# Shri Roshanlal Gautam vs State Of Uttar Pradesh And Others on 26 October, 1964

## Equivalent citations: 1965 AIR 991, 1965 SCR (1) 841

## Author: M. Hidayatullah

## Bench: M. Hidayatullah, P.B. Gajendragadkar, K.N. Wanchoo, Raghubar Dayal, J.R. Mudholkar

PETITIONER:
SHRI ROSHANLAL GAUTAM

Vs.

RESPONDENT:
STATE OF UTTAR PRADESH AND OTHERS

DATE OF JUDGMENT:
26/10/1964

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
GAJENDRAGADKAR, P.B. (CJ)
WANCHOO, K.N.
DAYAL, RAGHUBAR
MUDHOLKAR, J.R.

CITATION:
1965 AIR 991 1965 SCR (1) 841
CITATOR INFO :
R 1974 SC1940 (11)

ACT:
Nationalisation of Transport Services--Scheme prohibiting private operators from specified routes-Whether affects rights of operators holding permits related not to routes but to specified area-Scheme whether satisfies provisions of statute-Services provided under scheme whether adequate-Section 68C Motor Vehicles Act, 1939 as amended by Motor Vehicles (Amendment) Act, 1956.

HEADNOTE:
The appellant, the holder of a permit in respect of contract

carriages in the Agra region challenged a scheme framed by the Uttar Pradesh Government nationalising road transport services in the Agra region and prohibiting private operation of the services on, certain specified routes. His writ petition before the High Court having been dismissed and Letters Patent Appeal also having failed he appealed to the Supreme Court, by special leave.

Three contentions were advanced on behalf of the appellant : (1) The scheme was only a reproduction of an earlier scheme under A. 3 of the U.P. Road Transport (Development) Act, 1955 which had been struck down by the High Court. The requirements of s. 68C of the Motor Vehicles Act were quite different from those of s. 3 of the U.P. Act, and the scheme did not answer them. (2) Under s. 68C of the Motor Vehicles Act the State was under an obligation to provide 'adequate' transport services to replace those already in operation, but the scheme provided only for 16 contract carriage services. As the number of these services could be changed under the scheme, the latter would be again open to challenge whenever the change was effected. (3) The scheme was not properly framed because it provided for the operation of contract carriages on certain routes to the exclusion of the appellant who held a permit for an area irrespective of any route or routes.

HELD : The appeal must be dismissed.

(i) It is no doubt true that while s. 68C makes a mention of an "efficient, adequate, economical and properly coordinated road transport service" "in the public interest", the U.P. Act merely mentioned "the interest of the general public" "subserving the common good or for maintaining and developing efficient transport system". However it would be wrong to think that even under the U.P. Act Government would not think of an "adequate", "economical" or "property coordinated" road transport services for the common good and for maintaining and developing an efficient road transport system. The change in the language is no doubt there but the intention underlying the words is the same, and even if the exact words of s. 68C might not have been present before the framers of the scheme, it is quite obvious that they took into account those very factors. Indeed the use of the words "adequate State road transport contract carriage service" in cl. (3) of the scheme reproduced the language of s. 68C and not that of s. 3. This suggests that the requirements of s. 68C were probably borne in mind. [845 B-F]

842

(ii) The scheme was read as providing sixteen contract carriages and it was not considered whether it would become inadequate in the future. [84 A]

(iii) Under the Motor Vehicles Act there is no doubt a distinction between area and route in some of the sections but in others that distinction does not seem to be

