

(1972) 09 GAU CK 0006
In the Gauhati High Court
Case No : Civil Rule No. 527 of 1972

Manik Chandra Das

APPELLANT

Vs

The State of Assam and others

RESPONDENT

Date of Decision : 26-09-1972

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1973 Guw 1

Hon'ble Judges : P.K. Goswami, C.J.;Baharul Islam, J

Bench : Division Bench

Advocate : S. K. Ghose, A.G., Nagaland, P. C. Choudhuri, A. S. Bhattacharjee and B. Choudhury, for the Appellant; J. C. Medhi, Advocate-General, Assam and A. Mazumdar, Jr. Govt. Advocate, Assam, for the State., for the Respondent

Final Decision : Allowed

Judgement

P. K. Goswami, C. J.

1. The petitioner was granted a periodic stage carriage permit on the Mongaldai-Tangla-Bhutiachang route by the Regional Transport Authority, Tezpur, with effect from 1-9-1965 to 31-8-1968. He was running his vehicle No. ASD 1561 with a capacity of 31 seats. Thereafter the permit was extended for another period of three years ending 31-8-1971. Meanwhile he replaced the old vehicle by a new vehicle No. ASK 9479 of Leyland Make of 1966 model, with a seating capacity of 40, with effect from 16th June, 1971. He avers that he has invested more than Rs. 32,000/- in his above transport business and he is depending on the same for his livelihood. The above permit was finally extended for three years up to 31st August, 1974 on the decision of the State Transport Appellate Tribunal. That decision was not challenged by any one in any appropriate proceeding and we will, therefore, assume the same to be correct.

2. There are altogether 15 permit-holders of stage carriage permit for the Mongaldai-Tangla-Bhootiachag route, besides other permit-holders for

neighbouring areas of other routes. Altogether, there are 35 permits for the different routes. The permit-holders are represented by different associations and the petitioner belongs to Mongaldai-Tangla-Bhootiachag Bus Association, briefly "the Association", and the collective interests of the permit-holders in this route are looked after by this Association. The Secretary, Regional Transport Authority, Tezpur (6th respondent) sent to the Association a copy of the notification published in the Assam Gazette on 8th March, 1972, which purported to be a scheme published by the General Manager (5th respondent) of the Assam and Meghalaya State Road Transport Corporation (4th respondent). This scheme is said to be made u/s 68-C of the Motor Vehicles Act, 1939, as amended, briefly "the Act", for nationalisation of Mongaldai-Tangla-Bhootiachag-Orangjuli to Tangla via Dimakuchi route including the petitioner's route and specifying that "the Assam and Meghalaya State Road Transport Services would be provided by the State Government exclusively" This notification is marked as Annexure E-1 to the petition. Since this is one of the impugned notifications, it may be appropriate to quote the same here:

"In exercise of the powers conferred by Section 68-C of the Motor Vehicles Act, 1939 (Act IV of 1939) as amended by the Motor Vehicles (Amendment) Act, 1969 (Act 56 of 1969), I, Shri B. N. Hazarika, General Manager, Assam and Meghalaya, State Road Transport Corporation, Guwahati, do hereby publish the following Schemes specifying the route on which Assam and Meghalaya, State Road Transport Corporation Services will be provided by the State (Contd. on Col. 2)

1. Name of the route on which Assam and Meghalaya State Transport Corporation Services will be provided. ...
2. Distance of the route ...
3. Type of Service ...
4. Capacity of the Buses ...
5. Date of commencement of operation ...
6. Approximate Nos. of vehicles ...
7. Remarks ...

This is in supersession of Notification on the subject published at page 1210 in the Assam Gazette in its issue dated 3rd June, 1970 in the context of Amendment of M. V. Act, 1969, effective from 2nd March, 1970.

Sd/- B. N. Hazarika,

GENERAL MANAGER,

Assam and Meghalaya State Road Transport Corporation, Gauhati."

3. Objections to the scheme were submitted by the Association to the State

Government u/s 68-D and these were heard by the Minister of Transport (2nd respondent) on 3rd May, 1972 and he rejected the same. By notification dated 25th May, 1972, the Governor approved the aforesaid scheme u/s 68-D and the notification was published in the Extraordinary issue of the Assam Gazette on the following day. The Regional Transport Authority, Tezpur, thereafter on 30th May, 1972 informed the Association to stop plying of buses on the nationalised route with effect from 1st June, 1972. Hence this application under Article 226 of the Constitution by the petitioner for quashing the aforesaid two notifications and for allowing him to continue to ply his vehicle on the permit that was issued to him. The petitioner obtained a returnable Rule on 12th June, 1972 without any order for stay.

Government exclusively, date on which the Assam, Meghalaya, State Road Transport Corporation Services will commence operation under the Scheme and type, number and carrying capacity of the Assam and Meghalaya, State Road Transport Corporation vehicles to be used in such Services, etc. for the purpose of providing an efficient, adequate and properly co-ordinated Road Transport Services.

