

U.P. State Road Transport Corporation vs State Of U.P. And Another on 29 November, 2004

Equivalent citations: AIR 2005 SUPREME COURT 446, 2005 (1) SCC 444, 2004 AIR SCW 7025, 2005 ALL. L. J. 216, 2005 (2) SRJ 119, 2004 (7) SLT 349, 2005 (1) ALL CJ 723, (2004) 10 JT 173 (SC), 2004 (10) SCALE 28, 2004 (10) JT 173, 2005 ALL CJ 1 723, (2005) 2 ICC 115, (2005) 1 ALL WC 220, (2005) 1 CURCC 107, (2004) 10 SCALE 28, (2005) 1 SUPREME 656, (2005) 1 UC 617, (2005) 1 RECCIVR 235, (2005) 1 ACC 51, (2005) 3 CIVLJ 789

Author: G. P. Mathur

Bench: Chief Justice, G. P. Mathur, P.K. Balasubramanyan

CASE NO.:

Appeal (civil) 6341 of 2002

PETITIONER:

U.P. State Road Transport Corporation

RESPONDENT:

State of U.P. and another

DATE OF JUDGMENT: 29/11/2004

BENCH:

CJI., R.C. Lahoti, G. P. Mathur & P.K. Balasubramanyan

JUDGMENT:

J U D G M E N T [with C.A. Nos. 6342-6343/2002, 6344-6345/2002, 6347-6348/2002, 6350-6351/2002, 6353-6354/2002, 8575/2002, 4196/2003, 5258/2003. C.A No . /2004 @ SLP(Civil) No. 21557/2002 & C.A No /2004 @ SLP (Civil) No. 19034/2003] G. P. MATHUR, J.

Civil Appeal No. 6341/2002

1. This appeal, by special leave, has been preferred against the judgment dated 23.7.2002 of Allahabad High Court by which the scheme dated 13.2.1986 published under Section 68-C of the Motor Vehicles Act, 1939 and the approved scheme published on 29.5.1993 was quashed.

2. In order to appreciate the contentions raised by learned counsel for the parties, it is necessary to mention the essential facts, as the case has a long history. The Uttar Pradesh State Road Transport Corporation (for short 'UPSRTC') prepared a draft scheme to nationalize Saharanpur-Shahdara-Delhi route and the same was published on 29.9.1959 in accordance with Section 68-C of the Motor

Vehicles Act, 1939 (hereinafter referred to as the 'old Act'). The scheme was challenged by a number of operators and the High Court by its judgments dated 31.10.1961 and 7.2.1962 upheld the scheme as against 50 operators, but quashed the same as against 32 and 18 operators who had filed two groups of writ petitions on the ground that they should be afforded an opportunity of hearing. In appeal, the judgment of the High Court was upheld by this Court in Civil Appeal No. 1616 of 1968 decided on 3.4.1968 (Jeewan Nath Wahal vs. STAT). The hearing of the objections could not take place on account of interim orders passed in various suits, which were filed by some of these operators, and as a result, the scheme remained pending for over 20 years. Finally, the matter again came up to this Court and a two-Judge Bench quashed the scheme by the judgment dated 23.8.1985 on the ground that the delay of 26 years in disposing of the objections had resulted in violation of Articles 14 and 19(1)(g) of the Constitution. It was, however, left open to State Transport Undertaking to publish a fresh draft scheme if it was necessary to do so. The judgment is reported in 1985 (4) SCC 169 (Shri Chand vs. Govt. of U.P.).

