

## **Phool Chand Gupta vs Regional Tansport Authority, Ujjain & ... on 23 August, 1985**

**Equivalent citations: 1986 AIR 119, 1985 SCR SUPL. (2) 682, AIR 1986 SUPREME COURT 119, 1985 UJ (SC) 902, (1985) JAB LJ 754, 1985 (4) SCC 190, (1985) 2 ACC 540**

**Author: E.S. Venkataramiah**

**Bench: E.S. Venkataramiah, R.B. Misra**

PETITIONER:

PHOOL CHAND GUPTA

Vs.

RESPONDENT:

REGIONAL TANSPORT AUTHORITY, UJJAIN & ORS.

DATE OF JUDGMENT 23/08/1985

BENCH:

VENKATARAMIAH, E.S. (J)

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VENKATARAMIAH, E.S. (J)

MISRA, R.B. (J)

CITATION:

1986 AIR 119                      1985 SCR Supl. (2) 682

1985 SCC (4) 190                1985 SCALE (2) 334

CITATOR INFO :

R                1986 SC 242 (2)

F                1986 SC 1719 (4)

F                1987 SC 1324 (2)

ACT:

Constitution of India 1950, Article 32 and 19(1) (g)  
Delay in publication of approved scheme under section 68-D  
of Motor Vehicles Act, 1939 - Whether violate fundamental  
right. Motor Vehicles Act, 1939, sections 68-C and 68-D  
Publication of draft scheme - Approved scheme not published  
even after 20 years - Application for stage carriage permit  
for route covered by the draft scheme kept pending by  
Regional Transport Authority whether valid - Inordinate  
delay in publication of draft scheme - Whether violates  
fundamental rights.

Motor Vehicles Act, 1939, sections 68-C and 68-D -  
Publication of draft scheme - Approved scheme not published

even after 20 years - Application for stage carriage permit for route covered by the draft scheme kept pending by Regional Transport Authority whether valid - Inordinate delay in publication of draft scheme - Whether violates fundamental rights.

HEADNOTE:

The petitioner applied to the Regional Transport Authority for the issuance of a stage carriage permit under the Motor Vehicles Act 1939 to operate a stage carriage service on a route in the year 1968. Since a draft scheme prepared by the State Road Transport Corporation under section 68-C of the Act covering the said route had been published in the year 1965 proposing to operate stage carriage service on the route to the exclusion of other operators and the said scheme had not yet been published as the approved scheme as required by section 68-D of the Act, his application was kept pending the regional Transport Authority.

In the writ petition under Article 32 the petitioner sought to quash the draft scheme of the State Road Transport Corporation and to direct the respondents not to take any further steps pursuant to the draft scheme because the approved scheme had not been published even after a lapse of 20 years and this inordinate delay has resulted in the violation of the fundamental right guarantee under Article 19(1)(g).

Allowing the petition,

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HELD: 1. If there has been unreasonable delay in the publication of the approved scheme under section 68-D of the Motor Vehicles Act, 1939, the scheme is liable to be quashed, [686 D]

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2. There is no justification in the circumstances of this case to keep the proceedings pending any longer. The fact that the Central Government and the State Government have not given their approval/consent to the scheme cannot be considered as an extending circumstance. [686 D-E]

Yogeshwar Jaiswal etc. v. State Transport Appellate Tribunal and Ors. A.I.R. 1985 S.C. 516 followed.

3. The draft scheme, that is, scheme No- 72 of 1965 published under section 68-C of the Motor Vehicles Act, 1939 and all the proceedings which have taken place pursuant thereto till now including the order passed by the Special Secretary of the Government of Madhya Pradesh are quashed and the direction issued to the respondents not to take any further proceedings hereafter pursuant to the draft scheme. [686 E-F]

4. The draft scheme which was published in the year 1965 has not yet received the approval under section 68-D

of the Act and is not published as required by law. No satisfactory explanation is also forthcoming for this delay. During the period of 20 years since the publication of the draft scheme there has been lot of development in or around the area of routes covered by it. Hence it can no longer be said that the proposal in the draft scheme would satisfy the requirement- of section 68-C of the Act which provides that the transport service which is prepared to be introduced in respect of any route or area to the exclusion, complete or partial, of all other operators should be an efficient, adequate, economical and properly coordinated service. [685 B, 686 B-C]

5. The State Transport Undertaking can take fresh steps for publishing a scheme under section 68-C of the Act in respect of the route or area in question if thought necessary to do so. It is not necessary to revive the application allegedly made in the year 1968 at this distance of time. petitioner, if advised may file fresh application which shall be disposed of according to law. [686 F-H, 689 A]

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition (Civil) No. 8085 of 1985.

(Under Article 32 of the Constitution of India.) R.K. Jain and R.P. Singh for the Petitioner.

