
(1958) 04 AP CK 0021

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 318 to 321, 330 to 332 and 418 to 425 of 1958

K. Gopala Krishnayya and Others

APPELLANT

Vs

State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 08-04-1958

Acts Referred:

Constitution of India, 1950 — Article 131, 14, 166(3), 19, 19(2)
General Clauses Act, 1897 — Section 17, 18, 19
Motor Vehicles Act, 1939 — Section 68A, 68B, 68G
Road Transport Corporations Act, 1950 — Section 3, 34

Citation : AIR 1959 AP 292

Hon'ble Judges : P. Chandra Reddy, O.C.J.; Satyanarayana Raju, J

Bench : Division Bench

Advocate : M.K. Nambiar, for G. Suryanarayana and K. Mangachary, M. Dwaraknath, Smt. K. Amareswari, G.S.R. Anjaneyulu and M.B. Rama Sarma, for the Appellant; D. Narasaraju, General and G. Ramanujulu Naidu, D.V. Sastry and J.V. Sruyanarayana Rao and A.G., for the Respondent

Final Decision : Dismissed

Judgement

P. Chandra Reddy, Offg. C.J.

1. These petitions are filed by several persons carrying on motor transport business in Krishna District for the issue of a writ of certiorari to quash a common scheme No. T6/10/57 dated 5-11-1957 published in the Andhra Pradesh Gazette as approved by the Government of Andhra Pradesh in G. O. Ms. No. 58 Home (Transport IV) dated 7-1-1958 and published in the Andhra Pradesh Gazette, Part II (Extraordinary) dated 9-1-1958. The State of Andhra Pradesh published a scheme, for the purpose of providing an efficient, adequate, economical and properly co-ordinated transport service in the public interest to operate the transport services mentioned therein with effect from a date to be notified by the Government.

This was done in exercise of the powers conferred by Section 68C of the Motor

Vehicles Act as amended by the Act 100 of 1956 which introduced Chapter IV-A into the Motor Vehicles Act of 1939. The transport service specified in the scheme covers all the routes till now operated by the petitioners. The petitioners filed objections to the approval of the scheme by the Government. They were heard on 26-12-1957 and 27-12-1957 by the Secretary, Home and Transport Department of the State of Andhra Pradesh.

Meanwhile, the Government decided to establish a road transport corporation under the Central Act 64/1950 for the State of Andhra Pradesh and to transfer the assets of the Transport Department to the said State Transport Corporation. Pursuant to this, the Government constituted the Andhra Pradesh Road Transport Corporation for the State of Andhra Pradesh u/s 3 of the Central Act (64 of 1950). By G. O. Ms. 58, dated 7-1-1958, the scheme was approved by the Governor of Andhra Pradesh without any modification and this was to come into force from 10-1-1958.

By another order dated 11-1-1958, the Andhra Pradesh State Road Transport Corporation was empowered to take over the management of the existing Road Transport Department of the Government of Andhra Pradesh, and to enforce the scheme approved as aforementioned. It is at this stage that the petitioners have approached this Court invoking its jurisdiction under Article 226 of the Constitution. Since all the petitions raise common questions of law and fact, they can be disposed of by a common judgment.

2. Two broad grounds are raised in support of these petitions (1) that the provisions of Chapter IV-A (Amending Act 100 of 1956) are ultra vires the Constitution; and (2) even if that Chapter is intra vires, the scheme is vitiated by reason of the non-compliance with the procedure laid down by the Act.

3. Chapter IV-A of Act 100 of 1956 is impugned on three grounds, namely, that it is a colourable legislation, that it constitutes a fetter on the power of the Parliament to enact future legislations and that by Section 68-B of that Act the Parliament had delegated its authority to a subordinate agency to repeal some of the existing statutes which is hit at by Articles 245 and 246 of the Constitution.

4. To appreciate the first point, it is necessary to extract the relevant provisions of Chapter IV-A. Section 68-B of that Act recites:

"The provisions of this Chapter and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter IV of this Act or in any other law for the time being in force or in any instrument having effect by virtue of such law."

Section 68-G(1) reads thus:

"Where in exercise of the powers conferred by Clause (b) or Clause (c) of Sub-section (2) of Section 68-F any existing permit is cancelled or the terms thereof are modified, there shall be paid by the State Transport undertaking to the holder of the permit compensation the amount of which shall be determined in

accordance with the provisions of Sub-section 4 or 5 as the case may be."

The other sub-sections need not be set out as they are not material in the present context.

5. The first ground of attack with regard to the constitutionality of the Chapter IV-A is founded on the terms of Section 68-G (1). That subsection provides for compensation for the cancellation of the permits or any modification of the terms thereof. The other clauses of the Sub-section contain the principles and mode of determining the compensation. What is urged is that this chapter judged by its effect & operation empowers a State or State-Controlled Corporation to make an acquisition of private transport undertakings as a whole covertly and not directly, by making provision for compensation for only a part thereof namely, for the termination of the permits and as such, it is a fraud on the constitution particularly on Article 19(6)(2) and Article 31 thereof, neither of which could be abridged or abrogated by Parliament either directly or indirectly.

Though ostensibly the Statute gives authority to the statutory bodies enumerated therein only for acquisition of permits, in substance, it enables them to take away the whole undertaking which comprises both tangible and intangible property. The tangible assets of the undertaking comprehend within its fold workshops, sheds & several other adjuncts necessary for its effective organisation. The relevant section contemplates compensation only for the cancellation of the permits and for nothing more, without recompensing the bus-operators for the loss of profits and for rendering the rest of the undertaking absolutely valueless.

6. The argument is based mainly on *Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*, , popularly known as the 2nd Sholapur case) and *Saghir Ahmad v. State of U. P.*, AIR 1954 SC 728. The effect of the relevant provisions of the legislation assailed before the Supreme Court was to vest possession, control and management of the effects of the company in the Central Government or the persons nominated by it and the normal functioning of the company under its Articles under the Indian Companies Act had ceased and the right of the share-holders to elect their own directors to manage the affairs of the concern was taken away.

