

Chandra Kishore and ors. Vs. State of Uttar Pradesh and anr.

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Court : Allahabad

Decided On : May-11-1962

Reported in : AIR1963All301

Judge : V.G. Oak, J.

Acts : [Constitution of India](#) - Article 226; [Motor Vehicles Act, 1939](#) - Sections 42(1), 42(3), 68A, 68C, 68D(2) and 68D(3); Motor Vehicles (Amendment) Act, 1956; Uttar Pradesh Motor Vehicles Rules, 1940 - Rule 70A

Appeal No. : Civil Misc. Writ No. 2022 of 1959, with Civil Misc. Writ No. 1013 of 1960

Appellant : Chandra Kishore and ors.

Respondent : State of Uttar Pradesh and anr.

Advocate for Def. : H.N. Seth, Junior Standing Counsel

Advocate for Pet/Ap. : S.N. Kacker and ;M.L. Agarwal, Advs.

Disposition : Petitions partly allowed

Judgement :

ORDER

V.G. Oak, J.

1. These two connected petitions under Article 226 of the Constitution are directed against certain Government notifications issued under Chapter IV-A of the Motor Vehicles Act (hereafter referred to as the Act). In Civil Miscellaneous Writ No. 2022 of 1959 there are 12 petitioners. In Civil Miscellaneous Writ No. 1013 of 1960 Beni Prasad is the sole petitioner.

2. It will be sufficient to refer to the facts of Writ No. 2022 of 1959 in detail. Petitioners Nos. 1 to 6 plied stage carriages, on Mathura-Alwar route; while petitioners Nos. 7 to 12 plied their stage carriages on Mathura-Kama-Kosi route. In 1958 there was a proposal to nationalise Mathura-Govardhan-Barsana route and Mathura-Radha Kund-Chhatta - route in Agra Region. A notification under Section 68-C of the Act was, therefore, issued on 31-12-1958. The petitioners filed objections against the draft scheme. The objections were disposed of by the Joint Legal Remembrancer to U. P. Government; objections were overruled; and the draft scheme was published in the U. P. Gazette dated 8-8-1959. As a consequence of the final scheme introduced by the notification published under Section 68-D of the Act, buses are being plied on behalf of the State within the route covered by the petitioners' permits. The petitioners' permits covered Mathura-Govardhan route. The respondents have also been operating on this route. The petitioners have prayed that the two notifications issued under Sections 68-C and 68-D of the Act should be quashed. It is further prayed that the respondents be prohibited from plying Government buses on the route covered by the petitioners' permits.

3. An Assistant in the Transport Department of the U. P. Civil Secretariat has filed a counter-affidavit on behalf of the respondents. One Brahma Dutt has filed an affidavit on behalf of the 12 petitioners.

4. I notice that as many as 12 transport operators have joined in Civil Miscellaneous Writ No. 2022 of 1959. Each operator has a distinct and separate interest in operating under his own permit. There should have been 12 separate writ petitions on behalf of the 12 petitioners. The petition was filed in August 1959. It is perhaps too late to drive n petitioners to file separate writ petitions. The irregularity can be cured by requiring the petitioners to pay up the prescribed

court-fee for the II other writ petitions. Mr. S. N. Kackkar appearing for the petitioners has given an undertaking to pay up the deficit court-fee on it other writ petitions within 24 hours.

5. Mr. Kackkar challenged the notification under Section 68-C of the Act on two grounds. It is said that the notification was not issued in the prescribed form. It has not been shown how the petitioners have been prejudiced as a result of departure from the prescribed form. The petitioners did file objections against the draft scheme. This is a sufficient indication that the petitioners understood the nature of the draft scheme. Since the petitioners were not prejudiced, it is not necessary to give further consideration to the alleged departure from the prescribed form.

6. Another contention of Mr. S. N. Kackkar is that, no State Transport undertaking is in existence in Uttar Pradesh. He pointed out that under Section 68-C of the Act, action has to be taken by the State Transport undertaking. It was urged that no State Transport undertaking exists even now.

