A. VISHWANATH RAO ETC.

v.

THE STATE OF MYSORE & ORS.

February 16, 1968

[J. C. SHAH, V. RAMASWAMI AND G. K. MITTER, JJ.]

Motor Vehicles Act 1939, *ss.* 68-*B*, 68-*C*, 68-*D*, *and* 68-*E*; *Road Transport Act* 1950, *s.* 20; *Constitution of India, Art,* 14;—*Mysore State Transport Corporation preparing scheme to take over route partly in Mysore and partly in Andhra Pradesh—Both State Governments and Central Government approving final scheme—failure to prepare scheme according to s.* 20 *of* 1950 *Act if mere irregularity.—Scheme prescribing wide disparity between maximum and minimum number of vehicles and services—if fraud on ss.* 68-*C and* 68-*E—Exclusion only of Mysore and not Andhra Pradesh private operators—if discriminatory.*

The appellants were transport operators plying a stage carriage on an inter-State route 28 miles long of which a portion of 5 miles is situated in the State of Andhra Pradesh and the rest in the State of Mysore. A draft scheme was prepared and published by the second respondent Mysore State Road Transport Corporation under s. 68-C of the Motor Vehicles Act, 1939, proposing to take over the Stage Carriage Services on the route to the complete exclusion of other operators. After objections against the scheme had been heard by the Chief Minister of the State of Mysore under s. 68-B of the Act, the draft scheme was approved by his order dated March 7, 1964 with two modifications whereby, firstly, it specified the minimum number of vehicles and daily services and, secondly, it restricted the exclusion of other operators only to that part of the route which was in the State of Mysore. The approval of the Central Government was accorded to the scheme under the proviso to s. 68-D(3) of the Motor Vehicles Act and the final scheme was published by the Mysore Government in its Gazette dated July 16, 1964.

The appellants challenged the notification of the Mysore Government approving the final scheme by a writ petition under Art. 226 of the Constitution but the petition was dismissed by the High Court.

It was contended on behalf of the appellants (i) that the provisions of s. 20 of the Road Transport Corporations Act, 1950, were not complied with and the final scheme published by the first respondent was *ultra vires;* (ii) that whereas in the draft scheme the maximum number of vehicles and daily services were specified and not the minimum number, the final scheme provided the maximum number of vehicles as 18 and the minimum as one, and the maximum number of daily services as 10 and the minimum as 3; it was contended that by permitting such a great disparity between the maximum and minimum number of vehicles and daily services there was a virtual modification of the draft scheme and therefore the procedure prescribed by s. 68-E of the Motor Vehicles Act should have been followed; and (iii) that the approved scheme violated Art. 14 of the Constitution as there was a complete exclusion of the private operators on the portion of the route located in the Mysore State while permitting those who were plying their vehicles on the portion of the route lying in the State of Andhra Pradesh.

HELD : dismissing the appeal :

A (i) Even assuming that the requirements of s. 20 of the Road Transport Corporations Act should also be followed in a case where the Central Government has given its sanction under s. 68-D of the Motor Vehicles Act, it must be held that there had been sufficient compliance with the requirements of the Road Transport Corporations Act in the present case. It was not disputed that the concurrence of the State of Andhra Pradesh was secured for the final scheme and the Government of B the State of Mysore had also accorded its approval to it. In these circumstances the omission of the first respondent to make the scheme in the precise manner in which s. 20 of the Road Transport Corporation Act directs the preparation of the scheme was a mere irregularity which could not lead to the nullification of the final scheme. [203 H—204 B]

(ii) In the present case the distance of the route in question was a short distance of 28 miles, and the order of the Chief Minister shows that C there was seasonal variation of traffic density and during marriage and other seasons it was necessary to operate extra services. There was also variation on account of auspicious and inauspicious days. It was felt by the Chief Minister that the scheme would have to be sufficiently flexible to enable adjustment of services and vehicles to cater for the actual traffic needs. In the context of the particular facts of the case the gap between the minimum and maximum number of vehicles and services was not so great as to amount to a fraud on s. 68-C and 68-E of the Motor Vehicles D Act. [205 F—H]

B. H. Aswathanarayan Singh and Ors. v. *State of Mysore & Ors.*, [1966] 1 S.C.R. 87, distinguished.

(iii) It is manifest that operators plying in the State of Mysore and those plying in the State of Andhra Pradesh constitute two different classes of persons and therefore no question of discrimination can arise if there is complete exclusion of the operators within the State of Mysore and if E there is relaxation with regard to those operating in the State of Andhra Pradesh. [206 A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 8 and 9 of 1968.

