C.P. Sikh Regular Motor Service Etc vs The State Of Maharashtra & Others on 5 September, 1974

Equivalent citations: 1974 AIR 1905, 1975 SCR (2) 10, AIR 1974 SUPREME COURT 1905, 1974 2 SCC 579, 1974 MAH LJ 887, 1975 2 SCR 10

Author: Kuttyil Kurien Mathew

Bench: Kuttyil Kurien Mathew, A.N. Ray, V.R. Krishnaiyer

PETITIONER:
C.P. SIKH REGULAR MOTOR SERVICE ETC.

Vs.

RESPONDENT:
THE STATE OF MAHARASHTRA & OTHERS.

DATE OF JUDGMENT05/09/1974

BENCH:
MATHEW, KUTTYIL KURIEN
BENCH:
MATHEW, KUTTYIL KURIEN
RAY, A.N. (CJ)
KRISHNAIYER, V.R.

CITATION:
1974 AIR 1905 1975 SCR (2) 10
1974 SCC (2) 579
CITATOR INFO :
RF 1976 SC1731 (4)

ACT:
Motor Vehicles Act-1939-ss. 2(1); 2(28) and 68 C-Scope of.

HEADNOTE:
Section 68C of the Motor Vehicles Act 1939 says that where ally State Transport Undertaking is of opinion that it is necessary in the public interest that road transport services in general should be run and operated by the Road Transport Undertaking it may prepare a scheme giving particulars of the area or route proposed to be covered and shall cause every such scheme to be published in the official gazette. Section 2(1) says that unless there is anything repugnant in the subject or context in relation to

any provision of the Act. area means such area as the State Government may, having regard to that provision, specify by notification in the official gazette. The State Government established the Road Transport Corporation under s. 3 of the Road Transport Corporation Act 1950. The Corporation prepared a scheme proposing to operate stage carriage services in the entire State and on all routes and portions thereof falling within the said area to the complete exclusion of all other persons. The scheme approved by the State Government was published in the gazette. The appellants who were transport operators in the State challenged the validity of the scheme. The High Court dismissed the writ petitions.

On appeal to this Court it was contended that it was necessary for the State Government to have specified the area by notification because wherever the word 'area' Occurs in the Act the meaning to be given to that word is the one given in s. 2(1) unless there is something repugnant in the context or the subject matter in s. 68C.

Dismissing the appeals,

HELD : (a) In the context of s. 68C the word 'area' does not mean an area specified by the State Government in a notification in the gazette in accordance with the substantive part of the definition clause 2(1). The context in which the word occurs makes the application of the substantive part of the definition repugnant. [13F]

(b) The word 'area' concurring in s. 68C does not have the same meaning as the word 'route' in the section. A route postulates an area; but for that reason it cannot be said that the legislature made no distinction between the two. 'Area' is defined in S.2(1) and that definition does not speak of any route. Route is defined in S.2(28) of the Act. In fact "area" and "route" are distinct. Otherwise the legislature would not have found it necessary to provide a separate definition clause for route. [14D; G]

(e) If in respect of a scheme in relation to a route or routes, it is not necessary that the State Government should make a notification specifying the route or routes, there is no reason why the State Government should specify the area by a notification in the gazette for framing a scheme in relation to an area. It is impossible to understand the rationale behind the distinction why when a scheme is framed in relation to an area a notification in the gazette specifying its extent is necessary and why when it is framed in relation to a route or routes a notification specifying the route or routes is not required. [15B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 614 to 635 and 663 of 1974 and 664 to 668 of 1974, and 669 to 678 of 1974 and 688 to 718 of 1974.

Appeals by Special Leave from the Judgment and Order dated the 19th and 22nd March of 1974 and 2nd April, 1974 of the Bombay High Court (Nagpur Bench) in Special Civil Applications Nos. 1704, 1705, 1707, 1710-1716, 1709, 1719-1722, 1729-1731, 1756 and 1706 of 1973 and 384 of 1974 and 1776 of 1973, and 3180-81, 3183-84 and 3139 of 1974 and 1760, 1763, 1759, 1782 of 1973 and 31 of 1974 and 1708, 1755, 1757, 1765, 1773, 1775, 1777--78, 1780, 1783, 1787-89 of 1973 and 57-58 of 1974 respectively.

Special Leave Petitions (Civil) Nos. 1389-1390 of 1974. From the judgment and order dated March 19, 1974 of the Bom- bay High Court (Nagpur Bench) in 'Special Civil Application Nos. 1789 of 1973 and 61 of 1974.

M. N. Phadke, G. L. Sanghi, P. H. Palshikar, C. G. Madkholkar and A. G. Ratnaparkhi, for the appellants in C.A. Nos. 614 to 635, 664 to 678, 689 to 717 of 1974. G. L. Samghi, P. H. Palshikar, C. G. Madkholkar, and A. G. Ratnaparkhi, for the appellants in C.A. Nos. 688 and 718/74. K. B. Rohatgi, for the appellant in C.A. No. 663/74. A. -G. Ratnaparkhi, for the petitioners in S.L.P. Nos. 1389-90/74.

