

(1961) 07 KL CK 0041

In the High Court Of Kerala

Case No : O.P. No"s. 1083 and 1117 of 1961

Kuttappan Nair

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 10-07-1961

Acts Referred:

Constitution of India, 1950 — Article 162, 245

Citation : (1962) KLJ 262

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Advocate : T.N. Subramonia Iyer, K.S. Paripoornan and V.A. Abdul Azeez, for the Appellant;

Final Decision : Dismissed

Judgement

C.A. Vaidialingam, J.—The respective petitioners in these two writ petitions, who claim to be operating bus services in major portions of the route in the Trivandrum District, attack the scheme, as approved by the State Government, and finally published u/s 68 D (3) of the Motor Vehicles Act, as also certain consequential orders passed by the authorities. The details of the portions of the route operated by the petitioners are not given in the affidavits, but that does not become relevant in this case, because their attack is on the scheme itself.

2. The petitioner in O. P. 1117/61 states that he has got 30 buses operating in the major portions of the routes in the District; while the petitioner in O. P. 1083/61 states that he operates 13 buses in the major portions of the route in the District.

3. Mr. T. N. Subramonia Iyer, Learned Counsel appearing for the writ petitioners, has attacked the scheme and the subsequent orders on various grounds; while the learned Government Pleader appearing for the State and the other respondents have supported the scheme as well as the various orders, which are under attack.

4. Before I set out the contentions of Mr. T. N. Subramonia Iyer, Learned Counsel, it is desirable at this stage to state the nature of the scheme as well as the orders that are attacked. As the scheme and the orders that are attacked in both these writ petitions are almost the same, they are referred to by the exhibit number they bear in O. P. 1083/61. I may also state that the counter-affidavit filed by the State in O. P. 1083/61 is treated as the counter-affidavit of the respondents in O. P. 1117/61 also.

5. The Director of State Transport, on behalf of the State Transport Undertaking, prepared a scheme u/s 68C of the Motor Vehicles Act which was published in the State Gazette on 24-5-1960. According to the scheme so prepared, the proposal was to run buses by the State Transport Undertaking in complete exclusion of the existing passenger services. The proposal also covered about 32 different Routes.

6. Both the petitioners filed objections to the proposed scheme, as they are entitled to, u/s 68D(1) of the Act. The Chief Minister of Kerala heard, on 21-11-"60, the objections made to the scheme and the Government finally approved the scheme on 25-3-"61 u/s 68D(2) of the Act. The scheme so approved, was again published in the State Gazette by the State Government on 4-4--"61, as required under the provisions of sub-section (3) of section 68D. That becomes "The Approved Scheme" by virtue of the said sub-section referred to above. That "Approved Scheme" is marked as Ext. P. 1 in these proceedings.

7. On 16-5-"61, the Secretary, Regional Transport Authority Trivandrum, under Ext. P. 3, issued a notice purporting to be under Rules 8 and 9 of the Kerala Motor Vehicles (State Transport Undertakings) Rules, 1960 stating that the permits in respect of the vehicles mentioned against Nos. 1 to 58 are rendered ineffective beyond 31-5-"61 mid-night and that in respect of permits 59 to 63 therein, the portion of the Routes stated against each is curtailed. It is also mentioned therein that action by way of rendering the permits ineffective beyond 31-5-"61 or curtailing the area of the Route covered by the permits beyond that period, is taken on the basis of section 68F(2)(c)(i) and (iii) of the Motor Vehicles Act. The operators were also directed not to operate services on the Routes, the permits of which are rendered ineffective, or on the portions of route which are curtailed and there was also a further direction to the operators to surrender the permits within 7 days for cancellation or modification as the case may be.

8. The Director of Transport, Trivandrum made the necessary applications on 13-4-"61 for the issue of stage carriage permits in pursuance of the "Approved Scheme" published in the State Gazette dated 4-4-"61 so as to enable the State Transport Undertaking to run the services, in complete exclusion of the private operators, from 1-6-"61. This application must have been filed under the provisions of sub-section (1) of section 68F of the Act.

