

Supreme Court of India

Yogeshwar Jaiswal, Etc, Etc vs State Transport Appellate ... on 31 January, 1985

Equivalent citations: 1985 AIR 516, 1985 SCR (2) 790

Author: E Venkataramiah

Bench: Venkataramiah, E.S. (J)

PETITIONER:

YOGESHWAR JAISWAL, ETC, ETC.

Vs.

RESPONDENT:

STATE TRANSPORT APPELLATE TRIBUNAL AND ORS.

DATE OF JUDGMENT 31/01/1985

BENCH:

VENKATARAMIAH, E.S. (J)

BENCH:

VENKATARAMIAH, E.S. (J)

MUKHARJI, SABYASACHI (J)

CITATION:

1985 AIR 516 1985 SCR (2) 790

1985 SCC (1) 725 1985 SCALE (1) 204

CITATOR INFO :

F 1986 SC 119 (3,4)

F 1986 SC 242 (1,2)

F 1986 SC 1719 (4)

RF 1992 SC 1789 (5)

ACT:

Motor Vehicles Act 1939 Sections 68C, 68D and 68F:

HEADNOTE:

Stage carriages of State Transport Undertaking- Exclusive operation of- Draft scheme published-No decision taken thereon by State Government for nine years-Increased transport facilities-Need and necessity arising-Regional Transport Undertaking granting temporary permits-Action whether valid and legal-Statutory duty imposed by section 68C-Speedy exercise with due regard to public interest-Necessity of.

Administrative Law:

Statutory duty-Delay in performance of - Abuse of process of law - To be remedied by Court.

Practice and Procedure:

Motor Vehicle Permits-Grant of-Delay in-Performance of statutory duty - duty of Court to enforce by issuance of writ.

A notification dated November 17, 1971 was published under section 68C of the Motor Vehicles Act 1939, inviting objections to a draft scheme providing for exclusive operation of stage carriages of the State Transport Undertaking over thirteen routes in a district. At the Regional Transport Authority felt that it was necessary to increase the strength of the stage carriage services of nine routes out of the thirteen routes covered by the said scheme, it decided by its order dated December 17, 1979 to invite applications for temporary carriage permits. This decision was taken after it had allowed amalgamation and extension of certain existing permits held by 102 operators. Pursuant to this invitation by the Regional Transport Authority, a large number of persons including the appellants applied for the temporary permits. On January 10, 1980, the State transport undertaking having not made any applications under section 68F(IA)

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the application of the appellants and a large number of other persons about 800 were considered by the Regional Transport Authority and the appellants were granted nineteen temporary permits.

Some Operators who felt aggrieved by the resolutions of the Regional Transport Authority passed on December 17, 1979 and January 10, 1980 filed Revision Petitions before the State Transport Appellate Tribunal.

The Tribunal by its order dated June 3, 1981 set aside both the resolutions dated December 17, 1979 and January 13, 1980 of the Regional Transport Authority, on the ground that the amalgamation and extension of permits granted in favour of the existing operators, after the publication of the scheme under section 68C was contrary to the provisions of Chapter IVA of the Act.

The appellants filed writ petitions which were dismissed by the High Court, which held that since the grant of temporary permits in favour of the appellants was dependent upon the order dated December 17, 1979 to which the appellants were not parties, the temporary permits granted in their favour on January 10, 1980 were also liable to be set aside.

Allowing the Appeals to this Court,

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HELD: 1. The order of the Tribunal and the order of the High Court to the extent they cancel the temporary permits in favour of the appellants are set aside. The appellants are permitted to operate their services under the temporary permits issued to them under section 68F (IC) on January 10, 1980 and the operation of the said temporary permits shall come to an end in accordance with law. [799E]

2. A direction is issued to the State Government to pass orders under section 68D (2) approving the scheme with or without any modification or rejecting it or to pass any other order thereon which it may under that provision on or

before July 31, 1985. Such approved scheme shall be published under section 68D (3) on or before August 31, 1985. Failure to do so, the scheme published under section 68C shall stand quashed with effect from August 31, 1985. [799C-D]

