
(1973) 09 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Special Appeal No. 128 of 1973

Kulwant Rai

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 26-09-1973

Acts Referred:

Motor Vehicles Act, 1939 — Section 68D

Road Transport Corporations Act, 1950 — Section 38

Citation : AIR 1974 Raj 133 : (1973) RLW 662 : (1973) WLN 717

Hon'ble Judges : B.P. Beri, C.J.;D.P. Gupta, J

Bench : Division Bench

Advocate : L.L. Sharma and N.L. Parek, for the Appellant; L.M. Sanghvi, General (for Nos. 1 and 3), Rajnarain Munshi and N.B. Mathur, (for No. 2), for the Respondent

Final Decision : Dismissed

Judgement

Beri, C.J.—Appellant Kulwant Rai challenged the draft scheme for nationalisation of Bikaner-Sri Ganganagar route on several grounds before a learned Single Judge of this Court who by his detailed order dated 3-7-1973 dismissed the writ petition in limine. Kulwant Rai has come up in special appeal before us, We had issued a notice to the respondents to show cause why this appeal be not admitted and in answer to that the learned Advocate General. Mr. Rai Narain Munshi and Mr. N, B. Mathur appeared for the respondents.

2. Mr. L. L. Sharma, learned counsel for the appellant, has raised 3 grounds before us. The first is that the supersession of the Rajasthan State Road Transport Corporation (hereinafter called "the Corporation") u/s 38 of the Road Transport Corporations Act, 1950 (hereinafter called "the Corporations Act") amounted to a complete extinction of the Corporation as originally constituted and, therefore, u/s 68-C of the Motor Vehicles Act. 1939 (hereinafter called "the Vehicles Act") read with the Rajasthan State Transport Services (Development) Rules, 1965, no draft scheme of nationalization could be issued.

3. The learned Advocate General argued that the supersession u/s 38 of the Corporations Act did not mean a complete wiping out of the Corporation but merely a suspension thereof for the time being. He placed reliance on a decision of the Supreme Court in *Maharai Kumar Prithvi Rai v. State of Rajasthan*. Civil Appeal No. 327 of 1958 decided on 2-11-1960 (SC) where even when the District Board had been dissolved it was held that it did not amount to its civil death.

4. The relevant provisions of the Corporations Act might be, examined for ascertaining the legal consequences which supersession entails. u/s 3 a Road Transport Corporation in a State is established by a notification in the Official Gazette for the whole or any part of the State under such name as may be specified in the notification. It is not disputed that the Corporation before us was established under this section. Section 4 relates to its incorporation. It provides that every Corporation shall be a body corporate by the name notified u/s 3 "having perpetual succession" and a common seal, and shall by the said name sue and be sued. This provision in our opinion lends to the Corporation the garb of a juristic personality. The doctrine of perpetual succession is common to a large number of statutory corporations. It means, "that continuous existence which enables a corporation to manage its affairs, and hold property without the necessity of perpetual conveyances, for the purpose of transmitting it by reason of this quality, this ideal and artificial person remains, in its legal entity and personality, the same, though frequent changes may be made of its members. Field, Corp 58; *Scanlan v. Crawshaw*. 5 Mo. App 340." (Quoted in Black's Law Dictionary. Fourth Edition, page 1299). The constitution of the Corporation is regulated by Section 5 of the Corporations Act. It inter alia provides that subject to rules made under that Act a Corporation shall consist of a Chairman and such number of other members as the State Government may think fit to appoint, etc. Section 38 confers powers on the State Government to supersede a Corporation if the State Government is of the opinion that such a Corporation has been unable to perform, or has persistently made default in the performance of the duties imposed on it by or under the provisions of the Corporations Act or has exceeded or abused its powers, then the State Government may with the previous approval of the Central Government, by notification in the Official Gazette, supersede the Corporation for such period as may be specified in the notification. The consequences of such supersession are contained in Sub-section (2) of Section 38. They may be quoted in exact words for much emphasis has been laid on it :--

"38. (2) Upon the publication of a notification under Sub-section (1) superseding a Corporation-

(a) all the members of the Corporation shall, as from the date of supersession, vacate their offices as such members;

(b) all the powers and duties which may, by or under the provisions of this Act or of any other law, be exercised or performed by or on behalf of the Corporation shall, during the period of supersession, be exercised and performed by such

person or persons as the State Government may direct;

(c) all property vested in the Corporation shall, during the period of supersession, vest in the State Government."