Appeals by special leave from the judgment and order dated October 27, 1967 of the Mysore High Court in Writ Petitions F Nos. 1720 and 1722 of 1964.

P. Babula Reddy and *K. Rajendra Chaudhuri*, for the appellants (in both the appeals).

Shyamala Pappu, M. K. Ramamurthi and *Vineet Kumar*, for respondent No. 2 (in both the appeals).

G *R. N. Sachthey* and *S. P. Nayar*, for respondent No. 3 (in both the appeals).

The Judgment of the Court was delivered by

Ramaswami, J. These appeals are brought by special leave from the judgment of the Mysore High Court dated October 27, 1967 dismissing Writ Petitions Nos. 1720 and 1722 of 1964.

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The appellants are transport operators plying a stage carriage on the route Yadgir to Narayanapet on the strength of permits issued by the Regional Transport Authority, Gulbarga. The route

Yadgir to Narayanapet is an inter-State route of a distance of 28 miles out of which a portion of 5 miles is situated in the State of Andhra Pradesh and the rest is in the State of Mysore. A draft scheme was prepared by the second respondent, Mysore State Road Transport Corporation under s. 68-C of the Motor Vehicles Act, proposing to take over the Stage Carriage Services on the inter-State route Yadgir to Narayanapet to the complete exclusion of other operators. The draft scheme was published in the Gazette on June 21, 1962. The appellants and some others filed their objections against the proposed scheme. The objections were heard by the Chief Minister of the State of Mysore under s. 68-D of the Motor Vehicles Act and the draft scheme was approved with certain modifications by his order dated March 7, 1964. The approval of the Central Government was later on accorded under the proviso to sub-section (3) of s. 68-D of the Motor Vehicles Act. The approved scheme made two modifications to the draft scheme. The first was that it specified the minimum number of vehicles and daily services. The second modification was that it restricted the exclusion of other operators only to that part of the route which was in the State of Mysore. The approved scheme was published by the Government of Mysore in its Gazette dated July 16, 1964. The appellants moved the High Court of Mysore for grant of a writ under Art. 226 of the Constitution to quash the notification of the Mysore Government dated July 16, 1964 approving the final scheme. The main ground of challenge was that the approved scheme violated the provisions of s. 20 of the Road Transport Corporations Act, 1950 (Act 64 of 1950). It was also contended that there was an infringement of the requirements of s. 68-C and s. 68-E of the Motor Vehicles Act, 1939 (Act 4 of 1939) as modified by Act 100 of 1956, but the writ applications were dismissed by the High Court by its judgment dated October 27, 1967.

A B C D E F

Chapter IV A was inserted in the Motor Vehicles Act (Act 4 of 1939) by the Amending Act 100 of 1956 with effect from February 16, 1957. Section 68-C which is incorporated in Ch. IV A reads :

> "Where any State transport undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service, it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State transport undertaking, whether to the exclusion, complete or partial, of other persons or otherwise, the State transport undertaking may prepare a scheme

G H

A giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and such other particulars respecting thereto as may be prescribed, and shall cause very such scheme to be published in the Official Gazette and also in such other manner as the State Government may B direct."

Section 68-D provides as follows :

"(1) Any person affected by the scheme published under section 68C may, within thirty days from the date of the publication of the scheme in the Official C Gazette, file objections thereto before the State Government.

(2) 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 D matter, if they so desire, approve or modify the scheme.

(3) The scheme as approved or modified under sub-section (2) shall then be published in the Official Gazette by the State Government and the same shall thereupon become final and shall be called the approved scheme and the area or route to which it relates E shall be called the notified area or notified route :

Provided that no such scheme which relates to any inter-State route shall be deemed to be an approved scheme unless it has been published in the Official Gazette with the previous approval of the Central Government."

F Section 68-E states :

"Any scheme published under sub-section (3) of section 68D may at any time be cancelled or modified by the State transport undertaking and the procedure laid down in section 68C and section 68D shall, G so far as it can be made applicable, be followed in every case where the scheme is proposed to be modified as if the modification proposed were a separate scheme."

