

(1991) 04 AP CK 0032

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3514 of 1991

K. Kumaraswamy and Others

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 26-04-1991

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(6), 21, 226
Motor Vehicles Act, 1988 — Section 100(4), 99

Citation : (1991) 2 ALT 223 : (1991) 2 APLJ 351

Hon'ble Judges : Sardar Ali Khan, J;A. Venkatarami Reddy, J

Bench : Division Bench

Advocate : K.R.K. Varaprasad, for the Appellant; Govt. Pleader for Respondent Nos. 1 to 4 and D. Reddappa Reddy for A.P.S.R.T.C. for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Sardar Ali Khan, J.—Ninety private bus operators of Vijayawada have filed this Writ Petition for the issue of a Writ of Mandamus declaring that the petitioners are having fundamental rights under Article 21 of the Constitution of India i.e., the right to live and to carry on their profession or occupation under Article 19(1) (g) of the Constitution of India in running the stage carriage buses as per the original permits granted by the authorities on Vijayawada Town Service routes. They also seek a declaration that Section 99 of the Motor Vehicles Act, 1988 (Act No. 59 of 1988) is a fraud on the Constitution of India and seek a further declaration that the impugned notification, published in Deccan Chronicle English News Paper Daily dated 9-2-1991 (bearing Memorandum No. 22/Tr. IV/90 dated 5-2-1991) cannot affect the fundamental right of the petitioners in carrying on their profession and occupation of running the buses. They also seek a declaration that the impugned notification dated 5-2-1991 is illegal and void and not in accordance with the order of this court passed in W.P. Nos. 18385/89 and 11867/ 90 dated 28-12-1990.

2. This comprehensive prayer in the Writ Petition, therefore, is to be judged in the light of the facts alleged in the affidavit filed by the 2nd petitioner in support of the Writ Petition.

3. All the petitioners are citizens of India and they claim to have a fundamental right to carry on their profession and occupation guaranteed to them under Article 19(1)(g) of the Constitution of India. Further more, under Article 19(6)(i) it is provided that professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business can be prescribed by the State authorities. Under Article 19(6)(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 is provided.

4. The petitioners were granted permits to run buses which they claim to be a part of their profession and occupation. The concept of nationalisation under Article 19(6)(ii) of the Constitution of India is assailed by the petitioners in so far as it affects their profession or occupation to run the buses on the strength of the permits granted to them. The second aspect of the matter is that the petitioners allege that Section 99 of the Motor Vehicles Act, 1988 is a fraud on the Constitution as it ignores the difference existing between the profession and occupation on the one hand from trade, business and industry on the other.

5. On 9-2-1991 the Government of Andhra Pradesh published a notification bearing Memorandum No. 22/Tr.IV/90, dated 5-2-1991 of the Transport, Roads & Buildings (Tr.IV) Department, in Deccan Chronicle according to which notice was given in accordance with the directions of the High Court of Andhra Pradesh in W.P. Nos. 18385/89 and 11867/90 dated 28-12-1990 and of the Supreme Court of India in SLP Nos. 667/91 and 668/91 dated 28-1-1991. The object of this notification is to give information to the general public and to invite objections from them with reference to the schemes mentioned therein and the 66 routes enumerated in the said notice. The petitioners further allege that the impugned notice is void and illegal as it is not in accordance with any of the provisions of the Motor Vehicles Act. It is also alleged that most of the petitioners are not covered by the Writ Petitions mentioned in the notice and they are covered by W.P. Nos. 98/91 and 430/91 dated 4-2-1991. It is also alleged by the petitioners that the proceedings in the notification are barred by limitation u/s 100(4) of the Motor Vehicles Act, 1988.

6. Sri K.R.K. Vara Prasad, learned counsel appearing for the petitioners, has made three main submissions in this case. His first submission is that under Article 19(i)(g) of the Constitution of India the petitioners' fundamental rights are infringed by the impugned notice and he claims that the running of buses by them is in fact an occupation pursued by them which cannot be touched under Article 19(6)(ii). The second submission made by the learned counsel is that Section 99 of the Motor Vehicles Act of 1988 constitutes a fraud on the Constitution and, therefore, must be struck down as being illegal and ultra vires

the State Legislature. His third submission is that the proceedings in the notification, referred to above, are barred by limitation under the provisions of Section 100(4) of the Motor Vehicles Act of 1988.

