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**(1962) 02 AP CK 0021**

**In the Andhra Pradesh High Court**

**Case No :** Writ Petition No's. 1249, 1255, 1258, 1260, 1255, 1266, 1267, 1269 to 1275 of 1961

Damineni Sangayya and Another

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

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**Date of Decision :** 02-02-1962

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** AIR 1962 AP 462

**Hon'ble Judges :** Seshachelapati, J

**Bench :** Single Bench

**Advocate :** G. Suryanarayana, Smt. K. Amareswari, P. Ramakoti and P. Babulu Reddy, for the Appellant; D. Narasa Raju Advocate-General and P.R. Ramachandra Rao, for Road Transport Corpn. in all petitions, P. Ramachandra Reddi, Third Govt. Pleader for the State, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Seshachelapati, J.—These are 14 petitions, filed under Art. 226 of the Constitution of India, praying for the issue of writs of Certiorari, or Mandamus. The petitioners are all motor transport operators, plying their vehicles under valid stage carriage permits on several routes in the Guntur District. They challenge the legality of G. O. Ms. Nos. 2071 to 2075 Home (Transport V) Department, dated 16-10-1961 made and published under Sec. 68-D of the Motor Vehicles Act, 1939 as amended by Act C of 1956, and the consequential orders dated 9-11-1961 passed by the Regional Transport Authority, Guntur, under Sec. 68-F(1) and 68-F (2) (c) (i) of the Act. The Andhra Pradesh Road Transport Corporation, and the Regional Transport Authority, Guntur, and in some petitions, the State of Andhra Pradesh have been impleaded as respondents. The Andhra Pradesh Road Transport Corporation has filed counter affidavits traversing the allegations made by the petitioners, and those affidavits have been in the main adopted by the Government of Andhra Pradesh. The Regional Transport Authority, Guntur, has also filed counter affidavits. Several questions have been

raised and debated at the bar at length. Before considering the various contentions, it would be necessary to state in a brief outline, the circumstances leading up to the presentation of these petitions.

2. The Andhra Pradesh Road Transport Corporation (hereinafter called the Corporation) published in the Andhra Pradesh State Gazette dated 26-5-1960, the different and independent schemes under Sec. 68-C of the Motor Vehicles Act, 1939 (hereinafter called the Act) with reference. to Guntur District proposing to take over the road transport services on the routes specified in the said schemes. About 242 objections were received within the time prescribed under Sec. 68-D (1). Individual notices were given to all the objectors and the representatives of the Corporation. An oral hearing was granted by the Minister for Education and Transport on 3rd, 6th and 7th September, 1960. A large number of objectors were present in person and many of them were represented by counsel. After hearing the advocate of the Corporation and considering all the objections and the material before him, the Minister for Education and Transport rejected the objections and approved the schemes. The schemes were directed to come into force on the 1st day of each month, commencing from 1-1-1961 to 1-10-1961. They were duly published as G. O. Ms. Nos. 2230 to 2239 Home (Transport 1) Department dated 26-10-1960 in the Andhra Pradesh-Gazette on 27-10-1960.

Aggrieved by the action of the Minister of Education and Transport, some of the operators filed Writ Petitions in the High Court (W. P. No. 868 of 1960 and connected petitions). In their judgment dated 13-2-61 Manohar Pershad and Kumarayya JJ. quashed the order of the Minister for Education and Transport approving of the schemes dated 26th May, 1960 and published as G. O. Ms. No. 2230 to 2239 Home (Transport) Department dated 26-10-1960 and directed that the proposed schemes should be taken up for consideration from the stage of Sec. 68(D)(2) and dealt with by the Government in accordance with the provisions of Section 68-D of the Act. In another batch of writ petitions filed by objectors, following the earlier decision, the High Court quashed the orders of the Minister for Education and Transport approving of the schemes dated 26th May, 1960 and published as G. O. Ms. Nos. 2236, 2238, 2235 and 2234 dated 26th October, 1960. These schemes were also directed to be taken up from the stage of Sec. 68(2) and dealt with in accordance with law, and that the objections should be heard by somebody else than the Minister who heard the objections to the original schemes.

3. After these decisions were rendered by the High Court and in conformity with the directions contained therein, notices were directed to be given to the parties aggrieved that the objections would be heard by the Chief Minister on 11-10-1961 at 4-00 P.M. Accordingly a personal hearing was given by the Chief Minister on the date prescribed, and a large number of objectors were present in person and some of them were represented by counsel. Various arguments were raised and after hearing the counsel for the Corporation, the Chief Minister

considered the objections raised seriatim and held that there was no substance in any of them. During the course of the enquiry, the Chief Executive Officer of the Corporation filed a written memorandum requesting that in the scheme published at page 859 of the Andhra Pradesh Gazette on 26th May, 1950, a few routes be modified in the manner suggested. The modifications requested were allowed to be made. The Chief Minister approved the schemes on 15-10-1961 and directed their publication in the Andhra Pradesh gazette. The schemes were published on 16-10-1961 as G. O. Ms. Nos. 2071 to 2075.

