

Sobhraj Odharmal vs State Of Rajasthan on 17 September, 1962

Equivalent citations: 1963 AIR 640, 1962 SCR SUPL. (1) 99, AIR 1963 SUPREME COURT 640

Author: J.C. Shah

Bench: J.C. Shah, Bhuvneshwar P. Sinha, Syed Jaffer Imam, N. Rajagopala Ayyangar, J.R. Mudholkar

PETITIONER:
SOBHRAJ ODHARMAL

Vs.

RESPONDENT:
STATE OF RAJASTHAN

DATE OF JUDGMENT:
17/09/1962

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
SINHA, BHUVNESHWAR P.(CJ)
IMAM, SYED JAFFER
SUBBARAO, K.
AYYANGAR, N. RAJAGOPALA
MUDHOLKAR, J.R.

CITATION:
1963 AIR 640 1962 SCR Supl. (1) 99
CITATOR INFO :
R 1970 SC 898 (37A)
F 1971 SC1986 (10)

ACT:
Road Transport--Scheme--Objections--Notice of hearing--
Whether sufficient--Approval of Scheme--Cancellation of
permits of private operators--State plying vehicles without
permits--If infringes fundamental right-Motor Vehicles Act,
1939 (4 of 1939), ss. 42 (1) and 68R--Rajasthan State Road
Transport Service (Development) Rules, 1960, r. 7(4).

HEADNOTE:
A scheme for operating a motor transport service on the

Jaipur-Kotah route by the State Roadways was published in the Government Gazette. 61 private operators on the route filed objections to the scheme. The Legal Remembrancer heard the objections and rejected them. The scheme was approved by the State Government and was published. Some of the operators moved the High Court for a writ quashing the scheme. The High Court allowed the petition, set aside the scheme and directed the Legal Remembrancer to rehear the objections. The Legal Remembrancer sent individual notices by registered post to the 61 operators fixing the date of hearing and also published the notice in the Gazette. Notices were delivered to 13 operators and 39 were returned unserved. The Legal Remembrancer heard the objections and approved the scheme, which was then published in the Gazette. The Regional Transport Authority issued an order declaring that the Roadways shall operate on the route and cancelled the permits of the private operators. The Roadways, commenced operating without permits but subsequently they were granted permits. The appellants moved the High Court for a writ to quash the scheme but the High Court rejected the application. The appellants appealed to the Supreme Court against the order of the High Court; one of them filed a petition for a writ alleging that his right to carry on business was infringed. The appellants contended that the proceedings before the Legal Remembrancer were illegal as notices were not served upon all the operators, that r.7(4) which provided that on the publication of the notice in the Gazette it shall be presumed that all the parties concerned have been duly intimated was illegal and that the plying of the vehicles by the Roadways without obtaining permits infringed

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the fundamental rights of the appellants to carry on their Held, that the appellants were duly served with the notice of hearing of the objections before the Legal Remembrancer, and if they failed to appear before him to press their objections they could not challenge the scheme after it was duly published and had become final. The Legal Remembrancer was of the opinion that even those operators who had not been personally served had notice of the hearing. The opinion' of the Legal Remembrancer was based upon evidence and he did not rely upon the presumption under r.7(4). The High Court had also held that the objectors were duly served and the Supreme Court, according to its settled practice, did not interfere with such findings.

Held, further, that no fundamental right of the appellants was infringed. Once a scheme was legally and properly made and published, the permits' of the private operators on the route could be lawfully cancelled and they would not be entitled to challenge the plying of the vehicles by the State Roadways with or without permits. Since the permits of the appellants were lawfully cancelled their rights were extinguished and they had no fundamental rights which could

be infringed.. On the finalisation of the scheme the Regional Transport Authority had no option but to grant permits to the State Roadways.

Abdul Gafoor v. State of Mysore, [1962] 1 S.C.R. 909, 'Samarth Transport Co. (P) Ltd. v. Regional Transport Authority, [1961] 1 S.C.R. 631 and Kalyan Singh v. State of U. P. [1962] Supp. 2 S.C..R. 76, referred to.

JUDGMENT :

CIVIL APPELLATE ORIGINAL JURISDICTION Civil Appeal 471 of 1962.

Appeal from the judgment and decree dated 9th May, 1962, of the Rajasthan High Court in D. B. Civil Misc. Write No. 214 of 1962.

WITH Writ Petition No'. 66 of 1962.

Petition under Art. 32 of the Constitution of India for the enforcement of fundamental rights.

