

(2004) 12 KAR CK 0012

In the Karnataka High Court

Case No : Writ Petition No's. 33120-121, 33237-39, 48429-38 and 52160-61 of 2003 and 8512-13 of 2004

Karnataka State Road Transport Corporation and

APPELLANT

Vs

Karnataka State Transport Authority and Others

RESPONDENT

Date of Decision : 16-12-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 16 (1), 226, 227, 32

Karnataka Motor Vehicles Rules, 1989 — Rule 54, 56

Motor Vehicles Act, 1988 — Section 68, 68 (2), 68 (3), 68 (5), 74

Citation : AIR 2005 Kar 205

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Ashok Haranahalli, B.R. Sundaraj Gupta, K. Govindraj and S. Prakash Shetty, for the Appellant; M.C. Narasimhan, B.T. Parthasarathy, General, B. Phalakshaiah, Govt. Pleader, H.B. Nagraj, N. Raja Shekar, Narayanaswamy, B.R. Shailendra and Shivananjappa, for the Respondent

Judgement

V. Gopala Gowda, J.—(i) In these batch of writ petitions, the prayer in W.P. Nos. 33120-21 and 33237-29, 48429-38, 46814, 46815, 46816, 46817, 49936, 49937 and 51804/2003 filed by the Karnataka State Road Transport Corporation (KSRTC)/North West Karnataka Road Transport Corporation (hereinafter called as "NWKRTC" in short) is to quash the Contract Carriage Permits granted to private operators, some of them are also contesting respondents in these petitions. The contentions urged in these petitions, objections filed by both State and permit holder respondents and other allied matters pertaining to these writ petitions are dealt with in paragraph 4 of this order.

(ii) In W.P. Nos. 30657-60 and 52160-61/2003 filed by private operators/permit holders of the vehicles, the prayer is to direct the State respondents not to enforce the terms, conditions and instructions issued in the Circular No. STA.6/PR-02/2003-04, dated 5-4-2003 issued by the Chairman, Karnataka State Transport Authority (hereinafter referred to as KSTA). According to the

petitioners, the terms and conditions imposed in the permits based on the Circular instructions are without authority of law and, therefore, the same cannot be enforced against them.

(iii) In W.P. Nos. 44359 and 46514-15/ 2003 filed by the Association of Owners and Drivers of Tourist Vehicles of Dakshina Kannada, the prayers are quite apposite to the prayers made in the writ petitions mentioned in para (ii) above. The prayers in these petitions are to direct the State respondents to ensure that the permit holders of the contract carriage vehicles adhere to the provisions of Sections 74 and 84 of the Motor Vehicles Act, 1988 (hereinafter referred to as "MV Act") and to take necessary action against them strictly so that the vehicles adhere to the conditions of the permits. It is the grievance of the petitioners that the contract carriage operators are operating their vehicles in flagrant violation of the law, terms and the conditions of the permits. It is their grievance that virtually the contract carriages are being operated as stage carriage services on the notified routes which are to be exclusively operated by State owned Transport undertaking, services thereby their fundamental and statutory rights are affected.

(iv) In W.P. No. 51604/2003 the prayer of the petitioner is to quash the Endorsement issued by the KSTA at Annexure-A refusing to grant the contract carriage permit on the ground that the vehicle in respect of which permit sought for is over 10 years old and therefore (sic). A direction is also sought for to the respondents to consider the application of the petitioner dated; 26-11-2003 without insisting the model of the vehicle. The Endorsement is issued on the basis of 10 years old age prescribed for contract carriage vehicles vide Subject No. 2/2003 dated 13-8-2003. The petitioners contend that such prescription of period for the vehicle is contrary to the decisions rendered in W.P. No. 12316/2000 disposed of on 20-6-2002 and W.P. No. 26988/2002 (D.L. Suresh v. The Secretary, R.T.A).

(v) In W.P. No. 8512-13/2004 filed by the KSRTC Staff and Workers Federation and another employee, the prayer is to quash Section 3 of Karnataka Act No. 9/2003" (Karnataka Motor Vehicles Taxation and Certain Other Law (Amendment) Act, 2003, (hereinafter referred to as "the Amendment Act") by which the Karnataka Contract Carriages (Acquisition) Act, 1970 (hereinafter referred to as "KCCA Act"), has been repealed, the constitutional validity of it was upheld by the Constitutional Bench and another decision of the Apex Courts. The details pertaining to these writ petitions are dealt with in paragraph 5 of this order.

2. All these writ petitions have been heard together at length and disposed of by this common order.

3. (i) The KSRTC is a Corporation established u/s 3 of the Road Transport Corporations Act, 1950. The object of establishing the Corporation was to provide efficient, adequate and proper transport service to the commuters in the State of

Karnataka. For that purpose, the State Government has created monopoly of the routes as notified in the approved schemes under the relevant provisions of both the repealed M.V. Act of 1939 and M.V. Act to the Corporation for their exclusive operation. These routes are called "Notified Routes" in Karnataka under different schemes called as Kolar Pocket Scheme, Anekal Pocket Scheme, Dharwad Pocket Scheme, Shimoga Pocket Scheme etc. The schemes have got overriding effect upon Chapter-V in view of Section 98 of M. V. Act. The Corporation was subsequently split into four Corporations in the State. The petitioner in W.P. Nos. 51804-07/2003 is one such Corporation.

(ii) Several contract carriage operators were operating their services in the State as stage carriages to the detriment of the public interest. In order to eliminate the same, the State Legislature has enacted the KCCA Act which provided for Nationalization of contract carriages that were operating in Karnataka. Consequently, the contract carriages were acquired, the employees working in such vehicles were absorbed by the KSRTC and compensation amount was paid to the vehicle owners. Being aggrieved by the same, several private contract carriage operators in the State challenged the validity of KCCA Act and the matter went upto Supreme Court. A Constitutional Bench of the Apex Court upheld the validity of KCCA Act and the same is reported in *The State of Karnataka and Another Vs. Shri Ranganatha Reddy and Another*, (hereinafter referred to as "Ranganatha Reddy case"). After M. V. Act was enacted, once again the validity of CCA Act was upheld by the Supreme Court and the said decision is reported in *Vijay Kumar Sharma and others Vs. State of Karnataka and others*, .

(iii) Even after the contract carriages were abolished pursuant to KCCA Act, no other alternative statute was enacted. However, after a lapse of 27 years, the State Government has brought Amendment Act in the year 2003 repealing the KCCA Act without saving the vested fundamental and statutory rights of the Corporations and its employees as required in law. On account of this, the Contract Carriage Services in the State are revived and the State Transport Authority of the department represented by its Secretary, as its delegated Authority has issued innumerable contract carriage permits in exercise of his delegated power in utter disregard to the provisions of Section 68(2) and (3) read with Section 96 and Section 2(7) (sic) of the definition of contract carriages read with Section 74 of the M. V. Act by granting permits to the various contract carriage permit holders which is also contrary to the provisions of Rule 54 of the Karnataka Motor Vehicles Rules of 1989 (hereinafter called as K. M. V. Rules) and law laid down by the Apex Court in this regard.

4. (i) Being aggrieved by the same, the writ petitions mentioned in the first para (i) have been filed by the Corporations contending that (a) the Secretary of KSTA as its delegated authority who has neither jurisdiction or power to grant contract carriage permits in exercise of his power under Rule 56 of the K. M. V. Rules; (b) permits could not have been granted to them to operate on the Notified Routes

as specified in Section 104 of the MV Act; and (c) it is complained by the Corporation that on the basis of the contract carriages, the private contract carriage have been operating their services virtually as stage carriages upon the notified routes under the schemes in the State as it is their monopoly, which is not permissible in law; and (d) the KSRTC and other four Corporations who have come into existence should have been heard by either KSTA or RTA, as the case may be, before issuing the permits as their valuable vested fundamental and statutory rights of operating their services in the notified routes exclusively as monopolists are adversely affected and thereby the public interest is affected is one of the strong ground urged by them in their petitions.

