

Hazi Ismail and Etc. Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Aug-21-1981

Reported in : AIR1982Raj25; 1981()WLN406

Judge : M.L. Shrimal, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 63(3A), 68(3B), 68B, 68C(3), 68D(2), 68D(3) and 68J; [Constitution of India](#) - Articles 166 and 226; Rajasthan State Transport (Development) Rules, 1965 - Rules 3, 4 and 7; [Road Transport Corporation Act, 1950](#)

Appeal No. : Civil Writ Petn. Nos. 1766 of 1980 and 112 of 1981

Appellant : Hazi Ismail and Etc.

Respondent : State of Rajasthan and ors.

Advocate for Def. : S.K. Tiwari, Adv. General and; R.N. Munshi, Adv.

Advocate for Pet/Ap. : S.M. Mehta, Adv.

Disposition : Petitions dismissed

Judgement :

ORDER

M.L. Shrimal, J.

1. Writ Petition No. 1766 of 1980 filed by Hazi Ismail and Writ Petition No. 112/1981, filed by Sararath Mal, relate to the same route. As common questions of fact and law are involved in them, they are being disposed of by a common judgment.

2. The Rajasthan State Road Transport Corporation (hereinafter referred to as 'the Corporation') published a draft scheme, for nationalization of Kote-Rawatbhata route or area, under Section 68C of the [Motor Vehicles Act, 1939](#) (Act No. 4 of 1939) (hereinafter referred to as 'the Act'). It was published in the Gazette, dt. 3-4-1976. The petitioners submitted their objections to the Joint Legal Remembrancer No. 2, Jaipur who is empowered to hear objections in respect of draft schemes of nationalisation under the provisions of Sub-section (2) of Section 68-D of the Act. The Joint Legal Remembrancer No. 2, approved the scheme, along with other schemes, which is of total exclusion of all private operators on the above route or portions thereof. This approved scheme was then published in the Gazette, dt. 28th Jan. 1880. Thereafter the Secretary, Regional Transport Authority, served, on the petitioners,

notices to the effect that in exercise of the powers conferred by Section 68-F (2) of the M. V. Act, read with Rule 10 (a) of the Rajasthan State Road Transport Corporation (Development) Rules, 1965, the Regional Transport Authority, Kota, had resolved that the portion of the route between Kota to Rawatbhata covered by the petitioner's permit had been nationalised and that the Rajasthan State Road Transport Corporation would commence exclusive operation on the notified route.

3. Aggrieved by the aforesaid draft scheme, published in the Rajasthan Gazette, dt. 3-4-78, and the order of the Joint Legal Remembrancer No. 2. approving the draft scheme, (vide order. dt. 7-5-80 as published in the Rajasthan Gazette (Extraordinary) dt. 28th of Nov. 1980), petitioners have filed these writ petitions, challenging the validity of the notices, orders and scheme.

4. The first contention of the learned counsel for the petitioner is that Neemuch-Kota is an inter-State route. The approval of the scheme of nationalisation of Kota-Rawatbhata route has led to the breaking of the integrity of petitioner's inter-State route, Neemuch-Kota. The Corporation could not have framed any scheme in respect of such route without prior approval of the Government, as contemplated under Section 68J of the Act. In the instant case the Corporation counsel adds, has not obtained prior permission of the Central Government and as such the scheme, as framed, published and approved, is void in law and cannot curtail the right of the petitioners to ply their vehicle on the above route.

5. I have given careful consideration to the above noted arguments. A perusal of the approved scheme, published in the Rajasthan Gazette, dt. 28th Nov. 1980 shows that it does not relate to any inter-State route. It on the other hand, relates to Kota-Rawatbhata route and both the terminuses fall within the State of Rajasthan. The vehicles plied by the petitioners on a portion of the so-called inter-State route, are no doubt affected, but that cannot have the effect of converting the approved scheme into a scheme in relation to an inter-State route or the area.