M. C. Setalvad Attorney-General for India, K. Garg, D. P. Singh, S. C. Agarwala and M. K. R.Mamurthi, for the appellants and the petitioner.

C. K. Daphtary, Solicitor-General for India, S. K. Kapoor, K. K. Jain and P. D. Menon, for the respondents (in the appeal and the petition).

1962. September 17. The judgement of the Court was delivered by SHAH J.-Questions relating to the validity of a scheme approved by the State of Rajasthan under s.68D of the Motor Vehicles Act, 1939(4 of 1939) and its effect are raised by the appeal and the writ petition. In- the appeal the validity of the scheme is challenged on the plea that the appellants were denied reasonable opportunity of being heard in support of their objections before the scheme was approved. In the writ petition it is submitted that the fundamental right of the petitioner to carry on business of a 'motor transport operator is infringed by the State of Rajasthan plying its buses along the route covered by the scheme without obtaining permits under s.42(1) of the Motor Vehicles Act.

A scheme for operating a motor transport service on the Jaipur-Tonk-Deoli-Kotah route, was published on September 10, 1960 in the Rajasthan Government Gazette, by the Rajasthan State Roadways which is a State Transport Undertaking within the meaning of s. 68A(b) of the Motor Vehicles Act, 1939. Sixty-one persons, including certain holders of stage carriage permits authorising them to ply stage carriages on the route, lodged objections to the scheme with the Secretary., Government of Rajasthan, Transport Department, Jaipur within the period prescribed. The objections were heard by the Legal Remembrancer of the State and were rejected by order dated February 2, 1961. The scheme was then approved by the State Government and was published under s 68D of the Motor Vehicles Act and r.8 off the Rajasthan State Road Transport Service (Development) Rules, 1960. Some holders of stage carriage permits applied under Arts.226 and, 227

of the Constitution to the High Court ;of Rajasthan for the issue of writs cancelling the scheme. The High Court by order dated May 3, 1961, allowed the petition and set aside the scheme. The operative part of the order, insofar as it is material, was as follows :

"The approval of Scheme 'B' Jaipur-Kotah by the Legal Remembrancer is quashed and lie is directed to decide the objections of the permit holders of jaipur-Chaksu-Niwai- Banasthali Tonk-Deoli route in accordance with the observations made above. The Notification of the State Government, publishing the scheme is also set aside."

Thereafter the Legal Remembrancer sent individual ,notices by Registered. post pre-paid and addressed to all the sixty- one objectors fixing June 26, 1961, for hearing objections, and also published in the State Government Gazette a general notice to that effect. Out of sixty-one notices despatched, thirteen were duly received by the addressees and thirty-nine were returned unserved ; about the remaining nine notices no intimation was received from the Postal Department, till.' June 19, 1961. The Legal Remembrancer commenced hearing the objections. The proceeding lasted from June 1961 to March 1962. There were fifteen hearings, at which evidence was recorded and oral arguments were heard. The Legal Remembrancer by his order dated March 23, 1962, approved the scheme subject to certain modifications. The scheme as approved was then published on April 2, 1962, in the Government Gazette. On May 31, 1962, the Secretary, Regional Transport Authority, Jaipur, issued an order declaring that the State Road Transport Service shall commence to operate from May 15, 1962 on the route specified in the scheme as mentioned in Rule 2 and directed that fifty-five permits described in the order do stand cancelled. Pursuant to the scheme the State Transport Undertaking commenced operating its vehicles upon the route without obtaining permits under s. 42 (1) o the Motor Vehicles Act. Subsequently, applications were submitted to the Regional Transport Authority for permits and the same were granted to the State Transport Undertaking on July 28, 1962.

In the mean time, sixteen persons-who will be hereinafter referred to collectively as appellants claiming that they had not received notice of the proceedings before the Legal Remembrancer after the scheme was quashed by the High Court of Rajasthan and the proceedings were remanded applied to the High Court under Arts. 226 and 227 of the Constitution for writs of certiorari quashing the order of the Legal Remembrancer dated March 23, 1962, and all proceedings after May 31, 1961, regarding the scheme of nationalisation of Road Transport Service on the route in question, and the scheme published in the Rajasthan Government Gazette on April 2, 1962, and writs of prohibition restraining the State, of Rajasthan, the Regional Transport Authority, the Legal Remembrancer and the Rajasthan State Transport Undertaking from implementing the scheme and further restraining the Transport authorities from cancelling their permits for plying vehicles on the route and restraining the Regional Transport Authority from granting permits to the Rajasthan State Transport Undertaking in pursuance of the impugned scheme. The appellants also claimed a declaration that cl. (4) of r. 7 of the Rajasthan State Transport (Development) Rules, 1960 and the public notice dated May 30, 1961, published in the Rajasthan Government Gazette dated May 31, 1961, " were illegal, null and void and ultra vires" and a declaration that the proceeding before the Legal Remembrancer was taken without affording any real opportunity to the appellants to produce