4. Thereupon, the Corporation filed applications dated 17-10-61 before the Regional Transport Authority, Guntur for the grant of stage carriage permits in accordance with the approved schemes with effect from 1-12-1961. Those applications were received by the Regional Transport Authority, on 19-10-1961. On 27-10-1961 the Regional Transport Authority issued notices to the operators stating that at the meeting to be held on 9-11-1961 steps would be taken for the implementation of the approved schemes with regard to the specified routes. Accordingly, on 9-11-1961 the parties made representations before the Regional Transport Authority. After considering the objections, the Regional Transport Authority, by an appropriate resolution directed that under Sec. 68-F (2) (c) (i) of the Act the stage carriage permits, of the operators plying on the routes notified should be rendered ineffective beyond 30-11-1961, and called upon the operators to surrender Parts A and B of the permits to the Secretary, Regional Transport Authority, Guntur on 1-12-1961.

5. The present writ petitions are filed by some of the operators whose stage carriage permits had been rendered ineffective on the notified routes beyond 30-11-1961. Though all the petitions relate to different schemes published on 16-10-1961, they raise substantially the same or similar contentions. The contentions raised by Mr. G. Suryanarayana, Srimathi Amareswari and Mr. Babulureddy, the learned counsel appearing for some of the petitioners may be grouped under two heads. One, with regard to the schemes approved under Sec. 68-D of the Act; and (2) in regard to the implementation thereof by the Regional Transport Authority, Guntur. The main contentions with respect to the first group of objections are: one, that in the schemes approved by the Chief Minister under Sec. 68-D of the Act, distinct and independent routes were, by way of modification, included even though the said routes were not published under Sec. 68-C of the Act; and that such an inclusion is illegal, opposed to the rules and violative of the principles of natural justice, and secondly, that by reason of unlawfully including in the approved schemes routes not notified under Sec. 68-C the entire scheme becomes illegal and invalid and, therefore, unenforceable.

As regards the second group of objections, it is contended, first, that the Regional Transport Authority had fixed no date for the implementation of the scheme secondly, that the applications for the grant of the permits have not been made in conformity with Sec. 57(2) of the Act; thirdly, that along with the applications the fee for the grant of permits has not been paid in accordance with

Rule 167 of the Madras Vehicles Rules, and fourthly that "due notice" within the meaning of Rule 11 of the Andhra Pradesh Motor Vehicles Rules, 1957, has not been given to the operators before rendering the permits ineffective beyond a specified date. The learned Advocate-General appearing for the respondents, has contended that there is no force in any of the objections raised by the petitioners, that the schemes were approved strictly in conformity with law, that the consequential action was taken by the Regional Transport Authority in accordance with the statutory provisions and the rules made thereunder, and that all objections contra are devoid of any substance.

6. The objections of the petitioners will be considered seriatim.

7. The first objection relates, to the inclusion of the routes not notified under Sec. 68-C in the approved scheme by way of modification. This objection, though raised in all the petitions, directly arises in W. P. Nos. 1249 and 1258 of 1961, and they will, therefore, be taken up for consideration first.

8. W. P. No. 1249 of 1961: This petition is filed by two operators, Damineni Sangayya and Bandlamudi Subbayya. They ply their vehicles (A. P. G. 1481 and A. P. G. 1449 respectively) under stage carriage permits valid upto 30-7-1962, on the route Guntur to Ponnekallu. In the scheme published under Sec. 68-C on 26-5-1960, the route Guntur to Amaravati via Lam and Nidumukkala, was notified. During the course of the enquiry before the Chief Minister the Chief Executive Officer of the Corporation filed a memorandum requesting that the said route may be modified as:

i) Guntur to Amaravati via Lam and Nidumukkala, 8 buses.

ii) Guntur to Ponnekallu via Lam and Tadikonda in 3 buses.

The route as proposed in the published scheme was directed to be modified in the manner desired by the Corporation. Accordingly, in G. O. Ms. No. 2071 dated 16-10-1961, the modified route was published. In this petition, we are concerned with route 2 (ii) of the said scheme, namely, Guntur to Ponnekailu, via., Lam and Tadikonda Junction. Mr. Suryanarayana, the learned counsel for the petitioners contends that the route Guntur to Ponnekallu is a distinct and separate route, that by reason of its not being included in the scheme published u/s 68-C, the petitioners were precluded from being present and making their representations before the Chief Minister on 11-10-1961 and that the procedure adopted is violative of the terms of Sec. 68-D(i) and also principles of natural justice. It is also contended that no radical modifications could be introduced at the stage of approval of the schemes under Sec. 68-D by including new routes which are distinct and independent.

