

(1960) 08 PAT CK 0005

In the Patna High Court

Case No : Misc. Judicial Case No's. 221, 333, 334 and 413 of 1960

Deep Narain Pandey and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 08-08-1960

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Motor Vehicles Act, 1939 — Section 57(2), 68C, 68D, 68E, 68F(2)

Citation : AIR 1960 Patna 575

Hon'ble Judges : V. Ramaswami, C.J;Kanhaiya Singh, J

Bench : Division Bench

Advocate : P.R. Das and Saptami Jha, in Nos. 221 and 334 of 1960, Saptami Jha, in No. 333 of 1960, N. Bakshi and Purnendu Narayan, in No. 413 of 1960, for the Appellant; Govt. Pleader, Government Advocate, Lakshman Saran Sinha and Balbhadra Prasad Singh, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, C.J.—In Misc. Judicial Case No. 334 of 1960, the petitioner, namely. M/s. Road Transport Company at Dhanbad, has been carrying on motor transport business by running stage carriage services on Dhanbad-Hazanbagh and Dhanbad-Giridih routes by virtue of permits granted by the Chotanagpur Regional Transport Authority. On the 29th January, 1960, the petitioner applied for renewal of permits u/s 58(2) of the Motor Vehicles Act. It appears that respondent No. 3, the Bihar State Road Transport Corporation, prepared a scheme u/s 68C of the Motor Vehicles Act for notification of certain "routes, and the scheme was published in the Bihar Gazette dated 13-1-1960. A copy of the draft scheme in Hindi is annexure A to the application, which reads as follows:

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yksdfgr esa dqN ekaxks?ij lqpk: :i ls i;kZIr] ferO;;h vkSj lE;x&lefUor lokjh xkM+h ds izca/k ds fy;s ;g vko";d gS fd bu ekxks? ls lEcfU/kr rFkk bu ekxks? vkSj buds fofHkUu Hkkxksa ij ifjpfyr lokjh xkfM+;k] fuEukafdr ;kstuk esa m)r frfFk ls dsoy ek= fcgkj LVsV jksM V?kUlikSVZ dkjiksjs"ku }kjk gh ifjpfyr gks] ;|fi jkT; ljdkj dh vuqefr ls ml frfFk dk lokjh xkM+h pyk ldrs gSa A

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2 ** gtkjhckx&jkaph ;k mlds fofHkUu Hkkx ** 1&4&1960

3 ** cjgh&cxksnj&Mwejh&xkfoUniqj&fpjdqUMk ;k mlds fofHkUu Hkkx ** 1&4&1960

4 ** fxfjMhg&Mqejh ;k mlds foHkUu Hkkx A ** 1&4&1960

5 ** fxfjMhg&teqvk&dksMjek ;k mlds fofHkUu Hkkx A ** 1&4&1960

6 ** teqvk&odkbZ ;k mlds fofHkUu Hkkx ** 1&4&1960

7 ** jkaph&pkbZcklk ?MkbZjsDV lfoZlst? ** 1&4&1960

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The petitioner and a number of other persons filed objections to the said scheme, and the objections were heard by the Minister of Transport on 16-3-1960. The Minister of Transport rejected the objections and on 1-4-1960, the draft scheme was approved with certain modifications and published in an extra-ordinary issue of the Bihar Gazette. The notification of the State Government dated 1-4-1960, reads as follows:

"The Bihar Gazette Extraordinary Published by Authority. Chaitra 12, 1882.

No. Patna 145: Patna, Friday, April 1, 1960. Political (Transport) Department

NOTIFICATION.

The 1st April, 1960.

No. 5.T.-- Whereas the Bihar State Road Transport Corporation, which is a State Transport undertaking published a scheme in the Bihar Gazette, dated the ,13th January, 1960 (Part IX), in pursuance of Section 68C of the M. V. Act, 1939 (IV of 1939) to run its services relating to certain routes or portions thereof for the

purpose of providing efficient adequate, economical and properly co-ordinated passenger transport services on those routes or portions thereof.

And whereas the objections received in respect of the scheme have been considered by the State Government after giving an opportunity to the representatives of the objectors and those of the Bihar Road Transport Corporation to Be heard in the matter.

