

Narendra Kumar Varshney Vs. the State of Uttar Pradesh and ors.

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Court : Allahabad

Decided On : Jul-12-1971

Reported in : AIR1972All55

Judge : B.N. Lokur, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 68C, 68D and 68D(2); Uttar Pradesh State Road Transport Services Development Rules, 1958 - Rule 1(4); [Constitution of India](#) - Articles 14, 19(1), 19(6), 31(2) and 31(2A)

Appeal No. : Civil Misc. Writ No. 3196 of 1968

Appellant : Narendra Kumar Varshney

Respondent : The State of Uttar Pradesh and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : L.P. Naithani, Adv.

Disposition : Writ petitions dismissed

Judgement :

ORDER

B.N. Lokur, J.

1. These six petitions under Article 226 of the Constitution filed by 41 stage carriage permit-holders challenge a scheme made under Chapter IV-A of the [Motor Vehicles Act, 1939](#) (hereinafter referred to as the Act) for nationalising transport services on two routes in the Agra region of Uttar Pradesh. A proposal under Section 68-C of the Act was made on the 16th April, 1962, and notified on the 21st April, 1962, in respect of Aligarh-Ramghat-via-Atrauli route Aligarh-Bijauli-via-Atrauli route was also added thereto later by an amendment made on the 5th May, 1967, and published on the 6th June, 1967. A number of objections were made by the various private operators but the Deputy Legal Remembrancer to the Government of Uttar Pradesh, who was authorised to consider the objections on behalf of the State Government, overruled the objections and approved the scheme on the 20th May, 1968, and the scheme so approved was published on the 31st August, 1968. The scheme, inter alia, cancels the permits issued to the petitioners.

2. A number of averments have been made and numerous grounds have been taken in the petitions and the supplementary affidavit impugning the scheme but the scheme was attacked at the hearing on the following grounds only:--

(1) Adequate opportunity was not given to the petitioners by the Deputy Legal Remembrancer to lead evidence while hearing and deciding the objections and hence his decision is vitiated;

(2) The State Government has not created a separate department to perform the functions of the State Transport Undertaking which is a statutory authority and the scheme as proposed and later finalised is not in accordance with law;

(3) The compensation provided for the cancellation of the permits of the petitioners is illusory and the requirements as to compensation guaranteed under Article 31(2) of the Constitution have been disregarded;

(4) The scheme is hit by Article 14 of the Constitution as it involves hostile discrimination against the petitioners vis-a-vis other private operators in the Agra region and other regions of Uttar Pradesh; and

(5) The law in Chapter IV-A of the Act is void as it impairs the fundamental rights of the petitioners under Article 19(1)(f) of the Constitution and accordingly there is no valid law as envisaged by Article 31(1) of the Constitution on the authority of which the petitioners could be deprived of their property.

After the arguments on behalf of both the parties had concluded, an application was made for the petitioners to add another additional ground, namely that the Deputy Legal Remembrancer, in deciding the objections had not taken into consideration the personal hardships and individual grievances of the petitioners and other operators; that application was, however, rejected as it was belated.

3. As regards the first ground, the grievance of the petitioners is that on the 6th April, 1968, the petitioners desired the issue of summonses to six witnesses who were officers of the State Transport Undertaking but the Deputy Legal Remembrancer declined to comply with the request and thus the petitioners were denied opportunity of leading evidence on their objections.