9. W. P. No. 1258 of 1961: The petitioner in this petition is one Bejjam Veeraswami, who plies one of his vehicles, A. P. G. 149 on the route Sattanapalli to Madipadu via Achampet, under a stage carriage permit valid upto 20-1-1963. The objections in this petition are also similar to those in W. P. No. 1249 of 1961.

The case of the petitioner is that the route Sattenpalli to Madipadu was not included in the scheme published under Sec. 68-C of the Act, and, therefore, he had no opportunity of preferring his objections to the inclusion of the route in the approved scheme.

10. The learned Advocate-General, appearing for the respondents, has stated that even though the objections pressed by the petitioners are neither serious, nor sustainable but, having regard to the fact that the petitioners appear to be labouring under a strong sense of grievance and that factually they had not preferred their objections to the inclusion of the routes in question, he was instructed to state that the routes Guntur to Ponnekallu via Lam and Tadikonda Junction (involved in W. P. No. 1249 of 1961) and Sattennapalli to Madipadu via Achampet (involved in W. P. No. 1258 of 1961) would be excluded from the implementation of G. O. Ms. No. 2071 dated 16-10-1961, without however, prejudice to action being taken to nationalise the road transport service on the two routes in question in conformity with Chapter IV of the Motor Vehicles Act. In view of the statement made by the learned Advocate-General it is unnecessary to deal with the several contentions raised by the learned counsel for the petitioners in the two petitions. The writ petitions, 1249 and 1258 of 1961 are, therefore allowed with costs. Advocates fee Rs. 50/- in each case. A direction Will issue to the respondents that the two routes in question, namely, Guntur to Ponnekallu via Lam and Tadikonda Junction, and Sathenapalli to Madipadu via Achampet, be deleted from the scheme published as G. O. Ms. No. 2071 dated 16-10-1961. This order will not preclude any action being taken for the nationalisation of those routes in conformity with law.

11. Though in view of the statement of the learned Advocate-General, the two petitions have been disposed of in the manner aforesaid, the other objections raised in the petitions, which are common to all other petitions, have to be considered.

12. The second contention is that the unlawful inclusion in the schemes approved under Sec. 63-D of routes, not published under Sec. 68-C, not only should those routes be excluded from the operation of the approved scheme, but the entire scheme ought to be struck down. By reason of the statement of the learned Advocate-General with reference to W. P. Nos. 1249 and 1258 of 1961, it became unnecessary for me to decide the question whether the Chief Minister had jurisdiction to direct by way of modification the inclusion of distinct and independent routes in his approval of the schemes under Sec. 68-D of the Act, even though they had not been previously published under Sec. 68-C of the Act. For the sake of the second objection, I shall assume - without, however deciding the point - that the inclusion of the routes, Guntur to Ponnekallu via Lam and Sathanapalli to Madipadu via Achampet, in the scheme approved by the Chief Minister under Sec. 68-D is invalid. The question then arises whether by reason of including those two routes unlawfully, the entire scheme, should be struck down.

In contending that it should be so struck down, the learned counsel for the petitioners, are obviously thinking of the rule, not infrequently applied in the construction of laws or statutes which are partly valid and partly not. It had been held by the Courts of highest authority that if the offending provisions of an enactment are so indissolubly connected with the non-offending provisions, and they cannot be separated, then, the entire enactment must go. In the language of Rich, J. in *Vacuum Oil Company Proprietary Ltd. v. State of Queensland*, (1934) 51 OLR 677 at p. 689, if "the woof of invalid provisions is so woven with the warp of valid provisions that it is impossible to unravel the threads" the entire act or provisions will be struck down. But, if that which is good or unobjectionable, is clearly severable from that which is bad, and the good portion is complete in itself and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which was rejected, it must be sustained. In AIR 1948 194 (Privy Council) , Viscount Simon put the rule this way :

The real question is whether what remains is so inextricably bound up with the part declared invalid, that what remains cannot independently survive or, as it has sometimes been put, whether on a fair review of the whole matter it can be assumed that the Legislature would have enacted that survives without enacting the part that is ultra vires at all.

The scheme approved and published as G. O. Ms. No. 2071 includes seven routes. These routes are distinct and separable. In fact, it is the case of the petitioners that the two routes in question are distinct and independent routes. Even if the inclusion of these two routes in the approved scheme is not valid by reason of their not having been included in the scheme published u/s 68-C, I do not think that the rest of the routes are in any way affected. They are, in my view, clearly separable. Mr. Suryanarayana referred to a decision of the Supreme Court in *Dwarka Dass Bhatia Vs. The State of Jammu and Kashmir*, . The case arose out of an order of detention made by the Government of Jammu and Kashmir against the petitioner under the provisions of Jammu and Kashmir Preventive Detention Act. It was held by the Supreme Court, affirming the principle of the decision of *Shibban Lal Saksena Vs. The State of Uttar Pradesh and Others*, , and of the Federal Court in *Keshav Talpade v. King Emperor*, 1943-6 FLJ 28 : (AIR 1943 FCJ) that if some of the reasons for an action based on subjective satisfaction of an authority are found to be non-existent, or irrelevant, the entire action of the authority should have to be set aside as the Court cannot predicate what the authority would have done on the exclusion of those reasons. I am unable to see how these decisions can have a bearing on the questions I have to decide.

