

(1975) 10 RAJ CK 0020
In the Rajasthan High Court
Case No : Civil Writ Petition No. 543 of 1975

Khushal Dass

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 27-10-1975

Acts Referred:

Motor Vehicles Act, 1939 — Section 68D(2), 68D(3), 68E, 68E(1), 68E(2)

Citation : AIR 1976 Raj 157

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Advocate : R.R. Vyas, for the Appellant; R.N. Munshi, for Corporation and A.K. Mathur, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Gupta, J.—The petitioner is an existing operator of Ajmer-Mangaliawas-Pisangan route (hereinafter referred to as "the route") which is 28 miles long. A scheme for the nationalisation of Ajmer-Jodhpur route via Mangaliawas, Beawar and Bilara as approved by the State Government, was published u/s 68-D (3) of the Motor Vehicles Act (hereinafter referred to as "the Act") on August 31, 1962. That scheme was of partial exclusion of the existing operators and the petitioner and his co-operators of Ajmer-Mangaliawas-Pisangan route were allowed to ply their vehicles on the route. Thereafter the aforesaid scheme was modified u/s 68-E (1) read with Section 68-D of the Act by the order of the State Government dated April 30, 1964 and the permits of the petitioner and other operators of the route were rendered ineffective between Ajmer and Mangaliawas, which was the portion over-lapped by the notified route, meaning thereby that a restriction was imposed on the operators of the route in respect of picking up and setting down passengers on the Ajmer-Mangaliawas portion of the notified route. The modified scheme was published u/s 68-D (3) of the Act, by the notification dated July 1, 1964 in the Rajasthan Gazette dated September 3, 1964.

2. On July 20, 1974, the aforesaid nationalisation scheme relating to Ajmer-

Jodhpur via Mangaliawas, Beawar and Bilara route, was proposed to be further modified by the State Government u/s 68-E (2) of the Act, by providing for the complete exclusion of private operators on the notified route or portions thereof. The consequence of this modification, if it is approved, would be that the permits of the petitioner and other operators of this route would be curtailed for the portion from Ajmer to Mangaliawas, which forms part of the notified route. The petitioner raised certain preliminary objections against the above-mentioned proposal for modification of the approved scheme and the same have been rejected by Shri Sudhindra Gemawat, Deputy Secretary, Home Department, for and on behalf of the State Government, by his order dated November 23, 1974 (Annexure P/7). The present writ petition has been preferred against the aforesaid order rejecting the preliminary objections raised by the petitioner.

3. A show cause notice was issued to the respondents and the State Government as well as the Rajasthan State Road Transport Corporation, which is a State Government Undertaking has appeared in response to the show cause notice and have contested the writ petition.

4. The first submission of the learned counsel for the petitioner is that a nationalisation scheme modified u/s 68-E (1) of the Act could not be further modified u/s 68-E (2) of the Act. Learned counsel contends that if the State Government once approves a modification of the scheme on the proposal made by the State Transport Undertaking under Sub-section (1) of Section 68-E, it has no power to re-decide or review the matter again and further modify the modified scheme under; Sub-section (2) of Section 68-E,

5. A perusal of Section 68-E of the Act shows that the two sub-sections of the aforesaid Section give absolutely independent powers to the State Government in respect of the modification of an approved scheme. Under Sub-section (1) of Section 68-E, a modification can be proposed by the State Transport Undertaking, while under Sub-section (2) of Section 68-E, the State Government may itself publish a proposal to modify an approved scheme, if it considers necessary to do so in public interest. There is no doubt that in both cases it is the State Government which has to pass final orders in respect of the modification of the approved scheme. But it may be observed here that Sub-section (2) of Section 68-E begins with a non obstante clause and provides that the power of modification, which has been given by that provision to the State Government was notwithstanding anything contained in Sub-section (1), meaning thereby that the provisions of Sub-section (2) shall have its full operation. Thus, it is clear from reading the two sub-sections of Section 68-E together that the powers conferred under Sub-section (2) of the aforesaid section are in addition to and quite independent of the powers of modification which have been given to the State Government under Sub-section (1) of Section 68-E. Under the newly added provision contained in Sub-section (2) of Section 68-E, the State Government has been empowered to modify a nationalisation scheme which has either been proposed by the State Transport Undertaking u/s 68-C and is approved by the

State Government u/s 68-D (2) or even a modified scheme of nationalisation, which was modified by the State Government on the proposal of the State Transport Undertaking made under Sub-section (1) of Section 68-E. It may also be noted here that the procedure laid down in Section 68-C and Section 68-D would have to be followed when a proposal for the modification of an approved scheme is made by the State Transport Undertaking under Sub-section (1) of Section 68-E and the nationalisation scheme, as modified under Sub-section (1) of Section 68-E, would have to be published under Sub-section (3) of Section 68-D of the Act, as if it was a scheme approved under Sub-section (2) of Section 68-D. But under sub-section (2) of Section 68-E an additional and independent power is given to the State Government for further modification, both of an approved scheme u/s 68-D (2) and a scheme modified under Sub-section (1) of Section 68-E. It may also be observed that an approved scheme is law within the meaning of Article 13 of the Constitution, as held by their Lordships of the Supreme Court and it cannot be visualised that such an approved scheme would remain static for all times to come irrespective of current needs in public interest. As such the law has provided a machinery for making suitable changes in the approved scheme in accordance with the changing needs of the society. It has, therefore, been provided by the two sub-sections of Section 68-E that the approved scheme of nationalisation may be modified from time to time as may be considered necessary in public interest. If the State Transport Undertaking was to make a proposal for modification of the approved scheme, then the same shall be dealt with Sub-section (1) of Section 68-E and the very same procedure, as is applicable to a scheme initiated by such Undertaking u/s 68-C shall be applicable. But in case a State Transport Undertaking fails to make such a proposal for modification of the approved scheme, as may be necessary in public interest, a further right has been given to the State Government, under Sub-section (2) of Section 68-E to make a proposal for the further modification of an approved scheme or a scheme modified under Sub-section (1) of Section 68-E, if the same is necessary in public interest. The only requirement for such modification, which may be made by the State Government under Sub-section (2) of Section 68-E, is that an opportunity of being heard, in respect of the proposed modification, should be furnished to the State Transport Undertaking and other affected persons. There is thus no question of any review in the matter. I am, therefore, unable to accept the contention of the learned counsel for the petitioner that because the nationalisation scheme relating to Ajmer-Jodhpur via Mangaliawas, Beawar and Bilara route has already been modified under Sub-section (1) of Section 68-E, the same could not be further modified by the State Government under Sub-section (2) of the aforesaid Section.

