Nehru Motor Transport Co-operative Society Ltd. and ors. Vs. the State of Rajasthan and ors.

LegalCrystal Citation : legalcrystal.com/653154

Court : Supreme Court of India

Decided On : Dec-14-1962

Reported in : AIR1963SC1098; [1964]1SCR220

Judge : B.P. Sinha, C.J.,; J.C. Shah,; K.C. Das Gupta,; K.N. Wanchoo and; P.B. Gajendra

Acts : Motor Vehicles Act, 1939 - Sections 68C and 68D(3); Rajasthan State Road Transport Services (Development) Rules, 1960 - Rule 3; Constitution of India - Articles 14-32

Appellant : Nehru Motor Transport Co-operative Society Ltd. and ors.

Respondent : The State of Rajasthan and ors.

Judgement :

Wanchoo, J.

1. This petition under Art. 32 of the Constitution challenges the constitutionality of a scheme finalised under s. 68D(3) of the Motor Vehicles Act, No. IV of 1939, (hereinafter referred to as the Act) in the State of Rajasthan. The petitioners are holders of stage-carriage permits on Jodhpur-Bilara and Bilara-Beawar routes. A draft scheme was published under s. 68C of the Act by the Rajasthan Roadways, which is a State Transport Undertaking, (hereinafter referred to as the Roadways), on January 26, 1961. It provided for taking over of the transport service on the Jodhpur-Bilara, Beawar-Ajmer route by the Roadways. Further it provided for taking over three overlapping routes or portions thereof which were entirely on Jodhpur-Bilara, Beawar-Ajmer road, namely, Jodhpur-Bilara, Bilara-Beawar, and Beawar-Ajmer, and as required by r. 3 of the Rajasthan State Road Transport Services (Development) Rules, 1960, (hereinafter referred to as the Rules), the names of the permit-holders on these three overlapping routes with their permits were also specified for cancellation, and no transport vehicles other than the vehicles of the Road-ways were to ply on the route to be taken over. The usual time was also given for filing objections to all those whose interests were affected by the draft-scheme. The petitioners filed objections under s. 68D of the Act, which were heard by the Legal Remembrancer to the Government of Rajasthan, he being the person appointed to hear and decide the objections. The objectors wanted to lead evidence and did produce some witnesses but some witnesses to whom summonses were issued did not turn up and the objectors wanted the issue of coercive processes against them. The Legal Remembrancer however refused this on the ground that he had no power to issue coercive process. As the objectors did not produce any further witnesses, the arguments were heard and the Legal Remembrancer gave his decisions on May 31, 1962.

2. One of the main points then raised before the Legal Remembrancer was that there were a dozen other overlapping routes which were not touched by the scheme, and therefore the scheme was bad on the ground of discrimination. It may be mentioned that these overlapping routes were not completely overlapping the route to be nationalised, though the vehicles plying on those twelve routes had to pass over part of the Jodhpur-Bilara-Beawar-Ajmer road. It was urged on behalf of the Roadways before the Legal-Remembrancer that the intention was to render ineffective the permits on these twelve routes also insofar as they overlapped the route to be taken over, though these routes were not mentioned in the draft-scheme like the three routes which were completely covered by the Jodhpur-Bilara-Beawar-Ajmer route and no notice was apparently given to the seventy-two permit-holders on these twelve partially over-lapping routes. The Legal Remembrancer held that even though these routes were not specified in the draft-scheme and no notice had been given to the permit-holders thereof, it was open to him to render the permits ineffective with respect to these routes also and proceeded to pass orders accordingly.

3. Thereupon five writ petitions were filed in the High Court of Rajasthan by the permit-holders on the three routes which had been notified in the draft-scheme as well as by some of the permit-holders of the twelve partially overlapping routes which had not been notified but which had been affected by the order of Legal Remembrancer. Two main points were urged before the High Court in support of the challenge to the validity of the scheme as finally published on June 16, 1962. In the first place, it was urged that the State Government when publishing the scheme as required by s. 68D(3) of the Act had made certain changes in it beyond the decision of the Legal Remembrancer and therefore the final scheme as published was invalid as it was not open to the State Government to make any changes in the scheme as approved by the Legal Remembrancer. Secondly, it was urged on behalf of the operators on the twelve partially overlapping routes which had not been notified in the draft scheme that it was not open to the Legal Remembrancer to affect their interests when their routes were not specified in the draft scheme and they had been given no notice thereof. The High Court accepted both these contentions. It was of the opinion that it was not open to the State Government to make any modification in the decision of the Legal Remembrancer and inasmuch as that had been done the final scheme as published was invalid. It also held that as the twelve partially overlapping routes were not notified in the draft-scheme and no notice had been given to the permit-holders thereof, it was not open to the Legal Remembrancer to pass any orders with respect to them. It therefore set aside the scheme as published under s. 68D(3) of the Act. Finally, the High Court observed that as the scheme as published was not the scheme as approved by the Legal Remembrancer and as the decision of the Legal Remembrancer becomes final when it is published, it was open to the Legal Remembranceer to modify his decision, even though he may have signed and pronounced it. The Legal Remembrancer was thus directed to go into the matter again and leave the question of the twelve partially overlapping routes for a subsequent scheme. The final scheme as published under s. 68D(3) of the Act was set aside and the Regional Transport Authority was directed not to implement it until it was regularised in accordance with law.