6. This point is no more res integra, it stands concluded by a Division Bench case of this Court in *Sitaram v. State of Rajasthan*, 1973 WLN 917 as well as by other cases of this Court and the Supreme Court. Reference may be made with advantage to *M/s. Phool Chand v. State of Rajasthan*, 1975 WLN (UC) 519 as also to a Division Bench of this Court in *Malik Ram Kalra v. State of Rajasthan*, AIR 1975 Raj 229 to which I was a party. In that case, placing reliance on *B. H. Aswathanarayana Singh v. State of Mysore*, AIR 1965 SC 1848, it was observed that an inter-State route was one in which the terminus was in one State and the other one was in another State. In the case where both the termini are in one State, it cannot be said to be an inter-State route. The criterion is to see whether the two terminuses of the route are in the same State or not if they are in the same State, the route is not an inter-State route and the proviso to Section 68-D (3) will not be applicable. Reference was also made to the observation, made in *S. Abdul Khader Saheb v. Mysore Revenue Appellate Tribunal* AIR 1973 SC 534 wherein it was held that Government could nationalise an intra-State route even though a portion thereof overlapped inter-State route. This Court, after discussing the provisions of Section 68-J of the Act, held that it was permissible for the undertaking to prepare a scheme under Section 68-C, even if it involved exclusion of other operators, like the appellants, operating on a portion of the route under a permit in an intra-State route. The provisions of Section 68-J, therefore, have no bearing on the present controversy. They only provide that the duties of the State Government in regard to a scheme which relates to an inter-State route or area shall

be exercisable by the Central Government and not by the State Government.

7. The second limb of the same argument is that Kota-Rawatbhata is not a route, because there is no existing permit over that area and as such no scheme could have been framed. Learned counsel for the petitioners urged that the amended provision of Sub-section (28A) of Section 2 of the Act supports their contention. I find no substance in this contention. Section 68-C itself provides that a scheme can be prepared and published by the State Road Transport Corporation in relation to any area or route. This point has been conclusively determined by a number of cases of the Supreme Court, such as, *J.Y. Kondala Rao v. Andhra Pradesh State Road Transport Corporation*, AIR 1961 SC 82. Subba Rao J., speaking for the Court, observed that the scheme might as well be proposed to operate transport service in respect of a new route from point A to point B and that route would be an area within the meaning of Section 68-C. This case was followed in a later decision by their Lordships of the Supreme Court in *C. P. Sikh Regular Motor Service v. State of Maharashtra*, AIR 1974 SC 1905. Hon'ble Mathew J., speaking for the Court, observed at p. 1907).

'If, in forming an opinion with respect to the necessity of a scheme in relation to a route or routes, the power of 'State Transport Undertaking and, therefore, of the Corporation, is untrammelled by an outside authority like the State Government we fail to see why it cannot form opinion as to the necessity of a scheme in relation to any area in the State.'

8. The next contention of the learned counsel for the petitioners is that a reciprocal agreement regarding the route Kota-Chambal Dam extending up to Neemuch had been arrived at between the representatives of the Rajasthan State and the Madhya Pradesh and in pursuance thereof, permits were granted in favour of the petitioners and thereafter renewed from time to time, which were valid up to the year 1982. The Parliament in its wisdom by inserting Sub-section (3-A) in Section 63 of the Act (vide Act No. 56 of 1969) gave statutory recognition to such agreements. Under Sub-sec. (3-B) of the same section the effect of the agreement arrived at between the States was that countersignatures of permits were required to be made as a rule and no discretion was left with the Regional Transport Authority or with the State Transport Authority at the time of countersignature. When a permit had already been granted to the nominee of the State on such an inter-State route, counsel urged, the effect of the agreement is that in spite of the scheme, having been framed under Chapter IV-A of the Act and Published under Section 6K-D (3) of the Act. the permit of the petitioner, who holds permit on an inter-State route, cannot be curtailed.

