
(1966) 08 RAJ CK 0003
In the Rajasthan High Court
Case No : Civil Writ Petition No. 69 of 1962

Jagjit Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 31-08-1966

Acts Referred:

Constitution of India, 1950 — Article 366(19)
Motor Vehicles Act, 1939 — Section 2(20), 43(1), 58(2), 68B

Citation : AIR 1968 Raj 24 : (1967) RLW 116

Hon'ble Judges : V.P. Tyagi, J; I.N. Modi, J

Bench : Division Bench

Advocate : C.L. Agarwal, for the Appellant; Raj Narain, Deputy Govt. Advocate for Nos. 1 to 3 and D.P. Gupta, for Nos. 4 to 7, 9 to 16, 18 to 20, 22 to 27 and 31 and 32, for the Respondent

Final Decision : Dismissed

Judgement

Tyagi, J.—This writ application has been filed under Article 226 of the Constitution by Jagjit Singh and nine other bus operators on the Jaipur-Sikar amalgamated route challenging the legality of the proceedings taken by the Home Secretary to the Government of Rajasthan under the notification dated the 24th January, 1962 issued by the Government of Rajasthan u/s 43(1) (iii) of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act) in pursuance of which the respondents Nos. 4 to 33 were granted permits to ply their buses on Jaipur-Bikaner route via Sikar, Salasar. Sujangarh, Nokha.

2. The case of the petitioners is that about 31 bus operators, who were plying their buses on the Jaipur-Alwar route, were displaced on account of the nationalisation of the said route. In order to rehabilitate them, the Government of Rajasthan, purporting to act under the provisions of Section 43(1) (iii) of the Act, published in the Rajasthan Gazette a draft notification No. F. 1 (4) 31/H (B-Gr. I)/ 61 dated the 25th October. 1961 for inviting objections or suggestions in respect of the proposal for issuing direction for the grant of the permits to the 32

displaced operators of the Jaipur-Alwar route on the proposed route of Jaipur-Bikaner via Sikar which is 235 miles long and overlaps the Jaipur-Sikar route for which the petitioners held their permits. It is alleged that the petitioners submitted their objections to the Government against the proposal contained in the draft notification. A notice dated 4th December, 1961 was, however, published in the Rajasthan Gazette. Part IV-C dated the 4th December, 1961, authorising Shri Shiv Shanker, Home Secretary to the Government of Rajasthan to hear objections against the proposals contained in the draft notification referred to above in consultation with the State Transport Authority on the 15th December, 1961 in the office of the Judicial Secretary in the Rajasthan Secretariat, Jaipur, at 11.00 a.m. The grievance of the petitioners is that this Gazette was not despatched to its subscribers before the 15th December, 1961 when the objections were to be heard in the Home Secretary nor was any notice issued to the petitioners individually. The petitioners further submitted that they had absolutely no knowledge of the notice dated the 4th December 1961 and consequently they could not appeal before Shri Shiv Shanker, Home Secretary to the Government of Rajasthan for pressing their objections. On the 16th December 1961 petitioner Harjit Singh somehow came to know that the Home Secretary would hear objections and decide the same on some other date as the meeting of the State Transport Authority could not be held on the 15th December 1961. It is alleged that on the 13th January, 1962, the State Transport Authority met and petitioner Harjit Singh along with some other petitioners (whose names have not been given in the petition) went to attend this meeting and they tried to seek an adjournment, but the State Transport Authority refused to accept the petition for adjournment which the petitioner Harjit Singh subsequently submitted to the Secretary, State Transport Authority in its office and a telegram (Ex. 13-C) was also despatched the same day to the State Transport Authority to postpone the finalisation of the directions u/s 43 of the Act on Jaipur-Bikaner route unless he was heard in the matter. The further grievance of the petitioners is that the State Government without giving any opportunity to them of being heard by the Home Secretary in consultation with the State Transport Authority, finalised the instructions to be issued by it to the State Transport Authority u/s 43(1) (iii) of the Act and the notification was published in the Rajasthan Gazette, Extraordinary dated the 24th January, 1962. It is this notification that has been challenged by the petitioners, mainly, on the ground that the instructions were issued ex parte in clear violation of the principles of natural justice inasmuch as the petitioners in spite of their efforts were denied a chance of being heard though their objections were pending before the Home Secretary and the State Transport Authority. The second ground of attack, which has been vehemently urged before us, is that the State Government was not competent to issue any such specific directions for the issue of permits in favour of certain individuals in clear violation of the provisions contained in Sections 47 and 57 of the Act relating to the grant of permits. It is, therefore, prayed by the petitioners that the notification issued by the State Government on the 24th January, 1962 giving directions to the State Transport Authority u/s 43(1) (iii) of the Act for issuing

permits on Jaipur-Bikaner route to the respondents Nos." 4 to 33 be quashed and the permits granted to the aforementioned respondents in consequence of these instructions on the said route be set aside.