3. (i) Both the Tribunal and the High Court overlooked the relevant issues affecting the public interest which should always be the guiding principle in deciding cases relating to grant of motor vehicles permits under the Act. [798B]

(ii) The Tribunal and the High Court both failed to notice that the scheme had been published in the year 1971 and the order issuing temporary permits had been passed nearly nine years after its publication, after the Regional Transport Authority was satisfied that there was necessity for granting them. [i]

(iii) The Tribunal and the High Court did not seek to elicit information about the reasons for the inordinate delay in the State Government passing its order under section 68D of the Act and failed to consider the adverse effect on the travelling public. [798D]

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4. The Regional Transport Authority had found that there was need for issuing the said temporary permits for some of the routes in question, after it had granted extension to the permits held by 102 existing operators. On the cancellation of the said extensions, the need for providing additional travelling facilities became further intensified and therefore there was certainly no case for setting aside the temporary permits granted in favour of the appellants. The cancellation of the temporary permits issued in favour of the appellants has resulted ill grave public prejudice. [798G-H]

5. Delay in performance of statutory duties amounts to an abuse of process of law and has to be remedied by the court particularly when the public interest suffers thereby. [796F]

6. (i) The provisions of section 68C and section 68D of the Motor Vehicles Act 1939 clearly indicate that any scheme which is intended for providing efficient, adequate, economical or properly by coordinated transport service should be approved either as it is or in a modified form or rejected as the case may be within a reasonably short time as any extraordinary delay is bound to upset all or any of the factors, namely efficiency, adequacy, economy of coordination which ought to govern an approved scheme under Chapter IVA of the Act. [194G-H]

(ii) On account of various reasons such as the growth of population and the development of the geographical area adjacent to the area or route in question, any unreasonable delay may render the very proposal contained in the scheme antiquated, outmoded and purposeless. Hence there is need for speedy disposal of the case under section 68D of the

Act. [795A-B]

(iii) The power under section 68D has to be exercised having due regard to the public interest. [796H]

(iv) If there is an unreasonably long and unexplained delay in the State Government passing orders under section 68D of the Act, the Court may issue a mandamus to the State Government to dispose of the case under section 68D of the Act within a specified time or may in an appropriate case even issue a writ in the nature of certiorari quashing the scheme and a writ in the nature of prohibition directing the State Government not to proceed with the consideration of the scheme published under section 68C of the Act because section 68D does not confer an unfettered discretion on the State Government to deal with the case as it likes. [796F-G]

7. Sub-sections (IA) and 1C of section 68F of the Act read together indicate that what can be granted under either of the said sub-sections is only a temporary permit which can last during the period between the date of publication of the scheme under section 68C of the Act and the date on which the order under section 68D of the Act is made subject to the provisions contained in sub-section (IB) of section 68F of the Act. The life of such temporary permit cannot extend to an unreasonably long period, as even a renewable permit issued under Chapter IV of the Act is subject to the restrictions contained in section 58 of the Act as regards its duration and renewal and that a temporary permit issued under section 62 of the Act cannot be in force in any case for more than four months. The State Government is necessarily therefore required by law to pass its orders under section 68D of the Act as early as possible. [796C-E]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 53, 54-57, A 202-04 and 255 of 1982.

From the Judgment and Order dated 27th November, 1981 of Allahabad High Court in Civil Miscellaneous Writ Petitions Nos. 29]5, 2888 2914, and 2974 of 1981.

J. P. Goyal, S. N. Kacker, Shanti Bhushan, V. K. Verma, V. J. Francis, Mahabir Singh and N. S. Malik for the appearing Appellants.

V. M. Tarkunde, K. K. Venugopal, Prithviraj, B. S. Chauhan, Rani Chhabra, R. K. Jain, Mrs. Shobha Dikshit and Raju Ramachandran for the appearing Respondents.

