

RAJASTHAN HIGH COURT

Chandra Bhan and others

Vs.

State of Rajasthan

Writ Petition No. 354 of 1960
(Sarjoo Prosad, C.J. And B.P. Beri, J.)

09.11.1960

JUDGMENT

Sarjoo Prosad, C.J.

1. In this application under Article 226 of the Constitution the petitioners pray for a writ against the respondents restraining them from adopting and approving a scheme, which has been formulated and published for nationalization of road transport. The main ground on which the petition is founded is the assertion that the provisions of S, 68 D of the Motor Vehicles Act (Act No. IV of 1939 - herein-after called "the Act") are ultra vires the Constitution of India and that some of the relevant Rules of the Rajasthan State Road Transport Services (Development) Rules, 1960 (hereinafter called "the Rules"), framed under the Act are equally ultra vires the provisions of the Act and the Constitution.

2. The petitioners are transport operators having their buses plying on different routes, locally known as Jaipur-Alwar-Med route, Jaipur-Neem-ka-Thana route, and Jaipur-Kotputli route. These routes are overlapped also by the Jaipur-Delhi route and the Jaipur-Pratapgarh route. Some previous schemes of nationalization of the aforesaid routes purporting to be under Section 68C of the Act and the Rules framed for the purpose were either cancelled by the Government itself or struck down under orders of this Court by an appropriate writ. Thereafter new draft Rules were published on 4-6-1960, and objections invited. The petitioners and other operators filed their objections to the Rules in question and eventually the Rules were published as finalized in a Gazette Extraordinary on 19-8-1960. In pursuance of the Rules a fresh scheme of nationalization of road transport was published on 8-9-1960. and objections have been invited to the scheme. The petitioners have, therefore, come up to this Court praying

for appropriate writs prohibiting the respondents from approving the scheme-in question.

It is contended that by virtue of Section 68D or the Act the Government has constituted itself a Judge of the dispute vis-a-vis the Transport Undertaking owned, controlled and run by the Government on the one hand and the private bus operators on the other. This is violative of the fundamental principle of natural justice that a person should not be a judge in his own cause. The State Government, it is argued, being deeply interested in the scheme for nationalization of road transport and having already declared its avowed policy in favor of nationalization will not be able to judge dispassionately and without any bias the objections preferred by the different operators to the finalization of the scheme. With reference to the Rules it is contended that they are inconsistent with the provisions of the Act and are in excess of the powers given to the Government under the Act. For instance, it is said that the definition of "State Transport Undertaking " given in Rule 2(1)(e) is ultra vires, being restrictive in its meaning as compared with the comprehensive definition laid down in the Act itself. Rule 3 is said to be vague and lacking in material particulars. The petitioners submit that a scheme of road transport should take account of matters as to whether a particular service already running on a particular route is inefficient, and whether the State undertaking is likely to make it more efficient or adequate and remove the deficiency, and whether economically it is likely to be advantageous to the public if the scheme is given effect to. Similarly it is argued that clause (b) of Rule 9 gives an arbitrary power to the General Manager to act as a sort of a superior authority so as to dictate to the Regional Transport Authority to act in a certain manner thereby depriving it of its quasi-judicial function under Section 62 of the Act For the intervener Mr. Vyas has further contended that the use of the word "forthwith" in clause (c) of this Rule makes it run counter to the provisions of Section 57 of the Act in accordance where with the State Undertaking has to apply for the grant of a permit as held by the Supreme Court. Similarly Rule 11(1) is attacked on the ground that the General Manager of the State Undertaking is himself appointed a judge in determining the compensation payable to the bus operator.

