

(1992) 05 AHC CK 0017

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No"s. 10280, 13932, 13934, 13984, 13987, 15129 and 21288 of 1990

Padam Chand Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-05-1992

Acts Referred:

Constitution of India, 1950 — Article 154, 166
Motor Vehicles Act, 1939 — Section 269D, 269D(1), 269E, 269F, 68C
Motor Vehicles Act, 1988 — Section 100
Uttar Pradesh State Road Transport Services (Development) Rules, 1974 — Rule 6, 6(3)

Citation : (1992) 2 AWC 1253

Hon'ble Judges : M.K. Mukherjee, C.J.;R.A. Sharma, J

Bench : Division Bench

Advocate : M.M. Ghiedyal and L.P. Naithani, for the Appellant; S.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

R.A. Sharma, J.—All these writ petitions involve common questions of law and facts and as such are being decided by a common judgment. Writ petition No. 15129 of 1990 Padam Chand Sharma v. State of U.P. and Ors. has been made leading case with the consent of the learned Counsel for both the parties. Necessary facts of the leading case will be given hereinafter for deciding these writ petitions.

2. Question involved in these writ petitions is as to what is the date of publication of official Gazette. Is it the date which the Gazette bears or the date on which it is printed or the date on which it is made available to the public ?

3. A draft scheme u/s 68C of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act) proposing to nationalise 49 routes of Agra and Meerut Regions including the routes of the Petitioners, was published in the U.P. Gazette dated

June 23, 1989, Petitioners filed objections within time against the said scheme before the authority, appointed by the State Government, to hear the objections against the scheme. The Hearing Authority fixed 2-2-1990 as the date for consideration of the objections. On the above date the Hearing Authority adjourned the case to 26-2-1990, as it found that the notices have not been published. On 26-2-1990 the Authority passed an order holding that the notice has been published in the official Gazette dated 10-2-1990 and accordingly fixed 5-3-1990 to 10-3-1990 for consideration of the objection of the operators of the various routes, mentioned in the draft scheme. It has been averred in the writ petition by the Petitioners that no notice as contemplated by Sub-rule (3) of Rule 6 was served on them either by registered post or by publication in the official Gazette and they have no knowledge about the fixation of the aforesaid dates for consideration of their objections and they came to know about the above dates only from the operators of Aligarh and thereafter engaged Sri T.N. Nigam, Advocate, who, made an application before the Hearing Authority. The Hearing Authority by its order dated 6-3-1990 rejected the above application and closed the evidence. It is against this order of the Hearing Authority that these writ petitions have been filed.

4. Section 68-D of the Act, which is analogous to Section 100 of the new Motor Vehicles Act, 1988, empowered the Government to approve or modify the draft scheme after considering the objections and after giving an opportunity of being heard to the objectors and the corporation. In exercise of the powers conferred by Section 68-I of the Act the Government of U.P. has framed rules known as U.P. State Road Transport Services (Development) Rules, 1974 (hereinafter referred to as the Rule), for purposes of hearing and finalising the draft scheme. Rule 6, which provides for service of notices on the objectors and the corporation so far as it is relevant, is reproduced below:

6. Consideration and Disposal of objections Section 68-I(2)(c)

(1) The objections so received shall be considered and disposed of by such officer of the State Government as may be authorised in this behalf by the Governor under Clause (1) of Article 154 of the Constitution or under the rules made by him in pursuance of Clause (3) of Article 166 of the Constitution.

(2) Such officer shall fix the date, time and place for the hearing the objections and issue notices thereof to the objectors, and the representative of the corporation, calling upon them to appear before him in person or through a duly authorised agent or counsel and to produce their oral and documentary evidence on the date fixed for hearing.