In the instant cases each approved scheme and each route contained therein is distinct and severable. There is no basis for the suggestion that the Chief Minister would not have approved of the scheme without the two routes in question. As pointed out by Rajamannar, C. J. in *A.R.V. Achar Vs. Madras State*

and Another, it is not desirable to speculate as to what the Legislature would or would not have done if it had known that certain of the provisions would be declared illegal, and that the proper test is to find out whether omitting the offending provisions, the remaining portions can stand on their own.

In this connection, I may refer to a recent decision of their Lordships of the Supreme Court, in Dosa Satyanarayanamurty etc. Vs. The Andhra Pradesh State Road Transport Corporation, Subba Rao, J. speaking for the full Court held that Rule 5 of the Andhra Pradesh Motor Vehicles Rules is inconsistent with Section 68-E and, therefore void and the note inserted in the scheme as to variation of the frequency of service on any of the notified routes, or within any notified area, was also void.

"But on that ground" says the learned Judge, "as the learned counsel contends we cannot hold that the schemes are void. The note is easily severable from the scheme without in any manner affecting their structure. Without the note the schemes are self-contained ones and it is impossible to hold that the scheme; would not have been framed in the manner they were made if this note was not allowed to be included therein".

Applying the principles of this decision, I hold, that the routes impugned are clearly separable from the rest and that the rest of the scheme will not, in any manner, be affected if the two routes in question are excluded. The contention of the learned counsel for the petitioners, therefore is rejected.

13. It now remains to consider the wider contention namely, that if one scheme is held to be bad all other schemes approved with it must also be declared bad, as all the schemes constitute one larger integrated scheme for the purpose of achieving co-ordination of road transport service. I have taken the view that the scheme published in G. O. Ms. No. 2071 on 16-10-1961 is not open to any of the objections raised by the petitioners. That being so, the further argument as to the impact of the defective scheme on the other schemes does not fall to be decided. Further, in T. Butchiramayya v. Andhra Pradesh Road Transport Corporation, W. P. Nos. 389, 412, 424 and 452 of 1961 (AP) a Bench of this Court consisting of Manohar Pershad and Kumarayya JJ. held as follows :

There is equally no force in the contention of the learned counsel that since certain schemes have been quashed, co-ordination is disturbed and hence the objection with regard to ail must be heard together, because each scheme is a separate entity independent in itself and if one scheme is quashed on a ground not common to all the schemes merely because the schemes represent a phased programme, it cannot be said that co-ordination is disturbed and, therefore objections have to be heard together. The objections by the operators are with regard to the route and the services in that proposed schemes and if those routes and services are distinct from the routes and services in the other schemes and they have nothing common on them, this objection cannot stand.

Each scheme being separate and independent, even on the assumption that one

scheme is bad, it cannot be said that co-ordination is disturbed. I, therefore, hold that there is absolutely no force in the contention of the learned counsel for the petitioners.

14. It was also faintly argued that the date on which the scheme should come into force had not been specified in the G. O. Ms. Nos. 2071 to 2075, and that the date being an essential part of the scheme the scheme should be held to be bad. This contention need not be considered at any length, for it is directly covered by authority. In *Satyanarayana Transport (PR) Ltd. v. Andhra Pradesh State Road Transport Corporation* WP nos. 868 and batch of 1960 (AP) a Bench of this Court held that the date is not an integral part of the scheme, and need not, therefore, be mentioned in the scheme at the stage of being approved u/s 68-D. It was further held that the question of fixing of the date can arise only at the implementation of the scheme. In appeal from that decision to the Supreme Court in *Sri Satyanarayana Transport (PR) Ltd. v. Andhra Pradesh State Road Transport Corporation*, (Civil Appeal No. 347 of 1961) (SC) their Lordships of the Supreme Court have approved of the view taken by the High Court, and observed that the fixing of the date is a matter of detail and that It is for the Regional Transport Authority to fix the date after the scheme had been approved by the State Government, as it is the authority that has, u/s 68-F, the duty to issue a permit or cancel an existing permit. There is, therefore, no substance in this contention.

