

Ramesh Chand Etc. Etc vs State Of U.P. And Others on 4 September, 1979

Equivalent citations: 1980 AIR 129, 1980 SCR (1) 498, AIR 1980 SUPREME COURT 129, 1979 ALL. L. J. 1313, 1979 U J (SC) 8L8, 1979 UJ (SC) 819, 1980 (12) LAWYER 23, (1980) 1 SCR 498 (SC), (1979) 5 ALL LR 568, (1980) 1 SCJ 386, 1979 (4) SCC 776, (1979) 2 SCWR 280

Author: P.N. Shingal

Bench: P.N. Shingal, Syed Murtaza Fazalali, A.P. Sen

PETITIONER:
RAMESH CHAND ETC. ETC.

Vs.

RESPONDENT:
STATE OF U.P. AND OTHERS

DATE OF JUDGMENT 04/09/1979

BENCH:
SHINGAL, P.N.
BENCH:
SHINGAL, P.N.
FAZALALI, SYED MURTAZA
SEN, A.P. (J)

CITATION:
1980 AIR 129 1980 SCR (1) 498
1979 SCC (4) 776

ACT:

Motor Vehicles Act, 1939, Sections 68C read with Sections 7 & 16 of the U.P. Motor Vehicles (Special Provisions) Act, 1976 (Act 127/76), scope of Sections 7 and 16 of Act 127 of 1976 relates both to section 68C and 68D i.e. to the draft scheme under section 68C and approved scheme under section 68D of the Motor Vehicles Act, 1939-Validity of the scheme for inter state range Agra-Dholpur and of Agra region.

HEADNOTE:

On the question whether sections 7 and 16 of the U.P. Motor Vehicles (Special Provisions) Act, 1976 (Act 127 of

1976) related only to "approved" Schemes under section 68D of the Motor Vehicles Act and, therefore, the approved scheme for inter-state range Agra-Dholpur of Agra region was inoperative, the Court, while dismissing the Writ Petitions and the connected special leave petitions.

^

HELD: (1) Sections 7 and 16 of U.P. Motor Vehicles (Special Provisions) Act, 1976 have validly provided that the specification of the number of services is not and shall be deemed to have never been an essential requirement in a scheme prepared and published under section 68D of the Motor Vehicles Act, 1939. [503A-B]

The marginal note to section 7 states "specification of number of services not an essential requirement of section 68C or section 68D", makes the intention clear that the section is intended to cover section 68C also. The intention is also carried out by the Section providing that "Nothing contained in section 68C or section 68D of the Principal Act shall be deemed to require.. " The operation of section 7 is thus intended to apply both to sections 68C and 68D. The result would be that if one of the requirements of section 68C is that it should specify the number of services to be provided, it shall be deemed that requirement was never there. The reference to the approved scheme is because section 68C and section 68D form part of the same procedure of publication of a scheme and approval of the scheme. That this is the object is put beyond all doubt by the introduction of the validation section, section 16, which provides that in any scheme prepared or published under section 68C or approved or modified under section 68D of the Principal Act shall not be deemed to be invalid on the ground of number of services to be provided being not specified therein. [502F-H, 503A]

Shashi Kant Rai & ors. v. Regional Transport Authority, Varanasi Region and ors. AIR 1978 All. 68 over-ruled.

2. Failure to specify the number of services would not invalidate the draft scheme under section 68C or the approved scheme under section 68D of the Motor Vehicles Act, 1939. It cannot be said that when the word "particulars" is used in this part of section 68C, it can only be satisfied if the exact number of vehicles and trips for each rank is specified, and, that

499

there is no other way of satisfying the requirement implicit in the use of the word "particulars". The exact number of vehicles and trips for each route need not be given and all that section 7 of the amended Act provides is that the draft scheme as well as the approved scheme need not specify the number of services. [504C-E]

B.B. Aswathanarayan Singh & Ors. v. State of Mysore & ors. [1966] 1 SCR 67, applied.