The validity of this ordinance was called in question as contravening inter alia Article 31(2) of the Constitution. The Supreme Court struck down the ordinance as it authorised in effect deprivation, of property within the meaning of Article 31(2) without compensation. It was laid down there that the expression "acquisition and taking possession" used in Article 31(2) had the same meaning as the word "deprivation" and that it had a wide import including within its compass taking property temporarily and that the transfer of legal title was not an essential element. The restricted connotation of the term "acquisition" as involving a transfer of legal title to the property was not accepted by their Lordships.

7. The other case also lends support to the argument advanced on behalf of the petitioners. There, in furtherance of a State policy, the Transport Authorities in Uttar Pradesh established a complete monopoly in respect of the Road Transport business and excluded all private operators who would otherwise have been entitled to them. The validity of this action was questioned under Article 220 of the Constitution by private bus owners. Several questions were debated before the Supreme Court, but the only one relevant for our purpose is the one relating to Article 31(2) of the Constitution.

In dealing with this controversy, it was observed by Mukherjea J, (as he then was) who spoke for the Court that the immediate effect of the legislation in question was to deprive various operators carrying on their business in the various routes, of the means of supporting themselves and their families and who would be left with their buses which would be of no further use to them and which they may not be able to dispose of easily or at a reasonable price.

In the opinion of their Lordships this amounted to an invasion of the fundamental right guaranteed to a citizen under Article 31(2) of the Constitution. This pronouncement is based upon the opinion of their Lordships that the concept of acquisition was wide enough to comprehend even deprivation. To constitute an acquisition within the scope of Article 31(2) of the Constitution, it was not essential that there should be acquisition of title to the property in question and it was sufficient to deprive the citizen of the use of any tangible property.

8. It is to nullify this doctrine and uphold the narrower construction that was placed on it earlier by the Federal Court that the 4th amendment of the Constitution was introduced. Article 31 was amended by the Constitution 4th Amending Act of 1955 which inter alia added Article 31(2)(a). It is in these words:

"Where a law does not provide for the transfer of the ownership or of right to possession of any property to the State Or to a Corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of any property, notwithstanding that it deprives any person of his property."

It is clear from the language of the amended Article, that, to constitute acquisition, transfer of ownership or right to possession of any property to the State is a requisite ingredient. It is only acquisition in that sense that is brought within the purview of Article 31. It will not amount to acquisition though the person concerned is deprived of his property.

In other words, so long as the State does not acquire title to the property the fundamental right of a citizen under Article 31 does not come into play. Viewed in the light of the amended Article, it cannot be postulated that the attributes of a compulsory acquisition either in relation to tangible assets or intangible ones, are present in the Statute that is assailed as unconstitutional. Obviously, the Parliament made provision for compensation for cancellation of permits to avoid

controversy. Consequently the doctrine of colourable legislation cannot be extended to the provisions of Chapter IV-A of Act 100 of 1956.

9. Colourable legislation implies either want of legislative competency or a constitutional prohibition. It may not be permissible for a legislature to enact laws on a particular subject by reason of its being within the exclusive domain or field of another legislative body. Or, there may be a limitation on the legislative authority in the shape of some fundamental right. To circumvent either of them, a legislation may be so disguised as to make it appear that any of these restrictions are not transgressed. So, in judging whether an enactment is constitutional or not, a Court should not be guided by its form or outward appearance, but should look into the pith and substance of it. If, in substance, the subject-matter is something beyond the powers of the legislature to legislate upon, the form in which it is clothed would not save it. It is with reference to such a legislation, that the judicial pronouncements have used the expression colourable legislation.

10. As remarked by Duff J., in *Attorney-General for Ontario v. Reciprocal Insurers*, 1924 AC 328, where the law-making authority is of a limited or a qualified character it may be necessary to examine with some strictness the substance of the legislation for the purpose of determining what is it that the legislature is doing. A legislature cannot disregard the prohibition, binding it and the limits on its power by employing indirect methods in attaining the same result which could not be attained directly. So, the true effect of the operation of the legislation has to be examined to see if any constitutional violation or infraction has been committed by a legislature in enacting the Statute. Hence, the Courts have to enquire into the true nature and character of the legislation and should not be misled by the outward appearance.

11. The principles bearing on this are succinctly stated, if I may say so with respect, in *K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa*, .

12. But, we are unable to see how Section 68 of the said Act can come within the ambit of that doctrine. It is not suggested that it was not within the competence of the Indian Parliament to undertake a legislation bearing on the motor vehicles. This subject is included in the concurrent list. Hence, it was within the jurisdiction of the Parliament to make laws with regard to that item. Nor could it be said that the relevant provisions invade any fundamental right of a citizen. The executive function of a State extends to engaging itself in trade etc., by reason of Article 298 of the Constitution without any legislative sanction.

It is only when it wants a monopoly in any trade or business that a legislative sanction is needed. Article 19(6) of the Constitution as amended by the first amendment Act of 1951 among other things provided that

"nothing in Clause (g) of Article 19 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

***** (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."

This means that any law made by a legislature enabling a state by itself or by a corporation as its nominee to have a monopoly in regard to any trade or business etc., will be intra vires and would not offend against any provision of Article 19. To that extent Clause (g) of that Article which has conferred a fundamental right on a citizen to carry on trade or business is abrogated.

So, after this amendment, there is no constitutional prohibition against a legislature enacting laws which had the effect of extinguishing the rights of a citizen in regard to carrying on any occupation, trade or business. It could not therefore be said that the Parliament had either en-croached upon the exclusive field of State legislatures or has violated any constitutional guarantee or prohibition. That being the situation, there is no question of the Parliament intending to circumvent the limitations on its legislative power by resorting to indirect methods. Nor is there any substance in the submission that the whole undertaking of the bus transport is acquired by the Government covertly and indirectly by providing compensation for cancellation of the permits. So, there is no room for invoking the doctrine of colourable legislation in relation to the provisions of Chapter IV-A.