(ii) Statement of objections is filed on behalf first respondent State Government to the aforementioned writ petitioners defending the grant of contract carriage permits w.e.f. 1-4-2003 by virtue of repeal of the KCCA Act and on the lines of liberalised policy of the Government of India by enacting the M. V. Act of 1988 by repealing M. V. Act of 1939. It is contended by the learned counsel for private contract carriage permit holders petitioners that after repeal of KCCA Act, grant of any kind of permit including contract carriage permits is a matter of right and refusal is an exception. According to the first respondent, the Schemes published by the State Government notifying the routes under various pocket schemes in the State are applicable only to stage carriages and not applicable to contract carriages. It is claimed by it that stringent conditions have been imposed in the permits issued to the permit holders by the Secretary of the STA in consonance with the provision of Section 2(7) of the MV Act to avoid misuse of contract carriage permits issued to them, if there is contravention of the terms and conditions of the permits issued in their favour are brought to the notice of the Competent Authority under the provision of the M. V. Act necessary suitable action will be taken against the erring permit holders by either suspending the permits or imposing penalties including the cancellation of the same. (iii) (a) The petitioners in W. P. Nos. 8512-13/2004 have also filed an application to implead the KSRTC Staff and Workers Federation in the writ petition filed by the Corporations on the ground that the proposed respondent has been agitating against privatization of KSRTC or the policies of the Government which adversely affect the vested fundamental and statutory rights of the employees of the Corporations who are its members and that the Federation is vitally interested in the result of the writ petitions as it being the collective bargain agent under the provisions of Trade Unions Act of 1926 as it is the registered and recognized Trade Union, which has got statutory duty to protect the rights of its members/employees, contending that KCCA Act was enacted by the State Legislature to discharge its Constitutional obligations of the State by implementing the directive principles of the State policy as enumerated under Part IV of the Constitution of India as it is committed to the welfare state, and it constitutes basic feature of the Constitution, the constitutional validity of the said Act was upheld by the Constitutional Bench of the Apex Court in the case of Ranganatha Reddy referred to supra. The clear statement of law is laid down in this case by the Apex Court

after careful consideration of various provisions of the Articles contained in the Parts-III and IV of the Constitution of India, which judgment is binding upon the State Government and other Authorities and Courts under Article 141 of the Constitution of India. Therefore, impugned provision of Section 3 of the Act No. 9/2003 by repealing the KCCA Act, without taking away the basis of the Constitutional Bench judgment in the cases of Ranganatha Reddy (AIR 1978 SC 215) and Vijay Kumar Sharma and others Vs. State of Karnataka and others, referred to supra. Further it is stated that the State Legislature has no power to enact the impugned provision of Section 3 of the Amended Act 9/2003 to repeal the KCCA Act without providing an alternative law by saving the vested rights upon the corporations and its employees as held by the Apex Court in catena of cases which will be referred to in the reasoning portion of this order while answering the relevant points that are framed in these cases. The impugned provision in the impugned Act is bad in law for the reason that the State Legislature in discharge of its constitutional obligations enacted the KCCA Act by abolishing the contract carriages which were being operated indiscriminately in the State and acquired their assets and absorbed their employees by the Corporations and, therefore, the fundamental and statutory rights have been conferred upon the State owned Transport Undertaking Corporations, which are established under the RTC Act according to them, in the interest of common good, thereby public interest is protected by providing jobs to thousands of employees, the profits earned and properties acquired by them belongs to the State as it enures to the common good and it is the object of the State that the resources of the State shall not be allowed to be concentrated in the hands of private individual owners. Therefore, the said rights of them cannot be taken away by the State by enacting the impugned provision 3 of Amended Act 9/2003 which has repealed KCCA Act. After repeal of the Act the private operators again started operating their services by obtaining permits under the provisions of the M. V. Act, which is totally opposed to the directive principles of the State policy as stated under Article 39(b) and (c) of the Constitution of India.

(b) The Statement of objections are filed by respondents 3 and 4 to the impleading application of the Federation. The application is opposed on the ground that the proposed respondent is neither an operator nor "aggrieved person" and, therefore, it has no locus standi to come on record and hence it is stated that it cannot maintain its application. It is further stated that the proposed respondent is in no way affected by the grant of permits in favour of the contract carriage operators after KCCA Act is repealed. It is also stated that neither the validity of repealed provision of the Act nor delegation of power of the officer /Secretary of the STA as conferred upon him under Rule 56 of the KMV Rules or its vires is questioned by the petitioners and, therefore, the application is devoid of merit. Consequently, it is prayed by them for rejection of the application.

(c) Another application is filed by the Staff and Workers Federation to implead the State of Karnataka in the Writ Petitions filed by the Corporations, as the

contract carriage permits have been issued to the permit holder in exercise of the power u/s 74 read with 2(7) of the M. V. Act by the Secretary of KSTA without authority of law on the policy of the State Government, as it has repealed the KCCA Act by Section 3 of the Repealed Act No. 9/2003.

(d) Since the action of the State Government is under challenge in the Writ Petitions filed by the Staff and Workers Federation, the State of Karnataka is a necessary and proper party to these proceedings. So also, the proposed Federation is also necessary party as the policy-decision of the State Government will affect the fundamental and statutory rights of the employees of KSRTC and other Corporations. That apart, the proposed Federation has filed W. P. Nos. 8512-13/2004 seeking to strike down the provision of Section 3 of the Act of 9/2003 wherein it has repealed the provisions of KCCA Act, by urging various legal grounds placing reliance upon the various decisions of the Constitutional Bench and other cases of the Apex Court to show that the repeal Act is unconstitutional and, therefore, the same cannot be allowed to sustain. Therefore, both the above applications filed by Staff and Workers Federation for impleading it and State Government as respondents in the Writ Petitions of the Corporations are allowed by overruling the objections filed by respondents 3 and 4. The Learned Counsel for the petitioners shall file amended writ petitions in two weeks.

5. (i) In W. P. Nos. 8512-13/2004 filed by the KSRTC Staff and Workers Federation it is contended that the repeal of KCCA Act will have serious repercussions on the working of KSRTC, and other Corporations as the same has adversely affected the service conditions of its employees guaranteed under Article 16 of the Constitution of India. It is the specific stand taken by the petitioners that the impugned provision of Amended Act is beyond the competence of the State Legislature. It is further contended that the impugned Act has virtually revived the operation of contract carriages in the State, though the Constitutionality of KCCA Act had been upheld by the Constitutional Bench of Apex Court in the above-referred cases. In other words, the Amended impugned provision of the impugned Act has the effect of overriding the Constitutional Bench decision of the Apex Court and another decision, which is totally impermissible in law as the same is opposed to Constitution of India. According to the petitioners, the KCCA was enacted by the State Legislature to achieve the Directive Principles of State Policy as enshrined in Article 39(b) and (c) of the Constitution which is fundamental in character as held by the Apex Court in catena of cases which will be referred to in the reasoning portion of the order while dealing with the relevant point on this aspect and the same is defeated by the impugned action of the Amended Act.

(ii) Statement of objections are filed to these writ petitions on behalf of respondents 1, 2 and 4 denying the averments of the petitions and supporting the grant of contract carriage permits u/s 74 of the M.V. Act and also seriously questioned the maintainability of the above petitions contending that it has no

locus standi, as it is not aggrieved persons. It is claimed by them that after the repeal of KCCA Act and grant of permits in favour of contract carriage permit holders u/s 74 of M. V. Act is a matter of right and refusal to grant permit is an exception, in view of the liberalized Transport Policy evolved by the Union of India by enacting the above Act. It is further claimed that the various Schemes published by the State Government in respect of notified routes of different pockets in the State are applicable only to stage carriage permits creating monopoly to the State owned Transport undertaking Corporations and not applicable to contract carriage permits, as they are issued by the KSTA by its Secretary in exercise of his power under Rule 56 of KMV Rules. The Budget Speech of 2003 delivered by the then Hon''ble Chief Minister on the floor of the house is relied upon in support of their case, wherein the reasons for repealing the K.C.C.A. Act are elaborately stated. Further it is claimed that in order to give effect to smooth functioning of KSTA, as its Chairman and 2 other members are busy with their regular Administrative functions of their respective departments, the officers have delegated the powers of the KSTA under Rule 56 of K. M. V. Rules, to its Secretary, who is also the Joint Commissioner of the Transport Department. The reason justifying the delegation of power is that the constitution of STA comprises of high officers of different Departments who have their own regular official duties and it is impossible for them to meet regularly to consider the applications filed by the applicants for grant of permits in their favour after careful consideration of the same, meetings to be held by it. The power exercised under Rule 56 by the Secretary of STA for grant of permits is none other than the Joint Commissioner for Transport Department and, therefore, the same is in accordance with law. Further they have vehemently stated that the writ petitions are sought to be dismissed on the ground that there is an effective and alternative remedy of Statutory appeal or revision before the Karnataka State Transport Appellate Tribunal (hereinafter referred to as "the Tribunal") against the grant of permits in favour of permit holder of contract carriages. It is also stated that had the KSRTC provided efficient, adequate and sufficient transport service to the general public in the State, the Government would not have repealed the KCCA Act and, therefore, the State has got responsibility of providing efficient transport services to the public commuters as it has thought of providing an alternative transport facility and also keeping in view that the liberalized transport policy to be provided to the public commuters at large and also considering the other relevant aspect viz. by creating monopoly to the State owned Transport undertaking Corporations on the notified routes, their miserable failure to provide efficient and adequate services to the commuters, the unauthorized operators including maxi cab owners in the State are operating their services thereby it is found that there is huge revenue loss on account of evasion of M. V. Tax to the State exchequer.