7. Regarding the first submission made by the learned counsel for the petitioners, it may be seen that Article 19 of the Constitution confers a fundamental right to freedom to all citizens. The relevant part of Article 19, which has to be considered for the purpose of this case, is as follows: --

"19. Protection of certain rights regarding freedom of speech, etc:--

(1) All citizens shall have the right?

XXX XXX XXX (g) to practise any profession, or to carry on any occupation, trade or business.

xxx xxx xxx

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

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

(ii) the carrying on by the State, or by a corporation, owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."

It is significant to note that the fundamental right enshrined in Article 19 is available only to citizens of India and not to all persons who may be living in India. The fundamental right of protection of life and personal liberty is guaranteed to every person under Article 21 of the Constitution as it is provided in the said Article that no person shall be deprived of his life or personal liberty except according to procedure established by law. The main article to be considered in this particular Writ Petition is Article 19(1) (g) and (6) (ii) of the Constitution. Sri K.R.K. Vara Prasad, learned counsel for the petitioners, has also placed reliance on Article 21 of the Constitution for the limited purpose that no person can be deprived of his personal liberty except according to procedure established by law which does not have much relevance in the context of things with which we are concerned in this matter. It may also be stated that the principal submission made on behalf of the writ petitioners revolves around the fundamental right guaranteed to them in their capacity as citizens of India under Article 19(1)(g) of the Constitution. A careful reading of the provisions of the above said Article reveals the fact that all citizens have a fundamental right to practise any profession or to carry on any occupation, trade or business. The

fundamental right guaranteed to the citizens of India, therefore, is with regard to the profession, occupation, trade or business which may be carried on by them. But, such a right is subject to the restrictions imposed under Article 19(6) of the Constitution. In Article 19(6) it is provided that nothing in Sub-clause (g) conferring the rights mentioned above on the citizens shall affect the operation of any existing law in so far as it imposes or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to the matters which have been enumerated in Clauses (i) and (ii) of Clause (6) of Article 19. It may be stated that the wordings "nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to" along with Clauses (i) and (ii) have been substituted by the Constitution. (First Amendment) Act, 1951. The fundamental right guaranteed under Article 19(1)(g) will, therefore, have to be read and construed in the light of the provisions of Article 19(6). In other words, it can be said that the fundamental right under Article 19(1)(g) is absolute in its nature and content but subject to reasonable restrictions on the exercise of such right as provided under Article 19(6) (i) and (ii) of the Constitution. Under Article 19(6)(i) it is provided that nothing can prevent the State from making any law relating to the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business. It is, therefore, clear that what is provided under Article 19(6)(i) is that the State can impose reasonable restrictions on the practising of any profession or carrying on any occupation trade or business by enacting legislation prescribing professional or technical qualifications which may be necessary for the purpose of practising any profession or carrying on any occupation, trade or business. Subject to the acquisition of such technical qualifications by a citizen he has got a right to carry on any profession, occupation, trade or business. In contrast to Sub-clause (i) of Clause (6) of Article 19, the wording employed in Sub-clause (ii) of the said article is different. Under Sub-clause (ii) of Clause (6) of Article 19 it is stated that nothing shall prevent the State from making any law relating to the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise. The matter arising in this case is primarily concerned with the question of the interpretation of Article 19(6)(ii). At the outset it would be necessary to state that Article 19(6)(ii) empowers the State to make any law for carrying on by the State or by a corporation owned or controlled by the State of any trade, business, industry or service. It is significant to note that there is no mention of any profession or occupation in Sub-clause (ii) of Clause (6) of Article 19. What the State can carry on by itself or through a Corporation owned or controlled by it is any trade, business, industry or service. Article 19(1)(g) guarantees a fundamental right to a citizen to practise any profession, or to carry on any occupation, trade or business. Under Article 19(6)

(ii) the profession or occupation which is followed by a person cannot be a subject matter of law relating to carrying on by the State or by a State owned Corporation to the exclusion, complete or partial, of citizens or otherwise. In other words, it can be said that with the exception of profession and occupation, the State can legislate for creating a monopoly for carrying on any trade, business, industry or service by the State but such a monopoly cannot be created in case of a profession or occupation. It is also significant to note that in so far as the term "service" occurring in Clause (ii) is concerned, the same is not mentioned as a fundamental right under Article 19(1)(g) because what is provided is fundamental right to practise any profession, or to carry on any occupation, trade or business, but not any service. With this distinction in law, the submissions made by the learned counsel for the petitioners will have to be considered.

