

PETITIONER:
SARJOO PRASAD SINGH

Vs.

RESPONDENT:
THE STATE OF BIHAR & ORS.

DATE OF JUDGMENT 22/09/1976

BENCH:
RAY, A.N. (CJ)
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BEG, M. HAMEEDULLAH
SHINGAL, P.N.

CITATION:
1977 AIR 24 1977 SCR (1) 661
1977 SCC (1) 34

ACT:

Nationalisation scheme of Bus Routes under s. 68C of the Motor Vehicles Act, 1939--Form A under Rule 94A of the Bihar Motor Vehicles Rules read with Schedule II serial No. 4, 5 and 6--Interpretation of--Whether it envisages compulsory existence of private operators side by side with the State operation.

Motor Vehicles Act, 1939, Section 68D--Scope of--Whether there should be a finding on each and every separate objection raised.

Monopoly of bus routes--Whether permitting the existing private operators to operate till the date of expiry of their permits creates a monopoly.

Practice and procedure--Further plea taken in the affidavit-rejoinder to the writ petition shall not be allowed to be agitated.

HEADNOTE:

Fifteen routes including the route Ranchi-Daltonganj via Kuru was nationalised by a scheme by the respondent State as per gazette notification dated September 13, 1972. The scheme concerned inter alia the area and the route between Ranchi and Daltonganj including Ranchi, Kuru and Chandwa Daltonganj, being a rural service. The scheme permitted the existing private operators to continue till the expiry of their permits. The appellants challenged the scheme by way of an application under Art. 226 in the Patna High Court which was dismissed in limine.

Dismissing the appeal by special leave the Court,

HELD: (1) Rule 94A speaks of particulars of scheme proposing modification of an approved scheme prepared by the Transport Corporation. It is wrong to read serial Nos. 4, 5 and 6 in schedule II in Form, A which mentions the number of State carriages, scheduled to operate in each route by private operators and by State Transport Undertaking and the number of daily trips scheduled in each route by both these operators, to suggest that even though the route is nationalised, there must be private operators. The form is general. There may be on the same route both private operators and State Transport or there may be only private operators or there may be only State Transport. The form does

not suggest that even though the route is nationalised, there must be private operators. [662 F-G, -663 A--B]

(2) Section 68D of the Motor Vehicles Act states that 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. No finding of fact is necessary on each and every separate objection.

[663 D--E, G]

Capital Multi Purpose Co-operative Society Bhopal and others v. State of Madhya Pradesh [1967] 3 SCR 329, followed.

(3) No monopoly is conferred on the private operators who were allowed to continue to operate. Allowing them to operate means they were allowed to continue to operate in accordance with the permits. Operation after the expiry of the current permits would depend on the policy of the Government whether there would be any renewal and it there would be any renewal, that should be in accordance with law. [663 H. 664 A]

(4) Fresh plea by way of an allegation in the affidavit rejoinder to the writ petition when the State had no opportunity to deal with such allegation cannot be allowed to be agitated. [664B]
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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 742 of 1974.

Appeal by Special Leave from the Judgment and Order dated 15.2.1974 of the Patna High Court in C.W.J.C. No. 215/74.

A.B.N. Sinha, K.K. Sinha, K.N. Deshav, S.K. Sinha and Ugra Sankar Prasad for the appellant.

Pramod Swarup, for respondent No. 1

L.N. Sinha, Sol. Genl., B. P. Singh and A. K. Srivastava, for D. Goburdhan, for respondent No. 2.

The Judgment of the Court was delivered by

RAY C.J.--This appeal by special leave is from the judgment dated 15 February 1974 of the Patna High Court. The High Court dismissed in limine the application of the appellant under Article 226 of the Constitution.

The appellant challenged the scheme framed under section 68C of the Motor Vehicles Act, 1939 published in the Bihar Gazette On 13 September 1972. The Bihar State Road Transport Corporation published a scheme for nationalisation of fifteen routes including the route Ranchi-Daltonganj via Kuru. The scheme concerned inter alia the area and the route between Ranchi and Daltonganj. The area included Ranchi, Kuru, Chandwa Daltonganj. This is a rural service. The scheme stated that private operators would be able to run their buses till the expiry of their current permits and no private bus would be operated by the private operators after the expiry of their permits. The scheme further provided that the Government bus operators would operate in the area as shown in the Schedule.

