H. C. Narayanappa And Others vs The State Of Mysore And Others on 28 April, 1960

Equivalent citations: 1960 AIR 1073, 1960 SCR (3) 742, AIR 1960 SUPREME COURT 1073, 1961 (1) SCJ 7 1960 3 SCR 742, 1960 3 SCR 742, 1960 3 SCR 742 1961 (1) SCJ 7, 1961 (1) SCJ 7

Author: J.C. Shah

Bench: J.C. Shah, Bhuvneshwar P. Sinha, Syed Jaffer Imam, A.K. Sarkar

PETITIONER:
H. C. NARAYANAPPA AND OTHERS

Vs.

RESPONDENT:
THE STATE OF MYSORE AND OTHERS.

DATE OF JUDGMENT:
28/04/1960

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
SINHA, BHUVNESHWAR P.(CJ)
IMAM, SYED JAFFER
SARKAR, A.K.
SUBBARAO, K.

CITATION:
1960 AIR 1073 1960 SCR (3) 742
CITATOR INFO :
F 1961 SC 82 (6,14)
D 1963 SC1047 (28)
R 1974 SC 669 (9)
R 1977 SC 441 (24)
R 1978 SC 215 (30)
R 1981 SC 711 (7)
RF 1986 SC1785 (5)
R 1992 SC1888 (8)

ACT:
Transport Business-Stage carriages-Exclusion of Private operators-Competence of Parliament to create monopolies-Grant of monopoly to State for transport business-Scheme framed by State for State Transport, Undertaking

Legality--Motor Vehicles Act, 1939 (IV of 1939), Ch. IVA, ss. 68C, 68D (2)-Constitution of India, Arts. 12, 13(3)(a) 19(1)(g), 19(6), 298, Seventh Schedule, List II, entry 26, List III, entries 21, 35.

HEADNOTE:
In exercise of the powers conferred by s. 68C of the Motor-Vehicles Act, 1939, the General Manager of the Mysore Government Road Transport Department published a scheme for the exclusion of private operators on certain routes in a specified area and reservation of those routes for the State Transport Undertaking. The scheme was approved by the Government under s, 68D(2) of the Act after the Chief Minister of the State had given an opportunity to the operators affected by the scheme to make representations objecting to it, The petitioners who were
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private operators challenged the validity of the scheme and the action taken by the Government pursuant to it on the grounds, inter alia, (1) that the petitioners have a fundamental right to carry on the business of plying stage carriages and that the provisions of Ch. IVA of the Motor Vehicles Act, 1939, which provide for the right of the State to exclusive right to carry on motor transport business are invalid,(2)that by Ch. IVA Parliament had merely attempted to regulate the procedure for entry by the State into the business of motor transport in the State, and that in the absence of legislation expressly undertaken by the State in that behalf, that State was incompetent to enter into the arena of motor transport business to the exclusion of private operators, and (3) that the scheme violated the equal protection clause of the Constitution because only fourteen out of a total of thirty one routes on which stage carriages were plied for public transport in the area specified were covered by the scheme :
Held, (1) that the expression " commercial and industrial monopolies " in entry 21 of List III of the Seventh Schedule of the Constitution of India is wide enough to include grant or creation of commercial or industrial monopolies to the State and citizens as well as control of monopolies.
(2) that it is competent for the Parliament to enact Ch. IVA of the Act under entry 21 read with entry 35 of List III.
(3)that the scheme framed under s. 68C of the Motor Vehicles Act may be regarded as "law" within the meaning of Art. 19(6) of the Constitution, made by the State excluding private operators from notified routes or notified areas, and immune from the attack that it infringes the fundamental right guaranteed by Art. 19(1)(g).
(4)that on a true reading, the scheme in question was approved in relation to the fourteen notified routes and not

in relation to a notified area and that as a scheme under s. 68C of the Act may be one in relation to an area or any route or portion thereof, the scheme could not be challenged as discriminatory.

JUDGMENT:

ORIGINAL JURISDICTION: Petition No. 2 of 1960. Petition under Article 32 of the Constitution of India for the enforcement of Fundamental Rights.

A. V. Viswanatha Sastry and B. B. L. Iyengar, for the petitioner.

G. S. Pathak, R. Gopalakrishnan and T. M. Sen, for the respondents.

C. K. Daphtary, Solicitor-General of India and B.R.L. Iyengar, for the Intervener (D. R. Karigowda). 1960. April 28. The Judgment of the Court was delivered by SHAH, J.-The petitioners pray for a writ quashing a scheme approved under s. 68D(2) of the Motor Vehicles Act, 1939, by the Government of the State of Mysore and for a writ restraining the respondents, i.e., the State of Mysore, the General Manager, the Mysore Government Road Transport Department and the Regional Transport Authority, Bangalore, from taking action pursuant to the scheme.