preserved. The provisions of s. 51(2) (i) clearly show that the area at the commencement of the permit can be cut down by notifying certain routes and there seems to be no bar to doing it later in view of the scheme of nationalisation. By taking away one of the routes the area is as effectively cut down as when an area is included in the permit but routes are indicated on which alone the contract carriages can ply. The provisions of s. 68B also indicate that power is reserved to modify the existing permits either by curtailing the area or by curtailing the routes. Taking over of certain routes exclusively for the State undertakings renders that portion of the area ineffective for a private operator such as the appellant who holds the permit for the whole area including those routes. [848 B-G]
C.P.C. Motor Services, Mysore v. State of Mysore, [19621 Supp. 1 S.C.R. 717, Kondala Rao v. A. P. State Road Transport Corporation, A.I.R. (1961) S.C. 82 and Dosa Satyanarayanamurty etc. v. Andhra Pradesh State Road Transport Corporation, [1961] 1 S.C.R. 642, relied on.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 800 of 1964. Appeal by special leave from the judgment and order dated March 30, 1964, of the Allahabad High Court in Special Appeal No. 27 of 1964.

G. S. Pathak, B. L. Singhal and B. P. Maheshwari, for the appellant.

C. B. Agarwala, K. N. Singh and O. P. Rana, for the Respondents.

G. S. Pathak, A. V. Viswanatha Sastri, B. L. Singhal and B. P. Maheshwari, for the intervener.

The Judgment of the Court was delivered by Hidayatullah J. The appellant who appeals by special leave against the judgment of the High Court of Allahabad dated March 30, 1964 is the holder of a contract carriage permit granted to him by the Regional Transport Authority, Agra and valid till February 1, 1955. He owns a single contract carriage and his permit covers the whole of the Agra region which comprises the six districts of Mathura, Agra, Aligarh, Etah, Etawah and Mainipuri. No special route or routes are indicated in his permit and the terminal of his operation are the frontiers of this region on all sides. In 1955, the Government of Uttar Pradesh, purporting to act under S. 3 of the U. P. Road Transport Services (Development) Act, 1955, framed a scheme for nationalisation of transport services in Uttar Pradesh. The scheme which was then framed was struck down by an order of the High Court of Allahabad on the petition of some private operators. In 1955, the Motor Vehicles Act, 1939 was amended by the introduction of Chapter IVA dealing with special provisions relating to State Transport Undertakings. This amendment was introduced by the Motor Vehicles (Amendment) Act, 1956 with effect from February 16, 1957. After the amending Act the scheme was reconsidered by the State Government and action was taken under Chapter IVA to notify it under s.

68C of the Motor Vehicles Act. In this scheme 56 routes, which were mentioned by name, were removed from the operation of contract carriage permits issued to private operators in the Agra region and Government announced' that adequate State Road Transport contract carriage services would be provided on those routes or portions thereof. The functioning of transport services other than those put by the State Road Transport Services was prohibited on all those routes. The private operators objected again but their objections were over-ruled and the scheme was published in the Gazette on October 17, 1959. A writ petition (Civil Miscellaneous Writ Petition No. 26622 of 1959) was filed by the appellant and others objecting to the scheme on various grounds. This was allowed on February 1, 1962 by Mr. Justice Oak who set aside the scheme and remanded it for reconsideration in the light of his order. The scheme was not struck dawn in full but only partially in respect of the petitioners in the High Court. It was ordered, however, that the State Government would be at liberty to enforce the scheme in other respects. The main reason for striking down the scheme in respect of those petitioners was that their objections were not considered and they were not given a reasonable opportunity to produce evidence in support of their objections. After remand objections were considered and an order was passed by the Legal Remembrance on October 18, 1963 by which the scheme was reaffirmed over-ruling the objections. The only change made was that instead of the provision of "adequate" contract carriage service by the State Road Transport Contract Carriage Services it was provided that "

