

Gajraj Singh & Ors vs State Of U.P. & Ors on 1 May, 2001

Equivalent citations: AIR 2001 SUPREME COURT 2370, 2001 (5) SCC 762, 2001 AIR SCW 2212, 2001 ALL. L. J. 1365, 2001 (3) LRI 115, (2001) 5 JT 140 (SC), 2001 (5) JT 140, 2001 (6) SRJ 122, (2001) 2 UC 232, (2001) 3 CIVLJ 269, (2001) 3 ALL WC 2002, (2001) 44 ALL LR 366, (2001) 2 CURCC 163, (2001) 2 ACC 146, (2001) 3 SCALE 631, (2001) 3 SUPREME 598

Author: R.C. Lahoti

Bench: Chief Justice, R.C. Lahoti, Doraiswamy Raju

CASE NO.:

Appeal (civil) 3446 of 2001

PETITIONER:

GAJRAJ SINGH & ORS.

Vs.

RESPONDENT:

STATE OF U.P. & ORS.

DATE OF JUDGMENT:

01/05/2001

BENCH:

CJI, R.C. Lahoti & Doraiswamy Raju

JUDGMENT:

WITH C.A.No.3447/2001(@SLP(C) No.1339/2000), C.A.No.3448/2001(@SLP(C) No.1340/2000), C.A.No.3449/2001(@SLP(C) No.1342/2000), C.A.No.3450/2001(@SLP(C) No.1338/2000), C.A.Nos.3451-3452/2001(@SLP(C) NoS.11076-77/2000), C.A.No.3453/2001(@SLP(C) No.11081/2000), C.A.Nos.3454-3455/2001(@SLP(C) No.11079-80/2000), C.A.No.3456/2001(@SLP(C) No.11082/2000), C.A.No.3457/2001(@SLP(C) No.11084/2000), C.A.No.3458/2001 (@SLP(C) No.11088/2000), C.A.No.3459/2001 (@SLP(C) No.11092/2000), C.A.No.3460/2001 (@SLP(C) No.11106/2000), C.A.Nos.3461-3463/2001 (@SLP(C) No.11107-09/2000), C.A.No. 3464/2001(@SLP(C) No.13436/2000), C.A.No. 3465/2001(@SLP(C) No.13437/2000), C.A.Nos. 3466-3467/2001(@SLP(C) No.11089-90/2000), C.A.Nos. 3468-3470/2001 (@ I.As 1-9 In & SLP(C) Nos.7834-7836/2001 [CC5356-58/00]), C.A.No.3471/2001 (@I.As 1-8 In & SLP(C)No.7844/2001 [CC5767/00]) J U D G M E N T R.C.

Lahoti, J.

L...I...T.....T.....T.....T.....T.....T.....T..J A draft scheme under Section 68-C of the Motor Vehicles Act, 1939 to nationalise Saharanpur-Shahdra-Delhi route, prepared by Uttar Pradesh State Road Transport Corporation, Lucknow was published on 29.9.1959. The Allahabad High Court by its judgments dated 31.10.1961 and 7.2.1962 upheld the scheme as against 50 operators but quashed the same as against 50 operators holding that they should be granted an opportunity of hearing. These 50 operators were those who had laid challenge to the validity of the scheme by filing two groups of writ petitions consisting of 32 and 18 operators respectively. Judgments of Allahabad High Court were upheld by this Court in Jeewan Nath Wahal Vs. State Transport Appellate Tribunal (Civil Appeal No. 1616 of 1968 decided on 3.4.1968). Out of these 50 operators some of them filed suits in different courts and by virtue of interim orders they were successful in scuttling the hearing and keeping the scheme pending for well over 20 years. The matter came up before this Court in Shri Chand Vs. Government of U.P. - (1985) 4 SCC 169 wherein vide its judgment dated 23.8.1985 a two- Judges Bench of this Court directed the scheme to be quashed solely on the ground that the delay of 26 years in disposing of the objections had resulted in violation of Articles 14 and 19 (1)(g) of the Constitution. The Government was directed to frame the scheme afresh, if necessary.