(iii) Rejoinder is filed to the aforementioned objections traversing in detail the statement of objections and prayed to overrule the same.

(iv) Statement of objections is filed by respondents 5 and 6 interalia contending

that the petitioners are not "aggrieved persons" nor they can maintain the writ petitions. It is stated that only Public Interest Litigation (PIL) can be maintained by the KSRTC Staff and Workers Federation and since the writ petitions are not filed as PIL, it is not aggrieved person and, therefore, it has no locus standi to maintain the petitions and, therefore, they are liable to be dismissed. It is contended that there is no prohibition for the State Legislature to repeal the KCCA Act and the same is done for valid reasons, which are extensively assigned in the Chief Minister speech, which relevant portions are extracted in the Statement of counter. The same is the object and intendment of the repealed provision being enacted for repealing the KCCA Act. It is stated that contract carriage permits have been obtained u/s 74 of the MV Act and they are operating their services on the routes which will not affect the monopoly right of the State owned Transport undertaking Corporations. If they are disallowed to operate, the huge investments made on the vehicles by the contract carriage operators will become a waste and they will suffer great loss apart from causing hardship to the staff engaged and their families, the public commuters will also suffer for want of providing efficient and adequate transport facility to them in the State. Justifying the repeal of KCCA Act, respondents 5 and 6 have prayed for dismissal of the writ petitions.

6. The learned counsel for the parties were heard at length. The legal contentions urged and the decisions relied upon by them will be considered in due course at appropriate stages while answering the contentious points framed by this Court.

7. On the basis of the rival legal contentions urged, the following points arise for consideration of this Court :-

- (a) Whether the KSRTC and other Corporations have got alternative remedy to question the grant of permits and the writ petitions are not maintainable?
- (b) Whether the grant of permits in favour of contesting permit holders respondents are in accordance with Section 2(7) read with Section 74 of the M. V. Act?
- (c) Whether the Secretary of KSTA can exercise the powers under Rule 56 of the K. M. V. Rules to discharge the functions u/s 68 of the M. V. Act?
- (d) Whether the contract carriages are operating as stage carriages?
- (e) Whether the petitioner KSRTC Staff and Workers Federation is aggrieved person and it has no locus standi to challenge the Impugned provision of Section 3 of the M. V. Act No. 9/2003, which has repealed KCCA Act?
- (f) Whether the repeal of KCCA Act is legal and valid without removing the effect and basis of the decision of the Constitution Bench of the Apex Court in The State of Karnataka and Another Vs. Shri Ranganatha Reddy and Another, and another decision in Vijay Kumar Sharma and others Vs. State of Karnataka and others, though they are binding upon the State of Karnataka under Article 141 of

the Constitution of India?

(g) Whether the State Government was justified in repealing the KCCA Act, when it was enacted to discharge the directive principles of the State Policy in compliance with the constitutional obligations as envisaged in the preamble and Part IV of the Constitution of India, which is the basic feature of the Constitution, infringing the monopoly right created for KSRTC?

(h) Whether the Circular bearing No. STAB/PR-2002/2003-2004 dated 5-4-2003 issued for incorporating terms and conditions in the permits is in conformity with Section 74 of the M. V. Act?

8. Before proceeding to consider the points on merits, since W. P. No. 51604/2003 can be disposed of on a short ground, it is taken up for consideration. The petition is filed being aggrieved by the Endorsement issued at Annexure-A, dated 2-12-2003 refusing to consider the application for grant of contract carriage permit on the ground that the vehicle is of more than 10 years. Virtually it amounts to rejection of the application of the petitioner. The petitioner has got an alternative remedy of appeal u/s 89 and revision u/s 90 of the M. V. Act. The petitioner has not availed the same. Hence this writ petition is liable to be dismissed on the ground of availability of alternative remedy.

9. Regarding Point No.(a) :- Whether KSRTC/NWKRTC have got alternative remedy of either Appeal or revision u/s 89 and 90 of M. V. Act of 1988 against the impugned orders granting permits by the Secretary of the STA and, therefore, their Writ Petitions are not maintainable? This point has to be answered in favour of the KSRTC/NWKRTC for the following reasons:-

(i) The Secretary of STA has no authority or jurisdiction to grant permits. This aspect is elaborately considered while dealing with Points (b) and (c). For the reasons stated therein, since grant of permits is without jurisdiction and contrary to the provisions of M. V. Act and the Rules, availability of alternative remedy is no bar to entertain the petitions of KSRTC and NWKRTC.

(ii) The Apex Court in the cases of *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, and another decision reported in *State of Rajasthan and Another Vs. Shri Hari Ram Nathwani and Others*, has laid down law that even a discretionary administrative power entrusted by a statute to a particular authority cannot be further delegated except as otherwise provided in the statute and the principle against sub-delegation is reasoned from the maxim *delegatus non potest delegare*. In this view of the matter, the Secretary of the KSTA has no authority in law for granting permits and, therefore, the alternative remedy available for the petitioners in the statute is no bar for this Court to exercise its extraordinary jurisdiction. The said view has also been affirmed by the Constitutional Bench judgment of the Apex Court, reported in *L.N. Mukherjee Vs. The State of Madras*, , which has been followed in the case of *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others*, .

(iii) The permits granted to the permit holders are in violation of principles of natural justice as KSRTC/NWKRPC were not heard before issuing the permits.

(vi) Permits are granted on the notified routes which is totally impermissible in law. Hence availability of alternate remedy will not disentitle the KSRTC/NWKRTC to approach this Court. Accordingly Point (a) is answered. It is held that writ petitions are maintainable.

10. The other writ petitions are filed by the KSRTC/NWKRTC and others questioning the grant of contract carriage permits by the Secretary of KSTA on various grounds. The permits have been granted u/s 74 of the M. V. Act consequent upon the repeal of KCCA Act, which had abolished the contract carriages. So, if the validity of the repeal of the said Act by the Amendment Act is considered, consideration of other aspects depend upon the finding that will be recorded on the constitutional validity of the impugned provision repealing KCCA Act. Hence, Points (f) to (g) are taken-up together for consideration.

11. Regarding Point (e) :- The contract carriage permit holders have strenuously contended that the petitioner KSRTC Staff and Workers Federation and another workman are not aggrieved persons and, therefore, they have no locus standi to file the petitions questioning the validity of the impugned provision of the Amended Act No. 9/2003 in repealing the KCCA Act, it is also contended by them that it is not in the nature of PIL and, therefore, they have prayed for dismissal of the petitions on this ground alone. On the other hand learned Sr. Counsel Mr. M. C. Narasimhan on behalf of the petitioners by placing strong reliance upon the decision of this Court, reported in ILR (2002) Kar 2435 : AIR 2002 Kant 1853 in the case of Karnataka Urban Water Supply and Drainage Board Employees' Association v. State of Karnataka, wherein the similar contention was urged on behalf the respondents therein, which contention was negated by following the ratio laid down by the Apex Court in its cases and Madras High Court which decisions are referred at paragraphs 9, 10 of the abovesaid case and, therefore, he has requested this Court to apply the ratio laid down in the above cases to the facts of this case and answer the contention of maintainability in favour of the above petitioners. After hearing the learned counsel for the parties and perusal of the above decision, the submission made by the learned Sr. Counsel is well founded and the same must be accepted by this Court. The relevant paragraph 63 from Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others, and relevant portion of Paragraphs 11 and 13 in M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others, , which are referred to in the above decision of this Court at paragraphs 9 and 10 are extracted below in justification of the legal submission made by the learned Sr. Counsel on behalf of petitioner which reads as hereunder :-

"63..... Our current processual jurisprudence is not of individualistic Anglo-Indian mould. It is broad-based and people oriented, and envisions access justice through "class actions", "public interest litigation", and "representative

proceedings". Indeed, little Indians in large numbers seeking remedies in courts through collective proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concept of "cause of action" and "person aggrieved" and individual litigation is becoming obsolescent in some jurisdictions. It must fairly be stated that the learned Attorney General has taken no objection to a non-recognized association maintaining the Writ Petitions."

"11. In this context we noticed that this Court has changed from the earlier strict interpretation regarding locus standi as adopted in *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, and *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, , and a much wider canvass has been adopted in later years regarding a person's entitlement to move the High Court involving writ jurisdiction....."

"13. In the light of the expanded concept of the locus standi and also in view of the finding of the Division Bench of the High Court that the order of the Excise Commissioner was passed in violation of law. We do not wish to nip the motion out solely on the ground of locus standi. If the Excise Commissioner has no authority to permit a liquor shop owner to move out of the range (for which auction was held) and have his business in another range it would be improper to allow such an order to remain alive and operative on the sole ground that the person who filed the Writ Petition has strictly no locus standi. So we proceed to consider the contentions on merits."