8. Before embarking on a detailed consideration of the submissions made by the learned counsel, Sri K.R.K. Vara Prasad, it may be stated that his main submission is that all the petitioners, who are citizens of India, are carrying on their occupation as bus operators by virtue of the permits granted to them by the Transport authorities. Therefore, the occupation of the petitioners, viz., that of the bus operators cannot be really a subject matter of a scheme of legislation in exercise of the powers vested in the State under Article 19(6)(ii) of the Constitution. In order to examine the intrinsic merit of this submission, it would be necessary to go into the details of the procedure adopted by the authorities for the grant of permits to the bus operators to see whether such grant of permits is in the nature of an occupation bestowed upon the petitioners in their capacity as bus operators. Section 71 of the Motor Vehicles Act, 1988, corresponding to Section 47 of the Motor Vehicles Act, 1939, is in the form of a regulatory measure prescribing the procedure to be followed by the Regional Transport Authority in considering applications for the grant of stage carriage permits. A reading of both the sections clearly reveals the fact that the Legislature has empowered the authorities to adopt regulatory measures for the running of the buses by providing that no person can be a bus operator without acquiring a permit under the provisions of the Motor Vehicles Act and the rules framed thereunder. In both the sections, old and new, it is provided (SIC) the Regional Transport Authority shall have regard to the matters which are provided therein before granting a stage carriage permit to the applicant. It may not be necessary to go into all the details of the section which lays down the procedure to be followed strictly by the Regional Transport Authority while considering the applications for the grant of stage carriage permits. Suffice it to state that a close reading of these sections does not reveal that the permit is granted to the bus operators for carrying on any occupation as such. What it says is that the Regional Transport Authority shall take into consideration all the factors which have been enumerated therein and then grant a permit to the person concerned for operating a stage carriage in accordance with the conditions laid down therein. Under Rule 212 of the A.P. Motor Vehicles Rules, 1964 (old rules) guiding

principles for grant or renewal of stage carriage permits are provided, dealing with questions like classification of routes, capacity of the vehicles etc. Under the said rule it is stated that certain marks may be given for residential qualification, sector qualification, business or technical experience in motor transport and technical qualifications possessed by the applicants for the grant of stage carriage permits. More over, certain other factors like possession of workshop, the applicant being an ex-service man or displaced operator or the applicant being a co-operative society etc., are also to be awarded one mark each in their favour. Nowhere in the rules or the guiding principles it is stated that the grant of the stage carriage permit itself is a matter of occupation to be followed by the operators, nor could it be said that the permit confers the right to possess the stage carriage permit as a matter of occupation to be followed by them. More over, the permit itself which is granted under the statutory form prescribed under the rule also does not show that it is granted with regard to carrying on of any occupation. The statutory form gives details like the name of the holder, father's name, address, registration mark, maximum laden weight etc., but does not mention anything with regard to the nature of occupation which is followed by the permit holder. An analysis of the above rules of procedure and conditions under which the permits are granted therefore clearly shows that the stage carriage permit given to a bus operator is not as a matter of occupation to be followed by him but it is only with a view to enable them to run the buses in accordance with the terms and conditions which have been laid down in the said permit. It is obvious that such a permit is liable to be withdrawn if any infringement is committed by the permit holder of the terms and conditions which have been provided therein. Therefore, the very fundamental aspect of the argument advanced by the learned counsel for the petitioners does not hold good in the light of the rules and regulations which have been analysed above and it cannot be said that since the petitioners are following an occupation, the State cannot make any law preventing them from carrying on any such occupation under Article 19(6)(ii) of the Constitution.