4. It is now settled law that the authority hearing objections under Section 68-D (2) of the Act has to record the evidence produced before him before deciding the objections. In *Nageswararao v. Andhra Pradesh State Road Transport Corporation*, AIR 1959 SC 308 it has been laid down that the State Government acts as a quasi-judicial Tribunal when giving a hearing under Section 68-A of the Act and in *Malik Ram v. State of Rajasthan*, AIR 1961 SC 1715, the Supreme Court has observed that any hearing before a quasi-judicial authority does not merely mean an argument but it may in proper cases include the taking of evidence, both oral and documentary, and that accordingly, considering the nature of the objections and the purpose for which the hearing is given, production of evidence either oral or documentary is comprehended within the hearing contemplated by Section 68-D (2). The question which, however, arises is whether the hearing authority is bound to issue summonses for witnesses if requested by the objectors. In *Capital Multi-purpose Co-operative Societies v. State of Madhya Pradesh*, AIR 1967 SC 1815 the Supreme Court said:--

'.....strictly speaking, the authority cannot summon witnesses or order discovery and inspection of documents, as the Act has not provided for any such thing. Nor

has any rule been pointed out to us making such a provision But in the absence of such power all that the authority can do is to issue letters merely requesting persons to appear and it is open to those persons to appear or not. In this situation if an authority decides not to issue such letters it cannot be said that there was no effective hearing. In short, what the cases of this Court to which we have referred show is only this: if the party concerned wishes to produce any document or produce any witness, the authority may take the documentary evidence into consideration or take the evidence of the witness, necessary. But there is in the absence of any provision in the Act or the Rules, no power in the authority or the State Government to compel attendance of witnesses or to compel production of documents. This is of course not to say that if the authority wants any party before it to produce any document for satisfying itself whether the scheme is for the purposes mentioned in Section 68-C it cannot so ask; and if the party asked to produce documents does not do so, the authority would be entitled to draw such inferences as it might consider justified from the non-production of documents ' (page 1821)

The relevant U. P. Rules, namely, the U. P. State Road Transport Services (Development) Rules, 1958, do not provide for a power to the authority to issue summons and compel attendance of witnesses or production of documents. Rule 7 (2) envisages that the officer hearing the objection shall call upon the objectors to produce their oral and documentary evidence and Rule 7 (4) requires the objectors to produce necessary and relevant evidence and witnesses. There is indeed no obligation cast by the Rules on the inquiry Officer to issue summonses for witnesses sought by the objectors and it was, therefore, not imperative for the Deputy Legal Remembrancer to issue summonses as prayed by the petitioners. In the circumstances, his refusal to summon the witnesses cannot aggrieve the petitioners.

5. It was, however, urged that the Deputy Legal Remembrancer did not accept the request of the petitioners to issue summons on other grounds and not on the ground that he had no such power. An analysis of the order of the Deputy Legal Remembrancer discloses that he rejected the application for more than one reason; he stated, firstly, that the objectors should have filed a list of witnesses

along with his objection as required by Rule 5 (5) of the said Rules and as this was not done, the objection was not in accordance with the Rules and the objector was not even entitled to be heard in view of Rule 7 (5) which states that no objector shall be entitled to be heard unless the objections are framed in accordance with the provisions of the Rules. This reason, no doubt, is not appealing; the provision in Rule 5 that a person filing an objection shall submit along with the memorandum of objections a list of documents and witnesses cannot be regarded as mandatory; if such a list is not submitted along with the memorandum of objections the objector cannot be debarred from submitting the list at the later but not a belated stage of the hearing. The second reason given by the Deputy Legal Remembrancer is that the application was made on the date fixed for arguments; he was justified in declining to entertain the list of witnesses at the last stage of hearing, although he has observed that if any witnesses were present they could be examined. Finally, he remarked:

'In the absence of any specific provision in the Act or Rules to enforce the attendance of the witnesses I do not think it is necessary to summon any witness on behalf of the objectors.'

He was perfectly right in rejecting the application on this ground. It is true that he might have, if so inclined, issued letters of request to secure the attendance of the witnessess, whether the witnesses might or might not appear in answer thereto as remarked in *Nehru Motor Transport Co-op. Society Ltd. v. State of Rajasthan*, AIR 1963 SC 1098 and also in the case of *Capital Multipurpose Co-op. Societies*, AIR 1967 SC 1815 (Supra), but he is not obliged to do so, particularly as no such prayer was made and also as it was too late in the day to make such a prayer, the objections having been fixed for arguments.