Section 3 of the Road Transport Corporations Act, 1950 provides for establishment of Road Transport Corporations and reads as follows :

H "The State Government, having regard to—

(a) the advantages offered to the public, trade and industry by the development of road transport;

(b) the desirability of co-ordinating any form of road transport with any other form of transport;

(c) the desirability of extending and improving the facilities for road transport in any area and of providing an efficient and economical system of road transport service therein;

may, by notification in the Official Gazette, establish a Road Transport Corporation for the whole or any part of the State under such name as may be specified in the notification."

Section 4 states :

"Every Corporation shall be body corporate by the name notified under section 3 having perpetual succession and a common seal, and shall by the said name sue and be sued."

Section 18 is to the following effect :

"It shall be the general duty of a Corporation so to exercise its powers as progressively to provide or secure or promote the provision of, an efficient, adequate, economical and properly co-ordinated system of road transport services in the State or part of the State for which it is established and in any extended area:

provided that nothing in this section shall be construed as imposing on a Corporation, either directly or indirectly, any form of duty or liability enforceable by proceedings before any court or tribunal to which it would not otherwise be subject."

Section 19(1) provides as follows:

"(1) Subject to the provisions of this Act, a Corporation shall have power—

(a) to operate road transport services in the State and in any extended area;

. . . . ."

Section 20 deals with extension of the operation of the road transport service of a Corporation to areas within another State. Section 20 reads as follows :

"20. (1) If a Corporation considers it to be expedient in the public interest to extend the operation of any of its road transport services to any route or area situated within another State, it may, with the permis-

A sion of the State Government, negotiate with the Government of the other State regarding the proposed extension.

(2) If the Government of the other State approves the proposed extension, the Corporation shall prepare a scheme for the purpose and forward the same to the B other Government for its consent, and after such consent has been received, the Corporation may, with the previous approval of the State Government, sanction the scheme.

(3) After the scheme has been so sanctioned, it C shall be competent for the Corporation to extend the operation of its road transport service to such route or area and when the operation of such service is so extended, the Corporation shall operate the service on that route or in that area subject to the provisions of any law in force in the other State within which such D route or area is situated.

. . . . ."

Section 2(c) defines an "extended area" to mean "any area or route to which the operation of any road transport service of a Corporation has been extended in the manner provided in section 20."

E On behalf of the appellants it was contended, in the first place, that the provisions of s. 20 of the Road Transport Corporations Act, 1950 were not complied with and the final scheme published by respondent No. 1 was *ultra vires*. We are unable to accept this argument as correct. It is not necessary to examine in this case, whether there is any inconsistency between the pro- F visions of s. 20 of the Road Transport Corporations Act, 1950 and the proviso to s. 68-D of the Motor Vehicles Act. It is also not necessary to express any opinion as to whether the requirements of s. 20 of the Road Transport Corporations Act should be complied with even in the case of a scheme relating to inter-State route to which the Central Government has accorded G approval under the proviso to s. 68-D of the Motor Vehicles Act. We shall assume in favour of the appellants that the requirements of s. 20 of the Road Transport Corporations Act should also be followed in a case where the Central Government has given sanction under s. 68-D of the Motor Vehicles Act. Even upon that assumption we hold that there has been sufficient H compliance with the requirements of s. 20 of the Road Transport Corporations Act in the present case. It is not disputed that the concurrence of the State of Andhra Pradesh was secured for the final scheme and the Government of the State of

Mysore had also accorded its approval to it. In these circumstances the omission of respondent No. 1 to make the scheme in the precise manner in which s. 20 of the Road Transport Corporations Act directs the preparation of the scheme is a mere irregularity which cannot lead to the nullification of the final scheme published on July 16, 1964.

