
(1974) 09 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 215 of 1972

Madhya Pradesh State Road Transport Corporation

APPELLANT

Vs

The State Transport Authority, M.P., Gwalior and Another

RESPONDENT

Date of Decision : 06-09-1974

Acts Referred:

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

Citation : AIR 1975 MP 181 : (1979) ILR (MP) 627 : (1975) JLJ 245 : (1974) 19 MPLJ 862

Hon'ble Judges : G.P. Singh, J;B.R. Dubey, J

Bench : Division Bench

Advocate : D.V. Nigudkar, for the Appellant; S.Q. Hazan and P.C. Pathak, for the Respondent

Final Decision : Allowed

Judgement

Singh, J.

The facts giving rise to this petition are that Ratanlal Agarwal, respondent No. 2 in this petition, was holder of a stage carriage permit for the route Shivpuri to Jhansi via Karera which is an interstatel route. The permit expired on 4th September 1971. Ratanlal applied for renewal of this permit on 29th April 1971. The Madhya Pradesh State Road Transport Corporation opposed the grant of the renewal on the ground that the route was covered by Scheme 27-M which was published in the Government Gazette on 22nd October 1971. The State Transport Authority allowed the renewal of the permit by its order dated 2nd December 1971. The Corporation then filed the present petition under Article 226 of the Constitution challenging the order of renewal.

The learned counsel for the petitioner contended that the State Transport Authority had no jurisdiction to renew the permit in view of Section 68F (1-D) of the Motor Vehicles Act, 1939. In reply it was contended by the learned counsel for Ratanlal that a temporary permit was granted to Ratanlal on 5th September

1971 during the pendency of his renewal application and this temporary permit expired on 4th January 1972 after the publication of the scheme, hence it must be held that the original permit itself expired after the publication of the scheme and Ratanlal became entitled to renewal under the proviso to Section 68 (1-D). It was also contended that the Scheme 27-E was made u/s 68-E for modification of approved Scheme No. 27 and to such a scheme the provisions of Section 68F (1-D) have no application. Lastly it was contended that if the application for renewal cannot be allowed, it should be kept pending till the publication of the approved scheme as no provision has been made for rejection of such an application.

The subject of preparation and publication of a scheme is dealt with in Section 68-C which reads as under :

"Preparation and publication of scheme of road transport service of a State Transport undertaking. -- 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 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 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."

After hearing the objections to the scheme, the State Government may approve or modify the scheme. The scheme as approved or modified by the Government is published under Sub-section (3) of Section 68-D in the Official Gazette. On publication, the scheme becomes final and is called the approved scheme. An approved scheme can be modified or cancelled only by recourse to the procedure provided in Section 68-E. The relevant part of this section reads as follows:

68-E. "Cancellation or modification of scheme.-- (1) any scheme published under 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, 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." What consequences are to follow after publication of a scheme or approved scheme are dealt with in Section 68-F. Sub-section (1) provides for issue of permits to the State Transport Undertaking in pursuance of an approved scheme. Sub-sections (1-A) and (1-C) provide for grant of temporary permits after the publication of a scheme. Subject to these sub-sections, Sub-section (1-D) contains a ban for grant or renewal of a permit after the publication of a scheme. Sub-section (2) (a) provides for non-entertainment and rejection of pending applications for grant or renewal of permits after

publication of approved scheme. Sub-sections (1-D) and (2) (a) of Section 68-F read as follows:

"(1-D) Save as otherwise provided in Sub-section (1-A) or Sub-section (1-C), no permit shall be granted or renewed during the period intervening between the date of publication, u/s 68-C of any scheme and the date of publication of the approved or modified scheme, in favour of any person for any class of road transport service in relation to an area or route or portion thereof covered by such scheme:

Provided that where the period of operation of a permit in relation to any area, route or portion thereof specified in a scheme published u/s 68-C expires after such publication, such permit may be renewed for a limited period, but the permit so renewed shall cease to be effective on the publication of the scheme under Subsection (3) of Section 68-D."

XX XX XX " (2) For the purpose of giving effect to the approved scheme in respect of a notified area or notified route, the State Transport Authority or as the case may be, the Regional Transport Authority concerned may by order,--

(a) refuse to entertain any application for the grant or renewal of any other permit or reject any such application as may be pending."