3. On the above contentions we have thus to examine whether Section 68 D of the Act is ultra vires the Constitution and whether the grounds on which the validity of the Rules has been assailed are sustainable. Both parties have, in support of their respective contentions, placed reliance upon certain recent decisions of the Supreme Court which we propose to discuss in their appropriate places, For the present we

should first proceed to examine the relevant provisions of the Act. It should be observed at the outset that, as recognized by Article 298 of the Constitution, the executive power of the Union and of each State extends to the carrying on of any trade or business. Like every ordinary citizen, the Union and the State Government are thus authorized to carry on any trade or business subject to the restrictions which may be imposed by their respective Legislatures in respect of the particular trade or business. Under Article 19(6) of the Constitution, as amended, nothing in sub-clause (g) of clause (1) of that Article is to affect the operation of any existing law in so far as it relates to, or prevents the State from making any law relating to, the carrying on by the State or by a corporation owned or controlled, by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise. Such a legislation is, therefore, not liable to be struck down on the ground that it infringes Article 19(1), (g) of the Constitution; nor can the authority of the Parliament to enact laws granting monopolies to the State Government to conduct the business of road transport be open to any serious challenge. Entry 21 of List III of the Seventh Schedule concurrently authorizes the Union Parliament and the State Legislatures to enact laws in respect of commercial and industrial monopolies, combines and trusts; and the expression "commercial and industrial monopolies" is wide enough to include grant of monopolies to the State and Citizen as well as control of monopolies.

These expressions in a constitutional document, should not be construed in a narrow or restricted-sense. The fact that under Entry 26 of List II of the Seventh Schedule the States have exclusive authority to legislate in respect of trade and commerce within the State, subject to the provisions of Entry 33 of List III, does not derogate from the authority which is conferred by Entry 21 of List III concurrently on the Parliament and the State Legislatures. If it is accepted that legislation relating to monopoly in respect of trade and industry is within the exclusive competence of the State, then the anomalous situation would arise that the Union Parliament would not be competent to legislate in order to create monopolies in the Union Government in respect of any commercial or trading venture even though such a power is also reserved to the Union under Article 298 of the Constitution.

4. The Motor Vehicles Act, 1939, was enacted by the Central Legislative Assembly in exercise of its power under the Government of India Act, 1935, to legislate in respect of mechanically propelled vehicles. Chapter IV, A containing sections 68A to 68I, with which we are concerned in the instant case, was incorporated into that Act by the Parliament by Act 100 of 1956, whereby special provisions were made in relation to

the conduct of transport undertakings by the States themselves or corporations owned or controlled by the State. We may incidentally examine the scheme of this Chapter, before we deal' with the criticisms advanced against Section 68D of the Act. Section 68A gives various definitions including the definition of "State Transport Undertaking" as meaning inter alia an undertaking for providing road transport service carried on by the Central Government or a State Government or any Road Transport Corporation established under Section 3 of the Road Transport Corporation Act (Act 64 of 1950),.

Section 68B provides that the provisions of this Chapter and the rules and orders framed there under shall override Chapter IV of the Act or any other law for the time being in force. Section 68C authorises the State Transport Undertaking to prepare and publish a scheme of road transport services of a State. The whole policy for the framing, and publication of the scheme is embodied in that :

section which lays down the conditions under which alone a scheme can be prepared and operated by the State Transport Undertaking.

It requires that the undertaking should objectively come to an opinion that for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service, the necessity of such a scheme arises in public interest. It is only then that a scheme can be formulated by the State Transport Undertaking to run and operate road transport services in general or any particular class of such service in relation to any area or route or portion thereof, whether to the exclusion, complete or partial, of other persons or otherwise. The scheme prepared shall give particulars at 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 every such scheme to be published in the Official Gazette and also in such other manner as the State Government may direct. Evidently the object of publication is that persons affected by the scheme might have notice thereof and make their representations., if any, against the proposed scheme. This is further clarified by Section 68D, the impugned section, which deals with the lodging of objections to the scheme framed under the preceding section, the consideration of those objections and the publication of the final scheme approved or modified by the State Government. This section will be dealt with in extenso at a later stage. Section 68E provide for cancellation and modification of the scheme published under Section 68D at any time by the State Transport Undertaking. Section 68F deals with the issue of permits to

State Transport Undertakings in respect of a notified area or notified route and provides that the Regional Transport Authority shall issue such permits to the State Transport Undertaking notwithstanding anything to the contrary contained in Chapter IV. Under this provision the. Regional Transport Authority may for the purpose of giving effect to the approved scheme in respect of a notified area or notified route refuse to entertain any application for the renewal of any other permit; cancel any existing permit; or timidity the terms thereof so as to render the permit ineffective beyond a specified date, reduce the number of vehicles authorized to be used under the permit or curtail the area or route covered by the permit.

