

(1960) 01 AHC CK 0013

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2470 of 1959

Kashi Prasad Gupta

APPELLANT

Vs

Regional Transport Authority, Gorakhpur and Others

RESPONDENT

Date of Decision : 01-01-1960

Acts Referred:

Constitution of India, 1950 — Article 154, 162, 166, 166(3)
Motor Vehicles Act, 1939 — Section 44(5), 68, 68C, 68F, 68F(2)
Uttar Pradesh Road Transport Services (Development) Rules, 1958 — Rule 10
Uttar Pradesh State Road Transport Services (Development) Rules, 1955 — Rule 7

Citation : AIR 1961 All 214

Hon'ble Judges : J.K. Tandon, J

Bench : Single Bench

Advocate : S.N. Kacker, for the Appellant; S.C. Khare and Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

J.K. Tandon, J.—This petition is by one Sri Kashi Prasad Gupta who holds a stage carnage permit in respect of Gorakhpur Gola via Khajni and Urwa route under the Motor Vehicles Act, 1939. Since 1955 the strength of permits on this route was enlarged to ten. There is another route in the same area which is known by the name of Gorakhpur Gola via Khajni and Urwa Malhapur route. Its strength was two permits. As they happened to be partly identical routes the Regional Transport Authority had permitted the operators on both the routes to ply on either with the effect that the strength of the two routes put together became 12.

2. The petitioner claims that the traffic requirements of the routes did not justify the grant of 12 permits. For this reason, even though the strength of the first route had been increased from 7 to 10 in 1955, the additional permits were not granted until one was done in January 1958, second in April 1959 and the third in July 1959. Even then, in view of the insufficient traffic requirements, the buses plied in rotation so that the four buses had to remain idle on any particular date.

The Transport Department of the State Government, which are running their own stage carriages in different parts of the State, were according to the petitioner, anxious to accommodate a large number of operators who were being displaced from various routes taken over by them for what is called nationalised transport. In their attempt to do so they moved the Regional Transport Authority to raise the strength of these routes from 10 to 16 in one case and from 2 to 5 in the other. This matter, which was objected to by the petitioner and other operators plying vehicles on these routes, came up before the Regional Transport Authority for consideration on 7th July 1959.

After an adjournment the Regional Transport Authority finally decided on 26th September 1959 against increasing the sanctioned strength on these routes. In the same meeting one of the items of agenda also was the question of offering of alternative routes to some of the stage carriage owners. Of these Ram Avadh Misra, respondent No. 3, used to be an operator on Deoria Lar via Sulempur route and Mohd. Ismail, respondent No. 4, and Mahabir Prasad, respondent No. 5 on Siswa Thuthi Bari route.

By another resolution the Regional Transport Authority offered them alternative routes under Sub-section (2) of Section 68-G which were the routes held by the petitioner. This offer having been accepted by the above operators, the permits in their favour on their former routes were endorsed by the Regional Transport Authority on Gorakhpur Gola via Gajni route. The petitioner, whose interest has thereby been prejudicially affected, therefore, filed this petition impugning the action of the Regional Transport Authority by asking that their resolution dated 26th September 1959 might be quashed and they be further directed to forbear from placing the said respondents on the route in question.

3. One of the objections taken is that the Regional Transport Authority having itself held that there was no scope for further increase in the strength of the permits on this route, with due regard to its traffic requirements, its action in thrusting the three operators on it was illegal and without authority. Sub-section (3) of Section 47 of the Motor Vehicles Act requires the Regional Transport Authority to limit the number of stage carriage permits which may be granted in the region or on a specified route.

The limit fixed in the case of the instant route which was 12 only had been exceeded by the introduction of these three new operators. The objection thus is that the Regional Transport Authority was incompetent to grant permits beyond the limit fixed by it; this limit was still binding upon it notwithstanding the provision in Section 68-B which given an overriding effect to the provisions in Ch. IVA of the Motor Vehicles Act in which Section 68-G too existed. The action of the Regional Transport Authority is further impugned as capricious.