9. The R. T. A., Trivandrum, by its order dated 20-5-"61, Ext. P. 4, granted the permits for the number of vehicles applied for in respect of the Routes covered by the Nationalisation Scheme; but directed that the actual issue of the permits

will be made only after the date of communication of the decision of the R. T. A. as provided for under Rule 168(2).

10. The State Transport Undertaking appears to have filed revision before the State Transport Authority against the order Ext. P. 4. The main grievance of the State Transport Undertaking, appears to have been regarding the direction contained in Ext. P. 4 that the actual issue of the permits will be made only after the date of communication of the decision of the R. T. A. as provided under Rule 168(2). The State Transport Authority after notice to all the affected operators, heard this revision petition on 2-6-61 and on the same day passed an order rejecting the revision filed by the State Transport Undertaking and confirming the directions contained in Ext. P. 4. That order has become final. I am only mentioning this to complete the narration of facts.

11. The petitioners, as well as several other operators challenged the order Ext. P. 3 rendering ineffective their permits beyond 31-5-61 or curtailing their area or Route covered by their permits beyond 31-5-61. They also challenged the order of the R. T. A., Ext., P. 4, directing the issue of permits in favour of the State Transport Undertaking. The attack as against both these orders was made by a revision taken before the State Transport Authority. As more or less the same grounds of attack that are taken before me, were also taken before the State Transport Authority and as I will have to deal with those contentions separately, it is only to be stated at this stage that the State Transport Authority upheld the scheme as valid and over-ruled the objections of the petitioners and also upheld the order directing the issue of permits to the State Transport Undertaking under Ext. P. 4. The order of the State Transport Authority passed in revision is Ext. P. 5.

12. But so far as the order Ext. P. 3 is concerned, the State Transport Authority was of the view that when the R. T. A. took action u/s 68F-(2) of the Act, there has not been a proper compliance with the provisions of rules 8 and 9 of the Kerala Motor Vehicles (State Transport undertakings) Rules, 1960. In this view, the State Transport Authority gave certain directions to the R. T. A. The directions so given by the State Transport Authority, as well as the further action taken by the R. T. A., will be adverted to by me when I have to deal with the attack made by Mr. T. N. Subramonia Iyer against the order Ext. P. 3.

13. In these writ petitions, the scheme Ext. P. 1 and also the orders Exts. P. 3, P. 4 and P. 5 are attacked as illegal and invalid. There is also an alternative prayer for issuing a writ of mandamus or other appropriate writ, direction or order to the respondents to proceed with the matters according to law and as enjoined by the Act and the Rules.

14. The first contention of Mr. T. N. Subramonia Iyer Learned Counsel for the petitioner is based upon, what according to him is, a non-compliance of the provisions of the proviso to sub-section (3) of section 68D. According to the Learned Counsel, atleast 4 of the Routes mentioned in Ext. P. 1 namely, Nos. 19, 20, 21 and 25 are "Inter State Routes", as some of the portions in the said

Routes are in the district of Kanyakumari situated in the Madras State. Whatever definition may have been given to the expression "Inter State Route" by the Inter State Transport Commission, constituted u/s 63A of the Act, by the Central Government, there is nothing in Chapter IV A to show that the said definition is also adopted in section 68 D of the Act. Therefore, when any part of the Route referred to in a scheme falls outside the State and extends to even some portion in another State, it becomes an "Inter-State Route" and under the proviso to sub-section (3) of section 68D, no such scheme relating to such Route shall be deemed to be an "Approved Scheme" unless it has been published in the official Gazette with the previous approval of the Central Government. In this case, though the scheme relates to Route Nos. 19, 20, 21 and 25 also, there has been no publication in the official Gazette with the previous approval of the Central Government. Therefore, the scheme Ext. P. 1 cannot be considered to be an "Approved Scheme" and is void. In consequence, the Learned Counsel also urged that actions taken by the R. T. A., either u/s 68F(1) issuing permits to the State Transport Undertaking under Ext. P. 4, or taking action under Ext. P. 3 on the basis of section 68F(2)(c)(1) and (iii) are also void. Therefore, the order of the State Transport Authority, confirming these orders under Ext. P. 5 is also of no legal consequence.