The petitioners are operators of Stage carriages on certain routes in the sector popularly known as " Anekal area " in the Bangalore District. On January 13, 1959, the General Manager, Mysore Government Road Transport Department, who will hereinafter be referred to as the 2nd respondent, pub- lished a scheme in exercise of the powers conferred by s. 68C of the Motor Vehicles Act, 1939, for the exclusion of private operators on certain routes and reservation of those routes for the State transport undertaking in the Anekal area. The Chief Minister of the Mysore State gave the operators affected by the scheme an opportunity of making oral representations and on perusing the written objections and considering the oral representations, approved the scheme as framed by the 2nd respondent. On April 23, 1959, the scheme was published in the Mysore State Government gazette' On June 23, 1959, renewal applications submitted by petitioners 1 to 3 for permits to ply Stage carriages on certain routes covered by the scheme were rejected by the Transport Authority and the 2nd respondent was given permanent permits operative as from June 24, 1959, for plying buses on those routes. In Writ Petition No. 463 of 1959 challenging the validity of the permanent permits granted to the 2nd respondent, the High Court of Mysore held that the issue of permits to the 2nd respondent before the expiry of six weeks from the date Of the application was illegal. To petitioners 1 to 3 and certain other operators renewal permits operative till March 31, 1961, were thereafter issued by the third respondent. The 2nd respondent applied for fresh permits in pursuance of the scheme approved on April 15, 1959, for plying Stage carriages on routes specified in the scheme and notices thereof returnable on January 5, 1960, were served upon the operators likely to be affected thereby. On January 4, 1960, the five petitioners applied to this court under Art. 32 of the Constitution for quashing the scheme and for incidental reliefs. The petitioners claim that they have a fundamental right to carry on the business of plying stage carriages and the scheme framed by the 2nd respondent and approved by the State of Mysore

unlawfully deprives them of their fundamental right to carry on the business of plying stage carriages in the Anekal area. The diverse grounds on which the writ is claimed by the petitioners need not be Bet out, because, at the hearing of the petition, counsel for the petitioners has restricted his argument to the following four heads:

(1) that the scheme violates the equal protection clause of the Constitution, because only fourteen out of a total of thirty one routes on which stage carriages were plied for public transport in the Anekal area were covered by the scheme and that even from among the operators on the fourteen routes notified, two operators were left out, thereby making a flagrant discrimination between the operators even on those fourteen routes;

(2) that by Chapter IVA of the Motor Vehicles Act, 1939, Parliament had merely attempted to regulate the procedure for entry by the States into the business of motor transport in the State, and in the absence of legislation expressly undertaken by the State of Mysore in that behalf, that State was incompetent to enter into the arena of motor transport business to the exclusion of private operators; (3)that the Chief Minister who heard the objections to the scheme was biased against the petitioners and that in any event, the objections raised by the operators were not considered judicially; and (4) that the Chief Minister did not give " genuine consideration " to the objections raised by the operators to the scheme in the light of the conditions prescribed by the Legislature.

Re. 1:

In column 1 of the scheme " part of Bangalore District, viz,, Bangalore North, Bangalore South, Anekal and Hosakote Taluks " is set out as the area in relation to which the scheme is approved; and in column 3, " the routes (with their starting points, termini, intermediate stations and route length) in which the State transport undertaking will introduce its services to the exclusion of private operators " are those set out in statement 1 appended to the scheme. Statement 1 sets out the description of fourteen routes with their intermediate points, route length, number of buses to be operated and the maximum number of trips to be performed on each route. By column 4 " the number of existing stage carriages on each route with the number of trips and the names of their opera- tors " are described " as in statement 2 appended ". Statement 2 sets out the names and places of business of fifty-six operators together with the routes operated and the numbers of the stage carriages and trips made by those operators. In the Anekal area, there are thirty-one routes, which are served by stage carriages operated by private operators, and by the approval of the scheme, only fourteen of those routes are covered by the scheme' Section 68C, in so far as it is material, provides that a State transport undertaking, if it is of opinion that it is necessary in the public interest that road transport services in relation to any area or route or portion thereof should be run and operated by itself, whether to the exclusion, complete or partial, of other persons or otherwise, it may