Niren De, Attorney General for India, Santosh Chatterji, V. R. Manohar and G. S. Chatterji, for respondent No. 2 (In C.A. 614/74).

Santoshi Chatterjee, V. R. Manohar and G. S. Chatterjee, for respondent No. 2 in C.A. Nos. 615-635, 663-668 of 1974. F. S. Nariman, Additional Solicitor General of India and M. N. Shroff, for respondents Nos. 1, 3 to 6 (In C.As. Nos. 614, 663 and 718 of 1974).

Niren De, Attorney General for India and M. N. Shroff for Union of India in C.As. 614, 663, 688 & 718/74. M. N. Shroff, for respondents Nos. 1, 3 to 6 in C.As. Ncs. 6114 to, 635, 663 to 678, 688 to 718 of 1974.

S. Govind Swaminathan, A. V. Rangam and A. Subhashni, for interveners.

The Judgment of the Court was delivered by MATHEW, J. In these Civil Appeals and Petitions for Special Leave to appeal, the question for consideration are practically the same.. They are, therefore, disposed of by this common judgment.

The appellants filed petitions before the High Court of Bombay (at Nagpur and Bombay) challenging the validity of a scheme framed under s. 68C of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act'). The High Court dismissed the petitions and these appeals and petitions for special leave to appeal are directed against those orders. Section 68C under which the scheme was framed occurs in Chapter IVA of the Act. That chapter was added by Act 100 of 1956 which came into effect from February 16, 1957. The Maharashtra State Road Transport Corporation (hereinafter called 'the Corporation' is a corporation established for the whole of the State of Maharashtra under S. 3 of the Road Transport Corporations Act, 1950, and it is a 'state transport undertaking' within the meaning of s. 68A(b) of the Act.

By the scheme, the Corporation proposes to operate stage carriage and contract carriage services in the entire State of Maharashtra and on all routes and portions thereof falling within the said area to the complete exclusion of all other persons subject to the exceptions mentioned in the scheme. The scheme, as approved, was published in the Gazette dated November 29, 1973 and was to come into force with effect from January 1, 1974. It was the validity of this scheme that the appellants challenged before the High Court by their petitions.

In these appeals and petitions for special leave to appeal we are concerned only with two questions, namely, whether the area in relation to which the scheme has been framed should have been specified by a notification in the official Gazette by the State Government under S. 2(1) of the Act; and whether the scheme was invalid for the reason that it did not specify the minimum and maximum number of vehicles to be put on a route as also the minimum and maximum trips on each route.

It was submitted for the appellants that no valid scheme under s. 68C could be framed without specifying the area in relation to which the scheme has been framed by a notification by the State Government in the official gazette. This submission is founded on s. 2(1) of the Act which was inserted in the Act by Act 56 of 1969 :

> "2. In this Act, unless there is anything repugnant in the subject or context,- (1) 'area' in relation to any provision of this Act, means such area as the State Government may, having regard to the requirements of that provision, specify by notification in the Official Gazette".

Section 68C did not require that the area in relation to which the scheme has been framed should have been specified by notification in the official gazette by the State Government before the insertion of s.2(1) by the Amendment Act 56 of 1969. Therefore, the question for consideration is whether, after its insertion in the Act, it was necessary for the State Government to have specified the area by notification in the official gazette in order that the Corporation may frame a scheme in relation to that area. The appellants contended that wherever the word 'area' occurs it] any of the provisions of the Act, the meaning to be given to the word is the one given in S. 2(1) unless there is something repugnant in the context or subject matter and, as there is nothing in the context of or subject matter in s. 68C, which, by necessary implication, excludes the meaning given in the definition clause to the word 'area' occurring in the section, the meaning must be assigned to the word.

On the other hand, the learned Attorney General, appearing for the Corporation, submitted that the definition clause does not require the State Government to specify the area by a notification in the gazette merely because the word 'area' occurs in a section of the Act. He submitted that it is only if the State Government is of opinion that the provisions of a section so require it, that they need specify the area by a notification in the gazette. In other words, the argument was that in order that the definition clause may come into play, it is necessary that the State Government should from an opinion,, having regard to the requirement of the particular section in which the word 'area' occurs, that it is necessary, to specify the area by a notification in the gazette.

We are not quite sure whether the language of the definition clause is susceptible of the construction contended for by the learned Attorney General. We are inclined to think that the discretion that is vested in the State Government is only with respect to the specification of the extent of the area in the notification having regard to the requirement of the section in which the word 'area' occurs. That discretion has nothing to do with the necessity or otherwise of a notification specifying the area. In other words, the decision of the State Government is confined to the specification of the extent of' the area, having regard to the requirement of the section where the word 'area' occurs and not to the necessity or otherwise of the notification in the gazette specifying the area.