15. The Learned Counsel further urged that even assuming that the Inter State Transport Commission has got power to give a definition of the expression "Inter State Route", the Inter State Transport Commission is only a delegate and it cannot arbitrarily fix any Route as an "Inter state Route" when the Legislature itself has not chosen to define that expression in the Act.

16. The Learned Counsel also referred to the provisions of Articles 162 and 245 of the Constitution. But I may straightaway say that these two Articles have no bearing on the point under discussion.

17. Therefore, the net result of the contention of Mr. T. N. Subramonia Iyer on this aspect is that inasmuch as the proviso to sub-section (3) of section 68D has not been complied with, it should be considered that Ext. P. 1 is not an "Approved Scheme" at all.

18. The learned Government Pleader on the other hand, urged that none of the Routes included in the "Approved Scheme" Ext. P. 1 is "Inter State Route" as defined by the Inter-State Transport Commission. u/s 63-A, the Central Government have constituted an Inter-State Transport Commission, for the purpose of developing, co-ordinating and regulating the operation of transport vehicles in respect of any area or Route common to two or more States. u/s 63C of the Act the Central Government have also framed rules namely, the Inter State Transport Commission Rules, 1960. Rule 21 of the said Rules provides for the powers and functions of the Commission and among those powers and functions is the power under clause (1) of Rule 21 for classification of Routes and areas as "Inter State Routes" and "Inter State Areas" for the purpose of developing road motor transport. By virtue of these powers, the Inter State

Transport Commission had defined an "Inter State Route" in a particular manner. Therefore, unless a scheme is framed in respect of also a Route which will be an "Inter State Route" as defined by the Inter State Transport Commission, the learned Government Pleader, urged, the provisions of the proviso to sub-section (3) of section 68D do not come into play. The learned Government Pleader further urged that there is no special definition given to the expression "Inter State Route" in Chapter IVA for the purposes of that Chapter. Therefore, he urged that the definition given of an "Inter State Route" by the Inter State Transport Commission must apply to the expression "Inter State Route" occurring in the proviso to section 68D (3).

19. In my opinion, the contentions of Mr. T. N. Subramonia Iyer, Learned Counsel for the writ petitioner, cannot be accepted. There is no question in this case of either the State or the Inter State Transport Commission attempting to legislate. The Inter State Transport Commission, as will be seen u/s 63A is constituted for the purpose of developing, co-ordinating and regulating the operation of transport vehicles in respect of any area or route common to two or more States and it has also got jurisdiction to perform such other functions as are prescribed u/s 63C.

20. u/s 63C, the Central Government are given power to make rules to provide for all or any of the matters mentioned in clauses (a) to (i) therein. In particular, the Central Government have got power to make rules under clause (b) of section 63C providing "the powers and functions of the commission". Rule 21 of the Inter State Transport Commission Rules, 1960 framed by the Government, u/s 63C of the Motor Vehicles Act, states what powers and functions may also be exercised and discharged by the Inter State Transport Commission. In particular, clause (1) of Rule 21 relates to "Classification of Routes and Areas as Inter-State Routes and Inter-State Areas for the purpose of developing road motor transport". It is really in pursuance of the powers so given to the Inter state Transport Commission, that the latter has given the definition of the expression "Inter State Route" as follows :

Any route which originates in one State and terminates in another and connects two points which are important commercially or otherwise and are recognised as such by common usage or so justified by requirements, or is so declared by the Inter-State Transport Commission, shall be an inter State route. But any route which originates and terminates in the same State but traverses an enclave or enclaves in another individual States for more than 10 miles shall also be an inter-State route.

This definition is extracted from the order Ext. P. 5.

21. It is really on the basis of this definition given by the Inter state Transport Commission that it is urged on behalf of the state that none of the Routes mentioned in Ext. P. 1 are Inter State Routes and therefore, the provisions of the proviso to sub-section (3) of section 68D do not get attracted.