15. I will now take up the objections with respect to the proceedings connected with the implementation of the scheme. Under Sections 68-F (1) it is provided that, when in pursuance of an approved scheme, the State Transport undertaking, applies in the manner specified in Chapter IV of the Act for the grant of permits, the Regional Transport Authority should issue such permits. The applications for permits must, therefore, be made in conformity with Chapter IV. u/s 57 (2), which occurs in Chapter IV, the applications for the grant of permits must be made not less than six weeks before the date on which it is desired that the permits should take effect. It is argued that in the instant cases the applications were not made in accordance with Section 57 (2) aforesaid and that, therefore, the proceedings of the Regional Transport Authority in granting permits to the Corporation with effect from 1-12-1961 and rendering the existing permits of the various operators ineffective beyond 30-11-1961 are illegal and without jurisdiction.

16. In order to appreciate this contention it would be necessary to state a few facts. The schemes were approved by the Chief Minister on 15-10-1961 with certain modifications in respect of some of them. The schemes were published in the Andhra Pradesh Gazette on 16-10-1961. On 17-10-1961 applications for the stage carriage permits on the various routes in question were signed by the concerned authority. Evidently, those applications were not sent by post. They were delivered in person by a representative of the Corporation in the Office of the Regional Transport Authority, Guntur on 19-10-1981. That day happened to

be a public holiday on account of Vijayadasami. The applications were, nevertheless, received in the office of the Regional Transport Authority, but since they were not accompanied by the challans in respect of the fees as required under Rule 167 of the Motor Vehicles Rules, they were returned for presentation with the challans. The applications were accordingly represented by the Corporation with the challans on 20-10-1961.

Upon those facts, it is urged, in the first place, that there was no valid presentation of the applications on 19-10-1961, as it was a public holiday. In the second place, it is argued that, even if it should be considered that the applications were presented and received on 19-10-1961, inasmuch as they were not accompanied by the requisite fee, there was no proper or valid presentation in law. In the third place, it is contended that, the purported return of the applications on 19-10-61 is illegal for two reasons; (i) that rule 153(a) under which the return was made is ultra vires: and (ii) that, in any view, the return can only be made by the Regional Transport Authority and not by the Secretary to whom such a power was not delegated u/s 44 (5) of the Act read with rule 134 (A).

17. It now falls to consider whether under the terms of Section 57 (2) of the Act, there should be six clear weeks i.e., 42 days, exclusive of the date on which the applications for permits were made and the date on which it is desired that they should take effect. In Maxwell on the interpretation of Statutes (10th Edition page 351) it is stated :

Again when so many "clear days" or so many days "at least" are given to do an act, or "not less than" so many days are to intervene, both the terminal days are excluded from the computation.

The above principle is sustained by a long line of authority. The learned Advocate-General, however, suggests that this is by no means an unalterable rule, but depends upon the intendment of the enactment and the purpose for which the time-lag between the two events is prescribed. He relied upon a few observations of Chitty J., in *Re. Railway Sleepers Supply Co.* (1885)-29 Ch. D. 204. In that case, the words "not less than 14 days" occurring in Section 51 of the English Companies Act, 1862, before the meeting passing a special resolution and the meeting confirming it had to be construed. Chitty, J., held that the words "not less than 14 days" mean that there should be an interval of 14 clear days exclusive of the respective days of the meetings. It is true that the learned Judge observed that the object of having 14 clear days was to assist the share-holders. But I cannot agree that the supposed intention of the Legislature was the governing factor in the decision. Nor can I assent to the contention that the words "not less than six weeks" must be construed in the light of the requirement of S. 57(3), and when so construed, it may not be necessary to have six clear weeks. When expressions "not less than so many days" occur in enactments, it seems to me that there are two terminal points, and the period specified must be outside those two terminal points. The following passage in the

judgment of Stone, C. J., in Commissioner of Income Tax Vs. Ekbal and Co., is well worth citation :

Time can be infinitely divided. There is no fraction of a second which is so short in duration that it cannot be divided into something smaller. In my judgment expressions "within 30 days" and "not less than 30 days" are two quite different things. "Within 30 days" is within two points of time, one at which the period begins and the other at which it expires. On the other hand, "not less than 30 days", is outside these two points of time. There must be an interval of not less than 30 days and that means 30 days clear : see (1885) 29 Ch. D. 204. The period must continue beyond the expiration of the stated time. Whereas "within" the stated period must mean what it says, something less than the moment of expiration, in my opinion, therefore, the notice is invalid and the question referred to must be answered in the negative. The Commissioner must pay the costs of the reference.