12. In view of the ratio laid down in the above cases by the Apex Court, the contention urged on behalf of the respondents that the petitions cannot be maintained as they are (not) aggrieved persons is wholly untenable in law as the same is contrary to the law laid down by the Apex Court in the above-referred cases. Apart from the above reasons this Court has to hold that the petitioner Federation is an aggrieved person for the reason that the establishment of State owned Transport undertaking Corporations by the State Government under the provisions of RTC Act, to do its functions and taking relevant and factual aspects which were existing in the year 1976, wherein private contract carriage service operators were indiscriminately operating in the notified monopoly routes in the State by obtaining the permits under the M. V. Act of 1939, hence the State Legislature has enacted the law by name called KCCA Act, 1976 in exercise of its legislative power under Article 245 of the Constitution from Entry 42 of List No. II of Seventh Schedule, to discharge its constitutional obligation as provided under Article 39(b) and (c) Part IV of the Constitution of India, keeping in view the common good of the people of the State, the constitutional validity of the said Act was upheld by the Constitution Bench decision of the Apex Court. In view of the enactment of KCCA Act, the KSRTC has provided public employment to thousands of employees, who have been working in the Corporations and they have acquired vested fundamental and statutory rights on account of repeal of KCCA Act by the State Legislature, the abovesaid vested rights of the employees

will be adversely affected. Since the petitioner Federation is being the recognized Trade Union by the Corporations as their employees are its members and, therefore, it is its statutory duty to protect their vested rights as the collective bargain agent on their behalf.

13. (i) POINTS (f) and (g) :- In W. P. Nos. 8512-13/2004 the petitioners have prayed for quashing Section 3 of Amendment Act (Karnataka Act No. 9 of 2003) by which the KCCA Act is repealed. Mr. M. C. Narasimhan, learned Senior Counsel for the petitioners has mainly relied upon the Constitution Bench decisions of the Apex Court in *The State of Karnataka and Another Vs. Shri Ranganatha Reddy and Another*, and *Vijay Kumar Sharma and others Vs. State of Karnataka and others*, . In both the decisions the Constitutional validity of KCCA Act has been upheld and, therefore, the said judgments, under Article 141 of the Constitution of India, are binding on all, including the State Government. Mr. Narasimhan, learned Sr. Counsel has vehemently contended that the Legislature has no power to enact the impugned provision in Act No. 9/2003 to repeal the KCCA Act without removing the basis and effect of the Supreme Court decision. In support of this contention, he relied upon the following decisions :-

1. *Janapada Sabha Chhindwara Vs. The Central Provinces Syndicate Ltd. and Another*,

2. AIR 1997 3127 (SC)

3. *B. Krishna Bhat Vs. State of Karnataka and Another*,

4. *Indira Sawhney Vs. Union of India and Others*,

The Senior Counsel placing reliance upon the abovesaid decisions vehemently contended that unless the repealing statute address itself to the factual and legal basis of the judgments of the Supreme Court in upholding the Constitutional validity of KCCA Act, in the case of *The State of Karnataka and Another Vs. Shri Ranganatha Reddy and Another*, , para 8 and in another case *Vijayakumar Sharma v. State of Karnataka* AIR 1990 SC 2032, para 24 which portions of para 8 and para 24 are extracted as here-under :

"8. The Title of the Act indicates that it is "An Act to provide for the acquisition of contract carriages and for matters incidental, ancillary or subservient thereto". In the Preamble it is stated :

"Whereas contract carriages and certain other categories of public service vehicles are being operated in the State in a manner highly detrimental and prejudicial to public interest;

And whereas with a view to prevent such misuse and also to provide better facilities for the transport of passengers by road and to give effect to the policy of the State towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in the

concentration of wealth and means of production to the common detriment.

And whereas for the aforesaid purposes it is considered necessary to provide for the acquisition of contract carriages and certain other categories of public service vehicles in the State and for matters incidental, ancillary or subservient thereto."

A declaration was also made in Section 2 that the Act is for giving effect to the policy of the State towards securing the principles specified in Clause (b) and (c) of Article 39. A deep probe into and investigation of the facts stated in the Statement of Objects and Reasons and the Preamble of the Act was neither permissible nor was it gone into by the High Court. Mr. A. K. Sen advanced the leading argument on behalf of the respondents was that acquisition of vehicles which are available for sale in the market cannot be said to be for a public purpose. Counsel submitted that the scheme of nationalization in Chapter IV-A of the Motor Vehicles Act was given up the whole Undertaking of the various operators was not acquired but what was acquired was certain assets, most of which were available in the market. Acquisition of chattels or movables can never be for a public purpose. The High Court in support of its view, also refers to the wordings of Sub-section (3) Section 4 of the Act wherein it has been provided that the contract carriage and other property vesting in the State Government shall "be deemed to have been acquired for a public purpose". We are of the opinion that neither the argument nor the decision of the High Court that the acquisition is not for a public purpose is correct."

"24. The Karnataka Act, as its title shows, was enacted to provide for the acquisition of contract carriages and for matters incidental, ancillary and subservient thereto. It was enacted under Entry 42 of the Concurrent List read with Article 31 of the Constitution, in furtherance of Article 39(b) and (c) thereof. This is evident from the preamble, and Section 2 of the Act. The preamble states that since the contract carriages and certain other categories of public service vehicles were being operated in the State in a manner highly detrimental and prejudicial to public interest, it was necessary to prevent the misuse, and to provide better facility for the transport of the passengers by road. It was also necessary to give effect to the policy of the State towards securing that the ownership and control of the material resources of the community were so distributed as best to subserve the common good and that the operation of the economic system did not result in the concentration of wealth and means of production to the common detriment. To effectuate the said intention it was considered necessary to enact the legislation. Section 2 of the Act makes a declaration in the following words :

"It is hereby declared that this Act is for giving effect to the policy of the State towards securing the principles specified in Clauses (b) and (c) of Article 39 of the Constitution of India and the acquisition therefore of the contract carriages and other property referred to in Section 4."

Under Section 4 of the Act every contract carriage owned or operated by contract

carriage operator along with the permit or the certificate of registration of both as the case may be, vested in the State Government absolutely and free from all encumbrances. Further, all rights, title and interest of the contract carriage operators in the lands, buildings, workshops and other places and all stores, instruments, machinery tools, plants, apparatus and other equipments used for the maintenance, repair of, or otherwise in connection with the service of the contract carriage as the State Government may specify in that behalf and all books of accounts, registers, records and all other documents of whatever nature relating to the contract carriages vested in the State Government absolutely and free from all encumbrances, and all the said property was deemed to have been acquired for public purpose. Section 6 provided for payment of compensation for the acquisition of all the said property.

Since the avowed object of the Act was two-fold, namely (i) to prevent the misuse of the operation of the contract carriages and to provide better facilities for the transport of passengers, and (ii) to give effect to the policy underlying Clauses (b) and (c) of Article 39 of the Constitution, it was also necessary to prevent the issue of fresh permits or renewal of the existing permits for running the contract carriages in the State to any private individual. Hence, Section 14 provided for a prohibition of the issue of fresh permit or renewal of the existing permit to any individual or the transfer of such permit to anyone except to the State Government or the Corporation which it may establish under the Karnataka State Road Transport Corporations Act, 1950. To make an alternative arrangement for running the contract carriages and to prevent both the misuse of the permits as well as concentration of wealth in the hands of a few individuals, Section 20 of the Act provided that all contract carriage permits granted or renewed till then would stand cancelled and the Corporation alone would be entitled to the grant or renewal of the said permits to the exclusion of all other person, and that applications from persons other than the Corporation for the grant of such permits shall not be entertained.

In *The State of Karnataka and Another Vs. Shri Ranganatha Reddy and Another*, , this Court upheld the validity of the said Act holding, among other things, that the Act was for acquisition of property and was in the public interest and for a public purpose. The Act, according to the Court, had nationalized the contract transport service in the State and that was also for a public purpose as declared in the Act. It was also observed that if Articles 38 and 39 are to be given effect to, then the State has progressively to assume the predominant and direct responsibility for setting up new industrial undertakings which would also include development of transport facilities. The State has also to become agency for planned national development, and the socialistic pattern of society as the national objective required that public utility services should be in the public sector. The acquisition of road transport undertakings by the State, therefore, undoubtedly served the public purpose."