7. This matter has been dealt with in paragraph 5 of the counter-affidavit. It is stated there:

'The Road Transport service is carried on by the State Government and is a State Transport undertaking within the meaning of Section 68-A (b) of Chapter IV-A of the [Motor Vehicles Act, 1939](#), as amended by Act No. 100 of 1956. The abovesaid Road Transport services are run departmentally by the State Government in Transport Department and it is not constituted as any separate undertaking or as a legal entity entitled to sue or be sued. Accordingly the notification publishing the said scheme has been signed by the Secretary of the Transport Department and it is the State Government in Transport Department who had formed the opinion that the routes in question be notified under Ch. IV-A of the said Act.'

8. It, therefore, appears that a separate Undertaking called the State Transport undertaking has not been constituted. The respondents have been treating the Transport Department of Uttar Pradesh Government as the State Transport undertaking.

The question arises whether that course is permissible under the Act.

8a. A somewhat similar contention was advanced by Mr. S. N. Kackkar before the Supreme Court in 'Kalyan Singh v. State of U. P.', Civil Appeal No. 325 of 1961, D/- 11-12-1961 : (AIR 1962 SC 1183). In that case Mr, Kackkar's contention was :

'Under Sec. 68-C of the Motor Vehicles Act, the State Transport undertaking has to form its opinion and prepare a scheme for nationalisation and publish it in the manner prescribed thereunder, but in the present cases the State Government initiated the . schemes and, therefore, the schemes were not validly made.'

That contention was overruled by their Lordships in these words :

' Counsel for the State contends that a transport undertaking run by a State Government is a State transport undertaking and, therefore, the scheme initiated by the State Government which runs the State undertaking is a scheme initiated by the said undertaking.

It is true that the provisions maintain a distinction between a State Transport undertaking and the State Government. It is also true that the State Government has to hear the objections of the aggrieved parties and also the representatives of the State transport undertaking before approving or modifying the scheme, indicating thereby that the State Government has to decide the dispute that may arise between the two contestants. Though the functions of the different bodies are clearly demarcated in the case of undertakings run by corporations, there is overlapping in the case of an undertaking run by a State Government. This may lead to an anomalous position, but in practice it can be avoided, if the State Government creates a department to be in charge of the undertaking and hears the objections and approves or modifies the scheme in a manner without violating the principles of natural justice.'

9. The decision in Kalyan Singh's case, (AIR 1962 SC 1183) is authority for the view that, a Department of the State Government can properly be treated as the State Transport undertaking. This view is further supported by the definition of 'State Transport undertaking' contained in Clause (b) of Section 68-A of the Act :

' 'State Transport undertaking' means any undertaking providing road transport service, where such undertaking is carried on by,

(i) the Central Government or a State Government;

.....'

The definition suggests that, if an undertaking is carried on by a State Government, and the undertaking provides road transport service, that undertaking becomes State Transport undertaking. In the present case, it appears that the Transport Department of Uttar Pradesh Government has been providing road transport service. There is, therefore, no difficulty in looking upon the Transport Department as an undertaking. Under the definition contained in Clause (b) of Section 68-A of the Act, the Transport department of Uttar Pradesh Government is a state transport undertaking. It may be that there was no Government notification announcing that, the Transport Department of the Uttar Pradesh Government was a State Transport under taking. But the definition does not require any such formal declaration. If an undertaking contemplated by the definition is in existence, that undertaking is a State Transport undertaking. It is not, therefore, correct to say that the State Transport undertaking does not exist in Uttar Pradesh. I do not notice any serious defect in the (Notification issued under Section 68-C of the Act. it

10. Mr. Kackkar's next contention was that the petitioners' objections were not properly disposed of by the Joint Legal Remembrancer. This. contention is well founded. Annexure II to the counter-affidavit is the order of the Joint Legal Remembrancer rejecting the petitioners' objections. In that order dated 6-7-1959 the Joint Legal Remembrancer observed thus :

'The main contention of Sri Uma Shankar has-been that the scheme deserves to be rejected outright. I have expressed in another case that, having in view the phraseology of Sub-sections (2). and (3) of section 68-D, it is not within the competence of this Tribunal to reject the scheme alto gether and all that it can do is either to approve the scheme as it is or to modify it.'

