

(1966) 01 SC CK 0026

In the Supreme Court Of India

Case No : C.A. No"s. 1181, 1022 to 1037 of 1965

Ratanlal Agrawal

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 20-01-1966

Acts Referred:

Constitution of India, 1950 — Article 166, 226
Government Business (Allocation) Rules — Rule 7

Citation : (1967) JLJ 103

Hon'ble Judges : P.B. Gajendragadkar, C.J;V. Ramaawami, J;S.M. Sikri, J;P. Satyanarayan, J;J.C. Shah, J

Bench : Full Bench

Advocate : G.S. Pathak, Navnitlal, C.K. Daphtary, Attorney-General of India, K.A. Chitaley, Bameshwar Nath, S.N. Andley and P.L. Vora, for the Appellant; M. Adhikari, Advocate-Genercd, M.P. and I.N. Shroff, for the Respondent

Final Decision : Dismissed

Judgement

P. Satyanarayan Raju, J.—Civil Appeals Nos. 1022 to 1037 of 1965 are appeals under certificate granted by the High Court of Madhya Pradesh and arise from orders made by that Court in applications under Article 226 of the Constitution.

2. The Madhya Pradesh State Road Transport Corporation (hereinafter referred to as the Corporation) incorporated under the Road Transport Corporations Act, is the Appellant in all the appeals. For the purpose of effectuating the nationalisation of Road Transport Services on certain routes in the State of Madhya Pradesh, the Appellant framed five schemes, being Schemes Nos. 2, 4, 5, 7 and 9, which were duly published in the State Gazette. The existing operators who were affected by the proposed schemes filed objections. The objections were heard by Shri R.S. Shukla, Special Secretary to the State Government in the Home Department, and he passed in each case an order approving the scheme after modifying the same, in certain respects. Scheme No. 6, as approved, was published in the State Gazette on October 18, 1963 and the

other four schemes, as duly approved, were published in the State Gazette dated February 7, 1964. Orders were then issued cancelling and modifying certain existing permits and the holders of those permits were required to produce them for cancellation or for making necessary amendments. Thereupon, several objectors filed writ petitions in the High Court of Madhya Pradesh challenging the order of the Special Secretary on various grounds. Writ petitions were filed against each of the schemes separately, but the grounds raised were common and the reliefs claimed were identical. In substance, the operators challenged the various steps taken under the provisions contained in Chapter IV-A of the Motor Vehicles Act, 1939 (Act IV of 1939), hereinafter called the Act, and the rules framed thereunder.

3. By its order, dated December 23, 1964, the High Court of Madhya Pradesh quashed the orders modifying schemes Nos. 2, 4, 5, 7 and 9, the approved schemes as published in the Official Gazette and the orders passed and notices issued u/s 68-F (2) of the Act. In so doing, the learned Judges of the Division Bench proceeded only on one ground. They held that although R.S. Shukla, Special Secretary, had been authorised to dispose of the objections received in respect of the schemes, he had not been authorised to approve or modify them *Premchand Jain Vs. State of M.P. and Others*,

4. In order to correct the omission noticed in the earlier order, the State Government amended Supplementary Instruction No. 2 issued under Rule 13 of the Rules of Business and Rule 7 of the Government Business (Allocation) Rules which had been made under Article 166 of the Constitution. Under the amended Supplementary Instruction No. 2, the Chief Minister expressly authorised the Special Secretary to exercise the powers of the State Government u/s 68-D to approve or modify the schemes and also take all further steps towards that end.

5. After the Special Secretary was authorised in the manner stated above, he issued notices dated January 7, 1965, to the operators concerned intimating them that the various schemes would be taken up by him on January 30, 1965, for approval or modification u/s 68-D of the Act. Many existing operators, including the contesting Respondents raised certain objections before the Special Secretary. By his order, dated February 2, 1965, the Special Secretary overruled the objections and, after making certain modifications of an inconsequential character, approved the schemes. Those schemes, as modified by the order of the Special Secretary, were duly published in the Official Gazette, dated February 12, 1965. Thereafter, for the purpose of giving effect to those approved schemes, further action was taken u/s 68-F (2) of the Act.

6. The operators moved the High Court again under Article 226 of the Constitution calling in question the approved schemes and the further action taken to give effect to them, on several grounds. The only grounds which were pressed before the learned Judges of the Division Bench were these:

(1) The Special Secretary had no jurisdiction to hear objections or to approve or

modify the schemes.

(2) Before approving the schemes, the Special Secretary did not give to the Petitioners an opportunity of being heard though he was bound so to do u/s 68-D (2) of the Act.