Without taking away the effect of the said judgments, the Amended Act nullifying

the Constitutional Bench decisions of the Apex Court is bad in law and the impugned action is totally impermissible for the State Legislature. In support of the same, he relied upon the decision, reported in *Janapada Sabha Chhindwara Vs. The Central Provinces Syndicate Ltd. and Another*, . The relevant portions of paras 10 and 11 are extracted as under :-

"10..... On the words used in the Act, it is plain that the Legislature attempted to overrule or set aside the decision of this Court. That, in our judgment, is not open to the Legislature within certain limits to amend the provisions of an Act retrospectively and to declare what the law shall be deemed to have been, but it is not open to the Legislature to say that a judgment of a Court properly constituted and rendered in exercise of its powers in a matter brought before it shall be deemed to be ineffective and the interpretation of the law shall be otherwise than as declared by the Court.

11.....That judgment was binding between the parties and also by virtue of Article 141 binding on all "Courts in the territory of India". The Legislature could not say that declaration of law was either erroneous, invalid or ineffective either as a precedent or between the parties."

The learned Senior Counsel has also relied upon decision of the Apex Court, reported in AIR 1997 3127 (SC) . The relevant paras are extracted hereunder :

"155.D. The judicial review is the basic feature of the Constitution which has been entrusted to the Constitutional Courts, namely, the Supreme Court of India and High Courts under Article 32 and Articles 226 and 227 respectively. It is the constitutional duty and responsibility of the Constitutional Courts as assigned under the Constitution, to maintain the balance of power between the Legislature, the Executive, and the judiciary. In a Parliamentary democracy, for the Constitutional democracy to remain in living moral and intellectual force, it would be enforced through judicial review as an arch of democracy and rule of law.

E. The judicial review is life-breath of constitutionalism. Judicial review passes upon constitutionality of legislative Acts or administrative actions. The Courts either would enforce valid Acts/actions or refuse to enforce them when found unconstitutional.

F. Judicial review does not concern itself with the merits of the Act or action but of the manner in which it has been done and its effect on constitutionalism. It, thereby, creates harmony between fundamental law, namely, the Constitution and the executive action or legislative Act. Its fundamental object is to exert moral force upon the Legislature and the Executive to remain within the limits set by the Constitution and to save the people from tyranny of the Legislative / executive actions. It protects personal liberties of the people, their fundamental freedoms and creates social and economic harmony maintaining constitutional balance and justice in the Society, equality of opportunity and of status with dignity of person, social stability, progress and order under rule of law are the

goals set by the Constitution.

H. In a democracy governed by rule of law, the Legislature exercises its power under Articles 245 and 246 and other companion Articles read with the specified entries in the respective lists of the Seventh Schedule to the Constitution. Power to legislate law would include the power to amend the law, to enact a new law, and in an appropriate case, with retrospective effect. The Legislature in enacting new law or amending the existing law or re-validating the law has power to alter the language in the statute by employing the appropriate phraseology and to put up its own interpretation inconsistent with that put up by the Court in an earlier judgment on the basis of the preexisting law and to suitably make new law, amend the law or alter the law removing the base on which the previous decision was founded. If a Legislature finds that the interpretation given by the Court to the existing law is inconsistent with the constitutional or public policy or the objects of the Act intended to be achieved, the Legislature has power to enact new law, or amend the law consistent with Constitutional or public policy sought to be achieved by the statute. Such an enactment must generally be prospective and not retrospective in nature.

J. The Legislature in enacting the law cannot without anything more, by a mere declaration, directly overrule, or override a judicial decision. It can render the judicial decision ineffective only by enacting valid law on the subject within its legislative competence fundamentally altering or changing the character prospectively or retrospectively. The changes of altered conditions have to be such that the previous decision would not have been rendered by the Court had those conditions existed at the time of declaration of the law in the previous decision as invalid. It is also empowered to give effect to the Act so enacted or re-validated prospectively or retrospectively with a deemed date or with effect from a particular date.

K. The legislative judgment, by a facade of compliance or removal of the base, cannot render the decision or mandamus issued by the Court ineffective or invalid by a declaratory law that the previous decision of the Court is illegal or inequitable. Such a declaration is not conclusive, but is subject to judicial review. The real test is the effect of the legislation tested on the touchstone of the Constitution and its direct result on the declaration of law as interpreted earlier or the mandamus/direction issued by the Court in the previous litigation.

In another decision, reported in *B. Krishna Bhat Vs. State of Karnataka and Another*, relied upon in this regard and the relevant portion is extracted as hereunder :-

"8. xxxxxxxxxxxx This Court in a catena of cases has laid down that when a Legislature sets out to validate a tax declared by a Court to be illegally collected, it is not sufficient for the Legislature to merely declare that the decision of the Court shall not be binding because that would amount to reversing the decision rendered by a Court in exercise of judicial power which authority the Legislature

does not possess. It is also a settled principle in law that when invalidity of collection of levy is pointed out by the Court based on non-existence of certain necessary facts, it is not open to the Legislature to merely controvert that finding of the Court and validate such collection (sic) 388 at 392 this is what a Constitution Bench of this Court had held :-

"When a Legislature sets out to validate a tax declared by a Court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the legislature must possess the power to impose the tax, for, it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A Courts decision must always bind unless the conditions on which it is based are so fundamentally, altered that the decision could not have been given in the altered circumstances....."

(ii) In view of the clear pronouncements of law by the Apex Court in the decisions relied upon by Sr. Counsel Mr. M. C. Narasimhan, this Court has to hold that the repeal of KCCA Act by Section 3 of the Amendment Act (Act No. 9/2003) is contrary to the law laid down by the Supreme Court. In reality, the impugned action of the State Government nullifies the effect of the two decisions of the Apex Court in *The State of Karnataka and Another Vs. Shri Ranganatha Reddy and Another*, & *Vijay Kumar Sharma and others Vs. State of Karnataka and others*, in which the Constitutional validity of KCCA Act is upheld. Therefore, reliance placed upon the decisions cited by Mr. M. C. Narasimhan in support of his legal contention questioning the vires of the impugned provision of Act 9/2003 is well founded and the decisions are aptly applicable to the fact situation.

(iii) In the statement of objections filed on behalf of respondents 1, 2 and 4 to W. P. Nos. 8512-13/2004 the impugned provision of Section 3 in repealing the KCCA Act is sought to be justified by placing reliance upon the Budget Speech of 2003 delivered by the then Chief Minister of Karnataka. The same is extracted as hereunder :-

"214. The principal problem in the transport sector is that supply is woefully short of the growing demand for public transport services. This mismatch has put the common citizen to considerable difficulty and inconvenience. The inadequacy of passenger services run by State, Transport Undertaking has resulted in several distortions including unregulated and clandestine operation of Motor Cab, Maxi Cab and private bus operators and considerable dilution of travelling comfort. The brunt of this is being borne by the rural population.

215. Over loaded in maxi cabs causing serious accidents, substituting brazenly for nationalized buses; goods vehicles like trucks and tractors designed for agricultural operations taking on passenger load on routes inadequately served

by the State Transport Undertakings and roof top travelling is rampant.

216. The Tax Reforms Commission has examined this problem in considerable details and I quote "Inadequacy of public transport facilities due to various factors seems to be creating conditions of artificial scarcity. Unless private operation is permitted to optimum operation of passenger services and consequent improvement in comfort and safety standards unlikely.

217. The Tax Reforms Commission has therefore, made a strong case for encouraging private operators to operate the services to the maximum possible extent in view of the recommendation of the Planning Commission Report, the Contract Carriage Acquisition Act has been repealed in the interest of passengers comfort and safety. This has paved way for operation of contract carriage service throughout the State.

From the above, what is highlighted is the inadequate transport facility provided by the State Road Transport Corporation in the State to the public commuters. A strong case was made for encouraging private operators to operate their services by obtaining contract carriage permits. On the basis of the recommendation of the Tax Planning Commission, the KCCA has been repealed. Therefore, the question to be answered is, merely because of the inadequacy of transport facility provided by the State Road Transport Corporation, can the Legislature nullify the binding decisions of the Apex Court in the cases referred to supra? The answer should be it cannot for the following reasons.

(a) The decisions cited by Mr. M. C. Narasimhan, relevant paragraphs of which are extracted above, supports the answer.

(b) The KCCA Act was in force for the last 27 years. When it was in force, no contract carriage permits were granted either by the STA or RTA in the State until it was abolished. Despite that, there were alternative transport services such as Maxi Cabs, Tempo Travellers, Autorickshaws etc., Consequent upon upholding of KCCA Act by the Apex Court, the private operators kept quiet and nobody raised any voice. Even in the absence of contract carriages, life of citizens in the State was normal.

(c) Assuming that there was inadequate public transport facility, that could not have been the ground for the State Legislature for repealing the KCCA Act. The State Government should have taken steps to see that the State owned Transport Undertaking Corporations function effectively to achieve the object and intentment of the KCCA Act as the said Corporations are under the control, administration and management of the State Government.

