operate on that route. It was also given out in the said notification that the Corporation

shall operate additional service on notified route or on other different portion of the routes according to the local needs. Copy of this notification, so published, has been annexed to this writ application and marked as Annexure "1".

2. Objections were invited by the State Government and ultimately the State Government approved the scheme of the route Arrah-Sasaram u/s 68(D) of the Act with a condition that the Corporation shall ply only 5 Up and 5 Down trips as direct express services on the said route. Subsequently, in view of the Arrah-Sasaram Light Railway being closed down and there being no means of conveyance on the said route, the number of trips was raised to 21 up and 21 down services from 5 up and down trips. The Corporation probably did not cope with the increased public demand of bus services and the Regional Transport Authority, on the direction issued by the Government (annexure "2") created 10 more vacancies for grant of temporary permits on the aforesaid route (Arrah-Sasaram route). It is these 10 temporary vacancies, which the present ten writ petitioners were allowed to fill up and temporary permits were issued to them for plying buses on the said route, although the Corporation objected to the grant of temporary permits to them, before the Chairman, South Bihar Regional Transport Authority, as it took the view that the scheme approved for the route-Arrah-Sasaram as direct and express services were not for the exclusion of the private operators and so, the temporary permits were granted to the petitioners.

3. Having lost their case before the South Bihar Regional Transport Authority, the Corporation proposed to make some modification in the existing scheme on the route from direct services to an ordinary service. Copy of the proposed amendment by the Corporation has been annexed to this writ petition as annexure "3" in which it was given out that after the expiry of the permits issued to the private operators, no further permit would be granted nor existing temporary permits, if any shall be renewed thereafter.

4. The petitioners, to whom temporary permits were issued, in the meantime, under the apprehension of being uprooted because of the said modification of the scheme by the Corporation, moved the Court in its jurisdiction being C. W. J. C. 3296 of 1980 praying therein for quashing the said notification dated 6.8.80 (annexure "3") and for allowing the petitioners to continue operating on the said route till final approval of the proposed amended scheme u/s 68 (D) of the Act. A Bench of this Court in the said writ petition observed inter alia that ".....so long it is not finally published the private operators will not be uprooted from the route in question. It is another matter that the State undertaking may be granted temporary permits during the intervening period, u/s 68 F of the Motor Vehicle Act....."

5. On the basis of the said observation of, this Court, the authority granted temporary permits to the petitioners valid for the period of four months from the date of issue of the orders, which was dated 2nd February, 1981 (annexure "5"). Against the said order of granting temporary permits respondent no. 2 the Corporation went in appeal before the Chairman, State Transport Appellate

Tribunal challenging the authority to grant temporary permits, when the modification of the existing scheme was sought for u/s 68 (E) of the Act and the same is so published u/s 68 (C) of the Act that the respondent no. 3 had no jurisdiction to grant temporary permits to the petitioners on the route in question. The tribunal quashed and set aside the orders of the Chairman, Bihar Regional Transport authority (respondent no. 3) granting temporary permits to the petitioners by order dated 26th May, 1981 (annexure "7") which is under challenge in this writ application.

6. Mr. Badri Narain, Learned Counsel appearing for the petitioners mainly pleaded that when an approved scheme has already been in force u/s 68 (D) of the Act, subsequent publication for any modification or amendment of the same scheme u/s 68 (C) is just a procedural matter and if it is so, it does not have the effect u/s 68 (F) (1-A) of the Act. In other words, till the amendment or modification or the scheme takes a final shape, it is within the scope of the Regional Transport Authority to grant temporary permits considering the public needs on the route and denial of such rights is violative not only of natural justice, but it would be against the provisions of the existing law under which the temporary permits can very well be granted till the amended scheme is not made final and effective u/s 68 (D) (3) of the Act.

7. Counsel for the respondent, on the other hand, submitted that for the modification of any existing scheme, it is no doubt that the whole process beginning from section 68-C to 68-D (3) has to be followed but in substance, it amounts to introduction of a new scheme, and when the State Transport Undertaking comes on the road for maintaining the transport services, it will be to the exclusion of all private operators as Chapter IV-A deals with special provisions relating to State Transport Undertakings.

8. Chapter IV-A deals with the special provisions relating to the State Transport Undertaking. Section 68-C under this head speaks of preparation, and publication of scheme of Road Transport services of a State Transport Undertaking, where any State Transport Undertaking is of opinion that for the purpose of providing an efficient, adequate and economical and properly co-ordinate road transport service, it is necessary in public interest that the Road Transport services 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 of 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.