Now, therefore, in pursuance of Sub-section (2) of Section 68D of the said Act the State Government are pleased to approve the scheme with the following modifications namely;

(a) All services on the following routes will be plied by the Bihar State Road Transport Corporation from the 1st April, 1961 and not from the 1st April, 1960;

(i) Ranchi-Muri or portion thereof;

(ii) Giridih-Jamua-Kodarma or portions thereof; and

(iii) Jamua-Chakal or portions thereof, and

(b) the portion Gobindpur-Chirkunda or portions thereof is deleted from the route Barhi Bagodar-Dumri-Gobindpur-Chirkunda or portions thereof,

The State Government are further pleaded to direct that persons holding permanent permits to run stage carriages on the routes specified in the Approved Scheme shall operate them until the date of expiration of the existing permits. The scheme so modified is hereunder published as required by Sub-section (3) of Section 68D of the said Act.

SCHEME

The Bihar State Road Transport Corporation shall run and operate stage carriage services relating to routes or portions thereof specified below to the complete exclusion of other persons except those who, on the dates specified below, hold permanent permits to run stage carriages on those routes and are hereby allowed to operate them until the dates of expiration of the existing permits :

Serial No. Nature of Services. Name of route. Name of Service. Date from which Services are proposed to be piled.

1. Stage carriage. Ranchi-Muri or portions thereof. All Services. 1st April 1961.
2. Do. Hazaribagh Ranchi or portions thereof. Do. 1st April 1960.
3. Do. Barhi. Bagodar-Dumri Gobindpur or portions thereof. Do. 1st April 1960.
4. Do. Giridih-Dumri or portions thereof. Do. 1st April 1960.
5. Do. Giridih-Jamua-Kodarma or portions thereof. Do. 1st April 1961.
6. Do. Jamua-Chakai or portions thereof . Do. 1st April 1961.

7. Do. Ranchi-Chalbassa (direct services.) Do. 1st April 1960.

By order of the Governor of Bihar, Sd./- K. B. Sharma Deputy Secretary to Government.

On the 2nd April, 1960, the petitioner appeared before respondent No. 2 and submitted that the scheme was illegal and there should be a grant of renewal of the petitioner's permits even over the notified routes. The objection was overruled by respondent No. 2, and the application for renewal of the permits made by the petitioner was refused, except for such portions of the routes which were not notified. The petitioner thereafter moved the High Court for grant of a writ in the nature of certiorari under Article 226 of the Constitution for calling up and quashing the scheme and notification of the State Government, dated 1-4-1960, and also the order of the Minister of Transport, dated 2-4-1960, refusing to renew the petitioner's permits.

2. Cause has been shown by the learned Government Advocate on behalf of the State Road Transport Corporation and by the Government Pleader on behalf of other respondents to whom notice of the rule was ordered to be given.

3. Learned counsel on behalf of the petitioner submitted in the first place that the approved scheme was bad because of vagueness and uncertainty of the portions of the routes to be taken over. It was contended that the scheme did not specify the portions of the routes which were sought to be taken over and, therefore, it must be held to be void for vagueness and uncertainty. Learned counsel pointed out that the tabular portion of the scheme, item No. 1, column No. 3, reads as "Ranchi-Muri or portions thereof", and item No. 2, column No. 3, reads "Hazaribagh-Ranchi or portions thereof". There are similar entries under items Nos. 3, 4, 5 and 6, column No. 8, of the tabular statement.

The contention put forward on behalf of the petitioner is that it is not clear from the approved scheme whether the intention of the State Road Transport Corporation was to take over the entire routes or to take over portions thereof and also which of the portions were intended to be taken over. The argument put forward on behalf of the petitioner is very ingenious, but I do not think there is any substance in the argument. The reason is that the tabular part of the approved scheme must be read in the context of the preamble "of the scheme and also the draft scheme published on 13-1-1960. The preamble of the draft scheme states that

"As the Bihar State Road Transport Corporation consider that in public interest, for the efficient provision of sufficient economical and well-equipped passenger vehicles on several routes it is necessary that passenger vehicles running on those routes and different parts thereof and connected with those routes", should be run only by Bihar State Road Transport Corporation from the dates quoted in the under-mentioned scheme."

