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SHRI CHAND ETC.

v.

GOVERNMENT OF U.P. LUCKNOW & ORS.

AUGUST 23, 1985

B

[E.S. VENKATARAMIAH AND R.B. MISRA, JJ.]

Constitution of India, 1950, Arts. 32 and 19 (1) (g) - Delay in performance of statutory duties - Whether violates - Fundamental Right - s. 68-D, Motor Vehicles Act, 1959.

C

Motor Vehicles Act 1939, S. 68 (C) and 68 (D) - Draft scheme to operate stage carriages - Unreasonable delay in the approval and publication of the scheme - Whether renders the scheme bad in law.

D

The State Government of Uttar Pradesh after overruling objections approved a draft scheme and published it under sub-section (3) of section 68-D of the Motor Vehicles Act 1939 on 29th September, 1959 to authorise the State Transport Undertaking of Uttar Pradesh to operate state carriages on the inter-state route between Saharanpur and Delhi to the total exclusion of all other operators. The validity of the scheme was challenged before the High Court of Allahabad by 50 operators. The High Court by its judgment dated October 30, 1961 directed the State Government not to enforce the approved scheme against the said operators and also ordered that a fresh enquiry into the question whether the scheme should be approved or not, be held. The approved scheme became final as regards other operators. The result was that while the 50 operators who had filed Writ Petitions were able to operate their stage carriages on the route, those who had not filed the writ petitions could not operate. The U.P. State Road Transport Corporation however commenced to operate its stage carriage too.

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The respondent State Government has not been able to hear the objections to the scheme as directed by the High Court in 1961 because of certain orders of injunction passed by the Civil Courts restraining the State Government from proceeding with the hearing in suits filed by or at the instance of one or the other of the 50 operators who have been running their services on the route all these 24 years.

H

The petitioners in their petitions under Art. 32 questioned the validity of the proceedings pending before the State Government pursuant to the draft scheme published under Sec. 68-C of the Motor Vehicles Act 1939.

Allowing the Writ Petitions,

HOLD: 1. It is very strange that Civil Courts have issued orders of injunction from time to time effectively preventing the State Government from disposing of the matter. This is a case in which the Civil Courts should not have issued orders of injunction at all since such suits are barred under sec. 9 of the Code of Civil Procedure. [690 H]

2. Delay in performance of statutory duties amounts to an abuse of process of law and has to be remedied by the Court particularly when the public interest suffers thereby. [691 E-F]

In the instant case, the delay is in the order of 26 years. The situation created by the unreasonable delay in the approval of the scheme has not merely resulted in the violation of Art 14 of the Constitution but also of the fundamental right of the other operators guaranteed under Art 19 (1) (g) of the Constitution. Therefore, the draft scheme published on February 26, 1959 and the proceedings which have taken place pursuant thereto are quashed. The State Government is directed not to proceed with the hearing of the matter. It is open to the State Transport Undertaking to publish a fresh draft scheme under Section 68-C of the Act if it is necessary to do so. [692 C, 691 A-B]

Yogeshwar Jaiswal etc.v. State Transport Appellate Tribunal and Ors A.I.R. 1985 S.C. 516, Phool Chand Gupta v. Regional Transport Authority Ujjain & Ors. [1985] Supp. 2 S.C.R. 682 followed.

ORIGINAL JURISDICTION : Writ Petition (Civil) Nos. 1174 and 11851 of 1985.

(Under Article 32 of the Constitution of India)

U.R. Lalit and B.S. Chauhan for the Petitioner in W.P. No. 1174 of 1985.

K.K. Venugopal and R.P. Singh for the petitioner in W.P. No. 11851 of 1985.

