
(1980) 03 AHC CK 0037

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 7302 of 1973

Prem Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-03-1980

Acts Referred:

Motor Vehicles Act, 1939 — Section 68C, 68D, 68D(1), 68D(2), 68D(3)

Citation : AIR 1980 All 330

Hon'ble Judges : S.J. Hyder, J;K.N. Singh, J

Bench : Division Bench

Advocate : S.K. Dhaon and I. Swarup, for the Appellant; R.N. Trivedi and S.K. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Singh, J.—This petition is directed against the notifications dated 7-9-1961 and 3-9-1973 issued u/s 68-C and Section 68-D (3) of the Motor Vehicles Act, 1939.

2. On 7-9-1961, a notification u/s 68-C was issued by the State Transport Undertaking proposing a scheme for the purpose of providing efficient, adequate, economical and properly coordinated road transport services on two routes, in Kumaun Region, viz. (1) Almora-Daniya-Pithoragarh and (2) Almora-Kaphar-Khan-Basoli. A large number of objections were filed by the existing operators of the said route and by others who were likely to be affected by it and also by the Kumaun Motor Owners' Union Limited. The State Government appointed the Joint Legal Remembrancer to hear and decide the objections. The objectors appeared and they produced witnesses, the State Transport Undertaking also produced evidence before the hearing authority. By an order dated 18-12-1971 the hearing authority rejected the objections and approved the scheme. The scheme as approved by the hearing authority was published in the official gazette under a notification dated 3-9-1973 in accordance with Section 68-D (3) of the Act. Aggrieved, the petitioners, who are 216 in number, have by means of this petition under Article 226 of the Constitution challenged the validity of the said

scheme.

3. Learned counsel for the petitioners urged that some of the petitioners who have been granted stage carriage-cum-public carrier permits on the routes in question, were not afforded any opportunity of hearing, as a result of which the entire scheme is vitiated. Learned counsel appearing for the State Transport Undertaking urged that those who had obtained permits after 16-9-1961 had no right of hearing as they had obtained permits with open eyes that a scheme in respect of the routes in question had already been proposed and published.

4. Section 68-D (1) of the Act lays down that on publication of a scheme u/s 68-C any person already providing transport facility by any means along or near the area or route proposed to be covered by the scheme, any association representing persons interested in providing road transport facilities and any local authority or police authority within whose jurisdiction any part of the area or route is, may file objection before the State Government within 30 days from the date of the publication of the notification u/s 68-C. u/s 68-D (2) before approving or modifying the scheme the State Government is required to consider the objections after giving opportunity to the objectors. The scheme approved by the State Government acquires statutory character after its publication in the gazette u/s 68-D (3) of the Act. Section 68-D of the Act entitles a person to file objection if he has already been providing transport facilities on the routes proposed to be covered by the scheme or by the association representing the interest of those providing transport facilities. The Act does not confer any right on a person to file objection to the scheme who may have obtained permit after the issue of notification u/s 68-C of the Act. Once a notification u/s 68-C of the Act is issued and published in the gazette private operators who obtain permit thereafter accept the permit with their open eyes that a scheme has already been proposed notifying the same under Chapter IV-A of the Act. Such a person is not entitled to compensation as contemplated by Section 68-C of the Act. This position has been made clear by the legislature itself. By the Amending Act 56 of 1969 Section 68-F (1-D) was enacted, which provides that no permit shall be granted or renewed during the period intervening between the publication of the notification u/s 68-C and the publication of the approved 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. The legislature has made it clear that the Regional Transport Authority or the State Transport Authority have no jurisdiction to grant any permanent stage carriage or public carrier permit to any person on the route in respect of which a scheme has already been proposed. The Regional Transport Authority or the State Transport Authority had, therefore, no power to grant permit to the petitioners between 7-9-1961 and 3-9-1973. Those of the petitioners who obtained permits during that period were not entitled to file objections or to avail opportunity of hearing or to receive compensation as none of their legal rights have been affected.