3. The UPSRTC thereafter published a fresh scheme covering in all 39 routes which was published on 13.2.1986 under Section 68-C of the old Act. The scheme not only covered Sharanpur-Shahadara-Delhi route, but also 38 other routes. Objections were filed against the scheme and before they could be finally decided, Motor Vehicles Act 1988 (for short '1988 Act') came into force w.e.f. 1.7.1989 repealing the Motor Vehicles Act, 1939. The competent authority thereafter held that the proposed scheme had lapsed by virtue of Section 100 (4) of the 1988 Act. The UPSRTC preferred a writ petition but the High Court also took the view that the scheme had lapsed and accordingly upheld the order of the competent authority and dismissed the writ petition. Some of the existing operators challenged the grant of permits under Section 80 of the 1988 Act by filing writ petitions, but the same were also dismissed. The appeal against the decision of the High Court was allowed by this Court on 31.3.1992 and the grant of permits under Section 80 of 1988 Act to the respondents/private operators of Civil Appeal No. 1198 of 1992 and others on the respective routes, parts or portions of the nationalized route of the draft scheme dated 13.2.1986 was quashed. The competent authority was directed to approve the draft scheme within a period of 30 days from the date of receipt of the judgment and publish the same in the Gazette. The judgment of this Court is reported in 1992 (2) SCC 620 (Ram Krishna Verma & Ors. vs. State of U.P. & Ors). While the competent authority was hearing the objections, the State Government published a notification on 29.5.1993 whereby the draft scheme published on 13.2.1986 under Section 68-C of the old Act was approved. The notification specifically mentioned that the same was being done in view of the directions given by Supreme Court in Civil Appeal Nos. 1198, 1199, 1200 & 1201 of 1992 [Ram Krishna Verma's case (supra)]. The approved scheme covered all the 39 routes, which were proposed in the draft scheme published on 13.2.1986. Feeling aggrieved by the approved scheme dated 29.5.1993 several operators filed writ petitions in Allahabad High Court but the same were dismissed on 19.11.1999 on the ground that the scheme stood approved by the decisions of the Supreme Court in the case of Ram Krishna Verma (supra) and also Nisar Ahmad vs. State of U.P. 1994 Supp (3) SCC

460. The appeals preferred against the judgment of the High Court were allowed by this Court on 1.5.2001 and the judgment is reported in 2001 (5) SCC 762 (Gajraj Singh & Ors. vs. State of U.P. & Ors). It was held that the decision in Ram Krishna Verma's case (supra) was confined only to one

route namely, Shahrampur-Shahdara-Delhi route, and as a result of the said decision the draft scheme stood approved only with regard to the said route. The notification published on 13.2.1986 included not only the Shahrampur- Shahdara-Delhi route, but also 38 other routes and consequently the scheme had not been approved with regard to these 38 routes and objections filed thereto required to be considered on merits. The operative portion of the judgment is being reproduced below:

"12. The appeals are allowed. The impugned judgment of the High Court dated 19.11.1999 is set aside. The writ petitions are partly allowed. It is directed that the objections filed against the draft scheme dated 13.2.1986 insofar as they relate to the 38 routes listed at Serial Nos. 2 to 39 of the scheme, shall be heard and disposed of by the competent authority on their own merits and in accordance with law for which purpose the competent authority shall, within a period of four weeks from today, appoint and notify a date for hearing. We make it clear that only such of the objections shall be available to be heard and decided as were filed within 30 days of the date of publication of the draft scheme in the Official Gazette and which are maintainable and available to be heard in accordance with Section 68-D of the 1939 Act read with sub-section (2) of Section 100 of the 1988 Act.

..... If all the objections or any of them are allowed, the draft scheme shall meet the fate consistently with the decision on objections and the approved scheme dated 29.5.1993 shall be accordingly modified or annulled insofar as the routes specified at Serial Nos. 2 to 39 are concerned. In the event of the objections being dismissed, the approved scheme, as notified on 29.5.1993, shall continue to remain in operation. At the risk of repetition we would like to make it clear that insofar as Saharanpur-Delhi route is concerned, no objection in that regard shall be heard and the scheme as regards the said route shall be deemed to have been approved and maintained in terms of this Court's direction in Ram Krishna Verma case."

4. The competent authority (Special Secretary Transport, U.P. Government), after hearing the parties decided the objections by his order dated 3.11.2001. Feeling aggrieved by the decision of the competent authority, the UPSRTC and some private operators preferred writ petitions in the High Court. The High Court formulated five questions for determination and one of the questions was whether the scheme dated 13.2.86 has lapsed by efflux of time in view of Section 100(4) of the New Act. The High Court held that the draft scheme dated 13.2.1986 had lapsed under Section 100(4) of the 1988 Act and, therefore, it could not be approved or modified and accordingly the draft scheme dated 13.2.1986 and the approved scheme dated 29.5.1993 as modified by the order dated 3.11.2001, passed by the competent authority, were quashed.