9. Sri K.R.K. Vara Prasad, learned counsel for the petitioners, has submitted that the petitioners were paying profession tax as per the assessments made u/s 72 (1) (2) of the A.P. Gram Panchayats Act, 1964 and, therefore, it must be deemed that being a bus operator comes within the category of "occupation" which cannot be nationalised under Article 19(6)(ii) of the Constitution. This argument appears to be based on a fallacy. Mere payment of profession tax to the Gram Panchayat does not bring the business of bus operator into the category of a regular occupation. In fact, the said tax is paid as a profession tax which is in the nature of a business carried on by a particular person subject to the regulatory conditions that may be imposed by the authorities under the provisions of the Motor Vehicles Act. The very grant of a permit is as a regulatory measure for carrying on the business of transport by the person to whom it is issued subject to the rules and regulations which are applicable to such permits.

10. In *Sodan Singh v. New Delhi Municipal Committee*, (AIR 1989 S.C. 1988)

the Supreme Court held that the right to carry on trade or business mentioned in Article 19(1)(g) on street pavements can be properly regulated by the authorities and if according to the exigencies of the circumstances the small traders carry on their business in accordance with the regulations, then their fundamental rights remain intact under Article 19(1)(g) subject to reasonable restrictions under Clause (6) of Article 19. The right to carry on trade in the street, therefore, was deemed to be a right to carry on trade or business by the persons who are small hawkers and have no permanent establishments of their own and shall be subject to the reasonable restrictions that may be imposed for carrying on trade or business in accordance with the regulations prescribed by the authorities. In this connection, Kuldip Singh, J., concurring with the majority opinion of the Supreme Court pronounced by Sharma, J., analysed the fundamental rights guaranteed under Article 19(1)(g) in the following terms :

"The guarantee under Article 19(1)(g) extends to practice any profession or to carry on any occupation, trade or business. "Profession" means an occupation carried on by a person by virtue of his personal and specialised qualifications, training or skill. The word "occupation" has a wide meaning such as any regular work, profession, job, principal activity, employment, business or a calling in which an individual is engaged. "Trade" in its wider sense includes any bargain or sale, any occupation or business carried on for subsistence or profit, it is an act of buying and selling of goods and services, it may include any business carried on with a view to profit whether manual or mercantile. "Business" is a very wide term and would include anything which occupies the time, attention and labour of a man for the purpose of profit. It may include in its form trade, profession, industrial and commercial operations, purchase and sale of goods and would include anything which is an occupation as distinguished from pleasure".

Therefore, it is clear that the word "occupation" has a very wide meaning and it can take in its import any business or calling in which an individual is engaged. It cannot be said that a man who is engaged in an occupation of a commercial nature is not carrying on any trade or business as such. It is, evident that the distinction between the concept of a profession or occupation as against a person being engaged in a business or trade or industry is a thin one. It cannot be said that man who is engaged in business is not carrying on that business as his occupation and vice-versa. In fact, the term "profession" and "occupation" also overlap each other, and they both indicate the vocation that person may be following.

11. It may also be seen that under Sub-section (42) of Section 2 of the Motor Vehicles Act, 1988 the term "State Transport Undertaking" has been defined in the following terms :

" "State transport undertaking" means any undertaking providing road transport service where such undertaking is carried on by :--

(i) the Central Government or a State Government ;

(ii) the Road Transport Corporation established u/s 3 of the Road Transport Corporations Act, 1950 (64 of 1950) ;

(iii) any municipality or any Corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments."

Explanation :--For the purposes of this clause "road transport service" means a service of motor vehicles carrying passengers or goods or both by road for hire or reward."

Now, it is clear that Article 19(6)(ii) provides for 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. The concept of "service" in this case is, therefore, indelibly linked up with the concept of providing road transport service through the State Transport undertaking. Therefore, we do not see much force in the submission made by the learned counsel for the petitioner, Sri K.R.K. Vara Prasad that the term "service" can be differentiated for the purpose of this case from that of "occupation or business", as the case may be.