Any person/persons, who is/are already providing transport facilities or any Association of theirs which is recognised in this behalf by State Government or any Local Authority or Police Authority aggrieved by the scheme may, within thirty days from the date of its publication in the official Gazette, file objections thereto to the Secretary to the Government of Assam, Transport Department, Shillong.

Mangaldai-Tangla-Bhutiachang-Orangjuli-Bamunjulli to Tangla via Dimakuchi route including Bhutiachang-Chajrabazar-Punri-Odalguri sectors

106 M.M.

Passenger, Luggage and Mail

51 seater.

21st April, 1972.

5 buses or more as may be required. Combined Upper and Lower Class Service with Mails.

4. An affidavit-in-opposition was filed on 11th July, 1972 by the Secretary to the Government of Assam in the Transport Department on behalf of the respondents 1 to 6. Another affidavit-in-opposition was filed by the Law and Claims Officer of the Assam and Meghalaya State Road Transport Corporation on 25th July, 1972 on behalf of the respondents 4 and 5. No affidavits are filed personally by the 2nd and 5th respondents.

5. It is contended on behalf of the petitioner that the scheme which has been published by the 5th respondent is absolutely invalid as it is not in conformity with Section 68-C of the Act. It is further contended that the approval by the

State Government will not render valid what is already invalid in view of the provisions of Section 68-C.

6. The learned Advocate-General, Assam, fairly concedes that the scheme has not been made in strict conformity with Section 68-C. He also does not support the submission of the Government's affidavit that the 5th respondent is competent to form the requisite opinion u/s 68-C (paragraph 30 at page 84). Nor does he support the averment in the counter-affidavit of the Secretary (paragraph 18 at page 75 of the record) to the effect that "On the publication of the scheme by Shri B. N. Hazarika, General Manager, it is to be presumed that opinion having been formed, the scheme has been published in accordance with the provisions of Section 68-C of the Act". He, however, submits that since the objections to the scheme were heard by the Minister and the Governor has later approved the scheme, the publication of the same by the 5th respondent, even in the absence of the opinion of the State Transport Undertaking, which is the Road Transport Corporation in this case, is not fatal to the validity of the notification.

7. After hearing him for some time, we directed on 21st September, 1972 to produce the relevant records and the minutes of the proceedings of the Road Transport Corporation containing the decision taken u/s 68-C of the Motor Vehicles Act and such other papers as may be considered necessary. The next day, the learned Advocate-General, Assam, produced the minutes of the proceedings of the Assam State Road Transport Corporation, briefly "the Corporation", which has been constituted under Sec. 3 of the Road Transport Corporation Act, 1950 and is a State Transport Undertaking within the meaning of Section 68-A (b) of the Act. He first draws our attention to the minutes of the third meeting of 21st May, 1970, where, under item 3 thereof, the Board approved the Budget showing a surplus of Rs. 26,680/-. He also produced the memorandum on the Budget Estimate of the Corporation for the year 1970-71, from where he reads the following:-

"As per original programme, the Corporation has proposed to nationalise the following routes during the year 1970-71 With an estimated capital expenditure of 57.75 lakhs, under the 4th Five-Year Plan."

From these two references, the learned Advocate-General submits that the impugned scheme can be assumed to be approved by the Corporation. We are unable to accede to the submission of the learned Advocate General since there is no reference whatsoever to the scheme in the two documents relied upon by him. He then drew our attention to the minutes of the 17th Meeting of the Corporation of 8th April, 1972 and relies upon item 6 of the decision, which may be quoted:

"The question of nationalisation of the Routes viz., Mangaldoi-Tangla-Bhutiachang and Nowgong-Lanka-Hojai which could not be nationalised during 1971-72 was discussed. The Board accepted the proposal on principle and decided that a

detailed feasibility report for each route be prepared and submitted to the Board for approval."

The learned Advocate-General submits that this is a clear indication of approval of the scheme already published on 8th March, 1972. We, however, find that the 5th respondent was present in the meeting of the Corporation on 8th April, 1972 and it may be difficult to assume that he would not have drawn the attention of the Corporation to the scheme already published in the Assam Gazette on 8th March, 1972. Even so, we do not find a word in the minutes of the Corporation with regard to that scheme, which was already published by the 5th respondent. Viewed in this context, the decision as per item 6, by any stretch of imagination, cannot be held to indicate approval of the scheme already published. On the other hand, it is clearly stated in the decision that "a detailed feasibility report for each route be prepared and submitted to the Board for approval". The learned Advocate-General concedes that he is unable to show any feasibility report later submitted to the Corporation which the Corporation has approved. He, however, draws our attention to the minutes of the 19th Meeting of the Corporation on 10th June, 1972 and particularly with reference to item 3 therein:

"Feasibility report regarding nationalisation of Mangaldoi-Tangla-Bhutiachang route, Nowgong-Hojai-Lanka route and Goalpara-Pancharatna route."