This reasoning is not correct.

11. In *Malik Ram v. State of Rajasthan*, AIR' 1961 SC 1575 their Lordships observed on page 1577 thus :

'An authority to which power has been given to approve or modify some proposal has certainly, in our opinion, the power to say that it will not approve the proposal at all, for the words 'may approve', on a reasonable interpretation, include 'may not approve'. If a person may approve, he is not bound to approve.'

12. It is thus clear that the Joint Legal Remembrancer was wrong in his view that, he had & no authority to reject the scheme altogether. Since he proceeded on a wrong basis, his decision is liable to be quashed, so far as the present petitioners are concerned. He may now be required to dispose of the petitioners' objections under section 68-D in accordance with law.

13. It is, however, not necessary to quash the notification under Section 68-D just now. It appears that certain action has been already taken on the basis of the notification under Section 68-D of the Act. That scheme may be allowed to stand except in so-far as the petitioners are concerned. It will be open to the authority concerned to reject the scheme altogether after hearing the petitioners and disposing of their objections in accordance with law.

14. In paragraph 5 of the supplementary affidavit by Laxmi Chandra it was stated that, stage carriages owned by the State are plying on hire throughout the State on various routes including Mathura-Goverdhan-Barsana without obtaining permits from the Regional Transport Authority concerned. This position was not disputed on behalf of the respondents. The question, therefore, arises whether it was open to the State to ply for hire stage carriages without obtaining permits from the Regional Transport Authority,

15. Apparently, the authorities have acted under Section 68-F of the Act. Sub-section (i) of Section 68-F states :

'Where, in pursuance of an approved scheme, any State Transport undertaking applies in the manner specified in Chapter IV for a stage carriage permit..... the

Regional Transport Authority shall issue such permit.....'

It was urged for the petitioners that, any action under Section 68-F presupposes a final scheme sanctioned under Section 68-D of the Act. If the final scheme under Section 68-D falls through, it would not be open to take action under Section 68-F of the Act.

16. Again, Section 68-F refers to an application in the manner specified in Ch. IV of the Act. Section 42 appears in Ch. IV. Section 42 lays down the general principle of necessity for permits. Subsection (i) of Section 42 states :

'No owner of a transport vehicle shall use or permit the use of the vehicle in any public place save in accordance with the conditions of permit granted or countersigned by a Regional or State Transport Authority.....'

Admittedly, the State did not obtain permits as contemplated by Sub-section (i) of Section 42 of the Act. We have to consider the question whether the State was entitled to ply stage carriages without obtaining permits under Section 42 of the Act.

17. In 'Parbhani Transport Co-operative Society Ltd. v. Regional Transport Authority, Aurangabad, AIR 1960 SC 801 their Lordships of 'the Supreme Court observed on page 804 thus :

'Since the amendment the Government can no longer run transport vehicles for commercial purposes without obtaining permits under Section 42 (i). Now, the plying of buses as stage carriages is a commercial enterprise, and for such buses therefore, under the sections as they stand, the Government would require permits as any one else. That being so, the sections clearly contemplate that the Government may apply for and obtain permits for its 'buses run as stage carriages.'

That decision is a clear authority for the proposition that, ordinarily, even Government has to obtain a permit under Section 42 of the Act for plying i stage carriages. The question is whether there are any special reasons for exempting the State from that requirement. Mr. H. N. Seth appearing for the respondents

relied upon Sub-section (3) of Section 42 of the Act. Section 42 (3) states :

'Sub-section (i) shall not apply--

(a)

(b)

(c)

(d)

(e)

(ee)

(f) to any transport vehicle used for any other public purpose prescribed in this behalf;

.....'

Mr. Seth contended that the stage carriages plied by the State in the instant case are being used for a public purpose within the meaning of Clause (f) of Sub-section (3) of Section 42 of the Act. He referred to the language of Section 68-C of the Act. Section 68-C contemplates a service introduced in the public interest. So, prima facie, the draft scheme introduced under Section 68-C of the Act is in public interest. It does not, however, follow that the activity must be for a public purpose within the meaning of Clause (f) of Section 42 (3) of the Act.

