

(1988) 12 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition No's. 17063 to 17098 of 1987

Kallayya Ningayya Hiremath and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 15-12-1988

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 68 C, 68 D

Citation : AIR 1989 Kar 315 : (1989) ILR (Kar) 218 : (1989) 1 KarLJ 444

Hon'ble Judges : Prem Chand Jain, C.J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : G.V. Shantharaju, for H. Rangavittalachar, for the Appellant; R.N. Narasimha Murthy, General and K. Balakrishna, for the Respondent

Judgement

1. The Petitioners are all transport operators operating stage carriage services under valid permits granted by the Regional Transport Authority, Raichur, (respondent 2), on various routes within the district of Raichur. Some of the petitioners are operating the stage carriages from the year 1950 onwards. The General Manager, Karnataka State Road Transport Corporation, (hereinafter referred to as the Corporation)," with an intention of operating its stage carriage services to the exclusion of private operators including the petitioners, by a Notification No. MST. CO. PLN. RCH. 32/70 dt. 8-4-1970 published in the Official Gazette on 16-4-1970, proposed a scheme as per S. 68-C of the Motor Vehicles Act, 1939, (hereinafter referred to as the Act), to nationalise as many as 128 routes in the district of Raichur. A copy of the said notification is attached with the petition as Annexure B. The scheme was essentially a route scheme in contra distinction, to the "Area" scheme. It provided exemptions to the existing inter-State operators operating on the inter-State routes. On this scheme, it appears, no final decision was taken, and ultimately the Corporation proposed another scheme by a "Gazette Notification No. KST. CO. TR. PLN. RCH. 5909 dt. 30-8-1982 superseding the 1970 Scheme. As per the said scheme, as many as 174 routes were sought to be nationalised. A copy of the said Gazette

Notification dt. 30-8-1982 is attached, with the writ petition as Annexure C. Objections to the said scheme were invited. The petitioners who are the persons directly affected, filed elaborate objections pointing out to the authorities that the 1982 scheme is uneconomical, not properly coordinated, among other objections. Objections were heard by the Transport Minister, and on consideration of the entire matter, the scheme was ultimately approved and a Notification No. FTD 140 TMI 82/87-88 dt. 3-11-1987 has been issued approving the scheme-proposed by the Corporation nationalising the routes in Raichur District. Through these petitions, the petitioners have challenged the legality of the 1982 Scheme and the Notification approving the scheme.

2. The petitions came up for preliminary hearing before a learned single Judge on 18-11-1987 when Rule was issued, and, considering the importance of the matter the petitions were referred to be decided by a Division Bench under S. 9 of the Karnataka High Court Act, 1961, and that is how we are seized of these petitions.

3. In obedience to the notice issued, the Corporation has filed a statement, of objections in which the material allegations made in the petition have been controverted, inter alia, on the grounds that when the matter was pending before the State Government for consideration of the objections to the 1970 Scheme a suggestion was made for the modification of the scheme on which it was deemed expedient in the facts and circumstances to propose the 1982 Scheme, that the 1982 Scheme is the resultant of extensive survey of the routes and data collected both in regard to traffic demands and proper co-ordination and this scheme with 174 routes is of wider area as against 128 routes under the 1970 Scheme, that as many as 79 operators holding permits filed objections and also 28 representations including 23 resolutions of the Village Panchayats and 5 representations from public were received in support of nationalisation of the Raichur Scheme that the first respondent considered the objections and afforded hearing to the objectors between 27-1-1984 to 7-9-1987, and that it is thereafter that the first respondent approved the scheme vide Notification dt. 3-11-1987. It is also averred that the 1982 Scheme has not only taken into account route-survey, infrastructure facility, but has also established at huge cost Depots at Koppal, Sindhanoor and major divisional workshops at Raichur for maintenance and repairs of the vehicles, that several bus-stations and bus-shelters have also been constructed, and that the outlay on this account is about Rs. Two Crores which establishes the positive action towards achieving nationalisation. The Corporation has asserted that the 1982 Scheme has been proposed and approved in accordance with law and does not suffer from any infirmity.