12a. Here we may refer to two of the pronouncements of the Supreme Court in *Bhikaji Narain Dhakras and Others Vs. The State of Madhya Pradesh and Another*, and *Ram Chandra Palai and Others Vs. The State of Orissa and Others*, . In *Bhikaji Narain Dhakras and Others Vs. The State of Madhya Pradesh and Another*, , the validity of the C. P. and Berar Motor Vehicles Act, 1947, which introduced certain amendments into the Motor Vehicles Act, 1939, in its application to the Central Provinces and Berar and which contained among other things a provision for payment of compensation when any permit was cancelled, was considered. One of the contentions advanced on behalf of the private bus owners who were excluded from the business as a result of that Act was that the enactment conflicted with the provisions of Article 31(2).

This was negated by. Das acting Chief Justice on the ground that the 4th Amendment of the Constitution had saved the impugned law. In the second of the cases, this point does not seem to have been specifically argued but the enactment the vires of which was questioned contained a provision for payment of compensation for premature termination or cancellation of the permits. Rejecting the submission on behalf of the appellants that the fundamental right guaranteed under Article 19(1)(f) and Article 31(2) had been infringed, Bhagavathi J., observed that if the permits held by them under the Motor Vehicles Act were prematurely terminated or cancelled under the provisions of Orissa Act 36/1947 compensation was provided by the Act itself.

In this context, the judgment of the Allahabad High Court reported in *The Jain*

Transport and General Trading Co. Vs. State of Uttar Pradesh and Others, , may also be adverted to at this stage. There the enactment passed by the U. P. Legislative Assembly provided only for compensation for premature cancellation of permits or for the curtailment of routes. It was maintained that the Act was hit at by the provisions of Article 31 of the Constitution as it did not provide for compensation for the whole undertaking. In view of the answer given on behalf of the Government that the Statute was governed by the 4th Amendment and that the provision for compensation for the premature cancellation of the permits excluding any argument based on Article 31, it was conceded that if the Act was passed after the 4th Amendment, there could be no question of its being unconstitutional or invalid.

13. The compensation is payable under the provisions of the statute now impugned, for cancellation of the permits that have not expired. No one has a vested right to obtain a permit nor is it a matter of right to get a renewal. It follows that if the compensation is directed to be paid for the unexpired portion of the permit at a rate to be fixed by a competent authority, it could not be predicated that any fraud is committed upon the Constitution. We may incidentally mention that the Government of Andhra Pradesh has published a draft rule to the effect that preference would be given to the displaced operators when considering the grant of permits for stage carriages on other routes.

14. We, therefore, reject this contention and uphold the constitutionality of Section 68-G. There is always a presumption in favour of the constitutionality of a legislation and it is only for those who impeach its validity to show how the legislature has transgressed the limits imposed upon it by the constitution and this the petitioners have not succeeded in establishing.

15. We will now proceed to inquire whether Section 68-B of the Motor Vehicles Act is in any way inconsistent with any of the provisions of the Constitution. It is contended that since Chapter IV-A overrides Chapter IV and other laws both existing as well as those to be made in future, it casts a fetter on the future legislation and as such transgresses Article 372, which provides that Parliament has a right to override, repeal or abrogate any law, and that since the intendment of Section 68-B is to fetter future discretion of the Parliament, it must be declared void a being repugnant to Article 372.

Assuming without deciding that the impugned law covers future legislation and is not confined to existing law, we do not think that Section 68-B operates a clog on the power of Parliament to make laws in future. The competency of Parliament to alter, repeal or amend any law is not affected by Section 68-B. If a law which may hereafter be passed by Parliament is repugnant to the provisions of the statute now challenged the question would then arise which of the two laws will have to prevail. If the law that is made either expressly or by necessary implication repeals any part of Chapter IV-A it is the latter enactment that overrides it.

It depends upon the legislative intent and purpose and the effect of the subsequent enactment on Chapter IV-A. Whether Chapter IV-A operates to the exclusion of the other law has to be determined with reference to the wording etc., of the other laws and also upon the competency of the legislature in that behalf. If there is a conflict between the impugned statute and the other legislation either in existence or to be made the only question is which of them prevails. It cannot have; the effect of abridging or cutting down any right of the Government to make further legislation. Therefore, the argument in this regard is unsustainable and has to be negated.

The same section is also attached on the ground that by providing that the rules and orders made under the chapter should come into play even if they are inconsistent with Chapter IV or any other law, the executive or statutory authorities are invested with power to abrogate or modify or repeal an Act of Parliament or State Legislature which is repugnant to those orders. This is contrary to Articles 245 and 246 which vest law-making power in the legislature. The power to repeal an Act is the power of a legislature that could pass an Act and no other. The Parliament cannot delegate that authority to a subordinate agency. If it does so, it would be abdicating its legislative functions in favour of a State Government or any other statutory authority argued Sri Nambiar counsel for the petitioner.

16. To substantiate this proposition, reliance is placed on AIR 1949 175 (Federal Court) which laid down that the power to extend an Act with modifications amounted to legislation & as such constitutes delegated legislation which is ultra vires, as also on *Krishnan v. Secretary, Regional Transport Authority, Chittoor*, 1956 AWR 142: AIR 1956 AP 129, which observed that a legislature cannot abdicate its functions and delegate them to others. Neither of the two cases affords us any guidance in the context of this enquiry. The provision in question does not either expressly or by necessary implication repeal any other law.