The draft scheme is in Hindi, but learned counsel for the parties conceded that

the English translation of the passage noted above is correct. It was contended by the learned Government Advocate that the word "or" in the tabular statement of approved scheme, with regard to items 1 to 6, should be construed as "and" and, therefore, the intention of the State Road Transport Corporation was not to take portions of the routes but to take over the entire routes in items 1 to 6 of the tabular statement. The learned Government Advocate also referred to the preamble of the draft scheme where the expression ""those routes and different parts thereof" has been used. Reference was also made in this connection to the following passage from Halsbury's Law of England, 2nd Edn., Vol. 10, p. 266:

"If the construction is doubtful, and the doubt cannot be removed in any other way, it is permissible to refer to a preliminary agreement, at any rate if recited in the instrument."

and also to *Leggott v. Barrett* (1880) 15 Ch D306, where Brett, L. J., stated as follows:

"If there is any doubt about the construction of the governing words, the recital may be looked at to determine what is the true construction."

In my opinion, the argument of the learned Govt. Advocate is well founded and must be accepted as correct. It is manifest that the approved scheme, published on the 1st April, 1960, (annexure B), should be read and construed along with the draft scheme (annexure A). It is manifest that the order of the Minister of Transport cannot be understood without reference to the draft scheme which was the subject-matter of consideration before him.

I consider that the draft scheme and the approved scheme and the order of the Minister or Transport on the draft scheme are parts of a single proceeding and so the tabular statement of the approved scheme should be considered in the light of the preamble of the draft scheme. I therefore, hold that the word "or" in column 3 of the tabular statement of the approved scheme with regard to items 1 to 6 should be interpreted in a conjunctive sense, and the intention of the State Road Transport Corporation was to take over the entire routes mentioned in items, 1 to 6 by virtue of the scheme and not merely portions thereof, I would, therefore, reject the argument of learned counsel for the petitioner on this part of the case.

4. I next turn to the argument of the petitioner that the approved scheme is bad because there is possibility of discrimination by the State Transport Corporation in taking charge of the routes or portions of the routes. It was contended on behalf of the petitioner that the scheme is unconstitutional because there is violation of the guarantee under Article 14 of the Constitution. In reply to the argument the Government Advocate pointed out that the approved scheme has already been acted upon and the State Road Transport Corporation has already taken over charge of the whole routes and not of portions thereof. In support of this argument the Government Advocate referred to the affidavit of the State Road Transport Corporation filed on the 22nd July, 1960. In this affidavit it is

stated by the respondent No. 3 that

"the Bihar State Road Transport Corporation has displaced each and every private operator immediately after the expiry of his permit from the whole of the notified routes whereas such private operator was running a Stage Carriage on such notified routes and there has not been any discrimination whatsoever."

In paragraph 3 of the affidavit it is stated that

"in regard to routes, serial Nos. 2, 3, 4 and 7 of the Scheme, which is the subject-matter of Misc. Judicial Cases Nos. 333, 334 and 413 of 1960, the Corporation has not left out any portion of the notified routes from its operation enabling any other operator whatsoever to run his bus."

In paragraph 4 the Special Officer has said that

"the Corporation is running Stage Carriages covering the whole of the routes mentioned in column No. 3 of the Scheme which is the subject-matter of attack in Misc. Judicial Case No, 221 of 1960, and not merely on portions of them."

In view of this affidavit it is clear that there has been no actual discrimination in the matter of the operation of the scheme. On behalf of the petitioner Mr. P. R. Das, however, submitted that even though there has been no actual discrimination, still the scheme was bad because there was a possibility of discrimination. In support of his argument learned counsel referred to the Judgment of Patanjali Sastri, J., in the decision of the Supreme Court in Romesh Thappar Vs. The State of Madras, .

But the principle has been qualified by the Supreme Court in two later cases, The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others, and Biswambhar Singh and Others Vs. The State of Orissa and Another, . In The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others, , Patanjali Sastri, C. J., qualified the principle which he had laid down in the earlier case, namely, Romesh Thappar Vs. The State of Madras, .

