

PETITIONER:
SINDHI SAHITI MULTIPURPOSE TRANSPORT CO-OPERA-TIVE SOCIETY

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH & ORS.

DATE OF JUDGMENT 16/11/1976

BENCH:
RAY, A.N. (CJ)
BENCH:
RAY, A.N. (CJ)
BEG, M. HAMEEDULLAH
SINGH, JASWANT

CITATION:
1977 AIR 441 1977 SCR (2) 86
1977 SCC (1) 403

ACT:

Motor Vehicles Act, 1939 Chapter IV-A, Scheme under, whether open to constitutional challenge---S. 68D. objections against scheme, scope of.

HEADNOTE:

The Government of Madhya Pradesh proposed to pass scheme No. 9-M; regarding the nationalisation of road transport. The scheme was approved and notified in the State Gazette, after the appellant's objections made under section 68D of the Motor Vehicles Act, 1939, had been heard. The appellant filed a writ petition in the High Court challenging the Government's rejection of his objections, and also impeaching the scheme as published in the gazette. The High Court dismissed the petition holding that, as Chapter IV-A of the Act has been included as Entry 125 in the Ninth Schedule to the Constitution, the scheme cannot be challenged.. Dismissing the appeal the Court,

HELD: 1. Though Chapter IV-A of the Act is not open to any constitutional challenge, it is open to any aggrieved person to challenge any scheme on the ground that it is not a valid scheme as required by the provisions of Chapter IV-A of the Act. [87 C-D]

2. Under section 68D of the Act the only scope for objection is whether the scheme is efficient and adequate and not whether exclusion is complete or partial. [91 A-B]

Objections are confined only to the four grounds of efficiency, adequacy, economy and proper coordination of road transport service. There was never any objection to the Scheme on exclusion related to any of these grounds. [90 D-E]

Capital Multipurpose Co-operative Society Bhopal and Ors. v. The State of M.P. & Ors. [1967] 3 S.C.R. 329, applied.

H.C. Narayanappa & Ors. v. The State of Mysore & Ors., [1960] 3 SC.R. 742, referred to:

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1166 of

1976.

Appeal by Special Leave from the Judgment and Order dated the 16th September, 1976 of the Madhya Pradesh High Court in Misc. Petition No. 1004 of 1974.

M.N. Phadke, S.Q. Hasan and A.C. Ratnaparkhi for the appellant.

Ram Panjwani, H.S. Parihar and I. N. Shroff for Respondent. No. 1.

Niren De, Attorney General, Rameshwar Nath and Y.B. Desai, for Respondent No. 6.

The Judgment of the Court was delivered by

RAY, C.J.--This appeal is by special leave from the judgment dated 16 September, 1976 of the High Court of Madhya Pradesh.

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The appellant made an application under Articles 226 and 227 of the Constitution in the High Court and impeached the order dated 21 September 1974 whereby the Government dismissed the appellant's objections against Scheme No. 9-M relating to Road Transport Nationalisation. The appellant also impeached the Scheme as published in the Gazette on 11 October, 1974.

The High Court held that in view of the fact that Chapter IV-A of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act) is included as Entry 125 in the Ninth Schedule to the Constitution the appellant could not challenge the Scheme.

The High Court erred in holding that it was not open to the appellant to challenge the Scheme. The Attorney General rightly and fairly said that the judgment of the High Court could not be supported on that ground.

The High Court failed to appreciate that though Chapter IV-A of the Act is not open to any constitutional challenge it is open to any aggrieved person to challenge any Scheme on the ground that it is not a valid Scheme as required by the provisions of Chapter IV-A of the Act.

Scheme No. 9-M relating principally to Jabalpur-Sagar and Damoh-Hatta routes was published by the State Transport Undertaking in the State Gazette on 15 November, 1963. The Scheme was approved and finally published in the State Gazette on 12 February 1965. Under the Scheme which came into force with effect from 2 April, 1965 Jabalpur-Sagar and Damoh-Hatta portions of the routes were reserved for exclusive operation by the State Transport Undertaking. The portions Sagar-Bhopal, Rehli-Garhakota, Hatta-Panna, Kantangi-Majhoul and Damoh-Chhatarpur via Hirapur were kept for joint operation with existing permit holders with the condition that the permit holders with existing permits were not to pick up passengers from and to any station lying between Nohta-Abhana Garhakota or any other two stations on Jabalpur-Sagar road and Damoh-Hatta and vice-versa.

The Transport Authorities granted fresh permits covering Abhana Garhakota portion treating it to be a portion of joint operation with others. This action of the Transport Authorities was found to be destructive of the true intention of Scheme No. 9-M.