prepare a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and other particulars respecting thereto as may be prescribed. Section 68D(1) provides for inviting objections by persons affected by the scheme. Sub-section 2 of s. 68D authorises the State Government after considering the objections and giving an opportunity to the objectors to approve or modify the scheme; and by sub-s. 3, the scheme as approved or modified and published by the State Government in the official gazette shall " become final and shall be called the approved scheme and the area or route to which it relates shall be called the notified area or notified route." Counsel for the petitioners contended that exercising powers under s. 68C, the State transport undertaking may prepare a scheme in respect of an area or a number of routes in that area, but not a scheme for an area which is to apply to some only and not to, all routes on which public transport vehicles in the area operate. In this case, it is unnecessary to decide whether it is open to a State transport undertaking under a scheme framed for a notified area to limit its application to some only of the routes, because on a true reading of the scheme, it is amply clear that the scheme was approved in relation to fourteen notified routes and not in relation to a notified area.,, The approved scheme is in the form prescribed by the rules, and in the form prescribed, by column 1, the area in relation to which the scheme is approved is required to be set out. But a scheme under s. 68C must be one in relation to an area or any route or portion thereof wherein the transport service is to be undertaken by the State transport under taking to the exclusion, either complete or partial, of other operators. Column 1 of the approved scheme undoubtedly describes the area in relation to which the scheme is approved, but by the designation of the area, in the scheme, an intention to exclude either wholly or partially the operators of stage carriages from that area is not evinced either expressly or by implication. By column 3, the scheme expressly directs that the State transport undertaking will introduce its service to the exclusion of private operators on the specified routes. The scheme must therefore be regarded as one for the fourteen notified routes and not in relation to the area described in column 1.

Counsel for the petitioners submitted that an order passed on October 22, 1959, by the 3rd respondent the Regional Transport Authority-rejecting applications for permits for one of the fourteen routes to an applicant, indicated that in the opinion of the third, respondent, the scheme related to a notified area and not to notified routes. The order states that. " an approved scheme for the exclusive operation in the notified area of Bangalore District " by the second respondent " has come into existence after the notification of the route Bangalore to Nallur, and the major, portion of the route applied for lie in the notified area and as such it was not desirable, to grant any permit to operators to pass through notified area in the intraState route." The third respondent may have in considering the application assumed that the scheme related to a notified area, but the true interpretation of the scheme cannot be adjudged in the light of that assumption. The other document relied upon is a statement of objections filed by the second respondent on October

24, 1959, resisting the application for stage carriage permits to a private operator on the route Siddalaghatta-Bangalore via Nallur. In para. 4 of the statement, it was submitted that " the existing notification dated October 15, 1959, came under the notified area of the department" of the second respondent " and that would overlap certain services of the department". But because in making his defence, the second respondent has referred to the scheme as dealing with " the notified area", the scheme will not necessarily be hold to be one in relation to the notified area.

The argument that among the operators on the fourteen routes, two have been selected for special treatment and on that account, the scheme is discriminatory, has, in our judgment, no substance. It is averred in para. 13 of the petition that two persons, Chikkaveerappa operating on route Chikkathirupathi to Bangalore via Surjapur, Domsandra and Agara and Krishna Rao operating on route Bangalore to Chik- kathirupathi via Agara and Surjapur are not amongst those who are excluded from operating their vehicles on the notified routes. In the affidavit filed by the State and the second respondent, it is submitted that the plea of the petitioners that the two persons operating stage carriages on specified routes were not amongst those to be excluded is incorrect, and that those two persons had been notified by the Secretary of the third respondent that they were "

likely to be affected on giving effect to the approved scheme." Undoubtedly, route-item No. 2 in statement 1 to the scheme is " Bangalore to Surjapur or any portion thereof "

and the route operates via Agara and Domsandra, but the record does not disclose that the two named persons are, in plying their stage carriages, entitled to operate on the route specified with right to stop at the named places for picking up passengers.

It is not clear on the averments made in the petition that the route on which the stage carriages of the two named persons ply are identical; even if the routes on which the stage carriages of these two operators ply overlap the notified route, in the absence of any evidence to show that they had the right to pick up passengers en route, the discrimination alleged cannot be deemed to have been made out.

