

(2007) 02 AHC CK 0099

Allahabad High Court

Case No: None

Vijay Shankar Dixit

APPELLANT

Vs

State of Uttar Pradesh, Joint
Legal Rememberancer to
Government of Uttar Pradesh
and U.P. State Road Transport
Corporation (U.P. State
Transport Undertaking)

RESPONDENT

Date of Decision: Feb. 1, 2007

Acts Referred:

- Motor Vehicles Act, 1939 - Section 68(d)

Citation: (2007) 3 ADJ 528

Hon'ble Judges: Dilip Gupta, J; B.S. Chauhan, J

Bench: Division Bench

Final Decision: Allowed

Judgement

B.S. Chauhan, J.

Application for restoration is allowed in view of the grounds taken in the affidavit filed in support of the said application. The order dated 29.10.2003 is recalled. The writ petition is restored to its original number. Heard on merit.

2. This writ petition has been filed for quashing the notice dated 10.01.1991 asking the present petitioner to remain present before the hearing authority under the provisions of Motor Vehicles Act, 1988 (hereinafter called the "new Act") for the purposes of nationalization of the route in question, namely Kalpi-Kotra via Ait-Saidnagar.

3. The facts and circumstances giving rise to this case are that a Scheme u/s 68(d) of the Motor Vehicles Act, 1939 (hereinafter called the "new Act") was issued by the respondent authorities to nationalize large number of routes including the

Kalpi-Jhansi and allied routes and Kalpi-Kotra via Ait-Saidnagar. The said scheme was published in the officiate gazette on 2nd September, 1967. Some persons including the present petitioner who claimed to have permanent stage carriage permits on the route Kalpi-Kotra via Ait-Saidnagar filed their objections. The Scheme stood finalized and the final Scheme was published in the official gazette dated 10th March, 1973 under the provisions of 68(d) (2) of the old Act. Present petitioner challenged the said notification by filing Writ Petition No. 2852 of 1973 and the said writ petition was allowed vide judgment and order dated 30th October, 1973 quashing the said Scheme so far as the aforesaid route in question was involved and the hearing authority was directed to hear the matter in accordance with law. After remand, the matter remained pending before the hearing authority. In the meantime, the old Act was repealed by the new Act, which came into force with effect from 01.07.1989. The hearing authority issued notice dated 10.01.1991 directing the petitioner to appear before him for hearing the objections on 25.01.1991. The said notice/order is under challenge by filing the present writ petition on the ground that on commencement of the new Act, if the Scheme for nationalization under the old Act was pending, it was to be approved within one year from the date of enforcement of the new Act otherwise it would lapsed. This Court vide interim order dated 30.01.1991 restrained the hearing authority to proceed with the hearing so far as the route Kalpi-Kotra via Ait-Saidnagar was concerned.

4. Shri Sudama Ji Shandilya, learned Counsel for the petitioner has submitted that as per the statutory provisions contained in Section 100 (4) of the new Act, if the Scheme is not finalized within a period of one year from the date of its publication after commencement of new Act, the Schemed itself would lapsed. By virtue of provisions contained in Section 217 (2) (e) of the new Act, the Scheme was to be finalized within one year of the commencement of the new Act otherwise it would lapsed. Thus, Shri Shandilya has submitted that the Scheme stood lapsed on 01.07.1990 after one year of the commencement of the new Act and the notice dated 10.01.1991 is without jurisdiction as the Scheme had already lapsed.

5. Shri Sameer Sharma, learned Counsel appearing for the respondents has submitted that as the matter has been remanded after quashing the final order of approval and publication in the official gazette in view of the provisions of Section 68 (d) (2) of the old Act, the provisions of Section 217 ((2) (e) or 104 of the new Act will not be applicable and, therefore, the petition is liable to be dismissed.

6. We have considered the rival submissions made by learned Counsel for the parties and have perused the record.

7. The issue involved herein is no more res integra as it has been considered time and again by the Hon"ble Supreme Court.

8. The Scheme under the new Act if it remains pending for long time, loses sanctity for the reason that the main considerations of the Scheme and the purpose of providing efficient, adequate, economical and properly coordinated route transport service stands frustrated by efflux of time for the reason that during the interregnum period, the population increases and the number of trips so suggested in the draft Scheme may not cater to the needs of the traveling public and mere pendency of a draft Scheme for a long period itself is a sufficient ground for quashing the Scheme. (Vide [Yogeshwar Jaiswal Vs. State Transport Appellate Tribunal and Others](#), Phool Chand Gupta v. Regional Transport Authority, Ujjain and Ors. 1986 SC 119; and [Shri Chand Vs. Government of U.P., Lucknow and Others](#),

9. In [Ram Krishna Verma and Others Vs. State of U.P. and Others](#), a similar issue was considered and the Hon'ble Supreme Court placing reliance upon its earlier judgment in [Krishan Kumar Vs. State of Rajasthan and others](#), held that the Scheme published u/s 68 (c) of the old Act would stand lapsed if it is not approved within one year from the date when the new Act comes into force, i.e. with effect from 01.07.1989.

10. The instant case is squarely covered by the aforesaid judgments of the Hon'ble Supreme Court.

11. In the instant case, after remand in 1973, the Scheme remained pending before the hearing authority and the notice was issued on 10.01.1991, i.e. after the expiry of one year of the commencement of the new Act, i.e. 01.01.1989. Thus, the notice is without jurisdiction and the proceedings pending before the hearing authority had lapsed and in view thereof, the petition deserves to be allowed and the impugned notice dated 10.01.1991 is liable to be set aside.

12. The petition succeeds and is allowed. The notice dated 10.01.1991 issued by respondent No. 2 is hereby quashed as the proceedings pending before the hearing authority lapsed. In the circumstances, there shall be no order as to costs.

13. Needless to say that this judgment shall not be an impediment for the respondents to initiate the proceedings for nationalization of the route in question in accordance with law.