Counsel for the appellant contends first that the number of buses operated by private operators on part of the route were to be maintained in spite of the scheme of nationalisation. Reliance was placed on Form A under Rule 94A of the Bihar Motor Vehicles Rules in support of the contention. Rule 94A speaks of particulars of scheme proposing modification of an approved scheme prepared by the

Transport Corporation. In Schedule II at serial Nos. 4, 5 and 6 in Form A are mentioned the number of state carriages scheduled to operate in each route (a) by private operators and (b) by State Transport Undertaking; the number of daily trips scheduled in each route (a) by private operators and (b) by State Transport Undertaking; and the maximum and minimum number of stage carriages proposed to be operated in each route by the State Transport Undertaking to the exclusion of private operators. The contention of the appellant was that serial Nos. 4, 5 and 6 indicated that in spite of nationalization of route, private operators would be allowed to operate on part of the route. It was said that in the scheme no details about private operators had been given. It was also said that in the scheme the numbers of services run by the private operators and by the Corporation were wrongly given. It was said that 21 services were shown as run

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by the Corporation and that the Corporation was providing 42 trips. The appellant contended that private operators ran 41 buses and the route needed more buses aggregating 51.

It is wrong to read serial Nos. 4, 5 and 6 in Form A to suggest that even though the route is nationalised there must be private operators. The Form is general. There may be on the same route both private operators and State Transport, or there may be only private operators or there may be only State Transport.

In the scheme the existence of private operators is specifically mentioned and it is further mentioned that they would continue to ply till the expiry of their current permits. We are unable to hold that even though the route is nationalised there must be private operators. The private operators under the scheme in the present case were allowed to continue during the currency of their permits. Whether they will be allowed to operate after the expiry of their permits, will depend upon the policy of the Government. After the expiry of the current permits if the policy will allow for renewal of permits of the private operators, such renewal will have to be in accordance with law.

The scheme as modified and approved was published on 14 January 1974. All the details are there.

The second objection of the appellant was that the Minister did not give any reason in dealing with the objections of the appellant. Section 68-D of the Motor Vehicles Act states that 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. The provisions of the section speak about the approval or modification of the scheme. The Minister heard the objections for 2 days. The order of the Minister dated 24 September 1973 states that the scheme covering Ranchi-Bero Gumla was modified and approved as follows:

"The existing services operated by the private operators shall not be affected and they would continue to operate. No fresh permit shall be granted to private operators and the Corporation shall ply only Express services on this route. The other schemes covering Ranchi-Kuru-Chandwa-Daltonganj via Bernbad, (ii) Muzaffarpur Motihari and (iii) Muzaffarpur-Darbhanga via Benibad are approved."

Approval and modification of the scheme indicates that the scheme is efficient and adequate. No finding of fact is necessary on each and every separate objection. See Capital Multi Purpose Co-operative Society Bhopal and Others

v. State of Madhya Pradesh(1).

The third contention was that on the route Ranchi-Bero Gumla private operators were allowed to operate and thereby monopoly was conferred on them.. The contention is wrong. No monopoly is conferred on the private operators who were allowed to continue to

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

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operate. It means they were allowed to continue to operate in accordance with the permits. Operation, after the expiry of current permits, would depend on the policy of the Government whether there would be any renewal and if there would be any renewal, that should be in accordance with law.

The fourth contention was that the hearing concluded on 18 August, 1973 but the Government took into consideration letter dated 23 August 1973 written by the State Transport Corporation. This allegation was mentioned in the affidavit-rejoinder. The State had no opportunity to deal with the allegation. This allegation is not made in the writ petition. The appellant, therefore, cannot be allowed to agitate on that ground.

All the contentions fail. The appeal is dismissed. Parties will pay and bear their own costs.

S.R.

Appeal dis-

missed.

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