4. The matter then went back to the Legal Remembrancer who considered the draft-scheme in the light of the decision of the High Court and after hearing further arguments disposed of the objections. The main effect of his decision was that all the twelve partially overlapping routes were left out of the scheme and only the three routes notified in the draft-scheme which were completely covered by the route

Jodhpur-Bilara-Beawar-Ajmer, were affected. The decision of the Legal Remembrancer approving the scheme as modified by him was published on August 31, 1962, and the present petition is directed against that decision.

5. The decision of the Legal Remembrancer is being challenged before us on the following grounds :-

(1) a draft-scheme under the Act has to be approved as a whole and the procedure of approving a part of the scheme once and another part later is illegal, and therefore, the approval given to the draft-scheme by the Legal Remembrancer does not result in approving the scheme, as required by law.

(2) It was not open to the Legal Remembracer to review his order dated May 31, 1962 even after the decision of the High Court, and insofar as the Legal Remembrancer did so in obedience to the order of the High Court he abdicated his own judgment, and the approval therefore after such abdication of his own judgment, is no approval in law.

(3) As the scheme as published on June 16, 1962 was set aside by the High Court, it was the duty of the Legal Remembrancer to give a fresh hearing ab initio to the objectors which the did not do, and therefore the approval accorded by him to the draft-scheme after the judgment of the High Court is no approval in law.

(4) Hearing requires taking of evidence; but as the Legal Remembrancer expressed his inability to compel attendance of witnesses, there was no hearing as contemplated by law, and therefore the approval of the draft-scheme without a proper hearing is no approval in law.

(5) There was discrimination inasmuch as the operators of the twelve partially overlapping routes were left out of the scheme.

Re. (1) & (2).

6. There is no doubt that a draft-scheme has to be considered as a whole and all objections to it have to be decided before it can be approved by the State Government or by the officer appointed in that behalf, and the Act does not envisage approving of a part of the scheme once and putting it into effect and leaving another part unapproved and left over for enforcement later. It is also true that the Act does not provide for review of an approval once given by the Legal Remembrancer, though he may be entitled to correct any clerical mistakes or inadvertent slips that may have crept in his order. It is also true that the Legal Remembrancer when considering the objections has to exercise his own judgment subject to any directions that the High Court might give on questions of law relating to particular draft-scheme. But we do not think that this is a case where the draft-scheme has been approved in part and another part of it has been left unapproved to be taken up later; nor is this a case where the Legal Remembrancer abdicated his own judgment or reviewed his earlier decision when he proceeded to reconsider the matter after the High Court had set aside the scheme as published under s. 68D(3) of the Act on June 16, 1962.

7. Let us see what the draft-scheme was meant to provide in this case. As we have already indicated, the draft-scheme was published in order to take over the Jodhpur-Bilara-Beawar-Ajmer route. It also provided for taking over all the three completely