9. This point need not detain me long as it is without any substance. An inter-State agreement is not a law. To hold that inter-State agreement overlaps Chapter IV-A would amount to complete disregard of the provisions of Section 68-B of the Act, which specifically provides that the provisions of the Chapter and the Rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith, contained in Chapter IV of the Act or any other law for the time being in force or in any instrument having effect by virtue of any section. In *Abdul Khader Sahab's case* (AIR 1973 SC 534) it was held that the scheme of nationalisation approved under Section 68-D would prevail over an inter-State agreement.

10. On the above reasoning I hold that no prior permission of the Central Government was needed, for framing or publishing a scheme as the perusal of the scheme shows that it only excludes the private operators from the area falling within the State of

Rajasthan.

11. The third contention of the learned counsel for the petitioner is that under Section 12 (c) of the Road Transport Corporations Act (hereinafter referred to as 'the Act of 1950'), the General Manager is authorised to discharge those duties only which relate to day to day routine business and the framing of the scheme is a statutory act, required to be performed by the Corporation alone. In the opening part of the scheme it has been mentioned that the scheme has been framed under Sections. 68-C and 68-CC of the Act. Learned counsel contended that Section 68-CC was added by the State of Rajasthan by the Validating Act of 1974. The provisions of Section 68-CC were meant only for the existing draft schemes and they do not apply to the future schemes, such as, the scheme in hand and thus the scheme framed by the General Manager is per se illegal. In support of the above contention he submitted that the General Manager was summoned by one of the objectors before the Joint Legal Remembrancer No. 2 but he failed to appear and as such the Joint Legal Remembrancer ought to have drawn adverse inference against the Corporation with regard to the framing of the scheme ought to have held that the same was framed and published by the General Manager. The learned counsel appearing on behalf of the Corporation urged that the forming of opinion for the purpose of making provisions for an efficient adequate, economical and properly co-ordinated road service, which is necessary in the public interest, has been left to the Corporation. In fact certain data are required to be collected from various departments, such as length of the road, number of services plying over the route, etc. and the members are not expected to collect them. It will be the General Manager, who will put the whole thing at one place in a form which is simply a draft. The preparation of a scheme is a comprehensive process. The broad outlines of the scheme regarding the nature of services and the route or area are to be settled by the Corporation and when a draft is placed before the Corporation, it can check, discuss and consider it and make necessary changes therein and thereafter approve the same. In the case On hand a plan for nationalisation (vide Annexure R/2 for the year 1976-77) was placed before the Corporation. The last portion of the plan reads as under:

'The list of the proposed routes for the year 1976-77 is being put up before the Corporation for consideration and decision.'

Thereafter a meeting of the Corporation was held. The members perused the plan for nationalisation of the routes during the year 1976-77 and after discussion and careful consideration, it resolved that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service, it was necessary in the public interest in relation to certain routes to run and operate vehicles by the Rajasthan State Road Transport Corporation to the complete exclusion of others. The resolution has been marked as Annexure R/1 and has been placed on record. Kota-Rawatbhata route, appears at item No. 10 in that resolution. By resolution of the Corporation No. 11/76 dt. 31-1-76, the General Manager was directed to prepare a draft scheme. The draft scheme so prepared was placed before the Committee, as is evident from item No. 15/33/76 of the agenda of that day. The members after perusing the scheme and discussing the whole matter (vide resolution No. 26/76), approved of the same and directed the General Manager to get the scheme published as required under Section 68-C of the Act and to go ahead with the process of nationalisation. A photostat copy of that document has also been placed on record. The Corporation in its reply to the writ petitions specifically pleaded that the relevant averments made by the petitioners were denied. It was also denied that the impugned