Section 68-G sets out the principles and method of determining compensation to persons whose existing permits are cancelled, and Section 681 empowers the State Government to make rules for the purpose of carrying into effect the provisions of the Chapter. It would thus appear that the provisions contained in Chapter IV-A are not merely regulatory of the procedure for carrying on business of road transport by the State; but they also enable the State Transport Undertaking, subject to the provisions of the scheme, to exclude private operators and to acquire a monopoly, whether complete or partial, of the transport business in a notified area or on notified routes. But the machinery provided under the Chapter is complete and self-contained and has introduced checks and safeguards. It evolves a machinery for keeping the State Transport Undertaking within bounds and from acting in an arbitrary manner, because Section 68C lays down the Legislative policy in clear and unmistakable terms and the State Transport Undertaking can initiate a scheme only under the conditions mentioned therein. The State Transport Undertaking before propounding a scheme has to arrive at its decision on objective criteria. The parties affected and the public are given every opportunity to present their objections before the Government and the Government after following the prescribed procedure, which has been held to be of a quasi judicial character, confirms or modifies the scheme. The scheme before its finalization is subjected to public gaze and scrutiny and the appropriateness of the provisions are tested by the process laid down therein, which process can be claimed to be in accord with the principles of natural justice.

5. Mr. C.L. Agrawal has not assailed the other provisions in the Chapter except Section 68D which has been directly challenged as ultra vires. The section requires that persons affected by the scheme published under Section 68C have to present their objections to the State Government and the State Government 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, approves and modifies the scheme, and the scheme is then published in the Official Gazette and becomes final, and 'the are or route to which it relates is called the notified area or the notified route. Mr. Agrawal argues that the Government itself being deeply interested in the Undertaking cannot impartially dispose of these objections as a quasi-judicial body, inasmuch as it is bound to be biased in its own favor and it is not possible for the operators to receive an appropriate determination of their objections at the hands of such a body which in fact is a judge in its own cause. Reliance has been placed on certain observations in the Supreme Court judgment in *Nageswara Rao v. Andhra Pradesh State Road Transport Corporation*,¹ where it was held that in disposing of the objections the State Government in fact performed a quasi-judicial function and as, such must conform to the principles of natural justice. It was further pointed out that a State Government under the Constitution meant the Governor and the executive power of the State which vested in the Governor was exercised by him directly or by officers subordinate to him in accordance with the provisions of the Constitution. Therefore, the State Government as such is not competent through its officers, either departmental secretaries or any other officer serving under the Government, to dispose of the matter judicially, so as to make the objectors feel not only that justice has been done but also that justice may seem to have been done. It is important to remember that in the case aforesaid the Supreme Court did not hold that any of the provisions of Chapter IV-A or even sections 68C and 68D which directly came in for consideration were unconstitutional. There was some suggestion in the arguments that the Rules of Business the Governor is authorized to make under the Constitution only regulate the acts of the Governor or his subordinates in discharge of the executive power of the State Government and will not govern quasi-judicial functions entrusted to it. Their Lordships pointed out that the argument was fallacious and that the concept of a quasi-judicial act implied that :

"The act is not wholly judicial; it describes only a duty cast on the executive body or authority to conform to norms of judicial procedure in, performing some acts in exercise of its executive power. The procedural rules made by the Governor for the convenient transaction of business of the State Government apply also to quasi judicial acts, provided those rules conform to the principles of judicial procedure".

6. Subba Rao, J. who delivered the judgment himself referred to this judgment in a

subsequent case and explained the ratio of his decision. In *Nageswararao v. State of Andhra Pradesh*,² the distinction between the "official bias" of an authority which is inherent in the statutory duty imposed upon it and the "personal bias" of the said authority in favor of or against anyone of the parties has been distinctly brought out. It is true that the principles governing the "doctrine of bias" vis-a-vis judicial tribunals apply both to judicial and quasi judicial tribunals. The principles are that (i) no man shall be a judge in his own cause; and (ii), that justice should not only be done but manifestly and undoubtedly seem to be done; the combined effect of the maxims being that if a member of a judicial body is subject to a bias (whether financial or otherwise) in favor of, or against, any party to a dispute, or is in such a position that a bias must be assumed to exist, he ought not to take part in the decision or sit on the tribunal. Any direct pecuniary interest, however small, in the subject-matter of inquiry will disqualify a judge, and any interest, though not pecuniary, will have the same effect, if it were sufficiently substantial to create a reasonable suspicion of bias. But the question is whether where a statute confers a power on an authority and imposes a duty on it to be a judge in its own cause or to decide a dispute in which it has official bias, the doctrine of bias is qualified to the extent of the statutory authorization. "In the instant case", as held by their Lordships,