12. In Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, the Supreme Court held that Chapter IV-A of the Motor Vehicles Act, 1939, under which the transport authority is empowered to cancel the existing permit and issue a permit to the State Transport Undertaking, if a scheme is promulgated empowering the State Transport Undertaking to take on hand the transport service relating to any area route or portion thereof to the exclusion of any person, who has been carrying on the business in that route, is perfectly valid and binding. It further held that such a scheme does not provide for the transfer of ownership or the right to possession of any property to the State or to a Corporation owned or controlled by the State and, therefore, it cannot be said that such a scheme violates the fundamental rights under Article 31 of the . Constitution as it involves a transfer or compulsory acquisition of property from the operators to the State authorities. The Supreme Court further observed that under the Scheme promulgated by the transport authorities what happened is that one permit comes to an end and another one comes into being. The power of cancellation of a permit in favour of one and issuing a new permit to another are necessary steps in the regulatory jurisdiction entrusted to the Regional Transport Authority. In our opinion the above said pronouncement of the Supreme Court amply covers the contention raised by Sri K.R.K. Vara Prasad, learned counsel appearing for the petitioners, and indicates positively the regulatory nature of the promulgation of the schemes providing for cancellation of the permits issued in favour of the petitioners for the purpose of granting the same to the State authorities.

13. The decision reported in Akadasi Padhan Vs. State of Orissa, deals with the question of creation of a State monopoly. In this case the Supreme Court laid

down the manner in which Article 19 (1) (g) and (6) has to be interpreted in case a State monopoly is created in respect of any trade or business in the interests of general public. The creation of State monopoly in the interests of the general public has to be contrasted with the right guaranteed to a citizen under Article 19(1)(g) of the Constitution. It is significant to note that the Supreme Court has held that in attempting to construe Article 19(6) it must be borne in mind that a literal construction may not be quite appropriate. The task of construing important Constitutional provisions like Article 19(6) cannot always be accomplished by treating the said problem as a mere exercise in grammar. In interpreting such a provision, it is essential to bear in mind the political or the economic philosophy underlying the provisions in question and that would necessarily involve the adoption of a liberal and not a literal and mechanical approach to the problem. The judicial dictum, referred to above, laid down by the Supreme Court, is in consonance with the demands of a rapidly growing industrial society in a developing country like India. The principle of socialism that the State should strive to achieve the greatest good of the greatest number is a sacrosanct principle which is essential for the purpose of establishing an egalitarian society.

14. In the case of *Mohd. Hanif Quareshi v. Bihar*, (1959 SCR 629) the Supreme Court dealt with the constitutional question raised with regard to slaughter of cattle, particularly cows. The question arising in that case was whether the petitioners, who were engaged in the trade of butchers and its subsidiary undertakings, have a fundamental right to carry on the business guaranteed to them under Article 19(1)(g) of the Constitution. The petitioners challenge the laws of different States aimed at preventing the slaughter of cattle stating that it is an infringement of their fundamental right to carry on business or occupation, as the case may be, of butchers, guaranteed to them under Article 19(1)(g). After a detailed discussion of the matter, the Supreme Court justified the total ban of cow slaughter in these words :

"the she buffalo and the breeding bulls and working bullocks (both cattle and buffaloes) for their value, present and future, do not run the same amount of danger as a dry cow does. Regulation of slaughter of animals above a specified age may not be quite adequate protection for the cow but may be quite sufficient for the breeding bulls and working bullocks and the she-buffaloes. These considerations induce us to make an exception even in favour of the old and decrepit cows. The counsel for the petitioners, be it said to their credit, did not contend otherwise."

The ratio of this decision seems to be that the State has a right to enact legislation imposing reasonable restrictions on the exercise of the fundamental right guaranteed to the petitioners by way of profession or occupation carrying on trade as a butcher. A reasonable classification of the animals which were to be slaughtered and those which were to be saved from the butchers was upheld by the Supreme Court on the ground that if the restriction imposed appears to be in

the interests of the society at large and is based upon a reasonable classification of the animals, then it cannot be assailed as an infringement of fundamental right guaranteed to a citizen under Article 19(1)(g) of the Constitution.

15. In *H.C. Narayanappa and Others Vs. The State of Mysore and Others*, the Supreme Court held that the expression used in a constitutional enactment conferring legislative powers must be construed not in any narrow or restricted sense but in a sense beneficial to the widest possible amplitude of its powers. It was further observed by the Supreme Court that the authority of Parliament to enact laws granting monopoly to the State Government to conduct business of the road transport is not open to serious challenge. To the effect are the decisions of the Supreme Court reported in *Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City*, and AIR 1941 16 (Federal Court) .