Re. 2:

Article 298 of the Constitution as amended by the Constitution (Seventh Amendment) Act, 1956. recognises the executive power of the Union and of each State as extending to the carrying on of any trade or business. That power of the Union is subject in so, far as the trade or business is not one in respect of which Parliament may make laws, to legislation by the State and the power of each State, in so far as the trade or business is not one with respect to which the State Legislature may make laws, is subject to legislation by Parliament. Like ordinary citizens, the Union and the State Governments may carry on any trade or business subject to

restrictions which may be imposed by the Legislatures competent to legislate in respect of the particular trade or business. Under Article 19(6) of the Constitution as amended by the First Amendment Act, 1951, nothing in sub-cl. (g) of cl. (1) of Art. 19 is to affect the operation of any existing law in so far as it related to, or prevent the State from making any law relating to the carrying on by the State or by a Corporation owned or controlled by the State of any industry or business, whether to the exclusion, complete or partial, of citizens or otherwise. The State may therefore carry on any trade or business, and legislation relating to the carrying on of trade or business by ,the State, is not liable to be called in question on the ground that it infringes the fundamental freedom of citizens under Art. 19(1)(g). The Motor Vehicles Act.1939, was enacted by the Central Legislative Assembly in exercise of its power under the Government of India Act, 1935, to legislate in respect of mechanically 'propelled vehicles. Chapter IVA containing ss. 68A to 681 was incorporated into that Act by the Parliament by Act 100 of 1956 whereby special provisions relating to the conduct of transport undertakings by the States or Corporations owned or controlled by the State were made. Section 68A defines the expression " State transport undertaking " as meaning among others an undertaking for providing transport service carried on by the Central Government or a State Government or any Road Transport Corporation established under Act 44 of 1950. By s. 68B, the provisions of that chapter and the rules and orders made thereunder are to override Chapter IV and other laws in force. Section 68C authorises the State transport undertaking to prepare and publish a scheme of road transport services of a State transport undertaking. Section 68D deals with the lodging of objections to the scheme framed under the preceding section, the of those objections and the publication of the final scheme approved or modified by the State Government. Section 68F deals with the issue of permits to State transport undertakings in respect of a notified area or notified route and provides that the Regional Transport Authority shall issue such permits to the State transport undertaking notwithstanding anything contained in Chapter IV. It also enables the Regional Transport Authority, for giving effect to the approved scheme, to refuse to entertain any application for the renewal of any other permit, to cancel any existing permit, to modify the terms of any existing permit so as to render the permit ineffective beyond a specified date, to reduce the number of vehicles authorised to be used under the permit and to curtail the area or route covered by the permit. Section 68G sets out the principles and method of determining compensation to persons whose existing permits are cancelled.

By Chapter IVA, the State transport undertaking which is either a department of the State or a corporation owned or controlled by the State on the approval of a scheme, is entitled, consistently with the scheme, to exclusive right to, carry on motor transport business. The Regional Transport Authority is, bound to grant permit for the routes covered by the,, scheme to the State transport undertaking if that authority applies for the same and the Regional Transport Authority is also bound in giving effect to the approved scheme, to modify the terms of existing permits and to refuse to entertain applications for renewal of permits of private operators. Chapter IVA is

not merely regulatory of the procedure for carrying on business of road transport by the State; it enables the State transport undertaking, subject to the provisions of the scheme, to exclude private operators and to acquire a monopoly, partial or complete, in carrying on transport business, in a notified area or on notified routes.

The authority of the Parliament to enact laws granting monopolies to the State Government to conduct the business of road transport is not open to serious challenge. Entry No. 21 of List III of the Seventh Schedule authorises the Union Parliament and the State Legislatures concurrently to enact laws in respect of commercial and industrial monopolies, combines and trusts. The argument of the petitioners that the authority conferred by entry No. 21 in List III is restricted to legislation to control of monopolies and not to grant or creation of commercial or industrial monopolies has little substance. The expression " commercial and industrial monopolies " is wide enough to include grant or monopolies to the State and Citizens as well as control of monopolies, The expression used in a constitutional enactment conferring legislative powers must be construed not in any narrow or restricted sense but in a sense beneficial to the widest possible amplitude of its powers: Navinchandra Mafatlal v. The Commissioner of Income- tax, Bombay City(1), The United Provinces v. Atiqua Begum(2). Entry No. 26 of List II of the Seventh Schedule which invests the States with exclusive authority to legislate in respect of trade and commerce within the State, subject. to the provisions of entry No. 33 of List III, does not derogate from the authority conferred by entry 21 of List III concurrently to the Parliament and the State Legislatures, to grant or create by law commercial or industrial monopolies. The amplitude of the powers under the entry in the concurrent list expressly dealing with commercial and industrial monopolies cannot be presumed to be restricted by the (1) [1955] 1 S.C.R. 829, 836.