"the relevant provisions of the Act do not sanction any dereliction of the principles of natural justice. Under the Act a statutory authority, called the Transport Undertaking, is created and specified statutory functions are conferred on it. The said Undertaking prepares a scheme providing for road transport service in relation to an area to be run or operated by the said Undertaking. Any person affected by the Scheme is required to file objections before the State Government, and the State Government, after receiving the objections and representations, gives a personal hearing to the objectors as well as to the Undertaking and approves or modifies the scheme as the case may be. The provisions of the Act, therefore, do not authorize the Government to initiate the scheme and thereafter constitute itself a judge in its own cause. The entire scheme of the Act visualizes, in case of conflict between the Undertaking and the operators of private buses, that the State Government should sit in judgment and resolve the conflict. The Act, therefore, does not authorize the State Government to act in derogation of this principles of natural justice", Subba Rao, J. explained the earlier decision on the ground that the decision was on its own facts; and merely because in the previous stage the hearing given by the Secretary in charge of the Transport Department, while the final order was

passed by the Chief Minister, was held to offend the principles of natural justice, it did not follow as a logical corollary that the same infirmity would attach to the decision which in that case was given by the Chief Minister.

7. In another decision of the Supreme Court the point now urged by Mr. Agrawal was directly raised and answered against the petitioners and it does not appear to us that the point is any longer res integra : we mean the decision in H.C. Narayanappa. State of Mysore, petn. No. 2 of 1960, D/-28-04-1960 , a blue print whereof has been placed before us. The third and court head of the argument urged on behalf of the petitioners related to this aspect of the matter. Shah J., who delivered the judgment of the Court, to which Subba Rao, J. was also a party, repelled the contention in the following words :

"Section 68D of the Motor Vehicles Act undoubtedly imposes a duty on the State Government to act judicially in considering the objections and in approving or modifying the scheme proposed by the transport undertaking. AIR 1959 SC 308. It is also true that the Government on whom the duty to decide the dispute rests, is substantially a party to the dispute but if the Government or the authority to whom the power is delegated acts judicially in approving or modifying the scheme, the approval or modification is not open to challenge on a presumption of bias. The Minister or the officer of the Government who is invested with the power to hear objections to the scheme is acting in his official capacity and unless there is reliable evidence to show that he is biased, his decision will not be liable to be called in question, merely because he is a limb of the Government".

Constitutional validity of S, 68D can, therefore, be no longer assailed on the ground that under the section the Government itself is authorized to hear objections in a matter in which the Government is interested. This is obvious from what the learned Judge further observed :

"The guarantee conferred by Section 68D of the Motor Vehicles Act upon persons likely to be affected by the intended scheme is a guarantee of an opportunity to put forth their objections and to make representations to the State Government against the acceptance of the scheme. This opportunity of making representations and of being heard in support thereof may be regarded as real

only if in the consideration of the objections, there is a judicial approach".

8. A yet later decision *Kondala Rao v. The Andhra Pradesh State Road Transport Corporation*,³ of the Supreme Court is much to the same effect. It was contended there that the Government had complete control over the Road Transport Corporation, that the entire control over such road transport undertaking rested in the Government, and that the Chief Secretary to the Government of Andhra Pradesh was its Chairman. On this hypothesis it was argued that "the Government itself was a judge in its own cause and that therefore its decision was actuated by legal bias". Subba Rao, J., who this time again delivered the judgment of the Court, after referring to the distinction pointed out in his earlier judgment between "official bias of an authority which is inherent in the statutory duty imposed on it and personal bias of the said authority" in favor of or against any of the parties, proceeded to state that :

"The provisions of the Act did not sanction any dereliction of the principles of natural justice., for the Act visualized in case of conflict between the undertaking and the operators of private buses that the State Government should sit in judgment and resolve the conflict".