The proposition that the Parliament cannot delegate its legislative functions to a subordinate agency either to make laws or to repeal or modify or abrogate any other existing law is not in dispute. But, then, with regard to the provision of law now challenged there is no repeal either expressly or impliedly. Both will be on the statute book and the only thing is, the rules and orders made under this chapter will take effect. The necessary consequence of the rules and orders made under this Chapter coming into effect is to limit the ambit of operation of the other laws.

When a rule or order is made under that chapter the other laws would not operate for time being. That apart, it is not the delegatee that repeals the other laws that are in conflict with Chapter IV-A but the Act itself. The declaration that the rules and orders will come into play notwithstanding the other laws are inconsistent with them is made by the legislature itself by enacting Section 68-B.

17. In construing Section 6 of the Essential Supplies (Temporary Powers) Act XL

of 1946 which is in pari materia with the impugned provision, the Supreme Court in *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, , remarked that it was Section 6 of the Act cited above that declared that an order made u/s 3 of that Act should have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having the effect by virtue of any enactment other than this Act." Therefore, this argument that this section is invalid for the reason that the Parliament had delegated its legislative powers to statutory authorities which should make rules or orders is inadmissible.

18. For these reasons we hold that Section 68-B is not ultra vires the Constitution as it is not repugnant to any provision of the Constitution. It follows as a corollary that the constitutional validity of that provision is to be upheld.

19. This leads us to the question whether the scheme is invalid and unenforceable for any of the reasons adduced by the petitioners. Its validity is contested on the ground that the conditions laid down in Chapter IV-A have not been fulfilled. It is argued that no State Transport undertaking as contemplated by Section 68-A has been constituted for Andhra Pradesh, that the scheme does not disclose that it had arrived at the requisite opinion which is the necessary foundation for its jurisdiction to initiate the scheme, that the statutory body which initiated the scheme is different from that which claims to implement it and lastly that the functions allotted to the State Government under the relevant provisions of the Chapter being judicial or quasi-judicial in character, they could not be delegated to a Secretary of the Government.

20. On this part of the case, one of the major controversies centres round the jurisdiction of the State Transport undertaking as it existed at the relevant time to initiate the scheme. The stress of the argument on behalf of the petitioners is that no State Transport undertaking was constituted separately for Andhra Pradesh and the State Transport undertaking which was utilised for the purpose of initiation of the scheme was the one which came into being under the Motor Vehicles Hyderabad Amending Act, 1956.

Such Transport undertaking could not be regarded as the State Transport undertaking for the Andhra Pradesh, for the reason that it was constituted for another area and under a different enactment. The State Transport undertaking within the purview of the Hyderabad Act was a Road Transport Department of the State providing Road Transport service, which is quite different from the State undertaking as defined in Chapter IV-A of Act 100 of 1956. According to the latter definition, it is any undertaking providing Road transport service whether such undertaking is carried on by the Central Government or the State Government etc.

Thus, the Road Transport Department of erst while Hyderabad State is essentially different from the undertaking contemplated by Chapter IV-A, It is further submitted that the Department of a Government is not a juridical person and as

such lacks competence to initiate the scheme for operating the Road Transport Service. Another point raised was that no order has been passed by the State Government adopting the Transport Department as the State transport undertaking and in the absence of any adaption of that law by the Andhra Pradesh it has no legal authority to function as State undertaking for Andhra Pradesh as required by Section 119 of the States Reorganisation Act.

21. We find it difficult to accede to any of these contentions. We do not see any material difference between the two definitions. It is true that while the Hyderabad Statute talks of the Transport Department of the State as providing Road Transport Service, the definition of the Central Act, mentions only State Government. Undeniably, the Government of the State includes the Road Transport Department of the State. Therefore, when anything is done by a Department of a Government it is deemed to have been done by the Government of the State; so the connotation of both is the

22. Secondly, Section 119 of the States Reorganisation Act does not come into play in this regard for the reason that the laws prevailing in one part of the State are not sought to be extended to another part. Consequently, the need to adopt laws does not arise in this case. Section 119 has nothing to do with the two States, becoming one State or one Government on account of the merger. u/s 3 of the States Reorganisation Act, some of the Districts of the erstwhile Hyderabad State were added to the State of Andhra and thus became merged in the Andhra Pradesh.

As a corollary, the departments of the erst while Hyderabad Government in relation to the area which became merged in Andhra Pradesh became departments of the latter Government. It will not be appropriate to treat the Departments which were in existence in those merged areas as distinct and different from those of the State of Andhra Pradesh. If so interpreted it defeats the purpose of the theory that the State and the Governments are one. That being the case, we fail to see why it is not open to the Government of Andhra Pradesh to utilise the existing machinery for the purpose of introducing the scheme and working it out.

Nor is there any force in the argument that the State Transport undertaking created for the Telengana area which was working within the framework of the Hyderabad Act could not be regarded as competent authority within the purview of Chapter IV-A of Act 100 of 1956. The fact that a machinery was created under one enactment does not create any obstacle in the way of its being employed for the purpose of a similar enactment so long as it is worked within the four corners of the later one. The right to carry on the business to the exclusion of private sector in any specified area is conferred on the State Government and it is competent for the Government to do it directly or through any of its nominees. It follows that the submission based on the definition u/s 119 of the States Reorganisation Act cannot be given effect to.

23. That apart, it appears from the scheme as published in November 1957 that it has been adopted as the State undertaking of Andhra Pradesh. In the Andhra Pradesh Gazette which published it, the ! draft scheme is signed by one Guru Pershad, "General Manager, State Transport undertaking (Andhra Pradesh Road Transport)". No particular form is laid down in the Statute for adopting an institution by the reorganised State.