(3) The notices under Sub-rule (2) shall be served by:

(a) publishing at least 10 days before the date fixed for hearing a general notice in the official gazette giving date, time and place fixed for hearing of objections, and

(b) sending notices by registered post to the objector at the address as shown in the memorandum of objection and to the corporation:

Provided that where a general notice has been published as aforesaid, the service thereof shall, notwithstanding anything contained in Clause (b) be deemed to have been duly affected on the objector and the corporation.

(4) Subject to the provisions of Sub-rule (7) the objector and the corporation shall produce evidence and witnesses necessary and relevant to the enquiry on the date fixed for hearing.

(5) No. objector shall be entitled to be heard unless the objections are made in accordance with the provisions of these rules.

5. By Rule 6 the Hearing Authority is required to fix date, time and place for hearing the objections and to issue notice there of to both the objectors and the corporation In view of sub Rule (3) the notices are required to be served on the objectors both by publishing a general notice in the official Gazette and by sending it by registered post at their addresses as shown in the memorandum of objections. By virtue of proviso appended to Sub-rule (3) of the said Rule, on the publication of the general notice in the manner as aforesaid the service shall be deemed to have been duly affected on the objectors and the corporation. Service of notice as required by Rule 6, is a condition precedent for exercising the power of deciding the objections by the Hearing Authority. Unless the notice has been served on the objectors in the manner laid down by Rule 6 the Authority cannot proceed with the hearing of the objections,

6. As mentioned herein before, the Hearing Authority fixed 2-2 1990 as the first date for consideration of the objections, but the case was adjourned on the said date for 26-2-1990 on the ground that notices have not been published. It was on 26-2-1990 that the Hearing Authority passed an order holding that the notices have been published in U.P. Gazette dated 10-2-1990. The Petitioners have stated in the writ petitions that the notice was not published in the U.P. Gazette dated 10-2 1990, In support of their contentions they have filed a letter dated March 3, 1990, written by Director, Government press, U.P., Allahabad, in reply to the query by an operator of another route, in which it has been stated that U.P. Gazette dated January 27, 1990 has been given on 28-2-1990 to R. M.S. for despatch and steps are being taken to make Gazette dated 3-2- 1990 also available for despatch. It is thus apparent that till 3-3-1990 the U.P. Gazette dated 10 2-1990 in which the general notice fixing 26-2-1990 was published, had not seen the light of the day and was not made available to the public. It is also clear that till date on which the impugned order was passed on 6-3-1990 the aforesaid Gazette dated 10-2-1990 was not made available for public sale or for despatch to the subscribers

7. To publish means to declare publicly and to make known to the public. Publication means communication to the public. The object of publication of notice fixing date, time and place for hearing of the objections, is to make it

known to the objectors so as to enable them to appear before the Hearing Authority and lead evidence in support of their objections, publication of the notice in Gazette, as such, is not complete till it is printed in the Gazette and the Gazette containing the notice is made available to the public. Date which the Gazette bears or the date on which it is printed cannot thus be said to be the date of the publication. A Division Bench of this Court in the case of *U.S. Awasthi v. Union of India* 1975 UPTC 444, while considering the similar question as to when publication of notice in the Gazette is complete has laid down as follows:

The publication of notice in the official Gazette within the meaning of Section 269-E will obviously be publication as contemplated by Sub-section (1) of Section 269-D. namely, that the notification not only must be printed in the Gazette but the Gazette containing the notification must also be available to the public within the statutory period.