3. The petition has been contested by the State Government and by some of the recipients of the permits on the Jaipur-Bikaner route. Two separate replies to the writ petition have been filed, one by the State Government and the other by the contesting displaced respondents who got the permits on the Jaipur-Bikaner route.

4. The State Government has denied this fact that the petitioners had no knowledge of the notice issued by the State Government on the 4th December, 1961, appointing Shri Shiv Shanker, Home Secretary as an authority to hear the objections filed by the objectors in response to the draft notification dated the 25th October, 1961. The contention of the State Government is that registered notices were sent by post to all the objectors including the petitioners on the addresses given by them in their objections, but the petitioners deliberately avoided the service of these notices as they were interested in delaying the hearing of their objections and, therefore, the envelopes containing the notices to the petitioners were returned with an endorsement by the postman dated the 12th December, 1961 that the addresses were not available because the envelopes contained notices. It is, however, urged by the State Government that one Bhag Singh who was the president of the Union of the bus operators of Jaipur-Sikar route had also filed separate objections, but all the objections filed by each one of the bus operators of the Jaipur-Sikar amalgamated route were exactly identical and each one of them had given the same address. Bhag Singh was served with a notice to appear before Shri Shiv Shanker on the 16th December, 1961 and he put in his appearance along with his counsel Shri K.K. Khanna before the Home Secretary on the 15th December, 1961. It is also urged that Bhag Singh entered appearance as a representative of other operators including the petitioners who were the members of the union, of which he was the president, and he engaged Shri K.K. Khanna in the capacity of the President of the said union. This is, however, admitted by the State Government that the copies of the Gazette dated the 4th December, 1961, wherein the notice appointing Shri Shiv Shanker as an authority to hear the objections was published, was despatched to the Secretariat from the Press on the 12th December, 1961 and the copies of the same were despatched to its subscribers on the 15th December 1961, but this fact, according to the averment made in its reply by the State, cannot afford a ground to the petitioners to challenge the hearing of objections by the Home Secretary on the plea that it was done in clear violation of the principles of natural justice. According to the State Government, the petitioners had the knowledge about the publication dated the 4th December, 1961 and they wilfully avoided the service of the notice issued in their individual names and purposely avoided to appear before the Home Secretary on 15-12-61 in order to delay the matter in which they were vitally interested. It is also urged that as Shri D.C. Sharma, who was the Chairman of the State Transport

Authority, was out of station on 15-12-61 and therefore the meeting of the State Transport Authority could not be held on that day, but the Home Secretary thought it fit to hear the objections on that day and that he did in his own room in the Secretariat after notifying the change of venue for hearing the objections and consulted the State Transport Authority in its meeting held on the 13th January, 1962, where the Home Secretary was also personally present. The recommendation of the Home Secretary, as approved by the State Transport Authority, was finally adopted by the Government and the same was published in the Official Gazette dated the 24th January, 1962. In the amended reply, the State Government took a stand that the requirements of the law in this connection is that the State Transport Authority should be consulted before finally deciding the objections and it is not necessary that the State Transport Authority should also hear the objections of the objectors along with Home Secretary who was appointed to hear the objections. The recommendations of the Home Secretary, as approved by the State Transport Authority, were ultimately sanctioned by the Home Minister and, therefore, the decision contained in the impugned notification is the decision of the Government under the provisions of the law which have been meticulously complied with by the authorities concerned.

6. The other contesting respondents in their joint reply, however, added that Shri K. K. Khanna, Advocate, who was appointed to appear before the Home Secretary by the President of the union Shri Bhag Singh, represented all the operators of the Jaipur-Sikar route who had filed their objections which were identical. It is also averred that all the petitioners, including petitioner No. 10 Harjit Singh, were present at the meeting of the State Transport Authority held on the 13th January, 1962 in which the proposals regarding the disposal of the objections made by the Home Secretary Shri Shiv Shanker were discussed in their presence and that all the petitioners took part in the hearing of their objections against the draft notification and having had their full say in the matter, they cannot now be permitted to have a grievance that they had no opportunity of being heard in the matter of the objections filed by them. It may be observed here that this fact has not been controverted by the petitioners that they were present in the meeting of the State Transport Authority on the 13th January 1962. Even at the time of arguments, Mr. Agrawal did not controvert this fact but stated that the presence of the petitioners in the meeting of the State Transport Authority does not cure the defect of want of notice to them to enable them to appear before the Home Secretary on the 15th of December, 1961.