(3) In the instant case, the impugned scheme cannot be held to be inoperative for non-mentioning of the maximum or

minimum number of buses, vehicles and trips, since the scheme notified in U.P. Gazette on 4-12-1961 gave the required particulars. A reading of the scheme would indicate that transport vehicles and services would be provided on the routes taken over by country-type vehicles with 30 to 45 seats capacity. Moreover, this objection which was not taken before the scheme was approved in 1963 would not be allowed to be taken after a lapse of 15 years. [504 G-H, 505 A-B]

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 804-810 of 1977.

Appeals by Special Leave from the Judgment and order dated 20-10-76 of the Allahabad High Court in Writ Petitions Nos. 1529, 1564 and 1568 to 1571/63.

AND WRIT PETITIONS Nos. 650, 651, 652-653, 48, 394, 395, 691, 670, 680, 681, 687-688/79, 412-415, 416-418/79.

Under Article 32 of the Constitution AND SPECIAL LEAVE PETITION (CIVIL) NOS. 5193, 5196 and 17 5517/79 From the Judgment and order dated 20-10-1976 of the Allahabad High Court in Civil Misc. Writ Nos. 1523, 1544, 1528, 1541 and 1527/63.

R.K. Garg, P.C. Bhartari for the Appellant in C.A. 804/77.

G. L. Sanghi and P.C. Bhartari, for the Petitioner in W.P. No. 48/79 and in S.L.P. Nos. 5193-5196 and 5517/79.

P. C. Bhartari for the Appellant/Petitioners in C.A. 805-810/ 77 and W.P. 650, 651, 652, 653, 395, 691, 670, 680, 681, 687, 688/79 and other cases.

Shanti Bhushan P.C. Bhartari for the Petitioner in W.P. 394/79.

S.V. Gupte, Raj Narain Munshi and Sobhagmal Jain for RR. 7 in C.A. Nos. 804-810/77 and W.P. Nos. 650/79 and SLP (C) Nos. 5193-5196/79 and 5517/79.

Y.S. Chitaley, Raj Narain Munshi and Sobhagmal Jain for RR 7 in W.P. 48/79.

Raj Narain Munshi, Sobhagmal Jain and S.K. Jain for RR

7. in W.P. 651, 652, 653, 394, 395, 691, 670, 680, 651, 687- 688/79.

P.B. Sharma for RR 8 in W.P. 48/79.

O.P. Rana for the Intervener, State of U.P. The Judgment of the Court was delivered by KAILASAM. J. In all these appeals, writ petitions and special leave petitions the challenge is against the validity of the scheme framed by the State Transport Undertaking of U.P. In giving special leave in Civil Appeals Nos. 804 to 810 of 1977 this Court restricted the special leave by stating "Special leave granted confined to the alleged conflict between s. 68(c) of the Motor Vehicles Act and sections 7 and 16 of the U.P. Amendment Act of 1976, (Act 127/1976). When the hearing in these matters started Mr. Garg, learned counsel for the appellants, submitted that there is no conflict between sec. 68C of the Motor Vehicles Act, 1939 and sections 7 and 16 of the U.P. Amendment Act. But his plea is that the amendment has not in any way affected or cured the defect in sec. 68C and therefore the defect in the scheme continues to render it invalid In terms of the restricted leave granted, we do not think it is strictly open to the learned counsel to raise the plea which he has taken before us. But as several matters are involved and there is a conflict between two judgments of the Allahabad High Court we gave permission to the learned counsel to raise this question.

The point that is raised by Mr. Garg is that the introduction of sections 7 and 16 by the Amending Act 27 of 1976, the Uttar Pradesh Motor Vehicles (Special Provisions) Act, 1976 does not dispense with the requirements specified in sec. 68C as the two section relate only to approved schemes.

In order to appreciate learned counsel's contention it is necessary to set out sec. 68C of the Motor Vehicles Act, 1939. Section 68C reads as follows:-

"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 of route proposed to be covered and such other particulars respecting thereto 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."