His Lordship then quoted with approval from the judgment of Shah, J., which was much to the same effect though couched in different phraseology and to which reference has been made earlier. These decisions of the Supreme Court conclude the matter.

9. The net result of the above decisions is (i) that in disposing of the objections presented under Section 68-D of the Act, the authority concerned must deal with them judicially and without any prejudice or bias; (ii). that there is a clear distinction between the official bias of an authority inherent in the statutory duty imposed and its personal bias; in the case of the latter the authority would be incompetent to perform the statutory duty imposed but not otherwise; and (iii) that the mere fact that under the Act the State Government itself is authorized to resolve any conflict between the operators and the State Transport Undertaking does not involve any dereliction of the principles of natural justice, so as to justify the contention that the Government has been made a judge in its own cause. Mr. Agrawal submits that there is a difference between a State Transport Corporation which is a distinct entity and a Transport Undertaking departmentally owned and controlled by the Government. That may be so but for purposes of deciding about the validity or otherwise of Section 68D of the

Act this distinction is of no importance. Again the: question remains whether the bias is official or personal. In fact the decision given by Shah, J. referred to a case of departmental undertaking and yet it was held that the dispute could be decided by a person who was the limb of the Government provided he had no personal bias in the matter. In the petition all that has been stated in this case is that the Government was deeply interested in the policy of nationalization of road transport and has repeatedly expressed itself in favor of such a policy and that in pursuance of the above policy the Government has taken, various steps directing State and Regional Transport Authorities to refuse and withhold the grant of permits. There is nothing, however, in the affidavits to show that the person or authority authorized under the Rules to hear and, dispose of objections under Section 68D of the Act entertains any personal bias or prejudice against the petitioners.

10. Under the Rules the scheme is prepared by the General Manager representing the State Transport Undertaking; the memoranda of objections under Section 68D are to be addressed to the Secretary to the Government of Rajasthan in the Transport Department and they are to be considered by an officer authorized under the rules made by the Governor in pursuance of clause (3) of Article 166 of the Constitution of India. The Gazette Notification shows that under the Rules of Business aforesaid, framed by the Governor, the Legal Remembrances to the Government of Rajasthan has been authorized to perform that duty. The officer is to dispose of the objections on merits after giving an opportunity of being heard to the objectors or their duly authorized representatives and also the representatives of the State Transport Undertaking.

The officer so authorized to hear and determine the objections under the Statute is an Officer of high judicial standing and experience in the cadre of the Higher Judicial Service of the State and no one has suggested that he has any prejudice against anyone of the parties or that the objectors will not have a fair and impartial consideration of their objections at his hands.

In case the scheme relates to any inter-State route the section further provides that the scheme shall not be deemed to have been an approved-scheme unless it has been published in the Official Gazette with the previous approval of the Central Government. It is, therefore futile to contend, under those circumstances, that there can be any bias on the part of the person authorized to hear objections simply because of his official position. Rule 7(1) of the Rules provides for the appointment of the officer in question. A great deal of attack has been leveled at the Rule on the ground

that the Rules of Business framed by the Governor being of a confidential character, the public will not be able to know on what authority the appointment of the officer has been made, and the Rules are capable of being changed from time to time. Of course it would have been better if in Rule 7 itself it had been clearly specified that the Legal Remembrancer to the Government was authorized to hear and dispose of the objections presented, under Section 68D of the Act; but we do not think that the validity of the Rule as it stands can be challenged on these grounds. Under Article 166(3) of the Constitution the Governor is authorized to frame the Rules of business and it is of course open to him to change the Rules at his discretion in order to suit the convenience of the administration. If the authority of any particular appointment made by the operation of the Rules of Business is challenged on the ground that the appointment is not in accordance with those Rules, the Government may by notification satisfy 'the public demand to that effect; but normally the presumption is that when an appointment is made under the Rules, it must be in accordance with the Rules of Business framed by the Government. If in any particular case it is actually found that the appointment is not in accordance with the Rules so framed, the appointment may be quashed on that ground and the authority of the person appointed may be challenged on that account but we have no reason to assume nor has anything been suggested in this case that the appointment is not in accordance therewith. We have examined the Rule and we find that the Governor specially amended a particular Rule in order to suit the requirements of Rule 7(1) of the Rules framed under the Act and to that basis the said Officer has been appointed to discharge his functions under Section 68D of the Act. Another argument in this connection is that there should have been a previous publication of the particular Rule under the Rules of Business framed by the Governor under which the above appointment has been made, as required by Section 133 (2) of the Act, which provides that all rules made under the Act should be published in the Official Gazette and should, unless some later date is appointed, come into force on the date of such publication. There is an apparent fallacy in this argument, because Section 133 applies to publication of the Rules under the Act. It has nothing to do with the publication of the Rules of Business framed by the Governor under Article 166(3) of the Constitution. For the above reasons we are unable to entertain the plea so strenuously urged for the petitioners that Section 68D of the Act is ultra vires the Constitution.