In *Sneath v. Valley Gold Ltd.* 1893-1-Ch. 477 the expression "at least fourteen days before the date" in connection with the debenture holders' meeting, was construed as fourteen clear days" between the issue of the circular calling for the meeting, and the meeting. In *Rex v. Turner*, 1910-1 KB 346, the same view was taken : In *Browne v. Black*, 1912-1 KB 316 the Court of Appeal, in construing the scope of the expression "one month" under Sec. 37 of the Solicitors Act, 1843, construed the expression as "one clear calendar month". In *Re Hector Whaling Ltd.* 1936-1 Ch. 208 Bennet J. held that the words "not less than 21 days" occurring in Section 117 of the Companies Act, 1929, mean "21 clear days" exclusive of the date of service of the notice and exclusive of the date on which the meeting is to be held. In *K.A.S. Mohammed Ibrahim Vs. Jaithoon Bivi Ammal*, represented by her next friend and guardian, Shaik Dawood Rowther, after a review of some of the authorities herein cited, Satyanarayana Rao, J., held that the expression in Section 81 (2) of the Indian Companies Act, 1913, means and can only mean 21 clear days, that is, exclusive of the date of service and the date of the meeting.

18. In the light of the above authorities, I have no doubt in my mind that the expression "not less than six weeks" occurring in Section 57 (2) of the Motor Vehicles Act, means six clear weeks, i.e., 42 days, exclusive of the date of the applications and the date in which they are desired to take effect.

19. In this case, the applications were desired to take effect on 1-12-1961. If the applications therefor should have been made not less than six weeks before that date they should have been made on 19-10-1961. It, therefore, becomes very important to examine first, whether the applications were presented on that date and secondly whether they could have been received on that day. That as a matter of fact, the applications were filed and received in the office of the Regional Transport Authority on 19-10-1961 is beyond dispute. Mr. K. Prasada Rao, the Secretary of the Regional Transport Authority, Guntur, has filed an affidavit stating that the applications for the grant of stage carriage permits in

pursuance of the approved schemes were made by the Corporation on 19-10-1961, that he was in the office on that date, and that the applications along with other papers received were put up to him as a matter of course. I have no reason to entertain any doubt whatever as to the accuracy of the statement of a responsible officer like the Secretary of the Regional Transport Authority. I may observe also that the truth of this statement has not been seriously challenged before me.

But, what is contended is that the Secretary could not have validly received the application on that date, as it happened to be a holiday. In support of this contention assistance is sought from a decision of the Outh High Court in AIR 1937 272 (Oudh) . In that case a petition for the execution of a decree was dismissed by the Honorary Asst. Collector on a date which happened to be a public holiday. There were standing orders issued by the Government of India that no work of civil nature should be done on public holidays. It was, therefore, held by the learned Judge that the order passed by the Honorary Asst. Collector was a nullity. Reliance was also placed on a decision of the Allahabad High Court in *Kuldip Oil Industries Ltd. Vs. Ch. Pratap Singh*, at 508 where it was held that, normally when a day is declared to be a holiday under the provisions of Section 25 of the Negotiable Instruments Act, the High Court also falls in line with such a notification and takes steps to have the day in question declared a holiday for the civil Courts subordinate to it.

I am unable to read these decisions as supporting, in any manner, the contention of the learned counsel for the petitioners that anything done on a public holiday *per se* is nullity. On the contrary, in this case, there were clear official arrangements made for the reception of urgent papers on public holidays, including Sunday, in the office of the Regional Transport Authority in accordance with paragraph 6 of the District Office Manual. The Regional Transport Officer has expressly stated that a clerk of the office is drafted on duty on all public holidays, including Sundays, for the disposal of urgent work. An abstract from the turn register of the Regional Transport Authority, Guntur, from 12-8-1961 to 26-11-1961 has been produced before me. It shows that on 19-10-1961 (Vijayadasami day) there were functioning in the office three members of the staff P. Subbarayudu, P. Bhaskar and V. Sambaiah. I am satisfied that the office of the Regional Transport Authority had on 19-10-1961, a skeleton staff, that therefore, the applications could well have been received on that day. In fact, the Secretary, Regional Transport Authority has stated that he received the applications on 19-10-1961. That being so, I hold that the applications for the grant of stage carriage permits were not only factually made on 19-10-1961 but that they were duly received in the office of the Regional Transport Authority on 19-10-1961.

20. In view of the conclusion I have reached above that there was presentation of the applications on 19-10-1961, it is unnecessary to consider the alternative contention of the learned Advocate-General, that even if the applications are

deemed in law to have been made on 20-10-1961, it would still be a proper presentation according to Section 57(2) of the Act.

21. It is then contended that even, if the applications were, presented and duly received on 19-10-1961, they cannot be deemed to have been legally presented on that date by reason of the fact that the requisite fee as provided under R. 167 of the Madras Motor Vehicles Code had not been paid. It is true that on 19-10-1961 the challans for the payment of Rs. 12/- per vehicle had not been presented. The Regional Transport Officer has stated that he returned the applications with an endorsement for rectifying the defects, and that the Corporation represented the applications on 20-10-1961 after complying with the requirements. It is contended by the formed advocates for the petitioners that applications without requisite fee are no applications at all.