Sec. 68C requires the State Transport Undertaking to 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 thereto as may be prescribed. It is thus necessary that the scheme should give (1) particulars of the services proposed to be rendered; (2) the area or route proposed to be covered, (3) such other particulars thereto as may be prescribed. The scheme prepared under sec. 68C did not specify the number of services to be provided. The Allahabad High Court in Shashi Kant Rai & ors. v. Regional Transport Authority, Varanasi Region & ors. held that if the particulars regarding the adequacy etc. Of the proposed transport services are not given in the draft scheme then it will not be possible for the objectors to file any effective objection to the draft scheme in this regard and it would be difficult for the Hearing Authority to give its decision whether the draft scheme will be able to provide road transport services which would fulfil the four purposes

mentioned in sec. 68-C. The Court held that the draft scheme must give particulars indicating how the proposed transport services would be efficient, adequate, economical and properly coordinated. The scheme mentioned "adequate number of State transport services, according to traffic requirements are to be provided on the route or the portion thereof mentioned in cl. (2) above. The learned single Judge and the Division Bench of the Allahabad High Court were of the view that the draft scheme prepared under sec. 68-C was defective as the minimum number of services and the vehicles which were proposed to be introduced on the road had not been mentioned. In order to get over the effects of the decision the U.P. Legislature introduced the Uttar Pradesh Motor Vehicles (Special Provisions) Act, 1976 (U.P. Act No. 27 of 1976). Section 7 of the Act reads as follows:-

"Nothing contained in section 68C or section 68D of the principal Act shall be deemed to require or ever to have required a specification being made in an approved scheme of the number of services to be provided."

Section 16 of the Act is the validating section and runs as follows:-

"Notwithstanding any judgment decree or order of any court, any scheme prepared or published under section 68C, or approved or modified under section 68D of the principal Act or purporting to have been prepared, published, approved or modified shall not be deemed to be or have been in valid on the ground of the number of the services to be provided being not specified therein."

Mr. R. K Garg, the learned counsel for the appellants, submitted that sec. 7 is applicable only to approved schemes i.e. for a scheme which had been approved under sec. 68D(3) and that its object is to cure the defect in approved scheme under sec. 68-D where the number of services provided is not mentioned. The learned counsel would reach the section that nothing contained in the principal Act shall be deemed to require or ever to have required a specification of the number of services to be provided in an approved scheme. He would emphasise the words "approved scheme" and submit that the change if any is as regards the particulars required under an approved scheme under sec. 68-D and that this section would not relate, to the scheme under sec. 68-C. The marginal note to sec. 7 states "Specification of number of services not an essential requirement of Section 68C or Section 68D." The intention therefore is to make specification of number of services not an essential requirement under sections 68C and 68D. The section therefore is intended to cover sec. 68-C also. It is seen the intention is carried out by the section providing that "Nothing contained in Section 68C or Section 68D of the principal Act shall be deemed to require .." The operation of the section is thus intended to apply both to sec. 68C and 68-D. The result would be that if one of the requirements of sec. 68-C is that it should specify the number of services to be provided it shall be deemed that requirement was never there. The reference to the approved scheme is because sec. 68-C and section 68-D form, part of the same procedure of publication of a scheme and approval of the scheme. That this is the object is put beyond all doubt by introduction of the validating section, section 16, which provides that in any scheme prepared or published under sec. 68-C or approved or modified under sec. 68D of the principal Act shall not be deemed to be invalid on the ground of number of services to be provided being not specified therein. We are satisfied that sections 7 and 16 of the Act have validly provided that the specification of the number of services is not and shall be

deemed to have never been an essential requirement in a scheme prepared and published under sec. 68-C or approved or modified under sec. 68-D. The plea of the learned counsel therefore fails. In this, view we hold that the decision in Shashi Kant Rai and ors. v Regional Transport Authority, Varanasi Region, and Ors. (supra) is erroneously decided.