6. A preliminary objection was raised by Mr. Gupta that the permits issued by the Regional Transport Authority in compliance with the impugned directions of the State Government have now been exhausted and the Regional Transport Authority has renewed to the respondents Nos. 4 to 33 fresh permits and unless the validity of these fresh permits was challenged by the petitioners, they are not entitled to get any relief from this Court because after the renewal of the permits was ordered by the Regional Transport Authority, this petition has almost become

infructuous. Mr. Agrawal does not accept this position, on the contrary, he contends that renewal under the provisions of the Act is a continuation of the old permits previously granted to the displaced respondents and, therefore, if the old permits are declared illegal by this Court then the new permits, which have been renewed on the basis of the old permits would automatically go away. In support of this view, he has placed reliance on a Supreme Court authority in *V.C.K. Bus Service Ltd. Vs. The Regional Transport Authority, Coimbatore*, In that case the Supreme Court has held:

"A reading of the relevant provisions of the Act and of the rules leads indubitably to the conclusion that a renewal is a continuation of the permit previously granted. The fact that the grant of renewal is not a matter of cause, or that it is open to the authorities to impose fresh conditions at the time of renewal does not, when the permit is in fact renewed, alter its character as a renewal. . .

In the view that we have taken that under the provisions of the Act and the rules, a renewal is a continuation of the original permit, there can be no doubt as to what the rights of the appellant are. When the proprietor of *V.C.K. Bus Service* was granted a per mil by the Regional Transport Authority on 3rd December 1952 that grant was subject to the result of the decision of the higher authorities. On 5th September 1954, when the permit was renewed in favour of the appellant. That was subject to the decision of the High Court in writ appeal No 32 of 1954 which was then pending. When the renewed permit dated 5th September 1954 was again renewed on 23rd June 1955, that was likewise subject to the result of the decision in Writ Appeal No. 32 of 1954. When the High Court by its judgment dated 21st March 1956 passed in the said Writ Appeal upheld the cancellation of the permit which had been granted by the Regional Transport Authority on 3rd December 1952 to *V. C. K. Bus Service*, the permit renewed on 28th June 1955 became ineffective at least as from that date. The Regional Transport Authority was therefore right in treating it as having become void."

7. This authority makes it abundantly clear that if the permit is set aside by a higher authority, the renewal of that permit which as a matter of fact, is a continuation of the previously granted permit, stands automatically set aside and does not continue to subsist for the period for which it was renewed. In view of this judgment, we find no force in the preliminary objection raised by Mr. Gupta.

8. We now take up the first objection of the petitioners that the recommendation made by the Home Secretary to the Government for issuing directions under the provisions of Section 43(1)(iii) of the Act is vitiated because this recommendation was made by the Home Secretary without affording an opportunity to the petitioners who had filed their objections of being heard by him. Secondly it is urged that the hearing of objections was not done in the presence of the State Transport Authority whose consultation was necessary under the provisions of the law.

9. There were 58 bus operators on the Jaipur-Sikar amalgamated route and it is

admitted by both the parties that each one of them had filed the objection separately though the objections were identical. All these objections were submitted by the operators of the Jaipur-Sikar amalgamated route on the 29th November, 1961, and it is worthy of note that every objector had given his address in these objections below his signature as "Operator of Jaipur-Sikar amalgamated route, Chomu Sikar Bus Stand, outside Chand Pol Gate, Jaipur." The notice appointing Shri Shiv Shanker, Home Secretary as an authority to hear objections u/s 43 of the Act was published in the Rajasthan Gazette on the 4th December, 1961, but it is admitted by the State Government that this Gazette was not despatched to the subscribers upto the 15th December, 1961, though the copy of the same was sent to the Secretariat on the 12th December, 1961. In such circumstances, it is urged by Mr. Agrawal that the printing of a notice in the Official Gazette, if it was not out of the press, cannot be deemed to be a good notice to the public at large. We find a considerable force in this argument of Mr. Agrawal, but this fact alone shall not dispose of the objection raised by Mr. Agrawal before us. It is admitted by the petitioners themselves that individual notices were issued from the Secretariat under a registered cover to each individual objector on the 6th December, 1961 and out of 58 objectors, with the exception of 10 petitioners, every other objector was served with a notice as published in the Gazette of the 4th December, 1961. The envelopes containing the notices to the petitioners were, however, returned by the postman on the 12th December, 1961, with an endorsement thereon that the petitioners were not available at the addresses on the envelopes as they contained notices. (sic) This endorsement, however, does not help the Government to show that the petitioners were deliberately avoiding the service of the notices in order to delay the consideration of the objections by the Home Secretary. But this fact cannot be ignored that the State Government issued notices to the petitioners on the addresses given by them in their objections in order to afford them an opportunity to be heard before the Home Secretary. Mr. Gupta has urged that if for their own mistake that the petitioners did not give correct addresses of their residence, the notices could not be served on them, they should thank themselves and they cannot lay blame on the shoulders of the State Government for not letting them know that their objections were being disposed of by the Home Secretary on the 15th December, 1961, which was notified in the Official Gazette.