4. Before us, Mr. Shantharaju, learned counsel for the petitioners, raised the following points: --

(i) that once the State Transport Undertaking formulates and publishes a draft scheme under S. 68-C of the Act, it loses its power to formulate and publish

another draft scheme till the earlier draft scheme is deal with and finally disposed of by the State Government in accordance with the provisions contained in Chapter IVA of the Act;

(ii) that the power conferred on any authority will have to be exercised within a reasonable time and what is reasonable time will depend upon the facts and circum stances of each case; in the instant case the time taken for approving the scheme has exceeded five years and for this delay there is no plausible explanation forthcoming as a result of which the scheme is invalid; and

(iii) that though, in the inst4nt case the second scheme is of the year 1982 yet the only scheme existing in the eye of law is the scheme published in the year 1970 and as such the action of the State Government in approving the scheme of 1982 in the year 1987 is vitiated by inordinate delay.

5. Before dealing with the contentions advanced, we may refer to the relevant provisions of the Act as, they existed at the relevant time.- Chapter IVA was inserted in the Act by the Motor Vehicles (Amendment) Act, 1956, (Act 100 of 1956). The said chapter carne into force with effect from 16-2-1957 and consisted of Ss. 68-A to 68-1. S. 68-A contains definitions. S. 68-B provides that the provisions of Chap. IV-A and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter IV of the Act or in any other law for the time being in force or in any instrument having effect by virtue of any such law. Ss. 68C, 68D and 68E of the Act read as under .

"68C. Preparation and Publication of Scheme of Road Transport Service of a State Transport Undertaking.

Where any State Transport Undertaking is of the 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 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.

68D. Objections to the Scheme.

On the publication of any scheme in the Official Gazette and in not less than one newspaper in regional language circulating in the area or route which is proposed to be covered by such scheme-

(i) any person already providing transport facilities by any means along-or near

the area or route proposed to be covered by the, scheme;

(ii) any association representing persons interested in the provision of road transport facilities recognised in this behalf by the State Government; and .

(iii) any local authority or police authority within whose jurisdiction any part of the area or route proposed to be covered by the scheme lies, may, within thirty days from the date of its publication in the Official Gazette, file objections to it before the State Government.

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

The scheme as approved or modified under sub-sec. (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 inter-State 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.

68E. Cancellation or Modification "of Scheme.

(1) Any scheme published under subsec. (3) of S. 68D may at any time be cancelled or modified by the State Transport Undertaking and the procedure laid down in S. 68C and S. 68D shall, so far as it can be made applicable, be followed in every case where the scheme is proposed to be cancelled or modified as if the proposal were a separate scheme :

Provided that the State, Transport Undertaking may, with the previous approval of the State Government, modify without following the procedure laid down in S. 68C and S. 08D, any such scheme relating to any route or area in respect of which the road, transport services are run and operated by the State Transport Undertaking to the complete exclusion of other persons in respect -of the following matters, namely -

- (a) increase in the number of vehicles or the number of trips;
- (b) change in the type of vehicles without reducing the seating capacity;
- (c) extension of the route or area, without reducing the frequency of the service;
- or
- (d) alteration of the time table without reducing the frequency of the service.

(2) Notwithstanding anything contained in sub-sec. (1), the State Government may, at any time, if it considers necessary in the public interest so to do, modify any scheme published under sub-sec. (3) of S. 68D after giving-

(i) the State Transport Undertaking, and

(ii) any other person who, in the opinion of the State Government, is likely to be affected by the proposed modification,

an opportunity of being heard in respect of. the proposed modification.

An analysis shows that S. 68-C enables the State Transport Undertaking as defined in S. 68A of the Act to prepare a scheme for nationalisation of " transport service with the particulars mentioned in the section in case the State Transport Undertaking is of the 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 in any particular class of such service should be run and operated by the State Transport Undertaking to the exclusion, complete or partial, of other persons or otherwise. It is also provided that such a scheme shall be published in the Official Gazette and also in such other manner as may be directed by the State Government. Sec. 68D enables the person affected by the scheme to file objections within -10 days from the date of the publication of the proposed scheme in the Official Gazette before the State Government. The State Government has thereafter to consider the objections after giving an opportunity to the objector or his representative and the representative of the State Transport Undertaking to be heard in the matter. Power is given to the State Government to either approve the scheme or modify the scheme. The scheme as approved or modified is then published in the Official Gazette by the State Government and thereupon the scheme becomes final.