The learned Judges of the High Court rejected the first of the contentions. With regard to the second contention they held that the written order recorded by the Special Secretary made it manifest that he did not consider and decide the objections afresh, and that "the hearing he gave to the Petitioners (operators) with regard to their objections was farcical". In the opinion of the learned Judges, therefore, the order of the Special Secretary suffered from the infirmity that the Petitioners (operators) were denied a hearing in the sense indicated above and their objections were not dealt with afresh in the light of the object intended to be secured by the scheme.

7. As a result of the conclusion reached by them, the learned Judges quashed the order of the Special Secretary dated February 2, 1965, the publication of the Schemes Nos. 2, 4, 5, 7 and 9 in the State Gazette and the subsequent action taken in pursuance thereof u/s 68-F. They remitted the cases to the Special Secretary for a fresh decision in accordance with law with, "advertence" to the observations they had made in their order (1). Against the said orders of the High Court the Corporation applied for and obtained certificate of fitness and filed the present appeals.

8. In these appeals, the learned Attorney-General has argued that on a true construction of the order made by the High Court on an earlier occasion in *Premchand Jain Vs. State of Madhya Pradesh and Others*, it is clear that there was no direction by the High Court to determine the objections raised by the objectors afresh by a reappraisal of the material available before him, and that the operators had not made a request to the Special Secretary for such a reappraisal.

9. It may be noted at the out set that after the Chief Minister specifically empowered him to approve or modify the schemes, the Special Secretary issued further notices to the operators on January 7, 1965. The operators filed their objections. The main objection was that the Special Secretary had no jurisdiction to hear objections and to approve or modify the schemes. More specifically the objection was that the Special Secretary was not simultaneously empowered to hear objections and to approve or modify the schemes and that in the circumstances his order was without jurisdiction. The Special Secretary held that by virtue of the amendment of the Rules of Business made by the Chief Minister, he had the necessary authority to approve or modify the schemes and that there was absolutely no question of reopening the case and to commence a rehearing of the objections. In Para 20 of his order, he dealt with the objection raised before him that there should be a fresh enquiry by reason of the changed circumstances. He stated that all that the operators did before him was to file a

list of documents which they wanted the Corporation to produce.

10. Therefore, from a consideration of the objections filed by the operators and a reading of the order of the Special Secretary, it is clear that in the main the operators wanted a de novo enquiry on the ground that the Special Secretary, when he heard the objections in the first instance, had no jurisdiction to modify and approve the schemes. It may be mentioned, that originally when the Special Secretary heard the objections he believed that he had jurisdiction to approve or modify the scheme but the High Court held that he had no jurisdiction to do so since he was not specifically invested with that power. There is no doubt that none of the operators wanted to raise any fresh objection and all the parties proceeded on the assumption that all that had been previously done was good.

11. It was open to the objectors to have asked the Special Secretary to make a re-appraisal of the objections already preferred by them, but this they did not do.

12. It is argued by Mi. G.S. Pathak, Learned Counsel for the operators, relying upon the decision of this Court in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, that the giving of an opportunity to be heard is an integral part of the process of approving and modifying the scheme u/s 68-D (2) of the Act and that since power was conferred on the Special Secretary to hear objections without at the same time conferring on him the power to approve or modify the scheme, the previous hearing was a nullity and it was therefore incumbent on the part of the Special Secretary to hear the objections afresh. This argument was rightly rejected by the High Court when it held that there was no basis in law or principle for the assumption that the authority to hear and dispose of objections and the power to approve or modify the schemes in respect of which they were made must be given simultaneously and cannot be given successively. The High Court pointed out that if the same authority gave a personal hearing in regard to the objections to the schemes and grounded its final order relating to the schemes on its decision on those objections, there was 'no division of responsibility destructive of the concept of judicial hearing' and there could also be no question of want of jurisdiction.

13. The real point for enquiry is whether the High Court's order in terms directed the Special Secretary to re-open the case, to hear the objection afresh and write a fresh order. The operative part of the order of the High Court reads:

In the view we have taken of the grounds urged in support of these cases, the petitions succeed only on the third ground relating to jurisdiction with the consequence that the orders modifying the schemes, the approved schemes as published and the action taken u/s 68-F (2) cannot be allowed to stand.

The result is that all these petitions succeed and are allowed. The orders passed u/s 68-D modifying the schemes Nos. 2, 4, 5, 7 and 9, the publication of the approved schemes and the orders "passed and notices issued u/s 68-F (2) for the purpose of giving effect to those schemes are quashed. In the circumstances

of the case, the parties are left to bear their own costs and the outstanding amounts of security are directed to be refunded.