(d) By repealing the KCCA Act, nothing happened except paving way for operating contract carriages which is not only contrary to the law laid down by the Apex Court but also the preamble and directive principles of the State Policy under the Constitution. In order to augment the situation, instead of repealing the KCCA Act, grant of more and more permits to the State owned Transport

Undertaking Corporations directing them to operate their services would have solved the problem of the public commuters. This endeavour has not been done by the State Government and therefore it cannot blame the Corporations.

(e) On the other hand, contract carriages are reintroduced by repealing the KCCA Act, which is not permissible in law, as it tantamounts to taking away the basic feature of the Constitution. The Apex Court in exercise of its judicial review power under the Constitution of India has upheld the constitutional validity of KCCA Act after careful consideration and interpretation of provisions of the said Act.

(iv) In order to consider the validity of the impugned Section 3 of the Amendment Act repealing the KCCA Act, let me examine to what extent contract carriages mitigate the inadequate transport facility to the public commuters. "Contract Carriage" is defined u/s 2(7) of MV Act as under

"CONTRACT CARRIAGE" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorized by him in this behalf on a fixed or an agreed rate or sum".

From the definition clause, what it is clear that a contract carriage is a vehicle which (a) carries passenger/s for hire or reward; (b) is engaged under a expressed or implied contract: (c) used for the carriage of passengers mentioned therein who have entered into contract with the holder of the permit; (d) engaged on fixed rate or agreed sum on (i) a time basis to any route or distance and (ii) from one point to another (e) it shall not stop to pick-up or set-down passengers not included in the contract anywhere during the journey. It is thus clear; that the vehicle has to be operated from one point to another only for the purpose of carrying the persons who have entered into such contract and whose names are mentioned therein. It shall not stop anywhere in the middle to pick up or set down passengers not included in the contract. Thus, contract carriage is a vehicle used for a specific and special purpose. It shall not carry or drop the passengers anywhere in between the starting and ending points. Thus, if contract carriage, as defined, is properly understood, the repeal of KCCA Act will not achieve the goal or object sought to be achieved.

(v) From what is observed above, it is crystal clear that the use or purpose of a contract carriage is very limited. For such a limited purpose, the State ought not to have brushed aside or nullify or overcome the Constitutional Bench decision of the Apex Court by repealing the KCCA Act. In this view of the matter also, the repeal of KCCA Act by the State Government under the Amendment Act is not only bad in law but takes away the effect of Constitutional Bench decision of the Apex Court. Hence, the same is liable to be quashed.

(vi) There is no power or authority available to the State Government to repeal

the Act, the Constitutional validity of which has been upheld by the Supreme Court. If at all the Government wants to provide relief to the general public, it should have thought of alternative law or amendment to the relevant statutes. In His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, at paras 1151 and 1159 it is held thus :

"1151. What follows from this conclusion is the next question to be considered. It is submitted that an amendment should not alter the basic structure of the Constitution or be repugnant to the objectives set out in the Preamble and cannot be exercised to make the Constitution unidentifiable by altering its basic concept governing the democratic way of life accepted by the people of this country. If the entire Constitution cannot be abrogated, can all the provisions of the Constitution leaving the preamble, or one article, or a few articles of the original Constitution be repealed and in their place other provisions replaced, whereby the entire structure of the Constitution, the power relationship inter se three Departments, the federal character of the State and the rights of the citizens vis-a-vis the State, are abrogated and new institutions, power relationships and the fundamental features substituted therefore? In my view, such an attempt would equally amount to abrogation of the Constitution, because any such exercise of the power will merely leave the husk and will amount to the substitution of an entirely new Constitution, which is not denied, cannot be done under Article 368".

"1159. I will now consider the question which has been strenuously contended, namely, that there are no essential features, that every feature in the Constitution is essential, and if this were not so, the amending power under the Constitution will apply only to now essential features which it would be difficult to envisage was the only purpose of the framers in inscribing Article 368 and that, therefore, there is no warrant for such a concept to be read into the Constitution xxxxxxxxxxxx. If the constitution is considered as a mechanism, or call it an organism or a piece of constitutional engineering, whichever it is, it must have a structure, or a composition or a base or foundation. What it is can only be ascertained, if we examine the provisions which the Hon"ble Chief Justice has done in great detail after which he has instanced the features which constitute the basic structure. I do not intend to cover the same field once again. There is nothing vague or unascertainable in the Preamble and if what is stated therein is subject to this criticism it would be equally true of what is stated in Article 39(b) and (c) as these are also objectives fundamental in the governance of the country which the State is enjoined to achieve for the amelioration and happiness of its people. The elements of the basic structure are indicated in the Preamble and translated in the various provisions of the Constitution. The edifice of our Constitution is built upon and stands on several props, remove any of them, the Constitution collapses. These are : (1) Sovereign Democratic Republic (2) Justice, social, economic and political; (3) Liberty of thought, expression, belief, faith and worship; (4) Equality of status and of opportunity. Each one of these is important and collectively they assure a way of life to the people of India

which the Constitution guarantees. To withdraw any of the above elements the structure will not survive and it will not be the same Constitution, or this Constitution nor can it maintain its identity if something quite different is substituted in its place, which the sovereign Will of the people alone can do..... If this is the system which is the foundation of a democratic republic, it is unthinkable that it can exist without elements (2) to (4) above either collectively or separately.

..... A sovereign democratic republic, Parliamentary democracy, the three organs of the State, certainly in my view constitute the basic structure. But do the fundamental rights in Part III and Directive Principles in Part IV constitute the essential elements of the basic structure of our Constitution in that the Constitution will be the Constitution without them? In other words if parts III and IV or either of them are totally abrogated, can it be said that the structure of the Constitution as an organic instrument establishing sovereign democratic republic as envisaged in the preamble remains the same? In that sense as I understand the sovereign democratic republic, it cannot; without either fundamental rights or directive principles, what can such a government be if it does not ensure political economic, or social justice."

"(vii). The power of amendment under Article 368 does not include the power to abrogate the Constitution nor does it include the power to alter the basic structure or framework of the Constitution....."

In *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, at paras 61 and 62 it is held thus :-

"61. The significance of the perception that Parts III and IV together constitute the core of commitment to social revolution and they, together are the conscience of the Constitution is to be traced to a deep understanding of the scheme of the Indian Constitution. Granville Austin's observation brings out the true position that Parts III and IV are like two wheels of a chariot, one no less important than the other. You snap one and the other will lose its efficacy. They are like a twin formula for achieving the social revolution, which is the ideal which the visionary founders of the Constitution set before themselves. In other words, the Indian Constitution is founded on the bedrock of the balance between Parts III and IV. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution.

62. This is not mere semantics. The edifice of our Constitution is build upon the concepts crystallised in the Preamble. We resolved to constitute ourselves into a Socialist State which carried with it the obligation to secure to our people justice, social, economic and political. We, therefore, put part IV into our Constitution containing directive principles of State policy which specify the socialistic goal to be achieved. We promised to our people a democratic polity which carries with it

the obligation of securing to the people liberty of thought, expression, belief, faith and worship; equality of status and of opportunity and the assurance that the dignity of the individual will at all costs be preserved. We, therefore, put Part III in our Constitution conferring those rights on the people. Those rights are not an end in themselves but are the means to an end. The end is specified in Part IV. Therefore, the rights conferred by Part III are subject to reasonable restrictions and the Constitution provides that enforcement of some of them may, in stated uncommon circumstances, be suspended. But just as the rights conferred by Part III would be without a radar and a compass if they were not geared to an ideal, in the same manner the attainment of the ideals set out in Part-IV would become a pretence or tyranny if the price to be paid for achieving that ideal is human freedoms. One of the faiths of our founding fathers was the purity of means. Indeed, under our law, even a dacoit who has committed a murder cannot be put to death in the exercise of right of self defence after he has made good his escape. So great is the insistence of civilized laws on the purity of means. The goals set out in Part IV have, therefore, to be achieved without the abrogation of the means provided for by Part III. It is in this sense that Parts III and IV together constitute the core of our Constitution and combine to form its conscience. Anything that destroys the balance between the two parts will ipso facto destroy an essential element of the basic structure of our Constitution".

In the decision reported in Waman Rao and Others Vs. Union of India (UOI) and Others, at paragraph 27 it is held as hereunder :-

"27. Article 39 of the Constitution directs by clauses (b) and (c) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. These twin principles of State policy were a part of the Constitution as originally enacted....."