It was pointed out by Patanjali Sastri, G. J., in this case that the question of constitutional invalidity must be limited only to cases where there is actual discrimination in practice, and where there is no such actual discrimination the constitutional validity of the law cannot be questioned. The principle applied was, that the doctrine of severability includes separability in enforcement of the law. In the other case AIR 1954 SG 139, the question in debate was the constitutional validity of the Orissa Estates Abolition Act, 1951 (1 of 1952).

It was contended that section 3 of the Act was discriminatory because it gave discretion to the State to choose the time for the purpose of carrying out the objectives and the policy of the Act. The argument was rejected by the Supreme Court on the ground that in the very nature of things a certain amount of discretionary latitude had to be given to the State Government, and it was not suggested or shown that in practice any discrimination was made and the

provisions of the Orissa Estates Abolition Act could not, therefore, be held to be Unconstitutional.

In the present case the position is that there has been no actual discrimination in putting the scheme into effect and there is no possibility of any discrimination in future because any such possibility has been eliminated by the action of the State Road Transport Corporation in taking charge of the entire routes in accordance with the approved scheme. In my opinion, learned Counsel for the petitioner has been unable to make good his submission on this part of the case also.

5. The principle of separability of application has been well stated in an American case as follows:

""In any event, the statute should be construed so as to save its constitutionality. The premise that a statute is to be construed as applying to commerce without the constitutional jurisdiction of the legislature is demonstrated to be unfounded by the deduction of unconstitutionality to which such premise inevitably and plainly leads. This follows because of the elementary rule of construction that where two interpretations of a statute are in reason admissible, one of which, creates a repugnancy to the Constitution and the other avoids such repugnancy, the one which makes the statute harmonise with the Constitution must be adopted. While it is true that it would be possible to interpret the statute as applying to commerce not within the jurisdiction of the legislature, it is equally certain that it is susceptible of being confined within constitutional bounds."

Abby Dodge v. United States (1912) 223 US 166 .

6. It was also contended on behalf of the petitioner that rules had not been framed by the State Government u/s 681 of the Motor Vehicles Act, which reads as follows:

"68-1. Power to make Rules :-

1. The State Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

2. In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) the form in which any scheme Or approved scheme may be published u/s 68C or Sub-section (3) of Section 68D;

(b) the manner in which objections may be filed under Sub-section (1) of Section 68D;

(c) the manner in which objection may be considered and disposed of under Sub-section (2) of Section 68D;

(d) the manner of service of orders under this Chapter;

(e) any other matter which has to be, or may be prescribed."

It was contended that both the draft and the approved schemes were legally invalid on account of the failure of the State Government to make the necessary rules. I do not think there is any substance in this argument. It is true that power is granted u/s 68-1 to the State Government to make rules. The section, however, does not impose a duty upon the State Government to make the rules and it cannot, therefore, be argued that failure on the part of the State Government to make rules affects the legal validity either of the draft scheme or of the approved scheme. In Section 68C itself the legislature has provided as to what are the particulars to be mentioned by the State Transport undertaking in preparing a scheme. Section 68C provides in the first place that the scheme should state the nature of the services proposed to be rendered and also the area of the route proposed to be covered.

If the State Government thought fit, it could make rules to provide for any further particulars to be furnished in the scheme or the form in which the scheme should be submitted to the State Government. As I have already stated, Section 68-I is only an enabling provision, and the failure of the State Government to make rules does not affect the legal validity of the draft scheme or the approved scheme. It was also submitted on behalf of the petitioner that no materials were given in the draft scheme to show as to how an efficient, adequate, economical and co-ordinated road Service would be provided by the State Transport undertaking. I do not think there is any point in this argument. The omission on the part of the State Transport undertaking to furnish materials in its draft scheme does not affect its validity.

This view is supported by the decision of the Supreme Court in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, . It is also manifest in the present case that objections were taken by the petitioner and other persons to the enforcement of the scheme before the Minister of Transport, who judicially decided the necessity, effectiveness and desirability of the scheme and its necessity in the public interest. In my Opinion there is no substance in this argument put forward on behalf of the petitioner.