10. These arguments, in our opinion are not of much consequence to dispose of the question raised by Mr. Agrawal before us. It is a fact that whoever may be responsible for the non-delivery of the registered envelopes containing the notices to the addresses, the notices were not served on the petitioners personally and, under these circumstances, we cannot attribute knowledge to the petitioners that they knew it that Shri Shiv Shanker, Home Secretary was to dispose of the objections filed by the operators of the Jaipur-Sikar route in pursuance of the draft notification dated the 25th October, 1961.

11. Mr. Gupta has urged that under the provisions of the law it was not necessary

that each and every individual objector should be given a hearing to dispose of the objections filed by him u/s 43 of the Act. According to him, it is sufficient if the representatives of the interests affected were afforded opportunity of being heard in the matter. The proviso to Section 43 (1) of the Act clearly lays down that the directions under the provisions of Section 43 shall not be issued unless a draft of the proposed directions is published in the Official Gazette Specifying therein a date, being not less than one month after such publication on or after which the draft will be taken into consideration and any objection or suggestion, which may be received, has in consultation with the State Transport Authority been considered after giving the representatives of the interests affected an opportunity of being heard. It is not contested before us that the interests of all the 58 operators, who had filed objections to the proposed direction, were not identical and that they had a union of which Sardar Bhag Singh was the President. Sardar Bhag Singh in this case was served with a notice issued by the State Government in the registered envelope, and as a consequence of that service he had engaged the services of Mr. K.K. Khanna. Pleader and was represented before the Home Secretary Shri Shiv Shanker on the 16th December, 1961 when the objections were taken up by him for consideration The Vakalatnama appointing Shri K. K. Khanna as a pleader filed by Shri Bhag Singh shows that he described himself as the president of the union of the operators of the Jaipur Sikar route. Shri Khanna has filed an affidavit in this case, but he has nowhere said therein that he put in his appearance before Shri Shiv Shanker only on behalf of Bhag Singh.

12. Our attention has been drawn by Mr. Gupta to an application dated the 28th December, 1961, which was filed by Shri K. K. Khanna before the Superintendent, Government Press, Jaipur for seeking information regarding the despatch of the Extraordinary Gazette dated the 4th December, 1961 to its subscribers, and in that application Shri K. K. Khanna had described himself as a "Pleader for Jaipur-Sikar motor stand line," This description given by Shri Khanna about his capacity in which he was moving the said application shows that he had been engaged by Bhag Singh not in his individual capacity but as a representative of the union of the Jaipur-Sikar bus operators and Shri Khanna had entered appearance before the Home Secretary on the 15th December, 1961 in the capacity of a pleader for the operators of the Jaipur-Sikar route. All the facts referred to above no doubt go to show that the petitioners were not personally served with a notice to appear before the Home Secretary on the 15th December, 1961 but they leave no room for doubt to infer that Bhag Singh, the President of the union of which petitioners were members, effectively represented the cause of the operators of the Jaipur-Sikar amalgamated route who had filed identical objections before the Government against the present draft. In this view of the matter, it is difficult for us to accept the petitioners' contention that their cause was prejudiced for want of notice.

13. Another important circumstance which may be mentioned in this connection is that on the 13th January, 1962, the meeting of the State Transport Authority

was called and Shri Shiv Shanker, Home Secretary, according to the averment made by the State, was present in that meeting. The objections of the existing operators were discussed in that meeting. Petitioners Harjit Singh along with some other petitioners, according to the averments made in the writ petition itself, were present in the meeting of the State Transport Authority but instead of pressing their objections before the Home Secretary and the State Transport Authority, they , tried to seek an adjournment and for that purpose an application was tried to be presented before the members of the State Transport Authority but when they refused to accept it, it was handed over to the Secretary of the State Transport Authority in its office. A telegram to that effect was also sent by the petitioners Harjit Singh and some of the petitioners were undoubtedly present in the meeting but they did not avail that opportunity of supporting their objections before the Home Secretary and the State Transport Authority. The contention of the displaced contesting respondents is that all the petitioners were present in the meeting of the State Transport authority in the 13th January, 1962. It finds support from the affidavit filed by Kalyan Singh respondent in support of the reply submitted by the contesting displaced respondents. There is no reason to disbelieve the statement of Kalyan Singh respondent, especially when the petitioners themselves admit that Harjit Singh and some other petitioners were present before the State Transport Authority on the 13th January, 1962. In such circumstances, there was ample opportunity for the petitioners to put up their case before the Home Secretary and the State Transport Authority, and if they chose not to avail that opportunity, then they cannot lay blame on the Government for not being heard because they were not served with the notice for the meeting of the 15th December, 1961.