24. Allied with this topic is the argument that it is only u/s 47-A of Act 87 of 1956 which amended the Road Transport Corporation Act that the State Transport undertaking as it existed should be reconstructed or amalgamated in the reorganised State. If the procedure laid down u/s 47-A has not been followed, the undertaking constituted should be regarded as non est (non-existing). This submission lacks substance. Section 47-A is attracted only when a corporation which was in existence prior to the reorganisation was sought to be reconstructed or amalgamated. That is not the case here. It is only a department of the erstwhile Hyderabad Slate Government that has emerged as the State undertaking of Andhra Pradesh. It may also be mentioned that this point was not taken in any of the petitions for the issue of a writ of certiorari.

25. Nor is there any merit in the argument that the transfer of the assets and liabilities of the previous undertaking to the State Transport undertaking of the Andhra Pradesh Government is unauthorised and illegal. Irrespective of Section 34 of the Road Transport Corporation Act which authorises the Government to issue instructions to the Transport Corporation, Section 81 of the States Reorganisation Act operates to transfer the assets and liabilities relating to any commercial or industrial undertaking of an existing State to the successor State in which the undertaking is located. Even otherwise the legality of the transfer of the assets had not much material bearing on the discussion whether there was a competent authority for promulgating the scheme.

26. We cannot also accept the contention that the same statutory authority that initiates the scheme should implement it. After the publication of the draft scheme, the State Government created a Road Transport Corporation to take over management of the existing Road Transport Department of the Government of Andhra Pradesh. The Act does not prescribe that there should be identity of the two authorities. Surely, it is open to the successor authority to implement or continue the works started by another statutory body. Sections 17 and 18 of the Indian General Clauses Act warrant it and these provisions are reproduced in Clauses (f) and (e) respectively of Section 9 of the Madras General Clauses Act. Thus, this argument is devoid of any substance and has to be repelled.

27. We shall now pass on to the determination of the issue whether the provisions of Section 68-C of the impugned Chapter have been in any way violated. That section says :

"Where any State Transport undertaking is of opinion that for the purpose of providing efficient, adequate, economical and properly co-ordinated road

transport service, it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State Transport undertaking, whether to the exclusion, complete or partial of other persons or otherwise, the State Transport undertaking may prepare a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and such other particulars respecting thereto as may be prescribed, and shall cause every such scheme to be published in the Official Gazette and also in such other manner as the State Government may direct."

28. The argument pressed on us in this behalf is that the draft scheme does not disclose that it has arrived at the requisite opinion which is the necessary foundation for its jurisdiction to initiate a scheme and as such the scheme as framed is ultra vires.

29. In our view, the non-mention of the words "is of opinion" is not in any way fatal to the initiation of the scheme. The intendment of the section is that the statutory authority should follow the procedure indicated in that section when it considers or feels it necessary that it should provide an efficient, adequate, economical and properly co-ordinate road transport service. It only means that the undertaking when it reaches the decision that itself should operate transport service on particular routes for the convenience of the public it should publish the scheme so that all the persons affected by the scheme might file objections before it or place their views to enable them to make up their mind in that behalf.

No obligation is cast on the transport undertaking to say that it has arrived at the opinion that it should do a particular thing. The matter has been committed to the discretion of the Executive authority and made entirely dependant on its satisfaction and so the expression of opinion is not a sine qua non of its exercise of the discretion. Thus, the declaration of the opinion is not a condition precedent to Section 68-C coming into operation and it need not form part of the scheme and therefore the absence of it does not entitle the petitioners to call in question the very scheme itself.

All that is envisaged in that section is that the concerned authority should satisfy itself that in order to provide better facilities and amenities to the public, it will launch upon nationalisation. It is not a matter of form but one of substance, namely, giving information to the public so that persons concerned may have an opportunity of filing their objections. The judgment of the Privy Council in AIR 1936 253 (Privy Council) relied on for the petitioners does not carry the petitioners very far.

That lays down inter alia that where a power is given to do a certain thing in a certain way, the thing must be done in that way and not at all and other methods of performance are necessarily forbidden. These observations were made in dealing with the provisions of the Criminal Procedure Code. The question there

was whether the provisions of Ss. 164 and 364 were conformed to or not. There is no scope for the application of that principle here.

30. The decision in *A.K. Gopalan Vs. The District Magistrate and Another*, also does not afford us much assistance in this discussion, There, the District Magistrate of Malabar passed an order stating that he was satisfied that the detention of A. K. Gopalan was necessary for the maintenance of law and order and public safety . The validity of the detention order was the subject-matter of challenge in an application u/s 491 Cr. P. C. The matter came on first before Justice Suhba Rao and Justice Mack.

As they differed on the question whether the Older ex-facie should disclose that the detaining authority was satisfied that the detenu was acting or about to act in a manner prejudicial to public safety etc., the matter was placed before a third Judge, Jus Justice Satyanarayana Rao. The learned Judge agreed with Justice Subba Rao (as he then was) that the only ground on which a detention can be justified u/s 2 of the Act is that the detaining authority is satisfied that the person is acting or is about to act in a manner prejudicial to public safety. The satisfaction of the detaining authority though a subjective one should be recited in that order as it was an essential requirement of the sec-lion and not a mere technicality.

That case can have little analogy to the instant case because in the case cited, before a person could be deprived of his liberty it should be shown that he was acting or about to act in a manner prejudicial to the public safety or the maintenance of public order and it was essential that that person should be prevented from, so acting. That satisfaction is the very foundation of jurisdiction to act u/s 2. Here, no such considerations pertain to the initiation of a scheme u/s 68-C. As the opinion to be formed is a private one, it is not a condition precedent to the exercise of its monopoly. Further, there is no provision in the impugned chapter insisting upon such a publication.

31. Even otherwise, ex facie, the intention and purpose are disclosed in the scheme itself. The preamble to the draft scheme says :

"In exercise of the powers conferred by Section 68-C of the Motor Vehicles Act of 1939. it is hereby proposed for the purposes of providing an efficient, adequate, economical and properly co-ordinated Road Transport service in public interest to operate the following Transport services as per the particulars given below with esect from the date to be notified by the Government."