their evidence and without hearing their objections in accordance with law. It was urged by the appellants, inter alia, that as only thirteen objectors were served and the remaining forty-eight were not served with notice of hearing, the proceeding commenced before the Legal Remembrancer, relying upon the presumption of due service under cl. (4) of r. 7, was illegal. The High Court, without issuing rule upon the State and the Transport Authorities, dismissed the petition, holding that r. 7 (4) was not ultra vires the Motor Vehicles Act, and that it was difficult, on the material placed before the Court to hold that the Legal Remembrancer had not in fact determined the question of regularity of service of notice upon the objectors before he commenced hearing the objections.

Against the order dismissing the petition Appeal No. 471 of 1962 has been filed by the appellants in this Court. A petition has also been filed by one of the appellants in this Court under Art. 32 of the Constitution for a writ of mandamus restraining the State of Rajasthan, the Rajasthan State Transport Undertaking and the Regional Transport Authority, Jaipur Region, from "commencing their transport service" and from interfering with the right of the petitioner in the exercise of his right to ply stage carriages on that route under a permit issued by the Regional Transport Authority and which was, as originally granted, valid up to November 30, 1963. The petitioner also prayed for a writ or direction quashing the resolution passed by the Regional Transport Authority on May, 3/4, 1962, purporting to cancel his permits without issuing valid permits to the State Transport Undertaking. The principal ground in support of the petition was that the State of Rajasthan and the State Transport Undertaking could not commence to ply their vehicles on the route without obtaining valid permits under s. 68F and s. 42 (1) of the Motor Vehicles Act.

By s. 68C of the Motor Vehicles Act, 1939 (4 of 1939) a State Transport Undertaking, if it be of the opinion as to certain matters specified in the section, is authorised to prepare a scheme giving particulars

105. of the nature of the service and the area or route to be covered thereby, and to publish it in the Government Gazette and in such manner as the State Government may direct. Persons affected by the scheme may lodge objections to the scheme within the period prescribed. The objections are thereafter heard by the State Government after giving opportunity to the objectors to support them. The State Government may, thereafter, approve or modify the scheme, and the scheme so approved or modified when published in the official Gazette becomes final. Section 68F (1) requires the Regional Transport Authority, notwithstanding anything to the contrary contained in Ch. IV, to issue permits to the State Transport Undertaking for plying vehicles when that Undertaking applies for permits in pursuance of an approved scheme. Sub-section (2) of s. 68D provides that for the purpose of giving effect to the approved scheme in respect of a notified area or notified route, the Regional Transport Authority may, by order refuse to entertain any application for renewal of any other permit, cancel or modify an existing permit. Section 68I confers power upon the State Government to make rules for the purpose of carrying into effect the provisions of Chapter IVA and in Particular for certain specific matters set out therein. The Government of Rajasthan framed under s. 68 I rules called the Rajasthan State Transport Service (Development) Rules, 1960. Rule 3 prescribed the authority which was to prepare the scheme on behalf of the State Transport Undertaking, and the matters in respect of which provisions were to be made in the scheme. Rule 4 prescribed the method of publication and r. 5 the manner of filing objections. It was provided by cl.

(4) of r. 5 that the memorandum of objection shall contain, amongst other, the following information "(a) Full name and address of the objector on which the service of notice or order under these Rules maybe made;"

Rule 7 dealt with the procedure for consideration and disposal of objections. By cl. (1) it was provided that the objections shall be considered by an officer authorised to do so by the Governor. The officer so authorised had by cl. (2) to fix the date, time and place for hearing objections and to issue notice thereof to the objectors and the General Manager of the State Transport Undertaking asking them to appear before him. Clause (3) prescribed the method of service of notice, that "the notice under sub-rule (2) shall be sent by Registered post and shall be posted at least fourteen days before the date fixed for hearing". Clause (4) provided that "notwithstanding anything in sub-r. (3) a general notice may also be given regarding the date, time and place of hearing of objections by publication thereof in the official Gazette and where notice has been issued in this manner, it shall be presumed that all the parties concerned have been duly intimated". Rule 8 prescribed the form in which the approved scheme shall be published and Rule 9 provided for the consequences of publication of the scheme.