4. The next objection is in this manner. The three respondents held permits on a route which was nationalised under Ch. IVA. In the relevant scheme nationalising the particular route these respondents were, in view of cancellation of their

permits, to be paid compensation under Ch. IV A aforesaid. The contention urged, therefore, is that respondents 1 and 2 possessed no power, either under the scheme or under Ch. IV A otherwise, to induct these operators on any other route including the route operated by the petitioner. This was not permitted for the reason also that by this method the respondents who otherwise were responsible for payment of compensation to them transferred their liability on to the operators on these routes whose earnings were adversely affected; at the same time they escaped payment of compensation. It is said that this infringed the petitioner's fundamental right to carry on his trade.

5. The third ground relates to the legality of the scheme as a consequence of the enforcement of which respondents 3 to 5 have been displaced. It may be necessary in its connection to refer at the outset to certain provision including section 68-G of the Motor Vehicles Act. This section reads thus:

"Where any State transport undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service, it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State transport undertaking, whether to the exclusion, complete or partial, of other persons or otherwise, the State transport undertaking may prepare a scheme giving particulars of the nature of the service 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."

6. The expression "State transport undertaking" has been defined in Section 68-A and means an undertaking providing road transport service, where such undertaking is carried on by-

- (i) the Central Government or the State Government;
- (ii) any Road Transport Corporation established u/s 3 of Road Transport Corporation Act, 1950;
- (iii) The Delhi Road Transport Authority established u/s 3 of the Delhi Road Transport Authority Act 1950;
- (iv) any municipality or any corporation or company owned or controlled by the State Government.

7. The scheme which had been published u/s 68-C in the U. P. Gazette dated January 10, 1959 proceeded as follows, i.e.,

"Whereas the State Government is of opinion that for the purpose of providing an efficient, adequate, economical and properly coordinated Road. Transport Service, it is necessary in the public interest that Road Transport Services on the

routes (then routes are specified in a schedule at the end of the notification) should be run and operated by the State Transport Undertaking to the complete exclusion of other persons.

Now, therefore, in exercise of the powers conferred by Section 68-C.....read with Rule 4(1) of the Uttar Pradesh State Road Transport Services (Development) Rules, 1958, the Governor is pleased to publish the schemes"

The notification has then stated that the scheme has been published at the different places mentioned in it and any person whose interests are affected by those schemes may within 30 days of the publication file objections before the Secretary to Government, Uttar Pradesh, in the Transport Department. A further provision contained in it is, and this is material, that any person affected by the scheme and agreeing to its provision shall express his agreement in accordance with Rule 6 of the said Rules in form No. II within the time specified above for filing objections. Rule 6 of the Rules is thus:

"A permit-holder, who agrees to the scheme in so far as it makes any provision about him, shall express his agreement by filing a Statement in form II appended to these Rules, within the period provided for the filing of objections;"

Form II too itself is in the form of a letter addressed by a permit-holder to the Secretary to Government, Uttar Pradesh, signifying his agreement to the transfer of his permit or to the curtailment of the route or area of his permit in lieu of payment of compensation for cancellation of the same. Its material portion is thus:

"With reference to the notification No.....datedpublished in the official Gazette dated.. I, son of ... holder ofpermit No. . . .valid for ... routes hereby agree to the transfer of my aforesaid permit toroute, the curtailment of route or area covered by the said permit on payment of compensation in lieu of the cancellation of the permit for the remainder period of its validity".

8. There are two parts of the objection which the petitioner has urged in connection with the schemes published in the Gazette. As might have been noticed, the notification appearing in the Gazette of January, 10, 1959 has proceeded to say "that whereas the State Government is of opinion...." "the Governor is pleased to publish the scheme", the petitioner contends that Section 68-C required the State transport undertaking, as distinguished from the State Government, to perform this part of the act, i.e., the State transport undertaking, which in the present case will be the Transport Department of the State Government, should have published the notification and also formed the opinion that State road transport services were necessary in the public interest for providing an efficient, adequate and economical transport. The scheme not having been prepared originally by that Department but by the State Government was contrary to Section 68-C.

9. The second part of his objection is that Section 68-C envisages the filing of

objections by persons affected by the scheme and the decision of those objections by the State Government. By providing in the notification that the State Government had been of the opinion that framing of such a scheme was necessary for efficient transport etc. the State Government rendered itself incapable of deciding these objections. The section has imposed a duty upon the State Government to act judicially which, however, it cannot, and indeed could not, in view of the above circumstances.