32. Column 5 of the scheme as published says that the services will be operated to the exclusion of other persons. These two read together denote the decision of the State Transport undertaking to ply the stage carriages on the routes mentioned therein exclusively. Thus, it satisfies substantially the requirements of this section.

33. Lastly, even if there is a technical non-compliance with the conditions it will

not invalidate the scheme as no prejudice is caused to the petitioners. The dominant purpose of that section is that information should be afforded to the public so that they could have an opportunity of putting Forward any objections. It is not denied that all the petitioners had such an opportunity and in fact availed themselves of it. That being so, a writ of certiorari will not go against the scheme.

34. We will presently show that the functions contemplated in this chapter are essentially of an executive or administrative nature, and hence, the supervisory jurisdiction of this Court will not extend to such acts.

35. Aside this, there is the important circumstance that this point is not taken in the petition itself and normally the petitioner should confine his case to the averments in the petition and should not be allowed to travel beyond them. On that ground alone the objection has to be overruled.

36. This leads us to the question whether the Government is entrusted with judicial functions u/s 68-D of the Motor Vehicles Act and whether the delegation of the powers to the secretary to hear the objection is obnoxious to any principles of law or natural justice.

37. To appreciate the relative contentions in this respect, it is necessary to refer the provisions of Section 68-D.

"(1) Any person affected by the scheme published u/s 68-C may, within thirty days from the date of the publication of the scheme in the official gazette, file objections thereto before the State Government.

(2) The State Government may after considering the objections and after giving an opportunity to the objector or his representatives and the representatives "of the State Transport undertaking to be heard in the matter, if they so desire, approve or modify the scheme.

(3) The scheme as approved or modified under Sub-section (2) shall then be published in the official gazette by the State Government and the same shall thereupon become final and shall be called the approved scheme and the area or route to which it relates shall be called the notified area or notified route;

Provided that no such scheme which relates to any interstate route shall be deemed to be an approved scheme unless it has been published in the Official Gazette with the previous approval of the Central Government."

38. The chief point debated is that the power conferred on the State Government to approve or modify the scheme finally is a judicial one and in the discharge of this function the Government itself must hear the objections and any delegation in that behalf is contrary to the principles of natural justice and as such the scheme is illegal and is ultra vires Section 68-D. We do not think we can accede to this contention.

Before we consider whether the act to be performed u/s 68-D is judicial or quasi-

judicial or only an administrative one, we will dispose of the point whether any particular minister is required to hear personally the parties. The Act does not seem to contemplate that any particular Minister should give a personal hearing to any of the objectors. All that is envisaged in Clause 2 of Section 68-D is that an opportunity should be afforded to the objector or his representative and the representative of the State Transport undertaking to be heard in the matter. The section is silent as to the person or the body that has to give the hearing.

39. Article 154 of the Constitution vests the executive power of the State in the Governor which shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Article 163 provides for

"a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion."

By virtue of Article 166(1) every executive action of the Government is taken in the name of the Governor. Sub-section 3 of that Article requires the Governor to

"make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under the Constitution required to act in his discretion."

Under the rules made by the Governor in the exercise of the powers derived under that Sub-section, no provision for personal hearing of the parties by any Minister is made.

Under those rules, it was open to the Minister in charge of any portfolio to issue directions for the disposal of the case in his department by means of standing orders. It is alleged in the counter affidavit which is not traversed in the reply affidavit that the Chief Minister in charge of the Motor Transport of the State had directed the Secretary to Government, Home Department, to hear the objections. Therefore, there is nothing to prevent the Secretary from giving a personal hearing to the parties.

We cannot also lose sight of the fact that although oral hearing was given by the Secretary, the ultimate responsibility vested in the Government and it is the Government that approved of the scheme finally. In this connection, the following passage from the Speech of Lord Chancellor in *Local Government Board v. Alridge*, 1915 AC 120, which was extracted with approval in *Pradyat Kumar Bose Vs. The Hon"ble The Chief Justice of Calcutta High Court*, may be quoted: --

"My Lords, I concur in this view of the position of an administrative body to which the decision of a question in dispute between parties has been entrusted. The result of its inquiry must, as I have said, be taken, in the absence of directions in the statute to the contrary, to be intended to be reached by its ordinary procedure. In the case of the Local Government Board, it is not doubtful what

this procedure is. The Minister at the head of the Board is directly responsible to Parliament like other Ministers. He is responsible not only for what he himself does but for all that is done in his department. The volume of work entrusted to him is very great and he, cannot do the great bulk of it himself. He is expected to obtain his materials vicariously through his officials, and has discharged his duty if he sees that they obtain these materials for him properly. To try to extend his duty beyond this and to insist that he and Other members of the Board should do everything personally would be to impair his efficiency. Unlike a Judge in a Court he is not only at liberty but is compelled to rely on the assistance of his staff."

It follows the contention is not a substantial one.

40. We shall next take up the question whether the functions entrusted to the Government u/s 68-D (2) are of a judicial or quasi-judicial nature and if so whether the Minister concerned could delegate it to the Secretary, assuming that an obligation is cast on the Minister under that section to give a personal hearing to the objectors. The proposition that there can be no delegation of judicial functions unless the authority is empowered to do so either expressly or by implication is incontrovertible. We have, therefore, to determine the nature and scope of the power conferred on the Government by that section.

What is emphasised by the counsel for the petitioners is that since the Government has to hear the objector or his representatives and pronounce on the rights of both parties it acts judicially. The State Transport undertaking makes a claim and this is opposed by the private bus owners and the Government is empowered to adjudicate upon the matters in issue between the two and to approve or modify or cancel the scheme. By reason of this, the Government should be held to be a quasi-judicial body to this extent and the decision should be regarded as a quasi-judicial act, continues the learned counsel for the petitioners.