22. Admittedly, there is no definition of the expression "Inter State Route" either in the Act or in particular in Chapter IVA. In my view, as the expression "Inter State Route" has not been defined in any special manner in Chapter IVA, it is not only reasonable, but also legitimate to infer that the Legislature intended that the said expression should have the same meaning as given to it for the purpose of Chapter IV of the Act. Parliament must have been well aware, when it has not given a special definition to that expression in Chapter IVA, that powers are given to the Inter State Transport Commission in respect of such matters. Section 68D(3) including the proviso, runs as follows:

Objection to the scheme - (3) The scheme as approved or modified under sub-section (2) shall then be published in the Official Gazette by the State Government, and the same shall thereupon become final and shall be called the approved scheme and the area or route to which it relates shall be called the notified area or notified route:

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

Section 68B occurring in Chapter IVA states :

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

No doubt, section 68B does not say anything directly as regards any of the provisions of Chapter IV being applicable to matters under Chapter IVA. But the effect of section 68B is that if in respect of any particular matter the provisions of Chapter IV is to be applied and there are also provisions in Chapter IVA which may also apply, then, in that case, the provisions of Chapter IVA will prevail to the extent of its being inconsistent with the corresponding or analogous provision in Chapter IV.

23. Therefore, it has to be found out whether the particular provision in Chapter IV relating to Inter State Route, which is not inconsistent with the provisions in Chapter IVA, will apply or not to the proviso to sub-section (3) of section 68D in Chapter IVA. As I have already indicated, the expression "Inter State Route" has not been defined in any particular or special manner in Chapter IVA. There are provisions relating to that in Chapter IV read with the Inter State Transport Commission Rules, 1960. There being no inconsistency with those provisions relating to Inter state Route, with the provisions in Chapter IVA dealing with Inter State Routes also, in my view, the position is that the matter dealt with in the proviso to sub-section (3) of section 68D relating to Inter State Routes attracts the provisions of Chapter IV. In this view, I hold that the expression "Inter-State Route" referred to in the proviso to section 68 D(3) must satisfy the

definition of an "Inter State Route" as given by the Inter state Transport Commission functioning under the provisions of Chapter IV, read with the Interstate Transport Commission Rules, 1960. Considering the question on this basis, it is not the case of the petitioner that any of the Routes mentioned in Ext. P. 1 is an "Inter State Route" as defined by the Inter State Transport Commission. If so, there is no question of the previous approval of the Central Government being obtained for publication of the "Approved Scheme" and therefore, the proviso to sub-section (3) of section 68D will have no application in the circumstances of this case.

24. Therefore, it further follows that the scheme Ext. P. 1, which has been approved by the State Government and duly published under sub-section (3) of section 68 D is a perfectly valid and legally approved scheme.

25. No doubt, Mr. T. N. Subramonia Iyer referred to Ext. P. 2 which is a communication issued by the Regional Transport Officer, Kanyakumari district on 29-7-'58 to some of the operators on the ground that portions of the Neyyattinkara--Panachimood and Parassalai--Panachimood Routes lie in the Kanyakumari district and further directing those persons to apply for getting the endorsement from the R. T. A., Kanyakumari. Evidently that must be a notification issued for directing some of the operators to comply with the provisions of Section 63 of the Motor Vehicles Act, which provides among other matters, that a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned. That does not at all in my view, throw any light on the matter before me. Therefore, the first contention of Mr. T. N. Subramonia Iyer, based upon the proviso to sub-section (3) of section 68D, has to be negated.

26. The second contention of Mr. T. N. Subramonia Iyer is that there has been no publication of the scheme, Ext. P. 1 in any newspaper as required under Rule 5 of the Kerala Motor Vehicles (State Transport Undertakings) Rules, 1960. Rule 5 is as follows :

Apart from the publication in the Gazette all schemes formulated by the State Transport Undertaking and all schemes approved or modified by the Government shall be published, at least in one daily newspaper circulating in the area involved. Copies of the schemes shall also be put up on the notice boards of the Secretariat and the Offices of the State Transport Undertaking, the State Transport Authority, and the Regional Transport Authorities concerned.