6. In connection with the delay in the application, it may be mentioned that the objections were filed to the original notification as long back as 1962 and to the amendment made later, in July, 1967. The objections of Narendra Kumar Varshney, petitioner in Writ Petition No. 3196 of 1968, who actually filed an application for summoning of witnesses, were filed on the 19th February, 1968. None of these objections were accompanied with a list of witnesses although on

the 21st and 22nd November, 1967, seven witnesses were produced and examined on behalf of the petitioners. As there was no list of witnesses, the Deputy Legal Remembrancer naturally fixed the case for arguments and on the date of arguments Narendra Kumar Varshney presented the application for summoning the witnesses. Apart from the absence of a power to issue summons, the Deputy Legal Remembrancer was within his powers in rejecting the application in these circumstances.

7. It may be relevant to mention that the witnesses were sought to be summoned, according to the application, to prove the number of buses effectively available to the State Transport Undertaking and to indicate on the basis of that number that no extra buses could be provided to ply on the nationalised routes. In other words, the aim was to establish that the State Transport Undertaking did not possess necessary equipment for nationalising the route. Such a consideration is irrelevant in determining the objections. In the case of Capital Multi-Purpose Cooperative Societies, AIR 1967 SC 1815 (Supra) the Supreme Court observed:--

'As to documentary evidence, it was asked for to show, firstly, that the Corporation did not have equipment and finances to carry out the schemes, and, secondly, that the Corporation's past record of running its services was worse than that of the private operators. We think that both these questions really do not arise in the context of a scheme of nationalisation envisaged in Chapter IV-A of the Act It will thus be clear that nationalised road transport under Chapter IV-A would be run either by the Central Government, or a State Government or any of the other three authorities mentioned there which are all under the control of the State Government or the Central Government. In these circumstances, with the resources of the Government behind those authorities it would in our opinion be futile for any objector to say that the Central Government, the State Government or the authorities backed by it could not have equipment and finance to carry out the schemes. It seems to us that the very fact that a scheme is proposed suggests that the Central Government or a State Government or the authorities would carry it out. So there is no question of asking for production of documents relating to the equipment and financial position of a State Transport Undertaking as defined in Section 68-A (b).' (Pages 1821-1822)

Thus the request for summons made on behalf of the petitioners was not only outside the powers of the Deputy Legal Remembrancer to grant it but also very much delayed and its object was irrelevant. It follows that the refusal to summon the witnesses cannot in these circumstances, be made a grievance as denying to the petitioners of a fair and full hearing.

8. The second ground is founded upon the observations of the Supreme Court in *Kalyan Singh v. State of Uttar Pradesh*, AIR 1962 SC 1183 that to avoid the anomaly of the State Government proposing a scheme under Section 68-C and the State Government itself deciding the objections under Section 68-D (2), thus the State Government becoming the judge of its own cause, the State Government might create a department to be in charge of the undertaking and hear the objections and approve or modify the scheme in a manner without violating the principles of natural justice. The contention of the petitioners is that no such separate department has been brought into existence by the State Government in Uttar Pradesh. It is common ground that there is a Transport Department of the Government of Uttar Pradesh and that department functions in two sections. Transport (A) Department deals with the matters relating to the State Transport Undertaking, while Transport (B) Department deals with other matters of the Transport Department. In the counter-affidavit filed by D.P. Saxena, it has been averred that the Transport (A) Department is 'manned and administered and operated by different officers separately and independently of other sections of the Transport organisation.' That being so, the Transport (A) Department which solely performs the functions of the State Transport Undertaking answers to the requirement laid down by the Supreme Court in *Kalyan Singh's case* AIR 1962 SC 1183 (Supra).