In support of this contention a decision of a Bench of the Madras High Court in Pamidimukkala Sitharamayya and Others Vs. Ivaturi Ramayya and Another, has been relied upon. In that case, an appeal was presented on an unstamped or insufficiently stamped paper, and there was no order granting time under Sec. 149 C. P. C. It was observed by Varadachariar and Pandrang Row, JJ., that a mere filing of a paper without the proper court-fee does not amount to a proper presentation of appeal for all purposes, and that in the absence of an order granting time under Sec. 149 C. P. C., the presentation of an unstamped or insufficiently stamped memorandum of appeal does not amount to a valid presentation. Another decision of a Bench of the Madras High Court in PL. SP. NK. Nagappa Chettiar Vs. Commr. of Income Tax, Madras, has also been referred to. In that case an application under Sec. 66(1) of the income tax Act was filed in time. Along with the application the requisite fee was sent by money-order. The money-order did not reach the Tribunal before the due date, though the application did. Rajamannar, C. J., subserved that the word "accompany" used in Sec. 66(1) of the Act would normally mean "go with" and that the fee, therefore, should have been paid along with the application. But, on the facts of that case, he held that inasmuch as the assessee paid the money into the post office of 30-3-1953, which in the normal course would here reached the Tribunal the next day, the application must be deemed to have been made validly. This decision has been cited for the purpose of contending that if there is any fee to be paid along with the application it must be paid along with it before the due date.

In my view, this line of authority has absolutely no bearing on the facts of the present case, as there is an express provision in the instant cases as to what as to be done, when the requisite fee is not sent along with the applications. Rule 153-A of the Motor Vehicles Rules published in G. O. Ms. No. 2831, Home dated 5-9-1953 is in these terms:

The Transport Authority shall not reject an application for the grant or renewal of a permit or for the counter Signature of a permit solely on any or all of the following technical grounds:

- i) when an application is presented to a Transport authority not having jurisdiction;
- ii) when the form of application has not been correctly filled in: and
- iii) where the prescribed fee has been omitted to be paid.

In every such case, the Transport Authority should return the application for presentation to the Transport Authority concerned or for rectification of other defects informing the applicants of the correct procedure in the matter and giving him not more than seven days from the date of receipt of the communication to comply with such direction.

It is abundantly clear to me that under the terms of the above rule, the Regional Transport Officer was legally justified in returning the applications for the stage carriage permits presented by the Corporation on 19-10-1961, for the purpose of the rectification of the defect in respect of the failure to pay the requisite fee.

22. It is then contended that R. 153-A is ultra vires, firstly because the failure to pay the requisite fee is not a mere "technical defect" and secondly, by the process of returning the applications for representation, the period as contemplated under Sec. 57(2) of the Act is extended. There is no force whatever in either of these contentions. The question whether clause (iii) of R. 153-A deals with a technical omission or not, does not fall to be determined at all, because there is an express provision that in such a contingency, the Transport Authority shall not reject the applications. Nor, is there any force in the contention that the rule enlarges the period prescribed in Sec. 57(2). All that the rule states is that if the application is made in accordance with Sec. 57(2), it shall not be rejected on technical grounds as set out in cls. (i) to (iii).

23. It is then contended that even if the applications are returned for representation, there should be six clear weeks between the date of the representation and the date on which the permits are to take effect. In my view, this contention is founded in a fallacy. The crucial date is the date of presentation, and if that is within time, there is nothing to preclude the Regional Transport Authority to return the applications for the rectification of technical defects.

24. The last objection on this score is that even if Rule 153-A is a valid rule, the order of return on the applications can only be made by the Regional Transport Authority and not by the Regional Transport Officer, as the power under R. 134-A (XIII) to refuse to entertain applications for grant of renewal of permits has not been delegated to the Secretary by a general or a special resolution by the Regional Transport Authority. This contention in my opinion, is founded on a misapprehension, namely, that in returning the applications the Regional Transport Officer was exercising a power in the nature provided for under CL. (xiii) of R. 134-A. I agree with the contention of the learned Advocate-General that in returning the applications for compliance with the requirement as to the

payment of fee the Regional Transport Officer was not exercising a power of refusing the applications, but was only performing a ministerial act drawing the attention of the Corporation to the technical defect in their applications. I hold, therefore, there is no substance whatever in this objection.

25. The next objection is that the Regional Transport Authority had not fixed a date for the implementation of the scheme. I am unable to appreciate this contention. In Civil Appeal No. 347 of 1961 (SC) the Supreme Court has held that the Regional Transport Authority has the power to fix a date after the scheme has been approved by the State Government, as it is that authority which has, under Sec. 68-F, the power to issue a permit to a State Transport undertaking for plying the motor vehicles, and to cancel the existing permits. As contended by the learned Advocate-General, there is no special formality or procedure governing the fixing of the date. He has contended, and in my view rightly, that the resolution passed by the Regional Transport Authority on 9-11-1961 directing the permits of the operators ineffective beyond 30-11-1961 for giving effect to the approved scheme is itself fixing the date upon which the scheme should come into force. There is, therefore, no substance in this contention.