10. The fourth ground is that Section 68-F (2) required the Regional Transport Authority which is different from the Regional Transport Officer to order the cancellation of any permit for the purpose of giving effect to the scheme provided u/s 68-D. Admittedly the order cancelling the permits in favour of respondents 3 to 5 had been passed by the Regional Transport Officer. The contention, accordingly, is, that there was no cancellation of those permits in accordance with law and if there was no cancellation the question about their transfer on alternative routes did not arise.

11. The fifth ground is that according to the approved scheme the permits in favour of the three respondents had to be cancelled and they were entitled to compensation in lieu thereof u/s 68-G (1) and (4). It therefore, was not open to the Regional Transport Authority to grant them permit for an alternative route under Sub-section (2) of this section.

12. Some other grounds also have been raised in the petition but they do not appear to have been urged at the hearing, and in view of the fact that the final decision of this petition may not be affected by the answer on the first ground urged by the petitioner I will straightway pass on to examine the third ground. The second ground will be discussed thereafter.

13. Admittedly the Uttar Pradesh Government are through their Transport Department providing road transport services. Transport Department of the State Government is thus in a sense an undertaking providing road transport services. On its basis the argument put forth by the petitioner is that the proper authority to initiate the scheme u/s 68-C was this Department. The notification that a scheme has been framed should similarly have been made by the Transport Department of the Government and not by the State Government itself as happened to have been done.

It is not anybody's allegation that any independent authority, in the shape of a corporation, has been established by the State Government u/s 3 of the Road Transport Corporation Act, 1950. There is no company or corporation also operating these services which can be said to be controlled or owned by the State Government. The Transport Department of the Government is, on the other hand, providing and operating these services. The question which immediately arises is whether the notification published in the Gazette of January 10, 1959 can be said to be a notification of the scheme framed by that Department and further whether the scheme itself was not framed by it.

The petitioner has in support of his contention relied on the notification itself. He does not place any material to show that the scheme which had been published had not been framed by the Department but by some other authority. In its absence the notification alone is left, and according to it, as the petitioner would urge the State Government was of the opinion etc. Because of the above description in it he concludes that the scheme was prepared by the State Government and was published also by it.

14. Article 162 of the Constitution in laying down the extent of the executive power of the State has said that the same shall extend to matters with respect to which the Legislature of the State has power to make laws. In the case of matters with respect to which both the State Legislature and the Central Parliament have power to make laws, the executive power of the State is subject to, and limited by, the executive power conferred upon the Union by law made by the Parliament.

It is not disputed that road transport by mechanically propelled vehicles is a matter with respect to which the State Legislature has power to make laws. The Parliament also may similarly possess the power to make laws but it has not enacted any law by which the executive power of the State in respect of the particular matter has been limited by any power conferred on the Union. It may, therefore, be assumed that the executive power of the State of Uttar Pradesh extends over this particular matter.

15. In Article 154 of the Constitution it is further provided that the executive power of the State shall be vested in the Governor and shall be exercised by him, either directly or through officers subordinate to him, in accordance with the Constitution. And in Article 166 provision exists that all executive action of Government of a State shall be expressed to be taken in the name of the Governor, Clause (3) of this article empowers the Government to make rules for the more convenient transaction of the business of the Government. Similarly Clause (2) provides that orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified by the Governor in the rule made for the purpose.

16. The effect of the three Articles is that State road transport is a matter falling within the executive power of the State of Uttar Pradesh. This power vests in the Governor and is exercisable by him through his subordinates etc. and any action taken by the Government shall be expressed to be taken in the name of the Governor. The action of a department of the Government is the action of the Government of the State of which it is the department. Whenever, therefore, a department of the Government takes any action in execution of any of the executive power of the State, in formal language the action of the Government or of the department is expressed in the name of the Governor.

Under Clauses (2) and (3) of Article 164 the Governor is authorised to make rules providing the manner in which various orders and instruments shall be

made or executed but no rule has been pointed out in the instant case which required the particular scheme prepared u/s 68-C to be published under any other description than is required by Clause (1) of Article 166.