41. We are not inclined to accede to this theory, that there is a lis between the private bus operators and the State undertaking. The contention that the fundamental right of the citizen to carry on the motor transport guaranteed by Article 131 is destroyed by the scheme is untenable. As already pointed out, Article 19(6) of the Constitution as amended in 1951 authorised the State legislature to make a law to enable a State to have monopoly in any trade, business, industry or Service and it can be exercised by itself directly or through its nominee or creature.

When once a legislation is made in this regard (or at any rate when the State decides to have the monopoly in pursuance of the powers bestowed upon it by the Statute) the fundamental right of a citizen in that regard is extinguished, Clause (g) of Article 19 being abrogated. There is no right of a citizen coming into conflict with that of any State. Consequently, it does not involve any judicial determination of any disputes between two parties. Nor will it be correct to speak of this case as a lis inter partes because the State Transport undertaking itself

was acting administratively and not as a party. This view of ours is supported by the dictum of Viscount Haldane in 1915 AC 120.

In that case, Hampstead Borough Council under the powers of the Housing, Town Planning etc.. Act, 1909, made a closing order in respect of a house as being unfit for human habitation, and they subsequently refused an application by the respondent to determine the order. Thereupon the respondent challenged the validity of that order, in application by way of certiorari, inter alia, on the ground that the procedure adopted by the Board was contrary to natural justice in that the respondent had not been afforded an opportunity of being heard orally before the Board. In repelling this contention. Viscount Haldane observed;

"What appears to me to have been the fallacy of the judgment of the majority in the Court of Appeal is that it begs the question at the beginning by setting up the test of the procedure of a Court of justice, instead of the other stand which was laid down for such cases in Board of Education v. Rice, 1911 AC 179. I do not think the Board was bound to hear the respondent orally, provided it gave him the opportunities he actually had. Moreover, I doubt whether it is correct to speak of the case as a *lis inter partes*. The Hampstead Borough Council was itself acting administratively, although it had the right to appear, and did appear, before the Inspector and on the appeal, and might have to pay or receive costs."

Thus it is obvious there is no question of a State! arriving at a decision on the rights of parties.

42. Further, an act is not necessarily judicial merely because it affects the rights of subjects. There cannot be a judicial act, if it does not create rights or imposes obligations. As a consequence of the monopoly being operated, the rights of other people are necessarily affected, and that does not invest the acts complained of with a judicial character.

43. The proposition, that the fact an enquiry has to be made publicly and, objections have to be heard of persons affected does not necessarily convert it into a judicial or quasi-judicial act, is illustrated by *Franklin v. Minister of Town and Country Planning*, 1948 AC 87. In that case, the Minister of Town and Country Planning prepared the draft Stevenage New Town (Designation) Order, 1946 and caused the same to be published. Objections were received from a number of persons including the appellant. So, the Minister concerned instructed an Inspector of the department to hold a public enquiry under the provisions of the Act.

On receipt of a report from the Inspector, the Minister made an order in terms of the relevant section of the statute. The order was questioned on grounds, among other things, that the requirements of the Act were not complied with and the interests of the appellant were substantially prejudiced in that before considering the objections the Minister stated that he would make the said order and was thereby biased in any consideration of the said objections and the Minister did not before making the said order cause a public inquiry to be held with respect

thereto.

In the context of the inquiry into those objections, the question arose whether the order of the Minister was a quasi-judicial act or purely an administrative one. Lord Thankerton who spoke for the house remarked that the duty cast by the relevant statute on the Minister was only administrative and not a judicial one, but the Act prescribed certain methods or steps in the discharge of that duty. In the course of his speech the learned Law-Lord said :

"In my opinion, no judicial, or quasi-judicial duty was imposed on the respondent, and any reference to judicial duty, or bias, is irrelevant in the present case."

Incidentally, it may be mentioned that this observation answers the complaint of the petitioners that between the date of the filing of the objections and the final approval of the scheme by the Government, the Chief Secretary in a press interview said that the Government had made up its mind to embark upon the nationalisation of bus transport in the particular area. It was also said there that the object of the inquiry was further to inform the mind of the Minister and not to consider any issue between the Minister and the objectors.

Apply that test here, the procedural machinery set up by chapter IV-A could aptly be said to have been designed to inform the mind of the Government in judging whether the scheme would be a sound one and to enable it to make up its mind finally whether it should approve the scheme as promulgated or with modifications or cancel it. Thus, the purpose of inviting objections and hearing the persons concerned was all for the further information of the Government in order to aid the final consideration of the soundness of the scheme. Thus, these are all steps which the Government takes in the discharge of its duty as prescribed by Chapter IV-A. In performing the functions contemplated by the Chapter, the Government is not acting judicially or in a quasi-judicial capacity but was doing purely an administrative or ministerial act. As observed by Justice Mukherjea, who was in the minority in the *Province of Bombay Vs. Kusaldas S. Advani and Others*, :

"Where the language of a statute indicates with sufficient clearness that the personal satisfaction of the authority on certain matters about which he has to form an opinion founds his jurisdiction to do certain acts or make certain orders, the function should be regarded as an executive function."

44. Another ruling of an English Court which has a bearing on this topic is *R. v. Manchester Legal Aid Committee; Ex Parte R. A. Brand and Co.*, 1952 2 QB 413. It was ruled there that if an administrative body in arriving at its decision at a stage has before it any form of *lis* and throughout has to consider the question from the point of view of policy and expediency, it cannot be said that it is under a duty at any stage to act judicially.

45. In this enquiry, the judgment of the Supreme Court in 1950 SCJ 451 ; (AIR

1950 SC 2221 is very relevant. The question there arose whether a writ of certiorari was available to a person whose property was requisitioned u/s 3 of the Bombay Land Requisition Ordinance V of 1947 to quash the order made by the Government requisitioning certain properties. It was held by a majority of the Judges that the decision of the Provincial Government about the existence of a public purpose relating to the requisitioning of the property was not a judicial or quasi-judicial decision and therefore an application for the writ of certiorari would not lie.