We have already stated that Scheme 27-M was published u/s 68-C on 22nd October 1971. The permit of Ratanlal expired on 4th September 1971. Even if we assume that during the pendency of renewal application Ratanlal was granted a temporary permit on 5th September 1971 which was effective till 4th January 1972, it cannot be held that the life of the original permit was extended by the temporary permit. The permit that expired on 4th September and the temporary permit granted on 5th September were different and distinct although the latter was granted pending disposal of application for the renewal of the former. Learned counsel for the respondent referred to us Section 58 (4) which provides that the renewal of a permit shall have effect from the date of its expiry, whether or not a temporary permit has been granted pending disposal of the renewal application and where a temporary permit is granted, the fee paid in respect of such temporary permit shall be refunded. This provision was inserted by the Amending Act 56 of 1969. Before it the law was that the renewal took effect from the date of order of renewal and not from the date of expiry of the permit: *Shree Laxmi Bus Transport Co. Vs. The regional transport Authority, and Madhya Pradesh State Road Transport Corporation Vs. The State Transport Appellate Authority, Madhya Pradesh, Gwalior and Others*, . Section 58 (4) brings about a change in law on this point by providing that the renewal will take effect from the date of expiry of the permit. It also provides that if the permit-holder gets a temporary permit during the pendency of his application for renewal, the fee for that permit will be refunded. The reason behind this seems to be that as now the renewal will relate back to the date of expiry and the renewed permit will cover the period for which the temporary permit is granted, it would not be just for the

Government to tax the permit-holder twice for the same period, when he actually gets the benefit of operation of only one permit. The Section operates when the renewal is granted. It has not the effect of extending the date of expiry of the permit and it does not make the temporary permit a continuation of the expired permit. It is, therefore, impossible to accept the contention of the learned counsel for the respondent Ratanlal, that his permit did not expire on 4th September 1971 and that it was extended by the temporary permit and expired on 4th January 1972. The permit clearly expired on 4th September 1971 before the publication of Scheme 27-M u/s 68-C on 22nd October 1971 and the proviso to Section 68F (1-D) is not attracted.

We next come to the contention that Scheme 27-M is not a new scheme but a proposal u/s 68-E to vary the approved Scheme 27 and, therefore, Section 68F (1-D) is not attracted, Section 68F (1-D) comes into operation on the publication "under Section 68-C of any scheme". The question, therefore, is whether Scheme 27-M which has been published u/s 68-C is really a scheme.

The preamble of Scheme 27-M as published in the Government Gazette reads as follows :

"Whereas the Madhya Pradesh State Road Transport Corporation: "State Transport Undertaking" is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service on the routes specified in clause (2) of the Scheme given below (Scheme No. 27-M) and in modification of approved scheme No. 27, it is necessary in the public interest that the Road Transport Service in relation to the said routes should be run and operated by the Madhya Pradesh State Transport Corporation "State Transport Undertaking" in accordance with the Scheme given below :--

Now, therefore, in exercise of the powers conferred by Section 68-C and Section 68-E of the Motor Vehicles Act, 1939 as amended till date read with rule 3 (2) of the Madhya Pradesh State Road Transport Services (Development) Rules, 1959, the Madhya Pradesh State Road Transport Corporation, "State Transport Undertaking" hereby publishes the scheme given below in respect of the State Road Transport Services framed in pursuance of Section 68-C and Section 68-E of the said Act. Copies of the Scheme will also be found pasted on the office board of the Office of the State Transport Authority, and the Regional Transport Authority concerned."

The routes for which the scheme is proposed are mentioned in clause (2) and the schedule mentions the nature and extent of services to be provided on these routes by the State Road Transport Corporation. Clauses (4) and (5) indicate the routes for exclusive operation of the Corporation and clause (7) mentions the permits of the private operations which are proposed to be cancelled or curtailed. Earlier to the publication of Scheme 27-M the Corporation had proposed Scheme 27 for these routes. The permits of the respondent Ratanlal and some other operators were not included for cancellation when this scheme was published u/s

68-C, but at the time of final approval of the scheme u/s 68-D these permits were included. The High Court in M. P. No. 158 of 1970, decided on 16th August 1971 to set aside the approved Scheme 27 in so far as it affected the permits of the respondent and other operators which were not included in the scheme as earlier published u/s 68-C. The Corporation by preparing and publishing Scheme 27-M seeks cancellation and/or curtailment of the permits of the respondent and other private operators which remained unaffected by the approved Scheme 27, and thereby it proposes to make the routes mentioned in clauses (4) and (5) of the proposed scheme routes of complete exclusion. The real object of Scheme 27-M is to supplement the approved Scheme 27 by filling up the gaps which were accidentally left out.

The word "scheme" has not been defined in Chapter IV-A or elsewhere in the Act. Reading Section 68-C it is, however, clear that a scheme is a proposal prepared and published by a State Transport Undertaking indicating the nature of the services proposed to be run and operated by the Undertaking in relation to any area or route whether to the exclusion, complete or partial, of other persons or otherwise. A scheme can only be prepared and published when the State Transport Undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service it is necessary in the public interest that 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. After the approval is given by the State Government, a scheme becomes an approved scheme u/s 68-D. An approved scheme can be modified or cancelled u/s 68-E. One of the modes of modification or cancellation of an approved scheme is contained in the first part of Sub-section (1). Under this provision the State Transport Undertaking can cancel or modify an approved scheme by following the procedure laid down in Sections 68-C and 68-D "as if the proposal (for cancellation or modification) were a separate scheme". An approved scheme can be modified by the State Transport Undertaking without following the procedure under Sections 68-C and 68-D in cases covered by the proviso to Subsection (1) of Section 68-E. The State Government can also independently modify an approved scheme under Sub-section (2) of Section 68-E. We are not in this case concerned with the proviso to Sub-section (1) or subsection (2) of Section 68-E. We are only concerned with the first part of Sub-section (1). The point is whether a proposal to modify or cancel a scheme to which the procedure under Sections 68-C and 68-D has been applied as if the proposal were a separate scheme, can itself be called a scheme. The answer to this question, in our opinion, must depend upon the nature of the proposal. We have already seen that a scheme is a proposal prepared and published by the State Transport Undertaking in public interest to provide transport services to the complete or partial exclusion of others in any area or route. If the proposal for modification of an approved scheme carries out the object of nationalisation and supplements the approved scheme, the proposal