5 Learned counsel then urged that since the provisions of Section 68-F (1-D)

came into force with effect from 2-3-1970, that would not apply to the petitioners' case as the hearing had taken place prior to the enforcement of the aforesaid provision. It is true that Section 68-F (1-D) was brought on the statute book on 2-3-1970, whereas the notification u/s 68-C of the Act had been issued and published on 7-9-1961 and some of the petitioners had been granted permits on the routes in question after 7-9-1961 and before 2-3-1970, but that does not alter the legal position as even before the enforcement of the Amending Act 56 of 1969, legal position was clear that only those persons were entitled to hearing before the State Government who may have filed objection. Section 68-D (1) provides that objections should be filed within 30 days from the date of the publication of the notification issued u/s 68-C of the Act. If any objection is filed beyond that period, the State Government or the hearing authority is free to ignore the same. Such an objector has no right of hearing as contemplated by Section 68-D (2) of the Act. The petitioners had not filed any objection within 30 days of the publication of the notification u/s 68-C and as such they were not entitled to file any objection subsequently or to any opportunity of hearing before the Joint Legal Remembrancer. In *Amolak Singh v. State*, Spl. Appeal No. 2738 of 1978, decided on 26-7-1978 a Division Bench of this Court considered the question and held that a person who may have been granted permit after the issue of the notification u/s 68-C of the Act is not entitled to file objection or to insist for having opportunity of hearing. Another Division Bench of this Court took the same view in *Mukat Behari Agarwal v. U. P. State Road Transport Undertaking*, Writ Petn. No. 242 of 1968 decided on 15-1-1970 and held that if a permit is granted to a person after the issue of notification u/s 68-C of the Act the grantee is supposed to hold the permit subject to nationalisation of the route. He has no right to file objection or to get an opportunity of hearing. Principles of natural justice are not attracted in such circumstances. We, therefore, hold that those petitioners who obtained permits subsequent to the issue of notification u/s 68-C of the Act were not entitled to file objection or to any opportunity of hearing before the hearing authority.

6. It appears that Sahkari Samiti, Panwa-Naula, which had been granted a permanent public carrier-cum-stage carriage permit on the routes made an application before Sri R. Chandra, who was hearing authority for being impleaded as a party to the scheme and also for getting an opportunity of being heard before the scheme was finalised and for the issue of a direction to the Transport Department to issue a corrigendum amending the notification issued u/s 68-C of the Act by including the names of persons granted permits subsequent to 7-8-1961. Sri R. Chandra, the then Deputy Legal Remembrancer who had been appointed hearing authority passed order on 26-4-1963 directing the State Transport Undertaking to take steps to get the new operators (those who had been granted permits subsequently) impleaded by issuing a corrigendum. The petitioners' grievance is that in spite of the order dated 26-4-1963 the State Transport Undertaking did not issue any corrigendum, as a result of which the subsequent grantees were not granted any opportunity of hearing. It was further

contended that on 5-11-1971 the petitioner No. 1 made another application before Sri R. C. Saxena, who had been appointed as the hearing authority in place of Sri R. Chandra, for issuing a direction to the Transport Department to comply with the order dated 26-4-1963 for the issue of a corrigendum, but Sri R. C. Saxena, Joint Legal Remembrancer, rejected the application by his order dated 5-11-1971 on the ground that those operators who had obtained permits during the pendency of the hearing of the objections against the scheme did so at their risk and their right to ply motor vehicles was subject to the result of the scheme and it was not necessary to implead them.

7. Learned counsel urged that Sri R. C. Saxena had no authority to review the order dated 26-4-1963 passed by Sri R. Chandra and once the order had been passed by the hearing authority it was incumbent on the State Transport Undertaking to have complied with the same, their failure to do so vitiated the scheme. We find no merit in the contention. As discussed earlier, subsequent grantees of permit have no right to file objection or to avail the opportunity of hearing. The view taken by Sri R. C. Saxena was in accordance with the view taken by this Court in several cases. The Act or the Rules framed thereunder do not provide for issue of any corrigendum or for the amendment of the notification issued u/s 68-C of the Act for the purpose of impleading those who may have been granted permits subsequent to the publication of notification u/s 68-C. The State Transport Undertaking was, therefore, not bound to issue any corrigendum even if the hearing authority had directed for the same. (See *Raj Bahadur Lal and Others Vs. Govt. of Uttar Pradesh and Others*, It appears that subsequent grantees had been moving various applications from time to time before the hearing authority to delay the finalisation of the scheme. The hearing authority, in our opinion, rightly rejected the petitioner's application.