16. In *Dosa Satyanarayanamurty etc. Vs. The Andhra Pradesh State Road Transport Corporation*, the Supreme Court observed that Article 19(6) is only a saving provision and the law made empowering the State to carry on a business is secured from attack on the ground of infringement of the fundamental rights of a citizen to the extent it does not exceed the limits of the scope of the said provision. Sub-Clause (ii) of Article 19(6) is couched in very wide terms. Under it the State can make law for carrying on a business or service to the exclusion complete or partial of citizens or otherwise. The law, therefore, can provide for carrying on a service to the exclusion of all the citizens ; it may do business in the entire State or a part thereof. The word "service" is wide enough to take in not only the general motor service but also the species of motor service. There are, therefore, no limitations on the State's power to make laws conferring monopoly on it in respect of an area, and person or persons to be excluded.

17. In *Adarsh Travels Bus Service and Another Vs. State of U.P. and Others*, the Supreme Court held that the provisions of Chapter IV-A are devised to over-ride the provisions of Chapter IV and it is expressly so enacted. The provisions of Chapter IV-A are clear and complete regarding the manner and effect of the "take over" of the operation of a road transport service by the State Transport Undertaking in relation to any area or route or portion thereof. While, on the one hand, the paramount consideration is the public interest, the interests of the existing operators are sufficiently well-taken care of and slight inconvenience to the travelling public as may be inevitable are sought to be reduced to minimum.

18. A combined reading of all these decisions of the Supreme Court on the question of creation of State monopoly or nationalisation of a particular trade, business, industry or service indicate that liberal interpretation has to be given to the provisions of the Constitution for creation of such monopoly by the State. The law is also well-settled on the point as indicated above that grant of stage carriage permit is a regulatory measure and does not confer any absolute right to the permit holder to carry on such a trade or business independently of the permit. The permit itself is granted subject to conditions and is also liable to be cancelled for the infringement committed by the persons concerned. The permit

is also liable to be cancelled for the purpose of creating a State monopoly or for the creation of nationalised routes under a particular scheme promulgated in accordance with the provisions of the Motor Vehicles Act which cannot be challenged as an infringement of the fundamental rights of the petitioners.

19. The only other question which needs to be mentioned here is the further argument advanced by Sri K.R.K. Vara Prasad, learned counsel for the petitioners, to the meaning and purport of the word "otherwise", occurring in Article 19(6)(ii) of the Constitution. Sri Vara Prasad has tried to interpret the word "otherwise" as being of a compulsory nature providing for co-existence of the bus operators along with State Transport Undertaking and not complete exclusion of the operators under the provisions of the said Article. We are not inclined to agree with this view for the reasons which have already been given in this judgment. We are of the opinion that the term "otherwise" has been employed in Article 19(6)(ii) to indicate the wide nature and amplitude of the powers of the State for making any law relating to the carrying on by the State or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise. The term "otherwise" means that the State may in any other manner it likes taking into consideration the exigencies of a situation existing at a particular time provide for taking over of any trade, business, industry or service in the manner it deems fit and proper. The term "otherwise" lends flexibility to the powers of the State for making any law and cannot be read as a term which restricts the legislative power of the State from achieving the object laid down under Article 19(6)(ii).

20. The second submission made by the learned counsel for the petitioners is that Section 99 of the Motor Vehicles Act, 1988 is a fraud on the Constitution as it infringes the provisions of Article 19(1)(g) of the Constitution. Section 99 of the Motor Vehicles Act, 1988 falls under Chapter VI of the said Act dealing with the special provisions relating to State Transport Undertakings. Significantly enough the learned counsel Mr. Vara Prasad has not challenged the validity of either Chapter-IV or Chapter VI of the Motor Vehicles Act of 1988. Nevertheless, he joins an issue on the validity of Section 99 of the 1988 Act which falls under Chapter VI, being in violation of the fundamental right guaranteed to the petitioners under Article 19(1)(g) of the Constitution. Section 99 of the Motor Vehicles Act of 1988 provides for preparation and publication of proposals regarding road transport service of a State Transport Undertaking, which is in the following terms :--

"99. Preparation and publication of proposal regarding road transport service of a State Transport undertaking :--

Where any State Government is of opinion that for the purpose of providing an efficient, adequate, economical and properly coordinated 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 Government may formulate a proposal regarding a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and other relevant particulars respecting thereto and shall publish such proposal in the Official Gazette of the State formulating such proposal and in not less than one news paper in the regional language circulating in the area or route proposed to be covered by such scheme and also in such other manner as the State Government formulating such proposal deem fit."