Be that as it may, we do not think it necessary, to resolve this question in this case as, in our view, the word 'area' occurring in s. 68C does not, in the context, require specification by a notification in the. gazette by the State Government. To put it differently, we do not think that in the context of s. 68C the word 'area' means an area speci- fied by the State Government in a notification in the gazette in accordance with the substantive part of the definition clause. The context in which the word occurs makes the application of the substantive part or the definition repugnant.

Section 3 of the Road Transport Corporation Act, 1950, provides that the State Government may, by a notification in the, official gazette, establish a Road Transport Corporation for the whole or any part of the State. Section 18 of that Act provides that it shall be the general duty of a Corporation so to exercise its powers as progressively to provide an efficient, adequate, economical and properly coordinated system of road transport services in the State or part of the State for which it is established and in any extended area and s. 19 specifies the powers of the Corporation. Sub-section (2) (c) of that section empowers the Corporation to prepare schemes for the acquisition of, and to acquire the whole or any part of any undertaking of any other person to the extent to which the activities thereof consist of the operation of road transport services in that State or in any extended area-

Section 68C of the Act says :

> "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 any 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 there to 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".

It is clear that a scheme under s. 68C can be framed only in relation to an area or route or part thereof see Dosa Satyanarayanamurty, etc. v. The Andhra Pradesh-State Road Transport Corporation(1).

We do not think that the word 'area' occurring in s. 68C has the same meaning as the word 'route' in the section. When s. 68C talks of 'area' or 'route' or part thereof, it is not to be presumed that the legislature made no distinction between 'area' and 'route'. No doubt, a route must necessarily run over an area but, for that reason, one cannot equate an area to a route. An area simpliciter is certainly not a route. Its potentially to become a route would not make it a route. A route is an area plus something more. At any rate, there is no justification for making an assumption that the legislature, in the context of s. 68C did not want to make any distinction between 'area' and 'roue'. In Dosa Satyanamurty's Case(1), Subba Rao, J. observed :

> " Under s. 68C of the Act the scheme may be framed in respect of any area or a route or a portion of any area or a portion of a route. There is no inherent inconsistency between an 'area' and a route. The proposed route is also an area limited to the route proposed. The scheme may as well propose to operate a transport service in respect of a new, route from point A to point B and that route would certainly be an area within the meaning of S. 68C".

There can be no dispute that a route postulates an area. But, for that reason, as we said, it is difficult to maintain that the legislature made no distinction between the two. In s.2(1), the definition is only of the word 'area'. That definition does not speak of any route. By Act 56 of 1969, the legislature has defined the expression 'route' in s. 2(28A). That reads "route' means a line of travel which specifies the highway which may be traversed by a moor vehicle between one terminus and another".

(1) [1961] 1 S.C.R. 642, 664.

Certainly, the line of travel which specifies the highway which may be traversed by a motor vehicle is an area, but nevertheless, the two are distinct. Otherwise, the legislature would not have found it necessary to provide a separate. definition clause for 'route'. If, therefore, in respect of a scheme in relation to a route or routes, it is not necessary that the State Government should make a notification specifying the route or routes, we fail to understand the reason why the State Government should specify the area by a notification in the gazette for framing a scheme in relation to an area. In other words, it is impossible to understand the rationale behind the distinction why when a scheme is framed in relation to an area a notification in the gazette specifying its extent is necessary and why when it is framed in relation to a route or routes a notification specifying the route or routes is not required. When s. 68C says "where any State Transport Undertaking is of opinion that..... it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State transport undertaking", it means, in the context of the present case,, that the Corporation has to form an opinion whether it is necessary in the public interest that road transport service should be nationalized in relation to any area Or route. We are aware of a plausible construction of the section which would enable the Corporation to form an opinion only as to the necessity in the public interest of a scheme in relation to an area specified in the notification by the State Government. But we think, it comports more with the legislative purpose to hold that the 'State transport undertaking is invested with the discretion to select the area in relation to which it will frame the scheme than to hold that discretion has been vested in the State Government.

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 untrammeled by an outside authority like the State Government, we fail to see why it cannot form an opinion as to the necessity of a scheme in relation to any area in the State.

As the Corporation here was established for the whole of the State of Maharashtra, it was within its power to form an opinion as to necessity of a scheme in relation to any area or route within the State. We hold that there is no substance in the first contention of the appellant. The second point urged can behalf of the appellants was that a scheme framed under s. 68C should specify all the necessary particulars and as it did not specify the minimum and maximum number of vehicles to be put on a route as also the minimum and maximum trips in respect of each route, the scheme was invalid. The decision of this A Court in Aswathamarayan Singh v. State of Mysore(1) was relied on in support of this contention.

(1) [1966] 1 S. C. R. 87, at 92 and 94.

In the first place, this contention was not taken before the State Government in the objections filed by the appellants to the Scheme. Quite apart from that, we think that there is no factual foundation for the contention. The approved scheme specifies the minimum and maximum number of vehicles to be put on a route as also the minimum and maximum trips in respect of each route.

We dismiss the appeals without costs. We also dismiss the petitions for special leave to appeal.

P.B.R. Appeals dismissed.