6. Having noticed the relevant provisions, we now advert to the merits of the controversy.

Points 1 and 3: The argument of the learned counsel for the petitioners on this point is that till some final decision one way or the other is taken by the Government on a draft scheme which has been formulated and published in accordance with law, no fresh draft scheme can be formulated or published superseding the earlier pending draft scheme. On the other hand, it was contended by the learned Advocate General that in exercise of the power under S. 68C the State Transport Undertaking can frame more than one scheme for nationalisation of routes that the State Transport Undertaking, while formulating the scheme is only performing an administrative act, that a lis will come into being only as a result of the State Transport Undertaking's act i.e., formulation of the scheme, that the State Transport Undertaking has a right to. With draw the lis which has to, be adjudicated upon by the Government, and that there is no bar or restriction on the power of the State Transport Undertaking to withdraw a scheme and formulate another scheme in its place.

7. On the respective contentions of the learned counsel for the parties, the short question that arises for consideration is whether the State Transport Undertaking has jurisdiction to formulate a fresh scheme before a scheme which has already

been framed and is pending consideration before the Government and has not been finally adjudicated upon.

On giving our thoughtful consideration to the entire matter, both in law and on facts, we find no merit in the contention of the learned counsel for the petitioners.

8. As the facts stand, the first scheme was formulated in the year 1970 and was published under No. KST. CO. PLN. RCH. 32/70 dt. 84-1970 in Mysore Gazette dt. 16-4-1970 under S. 68C of the Act proposing to nationalise as many as 128 routes in the district of Raichur. Objections were filed against the said scheme, which were pending disposal with the Government. It appears that during the hearing of the objections, a suggestion was made by the first respondent i.e., the State for modification of the scheme. Keeping in view that suggestion and on consideration of the fresh data in regard to traffic demand and proper co-ordination, a scheme was proposed in supersession of the earlier scheme. This later scheme covers wider area involving 174 routes while the 1970 scheme covered 128 routes. Thus it would be seen that the 1982 scheme covers more area and brings into its fold larger number of routes. Without going into the causes for delay in not finally disposing of one way or the other the 1970 scheme, one thing is quite evident that the said scheme has been allowed to be dragged on for a period of 12 years. There can be no gainsaying that during the period of 12 years there must have been lot of developments in or around the area. Hence it can no longer be said that the 1970 scheme if survives would to day satisfy the requirement of S. 68-C which enables the State Transport Undertaking to prepare a scheme for nationalisation of transport service for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service. "In *Phool Chand Gupta Vs. Regional Transport Authority, Ujjain and Others*, , *Shri Chand Vs. Government of U.P., Lucknow and Others*, and *K.T. Dharanendrah Vs. Regional Transport Authority and Others*, , the Supreme Court has quashed the schemes on the ground that inordinate delay - had occurred and no approval had been granted by the Government under S. 68-D of the Act. That being the position of law, the 1970 scheme would be liable to be quashed on the ground of delay in approval. It is quite evident to us that the petitioners are just trying to sabotage the efforts of the State Transport Undertaking in nationalising the routes on which they were plying their vehicles. In case these petitions are allowed, the result would be that the 1982 scheme would be quashed and the 1970 scheme would be revived for final consideration and disposal by the Government. In that event, the petitioners and other interested persons would again have an opportunity to challenge the 1970 scheme on the ground that the same is liable to be quashed on the ground of inordinate delay, and as earlier observed, in view of the law laid down by the Supreme Court, the 1970 scheme is bound to be quashed. In these circumstances, the question arises whether the Court should allow the petitioners to succeed in their design. Obviously, the answer has to be in the negative. The State Transport Undertaking, instead of allowing the petitioners to succeed in their object of frustrating the nationalisation of routes, in public interest itself

bade adieu to a dead scheme which could not have achieved the object of S. 68-C. The S.T.U. formulated another fresh scheme taking into consideration all the relevant factors for the purpose-of providing an efficient, adequate economical and properly coordinated road transport service in public interest. The petitioners have approached this Court for a relief which if granted would not only create considerable confusion but would do more harm than good, and in our opinion, in the circumstances of the case, the petitioners, in exercise of our jurisdiction under Art. 226 of the Constitution, do not deserve any relief in these petitions.