14. It is next contended by Mr. Agrawal that the recommendations of the Home Secretary also suffered from an infirmity that he heard the objections in clear violation of the notice issued on the 4th December, 1961 all alone in the absence of the members of the State Transport Authority and, therefore, any instructions issued in pursuance of such recommendations are vitiated. In this connection, we may refer to the provisions of Section 43 of the Act. The proviso to Section 48 (1) lays down that no direction shall be issued unless a draft is published in the Official Gazette specifying therein a date being not less than one month after such publication, on or after which the draft will be taken into consideration and any objection or suggestion which may be received has, in consultation with the State Transport Authority, been considered after giving the representatives of the interests affected an opportunity of being heard.

15. The requirement of this provision of law is that the objection or suggestion which may be received by the Government in that behalf should be considered in consultation with the State Transport Authority after giving the representatives of the "interests affected" an opportunity of being heard. The language of the proviso is very clear. In our opinion, it is not the requirement of this provision of law that the hearing to the objectors must be given in the presence of the State Transport Authority. What is required under this proviso is that the objection or

suggestion received in that behalf by the State Government shall be considered in consultation with the State Transport Authority. The consultation with the State Transport Authority can be done either in the presence of the objectors or thereafter. There is no prohibition in law that consultation with the State Transport Authority cannot be made after hearing the objectors first. In the present case, the objectors were heard by the Home Secretary who was appointed by the State Government in that behalf for giving hearing to them on the 15th December, 1961 and thereafter the meeting of the State Transport Authority was summoned on the 13th January 1962 which was attended by the Home Secretary and the objections or suggestions received by him were discussed with the members of the State Transport Authority. In these circumstances, we feel that the requirement of law was fulfilled when the State Transport Authority was consulted by the Home Secretary after giving hearing to the President of the union of the operators who filed their objections before the Government. We do not find any flaw in the procedure adopted by the Home Secretary. The contention of Mr. Agrawal, in our opinion, has no force and it is, therefore, repelled.

16. This brings us to the second contention of Mr. Agrawal that the permits on the Jaipur-Bikaner route could not be issued by the Regional Transport Authority in pursuance of the directions issued by the State Government u/s 43 (1) (iii) of the Act without going through the procedure laid down for that purpose in Chapter IV of the Act. His argument is that the function of the Regional Transport Authority in the matter of granting permits under Chapter IV of the Act is quasi-judicial while the area covered by Section 43 of the Act is purely administrative, and does not include the area which is the subject-matter of the exercise of quasi-judicial authority by the Regional Transport Authorities. Any permit, therefore, issued under the administrative instructions of the Government without following the procedure laid down in Chapter IV of the Act for the grant of permits cannot be said to be a valid permit and such a permit does not create any right in favour of its recipient. In support of this contention, Mr. Agarwal has placed his reliance on a Supreme Court authority in *B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others*, Mr. Gupta, on the other hand, contended that after the Act was amended by the amending Act No. 100 of 1956, whereby Chapter IV-A was introduced, the position has been considerably changed, and, according to him, if the permits are granted by the Regional Transport Authority in pursuance of a scheme prepared under Chapter IV-A or in compliance with the directions issued by the Government u/s 48(1) (iii) of the Act to compensate the displaced operators from the nationalised routes, then the act of the Regional Transport Authority of granting permits under these circumstances is purely a ministerial or an administrative act. He also contended that for the grant of permit under a scheme of nationalisation made under Chapter IV-A or for a permit issued to compensate the displaced operators from the nationalised route under any instruction of the Government u/s 43 (1) (iii) by the Regional Transport Authority, no proceedings need be taken under the

procedure prescribed for the grant of fresh permit under Chapter IV of the Act.

17. These rival contentions of learned counsel for the parties pose an important question of law for our decision whether the act of the Regional Transport Authority in granting permit under the instruction issued by the Government u/s 48 (1) (iii) of the Act is an administrative act and the procedure prescribed by the Act in Chapter IV for the grant of permit need not be followed by it.

18. In order to appreciate these contentions, we may see the scheme of Chapter IV-A of the Act and the consequential amendment of Section 43 which, according to Mr. Gupta, has been made to expedite the grant of permits to the displaced operators, from the nationalised route on the alternative route or routes.