17. Therefore, once it is held that Article 166 required the executive action of the State Government, which will include the action by any particular department of the Government, expressed to be taken in the name of the Governor, the notification in question which was thus expressed was not wrong or otherwise defective. The description also in it to the effect that the State Government was of the opinion etc. cannot support the argument that the Transport Department which is carrying on State road transport services had not prepared the scheme.

It was also contended that Article 166 required the action taken to be expressed in the name of the Governor but instead of the Governor the notification mentioned the State Government instead. In the first place it is the action of the Government of the State which is expressed to be taken in the name of the Governor by virtue of Article 166. The action is, therefore, the action of the State Government though it is expressed in the name of the Governor.

Secondly, the expression State Government as defined in Clause (60) of Section 3 of the General Clauses Act, 1897 means as respects anything done or to be done after the commencement of the Constitution the Governor of the State. Therefore, even conceding for the sake of argument that the Governor and not the State Government should have been mentioned in notification no difference has resulted because the State Government was mentioned in it. The State Government will mean the Governor.

18. In view of the above discussion, I am unable to hold that the notification in question suffered from any such defect as is claimed by the petitioner.

19. The second part of this objection is again untenable. It is not true, as will presently appear from the provision in the rules framed in that behalf, that the same authority which prepares the scheme also hears the objection. The State Government acts through its servants and subordinates. Merely because every action of it is expressed to be taken in the name of the Governor, as, however, is necessary, does not show that there is identity also of the authorities discharging different functions allocated to them. The Government consists in its very nature of a number of departments headed by different individuals and authorities.

The rule of natural justice that a person cannot; be a judge in his own cause can hardly be applied to the present facts. The scheme is prepared by the Transport Department of the Government. Rule 7 of the U. P. State Road Transport Services (Development) Rules, 1955 makes provision for a committee consisting of the Legal Remembrancer to Government, Uttar Pradesh, the Secretary to Government, Uttar Pradesh, Transport Department and a member of the State Transport Authority to be nominated by the State Government for considering and deciding objections filed on the scheme.

It is an independent body which has hardly anything to do with the framing of the scheme. One of them is a member of the State Transport Authority which is charged, under the Motor Vehicles Act, with the administration of transport services. The procedure followed by the committee in deciding these objections also shows that the Transport Department is represented by the Transport Commissioner who is its head and it is after hearing him and the objector that the matter is decided. It is impossible to hold in the presence of these facts that the notification had the effect of constituting the State Government a judge in its own cause.

20. The petitioner referred to two recent cases of the Supreme Court: one of Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, and the other of Gullapalli Nageswara Rao etc. Vs. The State of Andhra Pradesh and Others, in which their Lordships held that the rule of natural justice which required that a person shall not be a judge in his own cause was applicable to proceedings held u/s 68-C of the Motor Vehicles Act. So far as the above proposition of law with reference to Section 68-C is concerned, the respondents also have not urged differently.

But their reply is that there was no contravention, of that fundamental principle. I think the learned Advocate General is right in his analysis of the facts attending the present case, according to which though the scheme was expressed to have been framed and published by, and in the name of the Governor, the authority which framed the scheme has not been proved to be the same as ultimately heard and decided the objections. Indeed, what appeared, on the contrary, is that the scheme was framed by the Transport Department and the authority which disposed of the objections was an entirely different and independent body. There has thus been no infringement in this respect too of the provision underlying Section 68-C.

21. A brief reference to the contents of Sections 68-F, 68-G and 68-H of the Act, before the remaining objections are considered, will be necessary.

"68-F(1) Where, in pursuance of an approved scheme, any State transport undertaking applied in the manner specified in Ch. IV for a stage carriage permit..... in respect of a notified area or notified route, the Regional Transport Authority shall issue such permit to the State transport undertaking notwithstanding anything to the contrary contained in Ch. IV.

(2) For the purpose of giving effect to the approved scheme in respect of a notified area or notified route, the Regional Transport Authority may, by order-

(a) refuse to entertain any application for the renewal of any other permit;

(b) cancel any existing permit;

(c) modify the terms of any existing permit so as to

(i)

(ii)

(iii)

(3) For the removal of doubts, it is hereby declared that no appeal shall lie against any action taken, or order passed, by the Regional Transport Authority under Sub-section (1) or Sub-section (2).