9. Though this aspect was not adverted to specifically, but the same may also have considerable bearing in declining the relief prayed for. The impugned scheme was gazetted on 30-8-1982. The petitioners and others filed objections and contested that scheme on merits. The State Government disposed of all the objections on merits and gave its approval on 3-11-1987. The petitioners filed the writ petitions in Dec., 1987, in which the question of Jurisdiction has been raised ,i.e., that the 1982 scheme could not be formulated as the 1970 scheme had not been disposed of on merits. When the petitioners were raising the question of lack of jurisdiction, why did they contest 1982.scheme on merits by filing objections? Could they not straightway come to this Court and challenge the formulation of the 1982 scheme? On the record, we have no explanation in the petitions in this regard. This circumstance again, in our opinion, shows that the petitioners are interested more in delaying the matter rather than get it adjudicated upon and finally settled expeditiously.

10. Moreover, as averred in the statement of objections, the State Transport Undertaking had taken into account the route survey and infrastructure facility; it had also established at huge cost depots at Koppal, Sindhanoor and major divisional workshops for maintenance and repairs of the vehicles, besides constructed several bus-stations and shelters which outlay has cost them about two crores of rupees. It is quite evident that the private operators are putting all sorts of hurdles in the nationalisation of routes and in d1lowing the scheme formulated by the State Transport Undertaking, and if at this stage the scheme is quashed, then it would cause more harm and inconvenience to the general public than doing any good at all.

11. On facts, it was also contended by the learned Advocate General that the scheme in question is entirely different from the earlier scheme and that the argument that the State Transport Undertaking has no jurisdiction to formulate a scheme during the pendency of an earlier scheme is untenable on this ground also. The contention appears to be well founded. It is not disputed that the present scheme covers much larger area than the one covered under the 1970 scheme. The 1982 scheme involves 174 routes while the 1970 scheme covered only 128 routes. Along with the written statement, a comparative statement, Exhibit R-1, has been produced which shows the difference between the two schemes. The 1970 scheme has only 128 routes while the 1982 scheme has 174 routes. Besides, all the new roads formed in the district of Raichur up to 1982 to

the extent of 46 new routes are included after detailed route survey. The minimum kilometres offered in 1970 scheme was about 33000 and under the 1982 scheme it is 67598. It is also brought out by way of illustration that the route Raichur to Hubli which is shown as SL No. 16 in the 1970 scheme provides minimum of 4 vehicles and maximum of 8 vehicles and the number of trips, minimum of two and maximum of four. However, it is under the 1982 scheme that Raichur and Hubli have been connected by three road portions i.e. Raichur to Hubli which is shown at Sl. No. 1 of routes length of 365 KMs providing one round trip with two vehicles. Similarly, Raichur to Hubli found at Sl. No. 2 will be operating in different routes covering distance of 315 KMs providing a minimum of four and maximum of six vehicles to perform minimum of two round trips and maximum of three round trips. So also, at Sl. No. 15, Raichur to Hubli covering different area of 309 KMs is provided with minimum of two and maximum of four vehicles to perform a minimum of one round trip and maximum of two round trips. Apart from this, the inter-State operations by K.S.R.T.C. Raichur Division reciprocally had added 12166 KMs which serves and caters both intra and inter-State traffic of Raichur District.

Thus from the frame of the scheme (though it includes the routes involved in 1970 scheme also), it is quite evident that it is absolutely a new scheme which was formulated by the State Transport Undertaking taking into consideration the relevant factors. The subjective satisfaction has to be of the State Transport Undertaking and we find no material available on the record to form an opinion that the subjective satisfaction of the State Transport Undertaking in formulating the 1982 scheme was without any foundation or basis. The 1982 scheme being a different scheme is not liable to be quashed on the ground that an earlier scheme which was different from the impugned scheme, was pending consideration before the State Government under S. 68 of the Act.

