
(1989) 08 MP CK 0026

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 774 of 1989

M.P. State Road Transport Corporation, Gwalior

APPELLANT

Vs

The Regional Transport Authority, Rewa, M.P. and Others

RESPONDENT

Date of Decision : 08-08-1989

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (1990) 1 ACC 620 : AIR 1990 MP 17 : (1989) JLJ 730 : (1989) MPLJ 773

Hon'ble Judges : T.N. Singh, J;S.K. Dubey, J;R.C. Lahoti, J

Bench : Full Bench

Advocate : D.V. Nigudakr, for the Appellant; J.P. Gupta, for the Respondent

Judgement

T.N. Singh, J.

When this matter came up on 13-7-1989 before two of us, sitting in Division Bench, petitioner's counsel placed reliance on two decisions of Apex Court and also an unreported Bench, decision of this Court, rendered at the Main Seat on 23-9-1981 (Capital Roadways & Finance Pvt. Ltd., Bhopal v. S.T.A., Gwalior). Because validity was challenged of a temporary permit expiring in August, 1989, hearing of the petition was expedited. On 27-7-1989, respondents 3 and 4, the permit-holders entered appearance through counsel and cited another unreported Bench decision of this Court rendered also at the Main Seal on 25-11-1988 in the case of Mahesh Kumar Singh v. R.T.A., Rewa. Counsel for the parties conceded that there was conflict between the two decisions and submitted that the matter be heard by a Larger Bench. Hence, it is before us today.

During the course of hearing, Shri J. P. Gupta, appearing for the permit-holders, raised a preliminary objection. But, we refused to entertain the same and decided to hear the matter to resolve the conflict and settle the law for the compelling reason stated below. Counsel contended that the permits being

issued by R.T.A., Rewa and the route being also outside the territorial jurisdiction of Gwalior Bench, the petition has to be heard at the Main Seat, Admittedly, however, the petitioner has challenged the impugned permits in revision before the State Transport Appellate Tribunal, Gwalior, for short, the "Tribunal", and the petitioner came before us as the office of the Tribunal was vacant and there was likelihood of that revision being rendered infructuous. Shri Nigudkar also contended that respondents having submitted to the jurisdiction of this Bench and having conceded that they would like to have a decision of this Court to resolve the judicial conflict abovementioned they must be deemed to have waived their right of hearing on facts at the Main Seat. We are of the view, however, that Judges of this Court sitting at any Seat can render a valid and binding decision for the entire State on any legal issue, except that of "vires" which is decided at the Main Seat, Our decision in this matter is a compelling necessity for correct law being applied by the Tribunal in disposing early the pending revision. Shri Nigudkar also submitted that Hon"ble the Chief Justice having taken decision for this petition to be heard at this Bench, under the Rules of this Court, his decision cannot be questioned. We do not think if it is necessary at all, in the circumstances of the case and for the reason aforesaid, to decide Shri Nigudkar"s contention or even Shri J. P. Gupta"s counter-contention based on the Presidential Order regarding this Bench"s territorial jurisdiction.

Before referring to the legal controversy dealt with by the two conflicting decisions aforementioned, we consider it proper to state briefly the factual contentions of parties raised in this petition. The permits annexed to the petition and challenged in the revision aforesaid, Annexures P/7 and P/8, issued respectively to respondents 3 and 4 were of a month"s duration, expiring on 16-5-1989. But, it is conceded that monthly temporary permits are being issued for the same route to the two respondents and those are expiring in August, 1989. For that, apparently, justification is found in the order passed on 6-4-1989 (Annexure P/6) by the R.T. A., Rewa, holding that scope existed for grant of temporary permits on that route. It appears that the petitioner"s objection was considered and the view taken by R.T.A. was that the objection was in regard to the time of departure from Rewa. That order is also impugned for reasons to be stated hereinafter. The route in regard to which the petitioner has raised grievance is - Khogapani-Shah-dol-Rewa of which the portion of the route between Rewa to Shahdol is 171 K.Ms. It is contended by Shri Nigudkar that part of the route is covered under the "approved" scheme of nationalisation, No. 50-M and part of that is covered also under the "proposed" scheme of nationalisation No. 85 and overlapping is prohibited under the Scheme and law.