68-G(1) Where, in exercise of the powers conferred by Clause (b) or Clause (c) of Sub-section (2) of Section 68F, any existing permit is cancelled or the terms thereof are modified there shall be paid by the State transport undertaking to the holder of the permit a compensation the amount of which, shall be determined in accordance with the provisions of Sub-section (4) or Sub-section (5), as the case may be.

(2) Notwithstanding anything contained in Sub-section (1), no compensation shall be payable on account of the cancellation of any existing permit or any modification of the terms thereof, when a permit for an alternative route or area in lieu thereof has been offered by the Regional Transport Authority and accepted by the holder of the permit.

(3)

(4) Where, in exercise of the powers conferred by Clause(b)of Sub-section (2) of Section 68F, any existing permit is cancelledso as to prevent the holder of the permit from using any vehicle authorised to be used thereunder for the full period for which the permit would otherwise have been effective, the compensation payable to the holder of the permit for each vehicle affected by such cancellation..... shall be paid as follows:

(The sub-section then lays down the rate of compensation which is at the rate of Rs. 200/- per month for every complete month or part of a month exceeding 15 days.)

(5)

(Sub-section (5) relates to cases of modification of the terms of permit with which we are not directly concerned.)

68-H. The amount of compensation payable u/s 68G shall be paid by the State transport undertaking to the person or persons entitled thereto within one month from the date on which the cancellation or modification of the permit becomes effective;

Provided that where the State transport undertaking fails to make the payment within the said period of one month, it shall pay interest at the rate of 31/2 per cent per annum from the date on which it falls due."

22. The order cancelling any existing permit has in view of Sub-section (2) of Section 68-F to be made by the Regional Transport Authority, Section 44 has laid down the constitution of State Transport Authority and of the Regional Transport

Authority. These consist of a number of persons to be appointed by the State Government and the Chairman, of each shall be a person who has had some judicial experience. The section further enjoins that no person who has any financial interest whether as proprietor, employee or otherwise in any transport undertaking shall be a member of these Authorities.

The policy underlying the above provisions, thus, clearly, is that the Regional Transport Authority is a statutory body charged with certain duties and possessing its own constitution. Sub-section (5) of Section 44, however, permits the Regional Transport Authority, if authorised in that behalf by rules made u/s 68, to delegate such of its powers and functions to such authority or persons as may be prescribed by the said rules. The State Government have, accordingly, framed Rule 10 of the V. P. Road Transport Services (Development) Rules, 1958 whereof the Regional Transport Authority has been conferred power to delegate its functions under Sub-sections (1) and (2) of Section 68-F to the Regional Transport Officer.

In pursuance of this rule the Regional Transport Authority has authorised the Regional Transport Officer of the region concerned to exercise the power of cancellation belonging to it under Clause (b) of Sub-section (2). The three permits held by the three respondents were, therefore, cancelled by this officer. The petitioner has challenged the validity of the cancellation effected by the Regional Transport Officer as according to him the particular power which belongs to the Regional Transport Authority under Ch. IV A, is unable of delegation.

Rule 10 which has made provision for delegation has too been attacked as being in excess of the power of the State Government. In support he has relied on Section 68-1 which authorises the State Government to make rules for the purpose of carrying into effect the provisions of Ch. IV A. This section does not make provision for any rules authorising delegation of authority by the Regional Transport Authority and so far as Sub-section (5) of Section 44 is concerned the petitioner's contention is that the delegation contemplated by it is confined to the cases of powers exercisable under Ch. IV alone.

23. The learned Advocate General has supported the action of the Regional Transport Officer, firstly by urging that Rule 10 has been validly made and though made under Ch. IV, it covered the cases of cancellation u/s 68-F (2) also and secondly by arguing that the power given to the Regional Transport Officer was a purely ministerial act which the Regional Transport Authority was always entitled to delegate.

24. I do not find it possible to agree with the learned Advocate General that the power of cancellation given to the Regional Transport Authority under Sub-section (2) of Section 68-F is a purely ministerial act. Sub-section (2) begins with the words.

"for the purpose of giving effect to the approved schemethe Regional

Transport Authority may by order cancel any existing permit."

The Regional Transport Authority has, therefore, to exercise its mind when cancelling any existing permit which it so required to give effect to an approved scheme.