7. Lastly, the submission was made on behalf of the petitioner that, even if the approved scheme was legally valid, the petitioner was entitled to renewal of his permits. It was pointed out that the petitioner had permits for the routes Dhanbad-Hazaribagh and Dhanbad-Giridih, and they did not completely overlap the notified route in the approved scheme. It was contended that in the eye of law "route" has a different conception from a "road" or a "highway", and in support of this submission reliance was placed on a decision of this Court in Bihar State Road Transport Corporation v. State of Bihar, Misc. Judicial Case No. 354 of 1960, 13-5-1960, and also on a decision of the Privy Council in Kelani Valley Motor Transit Co., Ltd. v. Colombo Ratnapura Omnibus Co., Ltd. 1946 AC 338: (AIR 1946 PC 137). It is true that the High Court has laid down the principle in M. J. C. No. 354 of 1960 (Pat) that a "route" was different from a "highway"; that

a "highway" was a physical track along which an omnibus ran, whilst a "route" an abstract conception of a line of travel between one terminus and another and something distinct from the highway traversed. But the question of construction of Section 68F(2) of the Motor Vehicles Act was not raised or discussed in Misc. Judicial Case No. 354 of 1960 (Pat), and the principle laid down in that case requires modification in view of the provisions of Section 68F(2) of the Motor Vehicles Act. As much of the argument in this case turned on the interpretation of Section 68F of the Motor Vehicles Act, it is necessary to reproduce that section in full:

"68F. Issue of Permits to State Transport Undertakings :--

1. Where, in pursuance of an approved scheme, any State Transport undertaking applies in the manner specified in Chapter IV for a stage carriage permit or a public carrier's permit or a contract carriage permit in respect of a notified area or notified route, the Regional Transport Authority shall issue such permits to the State Transport undertaking notwithstanding anything to the contrary contained in Chapter IV.

2. For the purpose of giving effect to the approved scheme in respect of a notified area or notified route, the Regional Transport Authority may, by order, --

- (a) refuse to entertain any application for the renewal of any other permit;
- (b) cancel any existing permit;
- (c) modify the terms of any 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 the permit;
 - (iii) curtail the area or route covered by the permit in so far as such permit relates to the notified area or notified route.

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It is manifest from the language of Section 68F(2) that the grant of a monopoly to a State Road Transport Corporation in pursuance of an approved scheme u/s 68C (sic) disqualifies a private operator from plying his vehicles in three classes of cases; (1) on self-same route as the notified route, (2) between any two intermediate points on the notified route, and (3) on any portion of the route of the private operator which overlaps any portion of the notified route. By enacting Section 68F the legislature contemplated that when an exclusive monopoly has been created by a scheme regarding a notified route, a private operator cannot ply his vehicle on any portion, of the notified route. It is manifest that Section 68F (2) (c) (iii) gives power to the Regional Transport Authority to "curtail the area or route covered by the permit in so far as such permit relates to the notified area or notified route". This clearly contemplates that where there is partial overlapping of the route of the operator over the notified route, the

Regional Transport Authority has power to curtail the length of the route covered by the permit in so far as such permit overlaps the notified route. It is manifest that the power of the Regional Transport Authority to curtail the route u/s 68F (2) (c) (iii) is co-extensive with the power of refusal of permit u/s 68F (2) (a) of the Motor Vehicles Act. In other words, the content of the power of renewal u/s 68F (2) (a) is co-extensive with the content of power of modification of the terms of the existing permit u/s 68F (2) (c). In this connection it is necessary to remember the legislative history of Chapter IVA which was added by Section 62 of Act 100 of 1956. Article 19(6) of the Constitution as originally promulgated was in the following terms :

"19(6) Nothing in Sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it prescribes or empowers any authority to prescribe, or prevent the State from making any law prescribing or empowering any authority to prescribe, the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business".

By the Constitution (First Amendment) Act, 1951, Article 19(6) was amended, and the amended Article is in the following terms;

"19(6). Nothing in Sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause, shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, --

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) 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."