Pursuant to the above direction, the U.P.S.R.T.C., Lucknow framed a draft scheme and published the same vide notification No. 1239 RW/1056 RW-85 dated 13.2.1986. The scheme so published included not only Saharanpur-Delhi route but 38 others - in all 39 routes. Objections were preferred against the scheme. While the draft scheme and the objections were so pending the Motor Vehicles Act, 1988 came into force with effect from 1.7.1989. Clause (e) of sub- section (2) of Section 217 of the 1988 Act provided that notwithstanding repeal of the 1939 Act any scheme made under Section 68-C of the 1939 Act and pending immediately before the commencement of this Act shall be disposed of in accordance with the provisions of Section 100 of the 1988 Act. The competent authority held the proposed scheme to have lapsed by operation of Section 100(4) of the 1988 Act which provides that where a proposed scheme is not approved within a period of one year from the date of its publication, the proposal shall be deemed to have lapsed. The matter travelled upto this Court and was disposed of by judgment dated 31st March, 1992 delivered in C.A. Nos.1198-1201 of 1992 (Ram Krishna Verma & Ors. Vs. State of U.P. & Ors., (since reported as - (1992) 2 SCC 620). This case was confined to Saharanpur-Shahdra-Delhi route only. This Court held that in Jeewan Nath Wahals case (Civil Appeal No. 1616 of 1968 decided on 3.4.1968), this Court while dealing with this very scheme had held that the scheme had become final except for the purpose of hearing the 50 operators who had challenged the scheme and the two-Judges Bench which dealt with and decided Shri Chands case (supra) was not justified in quashing the proposed scheme bypassing Jeewan Nath Wahals case which was a three-Judges Bench decision. This Court further held that the fresh draft scheme under Section 68-C dated 13.2.1986 must therefore be construed to be a draft scheme only in relation to 50 existing operators as per the directions ultimately emerging in Jeewan Nath Wahals case. The Court further observed that the 50 operators who were to be heard (regarding Saharanpur-Delhi route) had made a blatant abuse of the process of the court by delaying hearing as directed in Jeewan Nath Wahals case and therefore they had forfeited their right of hearing. In exercise of the power conferred by Article 142 (1) of the Constitution this Court held that the 50 operators could not be permitted to drag the litigation which should be brought to an end and as the

objections preferred by them had outlived their purpose, hearing of their objections was rendered a procedural formality with no tangible result. The Court therefore directed the competent authority to approve the scheme within a period of 30 days from the date of receipt of the judgment and publish the approved scheme in the gazette.

It appears that the competent authority, which was seized of the hearing of several objections filed before it and had in fact appointed a date of hearing, abruptly closed the hearing, approved the scheme and directed the same to be published. The approved scheme was published in the Government Gazette vide notification no.

1635/XXX-2-93-365-85 dated 29.5.1993. The preamble to the notification states that the approved scheme was being published in exercise of the powers under sub-section (2) of Section 100 of the 1988 Act and in view of the directions given by the Honble Supreme Court in C.A. Nos.1198, 1199, 1200 and 1201 of 1992 Shri Ram Krishna Verma & Ors. Vs. State of U.P. & Ors. The approved scheme includes all the 39 routes as proposed in the draft scheme published vide notification dated 13.2.1986.

Several petitions were filed in Allahabad High Court laying challenge to the approved scheme. Vide impugned judgment dated 19.11.1999 a Division Bench of High Court has dismissed all the petitions forming an opinion that the scheme had stood approved by the Supreme Court in Ram Krishna Verma's case (supra) and so was the view taken also in Nisar Ahmad & Ors. Vs. State of U.P. & Ors.-1994 (Suppl) 3 SCC 460 and therefore nothing survives for hearing and decision on the draft scheme.

Feeling aggrieved by the judgment of the High Court several petitions seeking special leave to appeal have been filed. There are a few intervention applications also filed by a few operators.

Delay condoned and leave granted in all the SLPs.