As a matter of fact, Clauses (a), (b) and (c) lay down different types of orders which will be necessary for giving effect to an approved scheme and in some of these cases the Regional Transport Authority will exercise to an extent in settling details a discretion also. To urge, therefore, that the duty imposed on the Regional Transport Authority by Sub-section (2) is purely ministerial in nature is not correct. The Legislature has intended that the Regional Transport Authority which ultimately is charged with the duty to grant permits, to cancel permits or otherwise modify their terms etc. should perform that duty cast upon it by the sub-section.

25. But the other argument of his has, in my opinion to succeed. A careful survey of Sec, 68-F will show that this provision in Ch. IV A is by way of a special provision relating to State transport undertaking. Indeed this is the heading also of Ch. IVA. Section 68-F has stated what the State Regional Transport Authority shall do, as will appear from Sub-section (1), when an application is made to it by a State transport undertaking for grant of a stage carriage permit in pursuance of an approved scheme and under Sub-section (2) for giving effect to that scheme.

In one case the permit is granted to the State Transport undertaking under Ch. IV and in the other permits which had previously been granted by the Regional Transport Authority under that Chapter are either to be cancelled or modified etc. In either case, therefore, the ultimate power is exercised under the present Chapter, i.e., Ch. IV but Section 88-F states the occasion when it is done.

In this view of the matter Sub-section (5) of Section 44 authorised the Regional Transport Authority to effect delegation of its powers u/s 68-F if the rules framed under Ch. IV so entitled it. Rule 10 referred to above was framed u/s 68 which is in Ch. IV, it also authorised the Regional Transport Authority to make the delegation in favour of the Regional Transport Officer. I am, therefore, unable to accept that the Regional Transport Officer was not authorised to cancel the permits in question.

26. These other facts will be necessary in connection with the remaining objection of the petitioner, i.e., with regard to the right of the Regional Transport Authority to grant permits on the alternative routes. Clause (d) of Rule 9 of the U. P. State Road Transport Services (Development) Rules, 1958 requires the Transport Commissioner to communicate the scheme after its finalisation to the Regional Transport Authority and the Regional Transport Authority has then to give effect to it forthwith.

We are concerned with two such schemes in the present case: One of them was

the Deoria Salempur Lar route by which Ram Avadh Misra was displaced from it and the other was Siswabazar Nichiaul Thuthibari route by which the other two respondents were displaced. Both these schemes were finally published u/s 68-D on 16-5-1959. The necessary communication was thereupon sent by the Transport Commissioner to the Regional Transport Authority, which, by its order dated 30th May 1959 No. 390/P.C./R.W./59 published in the U. P. Gazette dated June 6, 1959, cancelled the permits on the respective routes in favour of the three respondents.

The cancellation was to become effective in each case on the expiry of 15 days from the Publication of the order, i.e., from 21st June 1959. The scheme in pursuance of which these permits were cancelled also provided for cancellation of these permits as will appear from the notification approving those schemes. The schemes obviously contained] this provision by virtue of Rule 3 of the Rules which in Clause (b) required this particular to be stated.

27. The pertinent facts, therefore, are that both the schemes contained express provision for the cancellation of these permits. These permits were actually cancelled also on 30th May 1959 and this was done for giving effect to the scheme.

28. The point that will now arise is whether Section 68-G (2) still entitled the Regional Transport Authority to issue a permit for an alternative route. The learned Advocate General contended that the grant of permit on an alternative route takes place, according to the scheme underlying Section 68-G and Section 68-F, only after the original permit has been cancelled and the only limitation on the power of the Regional Transport Authority to grant it can be that he does so within a reasonable time from the date of cancellation of the original permit.

The petitioner, on the other hand, would insist that once a permit has been cancelled under Sub-section (2) of Section 68-F the permit-holder % entitled to compensation alone for which a liability also arises on the State Transport undertaking and it is not permissible therefore to the Regional Transport Authority to offer any alternative route or grant a permit on it in lieu of the cancelled permit.