5. The learned Solicitor General, who was assisted by Shri Pramod Swarup, appearing for UPSRTC, has submitted that the view taken by the High Court that the draft scheme dated 13.2.1986 had lapsed by virtue of sub-section (4) of Section 100 of 1988 Act, is patently erroneous as the said provision would apply only to a scheme which had been published under sub-section (1) of Section 100 of the Act and can have no application to a scheme which was published under Section 68-C of

the old Act, as is the case here. Learned Solicitor General has further submitted that a clear finding had been recorded in Ram Krishna Verma's case that the draft scheme dated 13.2.1986 had not lapsed under sub-section (4) of Section 100 of 1988 Act, and further in view of the direction issued by this Court in the case of Gajraj Singh, only certain objections were required to be heard by the competent authority and the already approved scheme published on 29.5.1993 was to stand modified consistent with the decision on the objections. It has thus been submitted that the scope of the writ petitions which had been filed in the High Court challenging the decision of the competent authority was a limited one, namely, to examine the correctness or otherwise of the decision of the authority and it could not have enlarged the controversy and thereafter to hold that the whole scheme had lapsed.

6. Shri Abhishek Singhvi, learned senior counsel, who has appeared for private operators who have been granted permits after 1.7.1989 under the 1988 Act has, on the other hand, submitted that by virtue of Section 217(2)(e) of the said Act, a scheme framed under Section 68-C of the old Act which was in force and was pending immediately before the commencement of the 1988 Act, had to be disposed of in accordance with the provision of Section 100 of the 1988 Act and, consequently, sub-section (4) of Section 100 of the said Act was clearly applicable. The draft scheme published on 13.2.1986 having not been approved within one year of the enforcement of the 1988 Act i.e. by 30.6.1990, the said scheme lapsed. Reliance has also been placed on Krishan Kumar vs. State of Rajasthan 1991(4) SCC 258 in support of the proposition that a scheme framed under Section 68-C of the old Act had to be approved within one year from the date of enforcement of the 1988 Act i.e. by 30.6.1990, otherwise it would lapse.

7. We have given our careful consideration to the submissions made by learned counsel for the parties. In our opinion, having regard to the earlier litigation and the decisions of this Court rendered with regard to the scheme in question, i.e. which was published under Section 68-C of the old Act on 13.2.1986, the view taken by the High Court that the same had lapsed is wholly erroneous in law.

8. As mentioned earlier, the competent authority had at an earlier stage held that the scheme had lapsed by virtue of sub-section (4) of Section 100 of the 1988 Act and the writ petition filed by UPSRTC against the said decision had been dismissed by the High Court on 16.3.1990. The aforesaid decision of the High Court holding that the scheme had lapsed was challenged in Ram Krishna Verma's case (supra) and the Court specifically considered the question as to whether the draft scheme dated 13.2.1986 had lapsed under sub-section (4) of Section 100 of the 1988 Act. A clear finding was recorded that the scheme had not lapsed and the relevant part of paragraph 11 of the said report is being reproduced below:

"11 . The hearing authority, therefore, wrongly concluded that the draft scheme stood lapsed. The High Court also equally committed illegality following its earlier view, which now stood overruled by this court in Krishan Kumar case. Accordingly it must be held that the view of the High Court and the hearing authority is clearly illegal.

In paragraph 15 of the reports, it was reiterated that the fresh draft scheme dated February 13, 1986 had not lapsed and would continue to be in operation and further that it would be confined only to 50 operators. The relevant part of operative portion of the order (paragraph 17 of the report) is being reproduced below:

"17. The appeals are accordingly allowed. The grant of permits to all the respondents/private operators and respondents 7 to 285 in C.A. No. 1198 of 1992 (SLP No. 9701 of 1990) under Section 80 of the Act or any others on the respective routes, parts or portions of the nationalized routes of February 13, 1986 draft scheme are quashed. The hearing authority shall lodge the objections of the 50 operators including the appellants herein. The competent authority shall approve the draft scheme of 1986 within a period of 30 days from the date of receipt of the judgment; and publish the approved scheme in the gazette."