Sub-section (3) lays down that on the expiration of the period of supersession the State Government may extend the period of supersession or reconstitute the Corporation in the manner provided in Section 5. Mr. Sharma's emphasis is that as soon as the Corporation is superseded it ceases to have a legal entity and one of the reasons urged by him is that all property hitherto vesting in the Corporation, comes to vest in the State Government as laid down in Section 38(2) (c). The stress laid by the learned Advocate General is that u/s 38(2)(b) all the powers and duties of the Corporation during its supersession are to be performed by an individual which necessarily implies the continuation of the Corporation. The question is what is the effect of supersession? Having regard to the language of Section 38 supersession broadly speaking is the result of the failure on the part of an existing Corporation. In such a situation the State has been authorised to supersede the members of an erring Corporation, take charge of the property and "during the period of supersession", -- and these are important words. -- the property vests in the State Government. In the very nature of things it is an arrangement for the interregnum and is analogous to suspension of the constitution of the Corporation and not of its legal entity. Learned counsel for the appellant's argument to our mind suffers from a fallacy when it mistakes the establishment and incorporation of a corporation with the constitution of the members of the Corporation. Learned counsel's attack in a word was that the divesting of the property from the Corporation u/s 38(2)(c) means civil death of its entity and takes away the essential features of the Corporation. The argument loses sight of the words that are contained in Section 38(2), namely, "all property vested in the Corporation shall, during the period of supersession, vest in the State Government." This vesting is not absolute but it is only an interim arrangement to safeguard the property presumably from waste or alienation. It is not a permanent arrangement but it is in the nature of a temporary custody for the safety and protection of the property of the Corporation. Sub-section (3) of Section 38 clearly provides that if the period of supersession is not extended the State Government can reconstitute the Corporation.

5. The second argument of Mr. Sharma is that the notification Annexure 5 to the writ petition against the proposed scheme was published under the signatures of the General Manager. He urged that assuming that the supersession was valid, all the rights of the Corporation came to reside in a single person, namely. Mr. Mangal Behari, a gentleman without designation but who was appointed as "persona designata" and the General Manager had no authority to authenticate the proposed draft scheme. The learned Advocate General invited our attention to Section 13 of the Corporations Act, which provides that all orders and decisions of a Corporation shall be authenticated by the signature of the Chairman or any other member authorised by the Corporation in this behalf, and

all other instruments issued by a Corporation shall be authenticated by the signature of the Chief Executive Officer or General Manager or any other officer of the Corporation authorised in like manner in this behalf. Before the relevant notification was issued it was processed in the office of the Corporation and that document is Annexure 12. The proposal was initiated by the Deputy General Manager (C) and it was marked to the General Manager/Administrator. Paragraph 22 contains the remarks of the General Manager and paragraph 23 gives the notings by the Administrator. The Administrator observed that "Action may be taken to notify", adding that he would like to see the draft of notification before publication. And paragraph 33 goes to show that the draft notification was seen and ordered by him to be published. Annexure 5, which is signed by the General Manager, indicates that it was for and on behalf of the Rajasthan State Road Transport Corporation, Jaipur. The question is whether this draft notification was properly published. We cannot lose sight of the fact that after the supersession there was no Chairman or Vice-Chairman of the Corporation and all the authority came to reside in the person whom the State chose to call as the Administrator. u/s 68-C of the Vehicles Act State transport undertaking may prepare the scheme of road transport service proposed to be rendered and the area or the route proposed to be covered and such other particulars respecting thereto as may be prescribed and "cause every such scheme to be published in the Official Gazette". Under the Rajasthan State Road Transport Services (Development) Rules, 1965 the scheme has to be prepared u/s 63-C of the Vehicles Act by the General Manager of the transport undertaking. There is no rule which requires that it should be published under the signature of a particular person. We asked Mr. Sharma to show us the provision of law on the subject which makes it obligatory that the notification be signed by any particular authority but he was unable to do so. We, therefore, find no substance in the objection that Annexure 5 was not properly signed.