9. On the publication of any such scheme u/s 68-D any person already providing transport facilities by any means long or near the area or route proposed to be covered under the scheme or any association representing persons interested in

the provision of road transport facilities recognised in this behalf by the State Government and any local authority or police authority within whose jurisdiction any part of the area or route proposed to be covered by the scheme lies, may within thirty days from the date of its publication in the official gazette file objection to it before the State Government and the State Government under clause (2) of section 68-D may after considering the objection and after giving an opportunity to the objector or his representative and the representative of the State Transport Undertaking be heard in the matter, if they so desire to approve or modify the scheme and it is only clause (3) of section 68-D that the scheme so approved or modified under clause (2) shall have to be published in the official gazette by the State Government and the same shall thereupon become final and shall be called the approved scheme and the area or the route to which it relates shall be called notified area or notified route.

10. Section 68-E relates to cancellation or modification of scheme. It appears that if at any time the State Government gets the view that any such State Transport Undertaking has failed or is likely to fail to provide adequate and efficient road transport service for the carriage of passengers in any notified area or notified route in pursuance of an approved scheme, action for cancellation or modification thereof may be taken up. Section 68-E runs as follows:-

Any scheme published in sub-section (3) of section 68-D may at any time be cancelled or modified by the State Transport Undertaking and the procedure laid down in section 68-C and section 68-D shall, as far as it can be made applicable be followed in every case when the scheme is proposed to be cancelled or modified."

11. The proviso to section 68-E speaks that the State Transport Undertaking may with the previous approval of the State Government modify the scheme following the procedure laid down in section 68-C and section 68-D any such scheme relating to any route or area in respect of the Road Transport Services or run and operated by the State Transport Undertaking to the complete exclusion of other person in certain cases namely, in case of increase in the number of vehicles and the number of trips, change in the type of vehicle without reducing the sitting capacity, extension of route or area or alteration of the time table without reducing the frequency of the services.

12. Clause (2) of section 68-E again speaks that notwithstanding anything in sub section (1) the State Government may, at any time, if it considers necessary in the public interest so to do, modify any scheme published in subsection (3) of section 68-D after giving an opportunity of being heard in respect of the proposed modification to the State Transport Undertaking, and to any other person, who, in the opinion of the State Government is likely to be affected by the proposed modification.

13. In reading section 68-E of the Act, it is quite apparent that even for a proposed modification the procedure laid down in section 68-C and 68-D will

have to be followed, as if the modification proposed were a separate scheme. So far the facts relating to this case is that by annexure "1" dated 14.1.74 the State Government approved the scheme u/s 68-E of the Act permitting the State Transport Undertaking to apply on the route. It was subsequently thereafter that a modification of the scheme u/s 68-E of the Act was introduced and the same was published on 6.8.80 vide annexure "3" of the writ application, by which the modification was sought to be made on the said route for the exclusive operation of the said scheme, the State Transport Undertaking objected to the grant of the temporary State carriage permit to any private operator on the route in question on the plea that modification scheme was published u/s 68-C of the Act. The submission of the Corporation was protested by the private operators on the ground that the proposed modification scheme published on 6.8.80 (annexure "3") is not an approved scheme in the eye of law and that there is already an approved scheme on the said route and that in the present publication with regard to the modification of the scheme the whole procedure has to be gone into, as envisaged u/s 68-E, objections are to be invited, parties are to be heard and only then the proposed modification, if approved shall be published in the official gazette by the State Government and the same shall thereupon become final to be known as approved scheme on the route to which it relates and otherwise not. Considering this aspect of the case the Regional Transport Authority, Patna i.e. respondent no. 3 granted temporary permit to the private operators (annexure 5) to the writ application. This order was challenged by the Bihar State Road Transport Corporation i.e. respondent no. 2 before the Appellate Tribunal Patna who after hearing the parties set aside the order of the Regional Transport Authority and took the view that it being a new scheme, provisions of section 68-F (1-A) shall be attracted and no temporary permit can be granted to private operators.

14. Question arises whether a modification sought for in an existing scheme as published u/s 68-C restricts the rights or authority to grant permits u/s 48 of the Act or does it absolutely restrict the right to grant temporary permit u/s 68-F (1-A) and 68-F (1-C) of the Act to the private applicant.