> 1 6 contract carriage services or more or less in accordance with the need from time to time" would be provided on the routes or portion thereof which were notified. The appellant filed a petition in the High Court challenging the scheme. It was heard by Mr. Justice Broome and rejected by him on March 17, 1964. The appellant then filed a special appeal under the Letters Patent against the decision of Mr. Justice Broome. The High Court by the impugned order dismissed it "summarily" though it passed a fairly detailed order. It is against the order that the present appeal has been filed.
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> The first contention of Mr. G. S. Pathak is that although the scheme purports to be under s. 68C of the Motor Vehicles Act, the requirements of that section were not borne in mind inasmuch as the scheme framed under s. 3 of the U.P. Act was without any change approved and notified after the successive remands by the High Court. It is therefore necessary to see how far the two provisions differ in their requirements. Section 3 of the U.P. Act laid down the power of the State Government to run Road 'Transport Services as follows :-
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> "3. Power of the State Government to run Road Transport Services.-
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> (1) Where the State Government is of the opinion that it is necessary in the interests of the general public and for subserving the common good, or for maintaining and developing efficient road transport system so to direct, it may, by notification in the official Gazette declare that the road transport services in general, or any particular class of such services on any route or portion thereof as may be specified, shall be run and operated exclusively by the State Government, or by the 'State Government in conjunction with railways or be run and operated partly by the State Government and

partly by others under and in accordance with the provisions of this Act.

(2) The notification under sub-section (1) shall be conclusive evidence of the facts stated therein."

Section 68C of the Motor Vehicles Act provided as follows:-

"68C. Preparation and publication of scheme of road transport service of a Slate Transport undertaking.

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 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."

It is contended that the requirements of the former section which were the conditions precedent for action are not the same as the requirements of s. 68C. It is no doubt true that while s. 68C makes a mention of an "efficient, adequate, economical and properly coordinated road transport service" "in the public interest" the U.P. Act merely mentioned "the interest of the general public" " subserving the common good or for maintaining and developing efficient road transport system." The change of verbiage, however, does not make a change in the requirements. It would be wrong to think that even under the U.P. Act Government would not think of an 'adequate', 'economical' or 'properly coordinated' road transport service when it chose to provide road transport services for the common good and for maintaining and developing efficient road transport system. The change in language is no doubt there but the intention underlying the words is the same and even if the exact words of s. 68C might not have been present before the framers of the scheme, it is quite obvious that they took into account those very factors. Indeed, the use of the words "adequate State road transport contract carriage service" in cl. (3) of the scheme framed and notified in 1959 reproduces the language of s. 68C and not that of s. 3. This suggests that the requirements of s. 68C were probably borne in mind. Even if they were not and only the requirements of the U.P. Act were borne in mind, we find no difficulty in holding that as the requirements are basically the same, the exercise of power must be referred to s. 68c under which it has validity, and not to s. 3 of the U.P. Act. This ground of objection was rightly over-ruled by the High Court. It was next contended that the provision of "16 contract carriages or more or less' under cl. (3) of the present scheme does not carry out s. 68C either in spirit or in terms. Section 68C requires 'adequate' services to be maintained and the fixing of 16 carriages in advance, it is said, does not carry out the purpose of that provision. It is also contended that as this number is likely to be changed the scheme itself would be open to challenge when- ever

the number is less than the adequate number required. It may be pointed out that on the former occasion the provision about 'adequate' carriages was challenged as too vague. It is because of that challenge that the number of carriages is now shown and it is provided that this number may be more or less as the occasion demands. We read the scheme as providing sixteen contract carriages. We need not consider whether it would become inadequate in the future. At the moment it is stated that 16 carriages will be provided and it is not affirmed that this number is in any way inadequate.

The last contention is the most serious of all. It is submitted that the scheme is not properly framed because it provides for the operation of contract carriages on certain routes to the exclusion of the appellant who holds a permit for an area irrespective of any route or routes. It is contended that the framers of the scheme have confused between a stage carriage permit and a contract carriage permit, since the former is granted for a route or route and the latter only for an area. The argument is that if State road transport contract carriages were to be provided the scheme should have indicated an area in which they were to operate and that area should have been excluded instead of dismembering the area of the appellant by mentioning the routes. Such a procedure, it is submitted, is contrary to the scheme of the grant of permits under Chapter IV of the Motor Vehicles Act. On behalf of the respondent it is submitted that the notification of the 56 routes curtails the area such as it was and that there is no breach of the provisions of the Motor Vehicles Act.