When the arguments of Mr. Garg on this point and the reply thereto were heard, Mr. Shanti Bhushan, the learned counsel for one of the appellants, submitted that he may be permitted to raise the question of validity of sec. 68-C. He submitted that if the amended sections 7 and 16 of the U.P. Act have the effect of modifying sec 68-C, sec. 68-C itself would not be valid. According to the learned counsel the requirement of sec. 68-C is that before a scheme is prepared and published the State Transport Undertaking must be of the opinion that for the purpose of providing an efficient, adequate, economical and properly coordinated road transport services, it is necessary in the public interest that the road transport services should be run and operated by the State Transport Undertaking. In order to satisfy the requirements the learned counsel submitted that the scheme should give (1) particulars of the nature of the services proposed to be rendered; (2) area or route proposed to be covered and such other particulars respecting thereto as may be prescribed. The first two requirements with which we are concerned are under sec. 68-C. Relying on a decision of this Court in B. H. Aswathanarayan Singh & ors. v. State of Mysore and Ors. the learned counsel submitted that if the requirement as to specification of the number of services to be provided in the draft scheme is dispensed with the particulars of the nature of services proposed to be rendered as required in sec. 68-C would be lacking. The learned counsel referred to page 93 of the case (supra) wherein the Court observed that "when sec. 68-C provides for giving particulars of the nature of the services proposed to be rendered the intention is that such details should be given as are necessary to enable the objectors to make their objections. We see no difficulty in holding that the details of the nature of services proposed to be rendered may not only be in the form of a precise number of vehicles and trips but also in the form of minimum and maximum number of vehicles and trips on each route." Strong reliance is placed on the requirement that the details or the nature of services should not only be in the form of precise number of vehicles and trips but also in the form of minimum and maximum number of vehicles and trips on each route. But this statement is explained in the next two sentences where the Court stated:

"Furnishing of minimum and maximum number of vehicles and trips for each route would also in our opinion, satisfy the requirement that particulars should be furnished of the services proposed to be rendered. Further the indication of minimum and maximum number of vehicles and trips for each route would give the necessary information to enable the objectors to oppose the scheme even with reference to the adequacy of the services proposed to be rendered." We do not think that the appellants are right in submitting that when the word "particulars" is used in this part of the section, it can only be satisfied if the exact number of vehicles and trips for each route is specified and that there is no other way of satisfying the requirement implicit in the use of the word "particulars". It is thus clear that the exact number of vehicles and trips for each route need not be given and all that sec. 7 of the amended Act provides is that the draft scheme as well as the approved scheme need not specify the number of services. The decision relied on by the learned counsel

makes it clear that the number of vehicles and trips for each route need not be specified. We are therefore unable to accept the contention that the failure to specify the number of services would invalidate the draft scheme or the approved scheme.

The learned counsel Mr. Shanti Bhushan submitted that in any event as the maximum or minimum number of buses, vehicles and trips have not been mentioned, the scheme should be held to be inoperative. This contention again is not factually sustainable as the impugned scheme under sec. 68C which was notified in the U.P. Gazette on 4-12-1961 gave the required particulars. Clause 3 of the scheme stated "Adequate number of State Road Transport passenger services according to traffic requirements are to be provided on the route mentioned in clause (2) above. The provision of Transport service otherwise than under the scheme is prohibited." Clause 2 provided that State Road Transport passenger services shall be provided on the inter-State route Agra-Dholpur of Agra Region. Clause 6 provided that the Transport Vehicles which may be used on the route indicated in clause (2) above, shall be of country type and their carrying capacity shall be 30 to 45 seats. Clause 7 mentions the permits which have been cancelled. A reading of the scheme would indicate that transport vehicles and services will be provided on the routes taken over by country-type vehicles with 30 to 45 seats capacity. There is no material to show that any of the operators or others entitled to object to the scheme raised this objection before the scheme was approved in the year 1963. When specifically asked whether such an objection was taken to the draft scheme the learned counsel for the appellants were unable to say that the objection was taken. We feel it is futile for them to raise the plea after a lapse of about 15 years. There is no substance in any of the contentions raised. One cannot but express amazement at the tenacity of the operators in stalling any scheme for nationalisation of public transport.

The appeals, special leave petitions and writ petitions are dismissed with costs.

V.D.K.

Appeals and petitions dismissed.