Ravinder Bana and Rameshwar Nath for the Respondents. The Judgement of the Court was delivered by VENKATARAMIAH, J. This is a petition filed under Article 32 of the Constitution. The petitioner applied to the Regional Transport Authority Ujjain in the State of Madhya Pradesh for the issuance of a stage carriage permit under the provisions of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act') to operate a stage carriage service on the route between Bhadavmata and Mandsaur in the year 1968. Since a draft scheme prepared by the Madhya Pradesh State Road Transport Corporation (the State Transport Undertaking) under section 68-C of the Act covering the said route had been published as scheme No. 72 in the year 1965 proposing to operate stage carriage services on the route to the exclusion of other operators and the said scheme had not yet been published as the approved scheme as required by section 68-D of the Act his application was kept pending by the Regional Transport Authority, Ujjain Region, Ujjain by its order dated January 20, 1977. Because the approved scheme has not been published till today even after the lapse of 20 years from the date of its publication under section 68-C of the Act the petitioner has filed this petition requesting the court to quash the draft scheme No. 72 of 1965 and to direct the State Government, the State Transport Undertaking and the Transport Authorities not to take any further steps pursuant to the said draft scheme.

When the above petition came up for preliminary hearing on July 29, 1985 a notice was issued to the State Government of Madhya Pradesh to show cause why the draft scheme and all proceedings

consequent upon its publication should not be quashed. In reply to the said notice a counter Affidavit has been filed, the deponent of which is 18 B.M. Saxena, Traffic Superintendent, Madhya Pradesh State Road Transport Corporation, Bhopal. In the counter affidavit it is stated that the draft scheme, that is, Scheme No.72 was published under section 68-C of the Act on December 31, 1965. The objections and representations filed in respect of the said scheme were heard by the Special Secretary appointed by the State Government to hear the objections and that the objections and representations were disposed of by him by his order dated May 16, 1967. Thereafter, the entire proceedings were placed before the State Government for its approval and publications under sub-sections (2) and (3) of section 68-D of the Act. It would appear that the scheme in question involved certain inter-State routes and that it had to be approved by the Central Government as required by the proviso to sub-section (3) of section 68-D of the Act and also assented to by the State Government of Rajasthan. The State Government had not been able to obtain till now the requisite approval/consent of the Central Government or the State Government of Rajasthan and thus it has not been possible to publish the approved scheme.

From the foregoing it is clear that the draft scheme which was published in the year 1965 has not yet received the approval under section 68-D of the Act and published as required by law. No satisfactory explanation is also forthcoming for this delay. The petitioner contends that this inordinate delay has resulted in the violation of the fundamental right guaranteed under Article 19(1) (g) of the Constitution. In support of his contention, the petitioner has relied upon a decision of this Court in *Yogeshwar Jaiswal etc. v. State Transport Appellate Tribunal & Ors.* A.I.R. 1985 S.C. 516. In that decision this Court has observed at pages 518-519 thus:

"The provisions of section 68C and 68D of the Act clearly indicate that any scheme which is intended for providing efficient, adequate, economical or properly co-ordinated transport service should be approved either as it is or in a modified form or rejected, as the case may be, within a reasonably short time as any extraordinary delay is bound to upset all or any of the factors, namely, efficiency, adequacy, economy or co-ordination which ought to govern an approved scheme under Chapter IVA of the Act. On account of various reasons such as the growth of population and the development of the geographical area adjacent to the area or route in question, any unreasonable delay may render the very proposal contained in the scheme antiquated, outmoded and purposeless. Hence there is need for speedy disposal of the case under section 68D of the Act..... Delay in performance of statutory duties amounts to an abuse of process of law and has to be remedied by the court particularly when the public interest suffers thereby. Hence if there is an unreasonably long and un-explained delay in the State Government passing orders under section 68D of the Act, the Court may issue a mandamus to the State Government to dispose of the case under section 68D of the Act within a specified time or may in an appropriate case even issue a writ in the nature of certiorari quashing the scheme and a writ in the nature of prohibition under section 68C of the Act because section 68D does not confer an unfettered discretion on the State Government to deal with the case as it likes. The power under section 68D has to be exercised having due regard to the public interest.

It is not denied that during the period of 20 years since the publication of the draft scheme there has been lot of development in or around the area or routes covered by it. Hence it can no longer be said that the proposal in the draft scheme would satisfy the requirements of section 68-C of the Act which provides that the transport service which is proposed to be introduced in respect of any route or area to the exclusion, complete or partial, of all other operators should be efficient, adequate, economical and properly co-ordinated service. This Court has given substantial reasons in Yogeshwar Jaiswal's case (supra) for quashing a scheme published under section 68-D of the Act if there has been unreasonable delay in the publication of the approved scheme under section 68-D of the Act. We do not find that there is any justification in the circumstances of this case to keep the proceedings pending any longer. The fact that the Central Government and the State Government of Rajasthan have not given their approval/consent to the scheme cannot be considered as an extenuating circumstance.

We, therefore, quash the draft scheme, that is, scheme No. 72 of 1965 published under section 68-C of the Act and all the proceedings which have taken place pursuant thereto till now including the order passed by the Special Secretary of the Government of Madhya Pradesh thereon and we issue a direction to the respondents not to take any further proceedings hereafter pursuant to scheme No. 72 of 1965.

This order does not prevent the State Transport Undertaking of the State of Madhya Pradesh from taking fresh steps for publishing a scheme under section 68-C if it thinks that it is necessary to do so. As regards the application said to have been made by the petitioner in the year 1968, we feel that it is not necessary to revive it at this distance of time. The petitioner may if he is so advised file a fresh application for a permit and if he makes such an application it shall be disposed of in accordance with law after inviting objections and representations to it from the concerned parties.

This petition is accordingly allowed. There shall be no order as to costs.

A.P.J.

Petition allowed.