The appellants contend that they did not receive the individual notices sent to them by registered post and that they "did not at all come to know about the hearing or the decision of the aforesaid objections by the Legal Remembrancer till the approved scheme relating to Jaipur- Tonk-Deoli-Kota route was published in the Rajasthan Government Gazette dated April 2, 1962". Opportunity to be afforded to the objector under s. 68D(1) must of course be a reasonable opportunity : he must have advance notice of the date, time and place and designation of the authority who will hear the objections. The authority hearing the objections must therefore give notice of the date, time and place for hearing the objections. Such notice must afford reasonable opportunity to the objector to appear before the authority and substantiate his objections. On behalf of the appellants it was submitted that the notice sent by registered post which was not served because it was never tendered to the addressees, followed by publication of the notice in the Government Gazette did not amount to affording reasonable opportunity to the objectors to substantiate their objections to the scheme. It was contended that cl. (4) of r. 7 which raises a presumption of service on publication of notice in the Government Gazette is invalid, because the State Government is not entitled to deprive the objectors of a reasonable opportunity of being heard by prescribing a presumption of service of notice of hearing merely from publication of the notice in the Government Gazette. But in considering this case it is unnecessary to embark upon the larger question which was canvassed at the Bar, whether notice given in the manner prescribed by cl. (3) r. 7 i.e. an individual notice sent by the registered post followed by a general notice published in the Government Gazette must, because of the presumption contained in cl. (4) of r. 7, always be considered as affording reasonable opportunity to the objectors. As already observed sixty-one objectors had filed objections before the Legal Remembrancer in the first instance. They appeared before the Legal Remembrancer and objected to the scheme. The scheme was approved by the Legal Remembrancer but the order of the Legal Remembrancer approving the scheme was set aside by the High Court in certain petitions filed before it. It is admitted by the appellants that they knew about the proceeding commenced in the

High Court challenging the validity of the scheme, and the order passed by the High Court remanding it to the Legal Remembrancer for hearing the objections. The appellants, however, contend that thereafter they 'did not receive any notice of the hearing pursuant to the order of remand and they did not come to know of the proceeding before the Legal Remembrancer till the scheme was published by the Government of Rajasthan. But the Legal Remembrancer was primarily the authority to be satisfied whether the objectors had adequate notice. There is nothing to show that he even relied upon the presumption of service arising from the publication of, the notice under r. 7(4). , The Legal Remembrancer was appraised of the fact that individual notice was received only by thirteen individual objectors by registered post and he had manifestly to consider whether the proceeding for hearing the objections could be started. The Legal Remembrancer had, when he commenced hearing, the following matters before him, that all the objectors were aware of the proceeding before the High Court and the order passed therein, that he had directed individual notices under r. 7 cl. (3) and the same were duly despatched, that a general notice was also published in the Government Gazette, that the scheme was an integrated scheme in respect of a route on which stage carriages were being plied by the objectors, and the objectors were vitally interested in plying and continuing to ply their buses and the publication of the scheme constituted a serious threat to their business. It is also manifest that he had to deal with operators of Motor Vehicles-a class of persons-who in order to carry on efficiently their business have constantly to acquaint themselves with the State Government Gazette in which the rules framed under the Act, the schemes, notices and the directions which the Government issue for acquiring control over Road Transport are published as required by the Motor Vehicles Act. There is no reference in the order sheet dated June 19, 1961 to the presumption which arises under r. 7(4). It appears that the Legal Remembrancer was of the opinion that those who had not been personally served with individual notices sent by registered post had still notice that the proceeding was to commence on June 26, 1961. The inference raised by the Legal Remembrancer cannot be said to be based on no evidence. The High Court has also held that the Legal Remembrancer was satisfied about service of the notice on the objectors in accordance with law, and that in proceeding to hear the objections the Legal Remembrancer acted according to law. The finding of the High Court that the objectors were duly served with the notice was one of fact, and according to the settled practice of this Court, no interference with the conclusion of the High Court would be called for. If the objectors were duly served and they failed to appear to press their objections before the Legal Remembrancer, they cannot seek to challenge the scheme after it is duly published and which by the statute is declared final. That brings us to the question whether any fundamental right of the petitioner in the writ petition, to carry on business was infringed by the State Transport undertaking plying its vehicles without obtaining permits under s. 42 (1). The scheme was by order dated March 23, 1962, of the Legal Remembrancer who was invested with authority to hear objections thereto, duly approved. The scheme so approved by the Legal Remembrancer was published in the Government Gazette, and thereby it was directed that permits of 55 operators (amongst whom is the petitioner) on the route in question shall be cancelled, and the Regional Transport Authority in exercise of the powers conferred under s. 68F (2) and in pursuance of the scheme ordered that those permits be cancelled.