26. It is lastly contended that the Regional Transport Authority had not given "due notice" within the meaning of R. 11 framed by the State Government in Chapter IV-A of the Motor Vehicles Act, before taking steps under Sec. 68-F the Act in implementation of the approved scheme. Rule 11 is in these terms,

11. Elimination of existing service (Procedure).

In giving effect to the approved scheme, the Regional Transport Authority or authorities concerned shall, before eliminating the existing service or cancelling any existing permit or modifying the conditions of the existing permit so as to:

- i) render the permit ineffective beyond a specified date;
- ii) reduce the number of vehicles authorised to be used under a permit; or
- iii) curtail the area or route covered by the permit in so far as such permit relates to the notified route; give due notice to the persons likely to be affected in the manner prescribed in these rules.

27. It is true that the implementation of an approved scheme under Sec. 68-F has two parts (i) the granting of permits to the State Transport undertaking; and (ii) among other things, the rendering of the permits of the various operators ineffective beyond a specified date. So far as the order under Sec. 68-F(1) is concerned, the Regional Transport Authority has no option but to grant a permit in consonance with the approved scheme, and there is no question of the operators or members of the public raising any objections thereto. In *Abdul Gafoor Vs. State of Mysore*, the Supreme Court observed as under:

Under Section 68-F(1) as already mentioned the Regional Transport Authority

has no option to refuse the grant of the permit provided it has been made in pursuance of the approved scheme and in the manner mentioned in Chapter IV. The duty of the Regional Transport Authority on receipt of the application from the State Transport Undertaking for a permit is therefore to examine the application for itself to see whether it is in pursuance of an approved scheme and secondly whether it has been made in the manner laid down in Chapter IV. This is a duty which the Regional Transport Authority has to perform for itself and there is no question of its asking for assistance from the public or existing permit holders for transport services on the route. Neither the public in general nor the permit holder has any part to play in this matter.

28. I am, therefore, of opinion that there is no substance whatever in the contention that there was no "due notice" in regard to the grant of permits to the State Transport Undertaking under S. 68-F(1) of the Act.

29. The next question is whether there was "due notice" in regard to the rendering of the petitioners' permits ineffective beyond 30-11-1961. It has already been stated that on 19-10-1961 applications to the grant of permits were made with effect from 1-12-1961. The Regional Transport Authority gave notice on 27-10-1961, to all the operators concerned that such applications have been made, and that the Regional Transport Authority would meet on 9-11-1961 for the purpose of implementation the approved scheme and proposing to render the permits of the operators ineffective under Sec. 68-F(2) (c) (i) of the Act beyond 30-11-1961. On 9-11-1961, the Regional Transport Authority met. Several operators were represented by counsel and after hearing their objections the Regional Transport Authority passed a resolution rendering the permits of the operators ineffective beyond 30-11-1961. It is argued that the conclusions, at the Regional Transport Authority were sent to some of the petitioners on 20th, and to some others, on 23rd November, 1961. It is argued further that the operators had invested considerable sums of money, and that they, had to close down their establishments by making arrangements with the members of the staff.

In support of that contention, some observations of the Supreme Court in *Shrinivasa Reddy and Others Vs. State of Mysore and Others*, have been relied on. Their Lordships, were there considering the reason behind the insistence of six clear weeks under Sec. 57(2) for applications under Sec. 68-F(1) by the State Transport Undertaking. They pointed out that the object of the rule was to give time to the Regional Transport Authority to deal with the matter and, if necessary, to inform those who might be affected under Sec. 68-F(2) to be prepared for the change. Now in this case, there is no doubt that the petitioners knew that the approved schemes were published on 16-10-1951. They knew also that their permits would be rendered ineffective beyond 30-11-1961. On 9-11-1961, they were present at the meeting of the Regional Transport Authority either in person or through their counsel and made their representations. The contention that after passing a resolution on 9-11-1961, there should be a

further notice, finds no warrant on the language of R. 11. All that R. 11 requires is that in rendering an existing permit ineffective beyond a specified date, the Regional Transport Authority shall give the persons likely to be affected due notice. In these cases, there was due notice, and in my view the requirements of R. 11 have been substantially complied with.

30. Upon a conspectus of all the cases, I am of opinion that the approval of the schemes by the Chief Minister and their publication under Sec. 68-D of the Act and the implementation thereof by the Regional Transport Authority, Guntur, under Sec. 68-F(1) and (2) at the Act, are valid and proper and that all objects contra raised in these petitions are without substance and must fail. All the petitions except W. P. Nos. 1249 and 1258 of 1961, are therefore dismissed with costs. Advocate's fee Rs. 50/- in each of the petitions.