The legal controversy centres on respondents" reliance on a Gazette Notification dated 6-4-1979 in regard to modification of Scheme No. 50-M and also of proposed Scheme No. 85. Shri Gupta has contended that R.T.A. had jurisdiction to, pass the impugned order and the temporary permits issued to respondents on the basis thereof are not liable to be quashed because those have been validly issued in accordance with the provisions of Section 68-E and Sub-sections (1-A)

and (1-C) of Section 68-F of the Motor Vehicles Act, 1939, for short, the "Act". Shri Nigudkar was submitted that the permits are ultra vires the "approved" as also "proposed" schemes aboveresferred and he further contended that the Gazette publication having not impaired or indented the validity or scope of those two claimants insofar as it concerns the route in question, reliance on Sub-sections (1-A) and (1-C) of Section 68-F of the Act is misconceived. According to him, the permits are hit fatally by Sections 68-D(3), 68-F(1) and 68-FF.

Chapter 1VA of the Act makes "Special provisions Relating to State Transport Undertakings" in the sense that nationalisation of routes is contemplated thereunder for operation by State Undertakings. On a bare reading of the conspectus of Sections 68-A to 68-FF of the Chapter, it becomes clear that provision is made of a "proposed" scheme u/s 68-C and for that scheme to be "approved" u/s 68-D(3), while provisions also exist for cancellation or modification of the "approved" scheme which can be made in accordance with Section 68-E. For the scope of the Scheme, Section 68-C is the pivotal provision which contemplates that it may be "in relation to any area or route or portion thereof which may be "run and operated by the State Transport Undertaking, whether to the exclusion, complete or partial, of other persons or otherwise"". For a scheme of nationalisation to be proposed u/s 68-C, Gazette notification has to be published in that regard and similarly when it is "approved", the process has to be repeated u/s 68-E, it is also contemplated that for cancellation or modification of an "approved" scheme, the same process has to be followed, "as if the proposal were a separate scheme".

Undoubtedly, u/s 68-F(1) R.T.A. as also the S.T.A. are obligated peremptorily to issue permit only to a State Transport Undertaking when application is made by it for operating vehicle on a route covered by an approved scheme. That man-date is inexorable and is made more rigorous by Section 68-FF under which the proviso, however, envisages grant of temporary permit to private operators as ad hoc measure till a permit is issued to a State Transport Undertaking in respect of any area or route covered by an approved scheme. Provision for issuance of temporary permit in favour of State Transport Undertaking under Sub-section (1-A) of Section 68-F, and in favour of a private operator under Sub-section (1-C) thereof, is also made in relation to the "proposed" scheme. As per Section 68-F(1-C), the S.T.A. or R.T.A. may issue a temporary permit on ad hoc basis to private operator when no application is made by State Transport Undertaking u/s 68-F(1-A). We quote that sub-section:

"(1A) Where any scheme has been published by a State Transport Undertaking u/s 68-C, the 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 scheme, 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."

In Capital Roadways (supra), it was held as follows:

"It is impossible to accept the proposition that an approved scheme which has the status Of a law, stands modified or in any way affected by a proposed scheme. An approved scheme can be cancelled or modified in the manner laid down in Section 68-E of the Motor Vehicles Act, The Corporation can modify or cancel an approved scheme by framing another scheme for that purpose. When the new scheme made with this object is finally approved, then a prior scheme can be said to be modified or cancelled, as the case may be. Mere publication of a proposed scheme cannot have that effect.

When that decision was cited in Mahesh Kumar Singh (supra), the Court agreed with the view expressed therein observing, mere publication of the "proposed" scheme cannot have that effect meaning that it cannot have the status of an "approved scheme". It added further as follows:

"Mere publication of a proposed scheme cannot have that effect. That may be so, but then we have to construe the provisions of Chapter IV-A of the Act harmoniously. Since there is a proposed scheme, the R.T.A. is authorised to issue temporary permits u/s 68-F(1-A) to the State Transport undertaking or if no such application is made, then to any other operator u/s 68-F(I-C). Here there are already two approved schemes for this route i.e. scheme Nos. 50 and 50-M providing for exclusive operation by the State Transport Undertaking and, as such, no permit can be issued to any other operator in view of Section 68-FF. This proposed scheme No. N.S. 50-M has been proposed for modification of the earlier approved schemes, so the proposed scheme may not have the effect of wiping out the earlier approved schemes, but then u/s 68-F(I-A & C) it could take effect in spite of subsisting of the earlier approved schemes. So, according to us, the R.T.A. had the jurisdiction to issue temporary permit to the respondents 2 and 3 under "Section 68-F(I-C)."