A reading of the above section reveals that if the State Government is of the opinion that for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service in relation to any area or route or portion thereof, it is necessary that the State Transport Undertaking should operate to the exclusion, complete or partial, of other persons or otherwise, then it may formulate proposals regarding a scheme giving particulars of the nature of the services proposed to be published in the official Gazette. It is extremely difficult to agree with the learned counsel for the petitioners that such a provision which is absolutely in consonance with the provisions of Article 19(1)(g) read with Article 19(6)(ii), constitutes a fraud on the Constitution. We have already indicated the parameters of Article 19(1)(g) which is to be read in the context of Article 19(6)(ii) of the Constitution which authorises the creation of a monopoly by the State. We have also discussed the relevant case law on the point which has upheld the right of the State to enact legislation for the purpose of nationalisation of the transport services in a particular area or areas, as the case may be. Moreover, the term "Road Transport Service" occurring in Section 99 of the Motor Vehicles Act, 1988 is to be understood in the light of the definition given in Sub-section (42) of Section 2 of the said Act, which has been referred to earlier. In the Explanation to Sub-section (42) of Section 2, "Road Transport Service" has been explained to be a service of motor vehicles carrying passengers or goods or both by road for hire or reward. The term "service", therefore, is linked up with the question of providing service for carrying passengers or goods through the State Transport Undertaking for hire or reward. It is in other words in the nature of a business which is taken over from the bus operators and brought under the control of the State Transport Undertaking. It is not a question of a business being replaced as is contended by the learned counsel for the petitioners by a service. We do not see any merit in the contention of the learned counsel in this regard and we are unable to agree with him that Section 99 constitutes a fraud on the Constitution and therefore should be struck down as such. Section 99 of the Act of 1988 is thoroughly intra vires the authority of the State Legislature and its validity cannot be questioned in the light of the conclusions already arrived at by us earlier in this judgment.

21. The third point with regard to the question of limitation deserves consideration in the light of the following facts. The draft scheme in this case was published on 19-8-1988 u/s 68-C of the Motor Vehicles Act, 1939. The scheme

was approved by the State Government u/s 68-D (2) on 19-4-1989. The scheme was published in the Official Gazette on 29-12-1989. The new Act, viz., Motor Vehicles Act of 1988 came into force on 1-7-1989. u/s 100(4) of the new Act it is provided that notwithstanding anything contained in this section, where a scheme is not published as an approved scheme under Sub-section (3) in the Official Gazette within a period of one year from the date of publication of the proposal regarding the scheme in the Official Gazette under Sub-section (1), the proposal shall be deemed to have lapsed. This scheme was pending at the time when the new Act came into force. u/s 217(2)(e) any scheme made u/s 68-C of the Motor Vehicles Act, 1939 or corresponding law if any, in force in any State and pending immediately before the commencement of this Act shall be disposed of in accordance with the provisions of Section 100 of the new Act. Since this scheme was pending at the time when the new Act had come into force, it is deemed to have been saved under the provisions of Section 217(2)(e) of the Act. u/s 100(4) of the new Act it is provided that a scheme which is not published or approved under Sub-section (3) in the Official Gazette within a period of one year from the date of proposal regarding the scheme in the Official Gazette shall be deemed to have lapsed. Therefore, the last date on which the scheme could have lapsed is 30-6-1990. The Scheme, however, was published on 29-12-1989, i.e., well within the time stipulated u/s 100(4). On 28-12-1990 the Division Bench of this court held . in W.P. No. 18385/89 and 11867/90 that u/s 217 of the Motor Vehicles Act, 1988, the Motor Vehicles Act of 1939 has been repealed with effect from 1-7-1989 and therefore the publication of the Scheme under the repealed enactment on 29-12-1989 is not a publication in the eye of law. The character of the scheme remains as a scheme which was pending at the time when the new Act of 1988 came into force. Since the scheme is a pending scheme, it shall be disposed of in terms of the provisions of Section 100 of the new Act. A Division Bench of this High Court in A.P.S.R.T.C. v. Habibuddin Ahmed, (1990 (1) ALT 484 (DB) also held that the period of limitation of one year should be reckoned from the date of coming into force of the new Act of 1988 on 1-7-1989. It would not be out of place to re-produce a paragraph of the said judgment in this case which is as follows:--

"If we compute the said period from the actual date of draft scheme u/s 68-C, it would amount to giving retrospective effect to Sub-section (4) of Section 100. It would also result in lapsing of several draft schemes pending immediately before the commencement of the new Act. When the old Act did not provide any time limit, and when the new Act for the first time provides such a time limit, it must be reckoned only from the date of coming into force of the new Act. Taking the other view would not be reasonable."