It is not very clear as to whether the grievance of the petitioners under this head relates to non-publication in one daily newspaper, of the scheme formulated by the State Transport Undertaking or of the scheme approved by the Government. In sub paragraph E in the grounds stated in the affidavit, it is mentioned that the scheme Ext. P. 1 is also illegal in that there was no previous publication in any newspaper as enjoined by Rule 5 of the State Transport Undertakings Rules and

that the said provision is mandatory. Evidently, the attack appears to be about non-publication of the Approved Scheme as required under Rule 5 of the Rules, 1960.

27. In paragraph 13 of the counter-affidavit it is stated that the Approved Scheme was sent by the Government on 25-3-61 to the Director of Public Relations for publication in one daily newspaper circulated in the area, but it happened that it came to be published in the newspaper "Malayali" only in its issue of 11-6-61. From the counter-affidavit it is clear that there has been a publication of the Approved Scheme, at any rate, in the newspaper "Malayali" of 11-6-61. The object of the rule requiring publication in one daily newspaper also, must be to give a wide publicity to the scheme as formulated by the State Transport Undertaking as also the scheme approved or modified by the state Government. The desirability of such a publication, either along with its publication, in the State Gazette or within a reasonable time thereafter, cannot be over-emphasised. Though the publication in the State Gazette in this case has been as early as 4th April 1961, the publication in the newspaper "Malayali" has been only on 11-6-61. But in this case, at any rate, the petitioners cannot have any grievance because they have been all aware of all the proceedings connected with the scheme at all stages. Even otherwise, non-publication in a daily newspaper will if at all, be only an irregularity and not an illegality, especially when publication has been made in the State Gazette. Therefore, this contention of Mr. T. N. Subramonia Iyer also stands negatived.

28. The third contention of Mr. T. N. Subramonia Iyer is that there has been no application made by the State Transport Undertaking for issue of the permits in the manner specified in Chapter IV, as required under the provisions of section 68F(1) of the Act. Section 68F(1) of the Act makes it obligatory on the part of the State Transport Undertaking to apply "in the manner specified in Chapter IV for a stage carriage permit". Sections 46 and 57(2) contained in Chapter IV come in to play.

29. There can be no controversy, as held by their Lordships of the Supreme Court in Shrinivasa Reddy and Others Vs. State of Mysore and Others, that the State Transport Undertaking, when applying u/s 68F(1) of the Act, must comply with the terms of sections 45, 46 and 57(2) in Chapter IV of the Act. In this case the applications made by the State Transport Undertaking u/s 68F(1) of the Act is within the period mentioned in section 57(2). Then the only question is whether the provisions of sections 45 and 46 have not been complied with by the State Transport Undertaking. The applications have been made to the R. T. A. of the Region referred to in section 45 of the Act. Therefore, the provisions of section 45 are also complied with.

30. Mr. T. N. Subramonia Iyer urged that the various particulars required u/s 46 of the Act, in an application for a permit, have not been furnished by the State Transport Undertaking. I am not inclined to accept this contention either. I have gone through the various applications made by the State Transport Undertaking

and the relevant details mentioned therein. It should be remembered that section 46 itself states that an application for a permit shall "as far as may be" contain the particulars referred to in clauses (a) to (f) therein. It should also be remembered that applications are made in pursuance of the Approved Scheme, Ext. P. 1. Almost all the details necessary are already contained in Ext. P. 1 and even the applications filed by the State Transport Undertaking, in my opinion, have given particulars "as far as may be" as required in section 46. Therefore, this contention also cannot be accepted.

31. The fourth contention of Mr. T. N. Subramonia Iyer is that there has been a violation of the provisions of Rule 8 of the Kerala Motor Vehicles (State Transport Undertakings) Rules, 1960. His ground of attack is that instead of giving due notice as required under Rule 8 before eliminating the existing services or cancelling any existing permit or modifying the conditions of the existing permit, the Regional Transport Authority in this case, when it issued Ext. P. 3 on 16-5-61, has already taken a decision rendering ineffective the permits or curtailing the permits with effect from 31-5-61 and has merely informed the petitioners about that decision without giving them due notice before taking such action.

