

(1992) 09 AHC CK 0002

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 41470 of 1992

Prithvi Nath Gupta

APPELLANT

Vs

Regional Transport Authority and Others

RESPONDENT

Date of Decision : 03-09-1992

Acts Referred:

Constitution of India, 1950 — Article 226

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

Motor Vehicles Act, 1988 — Section 100, 100(1), 100(2), 100(3), 100(4)

Citation : (1993) 2 AWC 1260

Hon'ble Judges : V.N. Khare, J;D.P.S. Chauhan, J

Bench : Division Bench

Advocate : V.S. Shukla, for the Appellant;

Final Decision : Dismissed

Judgement

V.N. Khare, J.—For the purposes of Motor Vehicles Act there is a route known as Padrauna-Jatha via Kinderpatti (hereinafter referred to as route). This route lies within the Jurisdiction of Regional Transport Authority, Gorakhpur. As far back as In July, 1977 State Government framed a scheme u/s 68 C of Motor Vehicles Act, 1939 for the route. On 28-8 1979 the said scheme was approved u/s 68 D of the Motor Vehicles Act, 1939 but It was not published in the gazette. On 10th October, 1979 a writ petition was filed challenging the said approved scheme as invalid. That petition was entertained and an interim order was granted on the same day, which is extracted below:

Meanwhile the impugned order dated 28-8-1979 shall not be implemented and given effect to.

Subsequently, on 8-4-1988 the said interim order was modified to the effect that it is made clear that while the Respondents shall not interfere with the Petitioner's right to ply vehicles 0:1 the routs to question, the publication u/s 68 D(3) of the Motor Vehicles Act if not stayed!. Admittedly the scheme approved by the State Government has not yet been published in the Official Gazette

2. Subsequently, the Motor Vehicles Act, 1988 came into force with effect from 1-7-1989, Section 100 of the Act, which is analogous to Section 68 C and D of the Motor Vehicles Act, 1939, provides procedure for framing a scheme for exclusive plying of the vehicles by the State Transport Undertaking. After the Motor Vehicles Act, 1988 came into force, the Regional Transport Authority, Gorakhpur treated the scheme for the route as lapsed and, therefore, has now proposed to grant permanent stage carriage permit on the said route. It is at this stage the Petitioner has come to this Court under Article 226 of the constitution for issuance of a direction to the Regional transport Authority not to grant any permanent permit on the route as according to them, since there is an approved scheme for this route and, therefore, no permanent stage carriage permit can be granted.

3. For appreciating the argument of the learned Counsel, it is necessary to look into the relevant provisions of the Act.

4. Sub-section 1 of Section 100 of the Act provides that on publication of any proposal regarding a scheme in the Official Gazette and in not less than one newspaper in the regional language, any person may within thirty days from the publication in the gazette file objection to it before the State Government. Sub-section 2 of Section 100 of the Act provides that the State Government after considering the objection may approve or modify the proposal. Sub-section 3 of Section 100 of the Act further lays down that after the scheme relating to the proposal as approved or modified u/s 2 shall "then" be published by the State Government in the Official Gazette, and in not less than one newspaper in the regional language and the same shall thereupon (emphasis mine) become final on the date of its publication in the Official Gazette and shall be called the approved scheme and the area or route to which it relates shall be called the notified area or notified route. Sub-section 4 of Section 100 of the Act further provides that notwithstanding anything contained in this section, where a scheme is not published as an approved scheme under Sub-section 3 in the Official Gazette within one year from the date of publication of the proposal regarding the scheme under Sub-section (1) the proposal shall be deemed to have lapsed.

5. On the strength of Sub-section (2) of Section 100 of the Act, learned Counsel for the Petitioner argued that once a scheme is approved it becomes a final scheme irrespective of the fact whether it is notified in the Official Gazette or not and the route is notified route and further no permanent stage carriage permit can be granted on the said route.

6. After hearing learned Counsel for the Petitioner we are of opinion that this argument of the learned Counsel for the Petitioner is not tenable. As earlier noticed Sub-section (3) of Section 100 of the Act provides that the scheme relating to the proposal as approved or modified under Sub-section (2) shall then be published in the Official Gazette by the State Government making such scheme and in not less than one newspaper in the regional language and tie

same shall be thereupon become final on the date of its publication in the Official Gazette and shall be called the approved scheme and the area of the route to which it relates shall be called notified area or route. Thus, the requirement of law is that after the scheme is approved by the State Government, it has to be published in the Official Gazette and an one news-paper in the regional language. In this connection the word then occurring in Sub-section (3) of Section 100 of the Act is very significant. In Balck's Law Dictionary then means as a adverb means "at that time" referring to a time specified, either past or future It also denote a contingency and be equivalent to "in that event". In Law Lexicon, the word then means "at that time" or "In that-case" according to the context. Here the word if read in the context denote a contingency and is equivalent to " in that event". The finality of a approved scheme is depended upon its publication in the Official Gazette So long an approved scheme is not published in the Official Gazette the scheme cannot be said to be final approved scheme. In fact for being final approved scheme the scheme as approved or modified by the State Government has got to be published in the Official Gazette and In one news paper in the regional language, if the scheme, as approved or modified by the State Government has not been published in the Official Gazette and in one news-paper In the regional language it cannot be called an approved final scheme and the route or area cannot be called notified routed or notified area within the meaning of Sub-section (3) of Section 100 of the Act. As soon as the scheme is published in the Official Gazette the scheme becomes final approved scheme. In the present case the approved scheme for the route having not been published in the Official Gazette, the scheme is not a final scheme and the route cannot be called a notified route. Unless the approved scheme is published in the Official Gazette it is open to the Regional Transport Authority to grant permanent stage carriage permit on the route in view of this the steps taken by the Regional Transport Authority to grant permanent stage carriage permit on the route cannot be said without authority of law. This petition lacks merit and is dismissed summarily.