This clearly shows that the period of limitation in the present case also started running from 1-7-1989 and the scheme could have been published up till 30-6-1990. The publication in this case, however, was made on 29-12-1989, which was set aside by this court for the reasons we have already given earlier in the judgment. In the same judgment a direction was given that the Government

shall publish within four weeks from the date of the said judgment in two local newspapers, one in English and one in Telugu, giving references of the schemes already published, inviting objections from any person u/s 100 within 30 days from the date of such publication and dispose of the same within two months from the date of expiry of 30 days period. In a recent judgment of a Division Bench of this High Court in W.P. No. 3108/91 and batch dated 24-4-1991 a similar view has been taken and after an elaborate discussion of the matter it has been held that the petitioners cannot be allowed to raise any plea of limitation in such matters with reference to Section 100(4) of the new Act of 1988. In *The Director of Inspection of Income Tax (Investigation), New Delhi and Another Vs. Pooran Mal and Sons and Another*, the Supreme Court while considering the provisions of Section 132(5) of the Income Tax Act of 1961 held on the question of limitation involved therein that even if the period of time fixed u/s 132(5) is held to be mandatory that applies when the first order u/s 132(5) was made. Thereafter, if any direction is given u/s 132(12) or by a court in writ proceedings, under Article 226 of the Constitution of India, an order made in pursuance of such a direction would not be subject to the limitations prescribed under Sec. 132 (5). The Supreme Court further observed that even if the period fixed u/s 132(5) is mandatory, that was satisfied when the first order was made. Once an order has been made u/s 132(5) within the period of limitation, the subsequent orders need not fall within the period of 90 days and the court can give a direction to pass suitable orders from time to time keeping in view the exigencies of the case. In this matter also the court has directed the publication of the notification within 30 days from the date of the judgment inviting objections from any person and dispose of the same within two months thereafter. Therefore, it is a dear case where the plea of limitation cannot be raised by the petitioners on the basis of Section 100(4) of the new Act alleging that the period of one year has expired and, therefore, the schemes are deemed to have been lapsed. The order passed by this court has been confirmed by the Supreme Court in its order dated 28-1-1991 passed in Civil Appeal No. 668/91. The Supreme Court has held as follows :--

"However, it is necessary to indicate that the calendar of events and the directions of the High Court in that behalf contained in the operative part of the order dated 28-12-1990 of the High Court shall be operative from to-day as if they were directed to commence from to-day. Ordered accordingly."

Therefore, the calendar of events as laid down by the Supreme Court is now binding on all the parties concerned. We do not see any force in the argument that the scheme is now lapsed because of the limitation of one year prescribed u/s 100(4) of the Motor Vehicles Act of 1988. The fact that the notification in the news papers has been published only with reference to W.P. Nos. 18385/89 and 11867/90 and no reference has been made to the petitioners in this writ petition, does not make any difference. It is agreed that the 66 routes covered by the Writ Petition which have been included in the notification, in response to which the petitioners in the present writ petition have also submitted their objections are

under consideration by the Government. We, therefore, reject this argument of the learned counsel for the petitioners.

22. In view of the above discussion, we see no merit in the Writ Petition. The Writ Petition is, therefore, dismissed. In the circumstances of the case there will be no order as to costs. Advocate's fee Rs. 250/-

23. Sri K.R.K. Vara Prasad, learned counsel for the petitioners has made an oral request for grant of leave to appeal to Supreme Court, under Article 133 of the Constitution of India. We have decided the matter arising in this writ petition in accordance with the settled principles of law. We do not see any substantial question of law of general importance involved in the matter which needs to be decided by the Supreme Court. Therefore, the oral request for leave to appeal to Supreme Court is rejected.