32. Rule 8 of the Kerala Motor Vehicles (State Transport Undertakings) Rules, 1960 is as follows :

In giving effect to the approved, scheme, the Regional Transport Authority or Authorities concerned shall, before eliminating the existing services or cancelling any existing service or cancelling any existing permit or modifying the conditions of the existing permit so as to--

- (i) render the permit ineffective beyond a specified date;
- (ii) reduce the number of vehicles authorised to be used under a permit or
- (iii) curtail the area or route covered by the permit in so far as such permit relates to the notified route;

give due notice to the persons likely to be affected in the manner prescribed in these rules.

So far as this aspect is concerned, if Ext. P. 3 is still in force, that order will have to be set aside and the R. T. A. directed to take up the question of further action being taken u/s 68F(2) of the Act after complying with the provisions of Rule 8 referred to above. In Gullapalli Nageswara Rao etc. Vs. The State of Andhra Pradesh and Others, , their Lordships had to consider Rule 11 of the Andhra Pradesh Motor Vehicles Rules, which was more or less analogous in terms to the provisions of Rule 8 of the Kerala Rules. In that case, the R. T. A. issued an order on 24-12-58 directing the operators to stop their buses, in view of Nationalisation, with effect from 25-12-58. Mr. Justice Subba Rao speaking for the court, observes at page 1383 as follows :

A combined reading of section 68F(2) and Rule 11 makes it clear that the order

contemplated under the said sub-section can be made by the Regional Transport Authority only after giving due notice to the persons likely to be affected by the said order.

The learned Judges further observes in the same page :

There are two defects in the procedure followed by the Regional Transport Authority: (i) while the rule enjoins on the Authority to issue notice to the persons affected before making the relevant order, the Authority made the order and communicated the same to the persons affected ; and (ii) while the rule requires due notice, i.e., reasonable notice, to be given to the persons affected, to enable them to make representations against the order proposed to be passed, the Regional Transport Authority gave them only a day for complying with that order, which in the circumstances could not be considered to be due notice within the meaning of the rule. We have, therefore, no hesitation to hold that the Regional Transport Authority did not strictly comply with the provisions of the rule.

Having due regard to the provisions of Rule 8, and to the principles laid down by the Supreme Court in the decision referred to above, I would have had no hesitation in setting aside the order, Ext. P. 3. Under Ext. P. 3 the R. T. A. has already taken a decision by way of curtailment or otherwise of the permits with effect from 31-5-61 and it is that decision that is communicated to the petitioners. It is not certainly in compliance with the provisions of Rule 8, nor in accordance with the principles laid down by the Supreme Court, inasmuch as no notice has been issued to the persons sought to be affected before making the relevant order.

33. But it has become unnecessary to quash Ext. P. 3 because the revisional authority, when passing the order Ext. P. 5, has given certain directions to the Regional Transport Authority. The State Transport Authority, in Ext. P. 5, is of the view that the order Ext. P. 3 cannot be sustained as such. Therefore, it has directed the R. T. A. to give time to the various operators till 16-6-61, for making representations and the R. T. A. has been also directed to decide the matter thereafter under the provisions of section 68F of the Act. In the counter-affidavit filed by the State, it is stated in paragraph 9 that in view of the directions given in Ext. P. 5, the Secretary, R. T. A. has issued a fresh notice on 12-6-61 to all the affected operators, including the petitioners, and the terms of the notices are also set out in the said paragraph. It will be seen that the notice is to the effect that the representations of the operators in rendering the existing permits ineffective or to curtail the routes involved in the scheme should reach the R. T. A. on or before 16-6-61 and those representations will be considered by the R. T. A. u/s 68F(2) of the Motor Vehicles Act. The receipt of those fresh notices has been accepted by the petitioners in the reply affidavit filed in O. P. 1083/61.

34. Therefore, it will be seen, a fresh notice in strict compliance with the provisions of Rule 8, has been already issued by the R. T. A. and Ext. P. 3 has

ceased to be in force. If the petitioners have already filed their representations in response to the notice issued on 12-6-61, and referred to in paragraph 9 of the State's counter-affidavit, the Authority will proceed further in the light of the directions contained in Ext. P. 5. If the petitioners have not filed their representations within the time mentioned in the notice, because of their having come to this Court by these writ petitions, they are given one week's time from to-day to file their representations as required in the notice dated 12-6-61. Those representations that may be filed within the time mentioned above, will be duly considered by the R. T. A. before final orders are passed. Subject to this reservation, the fourth contention of Mr. T. N. Subramonia Iyer also has to be rejected.