(vii) The importance attached to the Directive Principles of the State flows from the Preamble to the Constitution of India. The importance so attached is reflected in the following decisions rendered by the Apex Court :-

G.B. Pant University of Agriculture and Technology, Pantnagar, Nainital Vs. State of Uttar Pradesh and Others,

Secretary, H.S.E.B Vs. Suresh and Others etc. etc.,

AIR 1992 SC 523 (sic)

AIR 1979 SC 65

Workmen of Meenakshi Mills Ltd. and Others Vs. Meenakshi Mills Ltd. and Another,

The law is that Directive Principles being the basic structure of the Constitution,

the same shall not be either repealed or abrogated. In *Indira Sawhney Vs. Union of India and Others*, at para 66 it is held that Legislative or executive action violating basic structure of the Constitution is unconstitutional. The same is extracted hereunder :- "

"66. What we mean to say is that Parliament and the Legislatures in this country cannot transgress the basic feature of the Constitution, namely, the principle of equality enshrined in Article 14 of which Article 16(1) is a facet. Whether creamy layer is not excluded or whether forward castes get included in the list of Backward Classes, the position will be the same, namely, that there will be a breach not only of Article 14 but of the basic structure of the Constitution. The non exclusion of the creamy layer or the inclusion of forward castes in the list of Backward Classes will, therefore, be totally illegal. Such an illegality offending the root of the Constitution of India cannot be allowed to be perpetuated even by constitutional amendment. The Kerala Legislature is, therefore, least competent to perpetuate such an illegal discrimination. What even Parliament cannot do, the Kerala Legislature cannot achieve".

(viii) In the instant case, KSRTC was established under the provision of the RTC Act to achieve one of the Directive Principles of the State Policy as enshrined under Part IV of Constitution of India. In order to strengthen it, Schemes were evolved and certain routes have been notified creating a monopoly in it. The contract carriages have been abolished by enacting KCCA Act in the interest of common good after taking relevant factors such as they were operating their services virtually as stage carriage services in utter disregard to the permits issued to them and in violations of the provisions of the Act. The benefit of the same was in force for about 27 years, thereby a statutory right was created to KSRTC and other Corporations and its employees. By repealing the KCCA Act by the State Legislature upon whom the decisions of the Apex Court viz *The State of Karnataka and Another Vs. Shri Ranganatha Reddy and Another, & Vijay Kumar Sharma and others Vs. State of Karnataka and others*, in upholding the Act are binding under Article 141 of the Constitution of India and without taking away the effect of the judgment it should not repeal the Act, without providing alternative enactment in that place by providing the vested statutory rights both to the KSRTC and its employees. Thereby it has achieved the Directive Principles of State policy, which has been demolished by enacting the impugned amended Act 9/2003 to repeal KCCA Act which has resulted in destruction of basic structure of the Constitution of India, which is totally impermissible in law as held by the Apex Court in the above catena of cases which relevant portions are extracted as above. It follows that the action of the Government in repealing KCCA Act is wholly unjustified.

ix) KCCA Act was enacted under Entry 42 of Concurrent List III of VIIth Schedule of the Constitution of India which has received the Assent of the President of India. The same cannot be repealed by the State Legislature in exercise of its power from a different Entry, Entry 57 of List II of VII Schedule to amend the

Karnataka Motor Vehicles (Taxation) Act 1957, which is without Legislative power and which has not received the Assent of the President.

x) For the reasons stated in Paragraphs (I) to (ix) above, Points (f) and (g) are answered in favour of the petitioners.

14 (1). POINTS (b & c) :- This relates to the power of Secretary of STA to grant contract carriage permits. The answer to the point raised by the petitions filed by the KSRTC and NKRTC referred to in paragraph (i). It is contended that the power to grant intra-region or intra-district contract carriages vests with the Regional Transport Authority (RTA) and STA has no jurisdiction to entertain the applications in terms of Section 9 or u/s 74 of the MV Act. The contention raised is well-founded.

(ii) In order to appreciate the same, it is necessary to extract the relevant portions of Sections 69 and 74 of M.V. Act and they are as under:-

"69. General Provision As to Applications for Permits :- (1) Every application for a permit shall be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle or vehicles :

Provided that if it is proposed to use the vehicle or vehicles in two or more regions lying within the same State, the application shall be made to the Regional Transport Authority of the region in which the major portion of the proposed route or area lies, and in case the portion of the proposed route or area in each of the regions is approximately equal, to the Regional Transport Authority of the region in which it is proposed to keep the vehicle or vehicles :

Provided further that if it is proposed to use the vehicle or vehicles in two or more regions lying in different States, the application shall be made the Regional Transport Authority of the region in which the applicant resides or has his principal place of business.

(2) Notwithstanding anything contained in Sub-section (1), the State Government may, by notification in the Official Gazette, direct that in the case of any vehicle or vehicles proposed to be used in two or more regions lying in different States, the application under that Sub-section shall be made to the State Transport Authority of the region in which the applicant resides or has his principal place of business.

From the above provision, it is clear that (i) the application shall be made to the RTA; (ii) if the use of the vehicle is in two or more regions in the same State, the application shall be made to the RTA in whose jurisdiction major portion lies; (iii) if the operation of the vehicle is in two or more regions lying in different States, the application shall be made to the STA where the applicant resides or has principal place of business. Thus, if contract carriage permit is to be obtained from STA, the application shall be made under Sub-section (2) of Section 69 of M.V. Act.

In other cases, the grant of such permit is covered u/s 74 of the Act and the relevant portions are extracted hereunder :-

74. Grant of Contract Carriage Permit :- (1) Subject to provisions of Sub-section (3), a Regional Transport Authority may on an application made to it u/s 73, grant a contract carriage permit in accordance with the application or with such modification as it deems fit or refuse to grant such a permit :

Provided that no such permit shall be granted in respect of any area not specified in the application.

(2) The Regional Transport Authority, if it decides to grant a contract carriage permit, may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely :-

(i) that the vehicles shall be used only in a specified area or on a specified route or routes;

(ii) that except in accordance with specified conditions, no contract of hiring, other than an extension or modification of a subsisting contract, may be entered into outside the specified area;

(iii) the maximum number of passengers and the maximum weight of luggage that may be carried on the vehicle either generally or on specified occasions or at specified times and seasons;

(iv) the conditions subject to which goods may be carried in any contract carriage in addition to, or to the exclusion of, passengers;

(v) that, in the case of motor-cabs, specified fares or rates of fares shall be charged and a copy of the fare table shall be exhibited on the vehicle;

(vi) that, in the case of vehicle other than motor-cabs, specified rates of hiring not exceeding specified maximum shall be charged;

(vii) that, in the case of motor-cabs, a specified weight of passengers' luggage shall be carried free of charge and that the charge, if any, for any luggage in excess thereof shall be at a specified rate;

(viii) that, in the case of motor-cabs, a taximeter shall be fitted and maintained in proper working order, if prescribed;

(ix) that the Regional Transport Authority may, after giving notice of not less than one month,-

(a) vary the conditions of the permit;

(b) attach to the permit further conditions;

(x) that the conditions of permit shall not be departed from save with the approval of the Regional Transport Authority;

(xi) that specified standards of comfort and cleanliness shall be maintained in the vehicle;

(xii) that, except in the circumstances of exceptional nature, the plying of the vehicles or carrying of the passengers shall not be refused;

(xiii) any other conditions which may be prescribed.

(3)(a) The State Government shall, if so directed by the Central Government, having regard to the number of vehicles, road conditions and other relevant matters, by notification in the Official Gazette, direct a State Transport Authority and a Regional Transport Authority to limit the number of contract carriages generally or of any specified type, as may be fixed and specified in the notification, operating on city routes in towns with a population of not less than five lakhs.

(b) Where the number of contract carriages are fixed under clause (a), the Regional Transport Authority shall, in considering an application for the grant of permit in respect of any such contract carriage, have regard to the following matters, namely:-

(i) financial stability of the applicant;

(ii) satisfactory performance as a contract carriage operator including payment of tax if the applicant is or has been an operator of contract carriages; and

(iii) such other matters as may be prescribed by the State Government;

Provided that, other conditions being equal, preference shall be given to application for permits from -

(i) the Indian Tourism Development Corporation;

(ii) State Tourism Development Corporation;

(iii) State Tourism Development;

(iv) State transport undertakings

(v) Co-operative societies registered or deemed to have been registered under any enactment for the time being in force;

(vi) ex-servicemen.

The above provision confers power upon the RTA to grant contract carriage permits subject to Sub-section (3)(a) thereof which directs the Central Government to direct the STA and RTA to limit the number of contract carriages to be fixed and specified in a Notification.

(iii) If contract carriage permit is to be obtained from STA, only the STA has to grant the permits. Section 68 of M.V. Act empowers the State Government to constitute STA comprising a Chairman and other persons (whether officials or

not) not more than four and RTA comprising Chairman and not more than two persons.