This very scheme again came up for consideration in Nisar Ahmad's case (supra) and a similar contention was raised that the scheme had lapsed under sub-section (4) of Section 100 of the 1988 Act. The challenge was repealed and the relevant part of the judgment reads as under:

"3. ..What is required by the proviso to sub-section (3) of Section 100 is a scheme proposed under the Act. The present one is not a scheme proposed under the Act and that, therefore, the prior approval of the Central Government under the Act is not necessary. It is also to be seen that sub-section (4) of Section 100 is clearly inapplicable in the facts of this case. The scheme published by the State Government on 13.2.1986 was under the Act 4 of 1939. The draft scheme was pursuant to the directions issued by this Court, in consequence to the closing of hearing directed by this Court in Jeewan Nath Wahal case became final. The hearing was delayed due to dilatory tactics adopted by the operators and as per the directions of this Court in Ram Krishna Verma case the draft scheme was approved. In view of that matter and since this Court has already approved the draft scheme not only dated 26.2.1959 but also of 13.2.1986, the question of the lapse under sub-section (4) of Section 100 does not arise. The appeals are accordingly dismissed with costs of Rs. 1 lakh."

9. In Gajraj Singh's case (supra), the Court noticed the earlier decisions rendered in Nisar Ahmad and Ram Krishna Verma, and also the finding recorded therein that the scheme had not lapsed under sub-section (4) of Section 100 of the 1988 Act. Keeping in view the said finding and also the provisions of sub-section (4) of Section 100 of the Act, the Court gave a right to the operators to be heard under sub-section (2) of Section 100 of the Act. The notification issued on 29.5.1993 by which the draft scheme dated 13.2.1986 had been approved was not quashed, but merely a direction was issued that if the objections are allowed, the draft scheme shall meet the fate consistent with the decision on the objections and the approved scheme dated 29.5.1993 shall be modified accordingly. These decisions clearly hold that the scheme had not lapsed under sub-section (4) of Section 100 of the Act.

10. In *Daryao & others vs. State of U.P. & others* AIR 1960 SC 1457, a Constitution Bench considered the application of rule of res judicata in writ petitions. It was held that if a writ petition filed by a party under Article 226 is considered on the merits as a contested matter and is dismissed, the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution. Similarly, in *Devilal Modi vs. Sales Tax Officer* AIR 1965 SC 1150, which is also a decision by a Constitution Bench, it was held that it would not be right to ignore the principle of res judicata altogether in dealing with writ petitions filed by citizens alleging the contravention of their fundamental rights. It was further held that considerations of public policy cannot be ignored in such cases, and the basic doctrine that judgments pronounced by the Supreme Court are binding and must be regarded as final between the parties in respect of matters covered by them must receive due consideration. In *Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra and others* 1990 (2) SCC 715, the Constitution Bench emphasized that the binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much emphasized by the Constitution, is founded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32.

11. The principle of res judicata is based on the need of giving a finality to judicial decisions. The principle which prevents the same case being twice litigated is of general application and is not limited by the specific words of Section 11 of Code of Civil Procedure in this respect. Res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. (See *Satyadhan vs. Smt. Deorajin Devi* AIR 1960 SC 941).

12. This Court having specifically considered the question in two earlier decisions as to whether the draft scheme dated 13.2.1986 had lapsed under sub-section (4) of Section 100 of the Act and having recorded a clear finding that the scheme had not lapsed, it was not at all open to the High Court to examine the said question all over again and to hold that the draft scheme had lapsed. The decision rendered by this Court concluded the controversy and it was not permissible to any party or to any authority/tribunal or court, including the High Court to re-open the issue and to record a contrary finding. We are clearly of the opinion that the High Court committed manifest error of law in re-examining the question and recording a finding, which is totally in variance with the earlier decisions of this Court.