35. The 5th and the last contention of Mr. T. N. Subramonia Iyer, Learned Counsel is that the procedure contemplated under sections 68F (1), 68F (2), as also 68G are parts of a comprehensive scheme. It is his further contention that the procedure of granting permits u/s 68F (1) and the process of cancelling or modifying permits u/s 68F (2) and the determination of compensation etc., u/s 68G must all be considered and decided simultaneously. This contention cannot be accepted. I am of the view that the provisions of section 68G come into play only when action has been taken under the provisions of section 68F (2). It may be that action taken under sub-sections (1) and (2) of section 68F flows from the scheme and it may also be that the right conferred of claiming compensation u/s 68G arises in consequence of action taken u/s 68F (2). But there is nothing in section 68F or section 68G to indicate that the determination and payment of compensation must be done simultaneously along with action taken u/s 68F (1) and or (2).

36. The claim for compensation arises only because of action taken in one of the ways indicated in section 68F (2). But that does not, in my view, also lead to the conclusion that the compensation must be determined and paid at the same time or that the determination of compensation must be simultaneous. In fact, the wording of section 68G (1) also indicates that the question of payment of compensation and the determination thereof arises only when an existing permit is cancelled or the terms thereof are modified u/s 68F (2). In fact, the cancellation of the permit or modification of the terms of a permit must have already become an accomplished fact so as to entitle a party to be paid compensation. The determination of the amount can be made only when an event by way of cancellation of a permit or modification of the terms have been already effected. That section 68G has nothing to do with action taken u/s 68F (1), will also be indicated presently.

37. In this case, it is not necessary for me to consider as to whether action under sub-section (2) of section 68F must also be simultaneous or along with action taken u/s 68F (1). On the facts in this case, that question does not arise because admittedly, it was when the application for issue of permit was made by the State Transport Undertaking under sub-section (1) of section 68F, that the R. T.

A. took action under sub-section (2) of section 68F also.

38. So far as the order Ext. P. 4 is concerned, once an application is made by the State Transport undertaking (a) in pursuance of an Approved Scheme; and (b) in the manner specified in Chapter IV, the R. T. A. has no other option left with him, but to issue the permits asked for. In this case, the application has been made in pursuance of the Approved Scheme Ext. P. 1 and I have already shown that the application is made in the manner specified in Chapter IV. If that is so, the R. T. A. was bound to issue the permits to the State Transport Undertaking, in view of the clear provisions of section 68F (1) of the Act and neither the public in general nor the permit-holder has any part to play in the issue of permits to the State Transport Undertaking u/s 68F (1) of the Act. I am also of the further view that action u/s 68F (2) is really independent of the issue of the permits u/s 68F (1) of the Act. If action u/s 68F (2) is really independent of the issue of the permits u/s 68F (1), it also follows that the question of compensation u/s 68G does not come into the picture, when action is taken u/s 68F (1), In other words, action taken u/s 68F(1) is also independent of the claim for compensation u/s 68G of the Act. It follows that the last contention of the Learned Counsel cannot also be accepted.

39. So far as the order Ext. P. 5 passed by the State Transport Authority is concerned, that order has been passed by the appropriate authority, whose revisional jurisdiction was invoked. There is no lack of jurisdiction, when the State Transport Authority passed the order Ext. P. 5.

40. It follows from what is stated above that none of the orders Exts. P. 1, P. 4 or P. 5 requires to be quashed. The order Ext. P. 3, I have already stated, does not require to be quashed because it is no longer in force and that matter is again pending before the R. T. A. The alternative relief asked for in the writ petitions, does not also arise because I have already held that the various orders" excepting Ext. P. 3 are passed according to law and as enjoined under the Act or the Rules. Subject to what is stated above regarding the order Ext. P. 3, the writ petitions fail and are dismissed. The State will get half costs in each of these writ petitions.