After the constitutional amendment was made, Parliament enacted Central Act 100 of 1956, and Chapter IVA of the Motor Vehicles Act was added by virtue of Section 62 of that Act. In construing, therefore, Section 68F of the Motor Vehicles Act, we must keep in view the historical background and we must also keep in view the principle of interpretation that a statute should be so construed as to prevent the mischief and to advance the remedy according to the true intent of the makers of the statute. The question has been discussed by a Division Bench of this Court in *Mineral Development Ltd. v. Union of India* ILR 33 Pat 198 : (AIR 1954 Pat 340) as follows :

"The principle was, for example, applied by Lord Halsbury in *Eastman photographic Materials Co v. Comptroller General of Patents* (1898) AC 571, where the question was whether the word "Solio" used as a trade mark, was an invented or a descriptive word. In examining this question Lord Halsbury said: "Among the things which have passed into canons of construction recorded in Heydon's case (1584) 3 Co Rep 7a, we are to see what was the law before the Act was passed, and what was the mischief or defect for which the law had not provided, what remedy Parliament appointed, and the reason of the remedy". At p. 575 Lord Halsbury proceeded to state : "Turner, L. J., in *Hawking v. Gathercole* (1855) 6 De GM and GI, and adding his own high authority to that of the judges in *Stradling v. Morgan* (1560) 1 Plowd 199 , after enforcing the proposition that the intention of the Legislature must be regarded, quotes at length the judgment in that case: that the judges have collected the intention sometimes by considering the cause and necessity of making the Actsometimes by foreign circumstances" (thereby meaning extraneous circumstances)", so that they have ever been guided by the intent of the Legislature, which they have always taken according to the necessity of the matter, and according to that which is consonant to reason and good discretion". And he adds: We have therefore to consider not merely the words of this Act of Parliament, but the intent of the Legislature to be collected from the cause and necessity of the Act being made, from a comparison of its several parts, and from foreign (meaning extraneous) circumstances so far as they can justly be considered to throw light upon the subject."

Applying the principle to the present case It must be held that the order of the Regional Transport Authority dated the 2nd April, 1960 was legally right in refusing to renew the permits of the petitioner under S. GSF (2) of the Motor Vehicles Act.

8. For these reasons I hold that the petitioner has not made out a case for grant of a writ under Article 226 of the Constitution in this case. The application in Misc. Judicial Case No. 334 of 1960, accordingly fails and must be dismissed. There will be no order as to costs.

9. In Misc. Judicial Cases Nos. 333 and 413 of 1960, the material facts are identical in character, and for the reasons I have already given I hold that these applications should also be dismissed. There will be no order as to costs.

10. In Misc. Judicial Case No. 221 of 1960 the material facts are somewhat different. The petitioner in this case is the Mukhia of the Deoria-Jagdishpur Gram Panchayat in the district of Gaya. On the 3rd of June, 1959, the Bihar State Road Transport Corporation published a scheme for taking over certain routes u/s 68C of the Motor Vehicles Act. A copy of the scheme is annexure A to the application. The petitioner and certain other persons filed objections to the enforcement of the scheme u/s 68D of the Motor Vehicles Act. On the 26th September, 1959, the Minister of Transport heard the parties. He rejected the objections and on the 4th November, 1959, the scheme, as approved, was published in the Bihar Gazette.

A copy of the approved scheme is annexure F to the application. Mr. P. R. Das, who appeared in this case on behalf of the petitioner, advanced the same arguments regarding the validity of the scheme as in Misc. Judicial Case No. 334 of 1960. For the reasons given in Misc. Judicial Case No. 334 of 1960 I hold that these arguments have no substance, and the scheme approved by the Minister of Transport and published in the Bihar Gazette dated the 4th November, 1959, is legally valid. An additional argument was presented in this case by learned counsel on behalf of the petitioner. It was argued that different parts of the scheme had been put into effect on different dates. It was pointed out that routes 1 to 9 of the schedule of the approved scheme were to come into operation on the 4th November, 1959, and routes 10, 11 and 12 were to come into operation on the 1st January, 1960. I do not think there is any substance in this argument. It is not legally obligatory on a State Transport undertaking to start services on all the routes on one and the same date. There is nothing in the language of Sections 68C, 68D, 68E or 68F to suggest that the Legislature had contemplated that the services" on all the proposed routes must be mechanically commenced on one and the same date. There is nothing in these sections to suggest that the whole thing must be done in a rigid manner. On the other hand, some flexibility and practicability in starting services on different routes must necessarily be implied. I would, therefore, reject the argument of learned counsel for the petitioner on this point.