It thus became necessary to modify Scheme No. 9-M.. The proposal was then placed before the Board of the State Transport Undertaking referred to hereinafter as the Undertaking by, the General Manager. The Board of the Undertaking considered the matter at its meeting held on 20 August 1973 and passed Resolution No. 8354 approving the proposal modifying Scheme No. 9-M. The Board's Resolution directed inclusion of Sagar-Rehli-Garhakota-Jabalpur and Patharia-Damoh routes for exclusive operation by the State Corpora-

tion. The Board directed that the Scheme giving the details should be placed before the Board for its approval. In this background Scheme No. 9-M giving details was prepared and the proposal was placed before the Board of the Undertaking at the meeting held on

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29 November, 1973. The Board of the Undertaking approved the proposal by Resolution No. 1395 and authorised consequential action.

Scheme No. 9-M was published in the Official Gazette on 7 December 1973. The Scheme was thereafter considered by the Special Secretary to the State Government in exercise of powers under section 68D of the Act. Under section 68D of the Act persons contemplated in the Act might file objections and the State Government would hear objections and then approve or modify the Scheme. The State Government on 21 September 1974 approved the Scheme after having heard the objections. The approved Scheme was notified in the State Gazette dated 11 October 1974. The approved Scheme came into force with effect from 19 November, 1974.

Scheme No. 9-M as approved, after hearing objections, provided in clause (2) that the State Road Transport Services would be provided on the routes of Jabalpur, Sagar and Bhopal regions. In clause (2) of the Scheme 25 routes are set out. Route No. 2 is Jabalpur Bhopal via Patan, Tendukheda, Damoh, Rehli, Sagar and Raisen. Route No. 3 is Jabalpur-Sagar via Katangi and Damoh. Route No. 4 is Jabalpur-Sagar via Patan, Tendukheda, Damoh and Rehli, Route No. 20 is Sagar-Patharia.

In clause (4) of Scheme No. 9-M it is said that no person other than the Undertaking will be permitted to provide Road Transport Services on the routes or portions thereof specified in clause (2) except as provided in clause (5).

In clause (5) it is stated that all Road transport Services will subject to the provisions made in the subsequent clauses, namely, No. (6) and (7) be provided by the Undertaking exclusively on Jabalpur-Sagar via Katangi, Damoh and Damoh-Hatta via Bangnon roads covering portions of the routes specified in clause (2). The routes which the Undertaking will operate in conjunction with others are (1) Jabalpur-patan-Tendukheda-Abhana, (2) Damoh-Patera-Hatta-Panna, (3) Damoh-Hirapur-Tikamgarh and (4) Damoh-Hirapur-Chhattarpur portions of the routes specified in clause (2).

In clause (7) of the Scheme is set out a list of permits granted by the Regional Transport Authorities and modified as indicated therein. In Item No. 20 of the list is set out the name of United Transport and in Items 22 and 23 is set out the name of S.S.M. Trading Company, Society. The route of Damoh-jabalpur via Abhana, Patan which was in the name of United Transport Company was modified to remain operative on the route of Abhana-Jabalpur via Tendukheda, Patan. The route of Sagar-Jabalpur via Rehli, Gerhakota, Abhana, Tejgarh, Patan which had been given to S.S.M. Trading Company was modified to Abhana-Jabalpur via Tendukheda, Patna.

It, therefore, appears from the Scheme that the routes (1) Jabalpur-Patan-Tendukheda-Abhana, (2) Damoh-Patera-Hatta-Panna, (3) Damoh-Hirapur-Tikamgarh, (4) Damoh-Hirapur-Chhattarpur were to be operated by the Undertaking in conjunction with existing permit holders.

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The appellant under section 68D of the Act preferred objections to the Scheme. The objections were four in number. First the Scheme is mala fide as it is intended

"to avert (sic) issuance of permits on these routes to private operators". Second the Scheme is published without the undertaking forming the requisite opinion under section 68C of the Act. Third the Scheme is discriminatory. Two permits of the appellant are proposed to be curtailed whereas 14 permits on Sagar-Rehli-Garhakota route have been left over. Fourth the Scheme does not fulfil the four-fold tests in section 68C of the Act.

The Government heard the objections. The State Secretary rejected the objections and approved the Scheme on 21 September 1974. The State Secretary held that no mala fide was proved. He also rightly held that nationalisation of Road Transport Service would result in the legal effect of stoppage of issue of permits on the routes mentioned in the Scheme. In short, nationalisation of routes cannot be said to be mala fide. The State Secretary found that the undertaking considered the Scheme and formed the requisite opinion under Section 68C of the Act. The State Secretary found that there was no discrimination. There was nothing to prove that similarly situated operators were treated differently. There was no proof that the undertaking knew of the existence of the alleged permit of the appellant or of others. The State Secretary also found that the operators on Sagar-Garhakota-Patharia route were operating because it was not taken for exclusive operation. In other words, the Scheme does not concern the route on which the 14 operators are alleged to be plying. The State Secretary also found that the four purposes in section 68C of the Act were fulfilled.