(iv) Rule 54 of Karnataka Motor Vehicles Rules, 1989 (KMV Rules) prescribes the conduct of business of transport authorities. The power has to be exercised only in the said manner. Rule 56 provides for delegation of its power. Rule 56 (I)(d) thereof reads thus:-

"5 Delegation of Powers by State Transport Authority:-

(1) The State Transport Authority may, by a general or special resolution recorded in its proceedings, delegates :-

(a) to (c) xxx

(d) its power to grant a permit other than a stage carriage permit on an application made to the Chairman or Secretary or any officer of the Motor Vehicles Department not below the rank of a Regional Transport Officer with reference to the notification issued under Sub-section (2) of Section 69;

(v) In the statement of objections filed on behalf of respondents 1,2, and 4 to W.P. Nos. 8512-13/2004 filed by the KSRTC Staff and Workers Federation, the delegation of power to the Secretary by the STA is sought to be justified in the following manner :-

"It is submitted that the Motor Vehicles Act under which the appropriate rules have been framed by the Karnataka State Government by exercising its power u/s 68(5) read with Section 96(1) of the Motor Vehicles Act of 1988. The officers who have been delegated with the powers under Rule 56 of KMVR, 1989 by way of resolution by the KSTA to exercise the power of the Karnataka State Transport Authority in order to give effect to the smooth functioning are being exercised. It may be noted here that the State Transport Authority is constituted with the Chairman and the three members. The Chairman is the one who is the Commissioner of the Transport, Department of Transport for Karnataka State and one Dy. Inspector General of Police (Traffic and Road Safety) and Superintending Engineer of Public Works Department along with the non-official member who is nominated by the Government of Karnataka. The Chairman and other members are having their official duty in respect of the post which are held in their parental Department. The function of the Karnataka State Transport Authority is by way of conducting meeting and passing the resolution in the said meeting after giving an opportunity of being heard to the parties concerned. In addition to this, these members have to go ahead with their day to day work with the parental Department and as such there is no procedure of meeting everyday. Under these circumstances, the Rules have been framed to delegate its power to the Secretary or such other officers of Transport Department. Therefore, Authority has felt it necessary to delegate certain powers to the Secretary of Karnataka State Transport Authority who is none other than the Officer in the cadre of Joint Commissioner for Transport. Under these circumstances, it is

submitted that the power exercised by the Secretary, State Transport Authority who is none other than Joint Commissioner for Transport is in accordance with Law and thus required to be affirmed by this Hon"ble Court.

vi) The justification made as above cannot be accepted and it is wholly untenable for the following reasons :-

a) The STA should comprise of a Chairman and other three members as specified in Section 68(2) of MV Act. In other words, the STA shall conduct its business as prescribed in Rule 54 of KMV Rules. In that process, the Secretary has got his own duties and responsibilities to discharge. Such being the position, the Secretary alone cannot assume the status of STA as provided u/s 68 (3) of M.V. Act and discharge its function by virtue of the so-called delegation of power. The matter is still worse in case of casting of votes. The delegation of power by the State Government in favour of the Secretary is contrary to Section 68(2) read with 96 of KMV Act and Rule 54 of KMV Rules. The delegation defeats the very purpose and object of the MV Act and the KMV Rules.

b) The effect of delegation of powers of STA to the Secretary amounts to re-writing Sections 68 and 96 of KMV Act. The said provision stipulates Chairman and not more than four members. The delegation empowers only the Secretary to discharge the functions of STA. Such delegation has got overriding effect on Section 8 of the M.V. Act or making it redundant. Such a power is not conferred upon the State Government u/s 96 of the Act. The KMV Rules being subordinate legislation framed by the State Government cannot have the overriding effect of KMV Act enacted by the Union of India.

c) If the Chairman and other Members of STA are busy in their day-to-day affairs of the posts held by them and are unable to attend the meetings of STA for considering the applications to be disposed of by it, the State Government should not have constituted the STA comprising of such high-rank officers, who, sometimes, are unable to discharge their own duties and functions on account of busy schedule for various reasons. The Government should have brought suitable amendment so that the Chairman and members of STA who are able to devote full time for its functioning without hampering their routine works.

d) In view of the settled position of law the learned Advocate General has also fairly conceded that the STA cannot delegate its power to the Secretary alone.

(vii) For the reasons stated in paragraphs (i) to (vi)(a) to (d) above, Point Nos. (b) and (c) are answered in the negative. Consequently, the grant of contract carriage permits in favour of private operators are not in accordance with Section 2(7) of M.V. Act, bad in law and without jurisdiction. The writ petitions filed by the KSRTC and NKRTC have to be allowed.

15 (i). POINT (d):- In view of the findings recorded on the above points holding that grant of permits is without jurisdiction and contrary to the provisions of the MV Act. and KMV Rules, answer to this point is wholly unnecessary. However, the

status of a "contract carriage" is elaborately dealt with in paragraph 13 (iv) with reference to its definition u/s 2(7) of the MV Act. Certain photographs are produced in the Writ Petitions of KSRTC to show the way in which these contract carriages are functioning. In some writ petitions filed by the private operators, a prayer is made not to enforce the Circular instructions and the conditions imposed in the permits. In some other writ petitions, an Association of owners, drivers of private operators are seeking to strictly endorse the aforesaid circular guidelines and the conditions in the permits. The KSRTC and NKRTC have filed several writ petitions complaining the way in which contract carriages are being misused as stage carriages in the notified routes. All these prove beyond doubt that the permits for contract carriages are not granted strictly in accordance with Section 2(7) read with Section 74 of the MV Act. That apart, there is non-compliance of Sub-section (3)(a) of Section 74 of M.V. Act as the State Government has not limited the number of permits to be granted.

(ii) Sub-section (2) of Section 74 of MV Act which is extracted at para 13 (ii) empowers the authority granting contract carriage permit to impose or attach any of the conditions enumerated therein. In accordance with this provision, the circular in question has been issued directing to comply with certain conditions by the contract carriage operators. In the decisions reported in *Captain Sube Singh and Others Vs. Lt. Governor of Delhi and Others*, and *State of Andhra Pradesh and Others etc. Vs. B. Noorulla Khan and Another etc.*, . The imposition of terms and conditions in the permits is held legal and valid. Therefore, it is in accordance with law and there cannot be any grievance either against the circular or the conditions imposed in the permits. Therefore, the writ petitions of the Association has to be allowed and that of private operators are liable to be dismissed.

16. For the foregoing reasons, the contentions urged on behalf of the private operators are wholly untenable and the decisions relied upon are not helpful to them. On the other hand, the contentions urged and the decision relied upon by the learned counsel for KSRTC/NWKRTC and Mr. Narasimhan appearing for KSRTC Staff and Workers Federation are well -founded.

17. In the result, I pass the following order :

(a) Writ petitions mentioned in para (i) in the first paragraph are allowed and the contract carriage permits issued in favour of private operators are quashed.

(b) W.P. No. 51604/2003 referred in para (iv) is dismissed.

(c) W.P. Nos. 8512-13/2004 mentioned in para (v) are allowed and Section 3 of Karnataka Act No. 9/2003 repealing CCA Act is struck down as the same is violative of Article 39(b)(c) of the Constitution of India and decisions of the Apex Court and therefore unconstitutional.

(d) W.P. Nos. 30657-60 and 52160-61/ 2003 referred to in para (ii) are dismissed.

(e) W.P. Nos. 44359 and 46514-15/2003 referred to in para (iii) are disposed of as unnecessary as question of operating contract carriages does not arise in view of quashing of the provision of Section 3 of Act 9/2003 by repealing KCCA Act.

18. Before parting with the case, having regard to the nature of problem involved in the case and the hardship and inconvenience that may be suffered by the commuters, this Court feels to make the following observations and directions :-

(i) The State Government shall bring necessary amendments for the proper functioning of STA and RTAs in accordance with their constitution under the M.V. Act. The persons to be inducted as Chairman and Members shall be in a position to discharge their duties on full- fledged basis. This shall be done on top priority. At any rate, the process shall be completed within a period of six months.

(ii) The State Government shall also consider alternative transport arrangement of granting more and more stage carriage permits to augment the demand of the public commuters in consultation with the State owned Transport Undertaking Corporation;

(iii) The STA/RTA's in the State shall cancel all contract carriage permits of the contract carriage operators who are not before this Court, immediately. If any contract carriage vehicle are operated hereinafter, the authorities shall take action against them in accordance with law.

(iv) The KSRTC/NWKRTC shall consider the feasibility of introducing their services in places and routes where the private contract carriages are being operated as expeditiously by raising all resources at their command by mobilizing necessary financial aid from Banking Institutions for which the State Government shall give its supporting hand.

(v) It is hoped and trusted that the above observations will be implemented by the State and Corporations as soon in the public interest.