17a. A somewhat similar situation arose in *Satya Narain Singh v. The District Engineer, P. W. D.*, Civil Appeal No. 435 of 1958 decided by the Supreme Court on 8-2-1962 : (AIR 1962 SC 1161). In that case the question arose whether a lessee of a right to collect tolls was bound to allow stage carriage buses belonging to the Government of Uttar Pradesh to cross a river by the ferry without charging any toll. The State Government relied upon an exemption clause under Section 15 of the Northern India Ferries Act, 1878. The exemption ' clause was in these terms :

'The following shall be exempt from the payment of tolls; (a) All persons, animals and vehicles crossing any river by a public ferry when employed or transmitted on the public or District Board service.'

The State Government urged before the Supreme Court that, the stage carriage buses were exempted under this clause, because that was a public service. This contention was rejected by their Lordships in the following words :

'Could it be said that plying motor buses by way of commercial activity is running it on a public service? It is undoubtedly not easy to define what is 'public service', and each activity has to be considered by itself for deciding whether it is carried on as a public service or not. Certain activities will undoubtedly be regarded as public services, as for instance, those undertaken in the exercise of the sovereign power of the State or of Government functions. About these there can be no doubt. Similarly, a pure business undertaking though run by the Government cannot be classified as public service. But where a particular activity 'concerns a public utility, a question may arise whether it falls in the first or the second category. The mere fact that that activity may be useful to the public would not necessarily render it public service. An activity however beneficial to the people and however useful cannot, in our opinion, be reasonably regarded as public service if it is of a type which may be carried on by private individuals and is carried on by Government with a distinct profit motive. It may be that plying stage carriage buses even though for hire is an activity undertaken by the Government for ensuring the people a cheap, regular and reliable mode of transport and is in that sense beneficial to the public. It does not, however, cease to be a commercial activity if it is run with profit motive. Indeed even private operators, in order to attract custom, are also interested in providing the same facilities to the public as the Government undertaking provides. Since that is so, it is difficult to see what difference there is between the activity carried on by private individuals and that carried on by Government. By' reason of the fact that a commercial undertaking is owned and run by the State it does not ipso facto become a 'public service'. It is not disputed before us that the Roadways department of the Government of U. P. is running a profit making and a profitable activity by excluding every kind of competition. In the circumstances, therefore, we find it impossible to hold that its vehicles crossing

over ferries can be regarded as crossing on public service,'

It may be pointed out that, it was conceded that the service under consideration was beneficial to the public. Yet the Court declined to class the service as a 'public service.'

18. The meaning of the expression 'public purpose' varies according to context. We have, therefore, to examine the context, in which the expression 'public purpose' has been used in Clause (f) of Sub-section (3) of Section 42 of the Act. Subsection (3) enumerates a number of exemptions. Specific services have been specified from Clause. (a) to (e). Then follows Clause (ee), which was inserted by Act No. 100 of 1956. Then follows Clause (f). Clause (ee) is in these terms: -

'to any transport vehicle owned by a manufacturer of automobiles and used solely for such purposes as may be approved by the Central Government: "

Under Clause (ee), any purpose may be approved by the Central Government. It is not necessary that, that purpose should be a public purpose. But since Clause (ee) was inserted as a result of subsequent legislation, that clause cannot be of any guide in interpreting Clause (f). Clause (f) has to be interpreted in the light of the preceding Clause (a) to (e). Clause (a) is: -

'to any transport vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise;"

It is important to note that, under Clause (a), a Government owned transport vehicle must not be connected with a commercial enterprise. Clause (b) deals with such operations as road cleansing, road watering or conservancy. Clause (c) mentions such uses as police, fire brigade and ambulance purposes. Clause (d) mentions use for the conveyance of corpses. Clause (e) refers to towing a disabled vehicle to a place of safety. The Legislature specified certain public purposes in Clauses (a) to (c). Clause (f) is by way of a residuary provision. Considering the con- text, the expression 'any other public purpose' must be read on the principle of ejusdem generis. The public purpose contemplated by Clause (f) must be analogous to the public purposes specifically mentioned in Clause (a)

to (e).