Let it be noted that in Capital Roadways" case (supra), the petition was dismissed in limine, upholding Tribunal's view that mere publication of the proposed scheme had not the effect of modifying the approved scheme and R.T.A. was wrong in granting temporary permit to the petitioner, revisionist before the Tribunal. Reference was made in the decision only to Sub-section (1-A) and notice, unfortunately, was not taken of Subsection (1-C) of Section 68-F. Similarly, reference to Section 68-E was made without considering its language and without looking at Section 68-C and Section 68-F(1-C) in that context. As we have noted earlier, there are two stages of publication of a scheme of nationalisation. The same scheme "proposed" by a State Transport undertaking and published earlier, becomes "approved" scheme when it is published subsequently in the Official gazette by the State Government, albeit, with or

without modification that the latter may choose to make in respect thereto. When that "approved" scheme has to be modified or cancelled, the process has to be repeated and as directed expressly in Sections 68-E(1) the first publication, or the proposal for cancellation or modification of the approved scheme, has to be regarded as a "separate scheme". By legal fiction contemplated u/s 68-E(1) that also becomes a "proposed" scheme within the meaning of Section 68-C. Legislature has taken care to use advisedly the word "separate" to fix its status with respect to Section 68-C lest the first publication itself is taken for a "new" or another "approved" scheme. The legal fiction serves only that purpose and it is nothing more. (See Commissioner of Income Tax, Bombay City II Vs. Shakuntala and two Ors. etc., ; and The Bengal Immunity Company Limited Vs. The State of Bihar and Others,

For the reasons aforesaid, we are of the view that though the proposal for cancellation or modification of the scheme earlier approved u/s 68(3) may not be another "approved" scheme when first publication with regard to that proposal u/s 68-E(1) is made, the proposal would still have, when published, the status of a "proposed" scheme contemplated u/s 68-C. Such a proposal, when approved, may take the form of a new scheme if by that proposal, the earlier approved scheme is cancelled; but not otherwise. We find it difficult to accept Shri Gupta's contention that as and when such a fresh proposal is published, it has to be regarded as a proposal for a new scheme or, in itself, a new scheme. To avoid the confusion, as indicated earlier, advisedly, the word "new" has been avoided by the Legislature because the status of such a proposal has to depend on whether the earlier "approved" scheme is "modified" or "cancelled".

10 Having reached the conclusion afore said, we are constrained to observe that the view taken in Capital Roadways (supra) is not correct. True, in Mahesh Kumar Singh (supra) this Court has stressed the necessity of harmonising Sub-section (1-A) and Sub-section (I-C) of Section 68-F. In our opinion, on the other hand, what is necessary, rather, is to bring into focus the status of a proposal made u/s 68-C, whether or not, that is made with reference to Section 68-E." As and when a proposal is published, whether for a "new" scheme, or for a "modified" scheme contemplated u/s 68-E, the first preference has to go u/s 68-F(I-A) to the State Transport undertaking to apply for a temporary permit in respect of any area, route or portion thereof, specified in the "said scheme", namely, the said proposal, published u/s 68-C, when the preference is not availed, jurisdiction to issue temporary permit in respect of that very scheme, to private operator would accrue to S.T.A. or R.T.A., as the case may be. Both provisions, though inter-linked, are not conflicting. Each caters to the circumstance specified. However, in this connection, what is necessary still to emphasise is the requirement that follows from the mandate of Sections 68-D(3), 68-F(1) and 68-FF.

The "approved" scheme, and the subsequently "proposed" scheme in regard thereto are to be compared carefully and minutely to ascertain the impact of the later scheme. This, we have said because this aspect has not been considered in

Mahesh Kumar Singh (supra) and a general observation is made in that case, "but then u/s 68-F(I-A & C) it could take effect in spite of subsisting of the earlier approved schemes". In a decision recently rendered at this Bench, this statutory imperative stated above has been underscored observing, "on publication of an approved scheme number of services on the route notified in the scheme published u/s 68-C is frozen and the operators not protected under the scheme cannot operate on the notified route or even on a portion thereof". For this view, reliance was placed on Pandiyan Roadways Corporation Ltd. Vs. M.A. Egappan, which, in the instant case also, Shri Nigudkar had cited at the time of admission of the petition. (See Madhya Pradesh State Road Transport Corporation, Gwalior Vs. Nirmal Kumar Chordia and Others,

