
(1991) 12 AHC CK 0004

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 8630 of 1981

Radhey Govind Gupta

APPELLANT

Vs

Special Additional District and Sessions Judge and Others

RESPONDENT

Date of Decision : 18-12-1991

Acts Referred:

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

Citation : (1991) 2 AWC 527

Hon'ble Judges : Om Prakash, J;A.B. Srivastava, J

Bench : Division Bench

Advocate : S.K. Dhaon, for the Appellant; S.K. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Om Prakash, J.—This petition raises a short question whether the Respondent No. 1 was right in holding by the impugned order dated 7-4-81 (Annexure VT to the petition) which is sought to be quashed by the Petitioner that the Civil Court has no jurisdiction to entertain a suit filed for assailing the notification issued u/s 68-C of the Motor Vehicles Act 1939 (briefly "the Act 1939").

2. To appreciate the facts involved in this petition, it is expedient to have a cursory look at the relevant provisions of the Act 1939. Section 68-C of the Act states that where any State Transport Undertaking is of opinion that it is necessary in the public interest that road transport services should be run and operated by the State Transport Undertaking, 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. Section 68-D(1) provides that on the publication of a scheme in the Official Gazette, any person already providing transport facilities in the area or on the route-proposed to be covered by the scheme, any association representing persons interested in the provision of road

transport facilities recognised in this behalf by the State Government and any local authority or police authority within whose jurisdiction any part of area or route proposed to be covered by the scheme lies, may within thirty days from the date of its publication file objection to it before the State Government. Sub-section (2) of Section 68-D states that the State Government may after considering the objection and after giving an opportunity to the objector of being heard, approve or modify the scheme. Sub section (3) of this section further states that the scheme as approved or modified under Sub-section (2) shall then be published in the Official Gazette by the State Government and the same shall thereupon become final.

3. u/s 68-C Sri M.C. Sharma, General Manager of the U.P. State Road Transport Corporation (for short, the Corporation) Respondent No. 2 initiated a scheme to nationalise Phaphund Ghatia Ghat route which was notified, vide Notification dated 25th July, 1975, published in the Official Gazette on 13th September 1975. Thereupon, the Petitioner filed an objection to the State Government u/s 68-D. The objection, in brief was that Sri M.C. Sharma, General Manager was not duly appointed Manager and that no power was delegated to him by the Undertaking to prepare the scheme regarding the aforesaid route. The authority taking cognizance of such objection on behalf of the State Government (hereinafter referred to, as the Hearing Authority), rejected the submission of the Petitioner that such objection be treated as preliminary one and be decided at the preliminary stage, vide order dated 25th May, 1979 (Annexure 3 to the petition). The Hearing Authority took the view that "It would be expedient to consider and dispose of all the questions whether legal or factual at the time of final analysis and disposal of objections u/s 68-D (1)".

4. Then the Petitioner made an application to recall the order dated 25th May, 1979 (Annexure 3 to the petition) which too was rejected by the Hearing Authority, vide order dated 4th July, 1979 (Annexure 4 to the petition) observing; "It has to be pointed out again that these objections raised mixed question of law and fact. As such, they cannot be decided at this stage as preliminary points."

5. Thereafter, the Petitioner filed a suit in the Court of Munsif, Kannauj for injunction prohibiting the Corporation from giving effect to the scheme and for declaring the notification dated 25th July, 1975 published on 13th September, 1975 as null and void. Also, he made an application for ad-interim injunction which was allowed ex-parte by the learned Munsif, vide order dated 4-9-1979, which order was confirmed by order dated 20th December, 1979 (Annexure 5 to the petition). While confirming the ex-parte interim injunction, learned Munsif rejected the submission of the Respondents that Civil Court has no jurisdiction to the matter. Against the order dated 20th December, 1979 (Annexure 5 to the petition), the Respondents preferred an appeal which was allowed by the impugned order dated 7-4-1981 (Annexure 6 to the petition) by learned Special Additional District and Sessions Judge, Farrukhabad. In the impugned order, the

Respondent No. 1 took the view that jurisdiction of the Civil Court was impliedly barred by the provisions of the Act 1939.

6. The question for consideration, therefore, is whether the Respondent No. 1 was right in holding that the jurisdiction of the Civil Court was barred and that the notification issued u/s 68-C could not have been assailed by the Petitioner before the Civil Court. From the scheme of Section 68-C and 68-D as stated above, it is patently clear that aforesaid provisions constitute a self-contained Code in the matter of initiating a scheme and finalising that scheme after hearing the objections. A scheme is required to be prepared u/s 68-C when any State Transport Undertaking is of opinion that for providing efficient, adequate, economical and properly coordinated road transport service, it is necessary in the public interest that road transport services should be run and operated by the State Transport Undertaking. Against the scheme so proposed, objections can be filed u/s 68-D(1) by the persons falling in the three categories, envisaged by Clauses I, II and III of Sub-section (1) of Section 68-D. The objections shall be decided under Sub-section (2) after giving an opportunity of being heard to the objector. Sub-section (3) says that the scheme as approved or modified under Sub-section (2) shall become final and such approved scheme shall then be published in the Official Gazette by the State Government. From this provision, it is amply clear that jurisdiction of Civil Court is impliedly barred, as Section 68-D provides full machinery to make and dispose of the objections filed against the proposed scheme. No doubt, Chapter IV-A making special provisions relating to State Transport Undertakings, does not make a specific provision to bar the jurisdiction of the Civil Court explicitly, but the chapter clearly indicates that the objections against the proposed scheme can be filed in the manner as envisaged by Section 68-D which also provides a full procedure to dispose of them. From these provisions it is amply clear that the jurisdiction of the Civil Court is impliedly barred and the Respondent No. 1 was right in holding that the Civil Court had no jurisdiction and that the learned Munsif was in error in taking cognizance of the suit and granting the interim order ex-parte and confirming the same later. It is trite law that a provision made in the special enactment will override the provisions made in the general enactment. The Act 1939 is a special statute and the provisions contained therein will override the general provisions made in the Code of Civil Procedure, Section 9 of which confers a wide jurisdiction on the Civil Courts and that jurisdiction can be taken away only when that is barred by a statute. The scheme of Section 68-C and Section 68-D of the Act 1939 is such as to bar the jurisdiction of the Civil Court impliedly.

7. No authority is needed to support the aforesaid view we have taken, but if at all one is needed, we may refer a case: Anwar Vs. First Additional District Judge, Bulandshahr and Others, , in which the Supreme Court advertent to the aforesaid provisions of the Act 1939 held that the jurisdiction of the Civil Courts is impliedly barred from entertaining suits of this nature. The Supreme Court went on to say that the jurisdiction of the State Government (the Hearing Authority u/s 68-D of the Act) is exclusive in character and it is not open to a Civil Court to

issue an order of injunction restraining the Hearing Authority from proceeding with the hearing of the case exercising its statutory functions. The Supreme Court added that; whenever statute uses the expression that a decision of an authority shall be final as envisaged by Sub-section (3) of section 68-D, the jurisdiction of a Civil Court to go into the correctness or otherwise of the decision is taken away.

8. For the reasons, the petition fails and is dismissed. The interim order dated 11-8 1981 or any other order if any will stand vacated. The objections filed by the Petitioner which are still pending for adjudication before the Respondent No. 4 or whosoever is the Hearing Authority, will be disposed of thereby expeditiously. There will be no order as to costs.