6. Another submission made by the learned counsel for the petitioner is that Section 68-E (2) is ultra vires, and void, being contrary to the principles of natural justice. Mr. R. R. Vyas, learned counsel, however, waived this objection today in view of the replies filed by the Corporation and the State Government, in response to the show cause notice issued by this Court.

7. The next objection raised by learned counsel is that no procedure has been laid down under Sub-section (2) of Section 68-E of the Act and no rules have been made in respect of the hearing which has to be given by the State Government in respect of its proposal to modify a scheme published under Sub-section (3) of Section 68-D of the Act. It is not necessary to frame any rules or to prescribe a detailed procedure for such hearing u/s 68-E (2), so long as the principles of natural justice are followed. The only requirement of Sub-section (2) of Section 68-E is that the State Transport Undertaking as well as the other affected persons should be afforded an opportunity of hearing in respect of the proposed modification. The State Government published the proposed modification in the Rajasthan Gazette dated June 20, 1974 and invited objections in respect thereof from all interested and affected persons and the State Government further authorised Shri Gemawat, Deputy Secretary in the Home Department to hear and decide the objections, that may be preferred in respect of the proposed modification, for and on its behalf and the said officer is hearing the objections and has so far only decided the preliminary objections raised by the concerned operators. Thus so far there has been no breach of the principles of natural justice in this matter.

8. Then learned counsel for the petitioner argued that all objections in respect of the nationalisation schemes are being heard by the Joint Legal Remembrancer No. 2, as notified by the State Government vide notification dated December 6, 1973, published in the Rajasthan Gazette (Extraordinary) dated December 14, 1973 and that the Deputy Secretary in the Home Department could not hear the objections in respect of the proposed modification of the approved nationalisation scheme. It may be mentioned in this connection that by the notification dated December 6, 1973, the Joint Legal Remembrancer No. 2 to the Government of Rajasthan has been duly authorised to hear all objections u/s 68-D of the Act, for and on behalf of the State Government. The proposal which has been published by the State Government vide notification dated June 20, 1974, is not one u/s 68-C of the Act which has to be considered in accordance with the procedure laid down u/s 68-D. But the proposal for modification in the instant case has been made by the State Government under Sub-section (2) of Section 68-E and objections have also been invited under the aforesaid provision and, therefore, the notification dated December 6, 1973, cannot govern the consideration of the objections in respect of the proposed modification in the present case. Learned counsel also drew my attention to Item No. 38, relating to law and Judicial Department in Schedule I annexed to the Rules of Business of the Rajasthan State Government. The aforesaid item also refers to the consideration of objections in respect of approval and modification of schemes u/s 68-D of the Act. The present proposal for modification is outside the purview of the aforesaid item. By a notification issued by the State Government on May 5, 1973 and published in the Rajasthan Gazette dated May 9, 1973 the Governor of Rajasthan has ordered under Rule 54 of the Rules of Business made under Article 166 of the Constitution, that all matters and proceedings u/s 68-E of the Act will be

dealt with in the Home Department by an officer duly authorised in that behalf. By a subsequent notification dated April 15, 1974. Shri Sudhindra Gemawat. Deputy Secretary to the State Government in the Home Department has been duly authorised to deal with all matters and proceedings u/s 68-E of the Act, for and on behalf of the State Government. In view of the two notifications issued by the State Government on May 5, 1973 and April 15, 1974, Shri Gemawat is fully competent to hear and decide the objections to the proposed modification for and on behalf of the State Government, as these proceedings are under Sub-section (2) of Section 68-E of the Act. In these circumstances, I am unable to hold that the proceedings which are being conducted by Shri Gemawat, Deputy Secretary, Home Department are without jurisdiction.

9. Learned counsel lastly submitted that no provision has been made, in the proposal for modification of the approved scheme, in respect of other alternative services, in case the curtailment of the services rendered by the existing operators on portions of the notified route is approved. This is a question which relates to the merits of the proposed modification and it is for the competent authority, who has been authorised to deal with the objections u/s 68-E (2) to decide whether the proposed modification would be in public interest or not, although no proposal has been made for providing alternative services on portions of the notified route, after the curtailment of the existing services plied thereon by the operators of the over-lapping routes. It would be premature for this Court to decide this objection at this stage.

10. NO other argument was advanced before me by the learned counsel for the petitioner.

11. I, therefore, find no substance in the writ petition and the same is summarily dismissed.