We are, similarly, of the view that in making the provision in Chapter 1VA of the Act for nationalising any route or routes and envisaging publication of any scheme in regard thereto, the Legislature has not envisaged total ban on issuance of any kind of permit, such as a temporary permit on ad hoc basis to a private operator. Because, the Legislature has positively expressed its intention to the contrary by envisaging circumstances mentioned in Sub-section (1-C) of Section 68-F and the proviso to Section 68-FF for grant of temporary permit to private operators. That is done to take care of public interest so that the travelling public is not put to inconvenience as a result of any failure of any State Transport undertaking operating on the route notified, whether u/s 68-D or u/s 68-C, namely, under "approved" or "proposed" scheme. The fact that the arrangement has to be made on ad hoc basis is made clear by providing for issuance only of temporary permit and contemplating further that the life of the permit shall expire as soon as the State Transport undertaking has applied for and is granted a permit for that route accordingly. Care has still to be taken by the concerned Authority (S.T.A./ R.T.A.) to ensure that the current operation on any route by the State Transport undertaking does not suffer by overlapping as primacy is attached to the "approved" scheme; the "proposed" scheme has merely a subsidiary role and that is (indicated by sub-section (1-D) of Section 68-F under which it is contemplated that a non-temporary permit shall not be granted or renewed during the period intervening between the date of publication of any scheme proposed u/s 68-C and the date of publication of the scheme "approved" or "modified" in terms of Section 68-D(3) and or Section 68-E.

I2A. Accordingly, we are in general agreement with the view expressed in Mahesh Kumar Singh (supra) and we hold that under certain circumstances, when the "proposed" scheme of modification does not militate against the "approved" scheme, in any manner, it will be within the competence of the concerned authority to issue temporary permit to any private operator on ad hoc basis exercising jurisdiction in that regard in respect of the "proposed" scheme, as contemplated u/s 68-F(I-C). We reiterate that a proposed scheme simpliciter of modification of "approved" scheme does not ipso facto suspend or render invalid an "approved" scheme. The scope and extent of proposed modification,

published in terms of Section 68-E read with Section 68-C, has to be carefully analysed in each and every case before granting a temporary permit in any case u/s 68-F(I-C).

Having settled the law and answered the reference, we consider it unnecessary to render decision on merit in this case for more than one reason. It has been submitted to us in the course of hearing that the Tribunal is expected to function from 7th August, 1989 as the incumbent appointed in that Office is expected to take charge on that date and the vacancy in the Office will vanish. Therefore, the pending revision may be disposed of by the Tribunal. That is a sound and reasonable contention as ordinarily, this Court does not usurp jurisdiction on facts of a subordinate court or Tribunal. In this matter, the jurisdiction was assumed primarily to settle the law. Although Shri Gupta also contended that only few days remain for the permits to expire, on that ground itself we cannot refuse to interfere. Indeed, it shall be the duty of the Tribunal to decide the pending revision on facts in accordance with law herein laid down and if the impugned permits and the impugned order are found violative of Sections 68-D(3), 68-F(1) and 68-FF, those shall be quashed. The Tribunal will be required to compare the original or approved scheme-No. 50-M and the "proposed" modification of that scheme (Gazette Notification dated 6-4-1979) and it shall also consider the "proposed" scheme No. 85 in rendering its decision with respect to the entitlement of the contesting respondents based on Section 68-F(I-C) of the Act with regard to those two proposals.

In the course of his argument, Vishundas Hundumal and Others Vs. State of Madhya Pradesh and Others, and Allied Transport Company and Others Vs. State of Madhya Pradesh and Others, and that enterprise was undertaken because under the scheme in question, certain private operators are allowed to operate on portions of the different nationalised routes. Not only for the reason aforesaid that we have considered counsel's reliance in this Court, on the decision cited, to be inappropriate, otherwise also, we are of the view that those decisions would not help respondents. They have accepted the scheme and they have claimed that temporary permits are rightly granted to them despite those schemes, in virtue of their entitlement based on Section 68-F(I-C). They cannot now complain that the schemes are discriminatory as other private operators are allowed overlapping and the respondents have been refused that facility. Shri Nigudkar also cited decisions, but those we propose to mention only as on facts we are not disposing of petitioner's grievance finally in this petition. He has cited besides Pandiyan Roadways Corporation Ltd. Vs. M.A. Egappan, (supra) also Adarsh Travels Bus Service and Another Vs. State of U.P. and Others, besides relying on Dosa Satyanarayanamurty etc. Vs. The Andhra Pradesh State Road Transport Corporation, and a decision of the Andhra Pradesh High Court. (See K. Lakshminarasamma Vs. The Regional Transport Authority and Others,

In the result, the petition is disposed of in terms of the directions aforesaid. Parties shall appear before the State Transport Appellate Tribunal (respondent

No. 2) and take further order thereat for disposal of the pending revision preferred by the petitioner at that forum. No costs.