The appellant repeated some of the objections to the Scheme raised before the State Secretary and added new ones. The appellant's contentions here were these. First Scheme No. 9-M which was finalised was not the opinion formed by the undertaking. Second the appellant asked for resolution of the undertaking dated 20 August 1973 and this was not given. Therefore, no opportunity was given to the appellant to raise objections under section 68D of the Act. Third, Scheme No 9-M does not fulfil the four-fold purposes, namely, providing (a) efficient, (b) adequate, (c) economical and (d) properly coordinated road transport service as mentioned in section 68C of the Act. Fourth curtailment of route Sagar-Rehli-Garhakota is contrary to clause (5) of the Scheme.

Chapter IV-A of the Act contains sections 68-A to 68-I. These provisions in Chapter IV--A are under the heading "Special provisions relating to State Transport Undertakings".

The Scheme recites that the Undertaking formed the opinion that for purposes of providing efficient, adequate, economical and properly coordinated road transport service provided in clause (2) of the Scheme, it is necessary in the public interest that the road transport service in relation to the said routes should be run and operated by the Undertaking in accordance with the Scheme. There is thus in-

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trinsic evidence inherent in the Scheme that the Undertaking formed the opinion for the Scheme. The State Secretary rightly rejected the contention of the appellant which was repeated here.

It appears from the order of the State Secretary who heard the objections of the appellant against the Scheme that the Secretary never made an order directing the Undertaking to produce the resolution dated 20 August, 1973. In the writ petition filed by the appellant in the High

Court the appellant stated in paragraph 19 that the State Secretary instead of directing the Undertaking to produce these documents only observed that the Undertaking might think over the request adding that he might himself call for the said documents, if thought necessary. It also appears from the judgment of the High Court that the proceedings before the State Secretary indicated that the appellant's case was argued without any insistence on the production of the resolution. The High Court also noticed that the State Secretary made no such direction. The fact that he made no such direction shows that he found it possible to give the decision without production of it. The contention of the appellant is without any merit.

The State Secretary rightly held that the four-fold purposes indicated in section 68C of the Act are established. This Court in *Capital Multipurpose Cooperative Society Bhopal & Ors. v. The State of M.P. & Ors*(1), said that the right of a person to object to the Scheme is to be confined only to the four grounds, namely, that the Scheme did not provide (a) efficient, (b) adequate, (c) economical and (d) properly coordinated transport services. The Scheme in the present case amply establishes that it fulfils the four purposes mentioned in the Act.

It has to be remembered that the Scheme in clause (2) as well as in clause (5) mentions the exclusive operation of the Undertaking on these routes in the public interest. A mere allegation that the Scheme does not fulfil the purposes does not amount to any allegation and far less any proof.

The appellant laid emphasis on the contention that the appellant's permits in respect of the portion Garhakota to Sagar via Rehli ought not to have been curtailed because the route was not reserved for exclusive operation by the State Transport Undertaking under clause (5). It is a matter of policy as to what routes should be curtailed for the operation of the Scheme. Courts do not judge such policy decisions. The appellant's permits on the Garhakota-Rehli-Sagar routes expired on 26 and 30 September, 1976. The appellant has been granted fresh temporary permit on the route which is of conjoint operation. This temporary permit was granted to the appellant on 25 September, 1976. The appellant has taken advantage of it.

It has to be shown that unless the appellant is allowed to operate on Sagar-Rehli-Garhakota route the Scheme will not be efficient, adequate, economical and properly coordinated. The appellant did not allege and substantiate the case. This case cannot be entertained also for the reason that it is idle to suggest that the appellant will have not only Abhana-Jabalpur via Tendukheda Patan route but also Sagar-Rehli-Garhakota route as of right.

(1) [1967] 3 S.C.R. 329.

It is not only competent but also conscionable that a Scheme for nationalisation can be complete or partial. The efficiency as well as adequacy of the Scheme is advanced by such policy decisions of complete or partial nationalization of routes. See *H.C. Narayanappa & Ors, v. The State of Mysore & Ors.* C) Under section 68D of the Act the only scope for objection is whether the Scheme is efficient and adequate and not whether exclusion is complete or partial. Objections are confined only to the four grounds of efficiency, adequacy, economy and proper coordination of road transport service. Exclusion can be attacked only on these four grounds. There was never any objection to the Scheme on exclusion related to any of these grounds. The State

Secretary in his order, on hearing the objections, rightly said that the Sagar-Rehli-Garhakota-Patharia route is not to be taken for exclusive operation because there is no mention at all of the route. The Scheme in clause (5) has specifically mentioned which routes are for operation by the State Transport Undertaking in conjunction with others. The exclusion of the appellant from route on which the appellant had earlier operated cannot be said to challenge efficiency, adequacy, economy or proper coordination.

For these reasons the appeal is dismissed. In view of the order of the High Court as to costs parties will pay and bear their own costs.

M.R.

Appeal dis-

missed.

(1) [1960] 3 S.C.R. 742.

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