Sub-section (1) and (2) of s. 68F deal with different matters; exercise of the powers under cl. (2) is not dependent upon the grant of any permits to the State Transport Undertaking. By sub-s. (1) a statutory duty is imposed upon the Regional Transport Authority to grant permits to the State

Transport Undertaking, if application is made in that behalf pursuant to an approved scheme. To such an application the provisions contained in Ch. IV such as ss. 47, 48, 57 and allied sections will not apply. It was observed by this Court in *Abdul Gajoor v. State of Mysore* (1), "In-order that the approved scheme may be implemented the State Transport Undertaking which is to run and operate the Transport Service under the (1) [1962] 1 S.C.R. 909.

scheme must have a permit from the Regional Transport Authority. Section 68-F (1) provides that the State Transport Undertaking will have to apply for a permit (i) in pursuance of the approved scheme and (ii) in the manner specified in Chapter IV. Once that is done, the sub-section proceeds to say "A Regional Transport Authority shall issue such permit to the State Transport Undertaking", and this "notwithstanding anything to the contrary contained in Chapter IV". It appears clear to us that the provisions of s. 57 (3) have nothing to do with these matters dealt with by s. 68-F (1). x x x x Under s. 68-F (1) as already mentioned the Regional Transport Authority has no option to refuse the grant of the permit provided it has been made in pursuance of the approved scheme and in the manner mentioned in Chap. IV. The duty of the Regional Transport Authority on receipt of the application from the State Transport Undertaking for a permit is therefore to examine the application for itself to see whether it is in pursuance of an approved scheme and secondly whether it has been made in the manner laid down in Chapter IV. This is a duty which the Regional Transport Authority has to perform for itself and there is no question of its asking for assistance from the public or existing permit holders for Transport Services on the route. Neither the public in general nor the permit holders has any part to play in this matter." Sub-section (2) authorises the Regional Transport Authority to take action or to make orders to effectuate the scheme and to implement its directions. In the *Samarth Transport Co. (P) Ltd. v. The Regional Transport Authority, Nagpur* (1), dealing with the conditions under which the power under s.68-F(2)(a) may be exercised it was observed that "this power does not depend upon the presentation of an application by the State Transport Undertaking for a permit. This power is exercisable when it is brought to the notice of the authority that there is an (1) [1961] 1 S.C.R. 631.

approved scheme, and to give effect to it, application for renewal cannot be entertained."

In *Kalyan Singh v. State of Uttar Pradesh* it was held that an order passed by the Regional Transport Authority under s.68-F(2) pursuant to a direction under a scheme duly approved and published is purely consequential upon the scheme, and is not open to challenge. In considering the effect of cl.(2) of s.68F it was observed in that case that "the Regional Transport Authority was by the terms of the scheme left no discretion in the matter. It was by the scheme that the right of the appellant was restricted and if the scheme became final and binding the Regional Transport Authority had no authority to permit the appellant to ply his vehicles". It was further observed that "if the right of the appellant to ply his buses is lawfully extinguished he is not entitled to maintain an appeal challenging the right of the State Transport Undertaking to ply their buses with or without permits. Nor is any fundamental right of the appellant infringed by the State Transport Undertaking plying its buses without permits, and a petition under Art. 32 of the Constitution cannot be maintained unless a fundamental right of the applicant is infringed". It was therefore held in that case that if a valid scheme contains a direction for cancellation of outstanding permits and the permits are in fact cancelled by order of the Regional Transport Authority, it is not open to the operator whose permits

are cancelled to claim that the State Authority which commenced to operate its vehicles without obtaining permits under s.42 of the Motor Vehicles Act infringes the right of the operator to carry on his business. The right of the operator, having been lawfully extinguished .pro tanto by the scheme and the consequential order under s.68F(2), he is not entitled to have resort to this Court under Art. 32 of the Constitution for protection of his alleged right.

The scheme was duly published and the permits issued in favour of fifty-five operators whose names (1) [1962] Supp. 2 S.C.R. 76.

are set out in the order dated May 3/4, 1962 were lawfully cancelled. The objectors had since cancellation of their permits no fundamental right which could be infringed by the State Government plying its vehicles with or without permits issued by the Regional Transport Authority under s.42(1) of the Motor Vehicles Act. The appeal and the writ petition therefore fail and are dismissed with costs. There will be one hearing fee.

Appeal and writ petition dismissed.