Under the Motor Vehicles Act there is no doubt a distinction between area and route in some of the sections but in others that distinction does not seem to be preserved. 'These terms-route and area-were explained in C. P. C. Motor Services, Mysore v. The State of Mysore and A nr. (1) and it was pointed out that under the scheme of the Motor Vehicles Act, 1939 these two words sometimes stand for the road on which the omnibuses run or portions thereof. A similar view was earlier expressed in Kondata Rao v. A. P. State Road Transport Corpn. (2) In Dosa Satyanarayanamurty etc. v. The Andhra Pradesh State Road Transport Corporation("), Subba Rao I., 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 inconsis-
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> (1)[1962] Supp. 1 S.C.R. 717 (2) A.I.R. 1961 S.C. 82.
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> (3) [1961] 1 S.C.R. 642 at 664.

tency 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."

The argument thus loses a great deal of its force but there are other reasons too which show that the contention is misconceived.

By s. 2(3) a contract carriage is defined as a motor vehicle which carries a passenger or passengers on hire or reward under a contract from one point to another without stopping to pick up or set down along the line of that route passengers not included in the contract. A stage carriage is defined

as a motor vehicle carrying or adopted to carry passengers for hire or reward at separate fares paid for the whole journey or for stages of the journey. The distinction between the two is this: the contract carriage is engaged for the whole of the journey between two points for carriage of a person or persons hiring it but it has not the right to pick up other passengers en route. The stage carriage on the other hand, runs between two points irrespective of any prior contract and it is boarded by passengers en route who pay the fare for the distance they propose to travel. Mr. Pathak contends that if one examines the scheme of ss. 46 and 49 one finds that the application for a stage carriage permit is for a route or routes or area or areas but the application for a contract carriage is only for an area for which the permit is required. He contends, therefore, that as contract carriages do not ply on routes a scheme curtailing a contract carriage permit must be for a part of the area covered by the permit and that it cannot be for a route or routes. He also refers to s. 68G in which two separate principles and methods for the determination of compensation for the curtailment of areas and routes is provided and submits that this also points out that a contract carriage permit is by an area and not by a route and consequently the indication of the route on which the carriages of State undertakings would ran is ineffective to curtail the area of a private operator and the scheme must therefore fail. On the other hand, it may be pointed out that S. 51(2) of the Motor Vehicles Act itself provides as follows "51(2) : The Regional Transport Authority, if it decides to grant a contract carriage permit, may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:-

> (i) that the vehicle or vehicles shall be used only in a specified area or on a specified route or routes;

This provision clearly shows that the area at the commencement of the permit can be cut down by notifying certain routes and there seems to be no bar to doing it later in view of a scheme of nationalisation. In our judgment, the argument of the respondents must be accepted. If under S. 51 (2) (1) a permit for a contract carriage could be limited to specified route or routes notwithstanding that the petition for such a permit must be for an area there is no difficulty in accepting a scheme which cuts down the area by subtracting a few routes. By the taking over of the routes the area is as effectively cut down as when an area is included in the permit but routes are indicated on which alone the contract carriages can ply. There are two other arguments which support the contention of the respondents. Under S. 68B the provisions of Chapter IVA apply notwithstanding anything inconsistent therewith contained in Chapter IV of the Act. Sections 46 to 49 are in Chapter IV and no inconsistency between a scheme framed under S. 68C and any provision of Chapter IV can be made a ground of attack. Secondly, under s. 68F when the permits are issued to a State transport undertaking for stage carriages or contract carriages it is provided that the Regional Transport Authority may modify the terms of any existing permit so as to "curtail the area or route covered by the permit in so far as such permit relates to the notified area or notified route". This would indicate that power is reserved to modify the existing permits either by curtailing the area or by curtailing the routes. The taking over of certain routes exclusively for the State undertakings renders that portion of the area ineffective for a private operator such as the appellant who holds a permit for the whole area including those routes. The High Court was, therefore, right in holding that by the notified scheme the routes which were mentioned must be taken to have been subtracted from the area to which the permit applied. In other words, there is no merit in the appeal. The appeal fails and is

dismissed with costs.

Appeal dismissed.