overlapping routes, namely, Jodhpur-Bilara, Bilara-Beawar, and Beawar-Ajmer routes, and also portions thereof falling entirely on this road from Jodhpur-Ajmer. There was no indication in the draft-scheme for taking over what are called partially overlapping routes, only parts of which overlapped on the Jodhpur-Bilara-Beawar-Ajmer road. These partially overlapping routes were of two kinds. In some cases one terminus was on Jodhpur-Bilara-Beawar-Ajmer road while the other terminus was not on this road. In other cases, both the termini of the overlapping routes were not on this road, though a part of the route fell on this road. Rule 3 of the Rules provides for indicating all such overlapping routes as are intended to be affected and the draft scheme in the present case only indicated three routes which were completely on this road namely, Jodhpur-Bilara, Bilara-Beawar, and Beawar-Ajmer, and was not concerned at all with the other overlapping routes, where overlapping was only partial. It was therefore in our opinion unnecessary to bring in the question of the twelve partially overlapping routes when objections to this draft scheme were being considered. There is no doubt that the Roadways was also responsible for the introduction of this confusion for it seems to have been urged on its behalf, when the objections were considered on the first occasion, that these partially overlapping routes were also meant to be covered by the draft scheme, even though they were not mentioned in the draft scheme as required by r. 3 of the Rules and no notice had been issued to the permit-holders of those routes. The petitioners also raised a point with respect to these overlapping routes, and that is how on the first occasion, the Legal Remembracer held that even though these routes had not been included in the draft scheme and no notice had been given to the permit-holders thereof, it was open to him to pass orders with respect thereto and he proceeded to render the overlapping part of these routes ineffective. It is obvious from a perusal of the draft scheme that these twelve partially overlapping routes were not included in it at all and they were brought in only because of the objection raised by the petitioners and the reply of the Roadways that they were meant to be included. That is why when the writ petitions were decided by the High Court, it pointed out that the scheme did not initially include the partially overlapping routes. The High Court then went to observe that if the Legal Remembrancer thought fit to include these routes in the scheme also, he should have given notice to all concerned to file their objections. With respect, it seems to us that this observation of the High Court is not correct. If the scheme did not include the partially overlapping routes - as it undoubtedly did not, in spite of what the objectors might have said and what the Roadways might have maintained before the Legal Remembrancer on the first occasion - it was not open to the Legal Remembrancer to include these overlapping routes in the scheme at all and he could not do so even if he had given notice to the permit-holders on these overlapping routes. The question therefore whether the final approval of the draft scheme as published on August 31, 1962 is an approval of a part of the scheme only, leaving another part of the scheme unapproved and therefore liable to enforcement later, can only admit of one answer, namely, that the approval was of the scheme as a whole. The contention therefore on behalf of the petitioners that part of the scheme has been approved and the rest of it has been left unapproved, can have no force on the facts of the present case. The twelve overlapping routes were never meant to be affected by the scheme which left them untouched. The contention that only part of the scheme has been approved appears to have been based on the fact that these routes have not been rendered ineffective as to the overlapping part. But as these routes were never included in the draft scheme, the approval given to the draft scheme without touching these routes cannot in the circumstances be called an approval of a part of the scheme.

8. Nor do we think that there is any force in the contention that the Legal

Remembrancer abdicated his judgment when going into the question on the second occasion after the judgment of the High Court. The order of the Legal Remembrancer dated August 17, 1962 shows that he reconsidered the entire matter after hearing further arguments and there can be no doubt that he was exercising his own judgment when he finally decided to approve the draft scheme with certain modification. What the Legal Remembrancer has done in this case is to reappraise the evidence in the light of the legal position indicated by the High Court. Nor do we think that there is any substance in the argument that the order of the Legal Remembrancer dated August 17, 1962, is a review of his earlier order dated May 31, 1962. No question of review of that order arises for that order was in effect set aside when the High Court set aside the final scheme as published on June 16, 1962. It is true that that publication made certain further modifications into the scheme as approved by the Legal Remembrancer but that in our opinion makes to difference to the fact that the order of the High Court setting aside the final scheme as published on June 16, 1962 put an end to the order of the Legal Remembrancer dated May 31, 1962 also. This argument as to review has been raised because of the observation in the judgment of the High Court that the scheme as finally published on June 16, 1962 was not the decision of the Legal Remembrancer because of the changes made in it by the State Government and therefore it was open to him to modify it, though he might have signed his decision and pronounced it. With respect, we consider that this observation is not correct. It may be that the State Government had no authority to modify the decision of the Legal Remembrancer but when the High Court set aside the finally approved scheme as published on June 16, 1962, it meant the decision of the Legal Remembrancer dated May 31, 1962, also came to an end, for the final scheme as published on June 16, 1962 was undoubtedly based on it, even though there were further changes in that decision at the time of publication. In the present case the order of the High Court was analogous to a remand as understood in courts of law. What the Legal Remembrancer did on the second occasion was to reappraise the evidence in the light of the law laid down by the High Court. Therefore, it cannot be said that the decision of the Legal Remembrancer on August 17, 1962, is a review of his earlier decision dated May 31, 1962. It must be treated as a fresh decision, after the High Court had set aside the final scheme as published on June 16, 1962. Though therefore the proposition put forward on behalf of the petitioners may be accepted as correct, there is no scope for applying the principles contained in these propositions to the facts of this case. The contention therefore that the scheme as finally published on August 31, 1962 is bad because it militates against these principles must be rejected.

Re. (3) & (4).