8. Learned counsel for the petitioners urged that in their objection the petitioners had raised individual grievances challenging the draft scheme on a number of grounds but the hearing authority did not consider all those objections as no finding was recorded by him in the order dated 18-12-1971. In the absence of any such finding the scheme stands vitiated. This contention is untenable. Neither Section 68-C nor Section 68-D requires that the hearing authority should record specific findings on each and every question raised by an objector. The whole object of hearing objections u/s 68-D is, to consider whether the scheme provides adequate, efficient, economical and properly co-ordinated scheme. If the hearing authority after hearing objectors approves Or modifies a scheme, it necessarily follows that the scheme has been found to provide an efficient, adequate, economical and properly co-ordinated transport services. In the absence of a provision requiring an express finding the hearing authority is not under any legal duty to record findings on each and every kind of objections raised by the objector. Absence of findings on each and every point raised by the objectors would not invalidate the order passed by the hearing authority and it does not affect the validity of the scheme? This controversy has been determined by the Supreme Court in *Capital Multi-purpose Co-operative Society Bhopal and*

Others Vs. The State of M.P. and Others, . It was therefore not necessary for the hearing authority to have considered each and every objections in detail raised by the objectors and absence of such a finding does not vitiate his order approving the scheme.

9. In the instant case, however, the hearing authority considered the objections in detail. The main objection raised on behalf of the petitioners was that the Kumaun Motor Operators Union was constituted of backward persons and its members had sold away their valuables including both movable and immovables and some of the members were Bhutias who had joined the Union at the instance of late Pt. Jawaharlal Nehru who had suggested to them to form co-operative societies to carry on business of transport. They were likely to be uprooted from their business without any scheme being finalised. The objectors had further asserted that the scheme was not in public interest as there had been no complaint against the operation of their vehicles. The hearing authority did consider these objections in detail as would be evident from paragraphs 9 to 12 of its order. The hearing authority on appreciation of evidence produced before it recorded findings and rejected the petitioners' objections. The hearing authority held that formation of co-operative societies or the absence of any complaint against the petitioners plying over the routes in question had no relevance to the validity of the scheme. The hearing authority observed that no question of comparative merit based on past record of the private operators and State Transport Undertaking could arise while considering the draft scheme u/s 68-C. There is thus no justification for raising the grievance that the hearing authority did not consider the individual grievances raised by the petitioners.

10. Learned counsel for the petitioners then urged that the objectors had raised a grievance that the number of services as proposed in the scheme published u/s 68-C of the Act was not adequate and in support of that objection the petitioners had demonstrated that the traffic requirements had greatly increased after the issue of the notification of 7-9-1961 but the hearing authority wrongly held that the services as proposed under the scheme were adequate on the date on which the notification u/s 68-C had been issued. The hearing authority considered this question in detail in paragraphs 14, 15 and 16 of its order. It observed that if there has been increase in the traffic on the route after the publication of the scheme the State Transport Undertaking shall take due notice of the same and increase the services according to the traffic requirements. We do not find any error in the view taken by the hearing authority.

11. Lastly, the learned counsel urged that some of the petitioners who are transferees of the permit-holders who were holding permits on the routes in question on 7-9-1961 the date on which the notification u/s 68-C was issued, are entitled to ply on the routes in question in accordance with the provisions of the scheme, but their names have not been included in the notification u/s 68-D (2). While considering this question it is necessary to bear in mind that the scheme does not oust the private operators completely, instead, it contains provision

permitting the existing operators to ply on portions of the routes in question with corridor restrictions. The names of all those persons who held permit on the date of the issue of the notification have been mentioned in the notification. It, however, appears that after the issue of notification u/s 68-C and before the issue of the final notification u/s 68-D (3) a number of permits were transferred to other persons and as such the names of subsequent transferees could not be included in the notification u/s 68-C but that does not render the scheme invalid as in the final notification issued u/s 68-D (3) the names of all such transferees have been incorporated, as a result of which they are entitled to ply their vehicles in accordance with the provisions of the scheme. But even if the name of any such transferee is inadvertently omitted, he would be entitled to ply on the routes in accordance with the provisions of the scheme.

12. For the reasons stated above, we are of the opinion that the impugned notifications do not suffer from any legal infirmity. The petitioners are therefore not entitled to any relief.

13. In the result, the petition fails and is accordingly dismissed, but there will be no order as to costs. The interim order stands discharged.