12. We would now deal with the legal aspect. In the earlier part of the judgment, the relevant provisions have already been noticed. The contention of Sri Sharla Raju, learned counsel for the petitioners was that under the Act there is no jurisdiction with the State Transport Undertaking to withdraw a scheme which is pending adjudication with the Government and that the action of the State Transport Undertaking in framing another scheme during the pendency of earlier scheme is wholly without jurisdiction. Again we are unable to agree with this submission of the learned counsel. Chapter IV-A has been inserted in the Act by the Motor Vehicles (Amendment) Act, 1956. Under this Chapter, which consists of 9 sections, monopoly is conferred on the State to provide, in the interest of public, an efficient, adequate, economical and properly coordinated road transport service to the partial or complete exclusion of other persons. In these nine sections, there is no provision which may specifically put an embargo on the power of the State Transport Undertaking to withdraw a scheme already formulated.

13. As seen from the provisions of S. 68C it is the exclusive jurisdiction of the

State Transport Undertaking to formulate a scheme. The subjective satisfaction has to be of the State Transport Undertaking. When the scheme is published under S. 68C, S. 68D enables the persons affected by the scheme to file objections within 30 days from the date of the publication of the proposed scheme in the Official Gazette, before the State Government. The State Government considers the objections, if any, after giving an opportunity to the objectors or their representatives and the representatives of the State Transport Undertaking, to be heard in the matter, Thereafter the Government may either approve or modify the scheme. The approved or modified scheme then is published in the Official Gazette by the State Government and thereafter the scheme becomes final.

14. S. 68-E makes provision for the cancellation or modification of the approved scheme. The approved scheme on being published in the Official Gazette becomes final. Thereafter it can be modified or cancelled by the State Transport Undertaking and the procedure laid down in S. 68C and S. 68D, so far it can be made applicable, would be followed in every case, A provision is also made to enable the State Transport Undertaking to modify a scheme without following the procedure laid down in Ss. 68C and 68D as stated therein. It was on the strength of S. 68E that an argument was sought to be built by Mr. Rangaswamy, learned counsel, that the power given to modify or cancel a scheme is only as provided in that section. In other words, what was emphasized by the learned counsel was that the power in the State Transport Undertaking to cancel or modify a scheme is only after it is published under sub-sec. (3) of S. 68D.

We are afraid we are unable to agree with this submission of the learned counsel. As is evident, there is no time-limit prescribed within which the State Transport Undertaking can modify or cancel a scheme after its publication. Hence there would be no bar if such a power is exercised even immediately after a scheme is published under sub-sec. (3) of S. 68D. The occasion for modifying or cancelling a scheme arises only when in the opinion of the State Transport Undertaking it becomes necessary to do so. As earlier observed in the instant case the State Transport Undertaking had found it necessary even during the pendency of the 1970 scheme that it had become necessary to modify the scheme. If the contention of Mr. Sharla Raju is accepted, then the result would be that though the State Transport Undertaking had realised that the scheme of 1970 had lost its utility and it had become necessary to formulate another scheme, yet it was to wait for the publication of the scheme under subsec. (3) of S. 68D and immediately thereafter it could take steps for cancelling that scheme by formulating another scheme. To us it looks highly incongruous, nor can we attribute such an intention to the Legislature.

15. The matter may be viewed from this angle also. Under S. 68C it is the exclusive jurisdiction of the State Transport Undertaking to formulate a scheme. The act of formulating a scheme is purely administrative. The State Government exercises its power under S. 68D, after holding an enquiry. Before the

Government, there are two parties viz., (i) the State Transport Undertaking and (ii) the citizens who may object to the scheme in public interest or on personal grounds. There is therefore a proposal and an opposition and the State Government is to decide the lis between both of them which came into existence only as a result of the proposal made by the State Transport Undertaking. In case the State Transport Undertaking does not propose to proceed with the proposal, we do not see any reason why that proposal cannot be withdrawn by it. Once the State Transport Undertaking chooses to withdraw its proposal, no lis remains before the Government. The opposition cannot insist that the proposer cannot withdraw its proposal which gave birth

to a lis. In this view of the matter, we agree with the learned Advocate General that once the State Transport Undertaking decides to withdraw its proposal there is no lis between the parties and the result of such withdrawal is that no matter remains pending, which may require consideration/ decision by the Government.