9. There is no substance in the third ground that Chapter IV-A is unconstitutional since it does not comply with the provisions of Article 31(2) of the Constitution in as much as it provides for illusory compensation for acquisition of the property of the petitioners. This ground is based on a misconception of the situation. As a necessary consequence of the total nationalisation of the route, the existing permits of the private operators are cancelled and the cancellation of the permits does not, in law, operate as acquisition of the property of the permit-holders within

the meaning of Article 31(2) of the Constitution as amended by the Constitution (Fourth Amendment) Act, 1955. It was urged that on the permits of the petitioners being cancelled, the petitioners are thrown out of business and they are deprived of their commercial undertaking, which is taken over by the State. Reliance in support of this argument is placed on the following observations of the Supreme Court in *Deep Chand v. State of Uttar Pradesh*, AIR 1959 SC 648 made after referring to certain earlier cases :

'Those cases have held that Clauses (1) and (2) of Article 31 relate to the same subject-matter and that though there is no actual transfer of property to the State, if by the Act of the State an individual has been substantially dispossessed or where his right to use and enjoy his property has been seriously impaired or the value of the property has been materially reduced, it would be acquisition or taking possession within the meaning of Clause (2) of the said Article In the said case (*Saghir Ahmad v. State of U. P.*, AIR 1954 SC 728) this Court held in express terms that U. P. Transport Act, 1951, which in effect prohibited the petitioners therein from doing their motor transport business deprived them of their property or interest in a commercial undertaking within the meaning of Article 31(2) of the Constitution The fact that the buses belonging to the appellants have not been acquired by the Government is also not material. The property of a business may be both tangible and intangible. Under the statute the Government may not deprive the appellants of their buses or any other tangible property but are depriving them of the business of running buses on hire on public roads. We think therefore that in these circumstances the legislation does conflict with the provisions of Article 31(2) of the Constitution' (pages 669-670).

The above observations were made with reference to the provisions of the U. P. Transport Service (Development) Act, 1955, which was brought into force on 24th April, 1955, i.e., before Article 31(2) was amended by the Constitution (Fourth Amendment) Act, 1955 which came into force on 27th April, 1955. The case was thus governed by the unamended Article 31(2). The Constitution (Fourth Amendment) Act has not only made changes in Article 31(2) but has also introduced a new Clause (2-A) which reads :

'(2-A) Where a law does not provide for the transfer of ownership or right to possession of any property to the State or to a Corporation owned or controlled by a State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property notwithstanding that it deprives any person of his property.'

In view of Clause (2-A), the cancellation of an existing permit cannot be regarded as acquisition of the business of the permit-holder within the meaning of the amended Article 31(2). In AIR 1959 SC 308 the nature of cancellation of permit is explained in the following words:--

'It cannot be said that if the Transport Authority cancels the permit of a person carrying on his transport business in a route and gives it to another, the process involves a transfer of business or undertaking of the quondam permit-holder to the new entrant. Indeed the process does not involve even a transfer of the permit from one to another. The true position is that one permit comes to an end and another permit comes into being It may be that by the said process the existing permit-holder is precluded from doing his business and it may also be that the State Transport Undertaking carries on a similar business; but by no stretch of language or extension of legal fiction can it be said that the State Transport Undertaking is doing the same business which the previous permit-holder was doing. If there is no transfer in the case of cancellation of a permit in favour of one and issue of a new permit to another, equally there cannot be any such transfer in the case of issue of a permit to the State Transport Undertaking. Looking at the business not simply from the stand-point of the right to do so or the activity involved in it, but also from the standpoint of its assets, it becomes clear that no assets pertaining to the business of the quondam permit-holder are transferred to the State Transport Undertaking. Though the cancellation of the permit has the effect of crippling his business, none of assets of the business is taken over by the State Transport Undertaking; he is left in the possession of the entire assets of the business. It is no doubt true that in the context of the scheme of nationalisation he may not be able to make use of his assets in other routes or dispose of them at a great advantage to himself; but it cannot be said that by cancelling the permit, what is left with him is only the 'husk'. In fact the entire assets of the business are

left with him and the State Transport Undertaking has not taken over the same.' (page 317)