29. It cannot be doubted, having regard to the provision in Sub-section (1) of Section 68-F and also in Sub-clause (iii) of Clause (4 of Sub-section (1) of Section 43, that whatever permits have to be granted, whether to the State transport undertaking under Sub-section (1) of Section 68-F or to a permit holder on an alternative route, are granted under the relevant provisions of. Ch. IV. So far as the former is concerned Sub-section (1) of Section 68-F itself contains that provision and so far as Sub-section (2) of Section 68-G goes, Sub-clause (iii) aforesaid, which gives power to the State Government to issue directions to the State Transport Authority regarding the grant of permits for alternative routes to persons in whose cases their existing permits are cancelled under Sub-section (2) of Section 68-F, shows the requisite intention. The

question also has been canvassed that in granting permits on alternative routes the Regional Transport Authority cannot exceed the strength otherwise fixed by it u/s 47 (3), but it shall not be necessary to express any opinion on it in this case which can be disposed of on another point to which I shall immediately revert.

30. Sub-section (1) of Section 68-G lays down the rule that when any existing permit is cancelled there shall be paid by the State transport undertaking to the permit-holder compensation the amount of which shall be determined in accordance with Sub-section (4) or (5) as the case may be. The cancellation of the permit, therefore on the one hand entitles the permit-holder to compensation and, on the other, imposes a duty on the State transport undertaking to pay the same to him. u/s 68-H the compensation becomes payable within one month from the date on which the cancellation took place after which it bears interest also.

There is nothing in Sub-section (2), which gives to the Regional Transport Authority the power to offer an alternative route, to hold that the right to compensation acquired under Sub-section (1) and the liability to pay the same resulting on the State transport undertaking ceases with the offer of an alternative route. Under Sub-section (4) compensation is payable at a certain rate for every complete month or part of a month exceeding 15 days and the total amount is to be determined with reference to the unexpired portion of the permit.

The permit on alternative route is too, to be granted for the remainder of the term of the permit. The fact further that the permit on the alternative route is in lieu of the one cancelled under Sub-section (2) of Section 68-F shows that the alternative route has to be offered at the time of the cancellation of the original permit. Unless this is done the very purpose of Section 68-G, which requires payment of compensation for cancellation of the permit, shall be defeated. The compensation is determined at a certain rate per month for the unexpired portion of the permit.

If the Regional Transport Authority has power under Sub-section (2) to offer a permit after an interval since the cancelling of the permit, the State transport undertaking, which otherwise should be liable to pay compensation for the period of interval, will escape that liability though the section does not make such a provision. The scheme underlying Sections 68-C, 68-F, 68-G and 68-H clearly contemplates -- and tin"s is further borne out by Rule 3 and 9 and the provision in from II also quoted earlier that the offer for alternative route should be made in the scheme itself and not after an interval since the enforcement of the scheme.

Indeed the two schemes in question followed this line. Sub-section (2) of Section 68 in providing that notwithstanding anything contained in Sub-section (1) no compensation shall be payable, on account of compensation of an existing permit has intended that if a permit is cancelled and an alternative route is given in lieu

thereof and accepted by the holder the liability to pay compensation which is otherwise embodied in Sub-section (1) shall not arise. It could not be the intention of the Legislature that the Regional Transport Authority will be free to offer alternative routes subsequently and thus save the State Government or the transport undertaking from a liability duly incurred by it.

By permitting this interpretation to be placed on Sub-section (2) the State Government will at the sweet discretion of the Regional Transport Authority get rid of its liability to pay compensation, a liability duly incurred by it, because by following this course the compensation is in ultimate analysis paid not by them but by the operators on the route to which he is transferred. And though the rights of the other operators are undoubtedly affected they cannot offer any resistance. The Legislature could never think of such a consequence.

31. Therefore, as I read these sections the Regional Transport Authority has no power to offer an alternative route where the scheme does not so provide but provides, as in the instant case, for their cancellation on payment of compensation.

32. On the above finding the offer made by the Regional Transport Authority and accepted by the three respondents was without jurisdiction, the resultant permits in favour of respondents 3 to 5 which evidently shall adversely affect the interest of the petitioner must be held to be illegal.

33. In the result, therefore this petition ought to succeed. The resolution No. 32 dated 26th September 1959 granting permits to respondents 3 to 5 is quashed and respondents 3 to 5 are directed to forbear from operating on the routes in question in pursuance of the said permits. The petitioner will get his costs from, respondents 1 to 5.