Having heard learned counsel for the parties we are satisfied that the judgment of the High Court cannot be sustained and has to be set aside as regards 38 routes, i.e., routes other than Saharanpur-Delhi route finding mention in the draft and approved schemes at serial no.1. The High Court has, in our opinion, clearly erred in holding that the decision of this Court in Ram Krishna Verma's case had the effect of approving the draft scheme dated 13.2.1986 in its entirety and after the decision in Ram Krishna Verma's case nothing had remained to be done by the competent authority except to approve the draft scheme and notify the same as approved scheme. We have carefully perused the decision in Ram Krishna Verma's case. The decision is confined to Saharanpur-Shahdra-Delhi route alone. The tracing of the history of the litigation and the reference to earlier decisions of this Court wherein the nationalisation of this route was put in issue clearly shows that this Court was dealing with Saharanpur- Delhi route and the conduct of those 50 operators who had objected to the nationalisation of that route and were thereafter indulging into wanton and vexatious litigation and thereby frustrating the hearing. In the judgments of the High Court dated 31.10.1961 and 7.2.1962, referred to in the earlier part of this judgment, and the decisions of this Court in Jeewan Nath Wahal (supra) and Shri Chand (supra) the dispute which had come up for determination was

confined to that route alone. In Shri Chands case this Court had directed the Government to frame the scheme afresh, if necessary, and obviously that direction related to Saharanpur-Delhi route. Acting on that direction, notification dated 13.2.1986 was published which included not only Saharanpur-Delhi route but 38 other routes as well. Objections were now filed as against the proposed nationalisation of 38 routes also. By reference to decision in Ram Krishna Verma's case the competent authority could not have abruptly closed the hearing of objections which related to such 38 routes nor the High Court could have upheld approval of the scheme without disposal of the objections preferred against proposed nationalisation of 38 routes (other than Saharanpur-Delhi route).

It is pertinent to note that Section 68-D of the 1939 Act provided for filing of objections within 30 days of the publication of the proposed scheme and consideration of the objections by the State Government after giving an opportunity of hearing to the objectors or their representatives and the representatives of the State Transport Undertaking. A similar provision for filing of the objections and hearing thereon is included in Section 100 of the new Act. The provision for filing of objections and hearing to base the decision thereon, as contained in the new Act, being not inconsistent with the predecessor provision rather being *pari materia* therewith, continues to survive. The provisions for nationalisation of routes and excluding operation on such routes by private operators consequent thereupon are a reasonable restriction in public interest on the fundamental right to carry on trade or business under Article 19(1)(g) of the Constitution. It is on the hearing of the objections that the competent authority would form an opinion on the question whether the proposed nationalisation would provide a convenient, adequate, economical and properly coordinated road transport service and therefore it was necessary to do so in public interest. The scheme may then be annulled, modified or approved. The right to file objections and to secure hearing thereon is statutorily provided and is a valuable right of the private operators who would be eliminated, completely or partially, from operation on the routes covered by the scheme depending upon how and to what extent it is approved. This Court did not and could not have taken away such valuable right of hearing on the objections which were already before the competent authority. The decision of this Court in Ram Krishna Verma's case does not refer to the 38 routes and therefore this Court has not excluded the hearing insofar as such 38 routes are concerned. Such exclusion of right of hearing cannot be read in the judgement by implication. A doubt arising from reading a judgment of the Court can be resolved by assuming that the judgment was delivered consistently with the provisions of law and therefore a course or procedure in departure from or not in conformity with statutory provisions cannot be said to have been intended or laid down by the Court unless it has been so stated specifically.