19. Section 68-B of the Act clearly states that the provisions of Chapter IV-A and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter IV of the Act. This is an overriding provision and if any action is taken under the provisions of Chapter IV-A or the rules and orders made thereunder, then such an action shall not be affected or vitiated for want of compliance of the provisions of Chapter IV of the Act. Section 68-C relates to the preparation and publication of scheme of road transport service of a State Transport undertaking and Section 68-D deals with the procedure for disposing of the objections filed by the persons affected by the scheme published u/s 68-C. Where a scheme is approved in accordance with the provisions of Sections 68-C and 68-D and In pursuance thereof the State Transport undertaking applies to the Regional Transport Authority for a permit in respect of a notified area or a notified route, then Section 68-F comes into play and it provides that notwithstanding anything to the contrary contained in Chapter IV, the Regional Transport Authority shall issue such a permit to the State Transport undertaking. Sub-Section (2) also provides for certain other actions to be taken by the Regional Transport Authority to give effect to the approved scheme and it may, by order, refuse to entertain any application for the renewal of any other permit, cancel any existing permit or modify the terms thereof so as to render the permit ineffective beyond a specified date; reduce the number of vehicles authorised to be used under the permit; or curtail the area or route covered by the permit in so far as such permit relates to the notified area or notified route Then we come to S 68-G which embodies in itself certain principles and method for determining compensation to the displaced operators Sub-section (2) of Section 68-G provides that a displaced existing operator shall not get any compensation on account of the cancellation or modification of the permit if an alternative route or area in lieu thereof has been offered to him by the Regional Transport Authority and accepted by him. This is an alternative method provided by the law for compensating the displaced operators and the parliament, in order to give effect to this amended proviso of law, thought it expedient in its wisdom to clothe the State Government with a power to expedite the grant of permit on the alternative route and for that purpose introduced Clause (iii) in Section 43 (1) of the Act which reads as follows:

"43. (1) A State Government may, from time to time, by notification in the Official Gazette, issue directions to the State Transport Authority--

(i) X X X X X

(ii) X X X X

(iii) regarding the grant of permits for alternative routes Or areas, to persons in whose cases the existing permits are cancelled or the terms thereof are modified in exercise of the powers conferred by clause (b) or clause (c) of Sub-section (2) of Section 68 F"

20. Mr. Agrawal contends that under clause (iii) of Section 43 (i) the State Government has the power only to issue general directions and not the specific direction for the grant of permits to certain individual operators who have been dislodged from the nationalised route and if a permit is to be issued under these general directions to any dislodged operator, then it can be done only after inviting application from such operator and then inviting objections after publishing such application under the procedure given in Chapter IV of the Act for the grant of fresh permit. Mr. Gupta on the other hand submits that there is no necessity of inviting objections over again as such objections from those whose interests are affected by the issue of the direction u/s 43 (1) (iii) were invited and disposed of by the Government in consultation with the State Transport Authority before such directions were actually, issued by the Government. In support of this contention, he has referred to a Bench decision of this Court in Abdul Gafoor and Others Vs. State of Rajasthan and Others,

21. This court in Abdul Gafoor and Others Vs. State of Rajasthan and Others, while dealing with the question as to how a dislodged operator can be compensated under Chapter IV-A of the Act, made the following observations:

"There appears to be, however, a more suitable method provided under the law which can be conveniently followed. This is provided for by Section 43 (1) (ii) of the Act. Under the proviso to this clause, the grants of permits for alternative routes have to be made after giving "the interests affected thereby an opportunity of being heard." "

22. According to Mr. Agrawal, these observations of the learned Judges cannot be considered to be a good law as the Supreme Court in B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others, has clearly laid down that

"the field covered by Section 43 of the Act is administrative and does not include the area which is the subject matter of the exercise of quasi-judicial authority by the relevant tribunals."

He further submitted that the grant of a permit under the instructions of the Government is a quasi-judicial function of the Regional Transport Authority and, therefore, it cannot be granted by the Regional Transport Authority under the cover of the instructions issued by the Government without following the

procedure laid down in Chapter IV, and if a permit is given in violation of the provisions of Sections 46 to 57 of the Act, then it is a nullity and cannot confer any right on the holder thereof to ply the bus on the route mentioned therein.