will in itself amount to a scheme. But if the proposal is merely to cancel an approved scheme, it will be difficult to call it a scheme, for such a proposal does not envisage that road transport services be provided by the Road Transport Undertaking, rather it envisages the cancellation of the existing road transport services provided by the State Transport Undertaking under the approved scheme which it proposes to cancel. A proposal to cancel an approved scheme aims at denationalisation of road transport services and although for making the cancellation effective the procedure under Sections 68-C and 68-D is made applicable "as if the proposal were a separate scheme", it will be difficult to call the proposal a scheme. To put it differently, although every proposal for modification or cancellation of an approved scheme is to be treated for procedural purposes as if it were a separate scheme, every proposal is not in true sense a scheme as envisaged by Section 68-C. To see whether a proposal emanating u/s 68-E is in true sense a scheme, it has to be seen whether it has the essentials of a scheme u/s 68-C. In other words, it may be examined whether the proposal advances the policy of nationalisation of road transport services, which is the object behind Section 68-C.

Tested in the light of these principles, it is clear that Scheme 27-M fulfils all the characteristics of a scheme u/s 68-C and it is in true sense a scheme. The object behind it is to exclude the private operators which were accidentally left out in the approved scheme and to complete the nationalisation of the routes mentioned in its Clauses (4) and (5). In our opinion, the scheme is a true scheme and not merely a proposal which is treated for procedural purposes u/s 68-E as if it were a scheme. Scheme 27-M being a scheme published u/s 68-C, the embargo contained in Section 68F (1-D) was clearly attracted. The respondent's permit is mentioned for cancellation, and the route on which this permit operated is entirely covered by the scheme. The State Transport Authority had, therefore, no jurisdiction to renew the permit after publication of the scheme.

The next question is whether the application for renewal of the respondent's permit is to be dismissed or it is to be kept pending till the publication of the approved scheme. Section 68-F(1-D) provides for the consequences that are to follow the publication of a scheme u/s 68-C- The Section provides that no permit shall be granted or renewed during the period intervening between the date of publication of a scheme u/s 68-C and the date of publication of the approved scheme. The proviso to the section enables grant of renewal for a limited period of a permit which expires after the publication of a scheme. The section does not in terms provide that the applications for grant of a permit or for renewal of a permit which has expired before the publication of the scheme will be rejected. All that it provides is that no permit shall be granted or renewed, which means that an application for grant of a permit or renewal of a permit will not be allowed. But the question is whether the application is to be dismissed. It will be noticed that Section 68F(2), which provides for the consequences to follow on publication of an approved scheme, uses very clear language to the effect that

the Authority concerned may by order "refuse to entertain" an application for the grant or renewal of a permit or "reject any such application as may be pending." Parliament could have used similar language in Section 68F(1-D) if the intention were that applications for grant or renewal of permits on routes covered by a scheme published u/s 68-C are to be rejected or dismissed. Use of different languages suggest that the intention was not to authorise rejection of the applications. Another consideration which supports this construction is that the object behind Section 68F (1-D) is to enact a ban for a limited period; the ban under this section is lifted after the publication of the approved scheme. The approved scheme may or may not cover the routes that were proposed to be covered under the scheme. If a route covered by a scheme continues to be covered by the approved scheme, Section 68F(2) will apply; otherwise the ban would be entirely lifted. If an application for renewal of a permit expiring before the publication of a scheme is rejected u/s 68-F (1-D) and later the permit or route covered by it is excluded from the approved scheme, the rejection of the application will work a serious hardship to the permit-holder. On the other hand, if such an application is kept pending till the publication of the approved scheme, no injustice will result to any party. If the approved scheme covers the permit or route, the application will be rejected u/s 68F(2)(a); whereas, if the approved scheme does not cover it, the application will be disposed of in accordance with the provisions of Chapter IV. Having regard to all these considerations, we are of opinion that an application for renewal of a permit expiring before the publication of a scheme u/s 68-C in respect of a route covered by it is not to be dismissed u/s 68F (1-D). Such an application should be kept pending till the publication of the approved scheme.

The petition is allowed. The order of the State Transport Authority dated 2nd December 1971 renewing the respondent's permit is quashed. The application for renewal will be kept pending till the publication of the approved scheme u/s 68-D and shall thereafter be disposed of according to law. There shall be no order as to costs. The amount of the security deposit shall be refunded to the petitioner.