(2) [1940] F. C. R. 110.

generality of the expression " trade and commerce in the State List. If the argument of the petitioners and the intervener that legislation relating to monopoly in respect of trade and industry is within the exclusive competence of the State be accepted, the Union Parliament cannot legislate to create monopolies in the Union Government in respect of any commercial or trading venture even though power to carry on any trade or business under a monopoly is reserved to the Union by the combined operation of Art. 298, and the law which is protected from the attack that it infringes the fundamental freedom to carry on business by Art. 19(6). We are therefore of the view that Chapter IVA could competently be enacted by the Parliament under entry No. 21 read with entry No. 35 of the Concurrent List.

The plea sought to be founded on the phraseology, used in Art. 19(6) that the State intending to carry on trade or business must itself enact the law authorising it to carry on trade or business is equally devoid of force. The expression " the State " as defined in Art. 12 is inclusive of the Government and Parliament of India and the Government and the Legislature of each of the States. Under entry No. 21 of the Concurrent List, the Parliament being competent to legislate for creating,

commercial or trading monopolies, there is, nothing in the Constitution which deprives it of the power to create a commercial or trading monopoly in the Constituent States. Article 19(6) is a mere saving provision: its function is not to create a power but to, immunise from attack the exercise of legislative power falling within its ambit. The right of the State to carry on trade or business to the exclusion of others does not &rise by virtue of Art. 19(6). The right of the State to carry on trade or business is recognised by Art. 298; authority to exclude competitors in the field of such trade or business is conferred on the State by entrusting power to enact laws under entry 21 of List III of the Seventh Schedule,, and the exercise of that power in the context of fundamental rights is secured from attack by Art. 19(6), In any event, the expression " law " as, defined in Art. 13(3)(a) includes any ordinance, order, bye-law, rule, regulation, notification custom, etc., and the scheme framed under s. 68C may properly be regarded as " law "

within the meaning of Art. 19(6) made by the State excluding private operators from notified routes or notified areas, and immune from the attack that it infringes the fundamental right guaranteed by Art. 19(1)(g).

Be.3:

The plea that the Chief Minister who approved the scheme under S., 68D was biased has no substance. Section 68D of the Motor Vehicles Act undoubtedly imposes a duty on the State Government to act judicially in considering the objections and in approving or modifying the scheme proposed by the transports undertaking. Gullapalli Nageswara Rao v. Andhra Pradesh State Road Transport Corporation and another(1). It is also true that the Government on whom the duty to decide the dispute rests, is substantially a party to the dispute but if the Government or the authority to whom the power is delegated acts judicially in approving or modifying the scheme, the approval or modification is not open to challenge on a presumption of bias. The Minister or the officer of the Government who is invested with the power to hear objections to the scheme is acting in his official capacity and unless there is reliable evidence to show. that he is biased, his decision will not be liable to be called in question, merely because he is, a limb of the Government. The Chief Minister of the State has filed an affidavit in this case stating that the contention of the petitioners that he was " biased in favour of the scheme was baseless he has also stated that he heard such objections and representation& as were made before him and he had given the fullest opportunity to the objectors to submit their objections individually. The Chief Minister has given. detailed reasons for approving the scheme and has dealt with such of the objections as he says were urged before him. In the last para. of the reasones given, it is stated that the Government have heard all the arguments advanced on behalf of the operators and " after: giving full consideration-to them, the Government have come to (1959) Supp. 1 S.C.R.319 the conclusion that the scheme is necessary in the interest of the public and is accordingly approved subject to the modifications that it shall come into force on May 1, 1959 ". In the absence of any evidence controverting these averments, the plea of bias must fail.

Be. 4:

The argument that the Chief Minister did not give genuine consideration " to the objections raised by operators to the scheme in the light of the conditions prescribed has no force. The order of the Chief Minister discusses the questions of law as well as questions of fact. There is no specific reference in the order to certain objections which were raised in the reply filed by the objectors, but we are, on that account, unable to hold that the Chief Minister did not consider those objections. The guarantee conferred by s. 68D of the Motor Vehicles Act upon persons likely to be affected by the intended scheme is & guarantee of an opportunity to put forth their objections. and to make representations to the State Government against the acceptance of the scheme. This opportunity of making representations and of being heard in support thereof may be regarded as real only if in the consideration of the objections, there is a judicial approach. But the Legislature does not contemplate an appeal to this Court against the order passed by the State Government approving or modifying the scheme. Provided the authority invested with the power to consider the objections gives an opportunity to the objectors to be heard in the matter and deals with the objections in the light of the object intended to be secured by the scheme, the ultimate order passed by that authority is not open to challenge either on the ground that another view may possibly have been taken on the objections or that detailed reasons have not been given for upholding or rejecting the contentions raised by the objectors.

In the view taken by us, the contentions raised by the petitioners fail and the petition is therefore dismissed with costs.

Petition dismissed.