15. Learned Advocate for the petitioners contends that the respondent Corporation are not plying the number of bus services and trips on the notified routes as per the public demand which necessitated publication of the scheme u/s 68-E and till the modified scheme is not finally approved, the flights of the passengers on the route would continue and it was with this reason that the Regional Transport Authority issued temporary permits to cater the needs of the public in general during the period of interregnum.

16. Admittedly two schemes on the same route is not conceivable. If a particular scheme operating on the route does not work adequately in the interest of the public at large, the State Transport Undertaking may come up with the proposal for amendment of the scheme and until the scheme achieves its finality u/s 68-D clause (3) of the Act, the old scheme remains effective and in order to meet the

demand looking to the inadequacy and inefficiency of the running of the scheme it was thought of granting temporary permits which were valid only till the amended scheme is finally published and is approved u/s 68-D (3) of the Act. Section 68-F speaks that the proposed modified scheme will be deemed to be a separate scheme. But in any view it can never be understood to be a new scheme, as, for all material purposes it is modification of an earlier approved scheme on the route which probably could not work well.

17. Section 68-F (1-A) reads as follows : --

Where any scheme has been published by a State Transport Undertaking u/s 68-C, that undertaking may apply for a temporary permit in respect of any area or route or portion thereof specified in the said scheme, for the period intervening between the date of publication of the scheme and the date of publication of the approved or modified schema, and where such application is made, the State Transport Authority or the Regional Transport Authority, as the case may be, shall, if it is satisfied that it is necessary to increase, in the public interest, the number of vehicles operating in such area or route or portion thereof, issue the temporary permit prayed for, by the State Transport Undertaking."

18. Thus, it can be seen that where a scheme has been published by State Transport Undertaking u/s 68-C, but not yet approved u/s 68D (3) of the Act the temporary permit in respect of an area, or route or portion thereof specified in the said scheme may be granted, but in case if a State Transport Undertaking applies for a temporary permit in respect of that route, for the period intervening between the date of publication of the scheme and the date of the modified scheme being finally approved, such permit shall be granted to the exclusion of the private operators. But section 68-F (1-C) speaks that if no application for temporary permit is made u/s 68 F (1-A), the State Transport Authority or the Regional Transport Authority, as the case may be, may grant temporary permits to any person in respect of that area or route or portion thereof specified in the scheme subject to such condition as it may think fit and the permit so granted shall be ceased to be effective on the issue of permit to the State Transport Undertaking in respect of that area in question. Thus, publication of amended scheme for modification of the same u/s 68-C does not prohibit grant of temporary permits to private operators in case of necessity to provide adequate economical and coordinated road transport service in the public interest during the period of interregnum according to local demands.

19. It appears that a division Bench of this Court while disposing of C.W.J.C. no. 3296 of 1980 had taken a similar view that so long an amended scheme is not finally published, the private operators would not be uprooted from the route in question. It is another matter that the State Transport Undertaking may be granted temporary permit during the intervening period u/s 68-F of the Act. The view taken by the State Transport Appellate Tribunal (a copy of the order as contained in annexure-7) does not appear to be correct. It would be always desirable for the authority to first examine the applications made by the

Corporation for running passenger services vehicles on the prescribed route. It is true that if the Corporation makes an application for temporary permits covering all the routes, consideration for private operators then does not come up and necessary permits will go to the Corporation. If Corporation does not come up to put vehicles on all the routes then section 68-F (1-C) gets attracted and the authority in all fairness should examine the application for temporary permits made by private operators and if the private operators are found qualified, such temporary permits may be issued to them to serve the needs of the public in the area. Therefore, the orders contained in annexure "7" is set aside, but in the end I am constrained to observe that such exigency arises only when there is a delay in final approval of modified scheme u/s 68-E. The moment, amended scheme is published u/s 68-C, the authorities should gear up the process in right earnest, dispose of the objections with promptitude after giving an opportunity to the objectors or his representatives or persons affected by the scheme to be heard and thereafter modify and finally approve the scheme without much loss of time and in that situation there would be hardly an opportunity for murmuring and private operators coming up clamouring for grant of temporary permits on such routes. The authority should always be vigilant and up and doing with all promptitude in the best interest of public at large. In the result, the application succeeds for the reasons enumerated above and the orders contained in annexure "7" are hereby set aside. But in the circumstances of the case, there shall be no order for costs.