The Judgment of the Court was delivered by VENKATARAMIAH, J. The lamentable delay of nearly fourteen years involved in the State Government of Uttar Pradesh passing its order under section 68D of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act') on a scheme published

under section 68C thereof has been the main cause of these appeals by special leave filed against the judgment of the High Court of Allahabad dated November 27, 1981. E A notification dated November 17, 1971 was published under section 68C of the Act by the State transport undertaking of the State of Uttar Pradesh in the U. P. Gazette dated November 27, 1971 inviting objections to a draft scheme providing for the exclusive operation of its own stage carriages over thirteen routes within the jurisdiction of the Regional Transport Authority of Meerut. It is unfortunate that no decision has yet been taken by the State Government under section 68D of the Act for one reason or the other. In the meanwhile the members of the public as well as the motor operators have become subject to several constraints arising from the publication of such a scheme.

Chapter IVA of the Act was introduced by Act 100 of 1956 into the Act with the object of making provision for operation of motor vehicles to the exclusion, complete or partial, of other persons for the purpose of providing an efficient, adequate, economical and properly co-ordinated transport service to the community. The provisions contained in Chapter IVA of the Act and the Rules made thereunder are declared as having overriding effect on the provisions in Chapter IV of the Act which contains provisions relating to control of transport vehicles and all other laws. Section 68C of the Act provides that where any State transport undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service, it is necessary in the public interest that road transport services in general or in 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 to be covered and such other particulars respecting thereto as may be prescribed, and shall cause every such scheme to be published in the Official Gazette and also in such other manner as the State Government may direct. On the publication of the scheme, any person already providing transport facilities by any means along or near the area or route proposed to be covered by the scheme, any association representing persons interested in the provision of road transport facilities recognised in this behalf by the State Government and any local authority or police authority within whose jurisdiction any part of the area or route proposed to be covered by the scheme lies may, within thirty days from the date of the Publication of the scheme in the official Gazette, file objections to it before the State Government. The State Government may after considering the objections and after giving an opportunity to the objector or his representatives and the representatives of the State transport undertaking to be heard in the matter if they so desire, approve or modify the scheme. This is the substance of sub-sections (1) and (2) of section 68D of the Act. Under subsection '3) thereof the scheme approved or modified has to be published in the official Gazette and such scheme is called the approved scheme and the area or route to which it relates is called the notified area or notified route. The provisions of section 68C and section 68D of the Act clearly indicate that any scheme which is intended for providing efficient, adequate, economical or properly co-ordinated transport service should be approved either as it is or in a modified form or rejected, as the case may be, within a reasonably short time as any extraordinary delay is bound to upset all or any of the factors, namely, efficiency, adequacy, economy or coordination which ought to govern an approved scheme under Chapter IVA of the Act. On account of various reasons such as the growth of population and the development of the geographical area adjacent to the area or route in question, any unreasonable

delay may render the very proposal contained in the scheme antiquated, outmoded and purposeless. Hence there is need for speedy disposal of the case under section 68D of the Act.