13. There is another aspect of the matter. The competent authority heard the objections in view of the directions issued by this Court in *Gajraj Singh's* case. It was clearly provided in the judgment that the draft scheme shall meet the fate consistent with the decisions on objections and the draft scheme dated 29.5.1993 shall be accordingly modified. In the writ petitions which was filed in the High Court, what was assailed was the decision of the competent authority. Therefore, the scope of the writ petition was very narrow and the High Court could only examine whether the competent authority had considered the objections in accordance with the directions issued by this Court. In such a writ petition, the High Court could not have gone into the question as to whether the scheme

had lapsed under sub- section (4) of Section 100 of the Act. The view taken by the High Court that the scheme had lapsed is, therefore, wholly uncalled for and beyond the scope of the writ petition.

14. Krishan Kumar's case (supra) which has been strongly relied upon by Shri Singhvi for urging that the draft scheme dated 13.2.1986 had lapsed by virtue of sub-section (4) of Section 100 of the Act can be of no assistance to him. In the said case, it was observed that if the period of one year from the date of publication of the proposed scheme is applied to the pending schemes under Section 68-C of the old Act, the purpose and object of saving the old schemes under clause (e) of Section 217(2) of the 1988 Act would be frustrated. It was also observed that the scheme published under Section 68- C of the old Act pending on the date of commencement of the new Act would be a scheme proposed under sub-section (1) of Section 100 and, therefore, the rigour of period of one year as applicable to a scheme proposed under sub-section (1) of Section 100 would not apply to a scheme under Section 68-C pending on the date of commencement of the Act. However, after observing that it was not meant that a scheme under Section 68-C of the old Act pending on the date of commencement of the new Act may be approved or finalized at leisure without any time limit, the Court, applying the principle of harmonious construction, held that it would be legitimate to hold that in the case of a scheme under Section 68-C of the old Act pending on the date of enforcement of the new Act, namely, July 1, 1989, the period of one year as prescribed under Section 100(4), should be computed from the date of commencement of the new Act. Therefore, according to this decision, a draft scheme made under Section 68-C of the old Act would lapse after 30.6.1990. But in the present case, the competent authority long before 30.6.1990 held that the scheme had lapsed and the writ petition preferred against the said decision was also dismissed on 16.3.1990 on the same finding. The decision of the High Court was then reversed by this Court in Ram Krishna Verma's case (supra) and a specific direction was issued to the competent authority to approve the draft scheme and publish the same. Therefore, on the facts of the present case, it cannot at all be held that the scheme had lapsed.

15. Shri Dinesh Dwivedi, learned senior counsel for some of the operators, who have been granted permits under 1988 Act has submitted that principle of res judicata can have no application if there is a statutory prohibition, and in support of his submission he has relied upon Municipal Committee, Amritsar and others vs. State of Punjab and others 1969(1) SCC 475, Mathura Prasad Bajoo Jaiswal and others vs. Dossibai N.B.Jeejeebhoy 1970 (1) SCC 613, Nand Kishore vs. State of Punjab 1995(6) SCC 614 and Allahabad Development Authority vs. Nasiruzzaman and others 1996 (6) SCC 424. The principles laid down in these decisions can have no application here having regard to the factual position discussed above that the scheme was declared to have lapsed much before the expiry of period of one year and the said decision was ultimately reversed by this Court in Ram Krishna Verma's case (supra), wherein a direction was issued to publish the approved scheme, and also the fact that in Gajraj Singh's case (supra), the matter was remitted to the competent authority for a very limited purpose.