11. We may now turn to the attack which has been leveled against some of the relevant Rules, It is suggested that the definition of "State Transport Undertaking" in

Rule 2(e) of the Rules is ultra vires the Act because it gives a very restricted meaning to the expression used in the Act itself, and the definition in order to be valid should have been as comprehensive as the one which it bears under the Act itself. We do not think that the definition can be attacked on this ground. It is not apparently inconsistent with the Act and for purposes of the Rules the definition is confined merely to an Undertaking providing Road Transport Service carried on by the Government.

12. The next contention relates to Rule 3. It is suggested that this Rule is inadequate and does not fully provide for the conditions under which alone a scheme of Road Transport Service can be formulated and framed for a State Transport Undertaking. It is argued that there is nothing in the Rule to show how the Officer is to decide as to whether or not there was justification in public interest to nationalize the road transport in order to provide an efficient, adequate, economical and properly coordinated road transport service. The existence of these factors would depend largely upon the circumstances and materials available in a particular case and the scheme framed for the purpose; and it would be for the Officer disposing of the objections to see whether or not these conditions exist so as to enable the State Transport Undertaking to nationalize the transport service whether to the exclusion, complete or partial,' other persons operating on those routes. We do not think that the Rule can be challenged on this account. Indeed a review of the various provisions of the Rule shows that cumulatively they have a very important bearing upon the factors enumerated above and it cannot be reasonably assumed that the Rule has not provided for the requirements which under Section 68C of the Act enable the General Manager representing the State Transport Undertaking to prepare a scheme.

13. We have already dealt with Rule 7(1) of the Rules; but the learned counsel for the petitioners as well as the intervener have also very strenuously attacked Sub-Rule (6) of that Rule. They contend that all that Sub-Rule (6) authorizes is to approve or modify the scheme as the Officer deems proper after hearing the objections of the parties; but it does not confer any jurisdiction on the Officer to cancel the scheme as a whole. The Rule, in our opinion, does nothing more than provide for what is laid down in Sub-Section (2) of Section 6SD itself.

There also the identical expression occurs namely that the State Government, after considering the objections and giving an opportunity to the objectors or their representatives to be heard may "approve or modify the scheme". The word "cancel"

has not been used there. If the objections are of such a nature as to affect vitally the scheme and its component parts, and the objections prevail with the Officer concerned to decide them, the scheme may possibly be so modified or torn to pieces that it may have to be replaced by some better scheme; but the power of cancellation is something quite different from the power of modification or approval as contemplated by Section 68D of the Act.

The cancellation of a scheme may be a matter of policy with the Government and this is provided for by Section 68E of the Act. 'It is, therefore, wrong to suggest that the said Rule should have provided for cancellation or scrapping of the scheme itself as a whole. As we said the Officer in allowing the objections may so modify the scheme that it may become useless in material details and Such a procedure would be as good or as bad as scrapping the scheme itself. In any case the Rule could not give larger powers to the Officer hearing the objections than what has been conferred upon the State Government by Section 68D itself.