23. We may observe that before Chapter IV-A was incorporated in the Act and a consequent amendment was made in Section 43 for issuing directions regarding the grant of permits for alternative routes to the displaced operators as a measure to compensate them under the provisions of Section 68-G of the Act, there could not be any dispute that the function of the Regional Transport Authority in granting the permit was quasi-judicial as no other mode except the one embodied in Chapter IV of the Act was provided by the law for the grant of fresh permit, but it is difficult for us to say now that the grant of permit by the Regional Transport Authority in each and every case is a quasi-judicial function of the Regional Transport Authority. The position has considerably changed since a new Chapter IV-A and a consequent amendment in Section 43 was introduced. In *Abdul Gafoor Vs. State of Mysore*, a question was raised before the Supreme Court whether it was necessary for the Regional Transport Authority to publish the application filed by the State Transport undertaking u/s 68-E for the grant of permit on the notified route or area, and unless such an application was duly published and a notice thereof was given to the existing operators and they were allowed to make representation, the Regional Transport Authority was incapable to issue permit to the State Transport undertaking. Their Lordships, after discussing the entire scheme of Chapter IV-A and the application of the provisions relating to the grant of permit in Chapter IV of the Act, held:

"In our opinion, the Regional Transport Authority acts wholly in a ministerial capacity while dealing with an application of the State Transport Undertaking u/s 68-F (1). The fact that on other occasions and in other matters the Regional Transport Authority has quasi-judicial functions to perform cannot make its function u/s 68-F (1) a quasi-judicial function.""

24. In *Kalyan Singh v. State of Uttar Pradesh* AIR 1962 SC 1183 their Lordships of the Supreme Court confirmed what they had held in *Abdul Gafoor and Others Vs. State of Rajasthan and Others*, and further observed:

"The Regional Transport Authority was by the terms of the scheme left no discretion in the matter. It was by the scheme that the right of the appellant was restricted and if the scheme became final and binding the Regional Transport Authority had no authority to permit the appellant to ply his vehicles. The order passed by the Regional Transport Authority was purely consequential on the scheme, and if the scheme is not open to challenge, orders consequential thereon will not also be open to challenge "

25. These observations clearly show that the permits granted in pursuance of a scheme approved under Chapter IV-A is purely consequential and therefore it is an administrative act of the Regional Transport Authority and therefore it cannot be said that the permits given by the Regional Transport Authority are a result of

the acceptance of a scheme, under Chapter IV-A is given in the discharge of its quasi-judicial functions

26. There is force in the argument of Mr. Gupta that after Chapter IV-A was introduced, the Regional Transport Authority started functioning in two capacities. If the permits are granted by the Regional Transport Authority under Chapter IV, then there is no doubt that it does act in a quasi-judicial manner, but if it has to issue permits as a consequence of a scheme approved under Chapter IV-A or in order to compensate the displaced operators from the nationalised route by giving permits on the alternative route u/s 43 (1) (iii) of the Act, then the Regional Transport Authority shall act in an administrative capacity and not as a quasi-judicial body.

27. Section 68-G (2) is an enabling provision for compensating the displaced operators by offering them alternative routes by the Regional Transport Authority. No procedure has been provided in the Act itself. The Parliament itself thought it advisable to clothe the State Government with a power to issue instructions to the Regional Transport Authority by introducing clause (iii) to Section 43 (1) of the Act. No doubt, as the Supreme Court has held in *B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others*, that the instructions that shall be issued under the provisions of Section 43 (1) (iii) shall be administrative in nature but this fact that such instructions are of administrative nature would not come in the way of the Regional Transport Authority to grant permits to the displaced operators. Mr. Agrawal has conceded to this extent during the course of arguments that if any route has got to be opened by the Regional Transport Authority where no existing operator is plying his bus, procedure under Chapter IV may not be followed by the Regional Transport Authority and the permits may be granted to the displaced operators under the instructions issued by the State Government u/s 43 (1) (iii) of the Act, but his contention is that if already certain operators are plying their buses on a particular route and if the displaced operators are to be inducted on that route in order to rehabilitate them, then in that event the entire procedure as provided from Sections 46 to 57 shall have to be gone through and no permits can be issued without going into the formalities under the instruction issued by the State Government which are purely of administrative nature. There is no doubt that persons who are lawfully plying their vehicles on a particular route do acquire some kind of proprietary interest in the transport business on that particular route and when their right is affected by inducting fresh operators thereon, it is necessary under the law as well as on the principles of natural justice that they should be given adequate opportunity to file their objections and they should be heard before any alternative route is granted to the displaced operators.