The majority also ruled that there was nothing in the Bombay Land Requisitioning Ordinance to show that in arriving at its decision about a public purpose the Provincial Government had to act judicially. It was also pointed out that it was not correct to say that every determination of a fact affecting the rights of parties could not be regarded as a quasi-judicial decision. The word "quasi-judicial" itself necessarily implies the existence of a judicial element in the process leading to the decision. Das J. (as he then was) who concurred in the opinion of Kania C. J. who gave the leading judgment for the majority observed thus : --

"It is well established that if the legislature simply confides the power of doing an act to a particular body, if in the opinion of that body it is necessary or expedient to do it, then the Act is purely an administrative i.e., an executive act as opposed to a judicial or quasi-judicial act, and in the absence of proof of bad faith, the Court has no jurisdiction to interfere with it and certainly not by the high prerogative writ of certiorari."

In the light of this pronouncement of the Supreme Court, it is difficult to describe the functions assigned to the State Government by the impugned chapter as Judicial or quasi-judicial.

48. The mere fact that an executive authority has to determine certain objective facts as a preliminary step in the exercise of an executive duty does not mean that it must determine those facts judicially. The duty cast must not only be to determine a question but there should also be a duty to determine and decide that fact judicially.

46-A. In *Annie Besant v. Advocate General of Madras*, 46 I A 176 : (AIR 1919 PC 31), the Privy Council ruled that the action of a Magistrate in increasing, diminishing, withdrawing or imposing a deposit under the Indian Press Act was a pure matter of administrative discretion. It was not a judicial act but one done in the exercise of administrative functions, and an Omission to hear the owner and keeper of the printing press before declaring that the security which she deposited was forfeited to the Crown was only an irregularity which could not be reviewed by a process of certiorari.

46-B. In *Pradyat Kumar Bose Vs. The Hon"ble The Chief Justice of Calcutta High Court*, the principles stated above was affirmed by the Supreme Court. It was laid down that the exercise of the power to dismiss a judicial officer was not a

judicial power but an administrative power notwithstanding the fact that an opportunity to show cause in an inquiry approximating the judicial standards has to precede the exercise thereof.

47. Assuming that the hearing of objections etc., partakes of the character of a quasi judicial act, the final decision, viz., the approval of the scheme which is an administrative act would remain unaffected. The decision in *Robinson v. Minister of Town and Country Planning*, 1947-1 All ER 851 (which was quoted with approval by Das, J., in *Province of Bombay Vs. Kusaldas S. Advani and Others*, cited above) establishes that although the preliminary enquiry had to be done in a quasi-judicial manner, that fact could not alter the nature or character of the ultimate administrative act. That administrative act would remain an administrative act and could not be touched by certiorari.

48. For the foregoing reasons, the scheme in question is not open to examination upon the process of certiorari as it is not competent to a Court to enter upon such examination.

49. The circumstances under which certiorari is available are stated succinctly by Lord Justice Atkin (as he then was), if we may say so with respect, in the oft quoted case of *King v. Electricity Commissioners*, 1924-1 KB 171 :

""Wherever any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

50. It cannot be postulated that the instant cases fall within the rule stated above. The above discussion clearly indicates that no judicial duty was laid on the Government by Section 68-C or 68-D with the result that the acts complained of are not amenable to certiorari and hence the petitions should be dismissed.

51. The objection has also to be overruled in view of a very important circumstance, namely, that no exception was taken to the Secretary hearing the petitioners orally. They placed their case orally before the Secretary and seem to have filed written representations before him.

52. For these reasons, we hold that the petitioners have not succeeded in proving that the respondents have violated any procedure indicated in the relevant provisions of the statute or any principle of natural justice and that the scheme as finally approved is open to review by way of certiorari.

53. An additional ground of challenge was raised in W.P. No. 425 of] 958, namely, that the petitioners were discriminated against and thus respondents committed an infraction of the fundamental right enshrined in Article 14 of the Constitution. The petitioners were operating upon the Guntur Vijayawada route. What is urged is that the major part of the route lies in Guntur District and so the petitioners should not have been excluded upon the route, the nationalisation of

the motor transport being confined to Krishna district.

It is alleged that while only the petitioners were deprived of the route, the other operators in Guntur district were not touched by the scheme and this amounts to discrimination being obnoxious to Article 14 of the Constitution. For one thing, it is not correct to describe the scheme as only relating to Krishna district. There are a number of routes which partly lie in other districts like West Godavary and which are enumerated in the draft scheme -- Nos. 14, 20, 24 to 28 etc. Again, the mere circumstance that one of the routes lying in Guntur District was taken over first would not constitute discrimination within the ambit of Article 14.

A Zonal or territorial division of a district for implementation of the scheme for running the State Transport service could not be treated as a discrimination or denial of equal protection of laws.

It would attract the operation of Article 14 if a discrimination was made among the owners of stage carriages services operating on the same route or in a particular area and not otherwise. The Government or its nominee is the best Judge as to which route should be taken over first. The following observations of Bhagawati, J., in *Ram Chandra Palai and Others Vs. The State of Orissa and Others*, , furnish an effective answer to the objection of the petitioners in this behalf :

"It all depended upon the administrative convenience as to whether the State Government could adopt one mode of implementation of the scheme or the other and no blame could be laid at its door if, in the circumstances of this case, it adopted one mode of implementation in one district or part of a district and adapted another mode of implementation in another district or another part of a district provided, however, as we have stated above, all persons who were operating on a particular route or routes or were located in a particular area --or district were treated equally and without any discrimination inter se."

Therefore, we reject this argument also as an inadmissible one.

54. In the result, all the petitions are dismissed with costs. We fix the advocates' fee at Rs. 100/- in each petition.