14. Rule 9 of the Rules has come in for the most serious criticism. Rule 9 runs thus :

"Consequences on publication of the Scheme. Upon the publication of the Scheme- under Sub-Section (3) of Section 68-D of the Act, the consequences as hereinafter stated, shall have effect in respect of the notified route or area or portion thereof;

(a) No person (other than the State Transport Undertaking either singly or in conjunction with Railways) shall be entitled to a permit under Chapter IV of the Act;

(b) The General Manager or an officer authorized by him may specify the number of transport vehicles, if any, for which temporary permits may be granted or countersigned in favor of persons other than the State Transport Undertaking to meet a temporary need;

(c) The General Manager shall communicate the Scheme published under Rule 8 to the Regional Authority or to each Regional Transport Authority concerned and the Regional Transport Authority or each such Regional Transport Authority as the case may be, shall give effect to the approved scheme forthwith".

It is contended that this Rule practically takes away the jurisdiction of the Regional Transport Authority to decide matters in a quasi judicial manner in respect of

applications for grant or renewal of per-mite, as required by the Act, and appears to vest the General Manager with powers to dictate to the Transport Authority to refuse or grant permits. It must be remembered that the provisions contained in Chapter IV-A of the Act are special provisions relating to State Transport Undertakings and under Section 68B of the Act it is specifically provided, that the provisions of the Chapter and the Rules and orders made there under shall have effect notwithstanding anything inconsistent therewith contained In Chapter IV of the Act or any other law for the time being in force, or in any instrument having effect by virtue of any such law. The provisions of this Chapter have an overriding effect and, therefore, to this extent the jurisdiction of the Regional Transport Authority has been curtailed or circumscribed. There is an apparent reason for it because the General Manager framing the scheme is best expected to know about the details and the needs for transport in the area or route concerned; and since the object of the Statute is that there should be a properly coordinated road transport service the matter had to be left with the General Manager to advise the Regional Transport Authority as to the number of Transport vehicles, if any, for which temporary permits may be granted, under clause (b) of Rule 9. The clause does not say to whom temporary permits may be granted. It does not authorize the General Manager to specify to whom temporary permits may be granted so as to lead to favoritism or nepotism on his part. It only authorizes the General Manager or an officer authorized by him to specify the number of transport vehicles, if any, for which temporary permits may be granted to meet a temporary need. There is, therefore, not much substance in this contention. It has been further argued that the provision in clause (c) that the Regional Transport Authority should give effect to the approved scheme forthwith, after the scheme has been published and communicated to him by the General Manager is inconsistent with the provisions of Section 57 of the Act. The argument has been raised on the authority of the Supreme Court decision in *Shrinivasa Reddy v. State of Mysore*,⁴ where it has been held that the State Transport Undertaking also must comply with the provisions of Section 57(2) of the Act and must make an application for a stage carriage permit or a public carrier's permit not less than six weeks before the date on which it is desired that the permit should take effect or if the Regional Transport Authority appoints dates for the receipt of such applications then on such dates. The use of the word "forthwith" itself does not offend against the decision given by the Supreme Court. It merely implies that as soon as the approved scheme is communicated to the Regional Transport Authorities the scheme shall become final so far as they are concerned and they are bound to give effect to the approved scheme. It is obvious that if the scheme comes into effect the grant of

permits on the route or area will of necessity come to be regulated accordingly. Clause (c) relates merely to the finality of the scheme and if in other ways the State Transport Undertaking has to fulfill some of the requirements of the law in order to get the grant of permit it may still do so.

15. Nor do we think that there is much substance in the contention that the General Manager of the State Transport Undertaking is authorized under Rule 11 to determine and sanction compensation payable under section 68G of the Act. The policy of the law as to the manner in which compensation has to be determined has been indicated in the relevant provision of the Act itself and we do not see how a rule providing for determination of compensation by the General Manager of the State Transport Undertaking can be said to be illegal. Thereafter it is almost a ministerial act. The General Manager will have to determine the compensation payable according to the policy of the law and pay the same to the persons concerned.

16. All the above contentions, therefore, fail and we cannot give effect to any of them. We must, therefore, pronounce in favor of the constitutional validity of both Section 68D of the Act and the relevant Rules framed there under.

17. In the result we reject this application-with costs, hearing fee Rs. 100/-, and discharge the rule.

Application dismissed.

Cases Referred.

1. AIR 1959 SC 308
2. AIR 1959 SG 1376
3. Writ Petitions Nos. 76, 217 to 228 of 1960, D/-8-9-60
4. AIR 1960 SC 350