In the light of these observations made with reference to Chapter IV-A of the Act, added in 1956, after the Constitution (Fourth Amendment) Act and in view of the provisions of Article 31(2-A), the cancellation of an existing permit cannot be held to be tantamount to acquisition of property within the meaning of the amended Article 31(2). In that view the question whether the compensation provided by Section 68-G of the Act is illusory or otherwise does not survive. The provision for compensation is made, as indicated by the Court in Nageswara Rao's case, AIR 1959 SC 308 (*supra*), for the reason that

'as the permit is cancelled before the expiry of the term fixed therein, the Legislature thought it fit and proper to give some compensation to the permit-holder who is prevented from doing his business for the unexpired period of the permit.'

10. Nevertheless, Section 68-G (4) of the Act does not, in my opinion, offer illusory compensation. The compensation provided is Rs. 200/- per vehicle for every completed month or part of a month exceeding fifteen days of the unexpired period and this rate represents solely the net profit which the owner of the vehicle is assumed to make, deducting all expenses, The amount may not be the precise net profit in a given case but it has a reasonable connection with the net profit and cannot be characterised as illusory.

11. The fourth ground that the scheme suffers from the vice of discrimination and is repugnant to Article 14 of the Constitution has to be mentioned only to be rejected. A similar contention was negatived by the Supreme Court in *Narayanappa v. State of Mysore*, AIR 1960 SC 1073; *Kondala Rao v. Andhra Pradesh State Road Transport Corporation*, AIR 1961 SC 82 and AIR 1963 SC 1098. In *Kondalarao's* case a phased programme for the nationalisation of transport services was approved and it was observed :--

'The legislature made a sincere attempt to protect as far as possible individual rights from the arbitrary acts of the executive. Once it is conceded that Chapter IB-

A of the Act is constitutionally good and that the legislature can validly make law for nationalisation of the road transport service, the procedure laid down for implementing the said policy cannot, in our view, be said to be unreasonable The provisions of Chapter IB-A cannot be struck down on the ground that they confer an arbitrary power on the State Transport Undertaking and on the State Govt. to discriminate between individuals and the State Transport undertaking, between individuals and private undertakings and between individuals and individuals.' (page 88)

Reference was made to the exposition of the law contained in Article 14 in the Bank Nationalisation case (R.C. Cooper v. Union of India, AIR 1970 SC 564) but I am unable to discover therein anything destructive of the earlier views expressed by the Supreme Court in regard to Chapter IV-A of the Act.

12. The last ground, namely, that Chapter IV-A of the Act infringes the fundamental right of the petitioners under Article 19(1)(f) of the Constitution has no force. The cancellation of their permit has no effect on their right to 'acquire, hold and dispose of property'. If the permit is to be treated as property, the acquisition of the permit as well as the holding of the permit are subject to the regulatory provisions of the Act and the Act itself provides for termination of permit in the event of nationalisation of transport services. The restriction placed by Chapter IV-A in the matter of holding a permit is in furtherance of the nationalisation policy and can hardly be condemned as unreasonable. In the Bank Nationalisation case, AIR 1970 SC 564 (Supra) even, compulsory acquisition of property under Article 31(2) on payment of compensation is held not to impair the fundamental right under Article 19(1)(f). The Supreme Court observed :--

'If property is compulsorily acquired for a public purpose, and the law satisfies the requirements of Article 31(2) and 31(2-A) the Court may readily presume that by the acquisition a reasonable restriction on the exercise of the right to hold property is imposed in the interests of the general public.' (page 597)

It is incidentally relevant to mention that the nationalisation of the transport services which affects more the fundamental right under Article 19(1)(g) than the fundamental right under Article 19(1)(f) is saved by Article 19(6) of the Constitution

(vide Parbhani Transport Co-operative Society v. The Regional Transport Authority, AIR 1960 SC 801; AIR 1960 SC 1073 and AIR 1961 SC 82 at page 87).

13. The result is that none of the grounds urged calls for interference with the scheme and all the six writ petitions deserve to be and are hereby dismissed. No order as to costs.

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