We pass on to consider the next contention of the appellants that in the draft scheme the maximum number of vehicles and daily services was specified and not the minimum, but in the final scheme approved under s. 68-D of the Motor Vehicles Act there was specification of the minimum number of vehicles and daily services in respect of the route in question. The approved scheme stated that the maximum number of vehicles was 18 and the minimum was 1. It was, also, stated that the maximum number of daily services was 10 and the minimum was 3. It was maintained on behalf of the appellants that by prescribing the maximum and minimum number of vehicles and daily services and by permitting such a great disparity between the maximum and minimum number of vehicles and daily services there was a virtual modification of the draft scheme and the procedure prescribed by s. 68-E of the Motor Vehicles Act should have been followed. In our opinion, there is no justification for this argument. It is true that in *B. H. Aswathanarayan Singh and Ors.* v. *State of Mysore and Ors.*(1), it was pointed out by this Court that if the proportion which the minimum bears to the maximum is so great, and the gap between the two, is so wide as to make the prescription of the maximum and the minimum amount to a fraud on ss. 68-C and 68-E, the scheme will stand vitiated. But at the same time it was explained that it was not possible to lay down specifically at what stage the fixing of minimum and maximum would turn into fraud; but it is only when the gap between the minimum and maximum is so great that it amounts to fraud on the Act that it will be open to a court to hold that the scheme is not in compliance with s. 68-C and is hit by s. 68-E. The gap between the minimum and maximum would depend upon a number of factors, particularly on the variation in the demand for transport at different seasons of the year. At page 97 of the Report, Wanchoo, J., as he then was, speaking for the Court, observed as follows:

> "There is no doubt that though fixing of minimum and maximum number of vehicles and trips with respect to each route is permissible under s. 68-C and would not be hit by s. 68-E, the proportion between the minimum and maximum should not be so great as to make the fixing of minimum and maximum a fraud on

(1) [1966] 1 S.C.R. 87.

A ss. 68-C and 68-E of the Act. It is not possible to lay down specifically at what stage the fixing of minimum and maximum would turn into fraud; but it is only when the gap between the minimum and maximum is so great that it amounts to fraud on the Act that it will be open to a court to hold that the scheme is not in
B compliance with s. 68-C and is hit by s. 68-E. The gap between the minimum and maximum would depend upon a number of factors, particularly on the variation in the demand for transport at different seasons of the year. Even so if the approved scheme were to fix minimum and maximum with very wide disparity between
C the two, it may be possible for the court to hold after examining the facts of the case that such fixation is not in accordance with s. 68-C and is a fraud on s. 68-E. But, with respect, it seems to us that a variation in minimum and maximum from 6 to 12 or 5 to 9 can hardly be of such an order as to amount to fraud on
D the Act. The observations with respect to fixing of minimum and maximum number of vehicles and trips in the scheme made in *Rowjee's* case [(1964) 6 S.C.R. 330] must therefore be treated as *obiter* as in that case they did not require determination. In the present case the gap is not of such a wide nature."

E In the present case, the distance between Yadgir and Narayanapet is a short distance of twenty-eight miles and the order of the Chief Minister shows that there was seasonal variation of traffic density and during marriage and other seasons it was necessary to operate extra services. There was also variation on account of auspicious and inauspicious days. The scheme had to provide
F for operating extra services during Jathras, Car festivals and other occasions like Dasara fair at Mysore, Ulvi fair at Ulvi, Shivrarathri fair at Gokarn etc. It was felt by the Chief Minister that the scheme will have to be sufficiently flexible to enable the State Transport Undertaking to adjust its services and vehicles to cater to Shandy or weekly Bazar traffic to various places. In
G the context of the particular facts of this case we are of opinion that the gap between the fixation of minimum and the maximum number of vehicles and of daily services is not so great as to amount to a fraud on s. 68-C and 68-E of the Motor Vehicles Act. We accordingly reject the argument of the appellants on this aspect of the case.

H Lastly, it was contended that the approved scheme violated Art. 14 of the Constitution as there was a complete exclusion of the private operators on the portion of the route located in the Mysore State while permitting those who are plying their

vehicles on the portion of the route lying in Andhra Pradesh State. We do not consider there is any substance in this argument. It is manifest that operators plying in the State of Mysore and those plying in the State of Andhra Pradesh constitute two different classes of persons and therefore no question of discrimination can arise if there is complete exclusion of the operators within the State of Mysore and if there is relaxation with regard to those operating in the State of Andhra Pradesh.

For the reasons expressed we hold that there is no merit in these appeals which are accordingly dismissed with costs—there will be one set of hearing fees for both the appeals.

R.K.P.S. *Appeals dismissed.*