We find here that the Board considered the feasibility report and approved the nationalisation scheme for the route in question amongst others. We also find in that item the following observation:

"In connection with nationalisation of the Mangaldoi-Bhutiachang route, Sri G. S. Bhattacharjee informed the Board that the private operators moved writ petition in the High Court and the case would come up on the 12th June, 1972. Necessary legal steps, therefore, should be taken to defend the case. The General Manager stated that necessary steps had already been taken."

The learned Advocate-General is conscious that the resolution of the 10th June, 1972 after the present writ application had been submitted before the High Court on 8th June, 1972, which was taken note of in the meeting of the Corporation, cannot be justifiably relied upon by him to establish approval of the scheme by the Corporation and particularly so because on 26th May, 1972 the Governor's approval had been already notified. Even otherwise, the scheme published on 8th March, 1972 cannot be said to be approved by the aforesaid resolution of 10th June, 1972. If we may say so, in the instant case of nationalisation, the cart has been put before the horse.

8. Chapter IV-A of the Act contains Sections 68-A to 68-J and was engrafted by the Motor Vehicles (Amendment) Act, 1956. The title of this Chapter itself shows that they are "special provision relating to State Transport Undertakings". Section 68-A contains definitions and we have already noted the definition of "State Transport Undertaking" which, in this case, is the Road Transport Corporation. Section 68-B provides that the provisions of this Chapter and the rules and

orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter IV of this Act or in any other law for the time being in force or in any instrument having effect by virtue of any such law. Then comes Section 68-C, which may be quoted:

"Where any 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, 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 providing for what is laid down u/s 68-C, a procedure of hearing objections to the scheme is provided for u/s 68-D. Without quoting the section, we may only note that there is provision for hearing objections, amongst others, from any person already providing transport facilities by any means along or near the area or route proposed to be covered by the scheme and from any association representing persons interested in the provision of road transport facilities recognised in this behalf by the State Government (Section 68-D (1) (i) and (ii)). Under sub-section (2) of that section, the State Government may, after considering the objections and after giving an opportunity to the objector or his representatives and the representatives of the State Transport Undertaking to be heard in the matter, if they so desire, approve or modify the scheme. The scheme as approved or modified shall then be published under sub-section (3) of that section. Section 68-FF provides that where a scheme has been published under sub-section (3) of Section 68-D, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant permit except in accordance with the provisions of the scheme, provided that where no application for a permit has been made by the State Transport Undertaking in respect of a notified area or a notified route in pursuance of an approved scheme, the State Transport Authority or the Regional Transport Authority may grant temporary permit to any person in respect of the area or route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State Transport Undertaking for the notified area or the route. This section has been inserted by Act 56 of 1969 with effect from 2nd March, 1970. Section 68-G provides for principles and method of determining compensation when any existing permit is cancelled or the terms thereof are modified. Section 68-H provides for payment of compensation within one month from the date on which the cancellation or modification of the permit becomes effective. We need not refer to the other sections in the Chapter.

9. From the foregoing provisions, it is clear that an elaborate procedure has been made with regard to the nationalisation of a route to be served by State Transport Undertakings. u/s 68-C, it was necessary for the Road Transport Corporation in this case to form an opinion with regard to matters contained therein where it is necessary in the public interest that road transport services in general or any particular class of such service should be run and operated by the Corporation and whether to the exclusion, complete or partial, of other persons or otherwise. Once that opinion is formed by the Corporation, it is obligatory for it to prepare a scheme giving the necessary particulars mentioned in the section and publish the same as provided for under the law. Two things are, therefore, necessary u/s 68-C: firstly, formation of an opinion with regard to the necessity of operating a State Transport Undertaking in the public interest to the exclusion, complete or partial, of other permit-holders etc.; and secondly, once the opinion is formed and it is decided to operate the road transport service, the Corporation has to prepare a scheme and publish the same. The procedure laid down u/s 68-C does not contemplate an informality of any kind in a matter like this affecting the rights and financial interests of the existing permit-holders and also public interest in general. We should have therefore expected the Corporation to comply with Section 68-C in first arriving at a decision about nationalisation of this route and next to publish the scheme with all particulars, so that interested parties may submit their objections to the same, after hearing which the scheme may be approved either in toto or by necessary modification. The entire Chapter deals with nationalisation of routes by State Transport Undertaking and necessarily involves ouster of existing permit-holders affecting their rights. It is therefore necessary that the procedure laid down u/s 68-C must be complied with before any scheme can be held to be valid under the law. We are clearly of opinion in this case that the Road Transport Corporation did not at all apply its mind to the particular scheme, which was published by the 5th respondent on 8th March, 1972. The 5th respondent, therefore, had no jurisdiction to publish the scheme and the scheme being not in conformity with Section 68-C is invalid and ultra vires.

10. The scheme (Annexure E-I) is therefore quashed. Necessarily the approval of the Governor also falls, and the notification dated 25th May, 1972 (Annexure "J") is also quashed. The respondents are directed to forbear from giving effect to the said notifications and from interfering with the permit of the petitioner in respect of his route in pursuance of the impugned notifications. The application is allowed with costs. Hearing fee is Rs. 500/-. The Rule is made absolute.

Baharul Islam, J.

11. I agree.