9. It is urged that after the High Court set aside the final scheme as published on June 16, 1962, the Legal Remembrancer should have given a fresh hearing ab initio and that he did not do so. It is further urged that in as much as there is no provision in the Rules for compelling the attendance of witnesses whom an objector might like to produce, there can be no effective hearing of the objection, and therefore the scheme as finally published on August 31, 1962, is invalid. It is not disputed that the Legal Remembrancer did give a hearing to the objectors after the order of the High Court. What is urged however is that the objectors should have been allowed to give evidence afresh before the Legal Remembrancer finally disposed of the objections. We are of opinion that though the result of the order of the High Court was to set aside the order of the Legal Remembrancer dated May 31, 1962, it cannot be said that the order of the High Court wiped out the evidence which the objectors had

given before the Legal Remembrancer on the first occasion. We have already mentioned the two grounds on which the High Court set aside the final scheme as published on June 16, 1962, and those grounds had nothing to do with the evidence which was already produced. In our opinion, it was open to the Legal Remembrancer to take that evidence into account and it was not necessary that evidence should be given again, particularly when no fresh issues arose; nor was the Legal Remembrancer bound to take fresh evidence simply because the final scheme as published on June 16, 1962 had been set aside on account of certain technical and Legal defects. When the objectors had been given full opportunity to lead evidence on the previous occasion which was still there for the Legal Remembrancer to take into account, it was sufficient for the Legal Remembrancer, to hear the objectors' arguments in full after the order of the High Court in the light of the observations made by it, and the petitioners therefore cannot have any grievance on the score that they were not given any hearing after the order of the High Court. If it is borne in mind that the order passed by the High Court in the proceedings was in the nature of a remand order, all these objections will plainly be untenable.

10. As to the contention that the Rules do not provide for compelling the attendance of witnesses and all that the Legal Remembrancer can do is to summon witnesses who may or may not appear in answer to the summonses, it is enough to say that the proceedings before the Legal Remembrancer though quasi-judicial are not exactly like proceedings in court. In proceedings of this kind, it may very well be concluded when a witness is summoned and does not appear, that he does not wish to give evidence, and that may be the reason why no provision is made in the Rules for any coercive process. We think in the circumstances of the hearing to be given by the Legal Remembrancer, it is enough if he takes evidence of the witnesses whom the objectors bring before him themselves and if he helps them to secure their attendance by issue of summonses. But the fact that the Rules do not provide for coercive processes does not mean in the special circumstances of the hearing before the Legal Remembrancer that there can be no proper hearing without such coercive processes. We are therefore of opinion that the Legal Remembrancer did give a hearing to the objectors after the order of the High Court and that in the circumstances that hearing was a proper and sufficient hearing. The challenge therefore to the validity of the scheme as published on June 16, 1962, on this ground be rejected.

Re. (5).

11. Lastly we come to the question of discrimination. The argument is based on the fact that the twelve partially overlapping routes to which we have already alluded have not been touched by the scheme. That is undoubtedly so. We have already pointed out that in the case of some of these routes one terminus is on the Jodhpur-Bilara-Beawar-Ajmer road while the other is not on this road. In some cases neither termini is on this road and only a part of the route overlaps this road. The argument is that as the permit-holders on these partially overlapping routes have not been touched by the scheme, there is discrimination inasmuch as the permit-holders on the three routes which were totally overlapping the route which was being taken over, have been completely excluded. We do not think that this amounts to discrimination. It may be pointed out that under s. 68C it is open to take over any area or route to the complete or partial exclusion of other persons. Therefore, it was open to the State Government to take over this route only and exclude those who may be playing completely on this route or parts thereof and unless it can be shown that others who

are similarly situated have not been excluded from the scheme there can be no question of discrimination. In our opinion it cannot be said that those permit-holders whose routes were completely covered by the route taken over stand on the same footing as those whose routes were only partially covered by the route taken over. It may very well have been considered that in the first instance only those permit-holders will be excluded whose routes are completely covered by the routes taken over, and if that is permissible under the law it cannot be said that that would amount to discrimination when there is an obvious distinction between routes completely covered by the route to be taken over and the routes partially covered by the route to be taken over. We have been informed that since this scheme was approved steps have been taken even to exclude those permit-holders whose routes are partially covered by making their permits ineffective over the overlapping part of the route. But that apart, we can see no ground to uphold the plea of discrimination in the present case, for routes completely covered by the route taken over stand on a different footing from the routes only partially covered. The contention therefore that the final scheme as published on August 31, 1962 is bad because it discriminates in this manner, must be rejected.

12. We therefore dismiss the petition but in the circumstances of this case pass no order as to costs.

13. Petition Dismissed.