The other legal constraints flowing from the publication of the scheme under section 68C of the Act also lead us to the same conclusion. Section 68F (ID) of the Act provides that save as otherwise provided in sub-section (1A), or sub-section (1C) thereof no permit shall be granted or renewed during the period intervening between the date of publication under section 68C of any scheme and the date of publication of the approved or modified scheme, in favour of any person for any class of road transport service in relation to an area or route or portion thereof covered by such scheme. The proviso to sub-section (ID) of section 68F of the Act, however, states that where the period of operation of a permit in relation to any area, route or portion thereof specified in a scheme published under section 68C expires after such publication, such permit shall be renewed for a limited period, but the permit so renewed shall cease to be effective on the publication of the scheme under sub-section (3) of section 68D of the Act. This provision overrides the provisions in section 58 of the Act which provides for the renewal of motor vehicle permits issued under Chapter IV of the Act. As regards the issue of fresh permits for operating motor vehicles of the class referred to in the scheme in the area or on the route in question between the date of publication of the scheme under section 68C of the Act and the date of publication of the approved or modified scheme under section 68D of the Act, subsections (IA) and (1C) of section 68F of the Act alone have to be resorted to. Sub-Section (IA) of section 68F gives preference to the State transport undertaking regarding the issue of such permits. It provides that where any scheme has been published by a State transport undertaking under section 68C, that undertaking may apply for a temporary permit, in respect of any area or route or portion thereof specified in the said scheme, for the period intervening between the date of publication of the scheme and the date of publication of the approved or modified scheme, and where such application is made, the State Transport Authority or the Regional Transport Authority, as the case may be, shall, if it is satisfied that it is necessary to increase, in the public interest the number of vehicles operating in such area or route or portion thereof, issue the temporary permit prayed for by the State transport undertaking. Such temporary permit shall be effective if the scheme is published under sub-section (3) of section 68D of the Act until the grant of the permit to the State transport undertaking under sub-section (1) of section 68F of the Act or if the scheme is not published accordingly, until the expiration of one week from the date on which the order under sub-section (2) of section 68D of the Act is made. If no application for the temporary permit is made under sub-section (IA) of section 68F of the Act by the State transport undertaking, the State Transport Authority or the Regional Transport Authority, as the case may be, may under sub-section (1C) of section 68P of the Act grant, subject to such conditions as it may think fit, temporary permit to any person in respect of the area or route or portion thereof specified in the scheme and the permit so granted shall cease to be effective on the issue of a permit to the State transport undertaking in respect of that area or route or portion thereof. Sub-sections (IA) and (1C) of section 68 of the Act read together indicate that what can be granted under either of the said sub-sections is only a temporary permit which can last during the period between the date of publication of the scheme under section 68C of the Act and the date on which the order under section 68D of the Act is made subject to the provisions contained in subsection (IB) of section 68F of the Act. The life of such temporary permit cannot extend to an unreasonably long period, as even a renewable permit issued under Chapter IV of the Act is subject to the restrictions contained in section 58 of the Act as

regards its duration and renewal and that a temporary permit issued under section 62 of the Act cannot be in force in any case for more than four months. Necessarily, therefore, the State Government is required by law to pass its orders under section 68D of the Act as early as possible. Delay in performance of statutory duties amounts to an abuse of process of law and has to be remedied by the court particularly when the public interest suffers, thereby. Hence if there is an unreasonably long and unexplained delay in the State Government passing orders under section 68D of the Act, the Court may issue a mandamus to the State Government to dispose of the case under section 68D of the Act within a specific time or may in an appropriate case even issue a writ in the nature of certiorari quashing the scheme and a writ in the nature prohibition directing the State Government not to proceed with the consideration of the scheme published under section 68C of the Act because section 68D does not confer an unfettered discretion on the State Government to deal with the case as it likes. The power under section 68D has to be exercised having due regard to the public interest.

In the cases before us the appellants are aggrieved by the A quashing of the temporary permits which had been issued on January 10, 1980 under section 68F (1C) of the Act by the Regional Transport Authority, Meerut in their favour to operate stage carriages on some of the routes covered by the scheme nearly nine years after its publication. It appears that the Regional Transport Authority felt that it was necessary to increase the strength of the stage carriage Services on nine routes out of the thirteen routes covered by the scheme and accordingly it decided by its order dated December 17, 1979 to invite applications for temporary carriage permits. This decision was taken by the Regional Transport Authority after it had allowed the amalgamation and extension of certain existing permits held by 102 operators Pursuant to the invitation by the Regional Transport Authority, a large number of persons including the appellants applied for the temporary permits before the last date specified for making such applications i. e. December 31, 1979. On January 10, 1980, the U. P. State Transport Undertaking having not made any application under section 68F (IA) of the Act, the 1? applications of the appellants and a large number of other persons who were about 800 in number were considered by the Regional Transport Authority and the appellants were granted in all nineteen temporary permits. Some persons who felt aggrieved by the resolutions of the Regional Transport Authority passed on December 17 1979 and January 10, 1980 filed revision petitions before the State Transport Appellate Tribunal, Lucknow. The Tribunal by its order dated June 3, 1981 set aside both the resolutions dated December 17, 1979 and January 10, 1980 passed by the Regional Transport Authority. The main ground for setting aside the resolution dated December 17, 1979 was that the amalgamation and extension of permits granted in favour of the existing operators after the publication of the scheme under section 68C of the Act was contrary to the provisions of Chapter IVA of the Act. The Tribunal, however, did not hold that there was no necessity for increasing the number of stage carriage services on the routes in question and for issuing temporary permits under section 68F of the Act. Thereafter the appellants filed writ petitions before the High Court under Article 226 of the Constitution questioning the correctness of the order setting aside the temporary permits granted in their favour on January 10, 1980. The existing operators who had been granted amalgamation and extension of their permits by the Regional Authority on December 17, 1979, however, did not challenge the order of the Tribunal even though the orders passed in their favour were also set aside. The High Court dismissed the writ petitions filed by the appellants holding that since the grant of temporary permits in favour of the