6. The last argument urged by Mr. Sharma is that Deputy Legal Remembrancer (I) had no authority to hear and decide objections raised against the draft notification because he was not appointed as required under the rules framed under Article 166(3) of the Constitution of India. The learned Advocate General invited our attention to three authorities of this Court; namely, *Green Bus (Rai) Ltd. v. State of Rajasthan*, AIR 1968 Rai 169; *Tej Ram v. State of Rajasthan* AIR 1969 Rai 233 and *Lalehand v. State of Rajasthan* 1972 RLW 536 : (AIR 1973 Rai 103) where this question was raised and answered in favour of the Legal Remembrancer. The additional argument of the learned Advocate General is that if the authority of the Deputy Legal Remembrancer (I) was challenged successively but without success it was not open to the appellant to attack the same each time from a new angle and he placed reliance on *T. Govindaraja Mudaliar Vs. The State of Tamil Nadu and Others*, On one point both the learned counsel are agreed that the observations made by their Lordships of the Supreme Court in para. 11 of *A. Sanjeevi Naidu, etc. Vs. State of Madras and Another*, clinch the issue. Let us examine this authority first. We can do no better

than to quote a part of para. 11 of the report in Sanjeevi's case AIR 1970 SC 1102 as has been done by the learned Single Judge :--

"Under our Constitution, the Governor is essentially a constitutional head, the administration of State is run by the Council of Ministers. But in the very nature of things, it is impossible for the Council of Ministers to deal with each and every matter that comes before the Government. In order to obviate that difficulty the Constitution has authorised the Governor under Sub-article (3) of Article 166 to make rules for the more convenient transaction of business of the Government of the State and for the allocation amongst its Ministers, the business of the Government. All matters excepting those in which Governor is required to act in his discretion have to be allocated to one or the other of the Ministers on the advice of the Chief Minister. Apart from allocating business among the Ministers, the Governor can also make rules on the advice of his Council of Ministers for more convenient transaction of business. He cannot only allocate the various subjects amongst the Ministers but may so further and designate a particular official to discharge any particular function. But this again he can do only on the advice of the Council of Ministers."

While the learned Advocate General emphasised that the Governor may go further and designate a particular officer to discharge any particular function. Mr. Sharma's emphasis was that this he can do only on the advice of the Council of Ministers. The learned Advocate General also placed reliance on paragraph 9 of the judgment.

7. The Rajasthan Rules of Business paragraph 21 provides that "Except as otherwise provided by any other rule, disposal of business relating to items common to all departments shall ordinarily be made in the manner specified in Appendix "B" and for the disposal of business relating to other items, the Minister-in-charge or the Minister of State-in-charge, as the case may be may by means of standing orders, give such directions as he thinks fit." Under Rule 4 the business of the Government shall be transacted in the Secretariat Departments as specified in the First Schedule and shall be classified and distributed between those departments as laid down therein. Part 16 of the First Schedule to the Business Rules in Rajasthan lays down the allocation of business by the "Law and Judicial Department and Legal Remembrancer's Office". Entry 38 provides "Consideration of objections to, approval and modification of scheme u/s 68-D of the Motor Vehicles Act, 1939 (Central Act 4 of 1939)." It is not challenged before us that after consultation with the Chief Minister, the Transport Minister and the Law Minister the Governor was pleased to issue the notification Annexure 7 appointing the Deputy Legal Remembrancer (I) to hear objections to and to approve and modify the scheme u/s 68-D of the Vehicles Act. The notification in our opinion issued by the Governor after consultation with the Ministers concerned is certainly not lower in authority than a standing order issued under Rule 21 of the Business Rules of the Rajasthan Government. This clearly amounted to allocation of business according to the classification laid down in the

Business Rules. We have no reason to take a view different from that which was taken by the 3 decisions of this Court.

8. No other argument was urged before us.

9. The result is that this appeal fails and is dismissed in limine.