16. Moreover, there is no dispute that there can be more than one scheme for nationalisation of routes. In *T. Govindaraja Mudaliar Vs. The State of Tamil Nadu and Others*, it is observed thus (at p. 981):

" It is quite clear that each route can be nationalised and it is difficult to comprehend that when the law empowers that to be done any further conditions should be superimposed of coordinating the services on all the routes which are proposed to be nationalised. The following observations with regard to the above decision in *Dosa Satyanarayanamurty etc. Vs. The Andhra Pradesh State Road Transport Corporation*, explain the law on the point :

"This Court did not lay down that there cannot be any phased programme in the nationalisation of transport services in a State or in a district nor did it hold that there cannot be more than one scheme for a district or a part of a district. The observations of this Court in regard to the implementation of a scheme piecemeal were aimed at to prevent an abuse of power by discriminating against some operators and in favour of others in respect of a single scheme." "

Thus a power is available to frame several schemes. It again goes to show that it is left to the discretion of the concerned authority as to how best to achieve the object of nationalisation of routes in strict conformity with the provisions of the statute.

17. One more aspect may be adverted to. Under S. 68C the Government is given power to approve or modify a scheme. But this power also includes power to reject the scheme in its entirety. In *Malik Ram Vs. State of Rajasthan*, , of the report, on this aspect of the matter, it is observed thus (at p. 1577) :

"What S. 68D(2) provides is that after hearing the parties, the State Government may approve or modify the draft scheme. This in our opinion clearly implies that the authority which has to approve or modify the scheme has the power also, if it so thinks fit, not to approve the scheme at all. What is before the State

Government under S. 68D(2) is a draft scheme. That sub-section provides that the State Government may approve or modify the scheme; that does not mean that the State Government is bound to approve the scheme with or without modifications. An authority to which power has been given to approve or modify some proposal has certainly in our opinion the power to say that it will not approve the proposal at all, for, the words "may approve" on a reasonable interpretation include "may not approve". If a person may approve he is not bound to approve. Up to the stage when the hearing takes place under sub-sec. (2) the draft scheme is merely a proposal before the State Government and it will only become effective if it approves of it with or without modifications. But this power clearly implies the power to say that it does not approve the draft scheme at all; and if it says that, the draft scheme will stand rejected and the State Transport Undertaking may have to submit another scheme for approval. When S. 68E speaks of cancellation it refers to a scheme already approved under S. 68(1)(3), and in that context the word "cancellation" is properly used. But the fact that S. 68E provides for the cancellation of a scheme which has already been approved, does not mean that it is not open to the State Government under S. 68D(2) to say, after hearing the objections, that it does not approve the scheme at all which is put up before it as a draft for approval. We are therefore of the opinion that under S. 68D(2) it is open to the State Government to say after hearing objections that it does not approve of the draft scheme at all, in which case the draft scheme will stand rejected and the State Transport Undertaking may have to frame a fresh scheme in accordance with the procedure provided in Chap. IV-A."

In the instant case, respondent 3 in his written statement has categorically averred that during the consideration of the 1970 scheme before the State Government a suggestion was made for the modification of the scheme. The State Transport Undertaking, after collecting data and carrying out extensive survey of the routes, formulated 1982 scheme. In case the suggestion of the State Government had not been accepted, the 1970 scheme was bound to be rejected. The State Transport Undertaking found substance in the suggestion and formulated another entirely different scheme. As earlier observed, it would have been foolhardiness on the part of the State Transport Undertaking to have insisted on 1970 scheme which had become antedated. Thus the State Transport Undertaking rightly decided to formulate another scheme. In the circumstances of the case, it was not necessary that an independent order rejecting the 1970 scheme should have been passed as the effect of formulating a new scheme and its approval by the Government would be that the old scheme stood rejected. This approach finds support from the observations of the Andhra Pradesh High Court in *M. Gangappa Vs. The Government of Andhra Pradesh and Others*, wherein in para 87 of the report it is observed thus (at P. 150) : -