We have carefully perused the decision of this court dated 9.9.1994 in Nisar Ahmad & Ors. Vs. State of U.P. & Ors.- 1994 (Suppl) 3 SCC 460 also. Therein also these very schemes had come for the consideration of this Court. Almost the same pleas were raised as were raised in and disposed of by Ram Krishna Verma's case. Vide para 2 this Court has said that the direction issued by this Court under Article 142 (1) are binding on all the parties including the 50 operators and were declared to be bound by the orders passed by this Court in Ram Krishna Verma's case. Two contentions were advanced before this Court on behalf of Nisar Ahmad & Ors. : firstly, that prior approval of the Central Government relating to the scheme on the inter-state route was mandatory under Section

100(3) of the 1988 Act and yet not having been obtained the scheme was vitiated; and secondly, that the scheme having not been published under Section 100 (4) within a period of one year from the date of the draft scheme it had lapsed. This Court found no force in the contentions. The first plea was turned down on the authority of Jeewan Nath Wahal and Ram Krishna Verma's cases as also on the ground that prior approval of the Central Government had in fact been obtained on 9.9.1959. As to the second contention it was held that the scheme was not the one proposed under the 1988 Act but under the 1939 Act and therefore the scheme could not lapse as what is required by the proviso to sub-section (3) of Section 100 (of the 1988 Act) is a scheme proposed under the Act. Further, a draft scheme was published under the direction of this Court. All these observations clearly go to show that Nisar Ahmad & Ors's case (supra) related to that scheme which was dealt with by this Court in earlier two decisions. Needless to say the 38 routes were not subject-matter of those two decisions.

The upshoot of the above discussion is that the appeals are liable to be allowed insofar as the said 38 routes (i.e. other than Saharanpur-Delhi route) are concerned.

However, it is brought to our notice that on all the 39 routes, the State Road Transport Corporation of U.P. is operating buses ever since 1993 and for that purpose it has made substantial investment by putting the buses on the routes and recruiting employees to conduct, oversee and maintain operation on such nationalised routes. While protecting the statutory right of the operators to be heard under sub-section (2) of Section 100 of the 1988 Act, we have to keep in view the public interest also and therefore we do not deem it proper to quash post haste the notification dated 29.5.93 which has notified the draft scheme dated 18.2.86 as the approved scheme. In the peculiar facts and circumstances of this case allowing a hearing to the operators on their objections and in the meantime not disturbing the status quo as to operation of buses on the routes in question would meet the ends of justice and we propose to direct accordingly.

The appeals are allowed. The impugned judgment of the High Court dated 19th November, 1999 is set aside. The writ petitions are partly allowed. It is directed that the objections filed against the draft scheme dated 18.2.86 in so far as they relate to 38 routes listed at serial nos. 2 to 39 of the scheme, shall be heard and disposed of by the competent authority on their own merits and in accordance with law for which purpose the competent authority shall, within a period of four weeks from today, appoint and notify a date of hearing. We make it clear that only such of the objections shall be available to be heard and decided as were filed within 30 days of the date of publication of the draft scheme in the official gazette and which are maintainable and available to be heard in accordance with Section 68-D of the 1939 Act read with sub-section (2) of Section 100 of the 1988 Act. The draft scheme was notified under Section 68-C of the 1939 Act on 13.2.1986. The period of 30 days for filing objections had come to an end before 1.7.1988, the date of coming into force of the 1988 Act. All that had remained to be done was to hear and dispose of the objections which were already preferred and shall be deemed to have been preferred under Section 100 (1) of the 1988 Act and were available to be heard and determined by virtue of the saving clause contained in clause (e) of sub-section (2) of Section 217 of the 1988 Act. Thus, the competent authority shall hear all such parties who were entitled in law to be heard on the crucial date, if they had filed their objections

within the stipulated period. If the objections or any of them are allowed, the draft scheme shall meet the fate consistently with the decision on objections and the approved scheme dated 29.5.93 shall be accordingly modified or annulled in so far as routes specified at serial nos. 2 to 39 are concerned. In the event of the objections being dismissed, the approved scheme, as notified on 29.5.93, shall continue to remain in operation. At the risk of repetition we would like to make it clear that in so far as Saharanpur-Delhi route is concerned, no objection in that regard shall be heard and the scheme as regards the said route shall be deemed to have been approved and maintained in terms of this courts direction in Ram Krishna Verma's case (supra). No order as to the costs.

All the appeals and the intervention applications shall be deemed to have been disposed of in terms of the above direction.