19. Now, the activity of the State Government under consideration is merely to convey passengers along a certain route. Formerly, this activity was in the hands of private operators. Now the State proposes to take over the activity. To carry passengers along certain routes can hardly be described as a 'public purpose' within the meaning of clause (f) of Sub-section (3) of Section 42 of the Act; It may be readily conceded that, the activity is in public interest. But the question remains whether that activity implied a public purpose. In a sense, all State activity is for some public purpose. But the expression 'public purpose' has not been used in that wide sense in Clause (f) of Sub-section (3) of Section 42 of the Act. I think, the expression 'public purpose' has been used in the narrow sense of 'public service', as explained in Satya Narain Singh's case, (AIR 1962 SC 1161) referred to above. Satya Narain Singh's case, (AIR 1962 SC 1161) is authority for the view that the activity under consideration is not for a public purpose. The activity is largely for commercial purpose. The respondents are not, therefore, entitled to the exemption granted by Clause (f) of sub-sec. (3) of Section 42 of the Act.

20. Mr. H. N. Seth relies upon R. 70-A framed by the State Government under Section 68 of the Act. R. 70-A is published in the U. P. Gazette Extraordinary dated 29.2.1960 R. 70-A runs thus;-

'Public purposes for exemption from permit-- The use of Transport Vehicles owned by the State Government and operated by the U. P. Government Roadways in pursuance of a scheme which has been enforced under Chapter IV-A of the [Motor Vehicles Act, 1939](#) for providing an efficient, adequate, economical and properly co-ordinated road transport service in Uttar Pradesh shall be a public purpose within the meaning of Clause (f) to Sub-section (3) of Section 42

Mr. S. N. Kackkar appearing for the petitioners contended that R. 70-A is ultra vires.

21. The impugned rule has been framed under Section 68 of the Act. Sub-sec, (i) of Section 68 states:-

'A State Government may make rules for the purpose of carrying into effect the provisions of this Chapter.'

The rule-making power has been conferred on State Government merely for the purpose of carrying into effect the provisions of Chapter IV. The State Government has no authority to frame a rule merely for the purpose of interpreting certain provisions of the Act. Interpretation of statutes is the function of the Court. I have shown above, that, the activity under discussion is not for any. public purpose. Under Section 68 of the Act, a State Government has not been authorised to declare that, a certain activity, which is not for a public purpose, shall be deemed to be for a public purpose. But that is exactly what R. 70-A has done. Although the operation of stage carriages under Ch. IV-A is not in fact for a public purpose, K. 70-A declares that it shall be a public purpose ; within the meaning of Clause (f) of sub-sec. (3) of Section 42 of the Act. I agree with Mr. S. N.Kackkar that, R. 70-A is invalid.

22. As explained above, the State was under an obligation to obtain a permit under Section 42 of the Act. Admittedly, State vehicles have been operating without obtaining a permit under Section 42 of the Act. Such an activity is unlawful. Government vehicles have been placed on the route covered by the nationalisation scheme. But the present petitioners are not interested in the whole route. Their interest is confined to the route lying between Mathura and Govardhan. It will, therefore, be sufficient if the activity of Government vehicles is prohibited on Mathura-Goverdhan route till necessary permits are obtained. Since these petitions are being allowed in part, parties may be directed to bear their own costs.

23. The two connected petitions are partly allowed. The order of the Joint Legal Remembraacer dated 6-7-1959 disposing of objections under Section 68-D of the Motor Vehicles Act is quashed, in so far as it purports to dispose of the objections by the present 13 petitioners. He (or any other officer duly authorised in this behalf) is directed to rehear the petitioner's objections Under Section 68 (D) of the Act and dispose of those objections in accordance with law. It will be open to the officer concerned to re-consider the question of finalization of the draft scheme in

the light of his decision on those objections. The State Government is directed not to operate Government stage carriages between Mathura and Govardhan until the necessary permits prescribed by Section 42 of the Motor Vehicles Act have been obtained. Parties shall bear their own costs in each case. The stay orders in the two cases are vacated.

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