11. It was further submitted that a permanent permit was granted to the State Road Transport Corporation in violation of Section 57(2) of the Motor Vehicles Act, which runs as follows:

"57(2). An application for a stage carriage permit or a public carrier"s permit shall be made not less than six weeks before the date on which it is desired that the permit shall take effect, or, if the Regional Transport Authority appoints dates for the receipt of such applications, on such dates". It was submitted on behalf of the petitioner that grant of a permanent permit to the Corporation is null and void and must be quashed by a writ in the nature of certiorari under Article 226 of the Constitution. In support of this argument reliance was placed upon a decision of the Supreme Court in Shrinivasa Reddy and Others Vs. State of Mysore and Others, . I do not accept the argument advanced by learned counsel for the petitioner as correct. I think that the decision in, Shrinivasa Reddy and Others Vs. State of Mysore and Others, , is distinguishable and that the principle which really governs this case is a principle laid down by the Supreme Court in an earlier case, Gullapalli Nageswara Rao etc. Vs. The State of Andhra Pradesh and Others, , where the question of interpretation of Rule 11 of the Andhra Pradesh Motor Vehicles Rules was the subject-matter of debate. It was held in that case that a combined reading of Section 68F(2) and rule 11 of the Andhra Pradesh Motor Vehicles Rules made it clear that the order contemplated under the said sub-section could be made by the Regonional Transport Authority only after giving due notice to the persons likely to be affected by the said order. Where the Regional Transport Authority did not give due notice to the persons

affected and gave them only a day for complying with that order, the Regional Transport Authority could not be said to have complied strictly with the provisions of the rule. Even so the Supreme Court held that the non-compliance of the rule was a mere irregularity and did not affect the legal validity of the order given u/s 68F(2). In the course of his judgment, Subba Rao, J., pointed out that if the order of the Regional Transport Authority was set aside and the appellants were given another opportunity to make their representations to that Authority, it would be an empty formality. At p. 1383 the learned Judge states as follows:

"But, in view of the supervening circumstances, the High Court, while noticing this defect in the procedure followed by the Regional Transport Authority, refused to exercise its jurisdiction under Article 226 of the Constitution. Pursuant to the order of the Regional Transport Authority, the appellants withdrew their vehicles from the concerned routes and the vehicles of the Road Transport Corporation have been plying on those routes. The judgment of this Court conclusively decided all the questions raised in favour of the respondents, and if the order of the Regional Transport Authority was set aside and the appellants were given another opportunity to make their representations to that Authority, it would be, as the High Court says, only an empty formality. As their vehicles have already been withdrawn from the routes and replaced by the vehicles of the Corporation, the effect of any such order would not only be of any help to the appellants, but would introduce unnecessary complication and avoidable confusion. In the circumstances, it appears to us that, as the appellants have failed all along the line, to interfere on a technical point of no practical utility is to strain at a gnat after swallowing a camel". We cannot therefore, say that the High Court did not rightly exercise its discretion in this matter."

The petitioner in Misc. Judicial Case No. 221 of 1960 is not displaced operator but he is Mukhia of a Gram Panchayat. In the circumstance, therefore, of this case, I hold that though there has been a technical violation of Section 57(2) of the Motor Vehicles Act by the Regional Transport Authority in granting a permanent permit to the Corporation, that is a mere irregularity causing no prejudice to the petitioner, and, in the circumstances, the High Court will not be justified in exercising its jurisdiction under Article 226 of the Constitution for cancellation of the permanent permit. For these reasons I hold that the petitioner has made out no case for grant of a writ under Article 226 of the Constitution. The application, Misc. Judicial Case No. 221 of 1960, also fails and must accordingly be dismissed. There will be no order as to costs.

Kanhaiya Singh, J.

12. I agree.