

(1975) 12 AHC CK 0017

In the Allahabad High Court

Case No : Sp. A. No. 82 of 1974 in Writ Petition No. 6734 of 1973 & Special Appeal No. 82 of 1974

State of U.P.

APPELLANT

Vs

Shashi Kant Rai and Others

RESPONDENT

Date of Decision : 22-12-1975

Acts Referred:

Motor Vehicles Act, 1939 — Section 68C

Citation : AIR 1976 All 315

Hon'ble Judges : K.N. Seth, J;G.C. Mathur, J

Bench : Division Bench

Advocate : A.P. Singh, R.A. Sharma and Shanti Bhushan, for the Respondent

Final Decision : Dismissed

Judgement

G.C. Mathur, J.—The only question, which arises for determination in this appeal by the State Government, is whether, in the draft scheme prepared u/s 68-C of the Motor Vehicles Act, 1939, particulars regarding the adequacy of the services proposed to be rendered by the State Transport Undertaking are required to be given or not. The learned Single Judge, relying upon the decision of the Supreme Court in B.H. Aswathanarayan Singh and Others Vs. State of Mysore and Others, has held that such particulars are required to be given and, in case they are not given, the draft scheme would be defective and liable to be quashed. The main argument of the learned Standing Counsel is that the learned Single Judge has not correctly interpreted the Supreme Court decision and that, upon a proper reading thereof and of the provisions of the Act, it is clear that no particulars regarding the adequacy of the road transport services proposed to be rendered need be given in the draft scheme.

Section 68-C of the Act is in these words:--

"68-C. Preparation and publication of scheme of road transport service of a State Transport Undertaking-- Where any State Transport Undertaking is of opinion

that, for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service, it is necessary in the public interest that road transport services in general or any particular class of such service in relation to an area or route or portion thereof should be run and operated by the State Transport Undertaking whether to the exclusion, complete or partial, of other persons or otherwise, 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, after the scheme has been published u/s 68-C, three classes of persons specified therein may file objections to the draft scheme, Sub-sections (2) and (3) of Section 68-D are as follows:--

"68-D (2). The State Government may, after considering the objections and after giving an opportunity to the objector or his representatives and the representatives of the State Transport Undertaking to be heard in the matter, if they so desire, approve or modify the scheme.

(3) 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 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.

Provided that no such scheme which relates to any inter-State route shall be deemed to be an approved scheme unless it has been published in the Official Gazette with the previous approval of the Central Government."

2. The State Government has first to form an opinion that it is necessary in the public interest to provide State transport service on a particular route for the purpose of providing an efficient, adequate, economical and properly coordinated service. Once it has formed this opinion, the State Government may prepare a draft scheme. The scheme must give

- (i) particulars of the nature of the services proposed to be rendered;
- (ii) particulars of the area or route proposed to be covered; and
- (iii) such other particulars respecting thereto as may be prescribed.

The draft scheme is to be published for inviting objections thereto. In *Capital Multi-purpose Co-operative Society Bhopal and Others Vs. The State of M.P. and Others*, the Supreme Court has observed that it is open to take objections to the proposed scheme in the light of the four purposes set out in Section 68-C. The requirement of giving particulars is two-fold, namely, (i) to enable the persons mentioned in Sub-section (1) of Section 68-D to file objections to the draft scheme by showing that the purposes set out in Section 68-C will not be fulfilled

by it; and (ii) to enable the Hearing Authority to decide whether the purposes, for which the scheme has been prepared, will be fulfilled by it or not. Therefore, the particulars to be given in the draft scheme must show how the scheme will fulfil the four purposes set out in Section 68-C, so that the objectors can properly file their objections and the Hearing Authority can properly decide whether the scheme will fulfil the four purposes or not. If particulars regarding the adequacy etc. of the proposed transport services are not given in the draft scheme, then it will not be possible for the objectors to file any effective objections to the draft scheme in this regard and it would be difficult for the Hearing Authority to give its decision whether the draft scheme will be able to provide road transport services which would fulfil the four purposes mentioned in Section 68-C. In our opinion, the scheme of Sections 68-C and 68-D clearly indicates that the draft scheme must give particulars, indicating how the proposed transport services would be efficient, adequate, economical and properly coordinated.

3. The learned Standing Counsel has urged that the requirement of Section 68-C, namely, to give particulars of the nature of the services proposed to be rendered, is not to give details of the precise number of vehicles and trips which it is proposed to run on the route. According to him, if the rules do not prescribe the giving of the precise number of vehicles and trips or the minimum and maximum number of vehicles to be put on the route, it would be unnecessary to give details of these particulars in the draft scheme. He has further urged that the requirement of Section 68-C is only in respect of giving the details of the classes of vehicles which are to be put on the route. He has contended that the decision of the Supreme Court supports this view.