draft scheme was not prepared by the Corporation or the Corporation had not applied its mind to it. In a detailed reply, it is mentioned that the Corporation in its meeting, held on 31-1-1976, considered the proposal for nationalisation of the specific route and after examining the draft scheme, placed before it, approved of the same in its meeting, held On 13-3-1976 (vide resolution No. 26 of 1976) the Joint Legal Remembrancer No. 2 after giving careful consideration to the arguments advanced before him and perusing the documents and the relevant evidence, reached the conclusion that the impugned scheme had been framed by the Corporation and not by the General Manager. This court, in exercise of its power under Article 226, is not required to re-appreciate the evidence and act as an appellate court. The court cannot interfere in a decision given on facts unless the concerned authority under the Act has completely misdirected itself on a point of law or has based its decision on no evidence. I find no reason to reverse the above noted finding of the Joint Legal Remembrancer No. 2 and interfere in exercise of powers under Article 226. There is also nothing on record to hold that the conclusion arrived at by the concerned authorities is manifestly perverse or capricious. Reliance in this context may be made on *Bheruj Lal v. State Transport Appellate Tribunal, Rajasthan 1976 Raj LW 491: (AIR 1977 Raj 29)*.

12. The other limb of the same argument is that Rules 3, 4 and 7, Rajasthan State Transport (Development) Rules, 1965, are ultra vires of the Road Transport Corporations Act of 1950. This point need not detain me long, because the very same argument which has been advanced before me in support of the above contention had been advanced before a Division Bench of this Court in *Sita Ram's case (1973 WLN 917V)*. Their Lordships of the Division Bench considered the argument advanced before it on this point at length and repelled the same. I respectfully follow the reasoning given in that case and hold that for the reasons mentioned in that judgment the contention raised by the petitioner is not tenable.

13. Lastly, learned counsel for the petitioner urged that the objections to the scheme of nationalisation were required to be filed before the Home Commissioner and the authority to hear the objections has been delegated by the Government of Rajasthan under the Business Rules to the Joint Legal Remembrancer No. 2. The scheme as approved is required to be published in the Official Gazette by the State Government and this can be done only with the concurrence of the concerned Minister and with the sanction of the Governor. As no such steps were taken, the publication of the approved scheme, counsel adds, cannot be said to be valid in the eye of law. This objection was neither raised before the Joint Legal Remembrancer nor has it been averred in the writ petition and as such it cannot be allowed to be raised at this late stage of the day. Apart from that, a perusal of Annexure 2 reveals that the approved scheme of Kota-Rawatbhata via Shivpura, Borawas, Maora has been published in the name of the Governor of Rajasthan. It stands authenticated in the manner specified in the Rules of Business, made by the Governor and the validity of such an order, which has well been authenticated, cannot be called in question on the ground that it is not an order made or executed by the Governor. The validity of an order, which is expressed in the name of the Governor, which is expressed in the name of the Governor and is duly authenticated by the Secretary or Deputy Secretary in this behalf is not to be called in question in any court on the ground that it has not been made or executed by the Governor. Reference in this connection may be made to *Ishwarlal Girdharilal Joshi v. State of Gujarat (AIR 1968 SC 870)*.

14. Before parting with the case I would like to observe that it is a notorious fact that

means of public transport in this undeveloped part of the country (Rajasthan) are grossly inadequate and energetic measures to overcome this handicap have to be undertaken, if the State is to progress. It is surprising that the nationalisation of road transport calculated to provide efficient and coordinated transport service to the common people though initiated decades before, has been bogged down on some ground or the other and a major part of the road transport is still with the private sector. Every fresh scheme of nationalisation has led to a crop of litigations. The reason is that the affluent and resourceful bus operators have been able to put statutory hurdles and legal road-blocks on one ground or the other. The arguments raised on behalf of the petitioners in these present writ petitions have been decided in a number of cases much prior to the institution of the writ petition, points raised and determined in other cases have been reiterated again. The leisurely manner in which the Corporation contests the cases of nationalisation and the Joint Legal Remembrancer No. 2 deals with them, cannot be applauded.

15. Thus, there is no merit in these writ petitions which are accordingly dismissed. In the facts and circumstances of the case, the parties are directed to bear their own costs.

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