appellants was dependent upon the order dated December 17, 1979 to which the appellants were not parties, the temporary permits granted in their favour on January 10, 1980 were also liable to be set aside. These appeals by special leave are filed against the judgment of the High Court in the above writ petitions.

On the facts and in the circumstances of these appeals, we are constrained to observe that both the Tribunal and the High Court overlooked the relevant issues affecting the public interest which should always be the guiding principle in deciding cases relating to the grant of motor vehicles permits under the Act. The Tribunal and the High Court have both failed to notice that the scheme had been published in the year 1971 and the order issuing temporary permits had been passed nearly nine years after its publication, after the Regional Transport Authority was satisfied that there was necessity for granting them. The Tribunal and the High Court did not seek to elicit information about the reasons for the inordinate delay in the State Government passing its order under section 68D of the Act and failed to consider the adverse effect on the travelling public. The Tribunal and the High Court took a highly technical view in disposing of the matter. We are of the view that it is needless at this stage to go into the grounds in detail on which the Tribunal and the High Court found that the orders of the Regional Transport Authority were untenable since nearly fourteen years have elapsed from the date of publication of the scheme. The High Court appears to have given more attention to the validity of the grant of extensions to the existing operators on December 17, 1979 which was not at all in issue before it than to the correctness of the order of the Tribunal in setting aside the temporary permits granted to the appellants on January 10, 1980 which had been challenged by the appellants in the writ petitions. Admittedly the region in which the routes in respect of which the scheme is published are lying is a thickly populated part of the State of Uttar Pradesh. There has been a lot of development in the region in recent years on the agricultural front as well as the commercial front. The Regional Transport Authority had found that there was need for issuing the said temporary permits for some of the routes in question after it had granted extensions to the permits held by 102 existing operators. On the cancellation of the said extensions the need for providing additional travelling facilities become further intensified and therefore there was certainly no case for setting aside the temporary permits granted in favour of the appellants. The cancellation of the temporary permits issued in favour of the appellants has resulted in grave public prejudice. We are also of the opinion that the extra-ordinary delay in the disposal of the proceedings before the State Government under section 68D of the Act has brought about a stalemate which should be terminated quickly in the interests of the general public.

We, therefore, consider that in the interests of justice it is appropriate to bring to an end the proceedings under section 68D of the Act expeditiously. We would have perhaps considered the question of quashing the scheme itself at this stage but since no such contention is urged before us, we feel that it is sufficient to issue a direction to the State Government to pass orders under section 68D (2) of the Act approving the scheme with or without any modification or rejecting it or to pass any other order thereon which it may pass under that provision on or before July 31, 1985. We issue a direction accordingly. If the State Government approves the scheme with or without any modification, such approved scheme shall be published under section 68D (3) of the Act on or before August 31, 1985. If the State Government fails to dispose of the matter according within the time specified above, the scheme published under section 68C of the Act shall stand quashed with



effect from August 31, 1985. The order of the Tribunal and the order of the High Court to the extent they cancel the temporary permits issued in favour of the appellants are set aside. The appellants are permitted to operate their services under the temporary permits issued to them under section 68F (1C) of the Act of January 10, 1980 and the operation of the said temporary permits shall come to an end in accordance with law.

The appeals are accordingly disposed of There shall be no order as to costs.

N. V. K.

Appeals allowed.