The High Court's order in terms never directed the Special Secretary to make a de novo enquiry and to write a fresh order. It is submitted that the Special Secretary fore-closed his mind and that this is clear from what he stated at the end of paragraph 18:

There is absolutely no question of reopening the case and to commence rehearing of the objections by giving a fresh notice.

Properly understood, this sentence does not mean that the Special Secretary refused to apply his mind. The sentence is a composite one and what all the Special Secretary meant to say was that there was no need to re-hear the objections 'by giving fresh notice.'

14. The learned Judges of the High Court held that the order of the Special Secretary, dated February 2, 1965, suffered from the infirmity that the operators were denied a hearing in the sense viz., that he did not consider and decide the objections afresh and that the hearing which he gave to the operators with regard to their objections was farcical. It was on the basis of this conclusion that the High Court quashed the order, dated February 2, 1965 and the publication of the schemes Nos. 2, 4, 5, 7 and 9 in the State Gazette and the subsequent action taken in pursuance thereof u/s 68F. We do not think that the conclusion reached by the High Court can be supported. As already stated, there was no direction by the High Court on the previous occasion that the Special Secretary should re-hear the objections put forward by the operator nor was there any request by the operators to re-hear the objections and to dispose of them in a fresh order. It would have been an exercise in futility for the operators to reiterate their objections and the Special Secretary to repeat the reasons given by him in the earlier order. We are of opinion that the order of the Special Secretary approving the schemes as modified by him is a valid order and does not suffer from any infirmity.

15. It is then contended that the Chief Minister had no power to authorise the Special Secretary to dispose of any item of business allocated to the Transport Department and therefore under the purported exercise of power by the Chief Minister the Special Secretary did not acquire jurisdiction to deal with the matter. The Supplementary Instruction No. 2, as amended on February 9, 1962, reads as follows:

Subject to the Rules of Business, any particular item of business allocated to a department may be disposed of-

(i) by the Secretary of the department if the Chief Minister or the Minister-in-charge so directs; or

(ii) by any other Secretary, if the Chief Minister so directs;

and the disposal by such Secretary shall be deemed to be disposal by Government.

Explanation: For the purpose of this instruction, the power to dispose of a case includes the power to hear parties, make such enquiry and take such other action as may be necessary for or incidental to reaching a decision in the case.

Under Clause (ii), the Chief Minister could authorise any other Secretary to dispose of any particular business allocated to any particular department. The expression 'any other Secretary' would include a Special Secretary. It was therefore competent for the Chief Minister to authorise the Special Secretary to hear and dispose of the objections. It is no doubt true that subsequently Clause (ii) was amended and that the amended clause specified that the Chief Minister could authorise in that behalf the Chief Secretary, the Additional Chief Secretary or any other Special Secretary. As rightly pointed out by the High Court, the amendment was made with a view to clarify the position. The fact that the amendment was made does not mean that the expression employed in the unamended Clause (ii) was not sufficiently wide to include the Special Secretary.

16. Having regard to the conclusions reached by us as a result of the above discussion, we hold that these appeals must be allowed and the order of the High Court be set aside, with costs against the contesting Respondent in each of the appeals. One hearing fee.

17. There remains Civil Appeal No. 1181 of 1965. This appeal arises out of the order in Miscellaneous Petition No. 126 of 1965. The High Court allowed the above petition as well as the connected petitions and granted a certificate to the Corporation to appeal to the Supreme Court from the common order dated August 27, 1965. At the time of hearing of the petitions before the High Court, only two contentions were advanced on behalf of the operators on one of which the High Court held against the operators but on the other contention agreed with them and in the result allowed the writ petitions. The Appellants applied to the High Court for certificates for leave to appeal to the Supreme Court and the High Court granted the certificate as prayed for with the observation that in the ground of appeal the Petitioners sought to raise certain grounds which were abandoned by them in the High Court. The High Court allowed the writ petitions filed by the Appellants though one of the grounds taken by them was rejected by the High Court. The certificate sought for by the Appellants and granted by the High Court was obviously against the finding recorded by the High Court.

18. We may observe that it was incompetent for the High Court to grant certificates when obviously the appeals sought to be preferred by the Appellants were confined to the adverse finding recorded by that Court. (Vide the decision in C.A. No. 347 of 1961). Barring the Appellants the other operators who obtained certificate from the High Court did not pursue the matter further. The appeal preferred by the operators is now confined to the order in Miscellaneous Petition No. 126 of 1965. The appeal is dismissed, but there will be no order as to costs.

Petition dismissed.