8. The above decision was cited before Hearing Authority also, but it refused to follow it on the ground that it relates to the provisions of the Income Tax and cannot be relied upon for deciding the controversy under the Motor Vehicles Act. The view taken by the Hearing Authority cannot be sustained In the case of *U S. Awasthi (supra)* initiation of acquisition proceeding under Chapter XX A of the Income Tax Act were challenged before this Court on the ground that there was no publication of notice within a period of nine months as required by Section 269-D. Section 269-D provided for initiation of acquisition proceedings by publication of notice in the official Gazette within a period of nine months from the end of the month in which instrument of transfer of the property is registered. Section 269-E provided for filing of the objections and Section 269-F for hearing of the objections and passing the final order. It was admitted in that case that the notice was printed in the Gazette within nine months but the Gazette was not available for sale until long after nine months had expired. The question which was raised and decided by the Division Bench of this Court in that case was as to when the publication of notice in Gazette will be complete and in that connection it was laid down that mere printing of the notice in the Gazette cannot constitute publication unless the Gazette containing the notice is made available to the public. The law laid down by this Court in above case will be applicable to every case in which the question involved is as to what is the date of publication of notice/notification in the Gazette. The Hearing Authority was, as such, not justified to ignore the decision of Division Bench of this Court.

9. In the counter-affidavit filed by the U.P. State Road Transport Corporation it has been stated that the copy of Gazette dated 10-2-1990 was produced by it before the Hearing Authority on 26-2-1990. It has, however, not been disputed that the U.P. Gazette dated 10-2-1990 was not made available to the public till the impugned order was passed by the Hearing Authority It may be that the official of the corporation had obtained the copy of the Gazette at official or unofficial level from the Government press but that cannot change the position unless the Gazette has even made available for sale to the public, otherwise

serious consequences will follow because people may be deprived of their property and their rights before they could know about the notice/notification, which is required to be published in the Gazette. As the object of the publication of a notice in the Gazette is to bring it to the notice of the public, the date of publication of the notice in the Gazette cannot be any date other than the date on which the Gazette containing the notice is made available for sale to the public.

10. Learned Counsel for the corporation has also argued that the Petitioners had knowledge of the dates fixed by the Hearing Authority for deciding the objections and they have raised a technical issue of non-publication of the general notice in the Gazette in order to delay the hearing. In this connection reference has been made to paragraphs 14 and 15 of the counter-affidavit where in it is asserted that the Petitioner had full knowledge of the date fixed for hearing and on that basis they made enquiry from the Government press on 3-3-1990 about publication of the Gazette and in reply where of the Director of Government press had issued a letter dated 3-3-1990, copy of which has been filed as annexure 3 to the writ petition. Apart from the fact that above averment made by the corporation have been denied by the Petitioners, the submission of the corporation cannot be accepted. In paragraph 23 of the writ petition it has been stated by the Petitioners that the letter dated 3-3-1990 was sent by the Director Government press, U.P. in reply to the letter of the Union of the operators of another route. These allegations have not been specifically denied by the corporation and only this much has been reiterated that the Petitioners had full knowledge about the proceedings. There is neither any counter-affidavit filed on behalf of Hearing Authority nor there is any material placed before this court by it to show that the notices have been served on the objectors by registered post as required by Rule 6 (3). Petitioners in their writ petition and rejoinder-affidavit have categorically denied the knowledge and service of notice by registered post. When the question as to whether a person has the knowledge of the proceedings is seriously disputed, better course is to insist on strict compliance of the Rules providing for service of notice. As mentioned hereinbefore there has been failure to serve the Petitioners and other objectors in accordance with sub Rule (3) of Rule 6.

11. From perusal of the orders passed by the Hearing Authority it appears that the Hearing Authority was in great haste in completing the formality of the hearing. Hearing contemplated by Section 68-D of the Act and Section 100 of the new Act is not an idle formality. The Act has conferred rights on the existing operators to oppose the draft scheme by filing objections and by producing evidence before the Hearing Authority in support thereof. It was, as such, the duty of the Hearing Authority to find out as to when the Gazette was made available to the public in order to ascertain the date of publication. Under the circumstances there would not have been any harm had the Hearing Authority adjourned the case for one or two weeks so as to enable the objectors/Petitioners to produce evidence.

12. These writ petitions are allowed with costs. - The impugned orders are quashed. The Hearing Authority will now proceed with and decide the objections of the Petitioners and other objectors, if any, after giving them reasonable opportunity of being heard, in accordance with law.