"A further contention was raised that in some cases old schemes which were published were not rejected. Yet the new schemes regarding the same routes were approved while the old schemes were still pending. It is seen from para 21

of the Home Secretary's affidavit that earlier scheme was not in the proper form. So the R. T. C. has come up with a fresh scheme in the proper form and the same is approved now. The earlier defective -scheme was rejected by the Government by a G.O. dt. 30th July, 1973 and the same was not pending when the present scheme was approved. Even otherwise when the new scheme is approved even when the old scheme was pending, it would mean that the old scheme stood rejected. It was not necessary to say in the new scheme that the old scheme is cancelled. Vide *Standard Motor v. Kerala State* AIR 1969 SC 273."

As a result of the aforesaid discussion, we find that there is no bar on the power of the State Transport Undertaking under S. 68-C to formulate another scheme during the pendency of an earlier scheme framed by it, before the Government.

18. Learned Advocate General had sought to argue on the basis of the provisions of S. 21 of the General Clauses Act that the power to cancel a scheme which is pending consideration before the Government, is available to the State Transport Undertaking. In support of his contention he placed reliance on a Full Bench judgment in *H. Pattabhirami Reddy and Others Vs. Secretary to Government, Transport and R and B Department, Hyderabad and Others*, . This contention of the learned Advocate General was controverted by Mr. Shantaraju by contending that the said provision of the General Clauses Act has absolutely no applicability and that the State Transport Undertaking cannot be vested with such a power of cancellation. Reference in support of this contention was made to *The State of Bihar Vs. D.N. Ganguly and Others*, .

It is no doubt true that the judgment in *Pattabhirami Reddy's* case fully supports the contention of the learned Advocate General. But in the view we are taking on the provisions of the Motor Vehicles Act itself, we do not propose to advert to this aspect of the matter. When from the provisions of the statute itself a view, one way or the other, can be formed, then it is not necessary to advert to the provisions of the General Clauses Act. Therefore, we refrain from expressing any opinion in this regard.

19. Point No. 2:

It was lastly contended by the learned counsel for the petitioners that even the 1982 scheme which was published on 9-9-1982 had become five years" old on the date of its approval by the State Government under S. 68D of the Act and was therefore liable to be quashed in view of the decision of the Supreme Court in *Onkar Singh and Others Vs. Regional Transport Authority, Agra and Others*, . This contention of the learned counsel has no merit. The Government has tried to dispose of the objections and give its approval to the scheme expeditiously. From the averments made in the written statement filed on behalf of ,respondent 3, we find that between 27-1-1984 and 7-9-1987 number of hearings had taken place before the first respondent. It is also stated in the written statement that the petitioners had been obtaining adjournments time and again and succeeded in prolonging the matter possibly with the ulterior motive that they could take a

plea of delay in the approval of the scheme in the event they were driven to the Court of law in challenging the approved scheme. In the circumstances of the case, we find that there is no delay which could warrant quashing of the scheme on that ground. Consequently, the contention is rejected.

20. No other point arises for consideration.

21. To sum up, our conclusions are:

(1) that the petitioners have approached this Court for a relief which if granted would not only create considerable confusion but would do more harm than good, and in the circumstances of the case they do not, in exercise of our jurisdiction under Art. 226 of the Constitution, deserve any relief in these petitions;

(2) that the 1982 scheme is not liable to be quashed on the ground that an earlier scheme which was different from the impugned scheme was pending consideration before the State Government under S. 68D of the Act;

(3) that there is no bar on the power of the State Transport Undertaking under S, 68C to formulate another scheme during the pendency of an earlier scheme framed by it, before the Government;

(4) that there has been no such delay in approving the 1982 scheme which could warrant quashing of the same; and

(5) that from the frame of the 1982 scheme, it is quite evident that it is absolutely a new scheme which was formulated by the State Transport Undertaking, taking into consideration the relevant factors."

22. In view of our aforesaid conclusions, all these writ petitions are dismissed but without any order as to costs.

23. Petitions dismissed.