16. Shri A. Singhvi has also submitted that the UPSRTC cannot provide transport facility to the people in the area and, therefore, the nationalization of the routes is not in public interest. During the course of hearing an additional affidavit has been filed by Shri Arvind Dikshit, one of the respondents in Civil Appeal Nos. 6350-51/2002 wherein it is averred that though the population in

the area has greatly increased in the last about 15 years resulting in proportionate increase in traveling public, the number of buses being operated by UPSRTC has considerably gone down and many of such buses are over-age and in extremely bad condition. The UPSRTC has suffered a loss of Rs. 282.75 crores during the period 1996-97 to 2000-01. It has thus been urged that the UPSRTC is not at all in a position to cater to the needs of the people in the area by providing an efficient transport service. Learned counsel has further submitted that nearly 500 operators who have been granted permits after 1.7.1989 had taken loans from banks and finance companies at a very high rate of interest to purchase buses and in case the scheme of nationalization is enforced now, they will be completely thrown out of business landing them in serious financial trouble. The drivers, conductors and other staff employed by them will also be thrown out of employment. An affidavit in reply has been filed by Shri H.N. Aggarwal, General Manager, UPSRTC, Ghaziabad, wherein it is averred that though earlier UPSRTC was sustaining losses, but subsequently stringent measures have been adopted and in the year 2002-03 it earned a profit of Rs. 92 lakhs and in a period of five months i.e. from April to August, 2004, it has earned a profit of Rs.52.10 crores. It has also been averred that 2262 new buses have been inducted by UPSRTC in the last 2- 1/2 years.

17. The contention sought to be raised by Shri Singhvi on the basis of the additional affidavit filed by Shri Arvind Dikshit, cannot be accepted for several reasons. As discussed earlier, the draft scheme covering 39 routes was published on 13.2.1986 and the same was approved on 29.5.1993. In view of the decision in Gajraj Singh (supra), the competent authority was required to hear only such objections which were filed within 30 days of the publication of the draft scheme and the approved scheme as notified on 29.5.1993 was to stand modified consistent with the decision on the objections. No such plea as is sought to be raised now, was raised when the cases of Ram Krishna Verma (supra), Nisar Ahmad (supra) and Gajraj Singh (supra) were decided by this Court. It has been also submitted on behalf of the UPSRTC that it did not put in many buses on the routes in question on account of illegal running of buses by private operators who have been granted permits subsequent to 1.7.1989 and after such illegal running of buses is stopped, more buses will be inducted on the routes. Therefore, the contention of Shri Singhvi that the traveling public will suffer great hardship if the scheme is allowed to stand on account of the fact that UPSRTC does not have sufficient number of buses to run on the routes in question, does not appear to have any substance, in view of the clear stand of UPSRTC that it is now making profit and will induct more buses on the routes in question. By virtue of Section 103(1-A) of the Motor Vehicles Act (as amended in the State of U.P.), the UPSRTC can enter into agreements with bus owners to ply their buses on the nationalized routes. Such an arrangement may be beneficial to the existing private operators. On overall consideration of the matter, we are clearly of the opinion that the factors sought to be highlighted by Shri Singhvi cannot be taken into consideration to have the approved scheme annulled and nullified.

18. In view of the discussion made above, the appeal is allowed with costs and the impugned judgment dated 23.7.2002 of the High Court is set aside. The writ petition preferred by UPSRTC against the decision of the competent authority and connected writ petitions shall be heard afresh by the High Court in the light of the direction issued by this Court in the case of Gajraj Singh (supra) after impleading all such parties who have been granted relief by the competent authority.

Civil Appeal Nos. 6342-43/2002, 6344-45/2002, 6347-48/2002, 6350-51/2002, 6353-54/2002, 8575/2002 & 4196/2003

19. In view of the decision in Civil Appeal No. 6341 of 2002 (UPSRTC vs. State of U.P. & Anr), the appeals are allowed and the impugned judgment dated 23.7.2002 of the High Court is set aside..

20. The appellants were granted permits on 11.2.1991 after the High Court had held on 16.3.1990 that the Scheme had lapsed. In view of our finding that the Scheme had not lapsed, the appellants are not entitled for renewal of their permits. The appeal is accordingly dismissed.

Civil Appeal No . /2004 @ S.L.P. (Civil) No.21557/2002 and Civil Appeal No /2004 [@ S.L.P.(Civil) No. 19034/2003]

21. Leave granted.

In view of the decision in Civil Appeal No. 6341 of 2002, the appeals are allowed and the impugned judgment dated 23.7.2002 of the High Court is set aside.