It is also admitted by Mr. Agarwal that if the scheme prepared under Chapter IV-A of the Act itself includes a provision for the grant of permits to the displaced operators on some alternative route, then in that case the Regional Transport Authority can issue permits to them without complying with the requirements of

the provisions of Chapter IV which relates to the grant of fresh permits, because the existing operators who are thereby to be affected had the opportunity of raising their objections u/s 68-D when the scheme was under preparation, but he contends that if the scheme does not have any such provision of granting alternative route for the displaced operators then, according to him, the Regional Transport Authority cannot issue permits on the alternative routes without following the procedure of Chapter IV relating to the grant of fresh permits. From these objections it appears that if the existing operators of a route where the displaced permit holders are going to be rehabilitated by granting fresh permits had the opportunity of raising objection against such a grant, then, according to Mr. Agarwal, the Regional Transport Authority can issue permits, if the law so permits without undergoing the procedure provided for the grant of fresh permit in Chapter IV and if such opportunity of raising objection is not available to the existing operators then proceedings in accordance with the provisions of Sections 46 to 57 of the Act are necessary to be taken. This objection of Mr. Agarwal is based on the principles of natural justice and he apprehends that if the Regional Transport Authority is permitted to issue permits to the dislodged operators under the directions issued by the State Government u/s 43 (1) (iii) of the Act without following the procedure laid down for the issue of fresh permits in Chapter IV then the existing operators on that route shall be deprived of their right to have their say in the matter of granting of permits to the displaced operators. We are of opinion that this apprehension has no substance in it as Section 43 (1) itself provides a chance of raising objections to the interests affected which term undoubtedly covers the existing operators before the directions are finally issued by the Government. According to the proviso to the Section 43 the State Government can issue direction only after a draft of the proposed direction was published in the Official Gazette specifying therein a date being not less than one month after such publication, on or after which the draft will be taken into consideration and any objection or suggestion which may be received has, in consultation with the State Transport Authority, been considered after giving the representatives of the interests affected an opportunity of being heard. This proviso clearly contains a procedure for giving opportunity to the interested persons to raise objections or to give suggestions which the State Government is bound to consider in consultation with the State Transport Authority, and while doing so the representatives of the interests affected shall have an opportunity of being heard before the Government. This shows that the instructions u/s 43 (1) (iii) are issued by the Government after giving opportunity to the persons affected of being heard before the State Government and after consulting the State Transport Authority who in the natural course of circumstances is conversant with the conditions prevailing on the routes affected by such instructions.

28. It may be observed that the Act creates a hierarchy of bodies with distinct functions and powers ascending from the Regional Transport Authority upto the State Government. Section 68-G (2) provides that the Regional Transport

Authority shall offer an alternative route to the displaced operators in order to compensate them for being dislodged from the notified area or route. There is no divergence of opinion on this point that the Regional Transport Authority while exercising this function u/s 68-G (2) acts purely in an administrative capacity. The field of the operation of a Regional Transport Authority, as we know, is a limited one and it exercises its powers and functions within territorial limit assigned to it. It is, therefore, not expected that the Regional Transport Authority, while discharging its functions u/s 68-G (2) of the Act can make an offer for the alternative route to the displaced operators falling in the jurisdiction of the other Regional Transport Authority as it is not possible for the Regional Transport Authority to know the conditions of the route or routes falling within the jurisdiction of other Regional Transport Authorities in the State. In such circumstances, it was found necessary by the Parliament to clothe the State Governments with a power to issue directions for granting permits on the alternative routes to the displaced operators u/s 43 (1) (iii) of the Act. The law provides that such directions shall be issued by the State Government after consulting the State Transport Authority which under the Act has to discharge certain functions regarding the transport matters in the State. The power of issuing directions u/s 43 (1) (iii) is to be exercised by the State Government in accordance with the procedure laid down in the proviso appended to that section which affords an opportunity to the representatives of the interests affected to raise objections and to be heard in that behalf. In these circumstances if the directions are issued by the State Government under the provisions of Section 43(1) (iii) and transmitted to Regional Transport Authority u/s 44 of the Act, the only task that is left for the Regional Transport Authority is to issue the permit to the displaced operator or operators on the route notified in the direction itself. The function of the Regional Transport Authority of issuing a permit under the directions given by the State Government can therefore be equated to the function it has to discharge while issuing permit under the scheme prepared under Chapter IV-A of the Act. That function, as observed by the Supreme Court, is ministerial or administrative in nature. Therefore the function of the Regional Transport Authority of issuing permit in pursuance of the direction u/s 43 (1) (iii) is purely an administrative function which, under the changed scheme of the Act, is permissible. In these circumstances, we do not find any force in the contention of Mr. Agarwal that the Regional Transport Authority cannot issue permits to the displaced operators without following the procedure prescribed in Chapter IV of the Act. The permits issued by the Regional Transport Authority in this particular case in obedience with the directions of the State Government under the provisions of Section 43(1) (iii) of the Act are, therefore, legal and do not suffer from any infirmity.

29. In view of the above discussion, we do not find any force in this writ application and it is, therefore, dismissed.