4. In *B.H. Aswathanarayan Singh and Others Vs. State of Mysore and Others*, the draft scheme mentioned the maximum number of vehicles which were to be put on the route proposed to be nationalised and the approved scheme mentioned the minimum as well as the maximum number of vehicles to be put on the route. The main contention that was raised before the Supreme Court was that the scheme must mention the precise number of vehicles and trips and the mention of only the minimum and maximum number of vehicles and trips was not in accordance with the provisions of Section 68-C. In this case, at the time when the draft scheme was framed, the rules prescribed the giving of the maximum number of vehicles and this was complied with in the draft scheme. The rules, at the time of the approval of the scheme, prescribed both the minimum and maximum to be given and this was done in the approved scheme. There was thus no complaint about not giving the particulars prescribed by the rules. The question, which arose for determination before the Supreme Court, was whether the requirement of Section 68-C to give particulars of the nature of the services to be rendered could be satisfied only by mentioning the precise number of vehicles and trips in the draft scheme or also by the giving of minimum and maximum number of vehicles and trips therein. The Supreme Court held that both the giving of the precise number of vehicles and trips as well as the giving of the minimum and maximum number of vehicles and trips would satisfy the

requirement of giving particulars and of giving the necessary information to the objectors to oppose the scheme even with respect to the adequacy of the services proposed to be rendered.

5. The learned Standing Counsel has relied upon the observations made by the Supreme Court in paragraph 4 of the judgment where the Supreme Court has said that the words "nature of the services proposed to be rendered" clearly refer to the class of service to be taken over; but the interpretation of the words "giving particulars of the nature of the services proposed to be rendered" used in Section 68-C is given in paragraph 5 of the judgment. The Supreme Court has observed:

"Thus when Section 68-C provides for giving particulars of the nature of the services proposed to be rendered, the intention is that such details should be given as are necessary to enable the objectors to make their objections. We do not think that these details would necessarily consist of the precise number of vehicles and trips to be used on each route. We see no difficulty in holding that the details of the nature of services proposed to be rendered may not only be in the form of a precise number of vehicles and trips but also in the form of minimum and maximum number of vehicles and trips on each route. Furnishing of minimum and maximum number of vehicles and trips for each route would also in our opinion satisfy the requirement that particulars should be furnished of the services proposed to be rendered. Further, the indication of minimum and maximum number of vehicles and trips for each route would give the necessary information to enable the objectors to oppose the scheme even with reference to the adequacy of the services proposed to be rendered. We do not think that the appellants are right in submitting that when the word "particulars" is used in this part of the section, it can only be satisfied if the exact number of vehicles and trips for each route is specified and that there is no other way of satisfying the requirement implicit in the use of the word "particulars". As we have already said the word "particulars" has been used in its ordinary sense and means details and the indication of the minimum and maximum number of trips and vehicles would also, in our opinion, be sufficient to give the objectors the necessary information to enable them to object with reference to the conditions precedent provided in the section for framing a scheme."

In our opinion, the observations of the Supreme Court clearly show that such details or particulars regarding the road transport services proposed to be rendered have to be given in the draft scheme as would indicate whether the services would be adequate or not.

6. In the case before us, the draft scheme was published in the U. P. Gazette dated August 26, 1961. It gave neither the precise number of vehicles and trips nor the minimum and maximum number of vehicles and trips. It contented itself by saying in paragraph 3 as follows:--

"Adequate number of State Road Transport Services according to traffic

requirements are to be provided on the route or the portion thereof mentioned in Clause (2) above. The provision of transport services otherwise than under the scheme is prohibited."

This paragraph expressed only the opinion of the State Government, which was the State Transport Undertaking at the time, but gave no details or particulars showing how the services proposed to be rendered would be adequate. No such particulars are given in any subsequent paragraph of the scheme either. In the objections filed by the existing operators, two of the objections were :

"(j) Government has no interest in the provision of bus services in public interest but rather to show large profits by running a few buses which will be wholly inadequate for the route and travelling public.

(k) The exact number of buses and vehicles has nowhere been stated which will ply regularly on the route in question."

In spite of these objections, no attempt was made to rectify the error or to provide the lacking particulars. The Hearing Authority has also slurred over this requirement and has, on the statement of the Assistant General Manager, Government Roadways, to the effect that the U. P. Government Roadways had vast resources of men, money and material and adequate number of buses, observed that the State Transport Undertaking will provide "adequate buses". By its order dated January 8, 1971, the Hearing Authority rejected the objections and approved the scheme. The approved scheme was published in the Gazette on June 2, 1973.

7. From these facts it appears that no particulars showing the adequacy of the road transport services proposed to be rendered on the nationalised route were given in the draft scheme, that no attempt was made subsequently to make good this deficiency and that the Hearing Authority did not apply its mind to this aspect of the case. In view of this defect we hold that the draft scheme was not properly prepared and was not properly approved. The learned Single Judge was right in quashing the draft scheme as well as the approved scheme.

8. There are no merits in this appeal. It is accordingly dismissed with costs.