The Judgment of the Court was delivered by

A **VENKATARAMIAH, J.** These two petitions are filed under
Article 32 of the constitution. The petitioners have questioned
the validity of the proceedings which are pending before the
State Government pursuant to a draft scheme published under
section 68-C of the Motor Vehicles Act, 1939 (hereinafter
referred to as 'the Act') on February 26, 1959 proposing to
B authorise the State Transport Undertaking of Uttar Pradesh to
operate stage carriages on the inter state route between Saharan-
pur and Delhi to the total exclusion of all other operators.
After overruling the objections which had been received in
response to the said draft scheme the State Government approved
the scheme and published it under sub-section (3) of section 68-D
of the Act on September 29, 1959. The validity of the said
C approved scheme was challenged before the High Court of Allahabad
by 32 operators. By its judgment dated October 30, 1961 the High
Court of Allahabad directed the State Government not to enforce
the approved scheme against the said 32 persons who had filed the
writ petitions and it further directed that the State Government
should hold a fresh enquiry if necessary into the question
whether the scheme should be approved or not. Thereafter in
D another batch of writ petitions disposed of on February 7, 1962 a
similar order was passed in favour of 18 other petitioners. The
approved scheme, however, became final as regards other
operators. The result was that while the petitioners who had
filed the writ petitions were able to operate their stage
carriages on the route those who had not filed the writ petitions
E could not operate. The U.P. State Road Transport Corporation
however commenced to operate its stage carriages too. Even though
the judgment was delivered by the High Court of Allahabad in the
year 1961 it has not been possible for the State Government to
consider whether approval should be given to the draft scheme
either with or without modification as regards the 50 operators
F pursuant to the judgment of the High Court. All the petitioners
in the writ petitions who were permitted to operate their
vehicles have been running their services all these 24 years. It
has thus resulted in discrimination. We are informed that the
State Government has not been able to hear the objections to the
scheme as per the judgment of the High Court because of certain
G orders of injunction passed by the Civil Courts restraining the
State Government from proceeding with the hearing, in suits filed
by or at the instance of one or the other of the 50 operators who
have been running their services on the route in question. It is
very strange that the Civil Courts have issued such orders of
injunction from time to time thus effectively preventing the
H State Government from disposing of the matter. We are of the view

that this is a case in which Civil Courts should not have issued orders of injunction at all since such suits are barred under section 9 of the Code of Civil Procedure. Be that it as it may, the situation created by the unreasonable delay in the approval of the scheme has not merely resulted in the violation of Article 14 of the Constitution but also of the fundamental right of the other operators guaranteed under Article 19 (1) (g) of the Constitution. This Court in **Yogeshwar Jaiswal etc. v. State Transport Appellate Tribunal and Ors.** A-I.R. 1985 S.C. 516, has observed at page 518-519 thus:

"The provisions of section 68C and section 68D of the Act clearly indicate that any scheme which is intended for providing efficient, adequate, economical or properly co-ordinated transport service should be approved either as it is or in a modified form or rejected, as the case may be, within a reasonably short time as any extraordinary delay is bound to upset all or any of the factors, namely efficiency, adequacy, economy or co-ordination which ought to govern an approved scheme under Chapter IVA of the Act. On account of various reasons such as the growth of population and the development of the geographical area adjacent to the area or route in question, any unreasonable delay may render the very proposal contained in the scheme antiquated, outmoded and purposeless. Hence there is need for speedy disposal of the case under section 68D of the Act..... Delay in performance of statutory duties amounts to an abuse of process of law and has to be remedied by the court particularly when the public interest suffers thereby. Hence if there is an unreasonably long and unexplained delay in the State Government passing orders under section 68D of the Act, the Court may issue a mandamus to the State Government to dispose of the case under section 68D of the Act within a specified time or may in an appropriate case even issue a writ in the nature of certiorari quashing the scheme and writ in the nature of prohibition directing the State Government not to proceed with the consideration of the scheme published under section 68C of the Act because section 68D does not confer an unfettered discretion on the State Government to deal with the case as it likes. The power under section 68D has to be exercised having due regard to the public interest."

A Following the observations in the above decision in **Yogeeswar Jaiswal's case** (supra), in **Phool Chand Gupta v. Regional Transport Authority, Ujjain & Ors.** [1985] Supp. 2 S.C.R. 682 we have quashed a draft scheme published in the year 1965 since it had not been approved by the State Government of Madhya Pradesh and had not been published as required under section 68-D of the Act even though a period of 20 years had elapsed from the date of publication of the draft scheme. In the instant case the delay is in the order of 26 years. In view of the above decisions we allow these writ petitions and quash the impugned scheme published on February 26, 1959 and the proceedings which have taken place till now pursuant thereto and direct the State Government not to proceed with the hearing of the matter. It is now open to the State Transport Undertaking or Uttar Pradesh to publish a fresh draft scheme under section 68-C of the Act if it is of opinion that it is necessary to do so. We, however, permit the State Transport Undertaking to run the stage carriage vehicles which it is now running on the route in question under permits issued pursuant to the scheme which is now quashed, till 28.2.1986 or till they are replaced by temporary permits to be issued under sub section (1A) of section 68-F of the Act after the publication of a fresh draft scheme or by permits issued under Chapter IV of the Act, whichever is earlier.

E The writ petitions are accordingly allowed. There shall be no order as to costs.

M.L.A.

Petitions allowed.